

DEC 20 2019

No. S256927

IN THE SUPREME COURT OF CALIFORNIA Secretary Clerk

IXCHEL PHARMA, LLC,

Plaintiff and Appellant,

v.

BIOGEN, INC.

Defendant and Respondent.

Deputy

On Certified Questions From The United States Court Of
Appeals For The Ninth Circuit, Case No. 18-15258
Judge William B. Shubb, Case No. 2:17-CV-00715-WBS-EFB

**RESPONDENT BIOGEN, INC.'S MOTION FOR
JUDICIAL NOTICE IN SUPPORT OF ITS ANSWER
BRIEF ON THE MERITS; MEMORANDUM OF
POINTS AND AUTHORITIES; DECLARATIONS OF
LAURIE J. HEPLER, LISA R. HERMES and JENNY
S. LILLGE; [PROPOSED] ORDER**

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**MOTION FOR JUDICIAL NOTICE IN SUPPORT OF
ANSWER BRIEF ON THE MERITS**

In support of its Answer Brief on the Merits, Respondent Biogen, Inc. asks this Court to take judicial notice of the concurrently-submitted legislative history materials regarding the 1872 enactment of former Civil Code section 1673, and the 1941 transfer of former Civil Code section 1673 to become Business and Professions Code section 16600.

Respondent also asks this Court to take judicial notice of the publicly-filed Patent Settlement and License Agreement (“Patent License”) between Respondent Biogen, Inc. and non-party Forward Pharma FA Aps, available in full on the public website of the U.S. Securities and Exchange Commission.

This motion is based on Evidence Code sections 452, 453, 455, and 459, rule 8.252 of the California Rules of Court, the accompanying Memorandum of Points and Authorities and Declarations of Laurie J. Hepler, Lisa R. Hermes and Jenny S. Lillge, and the briefs filed in this matter.

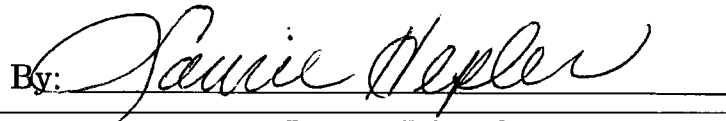
DATED: December 16, 2019

ROPES & GRAY LLP

Mark S. Popofsky and Rocky Chiu-Feng Tsai

GREINES, MARTIN, STEIN & RICHLAND, LLP

Laurie J. Hepler and Meehan Rasch

By: 

Laurie J. Hepler

Attorneys for Respondent BIOGEN, INC.

MEMORANDUM OF POINTS AND AUTHORITIES

Respondent Biogen, Inc. asks this Court to take judicial notice of the following:

- A. Legislative history materials pertaining to the 1872 enactment of former Civil Code section 1673, attached as Exhibits A-1 through A-6 to the Declaration of Jenny S. Lillge.
- B. Legislative history materials pertaining to the 1941 transfer of former Civil Code section 1673 to become Business and Professions Code section 16600, attached to the Declaration of Lisa R. Hermes.
- C. The Patent License between Respondent and Forward Pharma FA Aps, as filed with the U.S. Securities and Exchange Commission, is available at no charge through the SEC's public website at https://www.sec.gov/Archives/edgar/data/1604924/000110465917002473/a17-2604_1ex99d2.htm.

The legislative history materials, which are not readily available to the Court or opposing counsel, are consecutively numbered "JN ___" in the lower-right corner. (See Cal. Rules of Court, rule 8.252(a)(3).) The Patent License is a voluminous document that, although possible to attach, is far more easily legible when viewed online. (See *ibid.*)

None of the matter to be noticed relates to proceedings occurring after judgment. (Cal. Rules of Court, rule 8.252(a)(2)(D).)

**I. THIS COURT CAN AND SHOULD JUDICIALLY
NOTICE THE LEGISLATIVE HISTORY OF CIVIL
CODE SECTION 1673 AND BUSINESS AND
PROFESSIONS CODE SECTION 16600**

Under California Rules of Court, rule 8.252(a)(2), Respondent Biogen, Inc. requests judicial notice of the concurrently-submitted legislative history materials regarding the 1872 enactment of former Civil Code section 1673, and the 1941 transfer of former Civil Code section 1673 to become Business & Professions Code section 16600.

It is well settled that appellate courts may take judicial notice of a statute's legislative history pursuant to Evidence Code sections 452, 453, 455 and 459. (*People v. Superior Court* (1996) 13 Cal.4th 497, 504, fn. 1 [granting request for judicial notice of bill's legislative history]; *Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72, fn. 3 [taking judicial notice of legislative history on court's own motion]; Cal. Rules of Court, rule 8.252(a)(2)(C).) This includes legislative history supplied by Legislative Intent Service, Inc. (*Knighten v. Sam's Parking Valet* (1988) 206 Cal.App.3d 69, 77, fn. 2.)

Source and relevance of the section 1673 material:
Biogen obtained the legislative history materials on the 1872 enactment of former Civil Code section 1673 through a custom search for all relevant documents, conducted by the attorneys and research staff of Legislative Intent Service, Inc. (See Lillge and Hermes Decls.) Legislative Intent Service's Exhibits A-1

through A-6—the direct history documents—are attached to the Lillge Declaration.¹

These concurrently-submitted legislative history materials are relevant to show the text of former Civil Code section 1673; that it was substantively identical to current Business and Professions Code section 16600; what common law section 1673 was intended to displace; and the statute's natural application to individuals at the time of enactment. (Declaration of Laurie J. Hepler, ¶ 2.) These materials are likely to aid the Court as it considers the proper test for applying section 16600 to restraints on a business.

Source and relevance of the section 16600 material:

Biogen obtained the legislative history materials on the 1941 transfer of former Civil Code section 1673 to become Business and Professions Code section 16600 from Legislative Intent Service, Inc.'s internet site (www.legintent.com). (See Hermes Decl., ¶ 7.)

These concurrently-submitted legislative history materials are relevant to show that section 16600 was intended to restate the existing law as judicially interpreted, such that section 16600 should be given the same construction that section 1673 received—as more fully explained in the Answer Brief. (Hepler Decl., ¶ 3.) These materials are likely to aid the Court as it

¹ Secondary material described in the Lillge Declaration appears less relevant to this Court's consideration of the issues presented, but Biogen will supply it if the Court so directs.

considers the proper test for applying section 16600 to restraints on a business.

These materials were not presented to the trial court.

This is the first time these materials have been submitted to any court in this case. (See Cal. Rules of Court, rule 8.252(a)(2)(B).)

**II. THIS COURT CAN AND SHOULD JUDICIALLY
NOTICE THE PUBLICLY-AVAILABLE PATENT
LICENSE BETWEEN BIOGEN, INC. AND FORWARD
PHARMA FA APS**

The Patent Settlement and License Agreement (“Patent License”) between Respondent Biogen, Inc. and non-party Forward Pharma FA Aps is available on the Securities and Exchange Commission’s public database at the URL set forth above. This database, commonly known as EDGAR (for Electronic Data Gathering, Analysis, and Retrieval), is the proper subject of judicial notice. “EDGAR is the primary system for submissions by companies and others who are required by law to file information with the SEC.” (U.S. Securities and Exchange Commission, About EDGAR <<https://www.sec.gov/edgar/aboutedgar.htm>>, as of December 6, 2019.) Appellate courts may take judicial notice of documents filed with federal administrative agencies pursuant to Evidence Code sections 452, 453, 455 and 459. (*Smiley v. Citibank* (1995) 11 Cal.4th 138, 145, fn. 2 [proper for Supreme Court to take judicial notice of documents from federal administrative agencies]; *Scott v.*

JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 743, 753 [fact of Purchase and Assumption Agreement filed on official FDIC website “not reasonably subject to dispute” and “capable of ready determination” under Evidence Code section 452, subdivision (h)]; *Ironridge Glob. IV, Ltd. v. ScripsAmerica, Inc.* (2015) 238 Cal.App.4th 259, 265, fn. 5 [granting request for judicial notice of stock certificates filed with the SEC].)

The materials are relevant to this case. The Patent License is relevant because Ixchel Pharma, LLC’s operative complaint extensively referenced that agreement, grounding its allegation of an independently wrongful act upon that agreement’s supposed violation of Business and Professions Code section 16600. (See ER 98-106; ER 13-25 and esp. ER 15, fn. 3.) (Hepler Decl., ¶ 4.)

Although the Answer Brief cites only a fraction of the total Patent License, and most of those citations appear in the parties’ respective excerpts-of-record compiled for the Ninth Circuit, this Court may find it helpful and convenient to review the cited sections in the context of the whole document.

The Patent License was presented in part to the trial court. Portions of the Patent License were presented to the trial court, and that court took judicial notice. (See ER 15, fn 3.)

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CONCLUSION

For these reasons, Respondent Biogen, respectfully asks the Court to take judicial notice of the described materials.

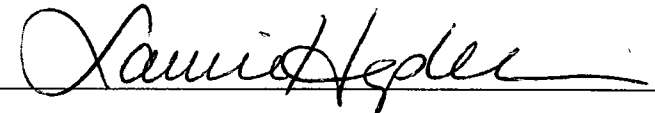
DATED: December 16, 2019

ROPES & GRAY LLP

Mark S. Popofsky and Rocky Chiu-Feng Tsai

GREINES, MARTIN, STEIN & RICHLAND, LLP

Laurie J. Hepler and Meehan Rasch

By: 

Laurie J. Hepler

Attorneys for Respondent BIOGEN, INC.

DECLARATION OF LAURIE J. HEPLER

I, Laurie J. Hepler, declare:

1. I am licensed to practice law in the state of California and a partner in the law firm of Greines, Martin, Stein & Richland, LLP, counsel for respondent Biogen, Inc. I have personal knowledge of the facts stated herein, and, if called as a witness, could and would testify competently thereto.

2. The legislative history materials attached to the Declaration of Jenny S. Lillge are relevant to the issues addressed in Respondent's concurrently-filed Answer Brief on the Merits. They show the text of former Civil Code section 1673; that it was substantively identical to current Business and

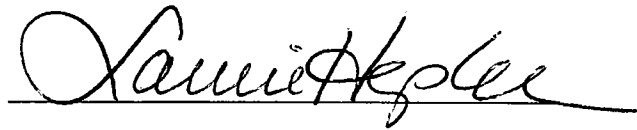
Professions Code section 16600; what common law section 1673 was intended to displace; and the statute's natural application to individuals at the time of enactment.

3. The legislative history materials attached to the Declaration of Lisa R. Hermes are also relevant to the issues addressed in Respondent's concurrently-filed Answer Brief on the Merits. They show that section 16600 was intended to restate the existing law as judicially interpreted, such that section 16600 should be given the same construction that section 1673 received.

4. The Patent License is relevant because Ixchel Pharma, LLC's operative complaint extensively referenced that agreement, grounding its allegation of an independently wrongful act upon that agreement's supposed violation of Business and Professions Code section 16600. (See ER 98-106; ER 13-25 and esp. ER 15, fn. 3.)

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

Executed on December 16, 2019 at San Francisco, California.

A handwritten signature in cursive script, reading "Laurie J. Hepler", written over a horizontal line.

Laurie J. Hepler

DECLARATION OF LISA R. HERMES

I, Lisa R. Hermes, declare:

5. I am Senior Research Librarian at Ropes & Gray, LLP (“Ropes”). Ropes represents Respondent Biogen, Inc. I have personal knowledge of the facts stated herein, and, if called as a witness, could and would testify competently thereto.

6. In September 2019, I engaged Legislative Intent Service, Inc. to locate and obtain all documents relevant to the 1872 enactment of former Civil Code section 1673. As described in **the accompanying Declaration of Jenny S. Lillge**, an attorney licensed to practice in California and employed by Legislative Intent Service, they provided me with true and correct copies of all original documents they located. Legislative Intent Service’s Exhibits A-1 through A-6—the direct history documents—are attached to the Lillge Declaration.

7. Also in September 2019, I undertook to locate and obtain all documents relating to the 1941 transfer of former Civil Code section 1673 to become Business and Professions Code section 16600. I visited the website of Legislative Intent Service, Inc., located at <http://www.legintent.com/california-business-and-professions-code-statutory-history/business-and-professions-code-section-16600/>, and purchased the “store research” of materials related to Senate Bill No. 360, which is the bill that enacted sections 16600, 16601, and 16602 of the Business and Professions Code. **Immediately following this Declaration** is a true and correct copy of all direct legislative history material obtained

from the Legislative Intent Service website, omitting only secondary material such as law review articles.

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

Executed on December 10, 2019 at Washington, D.C.



Lisa R. Hermes

EXHIBIT B

INTRODUCED BY SENATOR QUINN

January 21, 1941

WITHOUT REFERENCE TO COMMITTEE

An act to add Part 2, comprising Chapters 1 to 4, inclusive, Sections 16600 to 17101, inclusive, to Division 7, and to add Section 30028 to Division 30 of the Business and Professions Code, thereby consolidating and revising the law relating to the preservation and regulation of competition, and repealing acts and parts of acts specified herein.

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

1 SECTION 1. Part 2, consisting of Chapters 1 to 4, inclusive,
2 Sections 16600 to 17101, inclusive, is hereby added to Divi-
3 sion 7 of the Business and Professions Code, to read as
4 follows:

5
6 PART 2. PRESERVATION AND REGULATION
7 OF COMPETITION

8
9 CHAPTER 1. CONTRACTS IN RESTRAINT OF TRADE

10
11 16600. Except as provided in this chapter, every contract
12 by which anyone is restrained from engaging in a lawful pro-
13 fession, trade, or business of any kind is to that extent void.
14

15 16601. Any person who sells the good will of a business
16 may agree with the buyer to refrain from carrying on a simi-
17 lar business within a specified county, city, or a part thereof,
18 so long as the buyer, or any person deriving title to the good
19 will from him, carries on a like business in that specified
20 county, city, or a part thereof.

21
22 16602. Partners may, upon or in anticipation of a dissolu-
23 tion of the partnership, agree that none of them will carry on
24 a similar business within the same city or town or a specified
25 part thereof, where the
26 acted.

LIS-1a



CHAPTER 2. COMBINATIONS IN RESTRAINT OF TRADE

Article 1. General Provisions

16700. The provisions of this chapter are cumulative of each other and of any other provision of law relating to the same subject in effect May 22, 1907.

16701. Section 24 of this code shall not determine the separability of the provisions of this chapter, one from another. Such separability shall be determined by whether the provisions of Chapter 530 of the Statutes of 1907 and the provisions of Chapter 362 of the Statutes of 1909 are separable among themselves and as to each other.

16702. As used in this chapter "person" or "persons" includes corporations, firms, partnerships and associations existing under or authorized by the laws of this State or any other State, or any foreign country.

16703. Within the meaning of this chapter, labor, whether skilled or unskilled, is not a commodity.

Article 2. Prohibited Restraints on Competition

16720. A trust is a combination of capital, skill or acts by two or more persons for any of the following purposes:

- (a) To create or carry out restrictions in trade or commerce.
- (b) To limit or reduce the production, or increase the price of merchandise or of any commodity.
- (c) To prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity.
- (d) To fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption in this State.

To make or enter into or execute or carry out any contracts, obligations or agreements of any kind or description, by which they do all or any or any combination of any of the following:

- (1) Bind themselves not to sell, dispose of or transport any article or any commodity or any article of trade, use, merchandise, commerce or consumption below a common standard figure, or fixed value.
- (2) Agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure.
- (3) Establish or settle the price of any article, commodity or transportation between them or themselves and others, so as directly or indirectly to

control, restrict, regulate, fix, limit, reduce, increase, stabilize, or otherwise affect the price of such article, commodity or transportation, or to prevent competition in any trade or industry, or which are in furtherance of trade.



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competition among themselves, or any purchasers or consumers in the sale or transportation of any such article or commodity.

(4) Agree to pool, combine or directly or indirectly unite any interests that they may have connected with the sale or transportation of any such article or commodity, that its price might in any manner be affected.

16721. It is unlawful for any person, or his agent, to issue or to own trust certificates, or for any person or his agent, officer, or employee, or the directors or stockholders of any corporation, to enter into any combination, contract or agreement with any person or with any stockholder or director of a corporation, the purpose and effect of which is to place the management or control of the combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article.

Any person who enters into any such combination, contract or agreement which violates this section is guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not less than fifty dollars (\$50), nor more than five thousand dollars (\$5,000).

16722. Any contract or agreement in violation of this chapter is absolutely void and is not enforceable at law or in equity.

16723. No agreement, combination or association is unlawful or within the provisions of this chapter, the object and purpose of which are to conduct operations at a reasonable profit or to market at a reasonable profit those products which can not otherwise be so marketed.

16724. It is not unlawful, or within the provisions of this chapter, for persons engaged in the business of selling or manufacturing commodities of a similar or like character, to employ, form, organize or own any interest in any association, firm or corporation which has as its object or purpose the transportation, marketing or delivery of such commodity.

16725. It is not unlawful to enter into agreements or form associations or combinations, the purpose and effect of which is to promote, encourage or increase competition in any trade or industry, or which are in furtherance of trade.

16726. Except as provided in this chapter, every trust is unlawful, against public policy and void.

Article 3. Enforcement

1 16750. Any person who is injured in his business or prop-
2 erty by reason of anything forbidden or declared unlawful by
3 this chapter, may sue therefor in any court having jurisdic-
4 tion in the county where the defendant resides or is found,
5 or any agent resides or is found, or where service may be
6 obtained, without respect to the amount in controversy, and
7 to recover twofold the damages sustained by him, and the
8 costs of suit.
9
10

11 16751. Whenever it appears to the court before which any
12 proceedings under this chapter are pending that the ends of
13 justice require that other parties shall be brought before the
14 court, the court may cause them to be made parties defendant
15 and summoned, whether or not they reside in the county
16 where such action is pending.
17

18 16752. Upon a violation of this chapter by any corpora-
19 tion or association the Attorney General or the district attor-
20 ney of the proper county shall institute proper proceedings
21 in a court of competent jurisdiction for the forfeiture of char-
22 ter rights, franchises or privileges and powers exercised by
23 such corporation or association, and for the dissolution of the
24 corporation or association.
25

26 16753. Every foreign corporation or association, exercising
27 any of the powers, franchises or functions of a corporation in
28 this State, which violates this chapter, is hereby denied those
29 powers, franchises or functions and is prohibited from doing
30 any business in this State. The Attorney General shall
31 enforce this provision by bringing proper proceedings by
32 injunction or otherwise. The Secretary of State may revoke
33 the license of any such corporation or association heretofore
34 authorized to do business in this State.
35

36 16754. Every person who violates this chapter shall for
37 each day that such violations are committed or continued,
38 after due notice given by the Attorney General or any district
39 attorney, forfeit and pay the sum of fifty dollars (\$50), which
40 may be recovered in the name of the people of this State in any
41 county where the offense is committed, or where either of the
42 offenders resides. The Attorney General, or the district attor-
43 ney of any county on the order of the Attorney General, shall
44 prosecute for the recovery of the forfeit. When the action
45 is prosecuted by the Attorney General against a corporation
46 or an association of persons, he may begin the action in the
47 superior court in and for the county where the defendant
48 resides or does business.
49

50 16755. (a) Any violation of this chapter is a conspiracy
51 against trade, and any pe
52

1 16756. In any indictment, information or complaint for
2 any offense named in this chapter, it is sufficient to state the
3 purpose or effects of the trust or combination, and that the
4 accused is a member of, acted with, or in pursuance of it, or
5 aided or assisted in carrying out its purposes, without giving
6 its name or description, or how, when and where it was
7 created.
8
9 16757. (a) In prosecutions under this chapter, it is suffi-
10 cient to prove that a trust or combination exists, and that the
11 defendant belonged to it, or acted for or in connection with it,
12 without proving all the members belonging to it, or proving in-
13 strument on which it may have been based, or that it was evi-
14 denced by any written instrument at all.
15 (b) The character of the trust or combination alleged may
16 be established by proof of its general reputation as such.

17 16758. In any action or proceeding brought by the Attor-
18 ney General or any district attorney for the violation of this
19 chapter no person shall be excused from attending, testifying
20 or producing books, papers, or documents in obedience to sub-
21 pena or under order of court on the ground that the testimony
22 or evidence required of him may tend to incriminate him or
23 subject him to any penalty.
24 No individual shall be prosecuted or subjected to any pen-
25 alty for or on account of any transaction, matter or thing
26 concerning which he may so testify or produce evidence in
27 any action or proceeding brought by the Attorney General or
28 a district attorney under this chapter.

CHAPTER 3. FAIR TRADE CONTRACTS

29 16900. This chapter may be cited as the Fair Trade Act.
30
31 16901. As used in this chapter:
32 (a) "Producer" means grower, baker, maker, manufac-
33 turer or publisher.
34 (b) "Commodity" means any subject of commerce.

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1 16902. (a) No contract relating to the sale or resale of a
 2 commodity which bears, or the label or container of which
 3 bears, the trade-mark, brand, or name of the producer, or
 4 owner of such commodity and which is in fair and open com-
 5 petition with commodities of the same general class produced
 6 by others violates any law of this State by reason of any of the
 7 following provisions which may be contained in such contract:
 8 (1) That the buyer will not resell such commodity except
 9 at the price stipulated by the vendor.
 10 (2) That the vendee or producer require the person to
 11 whom he may resell such commodity to agree that he will not,
 12 in turn, resell except at the price stipulated by such vendor or
 13 by such vendee.
 14 (b) Such provisions in any contract imply conditions that
 15 such commodity may be resold without reference to such
 16 agreement in the following cases:
 17 (1) In closing out the owners' stock for the purpose of dis-
 18 continuing delivering any such commodity.
 19 (2) When the goods are damaged or deteriorated in quality,
 20 and notice is given to the public thereof.
 21 (3) By any officer acting under the orders of any court.

22
 23 16903. All the provisions of this chapter extend to any
 24 commodity sold through vending equipment, if such vending
 25 equipment bears the trade-mark, brand or name of the pro-
 26 ducer or owner of the commodity and if the commodity is in
 27 fair and open competition with commodities of the same gen-
 28 eral class produced by others.
 29

30 16904. Wilfully and knowingly advertising, offering for
 31 sale or selling any commodity at less than the price stipulated
 32 in any contract entered into pursuant to this chapter, whether
 33 the person so advertising, offering for sale or selling is or is
 34 not a party to such contract, is unfair competition and is
 35 actionable at the suit of any person damaged thereby.
 36

37 16905. This chapter does not apply to any contract or
 38 agreement between producers or between wholesalers or
 39 between retailers as to sale or resale prices.
 40

41 16906. Any person, corporation, firm, partnership, joint
 42 stock company, or any other association or organization which
 43 violates or proposes to violate this chapter may be enjoined by
 44 any court of competent jurisdiction.
 45 Actions for injunction under this section may be prosecuted
 46 by the Attorney General or any district attorney in this State
 47 in the name of the people of the State of California upon their
 48 own complaint or upon the complaint of any board, officer,
 49 person, corporation or association or by any person acting for
 50 the interests of itself, its members or the general public.

CHAPTER 4. UNFAIR TRADE PRACTICES

Article 1. General Provisions

17000. This chapter may be cited as the Unfair Practices
 Act.

17001. The Legislature declares that the purpose of this
 chapter is to safeguard the public against the creation or
 perpetuation of monopolies and to foster and encourage com-
 petition, by prohibiting unfair, dishonest, deceptive, destruc-
 tive, fraudulent and discriminatory practices by which fair
 and honest competition is destroyed or prevented.

17002. This chapter shall be liberally construed that its
 beneficial purposes may be subserved.

Article 2. Definitions

17020. The definitions in this article shall be used in con-
 struing this chapter.

17021. "Person" includes any person, firm, association,
 organization, partnership, business trust, company, corpora-
 tion or municipal or other public corporation.

17022. "Sell" includes selling, offering for sale or adver-
 tising for sale.

17023. "Give" includes giving, offering to give or adver-
 tising the intent to give.

17024. "Article or product" includes any article, product,
 commodity, thing of value, service or output of a service
 trade.

Motion picture films when licensed for exhibition to motion
 picture houses are not articles or products under this chapter.

(1) To any service, article or product for which rates are
 established under the jurisdiction of the Railroad Commis-
 sion of this State and sold or furnished by any public utility
 corporation, or installation and repair services rendered in
 connection with any services, articles or products.

(2) To any service, article or product sold or furnished by
 a publicly owned public utility and upon which the rates
 would have been established under the jurisdiction of the
 Railroad Commission of this State if such service, article or
 product had been sold or furnished by a public utility corpo-
 ration, or installation and repair services rendered in connec-
 tion with any services, articles or products.



1 17025. "Vendor" includes any person who performs work
2 upon, renovates, alters or improves any personal property
3 belonging to another person.
4

5 17026. "Cost" as applied to production includes the cost
6 of raw materials, labor and all overhead expenses of the pro-
7 ducer.
8

9 "Cost" as applied to distribution means the invoice or
10 replacement cost, whichever is lower, of the article or product
11 to the distributor and vendor, plus the cost of doing business
12 by the distributor and vendor.
13

14 17027. In establishing the cost of a given article or prod-
15 uct to the distributor and vendor, the invoice cost of the
16 article or product purchased at a forced, bankrupt, closeout
17 sale, or other sale outside of the ordinary channels of trade
18 may not be used as a basis for justifying a price lower than
19 one based upon the replacement cost as of the date of the sale
20 of the article or product replaced through the ordinary chan-
21 nels of trade, unless the article or product is kept separate
22 from goods purchased in the ordinary channels of trade and
23 unless the article or product is advertised and sold as mer-
24 chandise purchased at a forced, bankrupt, closeout sale, or by
25 means other than through the ordinary channels of trade.
26 Such advertising shall state the conditions under which the
27 goods were purchased, and the quantity of the merchandise to
28 be sold or offered for sale.

29 17028. "Ordinary channels of trade" means those ordi-
30 nary, regular and daily transactions in the mercantile trade
31 whereby title to an article or product, in no way damaged or
32 deteriorated, is transferred from one person to another.
33 "Ordinary channels of trade" does not include sales of
34 bankrupt stocks, closeout goods, dents, sales of goods bought
35 from a business or merchant retiring from business, fire sales
36 and sales of damaged or deteriorated goods, which damage or
37 deterioration results from any cause whatsoever. This listing
38 is not all inclusive but as example only.
39

40 17029. "Cost of doing business" or "overhead expense"
41 means all costs of doing business incurred in the conduct of
42 the business and shall include without limitation the follow-
43 ing items of expense: labor (including salaries of executives
44 and officers), rent, interest on borrowed capital, depreciation,
45 selling cost, maintenance of equipment, delivery costs, credit
46 losses, all types of licenses, taxes, insurance and advertising.
47

48 17030. "Loss leader" means any article or product sold
49 at less than cost:

50 (a) Where the purpose is to induce, promote or encourage
51 the purchase of other merchandise; or

1 (b) Where the effect is a tendency or capacity to mislead
2 or deceive purchasers or prospective purchasers; or
3 (c) Where the effect is to divert trade from or otherwise
4 injure competitors.
5

6 17031. "Price differential" means a discrimination
7 between different sections, communities or cities or portions
8 thereof, or between different locations in such sections, com-
9 munities, cities or portions thereof in this State, by selling
10 or furnishing an article or product, at a lower price in one
11 section, community or city, or any portion thereof, or in one
12 location in such section, community, or city or any portion
13 thereof, than in another.
14

15 Article 3. Offenses Against the Chapter

16
17 17040. It is unlawful for any person engaged in the pro-
18 duction, manufacture, distribution or sale of any article or
19 product of general use or consumption, with intent to destroy
20 the competition of any regular established dealer in such
21 article or product, or to prevent the competition of any per-
22 son who in good faith, intends and attempts to become such
23 dealer, to create price differentials.
24 Nothing in this section prohibits the meeting in good faith
25 of a competitive price.
26

27 17041. Nothing in this chapter prohibits differentials
28 which make allowances for differences, if any, in the grade,
29 quality or quantity when based and justified in the cost of
30 manufacture, sale or delivery, or the actual cost of trans-
31 portation from the point of production, if a raw product or
32 commodity, or from the point of manufacture if a manufac-
33 tured product or commodity, or from the point of shipment to
34 the point of destination.
35

36 17042. Nothing in this chapter prohibits any of the fol-
37 lowing:

38 (a) A selection of customers.

39 (b) A functional classification by any person of any cus-
40 tomer as broker, jobber, wholesaler or retailer.

41 (c) A differential in price for any article or product as
42 between any customers in different functional classifications.
43

44 17043. It is unlawful for any person engaged in business
45 within this State to sell any article or product at less than the
46 cost thereof to such vendor, or to give away any article or
47 product, for the purpose of injuring competitors or destroying
48 competition.
49

50 17044. The practice of using any article or product as a
51 "loss leader" is included among the prohibitions of this
52 chapter.



1 17045. The secret payment or allowance of rebates, refunds,
2 commissions, or unearned discounts, whether in the form of
3 money or otherwise, or secretly extending to certain pur-
4 chasers special services or privileges not extended to all pur-
5 chasers purchasing upon like terms and conditions, to the
6 injury of a competitor and where such payment or allowance
7 tends to destroy competition, is unlawful.

8
9 17046. It is unlawful for any person to use any threat,
10 intimidation, or boycott, to effectuate any violation of this
11 chapter.

12
13 17047. It is unlawful for any manufacturer, wholesaler,
14 distributor, jobber, contractor, broker, retailer, or other ven-
15 dor, or any agent of any such person, to solicit any violation
16 of this chapter.

17
18 17048. It is unlawful for any manufacturer, wholesaler,
19 distributor, jobber, contractor, broker, retailer, or other ven-
20 dor, or any agent of any such person, jointly to participate or
21 collude with any other such person in the violation of this
22 chapter.

23
24 17049. The prohibitions of this chapter against locality dis-
25 crimination and sales below cost embrace any scheme of special
26 rebates, collateral contracts or any device of any nature
27 whereby such discrimination or sale below cost is in substance
28 or fact effected in violation of the spirit and intent of this
29 chapter.

30
31 17050. The prohibitions of this chapter against locality
32 discriminations, sales below cost, and loss leaders do not apply
33 to any sale made:

- 34 (a) In closing out in good faith the owner's stock or any
- 35 part thereof for the purpose of discontinuing his trade in any
- 36 such article or product and in the case of the sale of seasonal
- 37 goods or to the bona fide sale of perishable goods to prevent loss
- 38 to the vendor by spoilage or depreciation, provided notice is
- 39 given to the public thereof.
- 40 (b) When the goods are damaged or deteriorated in quality,
- 41 and notice is given to the public thereof.

- 42 (c) By an officer acting under the orders of any court.
- 43 (d) In an endeavor made in good faith to meet the legal
- 44 prices of a competitor selling the same article or product, in
- 45 the same locality or trade area and in the ordinary channels
- 46 of trade.

- 47 (e) In an endeavor made in good faith by a manufacturer,
- 48 selling an article or product of his own manufacture, in a
- 49 transaction and sale to a wholesaler or retailer for resale to
- 50 meet the legal prices of a competitor selling the same or a
- 51 similar or comparable article or product, in the same locality
- 52 or trade area and in the ordinary channels of trade.

1 The notice required to be given under this section shall not
2 be sufficient unless the subject of such sales is kept separate
3 from other stocks and clearly and legibly marked with the
4 reason for such sales, and any advertisement of such goods
5 must indicate the same facts and the number of items to be
6 sold.

7
8 17051. Any contract, express or implied, made by any
9 person, firm, or corporation in violation of this chapter is an
10 illegal contract and no recovery thereon shall be had.

11 Article 4. Civil Liability

12
13
14 17070. Any person or trade association may bring an
15 action to enjoin and restrain any violation of this chapter and,
16 in addition thereto, for the recovery of damages.

17
18 17071. In all actions brought under this chapter proof of
19 one or more acts of selling or giving away any article or
20 product below cost or at discriminatory prices, together with
21 proof of the injurious effect of such acts, is presumptive evi-
22 dence of the purpose or intent to injure competitors or destroy
23 competition.

24
25 17072. Where a particular trade or industry, of which a
26 person complained against is a member, has an established cost
27 survey for the locality and vicinity in which the offense is
28 committed, that cost survey is competent evidence to be used
29 in proving the costs of such person.

30
31 17073. Proof of average overall cost of doing business for
32 any particular inventory period when added to the cost of
33 production of each article or product, as to a producer, or
34 invoice or replacement cost, whichever is lower, of each article
35 or product, as to a distributor, is presumptive evidence of
36 cost of each such article or product involved in any action
37 brought under this chapter.

38
39 17074. Proof of transportation tariffs when fixed and
40 approved by the Railroad Commission of the State of Cali-
41 fornia is presumptive evidence of delivery cost.

42
43 17075. In any action where it is alleged and shown that
44 the person complained against is selling below his cost of
45 doing business, and such person is including labor at less than
46 the prevailing wage scale in the trade in which such person
47 is engaged for the locality or vicinity in which he is doing
48 business, evidence of such prevailing wage scale shall be
49 admissible to prove the intent or purpose of such person to
50 violate this chapter.

1 any, sustained by the plaintiff, as well as the actual damages,
2 if any, sustained by any person who has assigned to the plain-
3 tiff his claim for damages resulting from a violation of this
4 chapter.
5

6 17063. The testimony of any witness in any action brought
7 under this chapter may be taken by deposition even though
8 the case is not one specified in Section 2021 of the Code of
9 Civil Procedure, but otherwise the provisions of Part 4, Title
10 3, Chapter 3 of the Code of Civil Procedure are applicable
11 to the witness, his testimony and deposition.

12 In addition, the books and records of any party, or of any
13 such witness, may be subpoenaed into court and introduced
14 into evidence, or introduced, by reference, into evidence, and
15 may be required to be produced at the taking of the deposi-
16 tion of any party or of any such witness and there inquired
17 into.

18 17084. Any party to any action brought under this chapter
19 may, upon notice, apply to the court in which the action is
20 pending, or to any judge thereof, for an order requiring any
21 other party to give to the applicant, within a specified time,
22 an inspection and copy, or permission to take a copy, of entries
23 of accounts in any book, or of any documents, papers, or
24 memoranda in such party's possession or under his control
25 containing evidence relating to the merits of any such action
26 or any defense therein.

27 If a compliance with the order is refused, the court shall
28 exclude the entries of accounts in any such book, or any such
29 document, paper, or memorandum from being given in evi-
30 dence by the other party, or if wanted as evidence by the
31 applicant the court shall presume them to be as the applicant
32 alleges.
33

34 17085. If, at any time while any action for a violation of
35 this chapter is pending, it appears to the court that an exten-
36 sive examination of books, papers, records, or documents is or
37 may become material or relevant to the issues in the action,
38 the court may, in its discretion, upon the application of any
39 party to the action, or upon its own motion, order a reference
40 to be had in the manner and form provided in Part 2, Title
41 8, Chapter 6, of the Code of Civil Procedure.

42 17086. No information obtained under any provision of
43 this article, or under Part 4, Title 6, Chapter 2, of the Code
44 of Civil Procedure, may be used against any such party,
45 or any such witness, as a basis for a misdemeanor or felony
46 prosecution in any court of this State.
47
48

1 17076. In any action brought under this chapter, where
2 persons are employed or performing services for any person
3 or in the conduct of the business wherein such person is
4 charged with a violation of this chapter, and are so employed
5 or performing such services without compensation or at a
6 wage lower than that prevailing at the time and place of the
7 service for the particular services performed, such services
8 shall be charged as an expense of the business in which ren-
9 dered and at the rate of the wage for the services rendered
10 prevailing at the time of the service at the place where
11 rendered.

12 17077. In any action or prosecution for sales below cost
13 in violation of this chapter, if the defendant acquires his raw
14 materials for a consideration not wholly or definitely com-
15 putable in money, the cost of the raw materials shall be pre-
16 sumed to be the prevailing market price for similar raw
17 materials in the ordinary channels of trade in the locality or
18 vicinity in which such raw materials were acquired, at the time
19 of the acquisition.
20

21 17078. If it appears to the court upon any application for
22 a temporary restraining order, or upon the hearing of any
23 order to show cause why a preliminary injunction should not
24 be issued, or upon the hearing of any motion for a preliminary
25 injunction, or if the court shall find, in any such action, that
26 any defendant therein is violating, or has violated, this chap-
27 ter, then the court shall enjoin the defendant from doing all
28 acts which are prohibited by the section, or sections, of which
29 any provision thereof is being violated, or has been violated,
30 by the defendant.
31

32 17079. The court may, in its discretion, include in any
33 injunction against a violation of this chapter such other
34 restraint as it may deem expedient in order to deter the
35 defendant from, and insure against, his committing a future
36 violation of this chapter.
37

38 17080. Any injunction against a violation of this chapter,
39 whether interim or final, shall cover every article or product
40 and not merely the particular article or product involved in
41 the action.
42

43 17081. It is not necessary for the plaintiff, in any action
44 under this chapter, to provide or file any undertaking or bond
45 for the issuance of any interim or final injunction.
46

47 17082. In any action under this chapter, it is not neces-
48 sary to allege or prove actual damages or the threat thereof,
49 or actual injury or the threat thereof, to the plaintiff. But, in
50 addition to injunctive relief, any plaintiff in any such action
51 is entitled to recover the actual damages if
52

Article 5. Liability of Agents

17095. Any person, who, either as director, officer or agent of any firm or corporation or as agent of any person, violating the provisions of this chapter, assists or aids, directly or indirectly, in such violation is responsible therefor equally with the person, firm or corporation for which he acts.

17096. In any injunction proceeding against any person as officer, director or agent, it is sufficient to allege and prove the unlawful intent of the person, firm or corporation for which he acts.

Article 6. Penal Provisions

17100. Any person, whether as principal, agent, officer or director, for himself, or for another person, or for any firm or corporation, or any corporation, who or which violates this chapter is guilty of a misdemeanor for each single violation and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or by imprisonment not exceeding 6 months or by both such fine and imprisonment, in the discretion of the court.

17101. In the prosecution of any person as officer, director or agent, it is sufficient to allege and prove the unlawful intent of the person, firm or corporation for which he acts.

Sec. 2. Section 30028 is hereby added to Division 30 of the Business and Professions Code, to read as follows:

30028. The following acts, together with all acts amendatory thereof, and supplementary thereto, are hereby repealed:

General Laws

Year	Chapter	Page
1907	530	984
1913	276	508
1931	278	583
1933	1037	2632
1933	1039	2637
1933	1041	2640
1935	814	2212
1937	396	1215

Civil Code

Section
1673
1674
1675



AMENDED IN SENATE APRIL 2, 1941

No. 360

SENATE BILL

INTRODUCED BY SENATOR QUINN

January 21, 1941

WITHOUT REFERENCE TO COMMITTEE

An act to add Part 2, comprising Chapters 1 to 4, inclusive, Sections 16600 to 17101, inclusive, to Division 7, and to add Section 30028 to Division 30 of the Business and Professions Code, thereby consolidating and revising the law relating to the preservation and regulation of competition, and repealing acts and parts of acts specified herein.

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

1 SECTION 1. Part 2, consisting of Chapters 1 to 4, inclusive,
2 Sections 16600 to 17101, inclusive, is hereby added to Divi-
3 sion 7 of the Business and Professions Code, to read as
4 follows:

5 PART 2. PRESERVATION AND REGULATION
6 OF COMPETITION

7 CHAPTER 1. CONTRACTS IN RESTRAINT OF TRADE

8
9
10 16600. Except as provided in this chapter, every contract
11 by which anyone is restrained from engaging in a lawful pro-
12 fession, trade, or business of any kind is to that extent void.

13
14 16601. Any person who sells the good will of a business
15 may agree with the buyer to refrain from carrying on a simi-
16 lar business within a specified county, city, or a part thereof,
17 so long as the buyer, or any person deriving title to the good
18 will from him, carries on a like business in that specified
19 county, city, or a part thereof therein.

20
21 16602. Partners may, upon or in anticipation of a dissolu-
22 tion of the partnership, agree that none of them will carry on
23 a similar business within the same city or town or a specified
24 part thereof, where the partnership business has been trans-
25 acted.



CHAPTER 2. COMBINATIONS IN RESTRAINT OF TRADE

Article 1. General Provisions

16700. The provisions of this chapter are cumulative of each other and of any other provision of law relating to the same subject in effect May 22, 1907.

16701. Section 24 of this code shall not determine the separability of the provisions of this chapter, one from another. Such separability shall be determined by whether the provisions of Chapter 530 of the Statutes of 1907 and the provisions of Chapter 362 of the Statutes of 1909 are separable among themselves and as to each other.

If the words "or reduce" (following the word "increase" were not effectively deleted from Subdivision 2 of Section 1 of Chapter 530 of the Statutes of 1907 by Section 1 of Chapter 362 of the Statutes of 1909, a combination of capital, skill or acts by two or more persons for the purpose of reducing the price of merchandise or of any commodity is a trust.

16702. As used in this chapter "person" or "persons" includes corporations, firms, partnerships and associations existing under or authorized by the laws of this State or any other State, or any foreign country.

16703. Within the meaning of this chapter, labor, whether skilled or unskilled, is not a commodity.

Article 2. Prohibited Restraints on Competition

16720. A trust is a combination of capital, skill or acts by two or more persons for any of the following purposes:

- (a) To create or carry out restrictions in trade or commerce.
- (b) To limit or reduce the production, or increase the price of merchandise or of any commodity.
- (c) To prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity.
- (d) To fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption in this State.
- (e) To make or enter into or execute or carry out any contracts, obligations or agreements of any kind or description, by which they do all or any or any combination of any of the following:

- (1) Bind themselves not to sell, dispose of or transport any article or any commodity or any article of trade, use, merchandise, commerce or consumption below a common standard figure, or fixed value.

(2) Agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure.

(3) Establish or settle the price of any article, commodity or transportation between them or themselves and others, so as directly or indirectly to preclude a free and unrestricted competition among themselves, or any purchasers or consumers in the sale or transportation of any such article or commodity.

(4) Agree to pool, combine or directly or indirectly unite any interests that they may have connected with the sale or transportation of any such article or commodity, that its price might in any manner be affected.

16721. It is unlawful for any person, or his agent, to issue or to own trust certificates, or for any person or his agent, officer, or employee, or the directors or stockholders of any corporation, to enter into any combination, contract or agreement with any person or with any stockholder or director of a corporation, the purpose and effect of which is to place the management or control of the combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article.

Any person who enters into any such combination, contract or agreement which violates this section is guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not less than fifty dollars (\$50), nor more than five thousand dollars (\$5,000).

16722. Any contract or agreement in violation of this chapter is absolutely void and is not enforceable at law or in equity.

16723. No agreement, combination or association is unlawful or within the provisions of this chapter, the object and purpose of which are to conduct operations at a reasonable profit or to market at a reasonable profit those products which can not otherwise be so marketed.

16724. It is not unlawful, or within the provisions of this chapter, for persons engaged in the business of selling or manufacturing commodities of a similar or like character, to employ, form, organize or own any interest in any association, firm or corporation which has as its object or purpose the transportation, marketing or delivery of such commodity.

16725. It is not unlawful to enter into agreements or form associations or combinations, the purpose and effect of which is to promote, encourage or increase competition in any trade or industry, or which are in furtherance of trade.



16726. Except as provided in this chapter, every trust is unlawful, against public policy and void.

Article 3. Enforcement

16750. Any person who is injured in his business or property by reason of anything forbidden or declared unlawful by this chapter, may sue therefor in any court having jurisdiction in the county where the defendant resides or is found, or any agent resides or is found, or where service may be obtained, without respect to the amount in controversy, and to recover twofold the damages sustained by him, and the costs of suit.

16751. Whenever it appears to the court before which any proceedings under this chapter are pending that the ends of justice require that other parties shall be brought before the court, the court may cause them to be made parties defendant and summoned, whether or not they reside in the county where such action is pending.

16752. Upon a violation of this chapter by any corporation or association the Attorney General or the district attorney of the proper county shall institute proper proceedings in a court of competent jurisdiction for the forfeiture of charter rights, franchises or privileges and powers exercised by such corporation or association, and for the dissolution of the corporation or association.

16753. Every foreign corporation or association, exercising any of the powers, franchises or functions of a corporation in this State, which violates this chapter, is hereby denied those powers, franchises or functions and is prohibited from doing any business in this State. The Attorney General shall enforce this provision by bringing proper proceedings by injunction or otherwise. The Secretary of State may revoke the license of any such corporation or association heretofore authorized to do business in this State.

16754. Every person who violates this chapter shall for each day that such violations are committed or continued, after due notice given by the Attorney General or any district attorney, forfeit and pay the sum of fifty dollars (\$50), which may be recovered in the name of the people of this State in any county where the offense is committed, or where either of the officers resides. The Attorney General, or the district attorney of any county on the order of the Attorney General, shall prosecute for the recovery of the forfeit. When the action is prosecuted by the Attorney General against a corporation or an association of persons, he may begin the action in the superior court in and for the county where the defendant resides or does business.

16755. (a) Any violation of this chapter is a conspiracy against trade, and any person who engages in any conspiracy or takes part therein, or aids or advises in its commission, or who as principal, manager, director, agent, servant or employee, or in any other capacity, knowingly carries out any of the stipulations, purposes, prices, rates, or furnishes any information to assist in carrying out such purposes, or orders thereunder or in pursuance thereof, is punishable by a fine of not less than fifty dollars (\$50) nor more than five thousand dollars (\$5,000), or by imprisonment for not less than six months nor more than one year, or by both such fine and imprisonment.

(b) Each day's violation of this chapter is a separate offense.

16756. In any indictment, information or complaint for any offense named in this chapter, it is sufficient to state the purpose or effects of the trust or combination, and that the accused is a member of, acted with, or in pursuance of it, or aided or assisted in carrying out its purposes, without giving its name or description, or how, when and where it was created.

16757. (a) In prosecutions under this chapter, it is sufficient to prove that a trust or combination exists, and that the defendant belonged to it, or acted for or in connection with it, without proving all the members belonging to it, for proving or producing any article of agreement or any written instrument on which it may have been based, or that it was evinced by any written instrument at all.

(b) The character of the trust or combination alleged may be established by proof of its general reputation as such.

16758. In any action or proceeding brought by the Attorney General or any district attorney for the violation of this chapter no person shall be excused from attending, testifying or producing books, papers, or documents in obedience to subpoena or under order of court on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to any penalty.

No individual shall be prosecuted or subjected to any penalty for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence in any action or proceeding brought by the Attorney General or a district attorney under this chapter.

CHAPTER 3. FAIR TRADE CONTRACTS

16900. This chapter may be cited as the Fair Trade Act.

16901. As used in this chapter:

(a) "Producer" means grower, baker, maker, manufacturer or publisher.



CHAPTER 4. UNFAIR TRADE PRACTICES

Article 1. General Provisions

17000. This chapter may be cited as the Unfair Practices Act.

17001. The Legislature declares that the purpose of this chapter is to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition, by prohibiting unfair, dishonest, deceptive, destructive, fraudulent and discriminatory practices by which fair and honest competition is destroyed or prevented.

17002. This chapter shall be liberally construed that its beneficial purposes may be subserved.

Article 2. Definitions

17020. The definitions in this article shall be used in construing this chapter.

17021. "Person" includes any person, firm, association, organization, partnership, business trust, company, corporation or municipal or other public corporation.

17022. "Sell" includes selling, offering for sale or advertising for sale.

17023. "Give" includes giving, offering to give or advertising the intent to give.

17024. "Article or product" includes any article, product, commodity, thing of value, service or output of a service trade.

Motion picture films when licensed for exhibition to motion picture houses are not articles or products under this chapter.

Nothing in this chapter applies: (1) To any service, article or product for which rates are established under the jurisdiction of the Railroad Commission of this State and sold or furnished by any public utility corporation, or installation and repair services rendered in connection with any services, articles or products.

(2) To any service, article or product sold or furnished by a publicly owned public utility and upon which the rates would have been established under the jurisdiction of the Railroad Commission of this State if such service, article or product had been sold or furnished by a public utility corporation, or installation and repair services rendered in connection with any services, articles or products.

(b) "Commodity" means any subject of commerce.

16902. (a) No contract relating to the sale or resale of a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer or owner of such commodity and which is in fair and open competition with commodities of the same general class produced by others violates any law of this State by reason of any of the following provisions which may be contained in such contract: (1) That the buyer will not resell such commodity except at the price stipulated by the vendor.

(2) That the vendee or producer require the person to whom he may resell such commodity to agree that he will not, in turn, resell except at the price stipulated by such vendor or by such vendee.

(b) Such provisions in any contract imply conditions that such commodity may be resold without reference to such agreement in the following cases:

(1) In closing out the owners' stock for the purpose of discontinuing delivering any such commodity.

(2) When the goods are damaged or deteriorated in quality, and notice is given to the public thereof.

(3) By any officer acting under the orders of any court.

16903. All the provisions of this chapter extend to any commodity sold through vending equipment, if such vending equipment bears the trade-mark, brand or name of the producer or owner of the commodity and if the commodity is in fair and open competition with commodities of the same general class produced by others.

16904. Willfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in any contract entered into pursuant to this chapter, whether the person so advertising, offering for sale or selling is or is not a party to such contract, is unfair competition and is actionable at the suit of any person damaged thereby.

16905. This chapter does not apply to any contract or agreement between producers or between wholesalers or between retailers as to sale or resale prices.

16906. Any person, corporation, firm, partnership, joint stock company, or any other association or organization which violates or proposes to violate this chapter may be enjoined by any court of competent jurisdiction.

Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney in this State in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.



1 17025. "Vendor" includes any person who performs work
2 upon, renovates, alters or improves any personal property
3 belonging to another person.
4

5 17026. "Cost" as applied to production includes the cost
6 of raw materials, labor and all overhead expenses of the pro-
7 ducer.
8

9 "Cost" as applied to distribution means the invoice or
10 replacement cost, whichever is lower, of the article or product
11 to the distributor and vendor, plus the cost of doing business
12 by the distributor and vendor.

13 17027. In establishing the cost of a given article or prod-
14 uct to the distributor and vendor, the invoice cost of the
15 article or product purchased at a forced, bankrupt, closeout
16 sale, or other sale outside of the ordinary channels of trade
17 may not be used as a basis for justifying a price lower than
18 one based upon the replacement cost as of the date of the sale
19 of the article or product replaced through the ordinary chan-
20 nels of trade, unless the article or product is kept separate
21 from goods purchased in the ordinary channels of trade and
22 unless the article or product is advertised and sold as mer-
23 chandise purchased at a forced, bankrupt, closeout sale, or by
24 means other than through the ordinary channels of trade.

25 Such advertising shall state the conditions under which the
26 goods were purchased, and the quantity of the merchandise to
27 be sold or offered for sale.
28

29 17028. "Ordinary channels of trade" means those ordi-
30 nary, regular and daily transactions in the mercantile trade
31 whereby title to an article or product, in no way damaged or
32 deteriorated, is transferred from one person to another.

33 "Ordinary channels of trade" does not include sales of
34 bankrupt stocks, closeout goods, dents, sales of goods bought
35 from a business or merchant retiring from business, fire sales
36 and sales of damaged or deteriorated goods, which damage or
37 deterioration results from any cause whatsoever. This listing
38 is not all inclusive but as example only.
39

40 17029. "Cost of doing business" or "overhead expense"
41 means all costs of doing business incurred in the conduct of
42 the business and shall include without limitation the follow-
43 ing items of expense: labor (including salaries of executives
44 and officers), rent, interest on borrowed capital, depreciation,
45 selling cost, maintenance of equipment, delivery costs, credit
46 losses, all types of licenses, taxes, insurance and advertising.
47

48 17030. "Loss leader" means any article or product sold
49 at less than cost:

50 (a) Where the purpose is to induce, promote or encourage
51 the purchase of other merchandise; or

(b) Where the effect is a tendency or capacity to mislead
or deceive purchasers or prospective purchasers; or
(c) Where the effect is to divert trade from or otherwise
injure competitors.

17031. "Price differential" Locality discrimination means
a discrimination between different sections, communities or
cities or portions thereof, or between different locations in
such sections, communities, cities or portions thereof in this
State, by selling or furnishing an article or product, at a
lower price in one section, community or city, or any portion
thereof, or in one location in such section, community, or city
or any portion thereof, than in another.

Article 3. Offenses Against the Chapter

17040. It is unlawful for any person engaged in the pro-
duction, manufacture, distribution or sale of any article or
product of general use or consumption, with intent to destroy
the competition of any regular established dealer in such
article or product, or to prevent the competition of any per-
son who in good faith, intends and attempts to become such
dealer, to create ~~price~~ ~~discrimination~~ *locality discrimination*.
Nothing in this section prohibits the meeting in good faith
of a competitive price.

17041. Nothing in this chapter prohibits ~~discrimination~~ *local-*
ity discriminations which make allowances for differences, if
any, in the grade, quality or quantity when based and justified
in the cost of manufacture, sale or delivery, or the actual cost
of transportation from the point of production, if a raw
product or commodity, or from the point of manufacture if
a manufactured product or commodity, or from the point of
shipment to the point of destination.

17042. Nothing in this chapter prohibits any of the fol-
lowing:

- (a) A selection of customers.
- (b) A functional classification by any person of any cus-
tomer as broker, jobber, wholesaler or retailer.
- (c) A differential in price for any article or product as
between any customers in different functional classifications.

17043. It is unlawful for any person engaged in business
within this State to sell any article or product at less than the
cost thereof to such vendor, or to give away any article or
product, for the purpose of injuring competitors or destroying
competition.

17044. The practice of using any article or product as a
"loss leader" is included among the prohibitions of this
chapter.



1 17045. The secret payment or allowance of rebates, refunds,
 2 commissions, or unearned discounts, whether in the form of
 3 money or otherwise, or secretly extending to certain pur-
 4 chasers special services or privileges not extended to all pur-
 5 chasers purchasing upon like terms and conditions, to the
 6 injury of a competitor and where such payment or allowance
 7 tends to destroy competition, is unlawful.

8
 9 17046. It is unlawful for any person to use any threat,
 10 intimidation, or boycott, to effectuate any violation of this
 11 chapter.

12
 13 17047. It is unlawful for any manufacturer, wholesaler,
 14 distributor, jobber, contractor, broker, retailer, or other ven-
 15 dor, or any agent of any such person, to solicit any violation
 16 of this chapter.

17
 18 17048. It is unlawful for any manufacturer, wholesaler,
 19 distributor, jobber, contractor, broker, retailer, or other ven-
 20 dor, or any agent of any such person, jointly to participate or
 21 collude with any other such person in the violation of this
 22 chapter.

23
 24 17049. The prohibitions of this chapter against locality dis-
 25 crimination and sales below cost embrace any scheme of special
 26 rebates, collateral contracts or any device of any nature
 27 whereby such discrimination or sale below cost is in substance
 28 or fact effected in violation of the spirit and intent of this
 29 chapter.

30
 31 17050. The prohibitions of this chapter against locality
 32 discriminations, sales below cost, and loss leaders do not apply
 33 to any sale made:

34 (a) In closing out in good faith the owner's stock or any
 35 part thereof for the purpose of discontinuing his trade in any
 36 such article or product and in the case of the sale of seasonal
 37 goods or to the bona fide sale of perishable goods to prevent loss
 38 to the vendor by spoilage or depreciation; provided, notice is
 39 given to the public thereof.

40 (b) When the goods are damaged or deteriorated in quality,
 41 and notice is given to the public thereof.

42 (c) By an officer acting under the orders of any court.
 43 (d) In an endeavor made in good faith to meet the legal
 44 prices of a competitor selling the same article or product, in
 45 the same locality or trade area and in the ordinary channels
 46 of trade.

47 (e) In an endeavor made in good faith by a manufacturer,
 48 selling an article or product of his own manufacture, in a
 49 transaction and sale to a wholesaler or retailer for resale to
 50 meet the legal prices of a competitor selling the same or a
 51 similar or comparable article or product, in the same locality
 52 or trade area and in the ordinary channels of trade.

1 The notice required to be given under this section shall not
 2 be sufficient unless the subject of such sales is kept separate
 3 from other stocks and clearly and legibly marked with the
 4 reason for such sales, and any advertisement of such goods
 5 must indicate the same facts and the number of items to be
 6 sold.

7
 8 17051. Any contract, express or implied, made by any
 9 person, firm, or corporation in violation of this chapter is an
 10 illegal contract and no recovery thereon shall be had.

Article 4. Civil Liability

11
 12
 13 17070. Any person or trade association may bring an
 14 action to enjoin and restrain any violation of this chapter and,
 15 in addition thereto, for the recovery of damages.

16
 17
 18 17071. In all actions brought under this chapter proof of
 19 one or more acts of selling or giving away any article or
 20 product below cost or at discriminatory prices, together with
 21 proof of the injurious effect of such acts, is presumptive evi-
 22 dence of the purpose or intent to injure competitors or destroy
 23 competition.

24
 25 17072. Where a particular trade or industry, of which a
 26 person complained against is a member, has an established cost
 27 survey for the locality and vicinity in which the offense is
 28 committed, that cost survey is competent evidence to be used
 29 in proving the costs of such person.

30
 31 17073. Proof of average overall cost of doing business for
 32 any particular inventory period when added to the cost of
 33 production of each article or product, as to a producer, or
 34 invoice or replacement cost, whichever is lower, of each article
 35 or product, as to a distributor, is presumptive evidence of
 36 cost of each such article or product involved in any action
 37 brought under this chapter.

38
 39 17074. Proof of transportation tariffs when fixed and
 40 approved by the Railroad Commission of the State of Cali-
 41 fornia is presumptive evidence of delivery cost.

42
 43 17075. In any action where it is alleged and shown that
 44 the person complained against is selling below his cost of
 45 doing business, and such person is including labor at less than
 46 the prevailing wage scale in the trade in which such person
 47 is engaged for the locality or vicinity in which he is doing
 48 business, evidence of such prevailing wage scale shall be
 49 admissible to prove the intent or purpose of such person to
 50 violate this chapter.



17076. In any action brought under this chapter, where persons are employed or performing services for any person or in the conduct of the business wherein such person is charged with a violation of this chapter, and are so employed or performing such services without compensation or at a wage lower than that prevailing at the time and place of the service for the particular services performed, such services shall be charged as an expense of the business in which rendered and at the rate of the wage for the services rendered prevailing at the time of the service at the place where rendered.

17077. In any action or prosecution for sales below cost in violation of this chapter, if the defendant acquires his raw materials for a consideration not wholly or definitely computable in money, the cost of the raw materials shall be presumed to be the prevailing market price for similar raw materials in the ordinary channels of trade in the locality or vicinity in which such raw materials were acquired, at the time of the acquisition.

17078. If it appears to the court upon any application for a temporary restraining order, or upon the hearing of any order to show cause why a preliminary injunction should not be issued, or upon the hearing of any motion for a preliminary injunction, or if the court shall find, in any such action, that any defendant therein is violating, or has violated, this chapter, then the court shall enjoin the defendant from doing all acts which are prohibited by the section, or sections, of which any provision thereof is being violated, or has been violated, by the defendant.

17079. The court may, in its discretion, include in any injunction against a violation of this chapter such other restraint as it may deem expedient in order to deter the defendant from, and insure against, his committing a future violation of this chapter.

17080. Any injunction against a violation of this chapter, whether interim or final, shall cover every article or product and not merely the particular article or product involved in the action.

17081. It is not necessary for the plaintiff, in any action under this chapter, to provide or file any undertaking or bond for the issuance of any interim or final injunction.

17082. In any action under this chapter, it is not necessary to allege or prove actual damages or the threat thereof, or actual injury or the threat thereof, to the plaintiff. But, in addition to injunctive relief, any plaintiff in any such action is entitled to recover the amount of the actual damages, if

any, sustained by the plaintiff, as well as the actual damages, if any, sustained by any person who has assigned to the plaintiff his claim for damages resulting from a violation of this chapter.

17083. The testimony of any witness in any action brought under this chapter may be taken by deposition even though the case is not one specified in Section 2021 of the Code of Civil Procedure, but otherwise the provisions of Part 4, Title 3, Chapter 3 of the Code of Civil Procedure are applicable to the witness, his testimony and deposition.

In addition, the books and records of any party, or of any such witness, may be subpoenaed into court and introduced into evidence, or introduced, by reference, into evidence, and may be required to be produced at the taking of the deposition of any party or of any such witness and there inquired into.

17084. Any party to any action brought under this chapter may, upon notice, apply to the court in which the action is pending, or to any judge thereof, for an order requiring any other party to give to the applicant, within a specified time, an inspection and copy, or permission to take a copy, of entries of accounts in any book, or of any documents, papers, or memoranda in such party's possession or under his control containing evidence relating to the merits of any such action or any defense therein.

If a compliance with the order is refused, the court shall exclude the entries of accounts in any such book, or any such document, paper, or memorandum from being given in evidence by the other party, or if wanted as evidence by the applicant the court shall presume them to be as the applicant alleges.

17085. If, at any time while any action for a violation of this chapter is pending, it appears to the court that an extensive examination of books, papers, records, or documents is or may become material or relevant to the issues in the action, the court may, in its discretion, upon the application of any party to the action, or upon its own motion, order a reference to be had in the manner and form provided in Part 2, Title 8, Chapter 6, of the Code of Civil Procedure.

17086. No information obtained under any provision of this article, or under Part 4, Title 6, Chapter 2, of the Code of Civil Procedure, may be used against any such party, or any such witness, as a basis for a misdemeanor or felony prosecution in any court of this State.



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Article 5. Liability of Agents

17095. Any person, who, either as director, officer or agent of any firm or corporation or as agent of any person, violating the provisions of this chapter, assists or aids, directly or indirectly, in such violation is responsible therefor equally with the person, firm or corporation for which he acts.

17096. In any injunction proceeding against any person as officer, director or agent, it is sufficient to allege and prove the unlawful intent of the person, firm or corporation for which he acts.

Article 6. Penal Provisions

17100. Any person, whether as principal, agent, officer or director, for himself, or for another person, or for any firm or corporation, or any corporation, who or which violates this chapter is guilty of a misdemeanor for each single violation and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or by imprisonment not exceeding six months or by both such fine and imprisonment, in the discretion of the court.

17101. In the prosecution of any person as officer, director or agent, it is sufficient to allege and prove the unlawful intent of the person, firm or corporation for which he acts.

Sec. 2. Section 30028 is hereby added to Division 30 of the Business and Professions Code, to read as follows:

30028. The following acts, together with all acts amendatory thereof, and supplementary thereto, are hereby repealed:

General Laws

Year	Chapter	Page
1907	530	984
1913	276	508
1931	278	583
1933	1037	2632
1933	1039	2637
1933	1041	2640
1935	814	2212
1937	396	1215

Civil Code

Section
1673
1674
1675

0



AMENDED IN ASSEMBLY APRIL 18, 1941

AMENDED IN SENATE APRIL 2, 1941

SENATE BILL

No. 360

INTRODUCED BY SENATOR QUINN

January 21, 1941

WITHOUT REFERENCE TO COMMITTEE

An act to add Part 2, comprising Chapters 1 to 4, inclusive, Sections 16600 to 17101, inclusive, to Division 7, and to add Section 30028 to Division 30 of the Business and Professions Code, thereby consolidating and revising the law relating to the preservation and regulation of competition, and repealing acts and parts of acts specified herein.

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

1 SECTION 1. Part 2, consisting of Chapters 1 to 4, inclusive,
2 Sections 16600 to 17101, inclusive, is hereby added to Divi-
3 sion 7 of the Business and Professions Code, to read as
4 follows:

5
6 PART 2. PRESERVATION AND REGULATION
7 OF COMPETITION

8
9 CHAPTER 1. CONTRACTS IN RESTRAINT OF TRADE

10
11 16600. Except as provided in this chapter, every contract
12 by which anyone is restrained from engaging in a lawful pro-
13 fession, trade, or business of any kind is to that extent void.

14
15 16601. Any person who sells the good will of a business
16 may agree with the buyer to refrain from carrying on a simi-
17 lar business within a specified county, city, or a part thereof,
18 so long as the buyer, or any person deriving title to the good
19 will from him, carries on a like business therein.

20
21 16602. Partners may, upon or in anticipation of a dissolu-
22 tion of the partnership, agree that none of them will carry on
23 a similar business within the same city or town or a specified
24 part thereof, where the par- business has been trans-
25 acted.

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CHAPTER 2. COMBINATIONS IN RESTRAINT OF TRADE

Article 1. General Provisions

16700. The provisions of this chapter are cumulative of each other and of any other provision of law relating to the same subject in effect May 22, 1907.

16701. Section 24 of this code shall not determine the separability of the provisions of this chapter, one from another. Such separability shall be determined by whether the provisions of Chapter 530 of the Statutes of 1907 and the provisions of Chapter 362 of the Statutes of 1909 are separable among themselves and as to each other.

If the words "or reduce" (following the word "increase") were not effectively deleted from Subdivision 2 of Section 1 of Chapter 530 of the Statutes of 1907 by Section 1 of Chapter 362 of the Statutes of 1909, a combination of capital, skill or acts by two or more persons for the purpose of reducing the price of merchandise or of any commodity is a trust.

16702. As used in this chapter "person" or "persons" includes corporations, firms, partnerships and associations existing under or authorized by the laws of this State or any other State, or any foreign country.

16708. Within the meaning of this chapter, labor, whether skilled or unskilled, is not a commodity.

Article 2. Prohibited Restraints on Competition

16720. A trust is a combination of capital, skill or acts by two or more persons for any of the following purposes:

(a) To create or carry out restrictions in trade or commerce.

(b) To limit or reduce the production, or increase the price of merchandise, or of any commodity.

(c) To prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity.

(d) To fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption in this State.

(e) To make or enter into or execute or carry out any contracts, obligations or agreements of any kind or description, by which they do all or any or any combination of any of the following:

(1) Bind themselves not to sell, dispose of or transport any article or any commodity or any article of trade, use, merchandise, commerce or consumption below a common standard figure, or fixed value.

(2) Agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure.

(3) Establish or settle the price of any article, commodity or transportation between them or themselves and others, so as directly or indirectly to preclude a free and unrestricted competition among themselves, or any purchasers or consumers in the sale or transportation of any such article or commodity.

(4) Agree to pool, combine or directly or indirectly unite any interests that they may have connected with the sale or transportation of any such article or commodity, that its price might in any manner be affected.

16721. It is unlawful for any person, or his agent, to issue or to own trust certificates, or for any person or his agent, officer, or employee, or the directors or stockholders of any corporation, to enter into any combination, contract or agreement with any person or with any stockholder or director of a corporation, the purpose and effect of which is to place the management or control of the combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article.

Any person who enters into any such combination, contract or agreement which violates this section is guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not less than fifty dollars (\$50), nor more than five thousand dollars (\$5,000).

16722. Any contract or agreement in violation of this chapter is absolutely void and is not enforceable at law or in equity.

16723. No agreement, combination or association is unlawful or within the provisions of this chapter, the object and purpose of which are to conduct operations at a reasonable profit or to market at a reasonable profit those products which can not otherwise be so marketed.

16724. It is not unlawful, or within the provisions of this chapter, for persons engaged in the business of selling or manufacturing commodities of a similar or like character, to employ, form, organize or own any interest in any association, firm or corporation which has as its object or purpose the transportation, marketing or delivery of such commodity.

16725. It is not unlawful to enter into agreements or form associations or combinations, the purpose and effect of which is to promote, encourage or increase competition in any trade or industry, or which are in furtherance of trade.



1 16726. Except as provided in this chapter, every trust
2 is unlawful, against public policy and void.

3 Article 3. Enforcement
4

5 16750. Any person who is injured in his business or prop-
6 erty by reason of anything forbidden or declared unlawful by
7 this chapter, may sue therefor in any court having jurisdic-
8 tion in the county where the defendant resides or is found,
9 or any agent resides or is found, or where service may be
10 obtained, without respect to the amount in controversy, and
11 to recover twofold the damages sustained by him, and the
12 costs of suit.
13

14 16751. Whenever it appears to the court before which any
15 proceedings under this chapter are pending that the ends of
16 justice require that other parties shall be brought before the
17 court, the court may cause them to be made parties defendant
18 and summoned, whether or not they reside in the county
19 where such action is pending.
20

21 16752. Upon a violation of this chapter by any corpora-
22 tion or association the Attorney General or the district attor-
23 ney of the proper county shall institute proper proceedings
24 in a court of competent jurisdiction for the forfeiture of char-
25 ter rights, franchises or privileges and powers exercised by
26 such corporation or association, and for the dissolution of the
27 corporation or association.
28

29 16753. Every foreign corporation or association, exercising
30 any of the powers, franchises or functions of a corporation in
31 this State, which violates this chapter, is hereby denied those
32 powers, franchises or functions and is prohibited from doing
33 any business in this State. The Attorney General shall
34 enforce this provision by bringing proper proceedings by
35 injunction or otherwise. The Secretary of State may revoke
36 the license of any such corporation or association heretofore
37 authorized to do business in this State.
38

39 16754. Every person who violates this chapter shall for
40 each day that such violations are committed or continued,
41 after due notice given by the Attorney General or any district
42 attorney, forfeit and pay the sum of fifty dollars (\$50), which
43 may be recovered in the name of the people of this State in any
44 county where the offense is committed, or where either of the
45 offenders resides. The Attorney General, or the district attor-
46 ney of any county on the order of the Attorney General, shall
47 prosecute for the recovery of the forfeit. When the action
48 is prosecuted by the Attorney General against a corporation
49 or an association of persons, he may begin the action in the
50 superior court in and for the county where the defendant
51 resides or does business.
52

1 16755. (a) Any violation of this chapter is a conspiracy
2 against trade, and any person who engages in any such con-
3 spiracy or takes part therein, or aids or advises in its commis-
4 sion, or who as principal, manager, director, agent, servant or
5 employee, or in any other capacity, knowingly carries out any
6 of the stipulations, purposes, prices, rates, or furnishes any
7 information to assist in carrying out such purposes, or orders
8 thereunder or in pursuance thereof, is punishable by a fine of
9 not less than fifty dollars (\$50) nor more than five thousand
10 dollars (\$5,000), or by imprisonment for not less than six
11 months nor more than one year, or by both such fine and
12 imprisonment.
13 (b) Each day's violation of this chapter is a separate
14 offense.

15 16756. In any indictment, information or complaint for
16 any offense named in this chapter, it is sufficient to state the
17 purpose or effects of the trust or combination, and that the
18 accused is a member of, acted with, or in pursuance of it, or
19 aided or assisted in carrying out its purposes, without giving
20 its name or description, or how, when and where it was
21 created.
22

23 16757. (a) In prosecutions under this chapter, it is suffi-
24 cient to prove that a trust or combination exists, and that the
25 defendant belonged to it, or acted for or in connection with it,
26 without proving all the members belonging to it, or proving
27 or producing any article of agreement, or any written instru-
28 ment on which it may have been based, or that it was evi-
29 denced by any written instrument at all.
30 (b) The character of the trust or combination alleged may
31 be established by proof of its general reputation as such.
32

33 16758. In any action or proceeding brought by the Attor-
34 ney General or any district attorney for the violation of this
35 chapter no person shall be excused from attending, testifying
36 or producing books, papers, or documents in obedience to sub-
37 pena or under order of court on the ground that the testimony
38 or evidence required of him may tend to incriminate him or
39 subject him to any penalty.
40 No individual shall be prosecuted or subjected to any pen-
41 alty for or on account of any transaction, matter or thing
42 concerning which he may so testify or produce evidence in
43 any action or proceeding brought by the Attorney General or
44 a district attorney under this chapter.
45

46 CHAPTER 3. FAIR TRADE CONTRACTS
47

48 16900. This chapter may be cited as the Fair Trade Act.
49

50 16901. As used in this chapter:

51 (a) "Producer" means grower, baker, maker, manufac-
52 turer or publisher.

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1 (b) "Commodity" means any subject of commerce.

2

3 16902. (a) No contract relating to the sale or resale of a

4 commodity which bears, or the label or container of which

5 bears, the trade-mark, brand, or name of the producer or

6 owner of such commodity and which is in fair and open com-

7 petition with commodities of the same general class produced

8 by others violates any law of this State by reason of any of the

9 following provisions which may be contained in such contract:

10 (1) That the buyer will not resell such commodity except

11 at the price stipulated by the vendor.

12 (2) That the vendee or producer require the person to

13 whom he may resell such commodity to agree that he will not,

14 in turn, resell except at the price stipulated by such vendor or

15 by such vendee.

16 (b) Such provisions in any contract imply conditions that

17 such commodity may be resold without reference to such

18 agreement in the following cases:

19 (1) In closing out the owners' stock for the purpose of dis-

20 continuing delivering any such commodity.

21 (2) When the goods are damaged or deteriorated in quality,

22 and notice is given to the public thereof.

23 (3) By any officer acting under the orders of any court.

24

25 16903. All the provisions of this chapter extend to any

26 commodity sold through vending equipment, if such vending

27 equipment bears the trade-mark, brand or name of the pro-

28 ducer or owner of the commodity and if the commodity is in

29 fair and open competition with commodities of the same gen-

30 eral class produced by others.

31

32 16904. Wilfully and knowingly advertising, offering for

33 sale or selling any commodity at less than the price stipulated

34 in any contract entered into pursuant to this chapter, whether

35 the person so advertising, offering for sale or selling is or is

36 not a party to such contract, is unfair competition and is

37 actionable at the suit of any person damaged thereby.

38

39 16905. This chapter does not apply to any contract or

40 agreement between producers or between wholesalers or

41 between retailers as to sale or resale prices.

42

43 16906. Any person, corporation, firm, partnership, joint

44 stock company, or any other association or organization which

45 violates or proposes to violate this chapter may be enjoined by

46 any court of competent jurisdiction.

47

48 Actions for injunction under this section may be prosecuted

49 by the Attorney General or any district attorney in this State

50 in the name of the people of the State of California upon their

51 own complaint or upon the complaint of any board, officer,

52 person, corporation or association or by any person acting for

the interests of itself, its

CHAPTER 4. UNFAIR TRADE PRACTICES

Article 1. General Provisions

1 17000. This chapter may be cited as the Unfair Practices

2 Act.

3 17001. The Legislature declares that the purpose of this

4 chapter is to safeguard the public against the creation or

5 perpetuation of monopolies and to foster and encourage com-

6 petition, by prohibiting unfair, dishonest, deceptive, destruc-

7 tive, fraudulent and discriminatory practices by which fair

8 and honest competition is destroyed or prevented.

9 17002. This chapter shall be liberally construed that its

10 beneficial purposes may be subserved.

Article 2. Definitions

11 17020. The definitions in this article shall be used in con-

12 struing this chapter.

13 17021. "Person" includes any person, firm, association,

14 organization, partnership, business trust, company, corpora-

15 tion or municipal or other public corporation.

16 17022. "Sell" includes selling, offering for sale or adver-

17 tising for sale.

18 17023. "Give" includes giving, offering to give or adver-

19 tising the intent to give.

20 17024. "Article or product" includes any article, product,

21 commodity, thing of value, service or output of a service

22 trade.

23 Motion picture films when licensed for exhibition to motion

24 picture houses are not articles or products under this chapter.

25 Nothing in this chapter applies:

26 (1) To any service, article or product for which rates are

27 established under the jurisdiction of the Railroad Commis-

28 sion of this State and sold or furnished by any public utility

29 corporation, or installation and repair services rendered in

30 connection with any services, articles or products.

31 (2) To any service, article or product sold or furnished by

32 a publicly owned public utility and upon which the rates

33 would have been established under the jurisdiction of the

34 Railroad Commission of this State if such service, article or

35 product had been sold or furnished by a public utility corpo-

36 ration, or installation and repair services rendered in connec-

37 tion with any services, articles or products.

1 17025. "Vendor" includes any person who performs work
2 upon, renovates, alters or improves any personal property
3 belonging to another person.
4

5 17026. "Cost" as applied to production includes the cost
6 of raw materials, labor and all overhead expenses of the pro-
7 ducer.

8 "Cost" as applied to distribution means the invoice or
9 replacement cost, whichever is lower, of the article or product
10 to the distributor and vendor, plus the cost of doing business
11 by the distributor and vendor.
12

13 17027. In establishing the cost of a given article or prod-
14 uct to the distributor and vendor, the invoice cost of the
15 article or product purchased at a forced, bankrupt, closeout
16 sale, or other sale outside of the ordinary channels of trade
17 may not be used as a basis for justifying a price lower than
18 one based upon the replacement cost as of the date of the sale
19 of the article or product replaced through the ordinary chan-
20 nels of trade, unless the article or product is kept separate
21 from goods purchased in the ordinary channels of trade and
22 unless the article or product is advertised and sold as mer-
23 chandise purchased at a forced, bankrupt, closeout sale, or by
24 means other than through the ordinary channels of trade.
25 Such advertising shall state the conditions under which the
26 goods were purchased, and the quantity of the merchandise to
27 be sold or offered for sale.
28

29 17028. "Ordinary channels of trade" means those ordi-
30 nary, regular and daily transactions in the mercantile trade
31 whereby title to an article or product, in no way damaged or
32 deteriorated, is transferred from one person to another.
33 "Ordinary channels of trade" does not include sales of
34 bankrupt stocks, closeout goods, dents, sales of goods bought
35 from a business or merchant retiring from business, fire sales
36 and sales of damaged or deteriorated goods, which damage or
37 deterioration results from any cause whatsoever. This listing
38 is not all inclusive but as example only.
39

40 17029. "Cost of doing business" or "overhead expense"
41 means all costs of doing business incurred in the conduct of
42 the business and shall include without limitation the follow-
43 ing items of expense: labor (including salaries of executives
44 and officers), rent, interest on borrowed capital, depreciation,
45 selling cost, maintenance of equipment, delivery costs, credit
46 losses, all types of licenses, taxes, insurance and advertising.
47

48 17030. "Loss leader" means any article or product sold
49 at less than cost:

50 (a) Where the purpose is to induce, promote or encourage
51 the purchase of other merchandise; or

1 (b) Where the effect is a tendency or capacity to mislead
2 or deceive purchasers or prospective purchasers; or
3 (c) Where the effect is to divert trade from or otherwise
4 injure competitors.
5

6 17031. Locality discrimination means a discrimination
7 between different sections, communities or cities or portions
8 thereof, or between different locations in such sections, com-
9 munities, cities or portions thereof in this State, by selling or
10 furnishing an article or product, at a lower price in one
11 section, community or city, or any portion thereof, or in one
12 location in such section, community, or city or any portion
13 thereof, than in another.
14

15 Article 3. Offenses Against the Chapter

16 17040. It is unlawful for any person engaged in the pro-
17 duction, manufacture, distribution or sale of any article or
18 product of general use or consumption, with intent to destroy
19 the competition of any regular established dealer in such
20 article or product, or to prevent the competition of any per-
21 son who in good faith, intends and attempts to become such
22 dealer, to create locality discriminations.
23 Nothing in this section prohibits the meeting in good faith
24 of a competitive price.
25

26 17041. Nothing in this chapter prohibits locality discrimi-
27 nations which make allowances for differences, if any, in the
28 grade, quality or quantity when based and justified in the
29 cost of manufacture, sale or delivery, or the actual cost of
30 transportation from the point of production, if a raw product
31 or commodity, or from the point of manufacture if a manu-
32 factured product or commodity, or from the point of shipment
33 to the point of destination.
34

35 17042. Nothing in this chapter prohibits any of the fol-
36 lowing:

- 37 (a) A selection of customers.
- 38 (b) A functional classification by any person of any cus-
39 tomer as broker, jobber, wholesaler or retailer.
- 40 (c) A differential in price for any article or product as
41 between any customers in different functional classifications.
42

43 17043. It is unlawful for any person engaged in business
44 within this State to sell any article or product at less than the
45 cost thereof to such vendor, or to give away any article or
46 product, for the purpose of injuring competitors or destroying
47 competition.
48

49 17044. The practice of using any article or product as a
50 "loss leader" is included among the prohibitions of this
51 chapter.
52

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1 17045. The secret payment or allowance of rebates, refunds,
2 commissions, or unearned discounts, whether in the form of
3 money or otherwise, or secretly extending to certain pur-
4 chasers special services or privileges not extended to all pur-
5 chasers purchasing upon like terms and conditions, to the
6 injury of a competitor and where such payment or allowance
7 tends to destroy competition, is unlawful.
8

9 17046. It is unlawful for any person to use any threat,
10 intimidation, or boycott, to effectuate any violation of this
11 chapter.
12

13 17047. It is unlawful for any manufacturer, wholesaler,
14 distributor, jobber, contractor, broker, retailer, or other ven-
15 dor, or any agent of any such person, to solicit any violation
16 of this chapter.
17

18 17048. It is unlawful for any manufacturer, wholesaler,
19 distributor, jobber, contractor, broker, retailer, or other ven-
20 dor, or any agent of any such person, jointly to participate or
21 collude with any other such person in the violation of this
22 chapter.
23

24 17049. The prohibitions of this chapter against locality dis-
25 crimination and sales below cost embrace any scheme of special
26 rebates, collateral contracts or any device of any nature
27 whereby such discrimination or sale below cost is in substance
28 or fact effected in violation of the spirit and intent of this
29 chapter.
30

31 17050. The prohibitions of this chapter against locality
32 discriminations, sales below cost, and loss leaders do not apply
33 to any sale made:

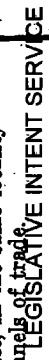
34 (a) In closing out in good faith the owner's stock or any
35 part thereof for the purpose of discontinuing his trade in any
36 such article or product and in the case of the sale of seasonal
37 goods or to the bona fide sale of perishable goods to prevent loss
38 to the vendor by spoilage or depreciation; provided, notice is
39 given to the public thereof.

40 (b) When the goods are damaged or deteriorated in quality,
41 and notice is given to the public thereof.

42 (c) By an officer acting under the orders of any court.

43 (d) In an endeavor made in good faith to meet the legal
44 prices of a competitor selling the same article or product, in
45 the same locality or trade area and in the ordinary channels
46 of trade.

47 (e) In an endeavor made in good faith by a manufacturer,
48 selling an article or product of his own manufacture, in a
49 transaction and sale to a wholesaler or retailer for resale to
50 meet the legal prices of a competitor selling the same or a
51 similar or comparable article or product, in the same locality
52 or trade area and in the or



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1 The notice required to be given under this section shall not
2 be sufficient unless the subject of such sales is kept separate
3 from other stocks and clearly and legibly marked with the
4 reason for such sales, and any advertisement of such goods
5 must indicate the same facts and the number of items to be
6 sold.
7

8 17051. Any contract, express or implied, made by any
9 person, firm, or corporation in violation of this chapter is an
10 illegal contract and no recovery thereon shall be had.
11

Article 4. Civil Liability

12
13
14 17070. Any person or trade association may bring an
15 action to enjoin and restrain any violation of this chapter and,
16 in addition thereto, for the recovery of damages.
17

18 17071. In all actions brought under this chapter proof of
19 one or more acts of selling or giving away any article or
20 product below cost or at discriminatory prices, together with
21 proof of the injurious effect of such acts, is presumptive evi-
22 dence of the purpose or intent to injure competitors or destroy
23 competition.
24

25 17072. Where a particular trade or industry, of which a
26 person complained against is a member, has an established cost
27 survey for the locality and vicinity in which the offense is
28 committed, that cost survey is competent evidence to be used
29 in proving the costs of such person.
30

31 17073. Proof of average overall cost of doing business for
32 any particular inventory period when added to the cost of
33 production of each article or product, as to a producer, or
34 invoice or replacement cost, whichever is lower, of each article
35 or product, as to a distributor, is presumptive evidence of
36 cost of each such article or product involved in any action
37 brought under this chapter.
38

39 17074. Proof of transportation tariffs when fixed and
40 approved by the Railroad Commission of the State of Cali-
41 fornia is presumptive evidence of delivery cost.
42

43 17075. In any action where it is alleged and shown that
44 the person complained against is selling below his cost of
45 doing business, and such person is including labor at less than
46 the prevailing wage scale in the trade in which such person
47 is engaged for the locality or vicinity in which he is doing
48 business, evidence of such prevailing wage scale shall be
49 admissible to prove the intent or purpose of such person to
50 violate this chapter.

1 any, sustained by the plaintiff, as well as the actual damages,
 2 if any, sustained by any person who has assigned to the plain-
 3 tiff his claim for damages resulting from a violation of this
 4 chapter.

5 17088. The testimony of any witness in any action brought
 6 under this chapter may be taken by deposition even though
 7 the case is not one specified in Section 2021 of the Code of
 8 Civil Procedure, but otherwise the provisions of Part 4, Title
 9 3, Chapter 3 of the Code of Civil Procedure are applicable
 10 to the witness, his testimony and deposition.

11 In addition, the books and records of any party, or of any
 12 such witness, may be subpoenaed into court and introduced
 13 into evidence, or introduced, by reference, into evidence, and
 14 may be required to be produced at the taking of the deposi-
 15 tion of any party or of any such witness and there inquired
 16 into.

17 17084. Any party to any action brought under this chapter
 18 may, upon notice, apply to the court in which the action is
 19 pending, or to any judge thereof, for an order requiring any
 20 other party to give to the applicant, within a specified time,
 21 an inspection and copy, or permission to take a copy, of entries
 22 of accounts in any book, or of any documents, papers, or
 23 memoranda in such party's possession or under his control
 24 containing evidence relating to the merits of any such action
 25 or any defense therein.

26 If a compliance with the order is refused, the court shall
 27 exclude the entries of accounts in any such book, or any such
 28 document, paper, or memorandum from being given in evi-
 29 dence by the other party, or if wanted as evidence by the
 30 applicant the court shall presume them to be as the applicant
 31 alleges.

32 17085. If, at any time while any action for a violation of
 33 this chapter is pending, it appears to the court that an exten-
 34 sive examination of books, papers, records, or documents is or
 35 may become material or relevant to the issues in the action,
 36 the court may, in its discretion, upon the application of any
 37 party to the action, or upon its own motion, order a reference
 38 to be had in the manner and form provided in Part 2, Title
 39 8, Chapter 6, of the Code of Civil Procedure.

40 17086. No information obtained under any provision of
 41 this article, or under Part 4, Title 6, Chapter 2, of the Code
 42 of Civil Procedure, may be used against any such party,
 43 or any such witness, as a basis for a misdemeanor or felony
 44 prosecution in any court of this State.

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1 17076. In any action brought under this chapter, where
 2 persons are employed or performing services for any person
 3 or in the conduct of the business wherein such person is
 4 charged with a violation of this chapter, and are so employed
 5 or performing such services without compensation or at a
 6 wage lower than that prevailing at the time and place of the
 7 service for the particular services performed, such services
 8 shall be charged as an expense of the business in which ren-
 9 dered and at the rate of the wage for the services rendered
 10 prevailing at the time of the service at the place where
 11 rendered.

12 17077. In any action or prosecution for sales below cost
 13 in violation of this chapter, if the defendant acquires his raw
 14 materials for a consideration not wholly or definitely com-
 15 putable in money, the cost of the raw materials shall be pre-
 16 sumed to be the prevailing market price for similar raw
 17 materials in the ordinary channels of trade in the locality or
 18 vicinity in which such raw materials were acquired, at the time
 19 of the acquisition.

20 17078. If it appears to the court upon any application for
 21 a temporary restraining order, or upon the hearing of any
 22 order to show cause why a preliminary injunction should not
 23 be issued, or upon the hearing of any motion for a preliminary
 24 injunction, or if the court shall find, in any such action, that
 25 any defendant therein is violating, or has violated, this chap-
 26 ter, then the court shall enjoin the defendant from doing all
 27 acts which are prohibited by the section, or sections, of which
 28 any provision thereof is being violated, or has been violated,
 29 by the defendant.

30 17079. The court may, in its discretion, include in any
 31 injunction against a violation of this chapter such other
 32 restraint as it may deem expedient in order to deter the
 33 defendant from, and insure against, his committing a future
 34 violation of this chapter.

35 17080. Any injunction against a violation of this chapter,
 36 whether interim or final, shall cover every article or product
 37 and not merely the particular article or product involved in
 38 the action.

39 17081. It is not necessary for the plaintiff, in any action
 40 under this chapter, to provide or file any undertaking or bond
 41 for the issuance of any interim or final injunction.

42 17082. In any action under this chapter, it is not neces-
 43 sary to allege or prove actual damages or the threat thereof,
 44 or actual injury or the threat thereof, to the plaintiff. But in
 45 addition to injunctive relief any plaintiff in any such action
 46 is entitled to recover

LEGISLATIVE INTERPRETIVE SERVICE

1 Article 5. Liability of Agents

2
3 17095. Any person, who, either as director, officer or agent
4 of any firm or corporation or as agent of any person, violating
5 the provisions of this chapter, assists or aids, directly or indi-
6 rectly, in such violation is responsible therefor equally with
7 the person, firm or corporation for which he acts.
8

9 17096. In any injunction proceeding against any person as
10 officer, director or agent, it is sufficient to allege and prove the
11 unlawful intent of the person, firm or corporation for which
12 he acts.

13 Article 6. Penal Provisions

14
15 17100. Any person, whether as principal, agent, officer or
16 director, for himself, or for another person, or for any firm or
17 corporation, or any corporation, who or which violates this
18 chapter is guilty of a misdemeanor for each single violation
19 and upon conviction thereof, shall be punished by a fine of
20 not less than one hundred dollars (\$100) nor more than one
21 thousand dollars (\$1,000) or by imprisonment not exceeding
22 six months or by both such fine and imprisonment, in the
23 discretion of the court.
24

25 17101. In the prosecution of any person as officer, director
26 or agent, it is sufficient to allege and prove the unlawful
27 intent of the person, firm or corporation for which he acts.
28

29 SEC. 2. Section 30028 is hereby added to Division 30 of
30 the Business and Professions Code, to read as follows:
31

32 30028. The following acts, together with all acts amenda-
33 tory thereof, and supplementary thereto, are hereby repealed:
34

35 General Laws

36	Year	Chapter	Page
37	1907	530	984
38	1913	276	508
39	1931	278	583
40	1933	1037	2632
41	1933	1039	2637
42	1933	1041	2640
43	1935	814	2212
44	1937	396	1215
45			
46			

47 Civil Code

48	Section
49	1673
50	1674
51	1675



1

Senate Bill No. 360

CHAPTER 526

An act to add Part 2, comprising Chapters 1 to 4, inclusive, Sections 16600 to 17101, inclusive, to Division 7, and to add Section 30028 to Division 30 of the Business and Professions Code, thereby consolidating and revising the law relating to the preservation and regulation of competition, and repealing acts and parts of acts specified herein.

[Approved by Governor May 31, 1941. Filed with Secretary of State May 31, 1941.]

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

SECTION 1. Part 2, consisting of Chapters 1 to 4, inclusive, Sections 16600 to 17101, inclusive, is hereby added to Division 7 of the Business and Professions Code, to read as follows:

PART 2. PRESERVATION AND REGULATION
OF COMPETITION

CHAPTER 1. CONTRACTS IN RESTRAINT OF TRADE

16600. Except as provided in this chapter, every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.

16601. Any person who sells the good will of a business may agree with the buyer to refrain from carrying on a similar business within a specified county, city, or a part thereof, so long as the buyer, or any person deriving title to the good will from him, carries on a like business therein.

16602. Partners may, upon or in anticipation of a dissolution of the partnership, agree that none of them will carry on a similar business within the same city or town or a specified part thereof, where the partnership business has been transacted.

CHAPTER 2. COMBINATIONS IN RESTRAINT OF TRADE

Article 1. General Provisions

16700. The provisions of this chapter are cumulative of each other and of any other provision of law relating to the same subject in effect May 22, 1907.

16701. Section 24 of this code shall not determine the separability of the provisions of this chapter, one from another. Such separability shall be determined by whether the provisions of Chapter 530 of the Statutes of 1907 and the provisions of Chapter 362 of the Statutes of 1909 are separable among themselves and as to each other.

If the words "or reduce" (following the word "increase") were not effectively deleted from Subdivision 2 of Section 1 of Chapter 530 of the Statutes of 1907 by Section 1 of Chapter 362 of the Statutes of 1909, a combination of capital, skill or acts by two or more persons for the purpose of reducing the price of merchandise or of any commodity is a trust.

16702. As used in this chapter "person" or "persons" includes corporations, firms, partnerships and associations existing under or authorized by the laws of this State or any other State, or any foreign country.

16703. Within the meaning of this chapter, labor, whether skilled or unskilled, is not a commodity.

Article 2. Prohibited Restraints on Competition

16720. A trust is a combination of capital, skill or acts by two or more persons for any of the following purposes:

- (a) To create or carry out restrictions in trade or commerce.
- (b) To limit or reduce the production, or increase the price of merchandise or of any commodity.
- (c) To prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity.
- (d) To fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption in this State.
- (e) To make or enter into or execute or carry out any contracts, obligations or agreements of any kind or description, by which they do all or any or any combination of any of the following:
 - (1) Bind themselves not to sell, dispose of or transport any article or any commodity or any article of trade, use, merchandise, commerce or consumption below a common standard figure, or fixed value.
 - (2) Agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure.

(3) Establish or settle the price of any article, commodity or transportation between them or themselves and others, so as directly or indirectly to preclude a free and unrestricted competition among themselves, or any purchasers or consumers in the sale or transportation of any such article or commodity.

(4) Agree to pool, combine or directly or indirectly unite any interests that they may have connected with the sale or transportation of any such article or commodity, that its price might in any manner be affected.

16721. It is unlawful for any person, or his agent, to issue or to own trust certificates, or for any person or his agent, officer, or employee, or the directors or stockholders of any corporation, to enter into any combination, contract or agreement with any person or with any stockholder or director of a corporation, the purpose and effect of which is to place the management or control of the combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article.

Any person who enters into any such combination, contract or agreement which violates this section is guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not less than fifty dollars (\$50), nor more than five thousand dollars (\$5,000).

16722. Any contract or agreement in violation of this chapter is absolutely void and is not enforceable at law or in equity.

16723. No agreement, combination or association is unlawful or within the provisions of this chapter, the object and purpose of which are to conduct operations at a reasonable profit or to market at a reasonable profit those products which can not otherwise be so marketed.

16724. It is not unlawful, or within the provisions of this chapter, for persons engaged in the business of selling or manufacturing commodities of a similar or like character, to employ, form, organize or own any interest in any association, firm or corporation which has as its object or purpose the transportation, marketing or delivery of such commodity.

16725. It is not unlawful to enter into agreements or form associations or combinations, the purpose and effect of which



is to promote, encourage or increase competition in any trade or industry, or which are in furtherance of trade.

16726. Except as provided in this chapter, every trust is unlawful, against public policy and void.

Article 3. Enforcement

16750. Any person who is injured in his business or property by reason of anything forbidden or declared unlawful by this chapter, may sue therefor in any court having jurisdiction in the county where the defendant resides or is found; or any agent resides or is found, or where service may be obtained, without respect to the amount in controversy, and to recover twofold the damages sustained by him, and the costs of suit.

16751. Whenever it appears to the court before which any proceedings under this chapter are pending that the ends of justice require that other parties shall be brought before the court, the court may cause them to be made parties defendant and summoned, whether or not they reside in the county where such action is pending.

16752. Upon a violation of this chapter by any corporation or association the Attorney General or the district attorney of the proper county shall institute proper proceedings in a court of competent jurisdiction for the forfeiture of charter rights, franchises or privileges and powers exercised by such corporation or association, and for the dissolution of the corporation or association.

16753. Every foreign corporation or association, exercising any of the powers, franchises or functions of a corporation in this State, which violates this chapter, is hereby denied those powers, franchises or functions and is prohibited from doing any business in this State. The Attorney General shall enforce this provision by bringing proper proceedings by injunction or otherwise. The Secretary of State may revoke the license of any such corporation or association heretofore authorized to do business in this State.

16754. Every person who violates this chapter shall for each day that such violations are committed or continued, after due notice given by the Attorney General or any district attorney, forfeit and pay the sum of fifty dollars (\$50), which may be recovered in the name of the people of this State in any county where the offense is committed, or where either of the

offenders resides. The Attorney General, or the district attorney of any county on the order of the Attorney General, shall prosecute for the recovery of the forfeit. When the action is prosecuted by the Attorney General against a corporation or an association of persons, he may begin the action in the superior court in and for the county where the defendant resides or does business.

16755. (a) Any violation of this chapter is a conspiracy against trade, and any person who engages in any such conspiracy or takes part therein, or aids or advises in its commission, or who as principal, manager, director, agent, servant or employee, or in any other capacity, knowingly carries out any of the stipulations, purposes, prices, rates, or furnishes any information to assist in carrying out such purposes, or orders thereunder or in pursuance thereof, is punishable by a fine of not less than fifty dollars (\$50) nor more than five thousand dollars (\$5,000), or by imprisonment for not less than six months nor more than one year, or by both such fine and imprisonment.

(b) Each day's violation of this chapter is a separate offense.

16756. In any indictment, information or complaint for any offense named in this chapter, it is sufficient to state the purpose or effects of the trust or combination, and that the accused is a member of, acted with, or in pursuance of it, or aided or assisted in carrying out its purposes, without giving its name or description, or how, when and where it was created.

16757. (a) In prosecutions under this chapter, it is sufficient to prove that a trust or combination exists, and that the defendant belonged to it, or acted for or in connection with it, without proving all the members belonging to it, or proving or producing any article of agreement, or any written instrument on which it may have been based, or that it was evinced by any written instrument at all.

(b) The character of the trust or combination alleged may be established by proof of its general reputation as such.

16758. In any action or proceeding brought by the Attorney General or any district attorney for the violation of this chapter no person shall be excused from attending, testifying or producing books, papers, or documents in obedience to subpoena or under order of court on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to any penalty.



No individual shall be prosecuted or subjected to any penalty for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence in any action or proceeding brought by the Attorney General or a district attorney under this chapter.

CHAPTER 3. FAIR TRADE CONTRACTS

16900. This chapter may be cited as the Fair Trade Act.

16901. As used in this chapter:

- (a) "Producer" means grower, baker, maker, manufacturer or publisher.
- (b) "Commodity" means any subject of commerce.

16902. (a) No contract relating to the sale or resale of a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer or owner of such commodity and which is in fair and open competition with commodities of the same general class produced by others violates any law of this State by reason of any of the following provisions which may be contained in such contract:

- (1) That the buyer will not resell such commodity except at the price stipulated by the vendor.
- (2) That the vendee or producer require the person to whom he may resell such commodity to agree that he will not, in-turn, resell except at the price stipulated by such vendor or by such vendee.
- (b) Such provisions in any contract imply conditions that such commodity may be resold without reference to such agreement in the following cases:
 - (1) In closing out the owners' stock for the purpose of discontinuing delivering any such commodity.
 - (2) When the goods are damaged or deteriorated in quality, and notice is given to the public thereof.
 - (3) By any officer acting under the orders of any court.

16903. All the provisions of this chapter extend to any commodity sold through vending equipment, if such vending equipment bears the trade-mark, brand or name of the producer or owner of the commodity and if the commodity is in fair and open competition with commodities of the same general class produced by others.

16904. Willfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in any contract entered into pursuant to this chapter, whether the person so advertising, offering for sale or selling is or is

not a party to such contract, is unfair competition and is actionable at the suit of any person damaged thereby.

16905. This chapter does not apply to any contract or agreement between producers or between wholesalers or between retailers as to sale or resale prices.

CHAPTER 4. UNFAIR TRADE PRACTICES

Article 1. General Provisions

17000. This chapter may be cited as the Unfair Practices Act.

17001. The Legislature declares that the purpose of this chapter is to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition, by prohibiting unfair, dishonest, deceptive, destructive, fraudulent and discriminatory practices by which fair and honest competition is destroyed or prevented.

17002. This chapter shall be liberally construed that its beneficial purposes may be subserved.

Article 2. Definitions

17020. The definitions in this article shall be used in construing this chapter.

17021. "Person" includes any person, firm, association, organization, partnership, business trust, company, corporation or municipal or other public corporation.

17022. "Sell" includes selling, offering for sale or advertising for sale.

17023. "Give" includes giving, offering to give or advertising the intent to give.

17024. "Article or product" includes any article, product, commodity, thing of value, service or output of a service trade.

Motion picture films when licensed for exhibition to motion picture houses are not articles or products under this chapter. Nothing in this chapter applies:

- (1) To any service, article or product for which rates are established under the jurisdiction of the Railroad Commission of this State and sold or furnished by any public utility



corporation, or installation and repair services rendered in connection with any services, articles or products.

(2) To any service, article or product sold or furnished by a publicly owned public utility and upon which the rates would have been established under the jurisdiction of the Railroad Commission of this State if such service, article or product had been sold or furnished by a public utility corporation, or installation and repair services rendered in connection with any services, articles or products.

17025. "Vendor" includes any person who performs work upon, renovates, alters or improves any personal property belonging to another person.

17026. "Cost" as applied to production includes the cost of raw materials, labor and all overhead expenses of the producer.

"Cost" as applied to distribution means the invoice or replacement cost, whichever is lower, of the article or product to the distributor and vendor, plus the cost of doing business by the distributor and vendor.

17027. In establishing the cost of a given article or product to the distributor and vendor, the invoice cost of the article or product purchased at a forced, bankrupt, closeout sale, or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost as of the date of the sale of the article or product replaced through the ordinary channels of trade, unless the article or product is kept separate from goods purchased in the ordinary channels of trade and unless the article or product is advertised and sold as merchandise purchased at a forced, bankrupt, closeout sale, or by means other than through the ordinary channels of trade.

Such advertising shall state the conditions under which the goods were purchased, and the quantity of the merchandise to be sold or offered for sale.

17028. "Ordinary channels of trade" means those ordinary, regular and daily transactions in the mercantile trade whereby title to an article or product, in no way damaged or deteriorated, is transferred from one person to another.

"Ordinary channels of trade" does not include sales of bankrupt stocks, closeout goods, dents, sales of goods bought from a business or merchant retiring from business, fire sales and sales of damaged or deteriorated goods, which damage or deterioration results from any cause whatsoever. This listing is not all inclusive but as example only.

17029. "Cost of doing business" or "overhead expense" means all costs of doing business incurred in the conduct of the business and shall include without limitation the following items of expense: labor (including salaries of executives and officers), rent, interest on borrowed capital, depreciation, selling cost, maintenance of equipment, delivery costs, credit losses, all types of licenses, taxes, insurance and advertising.

17030. "Loss leader" means any article or product sold at less than cost:

- (a) Where the purpose is to induce, promote or encourage the purchase of other merchandise; or
- (b) Where the effect is a tendency or capacity to mislead or deceive purchasers or prospective purchasers; or
- (c) Where the effect is to divert trade from or otherwise injure competitors.

17031. Locality discrimination means a discrimination between different sections, communities or cities or portions thereof, or between different locations in such sections, communities, cities or portions thereof in this State, by selling or furnishing an article or product, at a lower price in one location, community or city, or any portion thereof, or in one section, community or city, or any portion thereof, than in another.

Article 3. Offenses Against the Chapter

17040. It is unlawful for any person engaged in the production, manufacture, distribution or sale of any article or product of general use or consumption, with intent to destroy the competition of any regular established dealer in such article or product, or to prevent the competition of any person who in good faith, intends and attempts to become such dealer, to create locality discriminations.

Nothing in this section prohibits the meeting in good faith of a competitive price.

17041. Nothing in this chapter prohibits locality discriminations which make allowances for differences, if any, in the grade, quality or quantity when based and justified in the cost of manufacture, sale or delivery, or the actual cost of transportation from the point of production, if a raw product or commodity, or from the point of manufacture if a manufactured product or commodity, or from the point of shipment to the point of destination.



17042. Nothing in this chapter prohibits any of the following:

- (a) A selection of customers.
- (b) A functional classification by any person of any customer as broker, jobber, wholesaler or retailer.
- (c) A differential in price for any article or product as between any customers in different functional classifications.

17043. It is unlawful for any person engaged in business within this State to sell any article or product at less than the cost thereof to such vendor, or to give away any article or product, for the purpose of injuring competitors or destroying competition.

17044. The practice of using any article or product as a "loss leader" is included among the prohibitions of this chapter.

17045. The secret payment or allowance of rebates, refunds, commissions, or unearned discounts, whether in the form of money or otherwise, or secretly extending to certain purchasers special services or privileges not extended to all purchasers purchasing upon like terms and conditions, to the injury of a competitor and where such payment or allowance tends to destroy competition, is unlawful.

17046. It is unlawful for any person to use any threat, intimidation, or boycott, to effectuate any violation of this chapter.

17047. It is unlawful for any manufacturer, wholesaler, distributor, jobber, contractor, broker, retailer, or other vendor, or any agent of any such person, to solicit any violation of this chapter.

17048. It is unlawful for any manufacturer, wholesaler, distributor, jobber, contractor, broker, retailer, or other vendor, or any agent of any such person, jointly to participate or collude with any other such person in the violation of this chapter.

17049. The prohibitions of this chapter against locality discrimination and sales below cost embrace any scheme of special rebates, collateral contracts or any device of any nature whereby such discrimination or sale below cost is in substance or fact effected in violation of the spirit and intent of this chapter.

17050. The prohibitions of this chapter against locality discriminations, sales below cost, and loss leaders do not apply to any sale made:

(a) In closing out in good faith the owner's stock or any part thereof for the purpose of discontinuing his trade in any such article or product and in the case of the sale of seasonal goods or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation; provided, notice is given to the public thereof.

(b) When the goods are damaged or deteriorated in quality, and notice is given to the public thereof.

(c) By an officer acting under the orders of any court.

(d) In an endeavor made in good faith to meet the legal prices of a competitor selling the same article or product, in the same locality or trade area and in the ordinary channels of trade.

(e) In an endeavor made in good faith by a manufacturer, selling an article or product of his own manufacture, in a transaction and sale to a wholesaler or retailer for resale to meet the legal prices of a competitor selling the same or a similar or comparable article or product, in the same locality or trade area and in the ordinary channels of trade.

The notice required to be given under this section shall not be sufficient unless the subject of such sales is kept separate from other stocks and clearly and legibly marked with the reason for such sales, and any advertisement of such goods must indicate the same facts and the number of items to be sold.

17051. Any contract, express or implied, made by any person, firm, or corporation in violation of this chapter is an illegal contract and no recovery thereon shall be had.

Article 4. Civil Liability

17070. Any person or trade association may bring an action to enjoin and restrain any violation of this chapter and, in addition thereto, for the recovery of damages.

17071. In all actions brought under this chapter proof of one or more acts of selling or giving away any article or product below cost or at discriminatory prices, together with proof of the injurious effect of such acts, is presumptive evidence of the purpose or intent to injure competitors or destroy competition.

17072. Where a particular trade or industry, of which a person complained against is a member, has an established cost



survey for the locality and vicinity in which the offense is committed, that cost survey is competent evidence to be used in proving the costs of such person.

17073. Proof of average overall cost of doing business for any particular inventory period when added to the cost of any production of each article or product, as to a producer, or invoice or replacement cost, whichever is lower, of each article or product, as to a distributor, is presumptive evidence of cost of each such article or product involved in any action brought under this chapter.

17074. Proof of transportation tariffs when fixed and approved by the Railroad Commission of the State of California is presumptive evidence of delivery cost.

17075. In any action where it is alleged and shown that the person complained against is selling below his cost of doing business, and such person is including labor at less than the prevailing wage scale in the trade in which such person is engaged for the locality or vicinity in which he is doing business, evidence, of such prevailing wage scale shall be admissible to prove the intent or purpose of such person to violate this chapter.

17076. In any action brought under this chapter, where persons are employed or performing services for any person or in the conduct of the business wherein such person is charged with a violation of this chapter, and are so employed or performing such services without compensation or at a wage lower than that prevailing at the time and place of the service for the particular services performed, such services shall be charged as an expense of the business in which rendered and at the rate of the wage for the services rendered prevailing at the time of the service at the place where rendered.

17077. In any action or prosecution for sales below cost in violation of this chapter, if the defendant acquires his raw materials for a consideration not wholly or definitely commensurate in money, the cost of the raw materials shall be presumed to be the prevailing market price for similar raw materials in the ordinary channels of trade in the locality or vicinity in which such raw materials were acquired, at the time of the acquisition.

17078. If it appears to the court upon any application for a temporary restraining order, or upon the hearing of any

order to show cause why a preliminary injunction should not be issued, or upon the hearing of any motion for a preliminary injunction, or if the court shall find, in any such action, that any defendant therein is violating, or has violated, this chapter, then the court shall enjoin the defendant from doing all acts which are prohibited by the section, or sections, of which any provision thereof is being violated, or has been violated, by the defendant.

17079. The court may, in its discretion, include in any injunction against a violation of this chapter such other restraint as it may deem expedient in order to deter the defendant from, and insure against, his committing a future violation of this chapter.

17080. Any injunction against a violation of this chapter, whether interim or final, shall cover every article or product and not merely the particular article or product involved in the action.

17081. It is not necessary for the plaintiff, in any action under this chapter, to provide or file any undertaking or bond for the issuance of any interim or final injunction.

17082. In any action under this chapter, it is not necessary to allege or prove actual damages or the threat thereof, or actual injury or the threat thereof, to the plaintiff. But, in addition to injunctive relief, any plaintiff in any such action is entitled to recover the amount of the actual damages, if any, sustained by the plaintiff, as well as the actual damages, if any, sustained by any person who has assigned to the plaintiff his claim for damages resulting from a violation of this chapter.

17083. The testimony of any witness in any action brought under this chapter may be taken by deposition even though the case is not one specified in Section 2021 of the Code of Civil Procedure, but otherwise the provisions of Part 4, Title 3, Chapter 3 of the Code of Civil Procedure are applicable to the witness, his testimony and deposition.

In addition, the books and records of any party, or of any such witness, may be subpoenaed into court and introduced into evidence, or introduced, by reference, into evidence, and may be required to be produced at the taking of the deposition of any party or of any such witness and there inquired into.



17084. Any party to any action brought under this chapter may, upon notice, apply to the court in which the action is pending, or to any judge thereof, for an order requiring any other party to give to the applicant, within a specified time, an inspection and copy, or permission to take a copy, of entries of accounts in any book, or of any documents, papers, or memoranda in such party's possession or under his control containing evidence relating to the merits of any such action or any defense therein.

If a compliance with the order is refused, the court shall exclude the entries of accounts in any such book, or any such document, paper, or memorandum from being given in evidence by the other party, or if wanted as evidence by the applicant the court shall presume them to be as the applicant alleges.

17085. If, at any time while any action for a violation of this chapter is pending, it appears to the court that an extensive examination of books, papers, records, or documents is or may become material or relevant to the issues in the action, the court may, in its discretion, upon the application of any party to the action, or upon its own motion, order a reference to be had in the manner and form provided in Part 2, Title 8, Chapter 6, of the Code of Civil Procedure.

17086. No information obtained under any provision of this article, or under Part 4, Title 6, Chapter 2, of the Code of Civil Procedure, may be used against any such party, or any such witness, as a basis for a misdemeanor or felony prosecution in any court of this State.

Article 5. Liability of Agents

17095. Any person, who, either as director, officer or agent of any firm or corporation or as agent of any person, violating the provisions of this chapter, assists or aids, directly or indirectly, in such violation is responsible therefor equally with the person, firm or corporation for which he acts.

17096. In any injunction proceeding against any person as officer, director or agent, it is sufficient to allege and prove the unlawful intent of the person, firm or corporation for which he acts.

Article 6. Penal Provisions

17100. Any person, whether as principal, agent, officer or director, for himself, or for another person, or for any firm or

corporation, or any corporation, who or which violates this chapter is guilty of a misdemeanor for each single violation and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or by imprisonment not exceeding six months or by both such fine and imprisonment, in the discretion of the court.

17101. In the prosecution of any person as officer, director or agent, it is sufficient to allege and prove the unlawful intent of the person, firm or corporation for which he acts.

Sec. 2. Section 30028 is hereby added to Division 30 of the Business and Professions Code, to read as follows:

30028. The following acts, together with all acts amendatory thereof, and supplementary thereto, are hereby repealed:

General Laws		
Year	Chapter	Page
1913	276	508
1931	278	583
1933	1037	2632
1933	1039	2637
1933	1041	2640
1935	814	2212
1937	396	1215

Civil Code

Section
1673
1674
1675



CALIFORNIA LEGISLATURE
AT SACRAMENTO
FIFTY-FOURTH SESSION
1941

SENATE FINAL HISTORY

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

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

First Half—Began January 6, and adjourned January 25, 1941
Second Half—Began March 3, and adjourned sine die June 14, 1941

Legislative Days.....	93 days
Calendar Days.....	160 days
Constitutional Recess.....	36 days

HON. ELLIS E. PATTERSON
President of the Senate

W. P. RICH
President pro tempore

Compiled under the direction of
JOSEPH A. BEEK
Secretary of the Senate

By JOHN F. LEA
Chief Assistant Secretary of the Senate

AND
WALTER J. McLAUGHLIN
History Clerk

LEGISLATIVE INTENT SERVICE (800) 666-1917



359—Quinn, Jan. 21. Without reference to committee.

An act to add Chapter 4, comprising Sections 16300 to 16451, inclusive, to Part 1 of Division 7 and to add Section 30027 to Division 30 of the Business and Professions Code, thereby consolidating and revising the law regulating itinerant merchants and repealing acts and parts of acts specified herein.

Jan. 21—Read first time. To printer.
 Jan. 22—From printer. Read second time.
 Jan. 23—Reported correctly engrossed. Referred to Com. on Jud.
 Mar. 5—From committee with recommendation: Do pass.
 Mar. 6—Read second time.
 Mar. 10—Read third time, passed, title approved. To Assembly.
 Mar. 11—In Assembly. Read first time. To Com. on G. E. & E.
 Mar. 13—From committee with recommendation: Do pass.
 Mar. 14—Read second time.
 Mar. 21—Read third time, passed, title approved. To Senate.
 Mar. 21—In Senate. To enrollment.
 Mar. 25—Reported correctly enrolled. To Governor.
 April 4—Approved by Governor. Chapter 62.

360—Quinn, Jan. 21. Without reference to committee.

An act to add Part 2, comprising Chapters 1 to 4, inclusive, Sections 16600 to 17101, inclusive, to Division 7, and to add Section 30028 to Division 30 of the Business and Professions Code, thereby consolidating and revising the law relating to the preservation and regulation of competition, and repealing acts and parts of acts specified herein.

Jan. 21—Read first time. To printer.
 Jan. 22—From printer. Read second time.
 Jan. 23—Reported correctly engrossed. Referred to Com. on Jud.
 April 1—From committee with recommendation: Do pass as amended.
 April 2—Read second time: Amended. To printer.
 April 3—Reported correctly re-engrossed. Read third time, passed, title approved. To Assembly.
 April 4—In Assembly. Read first time. To Com. on Jud. Codes.
 April 17—From committee with recommendation: Do pass as amended.
 April 18—Read second time. Amended. To printer.
 April 21—From printer.
 May 15—Read third time, passed, title approved. Notice of motion to reconsider given by Mr. Johnson.
 May 16—Motion to reconsider continued to next legislative day.
 May 17—Motion to reconsider continued to next legislative day.
 May 19—Reconsideration waived. To Senate.
 May 20—Ordered to unfinished business file.
 May 22—Senate concurs in Assembly amendment. To enrollment.
 May 23—Reported correctly enrolled. To Governor.
 May 31—Approved by Governor. Chapter 520.

361—Quinn, Jan. 21. Without reference to committee.

An act to add Part 3, comprising Chapter 1, Sections 17500 to 17535, to Division 7, and to add Section 30041 to Division 30 of the Business and Professions Code, thereby revising and consolidating the law relating to false advertising, and repealing acts and parts of acts specified herein.

Jan. 21—Read first time. To printer.
 Jan. 22—From printer. Read second time.
 Jan. 23—Reported correctly engrossed. Read third time. Amended. To printer.
 From printer. Referred to Com. on Jud.
 Mar. 5—From committee with recommendation: Do pass.
 Mar. 6—Read second time.
 Mar. 7—Reported correctly re-engrossed.
 Mar. 10—Read third time, passed, title approved. To Assembly.
 Mar. 11—In Assembly. Read first time. To Com. on G. E. & E.
 Mar. 13—From committee with recommendation: Do pass.
 Mar. 14—Read second time.
 Mar. 21—Read third time, passed, title approved. To Senate.
 Mar. 21—In Senate. To enrollment.
 Mar. 25—Reported correctly enrolled. To Governor.
 April 4—Approved by Governor. Chapter 63.



LEGISLATIVE DIGEST

JANUARY 6 TO JANUARY 25, 1941

BILLS AND CONSTITUTIONAL
AMENDMENTS INTRODUCED PRIOR
TO THE CONSTITUTIONAL RECESS



CALIFORNIA LEGISLATURE
FIFTY-FOURTH SESSION

Compiled by
FRED B. WOOD
Legislative Counsel

JOSEPH A. BEEK
Secretary of the Senate

ARTHUR A. OHNIMUS
Chief Clerk of the Assembly

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S.B. 351—DeLAP AND RICHL. (Jud.) Repeals Tit. 11a, of Pt. 3, C. C. P., re conciliation proceedings.

S.B. 352—RICHL. (Wnt. Res.) Amends Act 2827, making provisions of act governing investment and reinvestment of surplus money apply to irrigation districts.
Chap. 17, Stats., 1941, approved Feb. 1, 1941, in effect immediately.

S.B. 353-362, inclusive—QUINN. (Jud.) Divisions 0 and 7, Business and Professions Code additions.

Prepared under direction of California Code Commission.
Restate law relating to business rights and general business regulations, all codifying without substantive change the provisions of law therein contained.

The following bills constitute the additions to the code:

- S.B. 353—General Provisions
- S.B. 354—Good Will
- S.B. 355—Trade-marks
- S.B. 356—Trade Names and Designations
- S.B. 357—Authorship
- S.B. 358—Licensing for Revenue and Regulation
- S.B. 359—Itinerant Merchants
- S.B. 360—Preservation and Regulation of Competition
- S.B. 361—Advertising
- S.B. 362—Premium Coupons

S.B. 363—KENNY. (B. & P.) Amends Secs. 6320, 6322, 6323, 6324, 6343, 6346, and 6360, adds 6326, B. & P. C., re law libraries and boards of law library trustees.

Amends sections added by S.B. 364. Requires money collected for law library to be delivered to board of trustees in manner provided by law when law library and board is in existence under other laws. Requires one dollar (\$1) to be paid for law library as court costs by any defendant, etc., appearing in municipal court. No costs to be collected in justices' courts in counties where there are more than 25 municipal court judges. Revolving fund, not exceeding five hundred dollars (\$500), authorized. Board given power to expend money for maintenance, repair and insurance of library property. Board permitted to require bond of officers and assistants. Revises procedure re removal of books from library.

S.B. 364—KENNY. (B. & P.) Adds Chap. 5, Div. 3, B. & P. C., repeals Secs. 4190 to 4204, inclusive, Pol. C., re law libraries and boards of law library trustees.

Puts into B. & P. C. provisions now in Pol. C. governing county law library and board of law library trustees for the county. States no substantive change in law relating to law libraries intended to be made by bill.

S.B. 365—KENNY. (Jud.) Amends Sec. 4300e, Pol. C., revising fees to be charged by justice of the peace.

S.B. 366—KENNY. (Jud.) Adds Sec. 4300 1c, Pol. C., re municipal court fees and costs.

Provides for payment of one dollar (\$1) library fee, on first appearance of each defendant of adverse party in civil action or proceeding.

S.B. 367—KENNY. (Fin.) Appropriates six hundred thousand dollars (\$600,000) for land and buildings for acute psychiatric hospital in southern California.



Journal of the Assembly

Legislature of the State of California

Fifty-fourth Session

1941

First Part of Session, January sixth to January twenty-fifth, inclusive
Second Part of Session, March third to June fourteenth, inclusive

Honorable Gordon H. Garland, Speaker
Arthur A. Ohnimus, Chief Clerk



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CALIFORNIA LEGISLATURE
FIFTY-FOURTH SESSION

ASSEMBLY DAILY JOURNAL

SEVENTH LEGISLATIVE DAY
NINTH CALENDAR DAY

IN ASSEMBLY

ASSEMBLY CHAMBER, SACRAMENTO

Tuesday, January 14, 1941

The Assembly met at 11 a.m.

Hon. Earl D. Desmond, Speaker pro tempore of the Assembly, presiding.

Chief Clerk Arthur A. Ohnimus at the desk.

ROLL CALL

The roll was called, and the following answered to their names:

Allen, Andreas, Bashore, Bennett, Burkhalter, Burns, Hugh M. Burns, Michael J., Cain, Call, Carlson, Cassidy, Clarke, Collins, George D., Collins, Sam L., Cooke, Cronin, Crowley, Daley, Del Murolo, Desmond, Dickey, Dills, Dilworth, Donnelly, Doyle, Evans, Field, Gaffney, Gallagher, Green, Gunlock, Hastain, Hawkins, Heisinger, Houser, Frederick F., Johnson, Kellems, Kepple, Kilpatrick, King, Knight, John B., Knight, T. Fenton, Leonard, Lowrey, Lyon, Maloney, Massion, McCollister, Meehan, Middough, Miller, Pelletier, Pfaff, Phillips, Poole, Potter, Poulson, Richie, Robertson, Russell, Salsman, Sawalisch, Sheridan, Stream, Tenney, Thomas, Thorp, Thurman, Turner, Voigt, Waters, Watson, Weber, Welch, Weybret, Wollenberg, and Mr. Speaker—77.

Quorum present.

PRAYER

Prayer was offered by the Chaplain, Rev. John T. Markham.

READING OF THE JOURNAL DISPENSED WITH

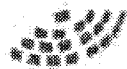
During the reading of the Journal of the previous legislative day, further reading was dispensed with, on motion of Mr. Turner.

LEAVES OF ABSENCE FOR THE DAY

The following members were granted leaves of absence for the day:

Mr. F. N. Howser, on motion of Mr. Robertson.

Mr. O'Day, on motion of Mr. Gallagher.



[Jan. 14, 1941]

Assembly Joint Resolution No. 6: By Mr. Turner—Relative to memorializing Congress to increase the appropriation of funds for the Central Valley Water Project.

Request for Unanimous Consent

Mr. Turner asked for, and was granted, unanimous consent to take up Assembly Joint Resolution No. 6, at this time, without reference to committee, print or file, and that the same be considered engrossed.

CONSIDERATION OF ASSEMBLY JOINT RESOLUTION NO. 6

Assembly Joint Resolution No. 6—Relative to memorializing Congress to increase the appropriation of funds for the Central Valley Water Project.

Resolution read.

The roll was called, and the resolution adopted by the following vote:
Ayes—Andrews, Bashore, Bennett, Burkhalter, Burns, Hugh M. Burns, Cronin, Dills, Carson, Clarke, Collins, George D. Collins, Sam L. Cooke, Doyle, Gaffney, Gallagher, Green, Gumlock, Hastain, Dickey, Dills, Dilworth, Donnelly, Frederick F. Johnson, Kellams, Kevola, Kilpatrick, King, Hawkins, Heisinger, House, Leonard, Lowrey, Lyon, Maloney, Masson, Kipatrick, King, Knight, T. Fenyon, Peltzer, Phillips, Poole, Potter, Poulson, McCollister, Meehan, Midthorpe, Miller, Swallisch, Sheridan, Stream, Tenney, Thomas, Robertson, Russell, Salzman, Watson, Welch, Weybret, and Wollenberg—68.
Noes—None.

Resolution ordered transmitted to the Senate.

INTRODUCTION, FIRST READING, AND REFERENCE OF ASSEMBLY BILLS (RESUMED)

The following resolution was offered:

Assembly Concurrent Resolution No. 8: By Mr. Tenney—Relative to a comprehensive survey of the State Highway System.

Request for Unanimous Consent

Mr. Tenney asked for unanimous consent to take up Assembly Concurrent Resolution No. 8, at this time, without reference to committee, print or file, and that the same be considered engrossed.

Mr. Kilpatrick withheld his consent.

Motion to Temporarily Suspend the Rules

Mr. Tenney moved that the Rules be temporarily suspended for the purpose of considering Assembly Concurrent Resolution No. 8, at this time.

Motion for temporary suspension of the Rules lost by the following vote:

Ayes—Bashore, Burns, Michael J. Collins, Sam L. Cooke, Crowley, Daley, Del Marolo, Dills, Gaffney, Green, Hawkins, Heisinger, King, Maloney, Midthorpe, Poole, Poulson, Kirby, Robertson, Salzman, Sheridan, King, Meloney, Middough, Thorp, Thurman, Turner, Watson, and Welch—29.
Noes—Andrews, Bennett, Burkhalter, Cain, Gull, Carlson, Clarke, Collins, George D. Collins, Kellams, Kevola, Kilpatrick, Gallagher, Gumlock, Hastain, House, Frederick F. Johnson, Leonard, Lowrey, Masson, Kipatrick, Knight, John B. Knight, T. Fenyon, Weybret, and Wollenberg—32.

Assembly Concurrent Resolution No. 8 referred to the Committee on Roads and Highways.

Jan. 14, 1941]

ASSEMBLY JOURNAL

163

WITHDRAWAL AND RE-REFERENCE OF ASSEMBLY BILLS

Mr. Dills moved that Assembly Bills Nos. 164 and 165 be withdrawn from the Committee on Judiciary Codes, and re-referred to the Committee on Judiciary General.
 Motion carried.

Mr. Watson moved that Assembly Bill No. 98 be withdrawn from the Committee on Governmental Efficiency and Economy, and re-referred to the Committee on Fish and Game.
 Motion carried.

Motion carried.

Mr. Meehan moved that Assembly Bill No. 84 be withdrawn from the Committee on Education, and re-referred to the Committee on Labor and Capital.
 Motion carried.

Mr. Stream moved that Assembly Bill No. 130 be withdrawn from the calendar, and re-referred to the Committee on Ways and Means.
 Motion carried.

**CONSIDERATION OF DAILY FILE
 THIRD READING OF ASSEMBLY BILLS**

Assembly Joint Resolution No. 1—Relative to the hunting season on migratory wild fowl.

Resolution read.

The roll was called, and the resolution adopted by the following vote:

Ayes—Andrews, Bashore, Bennett, Burkhalter, Burns, Michael J. Cain, Call Carlson, Clarke, Collins, George D. Collins, Sam L. Cooke, Crowley, Daley, Del Marolo, Dickey, Dills, Donnelly, Doyle, Field, Gaffney, Gallagher, Green, Gumlock, Hastain, Hawkins, Heisinger, House, Frederick F. Johnson, Kellams, Kevola, Kilpatrick, King, Knight, John B. Knight, T. Fenyon, Leonard, Lowrey, Lyon, Maloney, Masson, McCollister, Meehan, Midthorpe, Miller, Peltzer, Poole, Potter, Poulson, Ritchie, Robertson, Russell, Salzman, Sheridan, Stream, Tenney, Thomas, Turner, Waters, Watson, Welch, Weybret, and Wollenberg—62.
Noes—Allen, Desmond, and Thorp—3.

Resolution ordered transmitted to the Senate.

MOTION TO PRINT MESSAGE FROM THE GOVERNOR IN JOURNAL

On motion of Mr. Bennett, the following message from the Governor was ordered printed in the Journal:

First Biennial Message of Governor Culbert L. Olson to the Fifty-fourth Legislature of the State of California

To the Senate and Assembly of the State of California

Section 10 of Article V of our State Constitution, which has been a part of our Constitution since 1849, provides that the Governor, "shall communicate by message to the Legislature, at every session, the condition of the State, and recommend such matters as he shall deem expedient." It is in the performance of that duty that I appear before you at this opening session of the Fifty-fourth California Legislature. I also extend my greetings and best wishes for the success of

your legislative labors and for your personal well being; also to express my sincere desire that we shall engage in the performance of our respective duties in a spirit of cooperation with constructive purpose and mutual respect for the dignity of our offices.

We enter upon this year of 1941 with improved conditions in State finances, due to the increased activity of certain California industries, in which vast expenditures are being made by the Federal Government in carrying forward a program of National defense. This has increased the State's revenues under our existing revenue laws to the point of balancing our current month-to-month expenditures, and they may gradually reduce the accumulated deficit which a year ago, before the Nation entered upon a program of expenditures for National defense, was consistently rising to alarming proportions.

In my budget message two years ago it was shown that existing revenue laws were insufficient to meet the fixed charges and budgetary requirements for governmental services provided for by law, even with the most stringent curtailment of those services and the greatest possible economies that could be accomplished in their administration. And, as required by the Constitution I then recommended new measures to produce sufficient revenue to balance the budget for the ensuing biennium and to reduce the deficit that had accumulated during previous administrations. The present World War and the prospect that the United States would now be engaged in carrying forward a National Defense Program involving expenditures of many billions of dollars, with resultant stimulation of industrial and commercial activities, reemployment and great reduction in the State unemployment relief load, was then unforeseen. Had the revenue measures then recommended been adopted, it now appears that by the end of the present biennium the entire State deficit would have been wiped out and we could be looking forward to a reduction in tax revenues lightening the tax burden on those least able to pay.

* * *

Later on in your session this month, in obedience to my constitutional duty, I shall submit to you a proposed budget to meet the fixed charges and expenditures required by the Constitution and present laws during the next biennium. Looking forward to a continuance if not an increase in State revenues under existing laws sufficient to meet the expenditures under that budget and to also reduce the remaining State deficit during the next biennium, I am pleased to say at this time that I will not be compelled in my budget message to recommend enactment of any additional revenue measures at this regular session.

* * *

With regard to the condition and accomplishments of the administrative departments which are under the direction of the Governor, I submit to you the following report, leaving it to other elected officials to submit to you reports on the condition of their departments.

STATE DEPARTMENT OF FINANCE

The Department of Finance has exercised during this biennial period rigid control over all expenditures, resulting in substantial savings to the State Government. Every means available to the department has been utilized in accomplishing this result.

Judicious scrutiny has been made of all requests for the purchase of materials, supplies, and equipment, the filling of vacant positions, and the creation of new positions. Through the exercise of rigid budgetary control, all excessive and unjustified expenditure requests of the several State agencies have been disallowed and the savings thus effected, together with those accomplished through the other activities of the Department of Finance, have been set aside in reserves. These reserves will revert to the State Treasury, except to the extent that they have been utilized to make salary adjustments and to meet unforeseen contingencies not provided for in the original appropriation.

In order to encourage the widest possible competition on the State's purchasing, agencies have been required to draw specifications which will not discriminate against any firm or its products. Specifications are so prepared as to permit the fullest possible competition among business firms in the State. This serves to accomplish two purposes: (a) Extend to every business equal opportunity to bid; (b) Safeguard the interests of the State by obtaining quality products at the lowest cost. The result of such requirements has been a saving of thousands of dollars to the State.

Citing one instance of the result of competitive bidding: The 1941 contract for oil and gas netted the State a saving of \$158,365, the lowest price ever received by the State for its oil and gas requirements. The following accomplishments by the Department of Finance are worthy of mention:

1. Reduction in the premium of surety bonds, from a high of \$7.50 per thousand to a high of \$2.50 per thousand, will result in a saving of approximately \$50,000 per biennium.
2. Fewer passenger automobiles purchased, together with the policy of buying less expensive types.
3. Closing of the Napa State Farm, which during the twenty years of its operation resulted in losses of approximately \$275,000 to the State.

4. Daily report required as to use, mileage, and purpose of trips of each State automobile. This has eliminated the use of State cars for personal purposes.

5. The establishment of a policy that all State passenger vehicles must be operated for at least 65,000 miles instead of 50,000 miles before these vehicles are turned in on the purchase of new cars.

6. The more effective coordination achieved by the Department of Finance in the purchasing of securities for various State funds has prevented the numerous State agencies from bidding against each other, and thus makes it possible for the State to obtain high yield bonds at the lowest possible price.

7. All leasing of office and other rental space has been placed under the supervision of a Chief of the Division of Service and Supply, in order that the State may obtain adequate quarters at lowest rental prices.

* * *

The past two years have been quite the most active and successful in the history of the *State Planning Board*.

As a result of the board's studies of tax-delinquent lands, Assembly Bill No. 47, the Lands Classification Bill, has been adopted and will become effective early this year. The importance of the problem here dealt with is indicated by the fact that some three and one-half million acres of rural lands and three hundred fifty thousand subdivision lots have been deeded to the State for nonpayment of taxes.

Accurate maps are a necessity to practically all governmental agencies. California is today less than half covered by basic surveys, although more than \$10,000,000 have been spent for them by public agencies. As a result of studies, the Planning Board has developed a plan for State and Federal cooperation in providing complete statewide coverage within a reasonable period of time. This plan will give California the most comprehensive and best coordinated mapping program in the country and will assure a maximum return for every dollar spent.

As a result of studies by the Planning Board, California now has its first long term plan for the location of future State office buildings in Sacramento.

The board has cooperated with the National Resources Planning Board in studies of governmental and voluntary regulations of the oil and gas industries in California. This was done in preparation of a nationwide study of energy resources.

In cooperation with the State Council of Defense and at the request of the Army, the board conducted an intensive survey of tracts

of land appropriate for use for Army training camps. For this, the board has received praise and thanks from Army officials.

The board has issued the first survey of the activities of the various local and regional planning boards of California. As a result, for the first time, each of the thirty-three county planning commissions and the one hundred thirty city planning commissions, now knows what all of the commissions are doing.

The board expects to continue its studies of tax-deeded lands.

Other studies now well advanced are:

"An airport and airway plan for California" being prepared in cooperation with the Civil Aeronautics Authority, a study of "Recreation in California," with the assistance of the National Park Service, and a "Local Planning Manual" designed to guide the work of planning commissions in small cities. Unless emergencies interfere, all of these reports should be completed this year.

The facilities of the State Planning Board are available to investigate problems and make reports which will contribute to an improved administration of State affairs. It is a tool to be used in fact-finding, research and broad planning. It should be given greater support and larger responsibilities.

DEPARTMENT OF PUBLIC WORKS

In the eighteen months ending last June 30, the *Division of Highways* expended some \$55,000,000. This included \$29,000,000 for construction including rights of way, betterments, minor improvements and engineering, \$13,000,000 for maintenance and \$12,000,000 for allocations of work within incorporated cities.

Thirty-three major works have been completed in this eighteen-month period or are now in course of construction. These include:

The West's first freeway, the Arroyo Seco Parkway, between Los Angeles and Pasadena.

The further extension of this freeway on North Figueroa Street in Los Angeles.

The Calhenga Pass freeway from Hollywood to San Fernando Valley and points north.

The Olympic Boulevard freeway, from the center of Los Angeles to Santa Monica.

More adequate approaches to the Golden Gate Bridge.

New sections of four-lined divided highways on the main San Joaquin Valley route.

The Los Gatos Canyon road from Santa Cruz to Los Gatos.

The relocation of the Pacific Highway north of Redding due to the construction of Shasta Dam.

Shortening and straightening the road between Sacramento and San Francisco.

Several grade separation projects.

Numerous other projects throughout the State from Del Norte County in the north to Imperial County in the south.

New state-wide traffic surveys and studies have been undertaken with the hope of eliminating highway traffic congestion, particularly in metropolitan areas. The Highway Commission has pledged itself to convert the Bay Shore Highway from Palo Alto to San Francisco into a "freeway."

* * *

The *California Toll Bridge Authority* has rendered signal public service during the past two years.

In May, 1939, the Authority refinanced the bonded indebtedness against the San Francisco-Oakland Bay Bridge, thereby securing a reduction of interest from $\frac{1}{2}$ per cent to 4 per cent. In the bargain, the new issue was sold at a premium netting the Bridge a profit of \$1,065,000.

The Authority has since by four successive steps, reduced passenger car tolls from 50¢ to 25¢. Corresponding reductions have been made in tolls charged trucks, busses and commuters.

In September, 1940, the Authority completed purchase of the Carquinez and Antioch Toll Bridges from the American Toll Bridge Corporation and immediately reduced passenger car tolls by nearly 50 per cent. This was done without delaying the date when the bridges would otherwise have become public property and toll free. In the meantime, the public will be saved upward of \$4,000,000 in toll charges. This purchase was made by the issuance of revenue bonds purchased at an interest rate of only about $1\frac{1}{4}$ per cent per annum.

Under the function of construction, repair and improvement for the various State departments, the *Division of Architecture* has, during the past two years, accomplished architectural and engineering work to the value of over \$10,000,000.

In addition, the division constantly renders assistance of an advisory nature to the various departments.

Plans have been checked and approved for safety of design and construction for more than 760 school construction projects having an estimated construction cost in excess of \$35,000,000.

As a result of consultations with the Department of Institutions, the division has succeeded in standardizing all plans, fixtures and



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equipment for future housing facilities for the department. By this means the cost of such institutional housing has been reduced so that it now costs no more, and in many cases costs less, than modern housing built under mass construction methods. Further savings are anticipated.

The Division of Architecture has completely rearranged the plans for Chino Prison, making them conform with the original purposes of the Legislature in providing for its establishment, namely, that of a detention and rehabilitation home rather than a "maximum security" prison; also greatly increasing its capacity without increasing its cost.

* * *

In the *Division of Water Resources* an extraordinary number of surveys, investigations and studies have been made of the many problems raised by the construction of Shasta Dam and the Central Valley Project. These relate both to the disposal of water conserved by the project and also to the electric power to be generated at Shasta Dam.

An investigation was made and report rendered on the feasibility and cost of obtaining supplemental water supplies for the State institutions and cities in Napa Valley.

Following last year's floods in northern California, the division rendered a report covering the nature and extent of the floods, the damages resulting therefrom, and a program of rehabilitation and permanent remedial flood control measures.

The Department of Public Works has at all times sought to protect the market for Shasta Dam power and has appeared before the Railroad Commission to oppose the various efforts on the part of public utilities corporations that might interfere with that market. Conferences were held in recent months with representatives of the Department of Interior, United States Bureau of Reclamation, and the California Water Project Authority. Out of these conferences have come the first determinations of the cost of Shasta power to such public agencies as may wish to buy it wholesale.

* * *

I believe that it is very generally recognized that the *Golden Gate International Exposition* was a great success; that all Californians should draw great satisfaction from it; and that the State Government's participation therein, through the California Commission, was well conceived, well planned, and most capably managed.

Most of the State's exhibits have been salvaged for continued use. Several of the exhibits have been or will be reconstructed at the State Fair or elsewhere.

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The commission has returned to the General Fund in excess of \$250,000 in cash unexpended by it in the administration of the State's appropriation for the purposes of the exposition.

DEPARTMENT OF AGRICULTURE

The Department of Agriculture now has forty-five marketing programs in effect. These include twenty-one milk distributing programs, under five of which there is an excess supply distributed to relief clients at reduced prices. Milk wars have been eliminated.

The marketing programs as respects various crops, have benefited both the farmers and the consumers. In addition, when farmers are well organized to sell their crops under the various marketing acts, they find that they can qualify readily for Federal crop marketing loans which assist orderly marketing and increase the margin of profit remaining for the farmer.

The Department of Agriculture has been especially successful in removing large, market-depressing surpluses of many of California's important agricultural crops, by promoting their purchase by the Federal Surplus Commodity Corporation, for distribution in California and elsewhere to relief clients. This has meant not only a large direct augmentation of farmer income in California, but it has produced a much greater income because it served to stabilize and improve prices for the remaining major portions of their crops.

California now has one of the best meat inspection systems in the country. The City of Los Angeles asked the department to take over their meat inspection service. This was done as of November 1st. State meat inspection service is now rendered in forty of the fifty-eight counties, insuring consumers a wholesome meat supply.

The bovine tuberculosis problem is at last about cleaned up in California and we hope for Federal certification thereto early in 1941.

After years of effort, artichoke thistle infestation has been reduced from some 18,000 acres, mostly in Solano County, to less than 200. These lands have been restored to normal production purposes.

The department, working with the University of California, is publishing a new weed-control manual for farmers. It will be of great value.

Plant quarantines have been reexamined and corrections made to facilitate movement of restricted commodities.

An outstanding achievement of the department has been the development of methyl bromide as a fumigant. It is already of enormous value to the agriculture industry of the State. It has reduced the cost of fumigation in warehouses, being more effective than older methods. Its use in treating California pears and potatoes has

broadened the market for these commodities in other States because it kills the codling moth in pears and tuber moth in potatoes. Its use as a fumigant against insect pests infesting nursery stock has been quite successful, enabling the movement and wider circulation and use thereof.

Four cattlemen, selected by their industry, have reviewed the department's administration of the hide and brand laws. They have found State enforcement to be efficient.

DEPARTMENT OF INDUSTRIAL RELATIONS

In this department, notable improvements have been made in carrying out the provisions of the Labor Code for the protection of the workers, some of which for many years had become practically dead letters for laxity of enforcement.

Responsive to the need for more prompt compensation of workers' compensation claims, the *Industrial Accident Commission* now meets every day except Saturdays, Sundays and holidays, and has accomplished many procedural improvements to expedite the handling of compensation cases, so that the beneficiaries of the Workmen's Compensation Act receive the benefits of that act when they are most needed. Experience in its administration shows the need for amendments of procedural provisions of the act so as to further facilitate the prompt application of its benefits. The policies of the commission have been liberalized and its liberal interpretations of the Workmen's Compensation Laws are being sustained by court decisions. As an instance of the commission's liberalization policies, hernia cases which theretofore had been allowed medical treatment only during the first ten weeks are now treated as any other industrial injury and full benefits awarded; injured employees who must leave their home town for examination or special treatment are allowed reasonable expenses for board and lodging. Heretofore injured workmen were allowed only 50 per cent disability compensation if able to perform light work even though such work was unobtainable. Under present policies they are allowed full disability compensation unless such light work is available.

Elimination of the element of surprise at commission hearings and the saving of time of the commission and referees in reaching their decisions has been aided by making all records, such as X-rays, of injuries, available to both sides of any contest before the case comes for hearing.

This department has diligently sought to reduce the number of accidents and personal injuries in California's industries through the enforcement of safety laws and regulations and the thorough inspections needed particularly at this time, although insufficiently budgeted

for this service. The benefit of the Workmen's Compensation Law and the safety measures in accident and personal injury prevention is shown in the fact that in 1914, when California's population was less than 3,000,000, there were 691 accidental fatalities. In 1939, when the population was nearly 7,000,000, industrial fatalities were reduced to 461 in number.

More determined enforcement of the *Workmen's Compensation Act* has compelled many employers who have heretofore failed to comply with the act to carry insurance for the first time, and more than 200,000 workers not heretofore covered, have been brought under the protection of Workmen's Compensation Insurance. More than 217,000 employers are now insured. If all workmen's compensation was exclusively written by the State Compensation Insurance Fund, great savings in administrative costs could be made, the burden of workmen's compensation on the State's industries could be lessened, and the benefits of the act increased.

The *State Compensation Fund* is solvent and strong. It has experienced its greatest growth during 1939 and 1940. In this period new business amounted to over \$2,000,000 in premiums and accounted for more than 18,000 new policies. The fund insures more than 40,000 employers whose employees number more than 600,000.

In the *Division of Labor Statistics and Law Enforcement*, notwithstanding serious understaffing due to insufficient appropriations, marked progress has been made in the enforcement of labor laws and improving general administration. The division is handling a constantly growing and now very heavy load of labor complaints, both wage and nonwage. Laws for the protection of women and minors in industry are being fully enforced. To assist enforcement of child labor laws, a comprehensive digest of such laws has been prepared and distributed widely through school authorities, employers and others.

The *Division of Industrial Welfare* is charged with the welfare of women and minors in industry. Prior to 1939, due to lax interpretation of Industrial Welfare Commission orders, compliance with the minimum wage law was indifferent and "spotty." Since then, as a result of a series of law suits to enforce and a program of strict enforcement, this law is being observed to the letter throughout the State. Since February, 1939, the division has instituted 23 such suits, and won 22 of them. As a result, nearly \$500,000 have been added to the earnings of women and minors.

The *Division of Immigration and Housing* is handling a much heavier load of immigrant aid work and rendering a much improved service.

The division assisted the Housing Authorities of Los Angeles, San Francisco, and Oakland by checking their housing plans for conformity with the State Housing Act. During 1940, some 150 plans for hotels and apartments were similarly checked. This work is increasingly important and necessary because of the unusual increase in housing construction adjacent to the Army training camps and elsewhere outside incorporated cities.

Following the Imperial Valley earthquakes, the division inspected practically all of the hotels, rooming and apartment houses in that district. As a result of the reports thereon, many of them were demolished because they were considered to be damaged beyond repair.

The division has conducted several clean-up drives on shack-housing in cities, in cooperation with local authorities, with excellent results. An outstanding example of this work is in the City of Stockton where a number of the older rooming houses have been vacated or demolished on the division's recommendations.

* * *

The law creating the *California Apprenticeship Council* was adopted in 1939 and has been in operation only since September, 1939. But it is already apparent that the council has carried its program to practically all of the industrial centers of the State and that the program has met with pronounced success.

* * *

The past two years have been much the most active in the history of the *Division of Fire Safety*. Special attention has been given to correcting hazardous conditions disclosed by inspections of State institutions charged with the care and custody of some 28,000 persons, including insane, feeble-minded, narcotic addicts and juvenile delinquents. For the first time in the history of the division, exhaustive fire surveys have been made at six State Hospitals, at the Preston School and the Sonoma State Home. Recommendations have been made for corrective measures including new legislation.

Dangerous hazards discovered and revealed by the division have resulted in a new building program at the Yountville Home and the razing of two tinder-dry barracks declared unfit and unsafe for use. Inspection revealed the existence of alarming fire hazards in the State Building at Los Angeles. These are being corrected.

Inspection at Folsom has resulted in the correction of serious hazards, improvement of equipment and increase of fire department personnel.

A fire survey of the University of California is now under way; the first in its history. Already some surprising and deplorable conditions have been disclosed. And recommendations have been made condemning certain old buildings and calling for increased water supply, more fire alarm boxes, and elimination of unsafe practices.

The Division of Fire Safety is self-supporting, out of fees collected paid by the cleaning industry in which, incidentally, a high level of fire safety is maintained.

The State Fire Marshal's salary should be paid by the State rather than by private interests. The 28,000 wards of the State, in the various hospitals and institutions should be given adequate, organized protection from fire. The State, moreover, has invested some \$30,000,000 in the buildings housing them.

DEPARTMENT OF NATURAL RESOURCES

This department has initiated new and much needed programs for the conservation, development and utilization of our natural resources.

In the past the several divisions of this department operated independently of each other, and of the department. The various policy-making boards and commissions had never met together. Joint conferences of these commissions have been instituted, resulting in their closer cooperation, and in the coordination of their programs. Plans for the multiple use of the areas controlled and protected by the department are being worked out with the expectation that they will result in greater returns to the State.

* * *

Intervention by the Department has been highly instrumental in preventing great wastage of natural gas in the Montebello oil fields. By securing the cooperation of the interests involved, the owners of wells in this field have been able to make arrangements to distribute large quantities of gas into consumptive channels and to store still larger quantities underground. Otherwise, this gas would have been blown into the air and lost completely.

* * *

The *State Park Commission* now has a program for the orderly development of the State parks. Heretofore there has been no program. Park areas are now being developed and opened to the public. Obsolete accommodations are being rebuilt and modernized. New

swimming pools and camp sites are being provided. Public use of State parks has increased 45 per cent and revenues therefrom 60 per cent. In 1939 13,000,000 people and in 1940 over 20,000,000 people visited our State parks.

* * *

The *State Mining Board* heretofore but little active, has been reorganized and reenergized. The board is making a special effort to stimulate the search for minerals and ores essential to the National defense.

* * *

The *Fish and Game Commission* has improved relations with the Sportsmen's organizations and with the industries dependent upon our fisheries. Its development and conservation program is meeting wide public approval.

* * *

For the first time in the history of the State, the *Board of Forestry* has a state-wide policy and program for the control and prevention of forest fires. The Forestry Board has also initiated a program for the reforestation of devastated forest areas, and is working in close cooperation with Federal agencies for reforestation and for flood and soil erosion control and for the development of farm forestry in California.

DEPARTMENT OF PUBLIC HEALTH

California has the right to be very proud of the service rendered by its Department of Public Health. In the past two years, new low records have been established in the incidence of typhoid fever, diphtheria and smallpox, infant mortality and maternal deaths. The tuberculosis death rate is now the lowest in the history of the State.

Special researches are being conducted into the nature, cause and cure of sleeping-sickness, influenza, trichinosis and occupational diseases. County public health services have been further extended; so also public health nursing services.

Five motor clinics are now bringing dental service to pregnant women and to children living in rural areas. The crippled children's service has been extended. Mobile clinics render medical and public health service to thousands of migrants, both residents and new arrivals. Last year more than 47,000 immunizations were given to migratory agricultural workers against smallpox, typhoid and diphtheria.

Steady advance is reported in the work of controlling and stamping out syphilis and gonorrhea.

The new laws requiring premarital examination and prenatal blood tests for syphilis have already proved their worth in the discovery

of hundreds of unsuspected infections in young people, and expectant mothers. With the continuation of these laws and expansion of the venereal disease control program, we believe that syphilis in new-born babies will soon be eradicated and that the incidence of acquired syphilis and gonorrhea will be greatly reduced.

Recommendations for the improvement of health conditions in San Quentin Prison were made in a survey conducted by the State Department of Public Health in 1939, at the request of the Department of Penology. Complete studies were made of the method of purchasing, preparing and serving food, of the water supply and sewage disposal systems, and of general sanitary conditions. As a result of the survey, a chief steward was employed and the quality of food improved. Other recommendations are being put into effect.

DEPARTMENT OF INVESTMENTS

Some State banks are not large enough to afford independent audits. Therefore, the examining work of the *State Banking Department* has been expanded to include more minute inspection of banking operations. This has had a generally salutary effect and increased the safety factor protecting depositors.

Two years ago there were 25 banks in liquidation, having assets estimated at \$3,420,000 as against liabilities of \$5,327,000. Fifteen of these have been closed out. The remaining 10 have assets estimated at \$1,182,000 as against liabilities of \$3,690,000. Economical liquidation administration has, in some instances, enabled partial return of assessments paid by stockholders as well as 100 per cent return to the depositors.

Some banks are not the most favorably located for purposes of making sound commercial loans in sufficient volume. This has encouraged bond investment as an alternative. Therefore precautionary steps have been taken, for protection of depositors, to supervise their bond buying and selling operations.

Steps have been taken to encourage banks to divest themselves of real estate taken on foreclosure, so as to forestall embarrassment by too great capital tied up in this form of investment.

Two years ago the *Division of Building and Loan* had 21 associations in liquidation, all of which had been taken over in the period from 1930 to 1935. Since then, six of these associations have been closed out, four more will be closed out early this year and three more before the end of this year. These closures have had a beneficial effect upon the building and loan association business generally.

Two years ago the division was administering assets in liquidation totaling \$9,000,000. They now total \$10,500,000; an increase due principally to taking over the Mutual of Long Beach.

Two years ago the division was administering 411 parcels of real estate, plus two subdivisions, totaling 1,134 lots. Now there are 493 parcels, plus two subdivisions, containing 980 lots. All of this is exclusive of the Pacific States Savings and Loan Company.

In spite of this heavy increase in business transacted and assets under liquidation, the several offices of the division have been consolidated in two offices, one in Los Angeles, the other in San Francisco; the number of employees has been reduced by about one-third, the pay roll has been reduced by about 50 per cent, and overhead expenses have been reduced.

The Pacific States Savings and Loan Company was taken over in March, 1939. The association was insolvent in excess of \$10,000,000. It had ceased to function as a building and loan association. For several years it had deliberately carried on policies contrary to the requirements of the Building and Loan Association Act. The greater part of its total assets had become frozen in various kinds of real property holdings and its management was engaged in purchasing at heavy discounts and losses to their owners its certificates of deposit by various and devious methods, taking advantage of their needs for their money. In the performance of his duty under the law the commissioner was compelled to take over the assets of this association for the protection of the certificate holders to whom they belong and for whose benefit they must be liquidated and distributed. Yet the take-over has been contested, and is still being contested in court by the former management. Meantime, the affairs of the company have been operated by the Building and Loan Commissioner at considerably less cost for attorney fees than the former management had been paying, at considerably less cost for administration, and with much greater profit to the company than under the former management. Two dividends totaling 12½ per cent have been paid to the investors out of accumulated profits and collections of interest and principal on loans.

Contrary to predictions, the taking over of Pacific States and the Mutual of Long Beach have had no harmful effect upon the active associations remaining in the business. In fact, the aggregate assets of the latter associations have registered substantial increases. There are now 103 of these associations doing business under State license. They are generally in a very good condition; in better condition than at any time during the past 10 years. Loan delinquencies are at a minimum. Foreclosures have practically ceased. The associations have no difficulty in obtaining new funds. Their most difficult problem is

that of finding satisfactory loans in sufficient number. In the past two years, these associations have increased and combined reserves from 14 per cent to 17 per cent of their liabilities; thus increasing the margin of safety afforded their investors. This compares most favorably with the Federal Savings and Loan Associations operating in California on a reserve of only about 4 per cent.

During the past two years, at least three associations have been saved from very serious difficulties and possible liquidation by the guidance of the division. In each instance, additional capital was brought into the business, the management was changed to some degree and the business well started on the road to success.

The investing public may now confidently rely upon the office of the Building and Loan Commissioner to do its proper duty and the building and loan associations operating under the supervision of this division may justly take pride in the possession of their license certificates entitling them to engage in the building and loan association business.

DIVISION OF CORPORATIONS

The work of the *Division of Corporations* during the past two years has shown material improvement, characterized by a decidedly larger volume of work accomplished with greater economy. New legislation added heavily to the division's duties and work. Nevertheless, it was accomplished without adding to the staff and without exceeding the budget which, when adopted, did not contemplate a drastic expansion of activities.

During the past two years, special attention has been given to fraud prevention.

Because of the sharp decline of the number and volume of security offerings, the income of the division from licenses and other sources has suffered seriously. Thus far, however, due to the assistance of the Department of Finance by way of instituting modernized office methods and other economies, the division has nevertheless been able to keep within its budget.

The new California Small Loan Act and the Personal Property Brokers Act have now been in force long enough to prove their worth to the community. One proof lies in the fact that hordes of "loan sharks" retired from this field of business just prior to these laws becoming effective. The unsuccessful attempt to defeat the California Small Loan Law by referendum had a salutary effect upon several of the nation-wide "loan shark" chains, most of which closed their offices when it became apparent that the law was to go into effect.

However, there is evidence that these lenders are still looking at California with covetous eyes. There is indication that they plan a campaign at this session of the Legislature. Few people realize the nature and extent of social problems consequent upon the unhampered operations of "loan sharks" or the general damaging effect upon the entire economic and social structure of the community.

Credit Unions, licensed by the State, have displayed a remarkable growth during the last two years due, at least in part, to the new law liberalizing the rules governing their operation. In general, these Credit Unions, some of which are very small, have been very successful and have operated with benefit to their members and borrowers alike.

There have been no "bucket shops" operating in California during the past two years.

The new Stockholders' Protective Committee Act has likewise proved its worth. Under it, racketeering promoters have been denied licenses while legitimate protective committees have found it easy to comply with the statute and have enjoyed protection against the competition of racketeering committees.

* * *

The *Division of Real Estate* reports a most substantial revival of the real estate business; especially as reflected in the large increase in the number of men and women licensed to practice as brokers and salesmen.

Added precautionary measures have been adopted to protect unwary investors against sharp practices in the sale of oil and gas leases, cemetery lots and business opportunities.

DIVISION OF INSURANCE

Broader powers to protect the public granted in 1939 to the Division of Insurance have been applied with salutary and beneficial effects already apparent. For the first time in our history the division now has competent investigators and auditors in sufficient number to supervise the conduct of agents, brokers, solicitors, as well as the insuring companies themselves.

Labor-saving equipment and procedures have been installed with most satisfying results in efficiency and economy.

Last year the bureau recovered \$932,000 of policy proceeds and claim settlements for policyholders; nearly treble all previous yearly records.

Eleven of California's so-called "Chapter Nine" mutual life insurance companies, operating only in California, having \$58,000,000 of life insurance in effect and some 100,000 policies outstanding, were

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taken over. Investigations and hearings had disclosed misrepresentations, fraudulent claim settlements, exorbitant commissions to a few agents, inordinately high administrative expenses and excessive salaries to incompetent executives. Management has been assumed by division personnel at a cost of less than 19 per cent of salaries heretofore paid to officers and employees. Consideration is now being given to the rehabilitation of these companies so as to permit their return to independent operation. In the meantime, the policyholders are protected.

Careful studies of the worker's compensation rates proposed in 1939 accomplished a reduction of $8\frac{1}{4}$ per cent, which has now been in force one year and is saving California business over \$2,500,000 a year. We can not anticipate comparable reductions every year, but it is the fixed policy of the division to keep rates at the lowest levels consistent with the stability of the carriers and adequate protection.

The people may well be satisfied with the conduct of this division in which insurance companies, agencies and the insuring public alike have the highest confidence.

DEPARTMENT OF INSTITUTIONS

Introduction of the insulin shock treatment for acute case of schizophrenia has yielded a recovery rate of 83 per cent. This disease accounts for a very high proportion of all patients in State hospitals. Heretofore the spontaneous recovery rate has been only 8 per cent.

Cooperating with the State Department of Health, our mental hospitals are giving fever treatment, by malarial inoculation, for cases of syphilis involving the central nervous system before they have progressed to the stage of insanity. At present, more than a third of all admissions of cases of this kind are admitted upon their voluntary application. They stay two or three months and are then discharged as cured, being thus saved from the destiny of death or permanent insanity from their diseases. The trend of admissions of cases of neurosyphilis indicates that before very long almost all such cases will be admitted in the early stages and that general paresis will become a rare disease instead of constituting, as it has heretofore, 7 per cent of all of our hospital admissions.

By making new special provisions for outside care, we have been able to greatly liberalize and extend the parole policy for mental patients. Two years ago there were about 2,700 patients on parole. Now there are over 4,500; a net increase of about 1,800 patients, or 67 per cent. This new policy has produced great benefits for the patients, the institutions are relieved of some of their overcrowding, and large economies are realized.

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In spite of a growing admission rate, our system of outside care has enabled us to check the increase of population of our mental hospitals. In fact, recent months have produced an actual reduction, the first in the history of the department.

In the meantime new construction has increased the capacity of our mental hospitals by 1,284 beds. The net result, thus far, has been a reduction of overcrowding from 25 per cent to 20 per cent.

The medical work and the general care of our patients has been raised to a higher standard. This is perhaps best demonstrated by the sharp reduction in the death rate among patients in the seven mental hospitals.

The new activities of the department have, of course, necessitated fairly large expenditures for transportation, new equipment, and additional specially trained personnel. Nevertheless, economies growing out of our extension of extra mural care have enabled the department to restore to employees salary adjustments in the amount of over \$750,000 for the current biennium.

* * *

During the past year two deaths occurred in the *Whittier State School for Boys*, which were apparently suicidal. Inquiry into the circumstances and means of discipline used in handling recalcitrant boys in the school, made by the Director of Institutions and by a committee appointed by the Governor to thoroughly investigate the case, failed to disclose any evidence of corporal punishment or abuse of the boy, or other boys in the school, and that committee selected by the Governor upon the recommendation of relatives and friends of the boy made a report exonerating the Superintendent and all persons employed in and about the school for any blame in connection with his death. When the second suicide occurred, widespread public interest and indignation was aroused, in the belief, drawn from publicized statements of former inmates of the school and others, that attendants in charge of enforcing discipline in the school customarily engaged in inflicting corporal punishment upon runaway boys and for violations of disciplinary rules. In order to have such accusations and also the disciplinary means and methods used at the school fully investigated, I appointed a committee of three outstanding citizens experienced in handling juvenile delinquents and incorrigibles and sincerely interested in their reformation and welfare. This committee has made such an investigation, has heard volumes of testimony and received reports from any and all sources from which they believed truthful information might be obtained that would help them to reach conclusions of fact and report their conclusions and recommendations to the Governor's office. This report has been made. It embraces findings and

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conclusions of this committee that corporal punishment and brutal treatment has been commonly inflicted by attendants in charge of boys in the school who have been segregated for escaping or violating the rules of the school. As a result of this investigation one such attendant was tried and found guilty for violating the State law against corporal punishment in a State institution. In the light of this report, I have requested the State Personnel Board, with whom a copy has been filed in support of charges against the Superintendent of the Whittier School, to consider that report as charges affecting all persons employed in the institution for the purpose of making a thorough investigation of the matters thus reported to me as facts in regard to the treatment and handling of inmates of the school by their attendants. Inasmuch as this report would be secondary evidence before the Personnel Board in support of any charges, and in order that appropriate action justified by facts may be legally taken, a hearing and investigation of the whole matter must be held by the Personnel Board, which is the only authority to make removals of State Civil Service employees for cause. Recommendations have been made to me by said investigating committee with regard to a reformation of the system of handling the inmates of the Whittier School for Boys, and the qualifications of personnel employed in the school for that purpose, which I deem worthy of consideration and upon which I propose to act at the proper time.

DEPARTMENT OF EMPLOYMENT

The Department of Employment has two principal functions; finding jobs for workers and workers for employers, and administering unemployment insurance. The performance of both of these functions has been improved substantially during the past two years.

Specifically, the employment service to farmers and farm hands has been improved. During the past season, for the first time, workers could learn definitely where jobs were to be had, farmers could learn where to get workers on short notice, migrants were saved thousands of dollars in travel expense, there were no excess concentrations of labor, orders for workers were filled on request—even in isolated areas and, for the first time in many years, the agricultural season passed without a major strike.

Specifically, effective job-finding service is now rendered to youth, to young men discharged from the CCC's and to war veterans. California holds the record in the Nation for veteran placement.

Specifically, the department is working in closest cooperation with the National Defense Program, having placed thousands of skilled workers in the aircraft and other defense industries. The depart-

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ment, with funds made available by the State Department of Education, has inaugurated job training and retraining programs in which men have been given training for both old and new occupations—to assure a continuous supply of skilled workers.

Up to date, the department has collected over \$280,000,000 in contributions to the Unemployment Insurance Fund from 50,000 California employers, and disbursed over \$115,000,000 in unemployment benefits. The balance in the fund exceeds \$165,000,000. The fund now protects more than 1,500,000 workers. Thus far, there has been no quarter in which disbursements have exceeded income. However, there is some tendency toward equalization of income and disbursements.

A year ago at this time, charges were current that thousands of persons were obtaining insurance benefits illegally; that students were paying their way through college on unemployment insurance benefits; and that the fund was being used for health insurance. Four hundred twenty-four persons have been convicted in the California courts for obtaining money from the fund illegally. Chiseling has been stopped. The department is not financing college educations. And the department is not paying insurance to anyone who, because of sickness, can not take employment in his usual occupation.

More persons than ever before are obtaining jobs through the State Employment Service. Unemployment insurance benefits are being paid more promptly. The department has strengthened its relationships with both employers and employees. The department has become the center of labor placement for the defense industries. The department has reached that level of efficiency where it can, readily and efficiently, take care of an increased load, should this Legislature decide to place all workers in California under the protection of unemployment insurance.

The activities and policies of the Department of Employment stabilize and strengthen the economic life of the State.

DEPARTMENT OF MILITARY AFFAIRS

The California National Guard has been raised to new high levels of size and efficiency. Training schedules have been made more rigid and now embrace the newer developments in military arts. Personnel standards have been raised.

Two years ago the Guard's strength was 7,501 officers and men. Today it is 10,975. Old units have been increased in size and many new units have been organized. All units are modernized.

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Some armories have been remodeled; some new facilities erected. Two new armories have been built and one is now under construction. Many more are urgently needed and are in contemplation.

The Guard camp near San Luis Obispo has been enlarged by the purchase of 1,300 acres of additional land and the whole camp leased to the War Department which is building a large troop training camp thereon.

The schooling program for both officers and enlisted men has been enlarged.

Induction of the California National Guard into Federal service for a year of intensive training started last September 18th. It is contemplated that the entire Guard will have been called up by the end of this month.

The office of The Adjutant General is now engaged in framing plans for a State Guard to perform the normal peace-time duties of the National Guard when all of the latter shall have been inducted into the Federal Service. The State Guard will be on a voluntary basis and composed of men not subject to military service.

The National Guard is an organization of enthusiastic men animated and bound together by a high esprit de corps. It is proud of its past record and its high professional standards. As the several units pass into the Federal service, we may be sure that they will reflect great honor upon the State of California.

In anticipation of the passage of the National Selective Service and Training Act, plans for its administration in California were made through The Adjutant General's office many months in advance. These plans have since been executed with efficiency, dispatch, and great credit to the State.

• • •

The outstanding development within the *Veterans' Welfare Board* during the past two years is that its home purchase operations have come to an end, all funds placed at its disposal having been used in full. Very substantial operating economies have been effected. The board's affairs are in excellent condition.

DEPARTMENT OF MOTOR VEHICLES

In the past two years, economies have been instituted in the Department of Motor Vehicles effecting savings of nearly \$500,000 a year. This has enabled payment of the long delayed salary increases due employees under the Civil Service Act. At the same time, efficiency and service have been improved.

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The department carries on a continuous campaign of safety education and the Highway Patrol continues to render efficient service, but additional patrolmen are probably needed.

HORSE RACING BOARD AND ATHLETIC COMMISSION

The California Horse Racing Board and the State Athletic Commission have accomplished many reforms in aid of clean and honest races and athletics conducted by their licensees. They are performing a highly constructive service to the licensees, their patrons and the State.

BOARD OF STATE HARBOR COMMISSIONERS

The San Francisco Harbor Board, faced with a 35 per cent reduction in number of ships visiting San Francisco Harbor (due principally to war conditions), by an annual loss of \$350,000 in ferry boat revenue, and by the necessity for extensive repairs (too long deferred) to the railroad equipment, buildings and piers belonging to the board, has nevertheless succeeded in reducing staff and expenses, increasing the number of freight cars moved, making extensive repairs of rolling stock, tracks, buildings and piers, developing new revenues, collecting old debts, reducing insurance rate and premium charges, improving harbor services, and giving the personnel their automatic pay increases; all with the result that the board's budget will be balanced by the end of this biennium.

The board is working in close cooperation with Army and Navy officials in the National Defense Program.

The President of the board has performed a signal service for the State by assisting west coast ship-building interests to secure contracts for the building of ships on the Pacific Coast.

Present plans contemplate converting the Ferry Building to use as a bus terminal. A start in this direction has already been made. Traffic studies indicate that a centering of all interurban bus transportation in and out of San Francisco at the Ferry Building would serve the best interests of the general public as well as most business interests.

The board contemplates redesigning the piers at the Ferry Building in order to accommodate the large passenger ships contemplated in the Federal ship-building program. This development would make San Francisco the most famous and unique port in the world for the handling of ocean passenger business.

DEPARTMENT OF SOCIAL WELFARE

Under the Department of Social Welfare, 143,000 of California's elder citizens are now receiving old age assistance. They are deeply

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grateful for the release of liens against their property and for the increased monthly allowance from \$35 to \$40. The average payment is about \$38 per month.

The State has increased the proportion of costs paid for financial aid to dependent children, thus relieving the overburdened counties. Care for children in rural California has been extended and specialists made available under the Child Welfare Service.

Administration of the whole Social Security Program has been improved and mutually satisfactory arrangements between the State, as the supervising authority, and the counties have been achieved.

The State is preparing the first manual for administration of aid to the needy aged, the blind, and children, for distribution to county agencies. A State Hearing Officer has been employed so that needy persons appealing to the State Board of Social Welfare, but unable to get to the place where the board meets, can be heard in their own communities.

Thanks to cooperation with the State Fire Marshal's office, the inmates of all institutions in the State for aged persons, and children, are being given the most careful protection from fire hazards.

There has been no increase in the percentage of administrative costs.

STATE RELIEF ADMINISTRATION

Administration of State relief in the form of cash does to the needy unemployed has been rather a hectic job in every administration, due to a number of causes but principally to the underlying cause for State relief. That is the dire distress, need and want for sustenance by so many hundreds of thousands of people in poverty and unable to find a place in which to work for their own maintenance. Organized pressure groups voicing the complaints of many in need of relief who are on the borderline of eligibility but who have not been admitted to the relief rolls have harassed every administrator, particularly during the periods when the number needing relief was nearly three times greater than in recent months. And individual leaders with a revolutionary or social upheaval purpose have caused dissensions and made disturbances for relief administrators in disregard of the limitations of the powers of the administrators and often in disregard of the reasonableness of their protests. The number employed in the administration of relief has varied with the ups and downs of the relief case load, and administrators have been harassed by pressure groups to be retained while others were laid off, and by those who were laid off, for reemployment, all due to their dire need for employment and constituting another manifestation of the unemployment problem. Conflicting needs for retaining or obtaining

employment have often inspired unfounded criticism of individuals as being incompetent for the jobs they seek to hold. Such charges are too often erroneously accepted as facts by those disposed to criticize rather than cooperate in establishment of harmony and systematic, orderly procedure in employments and layoffs based upon a sense of fairness to all concerned.

Charges have been common that there has been a disposition on the part of this administration to give employment in the administration of relief purely as rewards for political party service in the election of this administration, regardless of their competency. But the fact is that no administrator has ever been requested—no administrator has ever been authorized by me to employ any person incompetent to perform the work for which he has applied. And it has been left to every administrator and his personnel division, working under contract with the State Personnel Board, under classifications, standards, ratings and qualifications established by it for the various employments, to determine the qualifications of each according to such standards. In order to relieve the administrator of the burden of hearing complaints as to discrimination and unfairness in layoffs and employments, there was designated under one administrator a board of personnel standards and appeals to hear such complaints and assist the administrator in dealing fairly with all persons concerned, and in all possible ways to assist in improving efficiency of this service and keeping the cost of administration within a limit of 15 per cent of the appropriation for relief, which I consistently recommended, and which recommendation was finally embraced in the relief appropriation act.

A joint legislative committee of the preceding Legislature has spent much time and money in the investigation of every relief agency in the State. In its hearings many loose, unfounded and utterly false statements have been made regarding employments in the relief administration by persons disgruntled because they have been discharged. Irrational, intemperate and false statements have been made by disappointed and vengeful individuals.

Good faith in seeking the distribution of the moneys appropriated for relief to the fullest possible extent to those for whose benefit it was intended has even been questioned by such persons in hearings of their ex parte and unreportable statements.

Any imputation that it was ever the purpose of this administration to make a political machine of the relief administration by appointing persons as rewards for their political activities and regardless of competency and merit is disproved by the fact that I have consistently heretofore and I am today recommending that the Legislature enact

a law placing the State Relief Administration under civil service beyond the control of its employees for political purposes.

Fortunately, with the drastic drop in the relief load and the prospect of continued employment of its employables in industry due to the increased Federal expenditures in preparing for National defense, we can look forward to the need for a budget not to exceed \$20,000,000 a year during the next biennium for whatever form of unemployment relief that may be provided for by the Legislature.

In my recent visit to Washington I was reliably informed that the National Administration contemplates a continuation of the WPA on approximately its present scale of WPA employments, which in California now provides for about 75,000 cases. It is to be hoped that there will be no let-down in WPA employments as there was in the latter part of 1939, when some 30,000 cases were dropped from the WPA rolls onto the State relief rolls, increasing the State relief load to an all time high in the early part of 1940.

THE STATE FAIR

The conduct of the State Fair has been attended with extraordinary success. The 4-H Clubs and Future Farmers organizations now have 15 new exhibit buildings which they crowd to capacity. At last September's fair the live stock exhibits were larger than ever before; the educational exhibit buildings were filled to capacity; the night attractions were exciting and drew capacity audiences; the grounds were greatly improved; the crowds were pleased with improvements in the conduct of racing events. Exhibitors and concessionaires alike were pleased and the attendance broke all records, reaching a total of 713,625. Since closing of the Exposition at Treasure Island, several buildings and much exhibit material has been transferred to the State Fair Grounds.

DEPARTMENT OF PENOLOGY

The Department of Penology has been reestablished and made to function.

A private contract made by the old prison board with a firm of architects to do the architectural work for the Chino Prison, instead of having that work done by the State Division of Architecture, was canceled at a direct saving to the State of approximately \$150,000. The architectural work is being done by the State Director of Architecture under reformed plans to conform with the original intent of the Legislature in providing for the establishment of this institution. This has resulted in further large savings.

The most comprehensive and scientific study of prison feeding ever made in the United States was made in 1939 at San Quentin. The

direct result was the hiring of a chief steward, improvement in the quality and nutritive value of food served, and the elimination of waste formerly suffered from bad preparation.

Corporal punishment in connection with the enforcement of discipline in San Quentin Prison has been abolished and orderly compliance with law and prison regulations now prevails in that penal institution.

Several divisions of the Department of Penology heretofore scattered are now being consolidated in the Ferry Building at San Francisco with prospect of increased efficiency and economy.

BOARD OF PRISON TERMS AND PAROLES

Inability to find outside jobs, a condition of parole, continues to delay the parole of many prisoners. Last year 544 prisoners approved for parole were forced to remain in prison for this reason, and another 284 were discharged, having served their sentences in full, who could have been released much earlier had jobs been available.

Experience with road camps and prison farms has been most satisfactory. Their expansion is strongly urged.

The board constantly strives to improve the type of information upon which paroles are granted. Increased attention is given psychiatric findings.

Continued increase in the number of sex offenders is a matter of grave concern. Their segregation and special treatment are especially difficult. It has become apparent that prison is not the solution for the constitutional psychopathic inferior type of criminal with antisocial tendencies. The board is trying to provide for clinical psychiatric treatment and observation for paroled sex offenders.

In 1939 California became a signatory to the Interstate Parole Compact for the supervision of parolees and probationers. Experience thereunder has been quite satisfactory.

The board has established its office in the Ferry Building in San Francisco with an executive secretary. Here for the first time in the history of the State's parole system, members of the board are available to relatives, dependents, attorneys and friends of inmates and to others properly interested in parole problems. The executive secretary spends part of his time in Los Angeles for parole interviews. This service has afforded tremendous relief to hundreds of distressed relatives of prisoners in furnishing them accurate information about the length of prison terms and parole requirements.

Considerably more time than ever before is now being spent by members of the board in consideration of parole cases. Last year, 4,746 cases were considered by the board at meetings held in San Quentin

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and Folsom Prisons. In each case, the inmate appeared personally before the board for the purpose of having his sentence fixed or his parole application considered.

DIVISION OF NARCOTIC ENFORCEMENT

Although in operation only a few months, the benefits of the new Narcotic Prescription Control law are already apparent. The compulsory reports thereunder disclose large amounts of narcotics being supplied to known addicts; addicts procuring prescriptions from two or more physicians at the same time; addicts using different names with different doctors and many other startling and flagrant abuses. The division is only now and for the first time in position to make individual investigations of disclosures developed by the prescription control system.

The division works in closest cooperation with Federal and local enforcement officers, and as a result the country now has a nationwide network for the apprehension of illicit manufacturers, importers and distributors of narcotics. In the past two years, many spectacular captures have been made of marihuana, heroin, Japanese "cotton" morphine, cocaine and opium. These captures, together with the seizure of 62 automobiles have been a strong factor in crippling the narcotic traffic.

Nevertheless the prevalence of drug addiction remains astounding and alarming owing to the many difficulties encountered in its prevention. For example, it is stated that it will require a 10-year program to eradicate marihuana, because of the widespread growth and easy access to this destructive drug plant.

* * *

The new *Prison Board*, in the six months since its appointment, has sponsored and effected a series of constructive projects, betterments and reforms much needed to give California a practical, humane prison administration. The results so far achieved justify confidence that the board is proceeding in the right direction. There has been a marked improvement in prison morale and discipline, both at San Quentin and Folsom. Brutalities have been abolished. Officials and guards responsible for brutalities have been summarily discharged. Political control has been eliminated and standards of prison management materially raised.

Plans have been adopted and are under way for creating more useful work opportunity for the inmates, to expand the present prison road camps and to establish prison forestry camps in isolated sections of the State parks and forest areas.

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The policy of making the new prison at Chino, in San Bernardino County, a minimum security rather than a maximum security institution, and to operate it largely as a prison farm, is being followed by the board.

The Detective License Bureau, an adjunct of the State Board of Prison Directors, is being revamped.

The State Parole Office is in the process of complete reorganization to provide more adequate supervision over parole prisoners. A merit system for the selection of employees has been inaugurated. The parole office will have a higher type of personnel and more modern facilities to meet existing conditions.

RECOMMENDATIONS

I shall not attempt in this message to recommend all the legislation which I consider is needed, but I here make the following recommendations:

Unemployment Relief

I recommend changes in the basic policy governing the handling of unemployment relief. Members of this, and of the past Legislature, and the general public as well, know that I have constantly advocated abandonment of the cash dole and the substitution thereof of work relief, including productive work, making opportunities for the unemployed to produce for their own needs.

I still oppose the dole. If I were to amplify this statement, I would only be repeating messages transmitted to you in the past and contained in your journals.

I now recommend that the State Relief Administration should be provided with funds and empowered to give employment to the unemployed and training for employment. The Relief Administration should cooperate closely with the State Employment Service with a view to finding jobs for the unemployed in industry. The Relief Administration should sponsor public works projects providing work for those who can not be placed in industry. The Relief Administration, cooperating with the Employment Service and with our State and local educational institutions should conduct and provide vocational courses of instruction to train the unemployed for skilled and semiskilled jobs. Such courses, of course, should be equally available for *all* job-seekers, whether they be eligible for relief or not. Job training should be a definite public policy; especially as long as there are large numbers of workers seeking jobs and defense industries in need of trained workers.

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Giving job training to unemployed workers will for a time cost a little more than the cash dole but to the extent that it fits them for jobs now waiting, it will in the long run be a profitable policy.

The policy of work relief will draw the line, clearly and sharply, between employable and unemployable. The giving of jobs and the doing of work will eliminate the onus of public charity. Even more, it will make certain that no chiselers will be found on the relief rolls.

Central Valleys Project

One subject of the most vital concern to the people of California is the development of our natural resources in a manner assuring maximum benefits therefrom to the people. As a part of this concern, we have the great Central Valleys Project. So very much depends upon the manner in which it shall be organized, how the costs of the various elements of the project shall be apportioned to navigation, flood control, salinity control, irrigation and electric power; how the water and power shall be distributed to the people and how much they shall cost; and how the great Central Valleys region shall be developed in order to improve the welfare of the people who live there.

If the Central Valleys Project is to be planned and operated so that its benefits shall really inure to all of the people, then we must develop definite, comprehensive, long-range plans and operating policies for the project. We must do this either by creating a California Authority fully empowered to serve these purposes and to help finance publicly-owned facilities for the distribution of electric power generated by the project, and to aid and promote new industrial developments and economic opportunities built upon the vast mineral, forest and farm resources of the region, OR by a Federal Authority clothed with ample powers by the National Congress.

Heretofore I have recommended amendments to our Central Valleys Project Act to give our Central Valleys Authority the power to proceed with such plans; particularly through the release and sale of a portion of the originally authorized revenue bonds to help finance local, publicly-owned electric power distribution systems.

But the Legislature has not seen fit to grant these powers.

And, being somewhat doubtful that the present Legislature would act favorably to such recommendations, I recently presented to the President of the United States the proposal that, since the Federal Government has assumed the cost of and is constructing the main features of the Central Valleys Project, it should go further and establish a Federal Regional Authority with full powers to secure its benefits to the people. The President's reaction was immediately favorable. He said he would favor the enactment by Congress of the

necessary legislation establishing such an authority. As a result, a bill will be introduced in Congress providing for the establishment of a regional Central Valleys Authority or a Pacific Southwest Authority which would also have similar jurisdiction in the Colorado River Basin. This solution of the Central Valleys problem will, if adopted, save time, eliminate confusion and the delays incident to divided authority, and assure the effective integration of all of the great benefits potential in the project.

In the meantime, however, as a safeguard and to facilitate the organization and construction of publicly-owned electric power distribution systems by cities and utility districts, I again recommend amendments to our Central Valleys Act, releasing revenue bonds authorized by the act and enabling their use to help finance local public utility districts.

I also recommend that memorials be addressed to the President and Congress urging further aid and the establishment of the proposed regional authority and greater speed in the construction of the Central Valleys Project.

Usury

Later on, during your session, I expect to make recommendations for further regulation and control over the small loan business, to prevent usurious charges.

Health Insurance

I repeat here a recommendation I made two years ago that California adopt a system of universal compulsory health insurance. The need and demand for such insurance is amply demonstrated by the many plans proposed or already in operation, including that advanced by the medical association. These plans are all constructive in purpose and many of them are quite useful within their limits but, by their very nature, they can not meet the broad needs of society.

There is but one method that is socially adequate. That is the method already applied to Workmen's Compensation Insurance, Old Age Insurance and Unemployment Insurance. It is the method applied to health insurance in 24 of the 27 countries having health insurance; that is, by making it both universal and compulsory. In our Department of Employment, which administers unemployment insurance in California, we already have the machinery and the organization to take over the work of administering a health insurance plan.

State Housing Authority

I again recommend the creation of a State Housing Authority.

Agricultural Legislation

I recommend still further strengthening of our agricultural marketing laws. This is needed not only to improve the farmer's economic position but also to counteract the weakening effect of recent court decisions.

The practice of submitting so-called "open-price" contracts to farmers in California still continues a source of irritation to growers and State enforcement officials. Under these so-called "open-price" plans, the grower is more or less at the mercy of the buyer in so far as the price he receives for his product is concerned. This matter should be studied by the Legislature with the hope that protective features for the growers can be devised to eliminate the losses which so frequently result from these contracts. Laws establishing and maintaining high quality standards for farm products entering the markets need strengthening.

Interstate trade barriers are hampering free movement of California's agricultural products. The California Commission on Interstate Cooperation should be empowered to move legally to help solve these problems which have such important bearing upon our relations with other States.

Soil Conservation

I again recommend legislation relating to soil conservation through the control of run-off and the prevention and control of soil erosion, establishing a State Soil Conservation Commission and providing for the organization and operation of soil conservation districts.

Reorganization of Governmental Agencies

For reasons set out in my message of May 18, 1939, I again recommend legislation and constitutional amendments providing for the reorganization of the State's fiscal operations, including tax collections, pre-audits and post-audits of expenditures, and the handling and investment of State funds.

Liquor Control

I again recommend the creation of a separate State agency to administer State control of the manufacture, transport, sale, purchase, possession and disposition of alcoholic beverages, and a restoration of the State Board of Equalization to its original status as a board of equalization of assessment of State and county taxes.

Industrial Relations

The need still exists for a State Labor Relations Act to provide machinery for the peaceful settlement of jurisdictional disputes, strikes and lockouts in intrastate commerce.

Unemployment Insurance

I recommend the broadening of the California Unemployment Insurance Act to include all industrial and agricultural employees so that no worker will be excluded from the benefits of this insurance.

Workmen's Compensation Insurance

The benefits, accruing alike to workmen and employers, still warrant legislation vesting the writing of Workmen's Compensation Insurance exclusively in the State fund.

Horse Racing

The California Horse Racing Law should be amended in several respects. Greater revenue should be derived to the State from the operation of tracks licensed by the State, and numerous amendments are recommended by the Racing Board, needed to better enable the board to administer the law in accordance with its purposes, in order to increase revenue, aid horse breeding in California, and aid the enforcement of fair-dealing and honest practices in the operation of the tracks and in the conduct of racetrack employees. I commend to your careful consideration the specific amendments recommended by the Horse Racing Board.

Division of Insurance

I recommend submission to the people for vote an amendment to the State Constitution to progressively eliminate the right to deduct certain real estate taxes from gross premium taxes, and to equitably modify the premium tax rate. Under present constitutional provisions the right to deduct real estate taxes has resulted inequitably in favor of those companies which, due to the depression, have acquired by foreclosure unprecedented amounts of real estate. The mounting size of these deductions affect State revenues very adversely. The insurance companies themselves, recognizing this situation, agree in principle with a plan for equitable progressive adjustment.

Memorials to the National Government

I believe that memorials should be addressed to the President and the Congress as follows:

1. Giving assurance of California's complete support of and desire to cooperate in the National defense.
2. Urging additional Federal appropriations to connect military cantonments with existing State highway systems and to improve and enlarge the capacity of highways and bridges where necessary to meet the extraordinary requirements of military use.
3. Calling attention to the large number of workers remaining unemployed and in need of relief in California; to the value of W.P.A.

work projects to the National Defense Program; and asking for continued large WPA allocations for California.

4. Calling attention to the housing shortage emergency induced in several areas in California by the rapid expansion of war industries and urging prompt response thereto.

5. Calling attention to the need of Federal aid for low cost housing projects in certain rural areas of California.

6. Calling for a study of the effects upon our economy of foreign war purchases and of National defense spending, and of the economic repercussions which may be expected when peace comes; and calling for the formulation of policies and programs for economic readjustment to peace.

7. Declaring our belief that old age pensions should be Federally financed and administered in their entirety.

8. Urging continued and enlarged appropriations for the more rapid development of the Central Valleys Project; calling attention to the value of the project to the National defense.

9. Reminding that the migrant problem remains very serious and distressing in California; asking continued support of the studies of the Tolson Committee; and asking enlarged allocation of funds for relief and rehabilitation of migrants.

10. Calling attention to the need for further flood control and navigation work in California.

11. Calling attention to the need for measures to remove and restrain interstate trade barriers.

12. Supporting the establishment of a Federal Executive Department of Education and increased Federal aid for education and public health services including proposals for National hospitals for tuberculars.

CONCLUSION

In concluding this message I wish to make these observations:

Our most pressing and acute problems, mass unemployment and taxation for its relief, have been rendered less acute and less pressing as a result of heavy National defense spending. Nevertheless we must regard this condition as temporary. We must give serious thought to the recurrence of these problems which will attend the return of peace. They may recur in forms even more aggravated than we have experienced in the past, and when war ends, which we all fervently hope shall be soon, we shall also have to face payment of its costs. In other words, the legislative and executive branches of our government must give every aid and support to the National defense. But we should, at the same time, anticipate the disturbing realignment of social and

economic forces consequent upon the return of peace and prepare for readjustments thereto. If we can, in the preparedness for peace, preserve and apply the same high purpose and National unity which prompt and support our present efforts to prepare our National and home defenses, we shall be better prepared for the solution of our internal problems and to maintain the confidence of the people in democratic processes and democratic institutions.

Respectfully submitted.

CULBERT L. OLSON,
Governor of California

RECESS

At 11:45 a.m. on motion of Mr. Lyon, the Assembly recessed until 2:30 p.m.

REASSEMBLED

At 2:30 p.m., the Assembly reconvened.
Hon. Earl D. Desmond, Speaker pro tempore of the Assembly, presiding.

CONSIDERATION OF HOUSE RESOLUTION NO. 26

House Resolution No. 26—Relative to the adoption of Permanent Standing Rules of the Assembly.
Resolution read.

Motion to Amend House Resolution No. 26

Mr. Lyon moved to amend House Resolution No. 26 as follows:

Amendment No. 1

In Rule 73, as printed on page 134 of the Assembly Journal, strike out "8. A Committee on Conservation, to consist of 9 members," and insert "8. A Committee on Conservation, to consist of 11 members."

Amendment No. 2

In Rule 73, as printed on page 135 of the Assembly Journal, strike out "34. A Committee on Medical and Dental Laws, to consist of 9 members," and insert "34. A Committee on Medical and Dental Laws, to consist of 13 members."

Amendment No. 3

In Rule 73, as printed on page 135 of the Assembly Journal, strike out "40. A Committee on Oil Industries, to consist of 9 members," and insert "40. A Committee on Oil Industries, to consist of 13 members."

Amendment No. 4

In Rule 73, as printed on page 135 of the Assembly Journal, strike out "43. A Committee on Public Health and Quarantine, to consist of 9 members," and insert "43. A Committee on Public Health and Quarantine, to consist of 13 members."

Amendment No. 5

In Rule 73, as printed on page 135 of the Assembly Journal, strike out "50. A Committee on Social Service and Welfare, to consist of 9 members," and insert "50. A Committee on Social Service and Welfare, to consist of 15 members."

Amendments read and adopted.

Consideration of House Resolution No. 26, as Amended
House Resolution No. 26, as amended, read.

On request of Messrs. Johnson and Phillips, the privilege of the floor of the Assembly Chamber for this day was unanimously extended to Mrs. Jessie Williamson, Vice Chairman of the Republican State Central Committee, and President of California Council of Republican Women of Northern California; Mrs. Grace Long, Chairman of the Publicity Committee of the California Council of Republican Women, and Miss Annie Woodall, member of the Republican State Central Committee and Treasurer of California Council of Republican Women, all of Berkeley.

ADJOURNMENT

At 6.30 p.m., on motion of Mr. Turner, the Speaker declared the Assembly adjourned until 10.30 a.m., January 24, 1941, out of respect to the memory of the late J. C. Peterson, Curator of Sutter's Fort.

DAVID V. OLIVER, Minute Clerk

CALIFORNIA LEGISLATURE

FIFTY-FOURTH SESSION

ASSEMBLY DAILY JOURNAL

FIFTEENTH LEGISLATIVE DAY
NINETEENTH CALENDAR DAY

IN ASSEMBLY

ASSEMBLY CHAMBER, SACRAMENTO
Friday, January 24, 1941

The Assembly met at 10.30 a.m.

Hon. Gordon H. Garland, Speaker of the Assembly, presiding.
Chief Clerk Arthur A. Ohnimus at the desk.

ROLL CALL

The roll was called, and the following answered to their names:

Allen, Andreas, Bashore, Bennett, Burkhalter, Burns, Hugh M., Burns, Michael J., Cain, Carl, Carlson, Cassidy, Clarke, Collins, George D., Collins, Sam L., Cooke, Cronin, Crowley, Daley, Del Marolo, Desmond, Dickey, Dills, Dilworth, Donnelly, Doyle, Evans, Field, Gaffney, Gailorber, Green, Gunlock, Hastain, Hawkins, Heisinger, Houser, Frederick F., Howser, E. N., Johnson, Kellems, Kepple, Kilpatrick, Knight, John B., Knight, T., Fenion; Leonard, Lovrey, Lyon, Maloney, Massion, McCollister, Meehan, Midsough, Miller, Millington, O'Day, Pelletier, Pfaff, Phillips, Poole, Porter, Poulson, Richie, Robertson, Russell, Seaman, Sawalisch, Stream, Tanager, Thomas, Thorp, Thurman, Turner, Voigt, Waters, Watson, Weber, Welch, Westcott, Wollenberg, and Mr. Speaker—18.

Quorum present.

PRAYER

Prayer was offered by the Chaplain, Rev. Thomas H. Markham.

READING OF THE JOURNAL DISPENSED WITH

During the reading of the Journal of the previous legislative day, further reading was dispensed with, on motion of Mr. Poole.

LEAVES OF ABSENCE FOR THE DAY

The following members were granted leaves of absence for the day:
Mr. Sheridan, on motion of Mr. Carlson.
Mr. King, on motion of Mr. Evans.

BUDGET MESSAGE ORDERED PRINTED IN THE JOURNAL

The Speaker ordered the Budget Message printed in the Journal:

Budget Message

To the Senate and the Assembly of the State Legislature of California

In accordance with the provisions of Section 34, Article IV of the State Constitution, I herewith submit for your consideration a budget containing a complete plan and itemized statement of all proposed expenditures provided by existing law and recommended for each fiscal year of the biennium beginning July 1, 1941, and ending June 30, 1943, together with the comparisons of revenues and expenditures as required by that section.

Expenditures recommended in this budget, totaling \$582,570,000 are \$13,487,000 below the actual and estimated expenditures for the current biennium. Estimated receipts are \$613,070,000, or \$34,582,710 more than the amount for the present biennial period. If this estimate proves correct, the excess of General Fund revenue over expenditures will retire the existing deficit in its entirety and permit the State to close the coming biennium with a General Fund surplus of \$11,000,000.

This prospect is, of course, contingent upon three factors: First, the continuance of the National Defense Program with its huge expenditures and consequent mounting economic activity.

Second, maintaining tax rates at present levels, and

Third, keeping actual appropriations for the coming biennium within the budget here presented.

Factors Controlling the Size of the Total Budget

Before discussing the items in this budget which show increases over the corresponding items of the current biennium, a few basic facts about the budget should be mentioned.

First, the fixed charges, or continuing appropriations, represent 70 per cent of the \$582,570,000 total, of which \$289,788,000 is for distribution or subventions to the counties, cities, and other units of local government for schools, streets and roads, local fairs and aid to the needy aged, the blind, and dependent children.

Second, items subject to executive control comprise only 30 per cent of the budget. Aside from unemployment relief, reductions possible in other controllable costs of State Government can not, in any case, be sufficient to offset the growth in mandatory charges experienced during recent years.

Third, California is a rapidly growing State. The numerical growth in population during the last decade exceeded that of any other State of the Union. It is reasonable, therefore, to expect corresponding demands for expanded governmental services with resultant increases in governmental costs.

Finally, we must take account of the fact that during the past quarter century the people have needed—demanded—and received many new, important and costly services at the hands of State Government. These services have contributed to and supported the general welfare. They have been evolved through our democratic processes. They are helping us to surmount the impact of the machine age. They are easing our transition to a more rational social and economic order. They typify the evolution of government from a mere instrument of the police power used for the preservation of order, into an effective agency responsible to the collective needs and will of the people. This is the promise of American democracy which makes it strong and unconquerable.

Fixed Charges

Fixed charges, over which the Governor can exercise no control, will increase \$21,424,000 during the coming biennium, according to budget estimates. In other words, that increase is mandatory under provisions of our State Constitution and existing statutes.

The largest item of mandatory costs is support of the public school system which during the coming two-year period will require \$160,670,000 or \$4,680,000 more than the expenditure for this purpose during the current biennium. This increase is a product of our population growth. Elementary school enrollment has advanced during the current school year and will rise further as the increased number of children born in 1934 and 1935 reach school age. High school and junior college attendance is gradually mounting. Moreover, schools are being called upon to train workers for our National Defense Program.

Expenditures for construction and maintenance of highways, county roads, and city streets—another fixed cost—will increase \$9,470,000 in the coming biennium to a new high total of \$126,000,000. Nevertheless, those most familiar with the demands likely to be made upon our highway system believe that the present rate of investment in the traffic arteries of our State is inadequate.

Aid to needy aged, blind, and children, a function of government much neglected in the past, is rapidly assuming major proportions. State payments stipulated for

assistance to these needy citizens will increase \$7,600,000 in the 1941-1943 period, reaching a total of \$49,700,000.

Requirements for debt interest and redemption will decrease in the next two years, due principally to a reduction in interest charges on resisted warrants. It is anticipated that the improvement in the State's financial position will enable retirement of all but a fraction of the \$90,000,000 of General Fund warrants now outstanding, and that the interest rate, which has decreased significantly in recent months, may drop to a still more advantageous level under the impact of increasing revenue. It should be emphasized, however, that debt service is the only important item of fixed cost showing a decrease in the coming fiscal period and that this reduction is more than offset by increases in the mandatory costs already mentioned.

Other fixed charges, principally representing State-collected revenue shared with local units of government, will increase \$3,100,000, making up the remainder of the \$21,424,000 in the unavoidable increases encompassed in the budget total. It may be unnecessary to observe that had there been no increases in fixed charges, the budget total for 1941-1943 would have been \$551,100,000 instead of \$582,500,000.

Controllable Expenditures

Controllable expenditures of State Government may be divided into six functional groups: General government offices; unemployment relief; charitable and penal institutions; the State university and State colleges; regulation of motor vehicles; and miscellaneous.

In order to facilitate presentation of these budget data, I shall first discuss operating expenses of each group. Operating expenses are those incurred in the normal running of our State offices, departments, institutions, schools, and other agencies of general government. They include salaries and wages of State employees, expenditures for food and clothing for inmates of our State institutions and prisons, and services, supplies, and equipment required by governmental offices.

In analyzing the State's operating expenses, there is one large item common to all agencies; that is the allowance for salary adjustments. The budget recommendations make full provision for these adjustments, in compliance with the expressed intention of the Legislature to recognize merit in its public servants, and to offer qualified persons an incentive for a career in public service. Governmental efficiency is promoted, and sound business principles prompt, the adoption and application of this policy.

Section 70 of the State Civil Service Act, adopted in 1937, provides that after one year in service, each employee shall receive an salary increase equivalent to one of the intermediate steps in his salary range if his performance rating shall equal a required percentage fixed by the Personnel Board. Salary ranges provide, generally, for four intermediate steps. Thus each efficient employee is entitled under the Civil Service Act to receive an adjustment of his salary at the end of each of his first four years of State service. Furthermore, the act provides that all agencies, in submitting budgetary requirements, shall carefully estimate and call attention to the need for money, sufficient to provide for appropriate salary adjustments for the employees under their jurisdiction. To carry through the biennium the adjustments given in the preceding year period, and to make the further adjustments due in 1941-1942, will require approximately \$7,000,000. This increase affects all State agencies and is included in the totals for the six functional groups itemized below.

General State Offices, Boards, Commissions and Departments

The function of general government involving support of 13 State departments, 17 boards and commissions, 3 administrative offices, together with the legislative, executive, and judicial branches, will require \$48,500,000 for normal operating expenses during the 1941-1943 biennium. Under the recommendations I am making to you, of this amount, approximately 45 per cent will be paid out of the State General Fund, and 55 per cent from special funds—funds earmarked for specific purposes. The aggregate increase over the current biennium is \$3,900,000. In recommending larger appropriations for general governmental agencies, I am recognizing the need for sound and sound funds by the State Department of Industrial Relations, the State Railroad Commission, the State Board of Equalization, the Franchise Tax Commissioner, and certain other agencies. During the budget hearings for these and all other agencies, substantial reductions were made, and it is only on the basis of accumulated need that increases have been included in my budget recommendations.

Unemployment Relief

Because of the upsurge of business and industrial activity in California, induced by large Federal expenditures for National Defense and the training of Army and Navy personnel, unemployment in this State has been decreasing at a rate unthought of even 12 months ago. It is now anticipated that by the beginning of the next biennium, jobs will have been found for nearly all of those now on the relief rolls who are capable of holding skilled or semiskilled jobs, and that the relief total will show a marked decline. The physically handicapped, and the seasonally

[Jan. 24, 1941]

unemployed. In this budget I have recommended an appropriation of \$88,700,000 for unemployment relief for the entire next biennium, a reduction of \$40,600,000 from the total for the current biennial period. You know as I have so often stated, that I am convinced we should as speedily as possible, but without permitting want and suffering, discontinue the payment of cash doles to the employable unemployed. Therefore, I shall present for your consideration, legislation to provide that unemployment relief funds may be used to give employment to the unemployed, and to train the unskilled for jobs in industry.

Hospitals, Homes, Prisons, Correctional Schools

The institutions, prisons, and reform schools of this State will provide care and maintenance for an average of 50,000 persons each year of the next biennium. For this purpose I recommend appropriations totaling \$28,650,000 or \$4,469,000 more than for the 1938-1941 period. In addition to salary adjustments and increases necessary for the growing number of patients and inmates, this increased allotment for the institutions of our State also makes provision for progress in the work of these agencies. I am recommending that during the next biennium the State make full provision for the institution shortly to be opened at the site of the State Marine Hospital, near Spadra, for the care and cure of chronic inebriates. The budget also contemplates that new treatments for the mentally ill, which have proved highly successful in limited applications, will be extended. The recently developed methods of intensive treatment, such as insulin shock, which have produced recoveries in the vast majority of cases in which they have been used, must be utilized in all instances where there is a possibility of success. Additional research work now being conducted in the State mental hospitals will be extended through placing into operation in January, 1942, the new Acute Psychiatric Hospital in San Francisco. While these improvements in the scientific handling of institutional cases will necessitate larger expenditures in the next biennium, the State will benefit economically and socially by rehabilitating thousands of men and women now crowding our State hospitals and restoring them to society as normal and useful citizens.

Education, State Colleges, University, and Special Schools

As all of you know, the University of California is one of the largest institutions of its kind in the United States in point of student enrollment and the personnel of its instructing staff is unsurpassed. The State maintains seven State colleges, which are also recognized as foremost among educational institutions with high standards of instruction. The State also maintains two special schools for the deaf and blind, a merchant marine training academy, and a polytechnic school, which are performing a splendid service in the State Department of Education. Operation of these educational institutions, support of the State Department of Education, free textbooks, and other educational activities will require an expenditure of \$37,980,000 during the coming two-year period, over 93 per cent of which will be paid from the State General Fund. Expenditures for these educational functions will increase \$2,800,000 over the total for this biennium, of which \$1,500,000 is for the University of California.

Regulation of Motor Vehicles

A constitutional amendment adopted in 1938 sets aside all revenue received from motor vehicle fuel taxes and motor vehicle fees, with the exception of "in lieu" license fees, for expenditure on highway, road, and street work and the regulation of motor vehicles. Thus, the State Department of Motor Vehicles occupies a somewhat unique place in governmental structure. Although expenditures of this department are controllable, any saving made in regulation of motor vehicles must be expended on highways, roads, and city streets. Expenditures recommended for this function of government total \$14,500,000 or \$1,230,000 above the comparable 1938-1941 figure.

Miscellaneous

Miscellaneous controllable items, including the State Fair, Sixth District Agricultural Association in Los Angeles, food control, tuberculosis subsidies, the Emergency Fund, and miscellaneous airport charges will require \$6,600,000. These expenditures will be \$1,200,000 less than for the current biennium. The increase in the operating expenditures for the State Government, exclusive of the \$6,000,000 to carry salary adjustments, will be about \$6,000,000. This sum represents the increased cost of extending governmental services in the fields I have mentioned.

Capital Outlays

Capital outlays recommended in this budget include only those "must" items requiring immediate attention. There are many others which would be highly desirable and which should be undertaken at the proper time, but a large part of this work can be postponed until the housing needs of the State Government can

Jan. 24, 1941]

be surveyed and a long-term building program formulated. In the meantime, provision should be made for the relatively minor outlays embraced in this budget. The State Government is badly in need of additional buildings. But whether we should enter upon a construction program at this time, in competition with the Federal Government's Program of Defense Construction, is a question meriting your immediate and serious study. Present prospects are that economic activity within our State will reach new high levels during the coming two or three years. But the time will come when peace shall again prevail in the world. We shall then have to face the probability that unemployment will again become as burdensome, as acute in all of its manifestations as ever before, perhaps more so. This prospect suggests that the actual commencement of an extensive public building program may well be postponed to provide work for those now engaged in preparedness industries. If we may judge from experience, an additional advantage of this policy will be the substantial economies resulting from lower prices of building materials.

I am, therefore, recommending that the State undertake a study of its long-term building needs and that, so far as possible, provision be made to time the construction of public buildings and the performance of public works to coincide with the work-needs of our citizens. Appropriate legislation for such a program will be introduced for your consideration.

The State's Financial Position

With respect to the current financial position of the State Government, I am pleased to report real improvement during the last year. The tax system of this State is quickly responsive to business conditions and the industrial activity generated by the National Defense Program has produced an extraordinary and unprecedented rise in revenue collections. Although the General Fund deficit is estimated at \$47,600,000 as of June 30, 1941, as compared with \$36,500,000 in 1939, this increase occurred entirely within the first year of the present biennium. Financial operations during the current fiscal year show income and expenditures in balance.

A General Fund surplus of \$11,000,000 is estimated for June 30, 1942, but I must caution you that this surplus is entirely prospective and contingent. It is two and one-half years in the future. These estimates have been carefully prepared, but every effort has been made to anticipate the course of future economic conditions. But events may change our whole outlook. In view of the uncertainties in the present world affairs, every effort must be made to husband the financial resources of the State Government with a view to creating a surplus in hand rather than a surplus in prospect. Periods of great economic activity have always generated a reaction. We can not expect defense activity to be an exception. When the last business boom ended in the market crash of 1929 and we entered upon a pronounced depression, the State of California had a General Fund surplus of over \$30,000,000. With our present State Budget approximately twice that of 10 years ago and a larger percentage of the total tied up in fixed charges, there is even greater need for a reasonable surplus to cushion the shock of another depression. When we have accumulated such a surplus, we may then turn our attention to revising our State Tax System and reducing the levies which now fall so heavily on those least able to pay. To that end, I invite your cooperation in holding special appropriation measures to the absolute minimum.

This budget, as I have said before, is based upon what I believe to be the present requirements of our State Government. However, in the discharge of your duties as legislators, you will wish to determine for yourselves the needs of each State agency. In carrying out this task, all departments of the State Government stand ready to extend to you every facility at their disposal.

Respectfully submitted.

CULBERT L. OLSON, Governor of California

January 24, 1941

Letter of Transmittal

SACRAMENTO, CALIFORNIA, January 23, 1941
Honorable Culbert L. Olson, Governor of California
State Capitol, Sacramento, California

DEAR GOVERNOR OLSON: The 1941-1943 Biennial Budget for the State of California, totaling \$52,570,000, is presented herewith for your consideration.

I am glad to report this budget to you at a time when increased revenues and decreased disbursements combine to give California a balanced fiscal program and assure the elimination of the General Fund deficit at the end of the biennium.

The Department of Finance has made every effort in the preparation of this budget to carry out your policies, analyzing each request submitted by the State departments, boards, and commissions, and eliminating increases which were con-

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LEGISLATIVE INTENT SERVICE

Journal of the Senate Legislature of the State of California

Fifty-fourth Session

1941

First Part of Session, January sixth to January twenty-fifth, inclusive
Second Part of Session, March third to June fourteenth, inclusive

Lieutenant Governor Ellis E. Patterson, President of the Senate
Joseph A. Beck, Secretary



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CALIFORNIA LEGISLATURE
FIFTY-FOURTH SESSION

SENATE DAILY JOURNAL

TWELFTH LEGISLATIVE DAY
SIXTEENTH CALENDAR DAY

IN SENATE

SENATE CHAMBER, SACRAMENTO
Tuesday, January 21, 1941

The Senate met at 11 a.m.
Hon. Ellis E. Patterson, President of the Senate, presiding.
Secretary J. A. Beek at the desk.

ROLL CALL

The roll was called, and the following answered to their names:

Senators Biggar, Breed, Brown, Carter, Collier, Crittenden, Cunningham, DeLap, Deuel, Dillinger, Fletcher, Foley, Garrison, Gordon, Hays, Jespersen, Judah, Keating, Kenny, Kuebel, Luckey, McBride, McCormack, Metzger, Mixer, Myhand, Parkman, Phillips, Powers, Quinn, Rich, Seawell, Slater, Swan, Swing, Tickle, and Ward—37.

Quorum present.

PRAYER

Prayer was offered by the Chaplain, Rev. H. W. Opperman.

LEAVES OF ABSENCE FOR THE DAY

The following Senators were granted leave of absence for the day:
Senators Wagy and Mayo, on motion of Senator Hays.

GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Fletcher, the privilege of the floor of the Senate Chamber for this day was unanimously extended to Major Edgar Gott, Vice President, Consolidated Aircraft Company, of San Diego.

On request of Senator Myhand, the privilege of the floor of the Senate Chamber for this day was unanimously extended to Superior Judge Andrew R. Schottky, of Mariposa County, former Senator from Merced and Madera counties.

On request of Senators Myhand and Powers, the privilege of the floor of the Senate Chamber for this day was unanimously extended to

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Resolution read. The roll was called, and the resolution adopted by the following vote:

AYES: Senators Biggar, Breed, Brown, Carter, Collier, Cunningham, DeLap, Deuel, Fletcher, Foley, Gordon, Hays, Judah, Keating, Kenny, Kuebel, Luckey, McBride, Metzger, Mixer, Myhand, Parlman, Phillips, Powers, Quinn, Rich, Seawell, Slater, Swan, Swing, Tickle, and Ward. 32.

NOES: None.

Resolution ordered transmitted to the Assembly.

RESOLUTIONS

The following resolution was offered:

By Senators Collier and Metzger:

Senate Resolution No. 30

WHEREAS, Since the making of the treaties between the United States and Great Britain and between the United States and Mexico for the regulation of migratory birds, the Biological Survey of the United States, formerly in the United States Department of Agriculture and now in the Department of the Interior, has been charged with the duties of establishing the seasons and bag limits for migratory birds coming within the purview of the treaties; and

WHEREAS, The efforts of the Biological Survey in carrying out the provisions of the Migratory Bird Treaty Act, enacted pursuant to said treaties, have earned and received the wholehearted cooperation and assistance of sportsmen throughout the Nation with the result that species of wild fowl which were once doomed to early extinction have increased in numbers and in distribution until the bird population is well on its way toward stabilization; and

WHEREAS, Since the commencement of regulation of water fowl by the Biological Survey in California, the number of ducks, geese, and similar species has greatly increased; now, therefore, be it

Resolved by the Senate, That the Biological Survey of the United States is hereby commended for its work in conserving and increasing the number of water fowl available for California hunters and urged to continue such efforts along the lines now established, without making any material change in the water fowl seasons and limits, and be it further

Resolved, That the Secretary of the Senate is hereby instructed to cause a copy of this resolution to be sent to the Chief of the Biological Survey and to the Secretary of the Interior of the United States.

Resolution read and adopted.

Senator Breed Presiding

At 11.15 a.m., Hon. Arthur H. Breed, Jr., of the Sixteenth District, presiding.

INTRODUCTION, FIRST READING AND REFERENCE OF SENATE BILLS

The following bills were introduced, and read the first time:

Senate Bill No. 352: By Senator Rich—An act to amend the title and Sections 1 and 2 of an act entitled "An act authorizing the investment and reinvestment and dispositions of any surplus moneys in the treasury of any county, city and county, incorporated city or town, or municipal utility district, or flood control district," approved April 23, 1913, relating to the investment of surplus moneys in the treasury of any county, city and county, incorporated city or town, municipal utility district, irrigation district or flood control district, and declaring the urgency hereof, to take effect immediately.

Referred to Committee on Water Resources.

Senate Bill No. 353: By Senator Quinn—An act to add Division 6 comprising Sections 14000 to 14004, inclusive, to the Business and

→ **Senate Bill No. 360:** By Senator Quinn - An act to add Part 2, comprising Chapters 1 to 4, inclusive, Sections 16600 to 17101, inclusive, to Division 7, and to add Section 30028 to Division 30 of the Business and Professions Code, thereby consolidating and revising the law relating to the preservation and regulation of competition, and repealing acts and parts of acts specified herein.

Without reference to committee.

Senate Bill No. 361: By Senator Quinn - An act to add Part 3, comprising Chapter 1, Sections 17500 to 17535, to Division 7, and to add Section 30041 to Division 30 of the Business and Professions Code, thereby revising and consolidating the law relating to false advertising, and repealing acts and parts of acts specified herein.

Without reference to committee.

Senate Bill No. 362: By Senator Quinn - An act to add Chapter 2, comprising Sections 17700 to 17702, inclusive, to Part 3 of Division 7, and to add Section 30029 to Division 30 of the Business and Professions Code, thereby consolidating and revising the law relating to redeemable coupons, and repealing acts and parts of acts specified herein.

Without reference to committee.

Senate Bill No. 363: By Senator Kenny - An act to amend Sections 6320, 6322, 6323, 6324, 6343, 6346, and 6360 of the Business and Professions Code, and to add Section 6326 thereto, relating to boards of law library trustees and law libraries.

Referred to Committee on Business and Professions.

Senate Bill No. 364: By Senator Kenny - An act to add Chapter 5 to Division 3 of the Business and Professions Code, consisting of Sections 6300 to 6365, inclusive, and to repeal Sections 4190 to 4201, inclusive, of the Political Code, relating to boards of law library trustees and law libraries.

Referred to Committee on Business and Professions.

Senate Bill No. 365: By Senator Kenny - An act to amend Section 4300e of the Political Code, relating to the fees of justices of the peace.

Referred to Committee on Judiciary.

Senate Bill No. 366: By Senator Kenny - An act to add Section 43001e to the Political Code, relating to municipal court fees and costs.

Referred to Committee on Judiciary.

Senate Bill No. 367: By Senator Kenny - An act making an appropriation for the purchase of land and for construction and equipment of an Acute Psychiatric Hospital in Southern California.

Referred to Committee on Finance.

Senate Bill No. 368: By Senator Kenny - An act to add Sections 273.5 and 601.2 to the Vehicle Code, relating to an oath or affirmation as a prerequisite to the issuance of an operator's or chauffeur's license or to the use of the highways.

Referred to Committee on Transportation.



CALIFORNIA LEGISLATURE
FIFTY-FOURTH SESSION

SENATE DAILY JOURNAL

THIRTEENTH LEGISLATIVE DAY
SEVENTEENTH CALENDAR DAY

IN SENATE

SENATE CHAMBER, SACRAMENTO
Wednesday, January 22, 1941

The Senate met at 11 a.m.
Hon. Ellis E. Patterson, President of the Senate, presiding.
Secretary J. A. Beck at the desk.

ROLL CALL

The roll was called, and the following answered to their names:

Senators Biggar, Breed, Brown, Carter, Collier, Crittenden, Cunningham, DeLap, Deuel, Dillinger, Fletcher, Foley, Garrison, Gordon, Hays, Jespersen, Judah, Keating, Kenny, Kuebel, Luckey, McBride, McCormack, Metzger, Mixer, Myland, Parkman, Phillips, Powers, Quinn, Rich, Seawell, Shelley, Slater, Swan, Swing, Tickle, and Ward 38.

Quorum present.

PRAYER

Prayer was offered by the Chaplain, Rev. H. W. Opperman.

LEAVES OF ABSENCE FOR THE DAY

The following Senators were granted leaves of absence for the remainder of their sojourn in Washington, D. C., pursuant to Senate Resolution No. 23, adopted January 16, 1941:

Senators Wagy and Mayo, on motion of Senators Hays and Mixer.

GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Powers, the privilege of the floor of the Senate Chamber for this day was unanimously extended to Hallie M. Tierney, Superintendent of Schools of Modoc County, of Alturas.

On request of Senator Swan, the privilege of the floor of the Senate Chamber for this day was unanimously extended to Harry M. Howell, Assistant Superintendent of Schools of Los Angeles.

On request of Senator Jespersen, the privilege of the floor of the Senate Chamber for this day was unanimously extended to Fred Bartholomew, of Los Angeles.

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Senate Bill No. 424: By Senator Breed--An act to amend Section 3714 of the Political Code, relating to annual financial estimates of counties.

Referred to Committee on Local Government.

Senate Bill No. 425: By Senator Breed--An act to add Section 1628 to the Streets and Highways Code, relating to expenditures by a county out of its special road improvement fund on streets, roads and highways in cities within the county.

Referred to Committee on Transportation.

Senate Bill No. 426: By Senator Breed--An act relating to the reimbursement of funds used to finance the construction, improvement or maintenance of highways, roads and streets by means of convict labor.

Referred to Committee on Governmental Efficiency.

Senate Bill No. 427: By Senator Luckey--An act to repeal Sections 131, 131.1, 131.2, 131.3, 131.4 and 131.5 of the Code of Civil Procedure, relating to probation officers and committees.

Referred to Committee on Judiciary.

Senate Bill No. 428: By Senator Mixter--An act to amend Sections 4009, 4030, 4035, 4036, 4044, 4045, 4061, 4210, 4212, 4228 and 4252, to amend and renumber Sections 4038 and 4039, and to repeal Sections 4032, 4034, 4037, 4040, 4041, 4042, 4043, 4046, 4060 and 4212 of, and to add Sections 4032, 4033, 4034, 4046, 4047, 4060, 4215 and 4234 to, the Business and Professions Code, relating to the sale and disposal of drugs and the persons engaged therein.

Referred to Committee on Business and Professions.

Senate Bill No. 429: By Senator Mixter--An act to add Section 79.5 to the State Employees Retirement Act, relating to retirement of employees of the State of California.

Referred to Committee on Governmental Efficiency.

Senate Bill No. 430: By Senator Tickle --An act to amend School Code Sections 4.784, 4.875 and 4.887, relating to the support of the Public School System.

Referred to Committee on Education.

CONSIDERATION OF DAILY FILE

SECOND READING OF SENATE BILLS

Senate Bill No. 353 - An act to add Division 6, comprising Sections 11000 to 11001, inclusive, to the Business and Professions Code, thereby consolidating and revising the law relating to general provisions concerning business rights, defining the terms used in connection therewith, describing the effect, of the provisions on business rights and providing the manner in which said rights may be asserted.

Bill read second time, ordered engrossed, and to third reading.

Senate Bill No. 354 - An act to add Chapter 1, comprising Sections 11100 to 11103, inclusive, to Division 6, and to add Section 30023 to

Division 30 of the Business and Professions Code, thereby consolidating and revising the law relating to the definition and transfer of good will, and repealing acts and parts of acts specified herein.

Bill read second time, ordered engrossed, and to third reading.

Senate Bill No. 355 An act to add Chapter 2, comprising Sections 14200 to 14325, inclusive, to Division 6, and to add Section 30024 to Division 30 of the Business and Professions Code, thereby consolidating and revising the law relating to trade-marks, and repealing acts and parts of acts specified herein.

Bill read second time, ordered engrossed, and to third reading.

Senate Bill No. 356 An act to add Chapter 3, comprising Sections 14400 to 14491, inclusive, to Division 6 and to add Section 30040 to Division 30 of the Business and Professions Code, thereby consolidating and revising the law relating to trade names and designations, and repealing acts and parts of acts specified herein.

Bill read second time, ordered engrossed, and to third reading.

Senate Bill No. 357 An act to add Chapter 4, comprising Sections 14700 to 14740, inclusive, to Division 6 and to add Section 30025 to Division 30 of the Business and Professions Code, thereby consolidating and revising the law relating to protection of the rights of authorship and repealing acts and parts of acts specified herein.

Bill read second time, ordered engrossed, and to third reading.

Senate Bill No. 358 An act to add Division 7, comprising Part 1, Chapters 1 to 3, inclusive, Sections 16000 to 16240, inclusive, and to add Section 30026 to Division 30 of the Business and Professions Code, thereby consolidating and revising the law relating to licensing by the State, counties and cities, and repealing acts and parts of acts specified herein.

Bill read second time, ordered engrossed, and to third reading.

Senate Bill No. 359 An act to add Chapter 4, comprising Sections 16300 to 16451, inclusive, to Part 1 of Division 7 and to add Section 30027 to Division 30 of the Business and Professions Code, thereby consolidating and revising the law regulating itinerant merchants and repealing acts and parts of acts specified herein.

Bill read second time, ordered engrossed, and to third reading.

→ **Senate Bill No. 360** An act to add Part 2, comprising Chapters 1 to 4, inclusive, Sections 16600 to 17101, inclusive, to Division 7, and to add Section 30028 to Division 30 of the Business and Professions Code, thereby consolidating and revising the law relating to the preservation and regulation of competition, and repealing acts and parts of acts specified herein.

Bill read second time, ordered engrossed, and to third reading.

Senate Bill No. 361 An act to add Part 3, comprising Chapter 1, Sections 17500 to 17535, to Division 7, and to add Section 30041 to Division 30 of the Business and Professions Code, thereby revising and



CALIFORNIA LEGISLATURE
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SENATE DAILY JOURNAL

FOURTEENTH LEGISLATIVE DAY
EIGHTEENTH CALENDAR DAY

IN SENATE

SENATE CHAMBER, SACRAMENTO
Thursday, January 23, 1941

The Senate met at 11 a.m.
Hon. Ellis E. Patterson, President of the Senate, presiding.
Secretary J. A. Beck at the desk.

ROLL CALL

The roll was called, and the following answered to their names:

Senators Biggar, Breed, Brown, Carter, Collier, Crittenden, Cunningham, DeLap, Deuel, Dillinger, Fletcher, Foley, Garrison, Gordon, Hays, Jespersen, Judah, Keating, Kenny, Kuebel, Luckey, McBride, McCormack, Metzger, Mixer, Myland, Parkman, Phillips, Powers, Quinn, Rich, Seawell, Shelley, Slater, Swan, Swing, Tickle, and Ward 38.

Quorum present.

PRAYER

Prayer was offered by the Chaplain, Rev. H. W. Opperman.

GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Fletcher, the privilege of the floor of the Senate Chamber for this day was unanimously extended to Ortan E. Darnall, President of the San Diego Board of Education, of San Diego.

On request of Senator Carter, the privilege of the floor of the Senate Chamber for this day was unanimously extended to Edwin J. Regan, District Attorney of Trinity County, of Weaverville.

On request of Senator Powers, the privilege of the floor of the Senate Chamber for this day was unanimously extended to Wm. Tunnison, Supervisor of Lassen County, of Westwood.

On request of Senator Judah, the privilege of the floor of the Senate Chamber for this day was unanimously extended to Benjamin B. Knight, District Attorney of Santa Cruz County, of Santa Cruz.

On request of Senator Kenny, the privilege of the floor of the Senate Chamber for this day was unanimously extended to Dr. C. W. Pierce, of the Los Angeles City Board of Education.

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to the United States, or for any of said purposes and which such districts shall propose to divert or carry water for use in such districts by means of a single main canal or system of works and providing certain purposes for which such contracts between such districts may be executed, providing for the manner of authorization of such contracts and validating such contracts heretofore executed, declaring the urgency hereof and providing that this act shall go into immediate effect," approved February 1, 1935, relating to cooperation between irrigation districts and county water districts.

Referred to Committee on Water Resources.

MOTION TO REFER SENATE BILLS

Senator Rich moved that Senate Bills Nos. 353 to 362, inclusive, be withdrawn from file, and referred to Committee on Judiciary.

Motion carried.

MOTION TO REFER ASSEMBLY BILLS

Senator Rich moved that Assembly Bills Nos. 336 and 337 be withdrawn from file, and referred to Committee on Judiciary.

Motion carried.

INTRODUCTION, FIRST READING AND REFERENCE OF SENATE BILLS (RESUMED)

The following bills were introduced, and read the first time:

Senate Bill No. 607: By Senator Kenny—An act to amend Section 2020 of the Welfare and Institutions Code, relating to income and resources under the Old Age Security Law, to take effect immediately.

Referred to Committee on Welfare and Institutions.

Senate Bill No. 608: By Senator Kenny—An act to amend Section 3084 of the Welfare and Institutions Code, relating to income of the needy blind, to take effect immediately.

Referred to Committee on Welfare and Institutions.

Senate Bill No. 609: By Senator Kenny—An act to amend Section 2163 of the Welfare and Institutions Code, relating to personal property of persons receiving old age assistance.

Referred to Committee on Welfare and Institutions.

Senate Bill No. 610: By Senator Kenny—An act to amend Section 3047 of the Welfare and Institutions Code, relating to property of persons receiving aid to the needy blind.

Referred to Committee on Welfare and Institutions.

Senate Bill No. 611: By Senator Kenny—An act to add Section 125 to the Welfare and Institutions Code, relating to the establishment of a Merit System Council, defining its powers and duties, and making an appropriation.

Referred to Committee on Welfare and Institutions.

Senate Bill No. 612: By Senator Kenny—An act to add Section 112.5 to the Welfare and Institutions Code, relating to establishment

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THIRTY-EIGHTH LEGISLATIVE DAY
EIGHTY-SIXTH CALENDAR DAY

IN SENATE

SENATE CHAMBER, SACRAMENTO
Tuesday, April 1, 1941

The Senate met at 1.30 p.m.
Hon. Ellis E. Patterson, President of the Senate, presiding.
Secretary J. A. Beek at the desk.

ROLL CALL

The roll was called, and the following answered to their names:

Senators Biggar, Breed, Brown, Carter, Collier, Cunningham, DeLap, Dillinger, Foley, Gordon, Judah, Luckey, McBride, Metzger, Parkman, Phillips, Powers, Quinn, Seawell, Slater, Tickle, and Wagy—22.

Call of the Senate

Senator Metzger moved a call of the Senate.

Motion carried.

The Secretary announced the absentees.

Time, 1.35 p.m.

The President directed the Sergeant-at-Arms to close the doors, and to bring in the absent members.

PROCEEDINGS UNDER CALL OF THE SENATE

PRAYER

Prayer was offered by the Chaplain, Rev. H. W. Opperman.

GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Slater, the privilege of the floor of the Senate Chamber for this day was unanimously extended to Supervisor and Mrs. George Kennedy of Sebastopol, Supervisor E. J. Guidotti of Guerneville, and Dolph Young, Secretary, Petaluma Chamber of Commerce, Petaluma.

On request of Senator Cunningham, the privilege of the floor of the Senate Chamber for this day was unanimously extended to Mrs. J. W. Guiberson and Miss Claire Guiberson of Corcoran.

On request of Senator Myhand, the privilege of the floor of the Senate Chamber for this day was unanimously extended to J. W.

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PERMISSION TO INTRODUCE BILL

The following request for permission to introduce a bill was presented:

By Senator Foley:

Request for Permission to Introduce a Bill

SENATE CHAMBER, SACRAMENTO, April 1, 1941

MR. PRESIDENT: In accordance with the provisions of Article IV, Section 2, of the Constitution, I request permission to introduce a bill, the title of which is as follows:

An act to amend Section 6.180 of the School Code, relating to sale or lease of school property.

Respectfully submitted.

SENATOR FOLEY

Recommendation of Committee on Rules

SENATE CHAMBER, SACRAMENTO, April 1, 1941

The Committee on Rules recommends that permission be granted to introduce the bill as requested.

(Signed out)

RICH, Chairman
BRIED
TICKLE
MYLAND
DEUEL

The roll was called, and permission granted by the following vote:

AYES—Senators Collier, Crittenden, Cunningham, DeLap, Billinger, Fletcher, Foley, Garrison, Gordon, Jespersen, Judah, Keating, Kenny, Kuebel, Luckey, Mayo, McBride, McCormack, Mixer, Parkman, Phillips, Powers, Quinn, Seawell, Shelley, Slater, Swan, Tickle, Wagy, and Ward 30.

NOES—None.

INTRODUCTION, FIRST READING AND REFERENCE OF SENATE BILLS (RESUMED)

The following bill was introduced, and read the first time:

Senate Bill No. 1307: By Senator Foley—An act to amend Section 6.180 of the School Code, relating to sale or lease of school property.

Referred to Committee on Education.

REPORTS OF STANDING COMMITTEES**Committee on Rules**

SENATE CHAMBER, SACRAMENTO, April 1, 1941

MR. PRESIDENT: Your Committee on Rules has examined:

Senate Bill No. 977

Senate Bill No. 670

Senate Bill No. 365

Senate Bill No. 669

Senate Bill No. 830

And reports the same correctly engrossed.

RICH, Chairman

Committee on Governmental Efficiency

SENATE CHAMBER, SACRAMENTO, April 1, 1941

MR. PRESIDENT: Your Committee on Governmental Efficiency, to which was referred:

Senate Bill No. 559

Has had the same under consideration, and reports the same back with the recommendation: Do pass.

Committee membership 11; committee vote: Ayes 8; absent 3.

SWING, Chairman

Above reported bill ordered to second reading.

Committee on Judiciary

SENATE CHAMBER, SACRAMENTO, April 1, 1941

MR. PRESIDENT: Your Committee on Judiciary, to which was referred:
Senate Constitutional Amendment No. 11
Has had the same under consideration, and reports the same back with the recommendation: Be adopted.
Committee membership 13; committee vote: Ayes 12; absent 1.
KEATING, Vice Chairman

Above reported resolution ordered to second reading.

SENATE CHAMBER, SACRAMENTO, April 1, 1941

MR. PRESIDENT: Your Committee on Judiciary, to which was referred:
Senate Bill No. 1007
Has had the same under consideration, and reports the same back with the recommendation: Do pass, and be re-referred to Committee on Finance.
Committee membership 13; committee vote: Ayes 12; absent 1.
KEATING, Vice Chairman

Above reported bill re-referred to Committee on Finance.

SENATE CHAMBER, SACRAMENTO, April 1, 1941

MR. PRESIDENT: Your Committee on Judiciary, to which were referred:
Senate Bill No. 360
Assembly Bill No. 271
Has had the same under consideration, and reports the same back with amendments with the recommendation: Amend, and do pass as amended.
Committee membership 13; committee vote: Ayes 12; absent 1.
KEATING, Vice Chairman

Above reported bills ordered to second reading.

SENATE CHAMBER, SACRAMENTO, April 1, 1941

MR. PRESIDENT: Your Committee on Judiciary, to which was referred:
Senate Bill No. 817
Has had the same under consideration, and reports the same back with amendments with the recommendation: Amend, and do pass as amended.
Committee membership 13; committee vote: Ayes 7; noes 5; absent 1.
KEATING, Vice Chairman

Above reported bill ordered to second reading.

SENATE CHAMBER, SACRAMENTO, April 1, 1941

MR. PRESIDENT: Your Committee on Judiciary, to which were referred:
Senate Bill No. 822
Senate Bill No. 1009
Has had the same under consideration, and reports the same back with the recommendation: Do pass.
Committee membership 13; committee vote: Ayes 12; absent 1.
KEATING, Vice Chairman

Above reported bills ordered to second reading.

SENATE CHAMBER, SACRAMENTO, April 1, 1941

MR. PRESIDENT: Your Committee on Judiciary, to which was referred:
Senate Constitutional Amendment No. 8
Has had the same under consideration, and reports the same back with amendments with the recommendation: Amend, and be adopted as amended.
Committee membership 13; committee vote: Ayes 12; absent 1.
KEATING, Vice Chairman

Above reported resolution ordered to second reading.

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CALIFORNIA LEGISLATURE
FIFTY-FOURTH SESSION

SENATE DAILY JOURNAL

THIRTY-NINTH LEGISLATIVE DAY
EIGHTY-SEVENTH CALENDAR DAY

IN SENATE

SENATE CHAMBER, SACRAMENTO
Wednesday, April 2, 1941

The Senate met at 1.30 p.m.
Hon. Ellis E. Patterson, President of the Senate, presiding.
Secretary J. A. Beek at the desk.

ROLL CALL

The roll was called, and the following answered to their names:
Senators Biggar, Breed, Carter, Collier, Cunningham, DeLap, Deuel, Dillinger,
Fletcher, Foley, Garrison, Keating, Kuebel, Mayo, McCormack, Parkman, Rich,
Seawell, Slater, Tickle, and Wagy—21.

Quorum present.

PRAYER

Prayer was offered by the Chaplain, Rev. H. W. Opperman.

LEAVES OF ABSENCE FOR THE DAY

The following Senator was granted leave of absence for the day:
Senator Brown, on motion of Senator Tickle.

GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senators Collier, Metzger, Seawell and Carter, the privilege of the floor of the Senate Chamber for this day was unanimously extended to Jesse Fiddler of Dunsmuir.

On request of Senators Fletcher and DeLap, the privilege of the floor of the Senate Chamber for this day was unanimously extended to Mrs. Philip Baneroft of Walnut Creek.

On request of Senator Fletcher, the privilege of the floor of the Senate Chamber for this day was unanimously extended to Mrs. H. W. Gibbons of Sacramento.

On request of Senator Crittenden, the privilege of the floor of the Senate Chamber for this day was unanimously extended to C. C. DeYoung of Stockton.

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And reports that the same has been correctly enrolled, and presented to the Governor on the second day of April, 1941, at 3.18 p.m.

RICHL, Chairman

Committee on Agriculture

SENATE CHAMBER, SACRAMENTO, April 1, 1941

MR. PRESIDENT: Your Committee on Agriculture, to which was referred:

Senate Bill No. 1049

Has had the same under consideration, and reports the same back with the recommendation: Do pass, and be re-referred to Committee on Finance.

Committee membership 11; committee vote: Ayes 10; absent 1.

CRITTENDEN, Chairman

Above reported bill re-referred to Committee on Finance.

SENATE CHAMBER, SACRAMENTO, April 1, 1941

MR. PRESIDENT: Your Committee on Agriculture, to which was referred:

Assembly Bill No. 1100

Has had the same under consideration, and reports the same back with the recommendation: Do pass.

Committee membership 11; committee vote: Ayes 10; absent 1.

CRITTENDEN, Chairman

Above reported bill ordered to second reading.

SENATE CHAMBER, SACRAMENTO, April 1, 1941

MR. PRESIDENT: Your Committee on Agriculture, to which were referred:

Senate Bill No. 658

Senate Bill No. 660

Senate Bill No. 659

Senate Bill No. 661

Has had the same under consideration, and reports the same back with amendments with the recommendation: Amend, and do pass as amended.

Committee membership 11; committee vote: Ayes 10; absent 1.

CRITTENDEN, Chairman

Above reported bills ordered to second reading.

SENATE CHAMBER, SACRAMENTO, April 1, 1941

MR. PRESIDENT: Your Committee on Agriculture, to which were referred:

Senate Bill No. 728

Senate Bill No. 999

Senate Bill No. 791

Assembly Bill No. 1250

Has had the same under consideration, and reports the same back with amendments with the recommendation: Amend, and re-refer to the committee.

Committee membership 11; committee vote: Ayes 10; absent 1.

CRITTENDEN, Chairman

Above reported bills ordered to second reading.

CONSIDERATION OF DAILY FILE

SECOND READING OF SENATE BILLS

Senate Bill No. 154—An act to amend Sections 26541 and 26542 of the Health and Safety Code, relating to food, and the standards prescribed by the State Board of Public Health in relation thereto.

Bill read second time, ordered engrossed, and to third reading.

Senate Bill No. 463—An act to amend Section 26470 of the Health and Safety Code, relating to adulterated food and the failure to comply with standards of freshness and purity.

Bill read second time, ordered engrossed, and to third reading.

Senate Bill No. 1253—An act to amend Section 10551 of the Health and Safety Code, relating to evidentiary effect of copies of birth, marriage or death records.

Bill read second time, ordered engrossed, and to third reading.

Consideration of Committee Amendments

The following amendments were proposed by the Committee on Financial Institutions:

Amendment No. 1

In line 1 of the title of the printed bill, strike out "Section 42 to", and insert "Article 8, comprising Section 1270, to Chapter 2, Part 2, Division 1, of".

Amendment No. 2

On page 1 of the printed bill, strike out lines 1 and 2; and in line 3, strike out "42. Laws", and insert

"SECTION 1. Article 8, comprising Section 1270, is hereby added to Chapter 2, Part 2, Division 1, of the Insurance Code, to read as follows:

Article 8. Licenses for Loans

1270. Every admitted incorporated insurer may engage in this State in the transactions authorized by this chapter without licenses other than those required by the provisions of this code. Such transactions shall comply with the laws of this State".

Amendment No. 3

On page 1, line 4, of the printed bill, after "credit", insert a period and "Such transactions heretofore or hereafter made by such insurer in accordance with the provisions of this section shall be valid and enforceable. The commissioner shall upon each examination of such insurer make such investigation as he deems advisable in order to determine whether the provisions of this section are being enforced."

Amendment No. 4

On page 1 of the printed bill, strike out lines 5 to 19, inclusive.

Amendments read and adopted.

Bill ordered printed, and re-referred to Committee on Financial Institutions.

Senate Bill No. 559—An act to amend Section 356a of the Political Code, relating to contracts between different State agencies.

Bill read second time, ordered engrossed, and to third reading.

→ **Senate Bill No. 360**—An act to add Part 2, comprising Chapters 1 to 4, inclusive, Sections 16600 to 17101, inclusive, to Division 7, and to add Section 30028 to Division 30 of the Business and Professions Code, thereby consolidating and revising the law relating to the preservation and regulation of competition, and repealing acts and parts of acts specified herein.

Bill read second time.

Consideration of Committee Amendments

The following amendments were proposed by the Committee on Judiciary:

Amendment No. 1

On page 1, lines 19 and 20, of the printed bill, strike out "in that specified county, city, or a part thereof", and insert "therein".

Amendment No. 2

On page 2 of the printed bill, between lines 14 and 15, insert "If the words "or reduce" (following the word "increase") were not effectively deleted from Subdivision 2 of Section 1 of Chapter 530 of the Statutes of 1907 by Section 1 of Chapter 362 of the Statutes of 1909, a combination of capital, skill or acts by two or more persons for the purpose of reducing the price of merchandise or of any commodity is a trust."

Amendment No. 3

On page 9, line 6, of the printed bill, strike out "Price differential", and insert "Locality discrimination".

Amendment No. 4

On page 9, line 23, of the printed bill, strike out "price differentials", and insert "locality discriminations".

Amendment No. 5

On page 9, line 27, of the printed bill, strike out "differentials", and insert "locality discriminations".

Amendments read and adopted.

Bill ordered printed, engrossed, and to third reading.

Senate Bill No. 817—An act to amend Section 1182 of the Penal Code, relating to new trials.

Bill read second time.

Consideration of Committee Amendments

The following amendments were proposed by the Committee on Judiciary:

Amendment No. 1

On page 1, line 10, of the printed bill, strike out "ninety (90)", and insert "one hundred eighty (180)".

Amendment No. 2

On page 1, line 10, of the printed bill, beginning with "the", the first time said word is used in said line, strike out all of the printed matter down to and including "time", on page 1, line 17, and insert "sentence is pronounced".

Amendments read and adopted.

Bill ordered printed, engrossed, and to third reading.

Senate Bill No. 822—An act to repeal Sections 301 to 304, both inclusive, and to amend Section 300 of the Labor Code, all relating to assignment of wages.

Bill read second time, ordered engrossed, and to third reading.

Senate Bill No. 1009—An act to validate the organization and existence of municipal utility districts organized pursuant to an act of the Legislature approved May 23, 1921, as amended, entitled "An act to provide for the organization, incorporation, and government of municipal utility districts to incur bonded indebtedness for the acquisition and construction of works and property, and to levy and collect taxes to pay the principal and interest thereon."

Bill read second time, ordered engrossed, and to third reading.

Senate Bill No. 668—An act to amend Section 587 of the Probate Code, relating to the powers and duties of executors and administrators.

Bill read second time.

Consideration of Committee Amendments

The following amendments were proposed by the Committee on Judiciary:

Amendment No. 1

In line 2 of the title of the printed bill, after "of", insert "guardians,".

Amendment No. 2

On page 1 of the printed bill, strike out lines 5 and 6, and insert "ment over any real".

Amendment No. 3

On page 1, line 9, of the printed bill, after "district or", insert "to any person, firm, association or".

Amendments read and adopted.

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FORTIETH LEGISLATIVE DAY
EIGHTY-EIGHTH CALENDAR DAY

IN SENATE

SENATE CHAMBER, SACRAMENTO
Thursday, April 3, 1941

The Senate met at 1.30 p.m.
Hon. Wm. P. Rich, President pro tempore of the Senate, presiding.
Secretary J. A. Beek at the desk.

ROLL CALL

The roll was called, and the following answered to their names:

Senators Collier, Crittenden, Cunningham, DeLap, Dillinger, Fletcher, Foley, Garrison, Gordon, Jespersen, Judah, Luckey, Mayo, McBride, Mixter, Myhand, Parkman, Powers, Rich, Slater, and Swing—21.

Quorum present.

PRAYER

Prayer was offered by the Chaplain, Rev. H. W. Opperman.

LEAVES OF ABSENCE FOR THE DAY

The following Senators were granted leaves of absence for the day:

Senator Brown, on motion of Senator Tickle.

Senator Shelley, on motion of Senator Foley.

GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Fletcher, the privilege of the floor of the Senate Chamber for this day was unanimously extended to City Councilman Harley Knox of San Diego.

On request of Senator Tickle, the privilege of the floor of the Senate Chamber for this day was unanimously extended to County Clerk Elmer Dowdy, San Benito County, of Hollister.

On request of Senator Slater, the privilege of the floor of the Senate Chamber for this day was unanimously extended to Chairman of Board of Supervisors E. J. Guidotti and Supervisors Joe D. Cox and George Kennedy of Sonoma County.

On request of Senator Slater, the privilege of the floor of the Senate Chamber for this day was unanimously extended to D. B. Walls,

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MOTION TO RECONSIDER

Senator Crittenden moved to reconsider the vote whereby Senate Bill No. 1005 was passed.

Postponement of Reconsideration

On motion of Senator Crittenden, the further consideration of the motion to reconsider the vote whereby Senate Bill No. 1005 was passed, was continued until the next legislative day.

THIRD READING OF SENATE BILLS (RESUMED)

Senate Bill No. 1098—An act to amend Sections 103, 112 and 113 and to repeal Sections 109 and 114 of the Welfare and Institutions Code, relating to the Department of Social Welfare.

Bill read third time.

The roll was called, and the bill passed by the following vote:

AYES—Senators Biggar, Breed, Collier, Crittenden, Cunningham, DeLap, Deuel, Fletcher, Judah, Kenny, Kuchel, Mayo, McCormack, Metzger, Mixer, Parkman, Phillips, Powers, Rich, Seawell, Tickle, Wagy, and Ward—23.

NOES—Senators Carter, Dillinger, Foley, Garrison, Keating, Quinn, Slater, and Swan—8.

Bill ordered transmitted to the Assembly.

Senate Bill No. 1212—An act to amend Sections 1, 2 and 4 of an act entitled "An act creating the California Farm Debt Adjustment Commission, defining its powers and duties and making an appropriation therefor," approved July 16, 1935, relating to farm debt adjustment, including extension of the period of existence of the California Farm Debt Adjustment Commission, membership upon and appointment to the commission, and further definition of the powers and duties of the commission, to take effect immediately.

Bill read third time.

Urgency Clause

Urgency clause read, and adopted by the following vote:

AYES—Senators Biggar, Breed, Carter, Collier, Crittenden, Cunningham, DeLap, Deuel, Dillinger, Fletcher, Foley, Garrison, Gordon, Jespersen, Judah, Keating, Kenny, Kuchel, Luckey, Mayo, McBride, McCormack, Metzger, Mixer, Parkman, Phillips, Powers, Quinn, Rich, Seawell, Slater, Swan, Tickle, Wagy, and Ward—35.

NOES—None.

The roll was called, and the bill passed by the following vote:

AYES—Senators Biggar, Breed, Carter, Collier, Crittenden, Cunningham, DeLap, Deuel, Dillinger, Fletcher, Foley, Garrison, Gordon, Jespersen, Judah, Keating, Kenny, Kuchel, Luckey, Mayo, McBride, McCormack, Metzger, Mixer, Parkman, Phillips, Powers, Quinn, Rich, Seawell, Slater, Swan, Tickle, Wagy, and Ward—35.

NOES—None.

Bill ordered transmitted to the Assembly.

Senate Bill No. 538—An act to amend School Code Section 6.320, relating to the ordering of State textbooks by heads of State institutions.

Bill read third time.

The roll was called, and the bill passed by the following vote:

AYES—Senators Biggar, Breed, Carter, Crittenden, Cunningham, DeLap, Deuel, Dillinger, Fletcher, Garrison, Gordon, Judah, Keating, Kenny, Kuchel, Luckey,

Senate Bill No. 360—An act to add Part 2, comprising Chapters 1 to 4, inclusive, Sections 16600 to 17101, inclusive, to Division 7, and to add Section 30028 to Division 30 of the Business and Professions Code, thereby consolidating and revising the law relating to the preservation and regulation of competition, and repealing acts and parts of acts specified herein.

Bill read third time.

The roll was called, and the bill passed by the following vote:

AYES—Senators Biggar, Breed, Crittenden, Cunningham, DeLap, Deuel, Dillinger, Fletcher, Foley, Gordon, Judah, Keating, Kenny, Kuchel, Luckey, Mayo, McBride, McCormack, Mixer, Myhand, Parkman, Powers, Quinn, Rich, Seawell, Slater, Swan, Tickle, Wagy, and Ward—30.

NOES—None.

Bill ordered transmitted to the Assembly.

THIRD READING OF ASSEMBLY BILLS

Assembly Bill No. 241—An act to amend Section 764 of the Probate Code, relating to sales of real and personal property in probate.

Bill read third time.

The roll was called, and the bill passed by the following vote:

AYES—Senators Biggar, Breed, Collier, Crittenden, Cunningham, DeLap, Deuel, Dillinger, Fletcher, Foley, Gordon, Judah, Keating, Kenny, Kuchel, Luckey, Mayo, McBride, McCormack, Mixer, Myhand, Parkman, Phillips, Powers, Quinn, Rich, Seawell, Slater, Swan, Tickle, Wagy, and Ward—32.

NOES—None.

Bill ordered transmitted to the Assembly.

REQUEST FOR UNANIMOUS CONSENT

Senator Kenny asked for, and was granted, unanimous consent to take up Assembly Concurrent Resolution No. 27, at this time, for consideration.

CONSIDERATION OF ASSEMBLY CONCURRENT RESOLUTION NO. 27

Assembly Concurrent Resolution No. 27—Approving a certain amendment to the charter of the City of Long Beach, State of California, ratified by the qualified electors of said city at a special municipal election held therein on the eighteenth day of March, 1941.

Resolution read.

The roll was called, and the resolution adopted by the following vote:

AYES—Senators Biggar, Breed, Collier, Crittenden, Cunningham, DeLap, Deuel, Dillinger, Fletcher, Foley, Gordon, Judah, Keating, Kenny, Kuchel, Luckey, Mayo, McBride, McCormack, Mixer, Myhand, Parkman, Phillips, Powers, Quinn, Rich, Seawell, Slater, Swan, Tickle, Wagy, and Ward—32.

NOES—None.

Resolution ordered transmitted to the Assembly.

THIRD READING OF SENATE BILLS (OUT OF ORDER)

Senate Bill No. 668—An act to amend Section 587 of the Probate Code, relating to the powers and duties of executors and administrators.

Bill read third time.

The roll was called, and the bill passed by the following vote:

AYES—Senators Biggar, Breed, Collier, Crittenden, Cunningham, DeLap, Deuel, Dillinger, Fletcher, Foley, Gordon, Judah, Keating, Kenny, Kuchel, Luckey, Mayo,

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CALIFORNIA LEGISLATURE
FIFTY-FOURTH SESSION

SENATE DAILY JOURNAL

SEVENTY-THIRD LEGISLATIVE DAY
ONE HUNDRED THIRTY-FIFTH CALENDAR DAY

IN SENATE

SENATE CHAMBER, SACRAMENTO
Tuesday, May 20, 1941

The Senate met at 2 p.m.
Hon. Ellis E. Patterson, President of the Senate, presiding.
Secretary J. A. Beek at the desk.

ROLL CALL

The roll was called, and the following answered to their names:
Senators Biggar, Breed, Brown, Carter, Collier, Crittenden, Cunningham, DeLap, Deuel, Dillinger, Fletcher, Foley, Garrison, Gordon, Jespersen, Judah, Keating, Kenny, Kuchel, Luckey, Mayo, McBride, McCormack, Metzger, Mixer, Myhand, Parkman, Powers, Quinn, Rlich, Seawell, Shelley, Slater, Swan, Swing, Tickle, Wagy, and Ward—38.

Quorum present.

PRAYER

Prayer was offered by the Chaplain, Rev. H. W. Opperman.

LEAVES OF ABSENCE FOR THE DAY

The following Senator was granted leave of absence for the day:
Senator Phillips, on motion of Senator McBride.

GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Slater, the privilege of the floor of the Senate Chamber for this day was unanimously extended to former Assemblyman Frank W. Luttrell of Santa Rosa, former Assemblyman Hubert B. Seudder of Sebastopol, A. L. Lee and Ashton Hayes of Santa Rosa.

On request of Senator Ward, the privilege of the floor of the Senate Chamber for this day was unanimously extended to Clarence Rogers of Santa Barbara.

On request of Senator Seawell, the privilege of the floor of the Senate Chamber for this day was unanimously extended to W. Shepard French of San Francisco.

On request of Senator Breed, the privilege of the floor of the Senate Chamber for this day was unanimously extended to Mrs. Maude Pesante of Oakland.

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On request of Senators Wagy and Seawell, the privilege of the floor of the Senate Chamber for this day was unanimously extended to Mr. and Mrs. James Henderson of Roseville.

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, SACRAMENTO, May 20, 1941

MR. PRESIDENT: I am directed to inform your honorable body that the Assembly on this day passed:

Senate Bill No. 327

ARTHUR A. OHNIMUS, Chief Clerk of the Assembly
By ROBERT J. FINNIE, Assistant Clerk

Above bill ordered enrolled.

ASSEMBLY CHAMBER, SACRAMENTO, May 20, 1941

MR. PRESIDENT: I am directed to inform your honorable body that the Assembly on this day passed:

Senate Bill No. 1338

ARTHUR A. OHNIMUS, Chief Clerk of the Assembly
By J. M. SIMS, JR., Assistant Clerk

Above bill ordered enrolled.

ASSEMBLY CHAMBER, SACRAMENTO, May 16, 1941

MR. PRESIDENT: I am directed to inform your honorable body that the Assembly on this day adopted the report of the Committee on Conference concerning:

Senate Bill No. 363—An act to amend Sections 6320, 6322, 6323, 6324, 6343, 6346, 6360 and 6361 of the Business and Professions Code, and to add Sections 6326, 6348.3 and 6348.5 thereto, relating to boards of law library trustees and law libraries.

ARTHUR A. OHNIMUS, Chief Clerk of the Assembly
By ROBERT J. FINNIE, Assistant Clerk

Above bill ordered enrolled.

ASSEMBLY CHAMBER, SACRAMENTO, May 20, 1941

MR. PRESIDENT: I am directed to inform your honorable body that the Assembly amended, and on this day passed as amended:

Senate Bill No. 360

Senate Bill No. 915

And respectfully requests your honorable body to concur in said amendments.

ARTHUR A. OHNIMUS, Chief Clerk of the Assembly
By ROBERT J. FINNIE, Assistant Clerk

Above bills ordered to unfinished business file.

ASSEMBLY CHAMBER, SACRAMENTO, May 19, 1941

MR. PRESIDENT: I am directed to inform your honorable body that the Assembly on this day adopted:

House Resolution No. 211

Resolved by the Assembly of the State of California, That the Senate be requested to furnish the Assembly a duplicate engrossed copy of Senate Bill No. 895, relating to making the State of California a party to quiet title actions; the original having been lost or misplaced.

ARTHUR A. OHNIMUS, Chief Clerk of the Assembly
By FRANK REED, Assistant Clerk

CALIFORNIA LEGISLATURE
FIFTY-FOURTH SESSION

SENATE DAILY JOURNAL

SEVENTY-FIFTH LEGISLATIVE DAY
ONE HUNDRED THIRTY-SEVENTH CALENDAR DAY

IN SENATE

SENATE CHAMBER, SACRAMENTO
Thursday, May 22, 1941

The Senate met at 2 p.m.
Hon. Ellis E. Patterson, President of the Senate, presiding.
Secretary J. A. Beck at the desk.

ROLL CALL

The roll was called, and the following answered to their names:

Senators Biggar, Breed, Brown, Carter, Collier, Crittenden, Cunningham, DeLap, Deuel, Dillinger, Fletcher, Foley, Garrison, Gordon, Jespersen, Judah, Keating, Kenny, Kuebel, Luckey, Mayo, McBride, McCormack, Mixter, Myhand, Parkman, Phillips, Powers, Quinn, Rich, Seawell, Shelley, Slater, Swan, Swing, Tickle, Wagy, and Ward—38.

Quorum present.

PRAYER

Prayer was offered by the Chaplain, Rev. H. W. Opperman.

LEAVES OF ABSENCE FOR THE DAY

The following Senator was granted leave of absence for the day:
Senator Metzger, on motion of Senator DeLap.

GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Fletcher, the privilege of the floor of the Senate Chamber for this day was unanimously extended to Chas. Martin, President, Security Trust and Savings Bank, and L. W. Christensen, both of San Diego; Allen Greening and Allen Holland, both of East San Diego, Dr. J. R. Scott and R. L. Mueller, both of Chula Vista.

On request of Senator Quinn, the privilege of the floor of the Senate Chamber for this day was unanimously extended to Wm. Early of Los Angeles.

On request of Senators Wagy and Ward, the privilege of the floor of the Senate Chamber for this day was unanimously extended to former Senator Edgar Stow of Santa Barbara.

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herein, authorize the augmentation of the amount available for expenditure for a purpose designated in any schedule set forth for such appropriation in Section 2 by transfer from any of the other designated purposes within the same schedule."

Amendment No. 308

On page 74 of the printed bill, as amended, strike out all of lines 48 to 51, inclusive; and on page 75, strike out all of lines 1 to 17, inclusive, and insert

"Sec. 13.6. The Director of Finance may, upon request of the officer, department, division, bureau, board, commission, or other agency to whom an appropriation is made herein, authorize the augmentation of the amount available for expenditure for a purpose designated in any schedule set forth for such appropriation in Section 2 hereof in the amount of any funds which he estimates will be received by said officer, department, division, bureau, board, commission, or other agency during the Ninety-third and Ninety-fourth Fiscal Years from any other officer, department, division, bureau, or other agency of this State, from any county, city and county or city, or any agency thereof, from the Federal Government, or any agency thereof, from any appropriation made by the Legislature at the Fifty-fourth Session, or from any other source which he determines has not been taken into consideration in said schedule, or is in excess of the amount so taken into consideration."

Amendments read and adopted.

Bill ordered printed, and to third reading.

MOTION TO RE-REFER ASSEMBLY BILL NO. 1855

Senator Crittenden moved that Assembly Bill No. 1855 be re-referred to Committee on Agriculture.

Motion carried.

UNFINISHED BUSINESS

CONSIDERATION OF ASSEMBLY AMENDMENTS

Senate Bill No. 179—An act to repeal Section 791, and to amend section and renumber Section 791.5 to be 791, of the Fish and Game Code, relating to crabs, declaring the urgency of this act, to take effect immediately.

The question being: Shall the Senate concur in the following Assembly amendments to Senate Bill No. 179?

Amendment No. 1

On page 2, line 8, of the printed bill, after the word "not", strike out "less than one hundred".

Amendment No. 2

On page 2, line 9, of the printed bill, strike out "dollars (\$100) nor".

Amendment No. 3

On page 2, line 10, of the printed bill, strike out "less than 50".

Amendment No. 4

On page 2, line 11, of the printed bill, strike out "days nor".

The roll was called, and the Senate concurred in Assembly amendments to Senate Bill No. 179 by the following vote:

AYES—Senators Breed, Brown, Carter, Collier, Crittenden, Cunningham, DeLap, Dillinger, Fletcher, Foley, Gordon, Judah, Keating, Kenny, Kuchel, Luckey, McCormack, Myhand, Parkman, Quinn, Seavell, Shelley, Slater, Swan, Swing, Tickle, Wagy, and Ward—28.

NOES—None.

Above bill ordered enrolled.

→ **Senate Bill No. 360**—An act to add Part 2, comprising Chapters 1 to 4, inclusive, Sections 16600 to 17101, inclusive, to Division 7, and to add Section 30028 to Division 30 of the Business and Professions Code, thereby consolidating and revising the law relating to the preser-



vation and regulation of competition, and repealing acts and parts of acts specified herein.

The question being: Shall the Senate concur in the following Assembly amendments to Senate Bill No. 360?

Amendment No. 1

On page 6 of the printed bill, as amended, strike out lines 43 to 52, inclusive.

Amendment No. 2

On page 14, line 38, of the printed bill, as amended, strike out "1907 530 981".

The roll was called, and the Senate concurred in Assembly amendments to Senate Bill No. 360 by the following vote:

AYES—Senators Breed, Brown, Carter, Collier, Crittenden, Cunningham, DeLap, Dillinger, Fletcher, Foley, Gordon, Judah, Keating, Kenny, Kuebel, McCormack, Mixer, Parkman, Powers, Quinn, Rich, Seawell, Shelley, Slater, Swan, Swing, Tickle, and Wagy—28.

NOES—None.

Above bill ordered enrolled.

WITHDRAWAL FROM COMMITTEE OF SENATE BILL NO. 981

Senator Gordon moved that Senate Bill No. 981 be withdrawn from Committee on Agriculture for purpose of amendment.

Motion carried.

SECOND READING OF SENATE BILLS (OUT OF ORDER)

Senate Bill No. 981—An act to amend Section 11 of an act entitled "An act to restrict the running of dogs at large; to protect live stock from depredations of dogs; to provide for the issuance of dog license tags by counties and the disposition of funds received as fees therefor; making the violation of the provisions of this act a misdemeanor and providing penalties therefor and providing for the collection of damages by owners of live stock injured by dogs," approved June 3, 1921, relating to the disposition of funds.

Bill read second time.

Motion to Amend

Senator Gordon moved the adoption of the following amendments:

Amendment No. 1

In line 4 of the title of the printed bill, after "counties", insert a comma.

Amendment No. 2

In line 7 of the title of the printed bill, after "therefor", insert a comma.

Amendment No. 3

In line 9 of the title of the printed bill, strike out "disposition of funds.", and insert "enforcement of this act and the payment of fees, salaries, costs, and expenses therefor from live stock indemnity funds, declaring the urgency thereof and providing that this act shall take effect immediately."

Amendment No. 4

On page 1, line 6, of the printed bill, strike out "may", and insert "shall".

Amendment No. 5

On page 1 of the printed bill, strike out lines 8 and 9, and insert "second, notwithstanding any other provision of this act or of any other law, to pay fees, salaries, costs, expenses, or any or all of them (which the board of supervisors is hereby authorized to do) for the enforcement of this act and all ordinances made pursuant to this act;"

CALIFORNIA LEGISLATURE
FIFTY-FOURTH SESSION

SENATE DAILY JOURNAL

SEVENTY-SEVENTH LEGISLATIVE DAY
ONE HUNDRED FORTY-FIRST CALENDAR DAY

IN SENATE

SENATE CHAMBER, SACRAMENTO
Monday, May 26, 1941

The Senate met at 2 p.m.
Hon. Ellis E. Patterson, President of the Senate, presiding.
Secretary J. A. Beek at the desk.

ROLL CALL

The roll was called, and the following answered to their names:

Senators Biggar, Breed, Brown, Collier, Crittenden, Cunningham, DeLap, Dillinger, Fletcher, Foley, Garrison, Gordon, Jespersen, Judah, Keating, Kenny, Kuebel, Luckey, Mayo, McBride, McCormuck, Metzger, Mixter, Myhand, Parkman, Phillips, Quinn, Rich, Seawell, Shelley, Slater, Swan, Swing, Tickle, Waggy, and Ward—36.

Quorum present.

PRAYER

Prayer was offered by the Chaplain, Rev. H. W. Opperman.

LEAVES OF ABSENCE FOR THE DAY

The following Senators were granted leaves of absence for the day:
Senator Powers, on motion of Senator Keating.
Senator Deuel, on motion of Senator Mayo.

GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senators Fletcher and Swan, the privilege of the floor of the Senate Chamber for this day was unanimously extended to Mr. and Mrs. Joseph Mento of Sacramento.

On request of Senator Myhand, the privilege of the floor of the Senate Chamber for this day was unanimously extended to Frank Duncan, Inspector, California Highway Patrol, and Richard Shaffer, both of Merced.

On request of Senator Jespersen, the privilege of the floor of the Senate Chamber for this day was unanimously extended to Reverend F. H. Menzel of San Francisco.

On request of Senator Biggar, the privilege of the floor of the Senate Chamber for this day was unanimously extended to Jay D. O'Dell,

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**FIRST READING AND REFERENCE OF ASSEMBLY BILLS
(RESUMED)**

The following resolution was read:

Assembly Concurrent Resolution No. 53—Relative to reports of the annual conventions or encampments of the Veterans of Foreign Wars of the Department of California.

Request for Unanimous Consent

Senator Slater asked for, and was granted, unanimous consent to take up Assembly Concurrent Resolution No. 53, at this time, for consideration.

CONSIDERATION OF ASSEMBLY CONCURRENT RESOLUTION NO. 53

Assembly Concurrent Resolution No. 53—Relative to reports of the annual conventions or encampments of the Veterans of Foreign Wars of the Department of California.

Resolution read.

The roll was called, and the resolution adopted by the following vote:

AYES—Senators Breed, Brown, Crittenden, Cunningham, Fletcher, Foley, Gordon, Judah, Kenny, Kuehel, Luckey, Mayo, McBride, McCormack, Myhand, Phillips, Rich, Seawell, Slater, Tickle, Wagy, and Ward—22.
NOES—None.

Resolution ordered transmitted to the Assembly.

**FIRST READING AND REFERENCE OF ASSEMBLY BILLS
(RESUMED)**

The following resolution was read:

Assembly Concurrent Resolution No. 54—Relating to relief for aliens.

Request for Unanimous Consent

Senator Phillips asked for, and was granted, unanimous consent to take up Assembly Concurrent Resolution No. 54, at this time, for consideration.

CONSIDERATION OF ASSEMBLY CONCURRENT RESOLUTION NO. 54

Assembly Concurrent Resolution No. 54—Relating to relief for aliens.

Resolution read.

The roll was called, and the resolution adopted by the following vote:

AYES—Senators Biggar, Breed, Brown, Collier, Crittenden, Cunningham, DeLap, Fletcher, Foley, Gordon, Judah, Keating, Kenny, Kuehel, Luckey, Mayo, McBride, McCormack, Mixer, Myhand, Parkman, Phillips, Rich, Seawell, Slater, Swing, Tickle, Wagy, and Ward—29.
NOES—None.

Resolution ordered transmitted to the Assembly.

REPORTS OF STANDING COMMITTEES

Committee on Rules

SENATE CHAMBER, SACRAMENTO, May 23, 1941

MR. PRESIDENT: Your Committee on Rules has examined:

Senate Bill No. 17

Senate Bill No. 395

Senate Bill No. 784

Senate Bill No. 1207

Senate Bill No. 1339

Senate Bill No. 641

And reports the same correctly engrossed.

RICH, Chairman

SENATE CHAMBER, SACRAMENTO, May 23, 1941

MR. PRESIDENT: Your Committee on Rules has examined:

Senate Bill No. 1013

And reports the same correctly re-engrossed.

RICII, Chairman

SENATE CHAMBER, SACRAMENTO, May 23, 1941

MR. PRESIDENT: Your Committee on Rules has examined:

Senate Bill No. 179—An act to repeal Section 791, and to amend section and renumber Section 791.5 to be 791, of the Fish and Game Code, relating to crabs, declaring the urgency of this act, to take effect immediately;

Senate Bill No. 360—An act to add Part 2, comprising Chapters 1 to 4, inclusive, Sections 16600 to 17101, inclusive, to Division 7, and to add Section 30028 to Division 30 of the Business and Professions Code, thereby consolidating and revising the law relating to the preservation and regulation of competition, and repealing acts and parts of acts specified herein;

Senate Bill No. 1276—An act to amend Section 4254 of the Political Code, relating to the compensation for public services in counties of the twenty-fifth class; And reports that the same have been correctly enrolled, and presented to the Governor on the twenty-third day of May, 1941, at 12 m.

RICII, Chairman

SENATE CHAMBER, SACRAMENTO, May 26, 1941

MR. PRESIDENT: Your Committee on Rules has examined:

Senate Bill No. 1316

And reports the same correctly engrossed.

RICII, Chairman

Committee on Welfare and Institutions

SENATE CHAMBER, SACRAMENTO, May 23, 1941

MR. PRESIDENT: Your Committee on Welfare and Institutions, to which was referred:

Assembly Bill No. 242

Has had the same under consideration, and reports the same back with the recommendation: Do pass.

Committee membership 11; committee vote: Ayes 10; absent 1.

PHILLIPS, Chairman

Above reported bill ordered to second reading.

Committee on Water Resources

SENATE CHAMBER, SACRAMENTO, May 23, 1941

MR. PRESIDENT: Your Committee on Water Resources, to which was referred:

Assembly Bill No. 1795

Has had the same under consideration, and reports the same back with amendments with the recommendation: Amend, and do pass as amended.

Committee membership 8; committee vote: Ayes 7; absent 1.

GARRISON, Chairman

Above reported bill ordered to second reading.

SENATE CHAMBER, SACRAMENTO, May 23, 1941

MR. PRESIDENT: Your Committee on Water Resources, to which were referred:

Senate Bill No. 1329

Assembly Bill No. 1652

Assembly Bill No. 1650

Has had the same under consideration, and reports the same back with the recommendation: Do pass.

Committee membership 8; committee vote: Ayes 7; absent 1.

GARRISON, Chairman

Above reported bills ordered to second reading.



Journal of the Assembly

Legislature of the State of California

Fifty-fourth Session

1941

First Part of Session, January sixth to January twenty-fifth, inclusive
Second Part of Session, March third to June fourteenth, inclusive

Honorable Gordon H. Garland, Speaker
Arthur A. Ohnimus, Chief Clerk

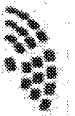


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CALIFORNIA LEGISLATURE
FIFTY-FOURTH SESSION

ASSEMBLY DAILY JOURNAL

FORTY-FIRST LEGISLATIVE DAY
EIGHTY-NINTH CALENDAR DAY

IN ASSEMBLY

ASSEMBLY CHAMBER, SACRAMENTO
Friday, April 4, 1941

The Assembly met at 2 p.m.
Hon. Gordon H. Garland, Speaker of the Assembly, presiding.
Chief Clerk Arthur A. Ohnimus at the desk.

ROLL CALL

The roll was called, and the following answered to their names:

Allen, Andrews, Bashore, Bennett, Burkhalter, Burns, Michael J., Cain, Call, Carlson, Clarke, Cooke, Cronin, Crowley, Daley, Del Mutolo, Desmond, Dickey, Dills, Dilworth, Donnelly, Doyle, Evans, Field, Gaffney, Gunlock, Hastain, Hawkins, Heisinger, Houser, Frederick F. Johnson, Kepple, Kilpatrick, King, Knight, John B. Knight, T. Fenton; Leonard, Lowrey, Massion, McCollister, Middough, Miller, Millington, Pelletter, Pfaff, Phillips, Poole, Pomson, Riche, Robertson, Russell, Salsman, Sheridan, Tenney, Thomas, Thorp, Thurman, Turner, Voigt, Waters, Watson, Weber, Welch, Weyhaet, Wollenberg, and Mr. Speaker—65.

Quorum present.

PRAYER

Prayer was offered by the Chaplain, Rev. Thomas H. Markham.

READING OF THE JOURNAL DISPENSED WITH

During the reading of the Journal of the previous legislative day, further reading was dispensed with, on motion of Mr. Welch.

LEAVES OF ABSENCE FOR THE DAY

The following members were granted leaves of absence for the day:

- Mr. F. N. Howser, on motion of Mr. Robertson.
- Mr. Sam L. Collins, on motion of Mr. Waters.
- Mr. Stream, on motion of Mrs. Daley.
- Mr. Cassidy, on motion of Mr. Carlson.

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→ **Senate Bill No. 360**—An act to add Part 2, comprising Chapters 1 to 4, inclusive, Sections 16600 to 17101, inclusive, to Division 7, and to add Section 30028 to Division 30 of the Business and Professions Code, thereby consolidating and revising the law relating to the preservation and regulation of competition, and repealing acts and parts of acts specified herein.

Referred to Committee on Judiciary Codes.

Senate Bill No. 538—An act to amend School Code Section 6.320, relating to the ordering of State textbooks by heads of State institutions.

Referred to Committee on Education.

Senate Bill No. 563—An act to amend Section 67.1 of the Alcoholic Beverage Control Act, relating to the tax on wine used for industrial purposes.

Referred to Committee on Public Morals.

Senate Bill No. 668—An act to amend Section 587 and Section 1515 of the Probate Code, relating to the powers and duties of guardians, executors and administrators.

Referred to Committee on Judiciary Codes.

Senate Bill No. 679—An act to amend Sections 820, 822 and 823 of, and to add Section 820.5 to, the Streets and Highways Code, relating to cooperation with the United States, declaring the urgency thereof, and providing that this act shall take effect immediately.

Referred to Committee on Governmental Efficiency and Economy.

Senate Bill No. 760—An act to amend Section 7110 of the Business and Professions Code, relating to the regulation of contractors.

Referred to Committee on Governmental Efficiency and Economy.

Senate Bill No. 761—An act to add Sections 7028.5, 7065.5, 7074, 7106.5, 7121 and 7137, and Article 9, consisting of Sections 7140 to 7145, inclusive, to Chapter 9 of Division 3 of, and to amend Sections 7002, 7026, 7059, 7068, 7069 and 7090 of, and to repeal Sections 7055, 7056, 7057, 7058, 7074, 7137, 7138 and 7139 of, the Business and Professions Code, relating to the regulation of contractors.

Referred to Committee on Governmental Efficiency and Economy.

Senate Bill No. 1009—An act to validate the organization and existence of municipal utility districts organized pursuant to an act of the Legislature approved May 23, 1921, as amended, entitled "An act to provide for the organization, incorporation, and government of municipal utility districts to incur bonded indebtedness for the acquisition and construction of works and property, and to levy and collect taxes to pay the principal and interest thereon."

Referred to Committee on Municipal Corporations.

Senate Bill No. 1098—An act to amend Sections 103, 112 and 113 and to repeal Sections 109 and 114 of the Welfare and Institutions Code, relating to the Department of Social Welfare.

Referred to Committee on Social Service and Welfare.

CALIFORNIA LEGISLATURE
FIFTY-FOURTH SESSION

ASSEMBLY DAILY JOURNAL

FIFTY-FIRST LEGISLATIVE DAY
ONE HUNDRED SECOND CALENDAR DAY

IN ASSEMBLY

ASSEMBLY CHAMBER, SACRAMENTO
Thursday, April 17, 1941

The Assembly met at 1.30 p.m.
Hon. Gordon H. Garland, Speaker of the Assembly, presiding.
Chief Clerk Arthur A. Ohnimus at the desk.

ROLL CALL

The roll was called, and the following answered to their names:

Bashore, Bennett, Burkhalter, Cain, Clarke, Collins, Sam L. Cooke, Cronin, Desmond, Dickey, Dilworth, Donnelly, Doyle, Field, Gallagher, Gunlock, Hastam, Heisinger, Houser, Frederick F., Howser, E. N. Johnson, Kilpatrick, Knight, John B. Knight, T. Fenton; Leonard, Lowrey, Maloney, Meehan, Miller, Millington, O'Day, Pelletier, Pfaff, Poole, Potter, Richie, Robertson, Russell, Salsman, Sheridan, Stream, Tenney, Thomas, Thurman, Waters, Watson, Weber, and Mr. Speaker—48.

Quorum present.

Call of the Assembly

Mr. Field moved a call of the Assembly.

Motion carried.

The Speaker directed the Sergeant-at-Arms to close the doors, and to bring in the absent members.

**PROCEEDINGS UNDER CALL OF THE ASSEMBLY
BY UNANIMOUS CONSENT**

PRAYER

Upon invitation of the Speaker, prayer was offered by Rev. Richard C. Dwyer.

READING OF THE JOURNAL DISPENSED WITH

During the reading of the Journal of the previous legislative day, further reading was dispensed with, on motion of Mr. Robertson.

LEAVES OF ABSENCE FOR THE DAY

The following member was granted leave of absence for the day:

Mr. Middough, on motion of Mr. F. N. Howser.

LEGISLATIVE INTENT SERVICE (800) 666-1917



ASSEMBLY CHAMBER, SACRAMENTO, April 16, 1941

MR. SPEAKER: Your Committee on Governmental Efficiency and Economy, to which were referred:

- Assembly Bill No. 1731
- Assembly Bill No. 1882

Has had the same under consideration, and reports the same back with amendments with the recommendation: Amend, and do pass as amended.

FIELD, Chairman

Above reported bills ordered to second reading.

ASSEMBLY CHAMBER, SACRAMENTO, April 16, 1941

MR. SPEAKER. Your Committee on Governmental Efficiency and Economy, to which were referred:

- | | |
|------------------------|------------------------|
| Assembly Bill No. 120 | Assembly Bill No. 1885 |
| Assembly Bill No. 948 | Assembly Bill No. 2111 |
| Assembly Bill No. 952 | Assembly Bill No. 2514 |
| Assembly Bill No. 1541 | Senate Bill No. 908 |
| Assembly Bill No. 1577 | |

Has had the same under consideration, and reports the same back with the recommendation: Do pass.

FIELD, Chairman

Above reported bills ordered to second reading.

Committee on Judiciary Codes

ASSEMBLY CHAMBER, SACRAMENTO, April 17, 1941

MR. SPEAKER Your Committee on Judiciary Codes, to which were referred:

- | | |
|------------------------|----------------------|
| Assembly Bill No. 2130 | Senate Bill No. 1287 |
| Assembly Bill No. 2589 | Senate Bill No. 363 |
| Senate Bill No. 360 | |

Has had the same under consideration, and reports the same back with amendments with the recommendation: Amend, and do pass as amended.

PHILLIPS, Chairman

Above reported bills ordered to second reading.

ASSEMBLY CHAMBER, SACRAMENTO, April 17, 1941

MR. SPEAKER: Your Committee on Judiciary Codes, to which were referred:

- Assembly Bill No. 1871
- Assembly Bill No. 240

Has had the same under consideration, and reports the same back with amendments with the recommendation: Amend, and re-refer to the committee.

PHILLIPS, Chairman

Above reported bills ordered to second reading.

ASSEMBLY CHAMBER, SACRAMENTO, April 17, 1941

MR. SPEAKER: Your Committee on Judiciary Codes, to which were referred:

- | | |
|------------------------|---------------------|
| Assembly Bill No. 2524 | Senate Bill No. 866 |
| Assembly Bill No. 2580 | Senate Bill No. 668 |
| Assembly Bill No. 2133 | Senate Bill No. 674 |
| Senate Bill No. 502 | Senate Bill No. 675 |
| Senate Bill No. 667 | Senate Bill No. 743 |
| Senate Bill No. 495 | Senate Bill No. 882 |
| Senate Bill No. 496 | Senate Bill No. 883 |

Has had the same under consideration, and reports the same back with the recommendation: Do pass.

PHILLIPS, Chairman

Above reported bills ordered to second reading.

LEGISLATIVE INTENT SERVICE (800) 666-1917



CALIFORNIA LEGISLATURE
FIFTY-FOURTH SESSION

ASSEMBLY DAILY JOURNAL

FIFTY-SECOND LEGISLATIVE DAY
ONE HUNDRED THIRD CALENDAR DAY

IN ASSEMBLY

ASSEMBLY CHAMBER, SACRAMENTO
Friday, April 18, 1941

The Assembly met at 10 a.m.
Hon. Earl D. Desmond, Speaker pro tempore of the Assembly, pre-
siding.
Chief Clerk Arthur A. Ohnimus at the desk.

ROLL CALL

The roll was called, and the following answered to their names:

Bashore, Burkhalter, Burns, Michael J., Cain, Call, Carlson, Collins, Sam L.,
Cooke, Daley, Del Mutolo, Desmond, Dickey, Doyle, Houser, Frederick F., Kil-
patrick, Knight, John B., Maloney, McCollister, Meehan, Miller, Pelletier, Phillips,
Tenney, Thomas, Thorp, Turner, Waters, and Welch—28.

Call of the Assembly

Mr. Call moved a call of the Assembly.
Motion carried. Time, 10.05 a.m.
The Speaker directed the Sergeant-at-Arms to close the doors, and to
bring in the absent members.

FURTHER PROCEEDINGS UNDER CALL OF THE ASSEMBLY
DISPENSED WITH

At 10.10 a.m., on motion of Mr. Call, further proceedings under the
call of the Assembly were dispensed with.

The names of the absentees were called, and the following answered
to their names:

Bashore, Bennett, Burkhalter, Burns, Michael J., Cain, Call, Carlson, Cassidy,
Clarke, Collins, Sam L., Cooke, Daley, Del Mutolo, Desmond, Dickey, Dills, Dil-
worth, Doyle, Field, Gunlock, Heisinger, Houser, Frederick F., Howser, F. N., Kil-
patrick, Knight, John B., Knight, T. Fenton; Maloney, McCollister, Meehan, Miller,
Pelletier, Pfaff, Phillips, Richie, Tenney, Thomas, Thorp, Thurman, Turner, Voigt,
Waters, and Welch—42.

Quorum present.

PRAYER

Prayer was offered by the Chaplain, Rev. Thomas H. Markham.

LEGISLATIVE INTENT SERVICE (800) 666-1917



2815, 2816 and 3281 of, to add Section 2041.5 to, and to repeal Sections 1652 and 2865 of, the Water Code, relating to water and the determination and administration of water rights.

Bill read second time, and ordered to third reading.

Senate Bill No. 1045—An act to amend Section 4251 of, and to add Sections 4200.5, 4300.5 and 4351.5 to, the Water Code, or to amend Sections 4, 5 and 9 of an act entitled "An act providing for the supervision of dams by the Department of Public Works through the State Engineer for the purpose of safeguarding life and property, defining powers and duties concerning the supervision of dams, providing for the enforcement of said supervision and providing penalties for violation thereof and making an appropriation therefor," approved June 10, 1929, as amended, relating to maintenance and operation of dams.

Bill read second time, and ordered to third reading.

Senate Bill No. 117—An act to repeal Sections 2.464, 2.465, 6.383 and 6.384 of, to amend Sections 2.505, 3.301 and 4.250 of, and to add Sections 3.321, 3.222, 3.323, 3.324 and 3.325 to, the School Code, all relating to the payment of the costs of providing for the education of high school pupils not residing in a high school or unified school district.

Bill read second time, and ordered to third reading.

Senate Bill No. 171—An act to amend Section 2.461 of, to repeal Sections 2.462, 2.463, 2.464 and 2.465 of, and to add a new section to be numbered 2.462 to, the School Code, all relating to annexation of elementary school districts on petition from a high school board.

Bill read second time, and ordered to third reading.

Senate Bill No. 517—An act to add Section 1.253 to the School Code, relating to assistant county supervisor of attendance.

Bill read second time, and ordered to third reading.

→ **Senate Bill No. 360**—An act to add Part 2, comprising Chapters 1 to 4, inclusive, Sections 16600 to 17101, inclusive, to Division 7, and to add Section 30028 to Division 30 of the Business and Professions Code, thereby consolidating and revising the law relating to the preservation and regulation of competition, and repealing acts and parts of acts specified herein.

Bill read second time.

Consideration of Committee Amendments

The following amendments were proposed by the Committee on Judiciary Codes:

Amendment No. 1

On page 6 of the printed bill, as amended, strike out lines 43 to 52, inclusive.

Amendment No. 2

On page 14, line 38, of the printed bill, as amended, strike out "1907 530 984".

Amendments read and adopted.

Bill ordered printed, and to third reading.

Senate Bill No. 1287—An act to add Section 65 to the Penal Code, relating to solicitations on behalf of initiative petitions.

Bill read second time.



CALIFORNIA LEGISLATURE
FIFTY-FOURTH SESSION

ASSEMBLY DAILY JOURNAL

SEVENTY-SECOND LEGISLATIVE DAY
ONE HUNDRED THIRTIETH CALENDAR DAY

IN ASSEMBLY

ASSEMBLY CHAMBER, SACRAMENTO

Thursday, May 15, 1941

The Assembly met at 10.30 a.m.

Hon. Gordon H. Garland, Speaker of the Assembly, presiding.

Chief Clerk Arthur A. Ohnumus at the desk.

ROLL CALL

The roll was called, and the following answered to their names:

Andrus, Bashore, Bennett, Burkhalter, Burns, Michael J., Cam, Call, Carlson, Clarke, Collins, Sam L., Cooke, Cronin, Daley, Dickey, Donnelly, Doyle, Gaffney, Gallagher, Green, Hawkins, Heisinger, Houser, Frederick F., Howser, F. N., Johnson, Kellems, Knight, John B., Knight, T. Fenton; Leonard, Lowrey, Lyon, Maloney, Massion, McCollister, Miller, Pelletier, Phillips, Potter, Robertson, Stream, Thomas, Thorp, Thurman, Turner, Voigt, Waters, Watson, Weber, Welch, Weybret, and Mr. Speaker—50.

Quorum present.

PRAYER

Prayer was offered by the Chaplain, Rev. Thomas H. Markham.

READING OF THE JOURNAL DISPENSED WITH

During the reading of the Journal of the previous legislative day, further reading was dispensed with, on motion of Mr. McCollister.

LEAVES OF ABSENCE FOR THE DAY

The following member was granted leave of absence for the day:

Mr. Cassidy, on motion of Mr. Green.

REPORTS OF STANDING COMMITTEES

Committee on Universities

ASSEMBLY CHAMBER, SACRAMENTO, May 15, 1941

MR. SPEAKER: Your Committee on Universities, to which were referred.

Assembly Bill No. 2155

Assembly Bill No. 2018

Has had the same under consideration, and reports the same back with amendments with the recommendation. Amend, and do pass as amended, and be re-referred to Committee on Ways and Means.

KELLEMS, Chairman

Above reported bills ordered to second reading.

The roll was called, and the bill passed by the following vote:

AYES—Allen, Andrews, Bashore, Bennett, Burkhalter, Burns, Hugh M., Burns, Michael J., Call, Carlson, Clarke, Collins, George D., Collins, Sam L., Cooke, Cronin, Crowley, Daley, Del Mutolo, Desmond, Dickey, Dills, Dilworth, Donnelly, Doyle, Evans, Field, Gaffney, Gallagher, Green, Gunlock, Hastain, Hawkins, Heisinger, Houser, Frederick F., Howser, F. N., Johnson, Kellems, Kepple, Kilpatrick, Knight, T. Fenton, Leonard, Lowrey, Lyon, Maloney, Massion, McCollister, Meehan, Middough, Miller, Millington, O'Day, Pelletier, Pfaff, Phillips, Poole, Potter, Poulson, Richie, Robertson, Russell, Salsman, Sawallisch, Sheridan, Stream, Thomas, Thorp, Thurman, Turner, Voigt, Waters, Watson, Weber, Welch, Weichert, and Wollenberg—74

NOES—None.

Notice of Motion to Reconsider Senate Bill No. 360

Mr. Johnson gave notice that on the next legislative day he would move to reconsider the vote whereby Senate Bill No. 360 was this day passed

COMMUNICATIONS

The following communication was received, and on motion of Mr. Hugh M. Burns, ordered printed in the Journal:

CALIFORNIA CODE COMMISSION
Sacramento, California, May 10, 1941

Hon. Hugh M. Burns, Assembly Chambers
State Capitol, Sacramento, California

SUBJECT: Senate Bill No. 360

DEAR MR. BURNS: This bill, among other things, codifies the Cartwright Anti-Trust Act. As indicated in the Code Commission's report of January 11, 1941, at pages 10 and 11, a special problem is presented because of a possible invalidity of the 1909 amendments, or of a portion thereof, to the Cartwright Act, a question not yet determined by our courts.

Accordingly, the commission included in the article which codifies this act a certain declaration as to separability (the first two sentences of Section 16701) calculated to preserve this question for determination by the courts, as explained in said report of the commission.

Subsequent to introduction of Senate Bill No. 360, it developed that this clause could be strengthened by amplification. This was done upon recommendation of the commission by the amendment of April 2, 1941, adding a sentence to said section, the last sentence of Section 16701 in its present form. In addition, upon recommendation of the commission and in furtherance of the same purpose, the express repeal of the Cartwright Act has been deleted from the bill. This was done on April 18, 1941.

Through this means, the Cartwright Act can be codified with assurance that the question as to the constitutionality of the 1909 amendments to that act can be considered and determined by the courts with the same effect in law after codification as prior to codification.

Very truly yours,

CALIFORNIA CODE COMMISSION
By FRED B. WOOD, Secretary

THIRD READING OF SENATE BILLS (RESUMED)

Senate Bill No. 563—An act to amend Section 67.1 of the Alcoholic Beverage Control Act, relating to the tax on wine used for industrial purposes

Bill read third time

The roll was called, and the bill passed by the following vote.

AYES—Allen, Andrews, Bashore, Bennett, Burkhalter, Burns, Hugh M., Burns, Michael J., Call, Carlson, Clarke, Collins, George D., Collins, Sam L., Cooke, Cronin, Crowley, Daley, Del Mutolo, Desmond, Dickey, Donnelly, Doyle, Evans, Field, Gaffney, Gallagher, Green, Gunlock, Hastain, Hawkins, Heisinger, Houser, Frederick F., Howser, F. N., Johnson, Kellems, Kepple, Kilpatrick, Knight, John B., Knight, T. Fenton, Leonard, Maloney, Massion, McCollister, Meehan, Middough, Millington, O'Day, Pelletier, Pfaff, Phillips, Poole, Potter, Poulson, Richie, Robert-



CALIFORNIA LEGISLATURE
FIFTY-FOURTH SESSION

ASSEMBLY DAILY JOURNAL

SEVENTY-FIFTH LEGISLATIVE DAY
ONE HUNDRED THIRTY-FOURTH CALENDAR DAY

IN ASSEMBLY

ASSEMBLY CHAMBER, SACRAMENTO

Monday, May 19, 1941

The Assembly met at 10.30 a m.

Hon. Gordon H Garland, Speaker of the Assembly, presiding.

Chief Clerk Arthur A. Ohmimus at the desk.

ROLL CALL

The roll was called, and the following answered to their names:

Andreas, Bushore, Bennett, Burkhalter, Burns, Michael J., Cain, Call, Clarke, Cooke, Daley, Desmond, Dilworth, Donnelly, Doyle, Evans, Field, Gaffney, Green, Hastan, Hawkins, Heisinger, Houser, Frederick F., Johnson, Kellems, Kepple, Knight, T. Fenton; Lowrey, Lyon, Maloney, Massion, McCollister, Middough, Miller, Pelletier, Pfaff, Phillips, Potter, Robertson, Salsman, Stream, Watson, Welch, Wollenberg, and Mr. Speaker—44.

Quorum present.

PRAYER

Prayer was offered by the Chaplain, Rev. Thomas H. Markham.

READING OF THE JOURNAL DISPENSED WITH

During the reading of the Journal of the previous legislative day, further reading was dispensed with, on motion of Mr. Stream.

LEAVES OF ABSENCE FOR THE DAY

The following members were granted leaves of absence for the day:

Mr. F. N. Howser, on motion of Mr. Robertson.

Mr. Gunlock, on motion of Mr. Cain.

Mr. Cassidy, on motion of Mr. Maloney.



Dickey, Dills, Dilworth, Donnelly, Doyle, Evans, Field, Gaffney, Gallagher, Hastain, Hawkins, Heisinger, Houser, Frederick F. Johnson, Kellems, Kepple, Kilpatrick, Knight, T. Fenton, Leonard, Lowrey, Lyon, Maloney, Massion, McCollister, Meehan, Middough, Miller, Millington, O'Day, Pelletier, Pfaff, Phillips, Potter, Richie, Robertson, Russell, Salsman, Sawallisch, Sheridan, Stream, Tenney, Thorp, Thurman, Turner, Voigt, Watson, Weber, Welch, Weybret, and Wollenberg—64

NOES—None.

Resolution ordered transmitted to the Senate.

Assembly Bill No. 1664—An act to amend Section 664 of the Political Code, empowering the State Board of Control to prescribe by rule and regulation limitations upon amounts to be expended by officers, agents and employees of the State while traveling on official business of the State.

Bill read third time.

The roll was called, and the bill passed by the following vote:

AYES—Allen, Bennett, Burkhalter, Burns, Hugh M. Burns, Michael J. Cain, Call, Clarke, Collins, George D., Cronin, Crowley, Daley, Del Mutolo, Dickey, Dills, Dilworth, Donnelly, Doyle, Evans, Field, Gaffney, Gallagher, Hastain, Hawkins, Heisinger, Houser, Frederick F., Johnson, Kellems, Kepple, Kilpatrick, King, Knight, T. Fenton; Leonard, Lowrey, Lyon, Maloney, Massion, McCollister, Meehan, Middough, Miller, Millington, O'Day, Pelletier, Pfaff, Phillips, Potter, Richie, Russell, Salsman, Sawallisch, Sheridan, Stream, Tenney, Thorp, Thurman, Turner, Voigt, Watson, Weber, Welch, Weybret, and Wollenberg—63.

NOES—None.

Bill ordered transmitted to the Senate

Assembly Bill No. 1662—An act to amend Section 352 of the Political Code, relating to the traveling expenses of State officers and employees.

Bill read third time.

The roll was called, and the bill passed by the following vote:

AYES—Allen, Bennett, Burkhalter, Burns, Michael J. Cain, Call, Clarke, Collins, George D., Cronin, Crowley, Del Mutolo, Desmond, Dickey, Dills, Dilworth, Donnelly, Doyle, Evans, Field, Gaffney, Gallagher, Hastain, Hawkins, Heisinger, Houser, Frederick F., Johnson, Kellems, Kilpatrick, King, Knight, T. Fenton; Leonard, Lowrey, Lyon, Maloney, Massion, McCollister, Meehan, Middough, Miller, Millington, O'Day, Pelletier, Pfaff, Phillips, Potter, Richie, Robertson, Russell, Salsman, Sawallisch, Sheridan, Stream, Tenney, Thorp, Thurman, Turner, Voigt, Watson, Weber, Welch, Weybret, and Wollenberg—62.

NOES—None

Bill ordered transmitted to the Senate.

**NOTICE OF MOTION TO RECONSIDER ASSEMBLY BILL
NO. 1355 WAIVED**

Mr. Frederick F. Houser waived his notice of motion to reconsider the vote whereby Assembly Bill No. 1355 was passed.

Assembly Bill No. 1355 ordered transmitted to the Senate.

→ **NOTICE OF MOTION TO RECONSIDER SENATE BILL NO. 360 WAIVED**

Mr. Johnson waived his notice of motion to reconsider the vote whereby Senate Bill No. 360 was passed

Senate Bill No. 360 ordered transmitted to the Senate.



CALIFORNIA LEGISLATURE
FIFTY-FOURTH SESSION

ASSEMBLY DAILY JOURNAL

SEVENTY-EIGHTH LEGISLATIVE DAY
ONE HUNDRED THIRTY-SEVENTH CALENDAR DAY

IN ASSEMBLY

ASSEMBLY CHAMBER, SACRAMENTO
Thursday, May 22, 1941

The Assembly met at 10 30 a.m.
Hon. Gordon H. Garland, Speaker of the Assembly, presiding.
Chief Clerk Arthur A Ohnimus at the desk.

ROLL CALL

The roll was called, and the following answered to their names :

Allen, Andreas, Bennett, Burkhalter, Burns, Michael J., Cam, Carlson, Clarke, Collins, George D., Collins, Sam L., Cooke, Cronin, Crowley, Daley, Del Mutolo, Dickey, Dills, Dilworth, Donnelly, Doyle, Evans, Gallagher, Green, Gunlock, Hawkins, Heisinger, Houser, Frederick F., Johnson, Kepple, Knight, John B., Knight, T. Fenton; Leonard, Lowrey, Lyon, Maloney, Massion, McCollister, Meehan, Middough, Miller, Millington, Pelletier, Pfaff, Poole, Potter, Poulson, Richie, Russell, Salsman, Sheridan, Stream, Thomas, Thorp, Thurman, Turner, Waters, Watson, Weber, Welch, Weibret. and Mr Speaker—61.

Quorum present.

PRAYER

Prayer was offered by the Chaplain, Rev. Thomas H. Markham.

READING OF THE JOURNAL DISPENSED WITH

During the reading of the Journal of the previous legislative day, further reading was dispensed with, on motion of Mrs. Daley.

LEAVES OF ABSENCE FOR THE DAY

The following member was granted leave of absence for the day :
Mr. Fred N. Howser, on motion of Mr. Sam L. Collins.

EXPLANATION OF ABSENCE

The following members of the Committee on Education were attending a meeting of their committee from 8.30 to 11.30 a.m., and, on motion of Miss Miller, their names were ordered placed upon the morning roll call: Miss Miller, chairman; and Messrs. Burns, Michael J., Cronin, Dills, Dilworth, Doyle, Gallagher, Johnson and Leonard.

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tain, Hawkins, Houser, Frederick F., Johnson, Kellems, Kilpatrick, King, Knight, John B., Leonard, Lowrey, Maloney, Massion, McCollister, Meehan, Miller, Millington, O'Day, Pelletier, Phillips, Poole, Richie, Russell, Salsman, Sheridan, Stream, Tenney, Thorp, Thurman, Turner, Voigt, Waters, Weber, Welch, Weybret, Wollenberg, and Mr. Speaker—59.

NOES—None.

Bill ordered reprinted, and to third reading.

FURTHER PROCEEDINGS UNDER CALL OF THE ASSEMBLY DISPENSED WITH ON ASSEMBLY BILL NO. 2142

At 5.06 p.m., on motion of Mr. Thurman, further proceedings under the call of the Assembly were dispensed with.

The names of the absentees were called, and Assembly Bill No. 2142 reconsidered by the following vote:

AYES—Allen, Bennett, Burkhalter, Burns, Michael J., Cassidy, Collins, George D., Cooke, Crowley, Dills, Dilworth, Doyle, Green, Gunlock, Hawkins, Heisinger, Houser, Frederick F., Johnson, Kellems, Kepple, Kilpatrick, King, Knight, John B., Lowrey, Lyon, Massion, McCollister, Middough, Miller, Pelletier, Pfaff, Poole, Potter, Richie, Robertson, Russell, Salsman, Stream, Tenney, Thorp, Waters, and Watson—41.

NOES—Bashore, Burns, Hugh M., Cain, Call, Carlson, Clarke, Collins, Sam L., Crown, Daley, Del Mutolo, Desmond, Dickey, Donnelly, Field, Gaffney, Gallagher, Hastain, Knight, T. Fenton; Leonard, Maloney, Meehan, Millington, O'Day, Phillips, Sawallisch, Sheridan, Thurman, Turner, Voigt, Weber, Welch, Weybret, Wollenberg, and Mr. Speaker—34.

Assembly Bill No 2142 ordered to third reading.

FURTHER PROCEEDINGS UNDER CALL OF THE ASSEMBLY DISPENSED WITH ON ASSEMBLY BILL NO. 1484

At 5.08 p.m., on motion of Mr. Carlson, further proceedings under the call of the Assembly were dispensed with.

The names of the absentees were called, and Assembly Bill No. 1484 reconsidered by the following vote:

AYES—Allen, Call, Carlson, Cassidy, Collins, Sam L., Crowley, Daley, Desmond, Dickey, Donnelly, Doyle, Field, Gallagher, Green, Gunlock, Hastain, Hawkins, Heisinger, Johnson, Kellems, Kepple, Knight, T. Fenton; Leonard, Lyon, Massion, McCollister, Meehan, Miller, Millington, Pelletier, Pfaff, Phillips, Potter, Poulson, Richie, Robertson, Sheridan, Thurman, Voigt, Waters, Watson, Weber, Welch, Weybret, Wollenberg, and Mr. Speaker—46.

NOES—Bashore, Bennett, Burkhalter, Burns, Michael J., Cain, Clarke, Collins, George D., Cooke, Del Mutolo, Dilworth, Gaffney, Houser, Frederick F., Kilpatrick, King, Knight, John B., Lowrey, Maloney, Middough, O'Day, Poole, Russell, Sawallisch, Stream, Tenney, Thorp, and Turner—26.

Assembly Bill No. 1484 ordered to third reading.

MESSAGES FROM THE SENATE

SENATE CHAMBER, SACRAMENTO, May 22, 1941

MR. SPEAKER: I am directed to inform your honorable body that the Senate on this day concurred in Assembly amendments to.

Senate Bill No. 179
Senate Bill No. 360

J A BEEK, Secretary of the Senate
By JOHN F LEA, Assistant Secretary

THIRD READING OF SENATE BILLS (RESUMED)

Senate Bill No. 1162—An act to amend Sections 4 and 6 of an act entitled "An act defining credit unions, providing for their incorporation, powers, management and supervision," approved March 31, 1927, relating to loans by and between credit unions.

Bill read third time.

LEGISLATIVE INTENT SERVICE (800) 666-1917



SUMMARY DIGEST
OF
STATUTES ENACTED
AND
PROPOSED CONSTITUTIONAL AMENDMENTS
SUBMITTED TO THE ELECTORS

CALIFORNIA LEGISLATURE
FIFTY-THIRD EXTRAORDINARY SESSIONS
FIFTY-FOURTH REGULAR SESSION

1940-1941



JOSEPH A. BEEK
SECRETARY OF THE SENATE

ARTHUR A. OHNIMUS
CHIEF CLERK OF THE ASSEMBLY

COMPILED BY
FRED B. WOOD
LEGISLATIVE COUNSEL

LEGISLATIVE INTENT SERVICE (800) 666-1917



L-1308

LIS -7

- S.B. 355 (Ch. 58). QUINN. Adds Ch. 2, secs. 14200-14325, Div. 6, and sec. 30024, B. & P. C., re trademarks. Repeals secs. 3196, and 3197-3201, Pol. C.; secs. 350-354~~4~~ Pen. C. except secs. 351a and 353a; and sec. 991, Civ. C.
Part of codification.
- S.B. 356 (Ch. 59). QUINN. Adds Ch. 3, secs. 14400-14491, Div. 6, and sec. 30040, B. & P. C., re trade names, container brands, farm names, and laundry supply designations. Repeals secs. 3196a and 3196b, Pol. C., and Acts 5255, 8623, and 4225.
Part of codification.
- S.B. 357 (Ch. 60). QUINN. Adds Ch. 4, secs. 14700-14740, Div. 6, and sec. 30025, B. & P. C., re authorship. Repeals sec. 3202, Pol. C., and secs. 367a and 367b, Pen. C.
Part of codification.
- S.B. 358 (Ch. 61). QUINN. Adds Div. 7, Pt. 1, Ch. 1-3, secs. 16000-16240, and sec. 30026, B. & P. C., re general business regulation, licensing for revenue and regulation by cities and counties, and collection of fees, taxes and charges by State agencies. Repeals sec. 435, Pen. C., and secs. 3366, 3388-3391 and 4041.14, Pol. C.
Part of codification.
- S.B. 359 (Ch. 62). QUINN. Adds Ch. 4, secs. 16300-16451, Pt. 1, Div. 7, and sec. 30027, B. & P. C., re itinerant merchants. Repeals Act 3895.
Part of codification.
- S.B. 360 (Ch. 526). QUINN. Adds Pt. 2, Chs. 1-4, secs. 16600-17101, Div. 7, and sec. 30028, B. & P. C., re contracts and combinations in restraint of trade, resale price maintenance, and unfair competition. Repeals secs. 1673-1675, Civ. C., Acts 8780, 8781, 8782, 8784, Ch. 1037 and Ch. 1039, Stats. 1933, and Ch. 814, Stats. 1935.
Part of codification.
- S.B. 361 (Ch. 63). QUINN. Adds Pt. 3, Ch. 1, secs. 17500-17535, Div. 7, and sec. 30041, B. & P. C., re false advertising. Repeals Act 6758, and secs. 538a, 556, and 654a-654c, Pen. C.
Part of codification.
- S.B. 362 (Ch. 64). QUINN. Adds Ch. 2, secs. 17700-17702, Pt. 3, Div. 7, and sec. 30029, B. & P. C., re redeemable coupons. Repeals Act 6759.
Part of codification.
- S.B. 363 (Ch. 453). KENNY. Amends secs. 6320, 6322, 6323, 6324, 6343, 6346, 6360 and 6363, adds secs. 6326, 6348.3 and 6348.5, B. & P. C., re county law libraries.
Exempts justices' courts in Los Angeles County from collecting law library fee. Authorizes board of supervisors to set aside additional library funds on yearly instead of



CALIFORNIA LEGISLATURE
AT SACRAMENTO

LIST OF MEMBERS
OFFICERS, COMMITTEES AND
RULES OF THE TWO HOUSES

TOGETHER WITH A LIST OF THE MEMBERS
OF CONGRESS, SUPREME COURT, STATE
OFFICERS, BOARDS, COMMISSIONS, AND
CLASSIFICATION OF COUNTIES, ETC.

FIFTY-FOURTH SESSION, 1941
FIRST PART - JANUARY 6 TO 25
WHICH PRECEDED CONSTITUTIONAL RECESS
SECOND PART BEGINS MARCH 3, 1941

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JOSEPH A. BEEK
SECRETARY OF THE SENATE

ARTHUR A. OHNIMUS
CHIEF CLERK OF THE ASSEMBLY

LEGISLATIVE INTENT SERVICE (800) 666-1917



Vital Statistics, Division of, 631 J St., Sacramento.

Mrs. Marie B. Stringer, *Chief*.

Vocational Rehabilitation, Civilian, Bureau of, 405 State Library Bldg., Sacramento.

H. D. Hicker, *Chief*.

Water Project Authority, Public Works Bldg., 1130 N St., Sacramento.

Attorney General, Controller, Treasurer, Director of Finance, Director of Public Works.

Frank W. Clark, *Chairman*.

Edward Hyatt, *Executive Officer*.

Water Resources, Division of, 401 Public Works Bldg., 1130 N St., Sacramento.

Edward Hyatt, *Chief*.

Geo. T. Gunston, *Assistant*.

Weights and Measures, Bureau of, Mull Bldg., 1125 10th St., Sacramento.

Clarence E. Tucker, *Chief*.

Whittier State School, Whittier.

E. J. Milne, *Superintendent*.

Woman's Relief Corps' Home, Route 1, Box 105, Santa Clara.

Belle Donovan, *President*.....San Francisco

Kate Henry, *Secretary*.....Newcastle

Louise Steel Brooke, *Superintendent*.....

.....Santa Clara

Women, Institution for.

See California Institution for Women.

Work Projects, Bureau of (State Relief Administration), 155 W. Washington Blvd., Los Angeles.

Mrs. Florence R. Wyckoff, *Chief*.

Workmen's Compensation.

See Compensation Insurance Fund; Industrial Accidents and Safety, Division of.

Yacht and Ship Brokers Commission, 516 Business and Professions Bldg., 1020 N. St., Sacramento; 906 State Bldg., Los Angeles.

Kenneth E. Marshall, *Commissioner*.

Press Headquarters, 222 State Capitol.

THE SENATE

LIST OF MEMBERS OFFICERS, COMMITTEES AND THE RULES

FIFTY-FOURTH SESSION
1941



JOSEPH A. BEEK
SECRETARY OF THE SENATE

JOHN F. LEA
CHIEF ASSISTANT SECRETARY

Sen.

LEGISLATIVE SERVICE (800) 666-1917



MEMBERS OF THE SENATE—FORTY SENATORS

48

LIEUTENANT GOVERNOR ELLIS E. PATTERSON, President of the Senate
 WILLIAM P. RICH, President pro tempore JOSEPH A. BECK, Secretary of the Senate
 JOSEPH F. NOLAN, Sergeant-at-Arms
 (R., Republican; D., Democratic)

District	Name and counties	Occupation	Party	Home P. O. address	Sacramento address	Legislative service
	B					
4	Biggar, George M., Mendocino, Lake.	Farmer	R.-D.	Covelo	Senate Chamber	40-51-52- 53-54
16	Dreed, Arthur H., Jr., Alameda	Real Estate	R.-D.-P.	315 15th St., Oakland	Senate Chamber	51-52-53- 54
28	Brown, Charles, Inyo, Mono.	Merchant	D.-R.	Shoshone	Senate Chamber	53-54
	C					
5	Carter, Oliver J., Shasta, Trinity	Attorney	D.	Redding	Senate Chamber	54

Members of Senate

2	Collier, Randolph, Del Norte, Siskiyou	Title Business	R.	Yreka	Senate Chamber	53-54
20	Crittenden, Bradford S., San Joaquin	Attorney	R.-D.	145 K. Harding Way, Stockton	Senate Chamber	44-45-46- 47-48-49- 50-51-52- 53-54
27	Cunningham, R. R., Kings	Real Estate and Insurance	D.-R.	208 N. Dovy, Hanford	Senate Chamber	52-53-54
	D					
17	DeLap, T. H., Contra Costa	Attorney	R.-D.	American Trust Bldg., Richmond	Senate Chamber	51-52-53- 54
6	Deuel, Charles H., Butte	Publisher	D.-R.	396 E. 4th St., Chico	Senate Chamber	46-47-48- 49-50-51- 52-53-54
9	Dillinger, H. E., Alpine, Amador, El Dorado	Attorney	D.-R.	618 Main St., Placerville	Senate Chamber	46-47-48- 49-54

Members of Senate

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LEGISLATIVE INTENT SERVICE (800) 666-1917



MEMBERS OF THE SENATE—Continued

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District	Name and counties	Occupation	Party	Home P. O. address	Sacramento address	Legislative service
24	Myband, Peter P., Merced, Madras	Rancher.....	D.	501 10th St., Merced.....	Senate Chamber...	53-54
	P					
21	Parkman, Harry L., San Mateo.....	Wholesaler and Jobber.....	R.-D.	934 Rowwood Dr., San Mateo.....	Senate Chamber...	47-48-49- 50-51-52- 53-54 60-61-62- 63-64
37	Phillips, John, Riverside.....		R.	65 N. 4th St., Banning.....	Senate Chamber...	60-61-62- 63-64
1	Powers, Harold J., Madoc, Lassen, Plumas.....	Rancher.....	R.-D.	Eagleville.....	Senate Chamber...	50-51-52- 53-54
	Q					
3	Quinn, Irwin T., Humboldt.....	Attorney.....	D.	First National Bank Bldg., Eureka.....	Senate Chamber...	52-53-54

Members of Senate

	R					
16	Rich, W. P., Yuba, Sutter.....	Attorney.....	R.	Marysville.....	Senate Chamber...	40-50-61- 52-53-54
	S					
7	Seawell, Jerrold L., Placer, Sierra, Nevada.....	Insurance.....	R.-D.	303 Mariposa Ave., Rose- ville.....	Senate Chamber...	48-49-50- 51-52-53- 54
14	Shelley, John F., San Francisco.....	Labor Executive	D.	2940 16th St., San Fran- cisco.....	Senate Chamber...	53-54
12	Slater, Herbert W., Sonoma.....	Publisher.....	D. R.	Box 96, Santa Rosa.....	Senate Chamber...	39-40-41- 42-43-44- 45-46-47- 48-49-50- 51-52-53- 54
19	Swan, John Harold, Sacramento.....	Junior College Teacher.....	D.	1133 Marian Way, Sacramento.....	Senate Chamber...	54

Members of Senate

53

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SENATORS AND COMMITTEES OF WHICH THEY ARE MEMBERS

BIGGAR—Labor (*Chairman*), Business and Professions, Education, Public Health and Safety, Public Utilities.

BREED—Finance (*Vice Chairman*), Elections, Revenue and Taxation, Rules, Transportation.

BROWN—Natural Resources (*Vice Chairman*), Fish and Game, Labor, Local Government, Welfare and Institutions.

CARTER—Public Health and Safety (*Vice Chairman*), Education, Judiciary, Water Resources, Fish and Game.

COLLIER—Revenue and Taxation (*Vice Chairman*), Education, Elections, Finance, Public Health and Safety.

CRITTENDEN—Agriculture (*Chairman*), Financial Institutions, Judiciary, Water Resources, Welfare and Institutions.

CUNNINGHAM—Local Government (*Vice Chairman*), Business and Professions, Financial Institutions, Natural Resources, Water Resources.

DELAPE—Financial Institutions (*Chairman*), Finance, Governmental Efficiency, Judiciary, Natural Resources.

DEUEL—Welfare and Institutions (*Vice Chairman*), Education, Financial Institutions, Governmental Efficiency, Rules.

DILLINGER—Elections (*Vice Chairman*), Business and Professions, Judiciary, Welfare and Institutions, Military and Veterans Affairs.

FLETCHER—Business and Professions (*Chairman*), Fish and Game, Military and Veterans Affairs, Transportation, Financial Institutions.

FOLEY—Education (*Vice Chairman*), Judiciary, Public Health and Safety, Welfare and Institutions, Business and Professions.

GARRISON—Water Resources (*Chairman*), Governmental Efficiency, Finance, Labor, Public Utilities.

GORDON—Fish and Game (*Chairman*), Agriculture, Labor, Local Government, Public Utilities.

HAYS—Judiciary (*Chairman*), Education, Financial Institutions, Governmental Efficiency, Military and Veterans Affairs.

JESPersen—Elections (*Chairman*), Agriculture, Education, Financial Institutions, Transportation.

JUDAH—Fish and Game (*Vice Chairman*), Business and Professions, Labor, Natural Resources, Transportation.

KEATING—Judiciary (*Vice Chairman*), Local Government, Military and Veterans Affairs, Public Health and Safety, Welfare and Institutions.

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KUCHEL—Water Resources (*Vice Chairman*), Agriculture, Elections, Judiciary, Natural Resources.

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McCORMACK—Transportation (*Chairman*), Agriculture, Elections, Governmental Efficiency, Revenue and Taxation.

NETZGER—Public Health and Safety (*Chairman*), Agriculture, Fish and Game, Local Government, Revenue and Taxation.

MIXTER—Finance (*Chairman*), Agriculture, Military and Veterans Affairs, Water Resources, Welfare and Institutions.

MYHAND—Rules (*Vice Chairman*), Agriculture, Public Utilities, Revenue and Taxation, Water Resources.

PARKMAN—Public Utilities (*Chairman*), Governmental Efficiency, Natural Resources, Public Health and Safety, Revenue and Taxation.



PHILLIPS—Welfare and Institutions (*Chairman*), Governmental Efficiency (*Vice Chairman*), Agriculture, Education, Public Health and Safety.

POWERS—Local Government (*Chairman*), Agriculture, Fish and Game, Governmental Efficiency, Transportation.

QUINN—Military and Veterans Affairs (*Chairman*), Finance, Judiciary, Revenue and Taxation, Transportation.

RICH—Rules (*Chairman*), Finance, Governmental Efficiency, Judiciary, Revenue and Taxation.

SEAWELL—Elections, Financial Institutions, Fish and Game, Governmental Efficiency, Natural Resources.

SHELLEY—Labor (*Vice Chairman*), Business and Professions, Financial Institutions, Transportation, Welfare and Institutions.

SLATER—Education (*Chairman*), Fish and Game, Military and Veterans Affairs, Public Utilities, Transportation.

SWAN—Business and Professions (*Vice Chairman*), Education, Local Government, Military and Veterans Affairs, Public Health and Safety.

SWING—Governmental Efficiency (*Chairman*), Elections, Finance, Judiciary, Revenue and Taxation.

TICKLE—Revenue and Taxation (*Chairman*), Finance, Labor, Public Utilities, Rules.

WAGY—Natural Resources (*Chairman*), Finance, Local Government, Public Utilities, Water Resources.

WARD—Public Utilities (*Vice Chairman*), Judiciary, Labor, Natural Resources, Welfare and Institutions.

SCHEDULE OF COMMITTEE MEETINGS

Time	Committee	Room No.
MONDAY		
8.00 a.m.	Labor	408
on adj'm't	Public Utilities	415
8.00 p.m.	Judiciary	414
8.00 p.m.	Transportation	408
TUESDAY		
8.00 a.m.	Business and Professions	408
on adj'm't	Public Health and Safety	408
on adj'm't	Fish and Game	414
8.00 p.m.	Agriculture	408
8.00 p.m.	Revenue and Taxation	414
WEDNESDAY		
8.00 a.m.	Finance	414
on adj'm't	Elections	408
on adj'm't	Welfare and Institutions	415
8.00 p.m.	Judiciary	414
THURSDAY		
8.00 a.m.	Natural Resources	408
on adj'm't	Education	414
on adj'm't	Local Government	408
8.00 p.m.	Governmental Efficiency	414
FRIDAY		
8.00 a.m.	Financial Institutions	415
on adj'm't	Water Resources	408
on adj'm't	Military and Veterans Affairs	415
ON CALL OF CHAIRMAN		
Committee on Rules.		



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STATE OF CALIFORNIA

REPORT OF THE
CALIFORNIA CODE
COMMISSION

TO THE GOVERNOR AND THE LEGISLATURE
OF THE STATE OF CALIFORNIA,
AT THE LEGISLATIVE SESSION OF 1941



97002

LEGISLATIVE INTENT SERVICE (800) 666-1917



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LETTER OF TRANSMITTAL

To His Excellency CULBERT L. OLSON,
Governor of California,
and to the members of the Legislature.

The California Code Commission, created by Chapter 750, Statutes of 1929, to enter upon a revision, compilation and codification of the laws of this State, and continued by Chapter 929, Statutes of 1931, Chapter 645, Statutes of 1933, Chapter 698, Statutes of 1935, Chapter 157, Statutes of 1937, and Chapter 486, Statutes of 1939, hereby presents its report.

January 11, 1941.

GERALD H. HAGAR, Chairman
WILLIAM G. HALE, Vice Chairman
A. M. KIDD, Vice Chairman
B. E. AHLPORT
DALLAS L. BARRETT
DON G. BOWKER
NORRIS MONTGOMERY
WILLIAM B. OWENS
THOMAS E. STANTON

(5)



LEGISLATIVE INTENT SERVICE (800) 666-1917 JN 110

**REPORT OF THE CALIFORNIA CODE COMMISSION
FOR THE YEARS 1939-1940**

I—PREVIOUS REPORTS

The California Code Commission has submitted five reports to the Governor and the Legislature, the present report being the sixth. The previous reports were made in December of 1930, and in January of 1933, 1935, 1937, and 1939.

Upon its appointment in January of 1930, the commission commenced its work of preparing a revision, compilation, and codification of the laws of California by compiling a complete record of what had happened to each law enacted since 1850. This involved a page by page examination of some fifty volumes of session laws. The result is the Statutory Record, published by the State in 1933, which covers the period 1850 to 1932 and is kept up-to-date by cumulative supplements appearing in each volume of session laws.

The unrepealed laws of the State were then compiled, classified, and allocated to the various subject headings determined upon (see Appendix B hereof), and to date the following codes and statutes, prepared and sponsored by the Commission, have been enacted:

1931 Legislative Session.

Probate Code.

1933 Legislative Session.

Agricultural Code.

Fish and Game Code.

Military Code.

Code of Civil Procedure revision.

District Organization Act.

1935 Legislative Session.

Insurance Code.

Military and Veterans Code.

Streets and Highways Code (in part).

Vehicle Code.

1937 Legislative Session.

Business and Professions Code (in part).

Harbors and Navigation Code.

Labor Code.

Welfare and Institutions Code.

1939 Legislative Session.

Business and Professions Code (in part).

Elections Code.

Health and Safety Code.

(7)



Public Resources Code (all but public lands).
Revenue and Taxation Code (property taxation, effective February 1, 1941).

II—ORGANIZATION FOR 1939-1941

The commission resumed its work after the 1939 session of the Legislature with the following membership:

- Dallas L. Barrett, Redding
- Don G. Bowker, Los Angeles
- Gerald H. Hagar, Oakland
- William G. Hale, Los Angeles
- A. M. Kidd, Berkeley
- Norris Montgomery, Santa Barbara
- William B. Owens, Stanford University

The officers of the commission were continued:

- Gerald H. Hagar, Chairman
- William G. Hale, Vice Chairman
- A. M. Kidd, Vice Chairman
- Fred B. Wood, Legislative Counsel—Secretary

In January of 1940, Governor Olson filled the two vacancies on the commission by the appointment of the following members:

- B. E. Ahlport, Los Angeles
- Thomas E. Stanton, San Francisco

III—STATEMENT OF WORK DONE

The commission has, since the adjournment of the 1939 legislative session, concentrated on the actual preparation of the Water Code and the remaining portions of those codes already enacted pursuant to its plan of revision and codification of all the laws of the State. The results of this work are presented as bills upon each of the following codes:

- Business and Professions.
- Public Resources.
- Revenue and Taxation.
- Streets and Highways.
- Water.

The commission continues to abide by this policy set forth in its 1935 report:

"The commission in its work of revision and codification has adopted a definite policy not to make substantive changes, but to confine its work to a compilation, consolidation, and clarification of the existing law. Such changes in wording as are made, are made to resolve ambiguities or to conform with administrative practice and legislative intent. The revision and codification will present the existing law in such form as to facilitate greatly the making of such substantive changes as are found to be necessary."



LEGISLATIVE INTENT SERVICE

This policy of the commission has found expression in the judicial decisions of this State. In the case of *Sobey vs. Molony*, 40 Cal. App. (2d) 381, decided by the district court of appeal on August 13, 1940, the court said:

"It is a demonstrable fact not challenged by respondent, that, by the codification of the law applicable to the practice of medicine in the Business and Professions Code, the legislature did not intend or attempt to change the substantive provisions of existing statutes, but simply intended to codify and clarify existing provisions. This code does not stand alone. The code commission was created by Statutes of 1929, page 1427, chapter 750. Since that time it has prepared codifications of many branches of the law. The Business and Professions Code, as adopted in 1937, does not apply only to the practice of medicine but also to seventeen other businesses and professions. In codifying the law the code commission and the legislature avoided, wherever possible, any substantive change in existing law."

This is not to disavow the authority of the commission to make "suggestion of such substantive changes in the existing law as may be deemed proper." (Section 2 of Deering Act No. 1442, as amended in 1931.)

This it has done upon occasion, notably the 1933 revision of a portion of the Code of Civil Procedure, relating particularly to jurisdiction and venue of municipal and justices courts. That, of course, was not done in connection with a revision of the code itself, but long in anticipation thereof, for it is not considered feasible to make substantive changes and effect a "consolidation" at one and the same time on the same subject, certainly not in one and the same legislative bill. There follows a discussion of the material presented at this time in each of the five codes mentioned above.

1. Business and Professions Code

In 1937 and 1939, the following four divisions of this code were enacted:

- I. Department of Professional and Vocational Standards.
- II. Healing Arts.
- III. Professions and Vocations Generally.
- V. Weights and Measures.

The commission in 1941 offers three new divisions, numbered VI, VII and VIII.

Division VI, Business Rights, revises and codifies the laws relating to good-will, trade-marks, trade names and other designations, and authorship.

Division VII, General Business Regulations, revises and codifies the laws relating to licensing by cities and counties, collection of license fees, vendors act, the Cartwright Anti-Trust Act, the Fair

Trade Act, the Unfair Practices Act, the "Printers' Ink" false advertising statutes and the statute regulating premium coupons.

Division VIII, Special Business Regulations, revises and codifies the laws relating to automobile financing, boxing and wrestling, furniture and bedding inspection, horse racing, paints, petroleum, prophylactics, and second-hand goods.

The commission also presents a revision and codification of the law relating to chemical laboratory technologists and technicians (to become a part of Division II, Healing Arts) and a codification of the law relating to detectives (for inclusion in Division III, headed Professions and Vocations Generally).

Each draft restating these laws has been submitted to, and has received the approval of, persons interested in their administration. Printed copies of the proposed additions have been distributed to all members of the Legislature and to a large number of persons and groups evincing interest in these various statutes. Conferences and correspondence with the administering agencies, interested attorneys and group representatives have resulted in many helpful suggestions toward the clearer restatement of the existing law.

The commission desires to call particular attention to its solution of a problem which arose in preparing the codification of the Cartwright Anti-Trust Act (Chapter 530, Statutes of 1907, as amended). In 1909 (Chapter 362) the act was amended, among other things, to provide certain exemptions in Section 1.

The Federal District Court for the Southern District of California has held that these exemptions, added to the California act in 1909, are unconstitutional and not separable and that, therefore, the entire California act is invalid. (*Blake vs. Paramount Pictures, Inc.*, (1938) 22 Fed. Supp. 249). This decision relies on the United States Supreme Court decision which held unconstitutional a Colorado antitrust statute, containing exemptions substantially identical to those added to Section 1 of the California act in 1909, on the ground that these exemptions, a part of the Colorado statute as originally enacted, made the required standard of conduct too uncertain for a penal statute. (*Cline vs. Frank Davy Co.* (1927) 274 U. S. 445).

The Attorney General of California is of the opinion that this 1909 amendment was invalid in view of the holding in *Cline vs. Frank Davy Co.*, never became a part of the 1907 act, hence that Section 1 of the Cartwright Act in the form in which originally enacted is valid and operative. (Opinion NS 2806, July 29, 1940.)

In the absence of a decision by the California Supreme Court, the commission has prepared a codification of the entire California act, as amended. As thus codified, without substantial change, it will, of course, have neither greater nor less validity, operation or effect than prior to codification. (*Business and Professions Code, Sec. 2: San Joaquin etc. Irr. Co. vs. Stevenson*, 164 Cal. 221, at 233 and 234; *Sobey vs. Molony*, 40 Cal. App. (2d) 381.) However, as a special precaution, the commission has inserted a specific saving clause (Section 16701) which is specially designed to leave as it is the question of separability, so that the 1907 Cartwright Act, and the 1909 amendments thereto, will manifestly have no greater (and no less) validity than they had not been codified.

LEGISLATIVE INTENT SERVICE

The commission recommends that the proposed additions to the Business and Professions Code submitted in 1941 be adopted by the Legislature and approved by the Governor.

2. Public Resources Code

In 1939 there was enacted a portion of this code which revised and codified the law relating to the Department of Natural Resources, mines and mining, oil and gas, forests, and parks and monuments, including a schedule of repeals. (Divisions I to V and X.)

Division IX, soil conservation, was added to the code at the first special session in 1940.

The commission has prepared and recommends for adoption at the 1941 Session of the Legislature a codification of the law relating to the organization and general powers of the State Lands Commission, and of all of the law relating to the leasing of State-owned public lands for any purpose, including the extraction of minerals, oil and gas therefrom.

This comprises Parts 1 and 2 of a new Division VI, relating to public lands, and will complete this code save for the codification of the law relating to the management and sale of State-owned public lands, and that relating to Federal public lands.

The material codified in these two parts represents the principal and most important provisions of the public land law of this State. A mimeographed draft showing, by strikeout type and by underlining, the changes from the existing law was prepared and distributed as widely as possible. A second draft in the form of a preprinted bill showing the text of the proposed addition to the Public Resources Code was also issued. Any necessary changes or corrections which may be brought to the attention of the Code Commission will be incorporated in the bill or bills introduced in the Legislature at the 1941 Session.

The relatively small amount of law remaining to be codified in the Public Resources Code will be prepared for submission to the Legislature at the 1943 Session.

The commission recommends that Parts 1 and 2 of Division VI of the Public Resources Code be adopted by the Legislature and approved by the Governor.

3. Revenue and Taxation Code

As enacted in 1939, the Revenue and Taxation Code consists of Division I, Property Taxation, effective February 1, 1941. The effective date was delayed in order that all officers and persons connected with the administration of the property taxation laws might become thoroughly familiar with the provisions of the code before commencement of operation under it. Also, it was contemplated that the Legislature could adopt such amendments prior to February 1, 1941, as would correct any unintended substantive changes in the property taxation provisions of the code.

The Legislature in 1939 instructed the commission to continue with its study of the subject of property taxation. (Assembly Concurrent Resolutions 191, 197, Resolutions Chapter 88 found at pages 3229 and 3280 of Statutes of 1939.) All public officials, State and local, and

all other interested persons were requested by the resolution to bring to the attention of the commission all incongruities, conflicts and errors they might discover in the text of the code. On the basis of these communications the commission was directed to prepare a report by December 1, 1940, accompanying the report with drafts of legislative bills to effect the changes in the code it might deem desirable.

The commission was also instructed by the resolution to prepare for printing the text of the Revenue and Taxation Code as enacted and as amended by the Legislature in 1939, with such marginal notes, footnotes, indices and tables of cross-reference as would facilitate the use of the code. The code was printed as directed, and over 1600 copies distributed.

On December 1, 1940, a report was issued embodying the commission's comments and recommendations concerning changes that appeared desirable in the text of Division I of the code which had been brought to its attention or which its study had disclosed.

In addition to this work on Division I, the commission has proceeded with the further codification of the tax laws of the State. The commission plans to submit for inclusion in the code the State tax laws.

To this end the commission has to date prepared drafts codifying eight State tax laws, namely, the retail sales, use, motor vehicle fuel license, use fuel, motor vehicle transportation license, private car, and insurance tax laws and the vehicle license fee act. The codification of these State tax laws will constitute the first seven parts of Division II, the sales and use taxes being consolidated into one part because of their similarity.

Mimeographed drafts of these parts have been sent out to a large mailing list, and on the basis of suggestions received and conferences held a revision of the drafts has been printed and is in distribution.

It is the intention of the commission to present the first seven parts of Division II to the Legislature in 1941 for enactment as part of the Revenue and Taxation Code.

It has been represented to the commission that as to these particular tax laws a postponed effective date would be desirable and the commission so recommends.

Subsequent to the 1941 legislative session the commission plans to proceed with the codification of the laws governing inheritance and gift taxes and the bank and corporation franchise, corporation income, and personal income taxes.

The commission recommends that the Legislature adopt, and that the Governor approve, the additions to the Revenue and Taxation Code submitted in 1941.

4. Streets and Highways Code

That portion of this code which deals with State highways and county highways was enacted in 1935 (Chapter 29).

The remainder of the code will revise and codify the laws governing: The acquisition, construction, improvement, and maintenance of county highways and city streets under the so-called "street opening and widening," "street improvement," and "legislation in the 'grade' acts and the bond provision, g thereto; toll bridges

(other than those under California Toll Bridge Authority) and ferries; joint highway districts, bridge and highway districts, and boulevard districts; street and highway lighting; grade separation; and tree planting.

The commission presents to the Legislature this session for inclusion in this code a revision and codification of the following laws, relating to streets and highways:

Special Assessment Investigation, Limitation and Majority Pro-
test Act of 1931 (Act 8490)*
Street Opening Act of 1889 (Act 8195)
Street Opening Bond Act of 1921 (Act 8210)
Street Opening Act of 1908 (Act 8198)
Street Opening Bond Act of 1911 (Act 855)
County Street Opening Act of 1923 (Act 8201)
Improvement Act of 1911 (Act 8199)
County Improvement Act of 1921 (Act 3289)
Street Improvement Act of 1913 (Act 3205)
Change of Grade Act of 1909 (Act 8203)
Improvement Bond Act of 1915 (Act 3209)
Highway Lighting District Act of 1909 (Act 3277)
Street Lighting Act of 1919 (Act 5216)
Municipal Lighting Maintenance District Act of 1927 (Act 5216a)
Street Lighting Act of 1931 (Act 5216b)
Tree Planting Act of 1931 (Act 5220a)

Prior to the 1939 Legislative Session nearly all of these acts had been restated and distributed in mimeographed draft form (showing changes from existing law wording by use of strikeout type and underlined type) to those interested. A revised second draft (also mimeographed and showing changes) was prepared following that session and, more recently, the material has been printed for wider distribution so that it may receive the greatest possible study and scrutiny of those interested.

The commission recommends for repeal the Grade Separation Act of 1927 (Act 6488) as an obsolete act not used for grade separation projects.

The commission recommends that the Legislature adopt and that the Governor approve those portions of the Streets and Highways Code presented in 1941.

5. Water Code

This code will revise and codify all of the laws of the State relating to water, including the acquisition and determination of water rights, supervision of dams, rights in conduits and streams, the control of flood water, the utilization of water resources in the public interest, and the numerous laws relating to public districts for the utilization or control of water.

Except for the laws relating to various districts, the code has been drafted and is ready for introduction. Mimeographed drafts in strike-out and underline type, with source notes and tables showing the source of ~~(800-8083-8085)~~ and the disposition of statutes in the code, have

* "Act" indicates the act number in Deering's General Laws of California.

been distributed to a mailing list of over 150 attorneys and other persons interested in water law.

Presented in 1941 for enactment are the following:

- Division I. State Powers over Water.
- Division II. Water Resources.
- Division III. Dams.
- Division IV. Conduits and Streams.
- Division V. Flood Control.
- Division VI. Water Authorities.

The portion of the code ready for presentation comprises an integrated unit. The portion remaining to be codified consists entirely of laws relating to public districts, such as:

conservancy, county power pumping, county water, county water works, drainage, irrigation, levee, metropolitan water, overflow, protection, reclamation, storm drain maintenance, water conservation, water, and water storage.

The preliminary mimeographed draft of the irrigation district portion is nearly completed. Extensive conferences are being held with representatives of the Irrigation Districts Association of California and of other interested groups, from whom the commission is receiving the fullest cooperation and assistance. The irrigation district material will be printed at the earliest possible date with notes, source material, and cross-reference tables, that it may receive wide circulation and thorough scrutiny.

The reclamation district portion is partly drafted, will soon be issued in preliminary mimeographed draft form and will be the subject of conferences with interested officials, persons and groups, as the work progresses.

The commission recommends that the Legislature adopt, and that the Governor approve, Divisions I to VI of the Water Code. The remaining portions are expected to be ready in 1943.

6. Certain Suggested Procedural Changes in the Water Code

After distribution of the mimeographed draft of the proposed Water Code and based upon their study of it, various persons directed attention to certain procedural provisions they felt should be modified and improved, even though such might involve some changes substantive in nature.

These points seemed well taken. Accordingly, the commission has prepared a separate bill, amendatory of the Water Code, designed to effectuate these changes—a separate bill, to avoid importing into any of the codification bills any element of substantive change, in consonance with the policy of the commission in that regard.

This separate, substantive change bill will be presented to the Legislature this session. If it meets with approval and is enacted this session it will take effect at the same time as the main nonsubstantive change Water Code bills. The fact that this bill is thus separate and distinct, coupled with the commission's report, will make it easier for any person subsequently reading, interpreting the main Water Code bills to refer to the separate bill for the changes suggested.

Code bills, that there is no intended substantive change in any of the latter.

7. Revision of the Law of Evidence

Subsequent to the 1939 commission report (see pages 17 and 18 thereof), it was determined to hold in abeyance the preparation of this revision pending the final formulation of a code of evidence, now nearly completed, by the Evidence Conference of the American Law Institute, of which conference Commissioner William G. Hale is a member. Accordingly, no part of this revision will be presented to the Legislature in 1941.

IV—STATUTE-FINDERS PUBLISHED BY THE STATE

The commission has been giving consideration to the growing need for an adequate index under one alphabet of all the active, effective statutes of California.

There are available two indexes, which, taken together, cover the period 1850 to 1932, inclusive. One is entitled "Index to the Laws of California, 1850-1920" (California State Printing Office, 1921). The other is entitled "Supplement (1921-1932) to Index to the Laws of California" bound with "Statutory Record, 1850-1932" (California State Printing Office, 1933).

State legislation subsequent to 1932 is indexed separately for each session, the index appearing in the latter portion of the volume of "Statutes and Amendments to the Codes" for each session since 1932 (1933, 1935 including extra session of 1934, 1937 including extra session of 1936, extra session of 1938 as separately bound, and 1939).

These session laws indexes appear in these several volumes at the pages indicated:

Year	Pages
1933	3359-3491
1935 (and 1934)	2867-2964
1937 (and 1936)	3283-3446
1938	183-201
1939	3645-3817

It, of course, would be serviceable to those using the statutes if there were a single index under one cover where one might find references to every statute ever enacted in California, whether still operative or whether repealed or obsolete.

A less comprehensive index, designed to cover only those statutes still operative and in effect (or those statutes that have never been expressly repealed) might also have a place and use. Upon the completion of all the codes contemplated by the commission a consolidated index to all of the codes would constitute an index to substantially all of California's active statutory law.

Another aid available to any person making a search for statutes on a given subject is the Statutory Record, published in 1933 in the same volume as the 1932 supplement to the index to the laws of California above mentioned. This record covers the period 1850-1932 and shows the status and disposition of every statute during that period.

ICE
LEGISLATIVE SERVICE

enacted, in so far as expressly affected by later statutes expressly amending, adding, repealing, supplementing, or revising it during that period.

For the period 1932 to date one finds the "Statutory Record" in the appendix in the back of each volume of the Statutes and Amendments to the Codes, as issued each regular session, and as separately issued for the extra session of 1938. The statutory record in the statutes for the regular session of 1939 is at pages 3469-3643 thereof and is a cumulative statutory record covering the period 1933 to 1939, inclusive, bringing the 1850-1932 Statutory Record up-to-date through 1939.

A further aid to the finding of a statute (particularly a statute that has been consolidated into a new code) is furnished by certain cross-reference tables.

Whenever a new code is enacted by the Legislature or a new division or part is added to one of the codes, two cross-reference tables are prepared and inserted in the back part of the volume of the session laws which contain the chapter or chapters enacting the new code or adding the new division or part.

One of these tables is so arranged as to lead the searcher from the old to the new. In the first column are listed chronologically and in sequence by codes and by general laws the sections of the old which have been carried over into the new. Then opposite, and to the right of each of these section numbers, appear the corresponding new section numbers. In this manner one may proceed readily from the old to the new, from the known to the unknown.

The other table is arranged in reverse order. The numbers of the sections of the new code, division or part are arranged in sequence. Opposite each appears a reference to the section of the old statute whence the new code section was derived. By use of this table a person examining a new code, division or part may take the number of any section thereof in which he is interested and readily trace it to its source.

The codes for which cross-reference tables have been published, and the volumes in which and pages at which the tables appear, are the following:

- Agricultural Code, Statutes 1933, pages 3277-3302
- Business and Professions Code, Statutes 1937, pages 3071-3087, Statutes 1939, pages 3275-3307
- Elections Code, Statutes 1939, pages 3308-3344
- Fish and Game Code, Statutes 1933, pages 3303-3320
- Harbors and Navigation Code, Statutes 1937, pages 3068-3116
- Health and Safety Code, Statutes 1939, pages 3345-3405
- Insurance Code, Statutes 1935, pages 2729-2757
- Labor Code, Statutes 1937, pages 3117-3144
- Military Code, Statutes 1933, pages 3328-3332
- Military and Veterans Code, Statutes 1935, pages 2758-2768
- Probate Code, Statutes 1931, pages 3176-3184
- Public Resources Code, Statutes 1931, pages 3176-3184

Revenue and Taxation Code (property taxation), Statutes 1939, pages 3427-3468

Streets and Highways Code, Statutes 1935, pages 2769-2797

Vehicle Code, Statutes 1935, pages 2798-2808

Welfare and Institutions Code, Statutes 1937, pages 3145-3172

Note may here be made of the fact that in 1933 there was a revision of certain portions of the Code of Civil Procedure principally relating to jurisdiction and venue in the municipal and justices courts. The cross-reference tables pertaining to this revision appear in the Statutes and Amendments to the Codes for the session of 1933 at pages 3321-3327.

Although the following 1931 enactments were not prepared or sponsored by the Code Commission, the tables of cross-reference as to them may be useful:

Building and Loan Association Act, Statutes 1931, pages 3173-3175

Corporate Securities Act, Statutes 1931, page 3172

General Corporation Law, Statutes 1931, pages 3169-3170

General Nonprofit Corporation Law, Statutes 1931, page 3171

V.—STATEMENT OF RECEIPTS AND EXPENDITURES

A statement of receipts and expenditures of the commission during the current biennium is appended to this report as Appendix A.

VI.—RECOMMENDATIONS

In accordance with the foregoing, the commission makes the following recommendations:

A. The commission recommends that the Legislature adopt, and that the Governor approve, the:

- (1) Proposed Water Code (Divisions I to VI, inclusive.)

- (2) Additional portions presented at this time for inclusion in the:

- (a) Business and Professions Code.
- (b) Public Resources Code.
- (c) Revenue and Taxation Code.
- (d) Streets and Highways Code.

B. The commission recommends that an adequate sum be made available for carrying on the work of the commission.

GERALD H. HAGAR, CHAIRMAN
CENTRAL BANK BUILDING
OAKLAND

WILLIAM G. HALE, VICE CHAIRMAN
UNIVERSITY OF SOUTHERN CALIFORNIA
LOS ANGELES

A. M. KIDD, VICE CHAIRMAN
UNIVERSITY OF CALIFORNIA
BERKELEY

FRED B. WOOD, SECRETARY



California Code Commission

CREATED BY THE PROVISIONS OF CHAPTER 760, STATUTES 1928
OFFICE: 218 STATE CAPITOL, SACRAMENTO

COMMISSION
D. E. AHLPORT
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NORRIS MONTGOMERY
WILLIAM B. OWENS
THOMAS E. STANTON

Sacramento, California
August 14, 1949.

TO THE MEMBERS OF THE BUSINESS AND PROFESSIONS CODE
CONFERENCE ON TRADE REGULATION LAW.

Subject: Codification of the laws regulating
business generally.

Gentlemen:

The California Code Commission, in the course of its program to codify all the statutory law of this state, has undertaken the codification of statutes of general application regulating the conduct of business enterprises.

In doing this work the code commission desires merely to restate the existing law clearly and concisely, without change in legal effect and with the approval of those most vitally concerned. In order to do this, the commission prepares drafts of the proposed text of the code for submission to those concerned. As we have been informed that you would be interested, we are herewith submitting to you for study and consideration the first draft of the proposed division of the Business and Professions Code covering general business regulations.

In addition to the draft, a cross-reference table is enclosed showing the disposition in the proposed code of the sections and parts of sections of the existing act. The source in the existing act of each section of the code is indicated in the draft by footnotes at the end of each code section.

In this draft of the proposed text we have indicated changes whenever feasible by showing the deleted matter in strike-out type and by underlining the new matter. By reading the ordinary type together with the strike-out and ignoring the underline type, the wording as it now exists may be seen. By reading the ordinary type and the underlined material and ignoring the strike-out, the wording as it will be in the code may be seen.

BUSINESS AND PROFESSIONS CODE
DIVISION VII - GENERAL BUSINESS REGULATIONS

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CROSS REFERENCE TABLE

Disposition of Existing Statutes in
Business and Professions Code

PENAL CODE

<u>Penal Code</u>			<u>Business and Professions Code</u>
<u>Section</u>	<u>Part</u>	<u>Last Amended Form</u>	
435		1872	16240
538a		1905:523: 634	17533
356		1915:654:1290	17532
654a	1st par.	1935:952:2480	17500
654a	2nd & 3rd par.	1935:952:2480	17501
654a	4th par.	1935:952:2480	17502
654b		1915:588:1027	17530
654c		1921: 91: 87	17531

POLITICAL CODE

<u>Political Code</u>			<u>Business and Professions Code</u>
<u>Section</u>	<u>Part</u>	<u>Last Amended Form</u>	<u>Section</u>
3366	1st pt., 1st sent.	1935:138: 487	16000
3366	1st prov., 1st sent.	1935:138: 487	16001
3566	2nd prov., 1st sent.	1935:138: 487	16002
3366	3rd prov.	1935:138: 487	omitted, covered by 16101
3366	2nd par.	1935:138: 487	16003
3388	1st sent.	1939:781:2310	16200
3388 (a)		1939:781:2310	16201
3388 (b)		1939:781:2310	16202
3388 (c)		1939:781:2310	16203
3388 (d)		1939:781:2310	16204
3388 (e)		1939:781:2310	16205
3388.5		1939:781:2310	16220
3389		1939:781:2310	16221
3389.5		1939:781:2310	16222
3390		1939:781:2310	16223

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Disposition of Existing Statutes in Business and Professions
Code - Continued.

<u>Political Code</u>			<u>Business and Professions Code</u>
<u>Section</u>	<u>Part</u>	<u>Last Amended Form</u>	<u>Section</u>
3391		1939:781:2370	16224
4041.14	1st pt.	1935:138: 487	16100
	1st prov.		16102
	2nd prov.		16103
	3rd prov.		16101

STATUTES OTHER THAN CODES

<u>Year Ch.</u>	<u>Pg.</u>	<u>Sec.</u>	<u>Part</u>	<u>Last Amended Form</u>	<u>Business and Professions Code Section</u>
1907:530:	984	1	1st sent.	1909:362:593	16720
		1	Intro. Cl., 2d sent.	1909:362:593	16723
		1	1st prov. 2d sent.	1909:362:593	Omitted, unconstitutional
		1	2d prov. 2d sent.	1909:362:593	Omitted, unconstitutional.
		2			16752
		2 $\frac{1}{2}$		1909:362:593	Omitted, unconstitutional
		3			16753
		4			16755
		5			16756
		6	1st&2d sent.		16757
		6	3d sent.		16758
		7			16754
		8			16722
		9			16700
		10			16721.
		11			16750
		11			16751
		12			16702
		13		1909:362:593	16703
1909:703:1078		1			Omitted, covered by 17500
1913:276: 508		1	1st pt., 1st sent.	1937:860:2395	17031

Disposition of Existing Statutes in Business and Professions
Code - Continued.

<u>Year</u>	<u>Ch.</u>	<u>Pge.</u>	<u>Sec.</u>	<u>Part</u>	<u>Last Amended Form</u>	<u>Business and Professions Code Section</u>
1913:276:	508		1	1st pt., 1st sent.	1937:860:2395	17040
1913:276:	508		1	1st prov., 1st sent.	1937:860:2395	17041
1913:276:	508		1	2nd prov., 1st sent.	1937:860:2395	17042
1913:276:	508		1	2nd & 3rd sent.	1937:860:2395	17024
1913:276:	508		1	1st pt., 2nd par.	1937:860:2395	17049
1913:276:	508		1	2nd pt., 2nd par.	1937:860:2395	17040
1913:276:	508		2	1st par.	1935:477:1546	17095
1913:276:	508		2	2nd par.	1935:477:1546	17101
1913:276:	508		3	1st par.	1939:175:1424	17043
1913:276:	508		3	2nd par.	1939:175:1424	17026
1913:276:	508		3	3rd par.	1939:175:1424	17029
1913:276:	508		3	1st sent., 4th par.	1939:175:1424	17044
1913:276:	508		3	2nd sent., 4th par.	1939:175:1424	17030
1913:276:	508		3	5th par.	1939:175:1424	omitted, covered by 17049
1913:276:	508		4	1st par.	1937:860:2395	17027
1913:276:	508		4	2nd par.	1937:860:2395	17028
1913:276:	508		5	1st sent., 1st par.	1937:860:2395	17096
1913:276:	508		5	2nd sent., 1st par.	1937:860:2395	17072
1913:276:	508		5	2nd par.	1937:860:2395	17071
1913:276:	508		6	1st par.	1937:860:2395	17050
1913:276:	508		6	2nd par.	1937:860:2395	17025
1913:276:	508		6.1		1939:175:1424	17050
1913:276:	508		7		1935:477:1546	17045
1913:276:	508		9		1935:477:1546	17051
1913:276:	508		10	1st sent.	1939:175:1424	17070
1913:276:	508		10	1st cl., 2nd sent.	1939:175:1424	17078
1913:276:	508		10	2nd cl., 2nd sent.	1939:175:1424	17079
1913:276:	508		10	3rd cl., 2nd sent.	1939:175:1424	17080

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Disposition of Existing Statutes in Business and Professions
Code - Continued.

<u>Year</u>	<u>Ch.</u>	<u>Pg.</u>	<u>Sec.</u>	<u>Part</u>	<u>Last Amended Form</u>	<u>Business and Professions Code Section</u>
1913:276:	508	10	3rd sent.		1939:175:1424	17081
1913:276:	508	10	2nd par.		1939:175:1424	17082
1913:276:	508	10	3rd par.		1939:175:1424	17083
1913:276:	508	10	4th par.		1939:175:1424	17084
1913:276:	508	10	5th par.		1939:175:1424	17085
1913:276:	508	10	6th par.		1939:175:1424	17086
1913:276:	508	11	1st par.		1937:860:2395	17100
1913:276:	508	11	2nd par.		1937:860:2395	17073
1913:276:	508	11	3rd par.		1937:860:2395	17074
1913:276:	508	12			1937:860:2395	omitted, covered by section 24
1913:276:	508	13	1st sent.		1937:860:2395	17001
1913:276:	508	13	2nd sent.		1937:860:2395	17002
1913:276:	508	14			1935:477:1546	17000
1913:276:	508	15	1st par.		1939:175:1424	17075
1913:276:	508	15	2nd par.		1939:175:1424	17076
1913:276:	508	15.1			1939:175:1424	17077
1913:276:	508	16	1st pt.		1937:860:2395	17021
1913:276:	508	16	2nd pt.		1937:860:2395	17022
1913:276:	508	16	3rd pt.		1937:860:2395	17023
1913:276:	508	16	4th pt.		1937:860:2395	17024
1913:276:	508	17	1st sent.		1939:175:1424	17046
1913:276:	508	17	2nd sent.		1939:175:1424	17047
1913:276:	508	17	3rd & 4th sent.		1939:175:1424	17048
1951:278:	583	1				16902
1951:278:	583	1 ^{1/2}			1933:260:793	16904
1931:278:	583	2				16905
1931:278:	583	3				16900
1931:278:	583	4				omitted, covered by sec. 24
1931:278:	583	5				16900
1931:278:	583	6			1937:843:2364	16903
1933:950:	2479	1			1939:1005:2786	17201
1933:950:	2479	2				17202
1933:950:	2479	3				omitted, unnecessary
1939:676:	2462	1				16300
1939:676:	2462	2				16301

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Disposition of Existing Statutes in Business and Professions
Code - Continued.

Year	Ch.	Pg.	Sec.	Part	Last Amended Form	<u>Business and Professions Code</u>
						Section
1939:876:2462			3			16302
1939:876:2462			4			16303
1939:876:2462			5			16304
1939:876:2462			6	Subd. (a)	1940:37:	16320
1939:876:2462			6	Subd. (b) (1)	1940:37:	16321
1939:876:2462			6	Subd. (b) (2)	1940:37:	16322
1939:876:2462			6	Subd. (b) (3)	1940:37:	16323
1939:876:2462			6	Subd. (b) (4)	1940:37:	16324
1939:876:2462			6	Subd. (b) (5)	1940:37:	16325
1939:876:2462			6	Subd. (b) (6)	1940:37:	16326
1939:876:2462			6	Subd. (b) (7)	1940:37:	16327
1939:876:2462			6	Subd. (b) (8)	1940:37:	16328
1939:876:2462			6	Subd. (b) (9)	1940:37:	16329
1939:876:2462			6.5		1940:37:	16305
1939:876:2462			7			16306
1939:876:2462			8			16307
1939:876:2462			9			16308
1939:876:2462			10			16309
1939:876:2462			11			16340
1939:876:2462			12			16341
1939:876:2462			13			16342
1939:876:2462			14			16343
1939:876:2462			15	1st sent.		16370
1939:876:2462			15	2nd sent.		16374
1939:876:2462			15	3rd sent.		16371
1939:876:2462			20		1940:37:	16372
1939:876:2462			21		1940:37:	16373
1939:876:2462			22			omitted, covered by sec. 16374
1939:876:2462			23		1940:37:	16375
1939:876:2462			24			16344
1939:876:2462			25			16345
1939:876:2462			26			16346
1939:876:2462			27			16390
1939:876:2462			28			16391
1939:876:2462			29			16347
1939:876:2462			30	1st sent.	1940:37:	16349
1939:876:2462			30	2nd sent.	1940:37:	16350
1939:876:2462			31			16348
1939:876:2462			32			16392
1939:876:2462			33			16410

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Disposition of Existing Statutes in Business and Professions
Code - Continued.

<u>Year</u>	<u>Ch.</u>	<u>Pg.</u>	<u>Sec.</u>	<u>Part</u>	<u>Last Amended Form</u>	<u>Business and Professions Code Section</u>
1939	876	2462	34			16411
1939	876	2462	35			16430
1939	876	2462	36			16431
1939	876	2462	37			16432
1939	876	2462	38			16450
1939	876	2462	39			16451
1939	876	2462	40			16310
1939	876	2462	41			16311
1939	876	2462	42			omitted, covered by sec. 24

DEFERRING ACTS

<u>No.</u>	<u>Sec.</u>	<u>Part</u>	<u>Last Amended Form</u>	<u>Business and Professions Code Section</u>
3995	1		1939:876:2462	16300
	2		" " "	16301
	3		" " "	16302
	4		" " "	16303
	5		" " "	16304
	6	Subd. (a)	1940:37:	16320
	6	Subd. (b) (1)	" "	16321
	6	Subd. (b) (2)	" "	16322
	6	Subd. (b) (3)	" "	16323
	6	Subd. (b) (4)	" "	16324
	6	Subd. (b) (5)	" "	16325
	6	Subd. (b) (6)	" "	16326
	6	Subd. (b) (7)	" "	16327
	6	Subd. (b) (8)	" "	16328
	6	Subd. (b) (9)	" "	16329
	6.5		" "	16305
	7		1939:876:2462	16306
	8		" " "	16307
	9		" " "	16308
	10		" " "	16309
	11		" " "	16340
	12		" " "	16341
	13		-6- " "	16342

LEGISLATIVE INTENT SERVICE (800) 666-1917

Disposition of Deering Acts in Business and Professions Code - Continued.

<u>Deering Act</u>				<u>Business and Professions Code</u>
<u>No.</u>	<u>Sec.</u>	<u>Part</u>	<u>Last Amended Form</u>	<u>Section</u>
3895	14		1939;876;2462	16343
	15	1st sent.	" " "	16370
	15	2nd sent.	" " "	16374
	15	3rd sent.	" " "	16371
	20		1940: 37:	16372
	21		" "	16373
	22		1939;876;2462	omitted, covered by sec. 16374
	23		1940: 37:	16375
	24		1939;876;2462	16344
	25		" " "	16345
	26		" " "	16346
	27		" " "	16390
	28		" " "	16391
	29		" " "	16347
	30	1st sent.	1940: 37:	16349
	30	2nd sent.	" "	16350
	31		1939;876;2462	16348
	32		" " "	16392
	33		" " "	16410
	34		" " "	16411
	35		" " "	16430
	36		" " "	16431
	37		" " "	16432
	38		" " "	16450
	39		" " "	16451
	40		" " "	16310
	41		" " "	16311
	42		" " "	omitted, covered by sec. 24
6758	1		1909;703;1078	omitted, covered by sec. 17500
6759	1		1939;1005;2786	17201
	2		1933: 950;2479	17202
	3		" " "	omitted, un- necessary
2702	1	1st sent.	1909;362: 593	16720
	1	Introductory cl. 2nd sent.	" " "	16723
	1	1st proviso, 2nd sent.	" " "	omitted, un- constitutional
	1	2nd proviso, 2nd sent.	" " "	omitted, un- constitutional

LEGISLATIVE INTENT SERVICE (510) 688-1917

Disposition of Deering Acts in Business and Professions
Code - Continued

<u>Deering Act</u>				<u>Business and Professions Code</u>
<u>No.</u>	<u>Sec.</u>	<u>Part</u>	<u>Last Amended Form</u>	<u>Section</u>
8702	2		1907:530: 984	16752
	2 1/2		1909:362: 593	16724
	3		1907:530: 984	16753
	4		" " "	16755
	5		" " "	16756
	6	1st & 2nd sent.	" " "	16757
	6	3rd sent.	" " "	16758
	7		" " "	16754
	8		" " "	16722
	9		" " "	16700
	10		" " "	16721
	11	1st sent.	" " "	16750
	11	2nd sent.	" " "	16751
12		" " "	16702	
13		1909:362: 593	16703	
8781	1	1st pt., 1st sent.	1937:860:2395	17031
	1	1st pt., 1st sent.	" " "	17040
	1	1st prov., 1st sent.	" " "	17041
	1	2nd prov., 1st sent.	" " "	17042
	1	2nd & 3rd sent.	" " "	17024
	1	1st pt., 2nd par.	" " "	17049
	1	2nd pt., 2nd par.	" " "	17040
	2	1st par.	1935:477:1546	17095
	2	2nd par.	" " "	17101
	3	1st par.	1939:175:1424	17043
	3	2nd par.	" " "	17026
	3	3rd par.	" " "	17029
	3	1st sent., 4th par.	" " "	17044
	3	2nd sent., 4th par.	" " "	17030
	3	5th par.	" " "	omitted, covered by 17049
	4	1st par.	1937:860:2395	17027
	4	2nd par.	" " "	17028
	5	1st sent., 1st par.	" " "	17096
	5	2nd sent., 1st par.	" " "	17072
	5	3rd par.	" " "	17071
	6	1st par.	" " "	17050
	6	2nd par.	" " "	17025
	6.1		1939:175:1424	17050
	7		1935:477:1546	17045
	9		" " "	17051
	10	1st sent.	1939:175:1424	17070
	10	1st cl., 2nd sent.	" " "	17078
10	2nd cl., 2nd sent.	" " "	17079	
10	3rd cl., 2nd sent.	" " "	17080	
10	3rd sent.	" " "	17081	

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Disposition of Deering Acts in Business and Professions
Code - Continued

<u>Deering Act</u>				<u>Business and Professions Code</u>
<u>No.</u>	<u>Sec.</u>	<u>Part</u>	<u>Last Amended Form</u>	<u>Section</u>
3781	10	2nd par.	1939:175:1424	17082
	10	3rd par.	" " "	17083
	10	4th par.	" " "	17084
	10	5th par.	" " "	17085
	10	6th par.	" " "	17086
	11	1st par.	1937:860:2395	17100
	11	2nd par.	" " "	17073
	11	3rd par.	" " "	17074
	12		" " "	omitted, covered by section 24
	13	1st sent.	" " "	17001
	13	2nd sent.	" " "	17002
	14		1935:477:1546	17000
	15	1st par.	1939:175:1424	17075
	15	2nd par.	" " "	17076
	15.1		" " "	17077
	16	1st pt.	1937:860:2395	17021
	16	2nd pt.	" " "	17022
	16	3rd pt.	" " "	17023
	16	4th pt.	" " "	17024
	17	1st sent.	1939:175:1424	17046
17	2nd sent.	" " "	17047	
17	3rd & 4th sent.	" " "	17048	
3782	1		1931:278: 583	16902
	1 $\frac{1}{2}$		1933:260: 793	16904
	2		1931:278: 583	16905
	3		" " "	16900
	4		" " "	omitted, covered by sec. 24
	5		" " "	16900
6		1937:843:2364	16903	

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1 DIVISION VII. GENERAL BUSINESS REGULATIONS.

2 Part 1. Licensing for Revenue and Regulation.

3 Chapter 1. Licensing by Cities.

4 16000. ~~3666~~ Boards of supervisors of the counties of
5 the State, and The legislative bodies of the incorporated
6 cities and towns therein, shall may, in the exercise of their
7 police powers, and for the purpose of regulation, as herein
8 provided, and not otherwise, have power to license all and
9 every any kind of business not prohibited by law, and trans-
10 acted and carried on within the limits of their respective
11 jurisdictions, and including all shows, exhibitions and
12 lawful games carried on therein, to and may fix the rates of
13 such license tax fee upon the same, and to provide for the
14 its collection of the same by suit or otherwise. (1st
15 pt., 1st sent., Pol. C. 3366, 1935:138:487)
16 16001. provided, that Every honorably discharged or
17 honorably released soldier, sailor, or marine of the United
18 States or Confederate States who has served in the Civil
19 War, any Indian war, the Spanish-American War, any
20 Philippine Insurrection, or in the Chinese Relief Expedition,
21 or in the World War of 1914 and years following, who is
22 physically unable to obtain a livelihood by manual labor,
23 and who shall be is a qualified elector of the ^{this} State of
24 California, shall have the right to may distribute circulars,
25 and to hawk, peddle, and vend any goods, wares or mer-
26 chandise, except spirituous, malt, vinous or other intoxi-
27 cating liquor, without payment of any license tax or fee
28 whatsoever, whether municipal, county or State, and the
29 board of supervisors or legislative body shall issue to such

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1 soldier, sailor or marine, without cost, a license therefor.

2 (1st proviso, 1st sent., Pol. C. 3366, 1935:138:487)

3 16002. provided, however, No license fee can may be
4 collected from, or nor any penalty for the nonpayment there-
5 of enforced against, any commercial traveler whose business
6 is limited to the goods, wares, and merchandise sold or
7 dealt in at wholesale in this State at wholesale. (2d
8 proviso, 1st sent., Pol. C. 3366, 1935:138:487)

9 16003. This section article shall does not be deemed
10 to repeal any act vesting municipal corporations with power
11 to license for revenue purposes. (2d par., Pol. C. 3366,
12 1935:138:487)

13 Chapter 2. Licensing by Counties.

14 16100. 4041.14. Under such limitations and restric-
15 tions as are prescribed by law, and in addition to juris-
16 diction and powers otherwise conferred, The boards of super-
17 visors, in their respective counties, shall have the juris-
18 diction and powers to license, may in the exercise of their
19 police powers, and for the purpose of regulation, as herein
20 provided, and not otherwise, license all and every any kind
21 of business not prohibited by law, and transacted and car-
22 ried on within the limits of their respective jurisdictions,
23 and including all shows, exhibitions, and lawful games
24 carried on therein, to and may fix the rate of license tax
25 fee upon the same, and to provide for the its collection
26 of the same by suit or otherwise. (1st pt., Pol. C.
27 4041.14, 1935:138:487)

28 16101. provided further, that The boards of super-
29 visors in their respective counties may for the purpose

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1 of revenue license individuals acting as hawkers, itinerant
2 peddlers or itinerant vendors, other than merchants having
3 a fixed place of business in the county, their employees,
4 and farmers selling farm products produced by them, acting
5 as hawkers, itinerant peddlers or itinerant vendors.

6 (Note: The legislative history of A. B. 229 justifies
7 this construction of a rather ambiguous provision. 3d
8 proviso, Pol. C. 4041.14, 1935:138:487)

9 provided further, that counties may for the purpose of
10 revenue license individuals, other than merchants having a
11 fixed place of business in the county, their employees, and
12 farmers selling farm products produced by them, acting as
13 hawkers, itinerant peddlers or itinerant vendors. (Note:
14 Duplicates the provisions of the foregoing sections. 3d
15 proviso, Pol. C. 3366, 1935:138:487)

16 16102. provided, that Every soldier, sailor or marine
17 of the United States who has received an honorable discharge
18 or a release from active duty under honorable conditions
19 from such service shall have the right to may hawk, peddle
20 and vend any goods, wares or merchandise, except spirituous,
21 malt, vinous or other intoxicating liquor, without payment
22 of any license, tax or fee whatsoever, whether municipal,
23 county or State, and the board of supervisors or legislative
24 body shall issue to such soldier, sailor or marine, without
25 cost, a license therefor. (1st proviso, Pol. C. 4041.14,
26 1935:138:487)

27 provided, that every honorably discharged or honorably
28 released soldier, sailor, or marine of the United States or
29 Confederate States who has served in the Civil War, any

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1 Indian war, the Spanish-American War, any Philippine
2 Insurrection or in the Chinese Relief Expedition, or in the
3 World War of 1914 and years following, who is physically
4 unable to obtain a livelihood by manual labor, and who shall
5 be a qualified elector of the State of California, shall have
6 the right to distribute circulars, and to hawk, peddle, and
7 vend any goods, wares or merchandise, except spirituous,
8 malt, vineous or other intoxicating liquor, without payment
9 of any license tax or fee whatsoever, whether municipal,
10 county or State, and the board of supervisors or legislative
11 body shall issue to such soldier, sailor or marine, without
12 cost, a license therefor; (Note: This part of the
13 section was last amended by 1921:164:163 and probably was
14 superseded by the unlimited exemption granted by Pol. C.
15 4041.14, added by 1929:755:1450.

16 Is the application of this provision to Confederate
17 veterans (not granted by Pol. C. 4041.14) any longer of
18 importance? 1st proviso, 1st sent., Pol. C. 3366, 1935:
19 138:487)

20 16103. provided, however, No license fee can may
21 be collected from, or nor any penalty for the nonpayment
22 thereof enforced against, any commercial traveler whose
23 business is limited to the goods, wares and merchandise
24 sold or dealt in at wholesale in this State at wholesale,
25 (2d proviso, Pol. C. 4041.14, 1935:138:487)

26 Note: The material proposed for this and the preced-
27 ing chapter is also being considered by the commission
28 for insertion in the Government Code.

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Chapter 3. State Licensing.

Article 1. Definitions.

16200. 3388. Unless the context otherwise requires,
the definitions set forth in this section chapter govern
the construction of the terms they define in the subsequent
sections of this ~~article~~ chapter. (Note: The material
proposed for this chapter is being considered by the Code
Commission for insertion in the Revenue and Taxation Code.
1st sent., Pol. C. 3388, 1939:781:2310)

16201. (a) "Fee" includes every tax, fee, penalty
and other monetary exaction, and interest and costs in con-
nection therewith, imposed or collected in connection with
or as a prerequisite to or condition for the issuance, re-
newal or continued validity of any license, certificate or
registration required by law. (Pol. C. 3388 (a), 1939:781:
2310)

16202. (b) "Tax" includes every tax, fee, penalty
and other monetary exaction, and interest and costs in con-
nection therewith, imposed or collected for revenue for
public purposes generally. (Pol. C. 3388 (b), 1939:781:2310)

16203. (c) "Charge" includes every tax, fee, penalty
and other monetary exaction, and interest and costs in con-
nection therewith, imposed or collected for regulatory pur-
poses or for some particular public purpose or purposes.
(Pol. C. 3388 (c), 1939:781:2310)

16204. (d) "Officer" includes director, chief, com-
missioner, chairman, department, division, bureau, commission,
board and any other person, officer or employee, and any
agency, of or in the government of the this State of

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1 California, (Pol. C. 3388 (d), 1939:781:2310)

2 16205. (e) "Taxpayer" includes every individual,
3 person, firm, partnership, joint adventure, association,
4 corporation, estate, trust, business trust, receiver,
5 syndicate and artificial legal entity subject to or liable
6 for any fee, tax or charge. (Pol. C. 3388 (e), 1939:781:
7 2310)

8 Article 2. Actions.

9 16220. 3388.5. The remedy provided by this article
10 chapter for the collection of any fee, tax and charge is
11 cumulative. No action taken under this article chapter
12 constitutes an election to pursue the remedy provided by
13 it to the exclusion of any other remedy provided by law.
14 (Pol. C. 3388.5, 1939:781:2310)

15 16221. 3389. Every officer by or for whom any fee,
16 tax or charge imposed by the statutes of this State is
17 collected may bring a suit in the name of the people of
18 the State of California against any taxpayer who fails,
19 neglects or refuses to pay any sums due, owing and unpaid
20 by the taxpayer upon the fee, tax or charge.

21 This section does not of itself authorize a suit for
22 recovery of a judgment for a tax on real estate which is a
23 lien thereon. (Pol. C. 3389, 1939:781:2310)

24 16222. 3389.5. Except as otherwise provided in this
25 article chapter, the provisions of the Code of Civil Pro-
26 cedure relating to the service of summons, pleadings,
27 proofs, trials and appeals are applicable to actions under
28 this article chapter. (Pol. C. 3389.5, 1939:781:2310)

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1 16223. ~~3390~~. Upon application and without bond or
2 affidavit, every officer suing under this article chapter is
3 entitled to all or any of provisional remedies provided in
4 the Code of Civil Procedure. (Pol. C. 3390, 1939:781:2310)

5 16224. ~~3391~~. All sums collected in suits under this
6 article chapter shall be reported to the Controller and de-
7 posited in the State treasury to the credit of the fund in
8 which would be deposited the fee, tax or charge for which the
9 suit was brought. (Pol. C. 3391, 1939:781:2310)

10 Article 3. Penalties.

11 16240. ~~436~~. Every person who commences or carries on
12 any business, trade, profession, or calling, for the trans-
13 action or carrying on of which a license is required by any
14 law of this state, without taking out or procuring the
15 license prescribed by such law, is guilty of a misdemeanor.
16 (Note: This section may be unnecessary. Each state licen-
17 sing act carries its own penalty section. cf. 16430, infra.
18 Unless it is applicable to county and municipal licensing
19 ordinances, it could be eliminated. Cf. People v. Fages
20 (1916) 32 Cal. App. 37 at 41, 162 Pac. 137. Pen. C. 435,
21 1872.)

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1 Chapter 4. Itinerant Merchants.
2 Article 1. General Provisions.
3 16300. Section 1: A "vehicle" is a device in, upon
4 or by which any person or property is or may be propelled,
5 moved or drawn upon a highway, excepting a device moved
6 by human power or used exclusively upon stationary rails
7 or tracks. (Sec. 1, D. A. 3895, 1939:876:2462)
8 16301. See 2: A "motor vehicle" is a vehicle which
9 is self-propelled. (Sec. 2, D. A. 3895, 1939:876:2462)
10 16302. See 3: A truck tractor and a semitrailer,
11 as defined in the Vehicle Code, shall be considered to
12 be one vehicle. (Sec. 3, D. A. 3895, 1939:876:2462)
13 16303. See 4: "Person" means any person, firm,
14 association, partnership, or corporation. (Sec. 4, D. A.
15 3895, 1939:876:2462)
16 16304. See 5: "Goods" means any goods, wares,
17 merchandise, products, or chattels of any description.
18 (Sec. 5, D. A. 3895, 1939:876:2462)
19 16305. See 6.5: "Farm products" means and includes
20 all agricultural, horticultural, viticultural and vegetable
21 products of the soil, poultry and poultry products, timber
22 and timber products, live stock, hay, dried beans, honey
23 and cut flowers, but shall not include milk and milk
24 products subject to the licensing and bonding provisions
25 of Chapter 10 of Division IV of the Agricultural Code.
26 (Note: Section takes effect 90 days after the final ad-
27 journment of the 1st ex. sess. of the 53d legislature.
28 Sec. 6.5, D. A. 3895, 1940:37:)
29 16306. See 7: (a) "Established place of business"

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1 means any permanent warehouse, building, or structure owned
2 in fee or leased, at which the owner or lessee carries on a
3 legitimate permanent business in good faith and at which
4 stocks of the goods transported are produced, stored, or
5 kept, in quantities usually carried and reasonably adequate
6 to meet the requirements of the business.

7 (b) "Established place of business" does not mean
8 tents, temporary stands, or other temporary structures, or
9 permanent structures occupied pursuant to a temporary
10 arrangement. (Sec. 7, D. A. 3895, 1939:876:2462)

11 16307. See 8. "Commission" means the Railroad Com-
12 mission of the State of California. (Sec. 8, D. A. 3895,
13 1939:876:2462)

14 16308. See 9. "Secretary" means the secretary of
15 the Railroad Commission of the State of California. (Sec.
16 9, D. A. 3895, 1939:876:2462)

17 16309. See 10. "Licensee" means a person to whom an
18 itinerant merchant's license has been granted by the com-
19 mission in accordance with the provisions of this act
20 chapter. (Sec. 10, D. A. 3895, 1939:876:2462)

21 16310. See 40. Nothing in this act chapter shall be
22 construed to repeal or amend the provisions of any or-
23 dinance enacted by a county, city and county, or city.

24 The provisions of this act chapter are cumulative and
25 supplemental with respect to regulations imposed by any
26 county, city and county, or city upon persons who are subject
27 to the provisions of this act chapter. (Sec. 40, D. A. 3895,
28 1939:876:2462)

29 16311. See 41. The provisions of this act chapter are
30 cumulative and supplemental with respect to any other laws
31 relating to motor vehicles now or hereafter enacted in this
32 State. (Sec. 41, D.A. 3895, 1939:876:2462.)

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1 Article 2. Application of the Chapter.

2 16320. Sec. 6. (a) "Itinerant merchant" means every
3 person who buys for the purpose of sale in any manner, or
4 offers to buy for the purpose of sale in any manner, at
5 wholesale or retail, any farm products, including timber
6 products, and who transports the same such products upon
7 a public highway by the use of a motor vehicle to any county
8 in this State, other than the county in which the products
9 were purchased, for the purpose of selling such products.

10 (Subd. (a), Sec. 6, D. A. 3895, 1940:37: Deleted
"including timber products" covered by section 16305.)

11 16321. (b) "Itinerant merchant" does not mean

12 (1) The provisions of this chapter do not apply to
13 persons who are engaged in the business of transporting goods
14 in motor vehicles for hire or who operate motor vehicles
15 in such business as agents, employees, lessees, or con-
16 tractors and who do not own or have any interest in the
17 goods transported and who do not act for any party in the
18 acquisition, purchase, sale, or disposition of the goods
19 transported. (Subpart (1) of Subd. (b), Sec. 6, D. A.

20 3895, 1940:37:)

21 16322. (2) The provisions of this chapter do not apply to
persons who use motor vehicles to transport
22 farm products produced by them or on land owned by them.
23 (Subpart (2) of subd. (b), Sec. 6, D. A. 3895, 1940:37:)

24 16323. (3) The provisions of this chapter do not
25 apply to persons transporting property owned or handled
26 on consignment by them in motor vehicles operated by them,
27 or by their agents or employees, when such transportation
28 is an incident to a business conducted by them, and when such
29 property is being transported to or from an established place

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1 of business operated by them, their agents or employees, or
2 when such transportation is incidental to the conduct of an
3 established place of business. (Subpart (3) of subd. (b),
4 Sec. 6, D. A. 3895, 1940:37:)

5 16324. {4} The provisions of this chapter do not apply
6 to persons who use motor vehicles exclusively for the trans-
7 portation, sale, and delivery, at wholesale or retail, of
8 any particular group of goods having a common trade-mark,
9 trade name, or brand, if such persons are agents or em-
10 ployees of the manufacturers or are wholesale distributors
11 or retail dealers through whom such goods are marketed.
12 (Subpart (4) of subd. (b), sec. 6, D. A. 3895, 1940:37:)

13 16325. {5} The provisions of this chapter do not apply
14 to persons who use motor vehicles to transport goods for
15 the personal use of the owners of the vehicles, or for the
16 use of others if no charge is made for the transportation.
17 (Subpart (5) of subd. (b), sec. 6, D. A. 3895, 1940:37:)

18 16326. {6} The provisions of this chapter do not apply
19 to persons who use motor vehicles in exchange of work.
20 (Subpart (6) of subd. (b), sec. 6, D. A. 3895, 1940:37:)

21 16327. {7} The provisions of this chapter do not apply
22 to independent contractors engaged in the delivery or dis-
23 tribution of newspapers of general circulation. (Subpart (7)
24 of subd. (b), sec. 6, D. A. 3895, 1940:37:)

25 16328. {8} The provisions of this chapter do not apply
26 to farmers who occasionally transport from the place of
27 production to a warehouse, regular market, place of storage,
28 or place of shipment the farm products of neighboring
29 farmers in exchange for like services or for a cash con-

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1 sideration, (Subpart (8) of subd. (b), sec. 6, D. A.

2 3895, 1940:37:)

3 16329. (9) The provisions of this chapter do not apply

4 to persons, the principal part of whose business is the manu-

5 facturing, canning or processing of farm products or timber

6 products. (Subpart (9) of subd. (b), sec. 6, D.A. 3895,

7 1940:37:)

8 Note: Article 2, sections 16320 to 16329, is based on
9 section 6, the amendment of which takes effect 90 days after
10 final adjournment of the 1st ex. sess. of the 53d legislature.

11 Article 3. Licensing.

12 16340. ~~Sec. 11.~~ No person shall may engage in business

13 as an itinerant merchant unless he has first obtained a

14 license as provided in this act chapter. (Note: The

15 provisions of the act for posting a bond were repealed by

16 Chapter 37 of the Statutes of 1940, the repeal becoming

17 effective 90 days after the final adjournment. Sec. 11,

18 D. A. 3895, 1939:876:2462)

19 16341. ~~Sec. 12.~~ Every person who wishes to engage

20 in business as an itinerant merchant shall file with the

21 commission an application for a license to transact the

22 business of an itinerant merchant. (Sec. 12, D. A. 3895,

23 1939:876:2462)

24 16342. ~~Sec. 13.~~ The application for a license shall

25 contain the applicant's full name, his post-office and

26 residence addresses, and an exact description of the motor

27 vehicle or vehicles to be used in the conduct of his busi-

28 ness. If the applicant is a firm, association, partnership,

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1 or corporation the application shall contain the name and
2 address of each member of the firm, association, or partner-
3 ship, or of each officer of the corporation.

4 The application shall contain such further information
5 as the commission may require. (Sec. 13, D. A. 3895, 1939:
6 876:2462)

7 16343. See 14. The applicant shall satisfy the com-
8 mission of his character, responsibility, and good faith in
9 seeking to carry on the business of an itinerant merchant.
10 (Sec. 14, D. A. 3895, 1939:876:2462)

11 16344. See 24. The license issued to an itinerant
12 merchant shall be in the form of a card certificate signed by
13 the secretary and shall contain the name and address of the
14 licensee, a description of the motor vehicle or vehicles to
15 be used by the licensee as an itinerant merchant, and an
16 identification number. (Sec. 24, D. A. 3895, 1939:876:2462)

17 16345. See 25. Every person licensed under the pro-
18 visions of this act chapter shall write his usual signature
19 with pen and ink in the space provided for that purpose on
20 the license issued to him immediately on receipt thereof,
21 and such license shall not be valid until so signed. (Sec.
22 25, D. A. 3895, 1939:876:2462)

23 16346. See 26. The licensee shall have his license
24 in his immediate possession at all times when acting as an
25 itinerant merchant, and shall display it upon demand of a
26 member of the California Highway Patrol, a justice of the
27 peace, a peace officer, or an investigator employed by the
28 department commission. (Note: S. B. 243 as first intro-
29 duced provided for its enforcement by the department of

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1 Professional and Vocational Standards. When it was amended
2 in the Senate April 3, 1939, to provide for enforcement by
3 the commission, the above reference was inadvertently left
4 unchanged. Sec. 26, D. A. 3895, 1939:876:2462)

5 16347. See 29. A license issued to an itinerant
6 merchant is valid for the remainder of the calendar year
7 in which it is issued. (Sec. 29, D. A. 3895, 1939:876:2462)

8 16348. See 31. No itinerant merchant's license may
9 be sold or transferred. (Sec. 31, D. A. 3895, 1939:876:2462)

10 16349. See 30. A licensee may renew his license by
11 filing an application and paying the license fee in the
12 manner prescribed in this act chapter in connection with
13 the issuance of an original license. (Note: The 1940
14 amendment deleted the requirement of a bond for a license
15 contained in the act by amending this section and by repeal-
16 ing secs. 16, 17, 18 and 19. Inasmuch as the proclamation
17 convening the extraordinary session may not have specified
18 the repeal of the bonding provision as a subject on which
19 the legislature might act, there may be a question as to
20 its validity. See proclamation item 27, Const. Art. V,
21 sec. 9.

22 The amendment takes effect 90 days after the final
23 adjournment of the 1st extraordinary session of the 53d
24 legislature. 1st sent., sec. 30, D. A. 3895, 1940:37:)

25 16350. The commission shall not renew the license
26 of any licensee against whom there is an unsatisfied judg-
27 ment rendered in any action arising out of the licensee's
28 business in this State as an itinerant merchant. (Note:
29 Amendment takes effect 90 days after the final adjournment

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1 of the 1st extraordinary session of the 53d legislature.

2 2d sent., sec. 30, D. A. 3895, 1940:37;)

3 Article 4. Consent to Service.

4 16370. See 15. With the application for a license the
5 applicant shall also file a consent and agreement that any
6 civil action for damages commenced against the licensee in
7 this State, and arising out of transactions in this State,
8 may be commenced by serving summons upon the Secretary of
9 the Railroad Commission and by leaving with the secretary two
10 copies of such summons. (1st sent., sec. 15, D. A, 3895,
11 1939:876:2462)

12 16371. Such The consent and agreement required by this
13 chapter shall further provide that such an action may be
14 commenced in any county in this State in which the cause of
15 action arose. (3d sent., Sec. 15, D. A, 3895, 1939:876:
16 2462)

17 16372. See 20. In any action against a licensee
18 arising out of business done in this State by the licensee
19 as an itinerant merchant and instituted in any court in this
20 State, service of summons or other legal process upon the
21 commission shall constitute valid service of the licensee
22 against whom the summons is directed. (Note: Amendment
23 takes effect 90 days after final adjournment of the 1st ex.
24 sess. of the 53d legislature. Sec. 20, D. A. 3895, 1940:
25 37;)

26 16373. See 21. The commission shall keep a record
27 of all processes served upon it as an agent for each
28 licensee, identifying in such record each process so served,
29 the court from which issued, the title and the nature of the

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1 action, and the time and date of service. (Note: Amend-
2 ment takes effect 90 days after final adjournment of 1st
3 ex. sess. of the 53d legislature. Sec. 21, D. A. 3895,
4 1940:371)
5 16374. The secretary shall note on said both copies
6 of the summons the time of the service thereof upon him,
7 and shall file one of said ^{the} copies in his office and shall
8 forthwith mail the other of said copies, by registered mail,
9 to the itinerant merchant by motor vehicle named as defen-
10 dant, to his address on file with the Railroad Commission.
11 (Note: The deleted words do not appear to have any meaning
12 unless they limit the operation of the provision for mailing
13 to those merchants who use motor vehicles. If so, possibly
14 as to other itinerant merchants the provision would be lack-
15 ing in due process. See Wuchter v. Pizzutti (1928) 276 U. S.
16 13. Note that with the deletion the sentence carries the
17 same sense as section 22, shown in strike-out below. Sec-
18 tion 15 was amended by inserting this sentence during the
19 course of passage. 2d sent., sec. 15, D. A. 3895, 1939:
20 876:2462)

21 See 22. The commission shall immediately forward by
22 United States mail the process so served to the party or
23 parties against whom the process is directed, addressed to
24 the post-office address designated by the party. (Note:
25 Deleted as duplicative of the preceding section. Sec. 22,
26 D. A. 3895, 1939:876:2462)

27 ^{See 23.} 16375. / The court in which is pending an action against
28 a licensee arising out of business done in this State by the
29 licensee as an itinerant merchant may grant such continuances

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1 as are necessary to afford the licensee a reasonable oppor-
2 tunity to defend the action. (Note: Amendment takes effect
3 90 days after the final adjournment of the 1st ex. sess. of
4 the 53d legislature. Sec. 23, D. A. 3895, 1940:37:)

5 Article 5. Motor Vehicles.

6 16390. See 27. The commission shall assign to each
7 licensee a number for each vehicle to be used by the licen-
8 see in his business as an itinerant merchant, and the com-
9 mission shall issue to the licensee for each such vehicle a
10 license plate of such color and form as to be readily dis-
11 tinguishable from motor vehicle license plates issued by the
12 Department of Motor Vehicles of this State. (Sec. 27, D. A.
13 3895, 1939:876:2462)

14 16391. See 28. When the motor vehicle for which a
15 license plate is issued is used by the licensee in his busi-
16 ness as itinerant merchant, the licensee shall display such
17 license plate on a conspicuous place on the vehicle. (Sec.
18 28, D. A. 3895, 1939:876:2462)

19 16392. See 32. No motor vehicle shall be operated
20 by an itinerant merchant unless the vehicle is equipped with
21 a license plate as provided in this ~~act~~ chapter. A license
22 plate shall not be transferred from one vehicle to another.
23 (Sec. 32, D. A. 3895, 1939:876:2462)

24 Article 6. Manifests.

25 16410. See 33. All itinerant merchants and their
26 agents and employees shall carry on each motor vehicle
27 used by them a manifest on a form prescribed by the com-
28 mission showing a description of the goods in the vehicle,

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1 and the place where and the person from whom the goods were
2 purchased. If the goods are purchased by weight, the weight
3 and the name and address of the person weighing the goods
4 shall be shown on the manifest. (Sec. 33, D. A. 3895,
5 1939:876:2462)

6 16411. ~~Sec. 34.~~ Each manifest shall be kept in dup-
7 licate. The itinerant merchant shall preserve a copy of
8 each manifest. On or before the fifteenth day of every
9 month, each itinerant merchant shall file with the commis-
10 sion the original copies of the manifests covering all goods
11 purchased by the merchant in the course of his business as
12 an itinerant merchant in this State during the preceding
13 calendar month. (Sec. 34, D. A. 3895, 1939:876:2462)

14 Article 7. Revenue.

15 16430. ~~Sec. 35.~~ Each itinerant merchant shall pay a
16 license fee in the amount of ten dollars for each motor
17 vehicle to be used by him in the conduct of his business.
18 The fee shall be paid to the commission at the time appli-
19 cation is made for a license. (Sec. 35, D. A. 3895, 1939:
20 876:2462)

21 16431. ~~Sec. 36.~~ The commission shall pay into the
22 State treasury all moneys received under the provisions of
23 this act chapter. The State Treasurer shall credit such
24 moneys to the itinerant merchants fund, which fund is hereby
25 created. (Sec. 36, D. A. 3895, 1939:876:2462)

26 16432. ~~Sec. 37.~~ All moneys in the itinerant merchants
27 fund are hereby appropriated without regard to fiscal years
28 to be expended in accordance with law by the commission in
29 the enforcement and administration of the provisions of

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1 this act chapter. (Sec. 37, D. A. 3895, 1939:876:2462)

2 Article 8. Penalties.

3 16450. See 38. Any person who violates any provision
4 of this act chapter shall be is guilty of a misdemeanor, and
5 upon conviction thereof, shall be punishable by a fine of
6 not more than three hundred dollars or less than twenty-
7 five dollars, or by imprisonment in the county jail for a
8 period of not more than sixty days or less than ten days,
9 or by both such fine and imprisonment. (Sec. 38, D. A.
10 3895, 1939:876:2462)

11 16451. See 39. Any member of the California Highway
12 Patrol may, for the purpose of making an investigation, stop
13 any motor vehicle in which goods are being transported on
14 any public highway by or on behalf of an itinerant merchant.

15 If the driver of the motor vehicle fails to produce a
16 manifest covering goods in the motor vehicle as required by
17 the provisions of this act chapter, or if the member of the
18 patrol has reason to believe that the driver is not lawfully
19 in possession of the goods, the patrolman may take possession
20 of the goods and hold them for thirty days pending an in-
21 vestigation. (Sec. 39, D. A. 3895, 1939:876:2462)

22 See 42. A decision that any provision of this act is
23 invalid, or that any provision as applied in a particular
24 situation is invalid, shall not affect the remainder of this
25 act. (Note: Covered by Sec. 24 of this Code. Sec. 42,
26 D.A. 3895, 1939:876:2462.)

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1 Part 2. Preservation and Regulation of Competition.

2 Chapter 1. Combinations in Restraint of Trade.

3 Note: The United States District Court for the
4 Southern District of California has held that the entire
5 act constituting this chapter is invalid. It reasoned
6 that parts of the 1909 amendment made the standard of
7 conduct required by the act uncertain within the rule of
8 Cline v. Frink Dairy Co. (1927) 274 U.S. 525. It further
9 held that the amendment was not severable from the
10 original act because (1) the act contained no severa-
11 bility clause, and (2) the original act was so harsh that
12 the Legislature must be presumed to have intended that
13 it should not remain unamended. Blake v. Paramount
14 Pictures (1938) 22 Fed. Supp. 249.

15 The California Attorney General in a recent opinion
16 (NS-2806 July 29, 1940) declared, however, that although
17 the 1909 amendment was invalid, the original act remains
18 in full force and effect.

19 The 1909 amending act added two provisos to section 1
20 and added sections 2 $\frac{1}{2}$ and 13. Cline v. Frink Dairy Co.,
21 supra, dealt with the provisions of a Colorado act
22 (Statutes of 1913, Chapter 161, page 613) which were
23 identical with the provisos in our section 1 but which
24 were a part of the Colorado statute as originally enacted.
25 The reasoning in that case apparently applies to our
26 section 2 $\frac{1}{2}$ as well. Section 13 of our act (the third
27 proviso of section 1 of the Colorado act) was construed
28 in Overland Publishing Co. v. H. S. Crocker Co. (1924)
29 193 Cal. 109, 222 Pac. 812, which cited a Colorado case,

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1 Campbell v. People, 72 Colo. 213, 210 Pac. 841. The United
2 States Supreme Court in the Frink Dairy case also cited that
3 Colorado case, finding that holding not inconsistent with
4 its own.

5 The Commission, therefore, for the present, proposes
6 the codification of only that part of the amending act which
7 constitutes section 13 (See Sec. 16703). The provisions not
8 recommended for codification are as follows:

9 Sec. 1. * * * Provided that no agreement,
10 combination or association shall be deemed to be
11 unlawful or within the provisions of this act,
12 the object and purpose of which are to conduct
13 its operations at a reasonable profit or to
14 market at a reasonable profit those products
15 which cannot otherwise be so marketed; provided
16 further, that it shall not be deemed to be
17 unlawful, or within the provisions of this act,
18 for persons, firms or corporations engaged in
19 the business of selling or manufacturing commo-
20 dities of a similar or like character, to employ,
21 form, organize, or own any interest in any
22 association, firm or corporation, having as its
23 object or purpose the transportation, marketing
24 or delivery of such commodity.

25 Sec. 2 $\frac{1}{2}$. It shall be lawful to enter into
26 agreements or form associations or combinations,
27 the purpose and effect of which shall be to pro-
28 mote, encourage or increase competition in any
29 trade or industry, or which are in furtherance
30 of trade.

31 Article 1. General Provisions.

32 16700. ~~Sec. 9. That~~ The provisions hereof shall be
33 held of this chapter are cumulative of each other and of
34 all any other laws in any way affecting them now in force
35 in this state. provision of law relating to the same sub-
36 ject in effect May 22, 1907. (Note: May 22, 1907 was
37 the effective date of the act under Pol. C. 323 as it then
38 read. (Sec. 9, D.A. 8702, 1907:530:984)

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1 16701. Section 24 of this code shall not be construed
2 to declare the intent of the legislature in enacting this
3 chapter to be different from the intent of the legislature
4 in enacting Chapter 362 of the Statutes of 1909. (New.
5 Note: See introductory note to this chapter. Section 24
6 is the general separability clause for the code.)

7 16702. See 12. The word As used in this chapter
8 "person" or "persons" wherever used in this act, shall be
9 deemed to include corporations, firms, partnerships and
10 associations existing under or authorized by the laws of
11 this state or any other state, or any foreign country.
12 (Sec. 12, D.A. 8702, 1907:530:984)

13 16703. See 13. Within the meaning of this chapter,
14 labor, whether skilled or unskilled, is not a commodity
15 within the meaning of this act. (Sec. 13, D.A. 8702,
16 1909:362:593).

17 Article 2. Prohibited Restraints on Competition.

18 16720. Section 1. A trust is a combination of
19 capital, skill or acts by two or more persons, firms,
20 partnerships, corporations or associations of persons,
21 or of any two or more of them for either, any or all of
22 the following purposes:

23 1. (a) To create or carry out restrictions in trade
24 or commerce.

25 2. (b) To limit or reduce the production, or in-
26 crease the price of merchandise or of any commodity.

27 3. (c) To prevent competition in manufacturing,
28 making, transportation, sale or purchase of merchandise,
29 produce or any commodity.

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1 4. (d) To fix at any standard or figure, whereby its
2 price to the public or consumer shall be in any manner con-
3 trolled or established, any article or commodity of merchan-
4 dise, produce or commerce intended for sale, barter, use or
5 consumption in this state.

6 5. (e) To make or enter into or execute or carry out
7 any contracts, obligations or agreements of any kind or
8 description, by which they do all or any or any combination
9 of any of the following:

10 (1) they shall Bind or have bound themselves not to
11 sell, dispose of or transport any article or any commodity
12 or any article of trade, use, merchandise, commerce or
13 consumption below a common standard figure, or fixed value,
14 or

15 (2) by which they shall Agree in any manner to keep
16 the price of such article, commodity or transportation at
17 a fixed or graduated figure, or

18 (3) by which they shall in any manner Establish or
19 settle the price of any article, commodity or transportation
20 between them or themselves and others, so as to directly
21 or indirectly to preclude a free and unrestricted competi-
22 tion among themselves, or any purchasers or consumers in
23 the sale or transportation of any such article or com-
24 modity, or

25 (4) by which they shall Agree to pool, combine or
26 directly or indirectly unite any interests, that they may
27 have connected with the sale or transportation of any such
28 article or commodity, that its price might in any manner be
29 affected. (1st sent. of sec. 1, D.A. 8702, 1909:362:593)

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1 16721. Sec. 10. It shall not be is unlawful for any
2 person, partnership, association or corporation, or any
3 his agent thereof, to issue or to own trust certificates,
4 or for any person, partnership, association or corporation,
5 or his agent, officer, or employee, or the directors or stock-
6 holders of any corporation, to enter into any combination,
7 contract or agreement with any person or persons, corpora-
8 tion, or corporations, or with any stockholder or director
9 thereof of a corporation, the purpose and effect of which
10 ~~combination, contract or agreement shall be~~ is to place the
11 management or control of such the combination or combina-
12 tions, or the manufactured product thereof, in the hands of
13 any trustee or trustees with the intent to limit or fix the
14 price or lessen the production and sale of any article of
15 commerce, use or consumption, or to prevent, restrict or
16 diminish the manufacture or output of any such article.

17 and Any person, partnership, association or corporation
18 that who shall enter into any such combination, contract
19 or agreement for the purpose aforesaid which violates this
20 section shall be deemed is guilty of a misdemeanor, and on
21 conviction thereof shall be punished by a fine not less than
22 fifty dollars, nor more than five thousand dollars. (Note:
23 Cf. 16755. That section purports to fix the penalty for any
24 violation of the act, and includes an optional jail term.
25 The violations denounced by the above section are also most
26 inclusive. (Sec. 10, D.A. 8702, 1907:530:984).

27 16722. Sec. 8. That Any contract or agreement in
28 violation of the provisions of this act, chapter shall be
29 is absolutely void and shall is not be enforceable either
30 in at law or in equity. (Sec. 8, D.A. 8702, 1907:530:984)

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1 16723. Except as provided in this chapter, every
2 such trust as is defined herein is declared to be
3 unlawful, against public policy and void. (Introduc-
4 tory cl., 2d sent., sec. 1, D.A. 8702, 1909:362:593)

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Article 3. Enforcement.

1
2 16750. See 11. In addition to the criminal and civil
3 penalties herein provided, Any person who shall be is in-
4 jured in his business or property by any other person or
5 corporation or association or partnership, by reason of any-
6 thing forbidden or declared to be unlawful by this act
7 chapter, may sue therefor in any court having jurisdiction
8 thereof in the county where the defendant resides or is
9 found, or any agent resides or is found, or where service
10 may be obtained, without respect to the amount in contro-
11 versy, and to recover twofold the damages sustained by him
12 sustained, and the costs of suit. (Sec. 11, D. A. 8702, 1907
13 530:984)

14 16751. Whenever it shall appears to the court before
15 which any proceedings under this act chapter may be are
16 pending, that the ends of justice require that other parties
17 shall be brought before the court, the court may cause them
18 to be made parties defendant and summoned, whether or not
19 they reside in the county where such action is pending, or
20 not. (Note: It is suggested that in so far as this and
21 the previous section do not duplicate the existing general
22 law, they may possibly be questioned as special regulations
23 of the practice of courts of justice. See Mojave River
24 Irr. Dist. v. Superior Ct. (1927) 202 Cal. 717. Cf. proposed
25 B. & P. C. section 18413. Sec. 11, D. A. 8702, 1907:530:
26 984)

27 16752. See 3. For Upon a violation of any of the
28 provisions of this act chapter by any corporation or associa-
29 tion mentioned herein, it shall be the duty of the attorney

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1 general or the district attorney of the proper county, to
2 shall institute proper suits or quo warranto proceedings in
3 any a court of competent jurisdiction for the forfeiture
4 of its charter rights, franchises or privileges and powers
5 exercised by such corporation or association, and for the
6 dissolution of the corporation or association, same under
7 the general statutes of the state. (Sec. 2, D. A. 8702,
8 1907:530:984)

9 16753. Sec. 3. Every foreign corporation, as well as
10 every foreign or association, exercising any of the powers,
11 franchises or functions of a corporation in this state,
12 violating which violates any of the provisions of this
13 act chapter, is hereby denied the right those powers,
14 franchises or functions and is prohibited from doing any
15 business in this state, and it shall be the duty of
16 The attorney general to shall enforce this provision by
17 bringing proper proceedings by injunction or otherwise.
18 The secretary of state shall be authorized to may revoke
19 the license of any such corporation or association here-
20 tofore authorized by him to do business in this state.
21 (Sec. 3, D. A. 8702, 1907:530:984)

22 16754. Sec. 7. Each and Every firm, person, partner-
23 ship, corporation, or association of persons, who shall in
24 any manner violates any of the provisions of this act chapter
25 shall be for each and every day that such violations shall
26 be are committed or continued, after due notice given by
27 the attorney general or any district attorney, forfeit and
28 pay the sum of fifty ~~($\$50$)~~ dollars, which may be recovered
29 in the name of the people of the this state of California.

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1 in any county where the offense is committed, or where either
2 of the offenders resides, and it shall be the duty of the
3 attorney general, or the district attorney of any county on
4 the order of the attorney general, to shall prosecute for
5 the recovery of the same forfeit. When the action is
6 prosecuted by the attorney general against a corporation or
7 an association of persons, he may begin the action in the
8 supreme superior court of the in and for the county in which
9 where the defendant resides or does business. (Note: The
10 last sentence may be a special regulation of the practice of
11 courts of justice within the prohibition of Art. IV, Sec. 25
12 of the California Constitution. See Hojave R. Irr. District
13 v. Superior Ct. (1937) 202 Cal. 717. Sec. 7, D. A. 8702,
14 1907:530:984)

15 10735. Sec. 4. (a) Any violation of either or all of
16 the provisions of this act chapter shall be and is hereby
17 declared a conspiracy against trade, and any person who may
18 become engaged engaged in any such conspiracy or takes part
19 therein, or aids or advises in its commission, or who shall
20 as principal, manager, director, agent, servant or employee,
21 or in any other capacity, knowingly carry carries out any of
22 the stipulations, purposes, prices, rates, or furnishes any
23 information to assist in carrying out such purposes, or
24 orders thereunder or in pursuance thereof, shall be punished
25 is punishable by a fine of not less than fifty ~~(\$50)~~ dollars
26 nor more than five thousand ~~(\$5,000)~~ dollars, or be by
27 imprisoned imprisonment for not less than six months nor
28 more than one year, or by both such fine and imprisonment.

29 (b) Each day's violation of this provision chapter

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1 shall constitute is a separate offense. (Note: Cf.
2 16721 and the note thereto. Sec. 4, D. A. 8702, 1907:
3 530:984)
4 16756. Sec. 5. In any indictment, information or
5 complaint for any offense named in this act chapter,
6 it is sufficient to state the purpose or effects of the
7 trust or combination, and that the accused is a member
8 of, acted with, or in pursuance of it, or aided or
9 assisted in carrying out its purposes, without giving its
10 name or description, or how, when and where it was created.
11 (Sec. 5, D. A. 8702, 1907:530:984)

12 16757. Sec. 6. (a) In prosecutions under this act
13 chapter, it shall be is sufficient to prove that a trust
14 or combination, as defined herein, exists, and that the
15 defendant belonged to it, or acted for or in connection
16 with it, without proving all the members belonging to it,
17 or proving or producing any article of agreement, or any
18 written instrument on which it may have been based, or
19 that it was evidenced by any written instrument at all.

20 (b) The character of the trust or combination alleged
21 may be established by proof of its general reputation as
22 such. (Sec. 6, D. A. 8702, 1907:530:984)

23 16758. In case any court of record, or in vacation
24 any judge of said court in which is pending any civil,
25 criminal or other action or proceeding brought or prosecuted
26 by the attorney general or any district attorney for the
27 violation of any of the provisions of this act chapter or
28 in any action or proceeding for the violation of the law
29 of this state, against conspiracy or combination in restraint

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1 of trade or orders; no person so ordered shall be excused
2 from attending, testifying or producing books, papers,
3 schedules, contracts, agreements or any other documents in
4 obedience to the subpoena or under the order of such court
5 or any commissioner or referee appointed by said court to
6 take testimony or any notary public or other person or
7 officer authorized by the laws of this state to take
8 depositions when the order made by such court or judge there-
9 of includes a witness whose deposition is being taken before
10 such notary public or other officer on the ground or for the
11 reason that the testimony or evidence required of him may
12 tend to incriminate him or subject him to any penalty.
13 but No individual shall be prosecuted or subjected to
14 any penalty for or on account of any transaction, matter or
15 thing concerning which he may so testify or produce evidence,
16 documentary or otherwise, before any such court, person or
17 officer in any action or proceeding brought by the attorney
18 general or a district attorney under this chapter. (Sec. 6,
19 D. A. 8702, 1907:530:984)

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1 Chapter 25 Fair Trade Contracts.

2 16900. See 5. This act chapter may be known and cited
3 as the "Fair trade act." (Sec. 5, D.A. 8782, 1931:278:583)

4 16901. See 3. The following terms, as used in this
5 act, are hereby defined as follows: As used in this chapter:

6 (a) "Producer" means grower, baker, maker, manufacturer
7 or publisher.

8 (b) "Commodity" means any subject of commerce. (Sec.
9 3, D. A. 8782, 1931:278:583).

10 16902. Section 14 (a) No contract relating to the
11 sale or resale of a commodity which bears, or the label or
12 content of which bears, the trade-mark, brand, or name of
13 the producer or owner of such commodity and which is in
14 fair and open competition with commodities of the same
15 general class produced by others shall be deemed in violation
16 of violates any law of the this state of California by
17 reason of any of the following provisions which may be con-
18 tained in such contract:

19 (1.) That the buyer will not resell such commodity
20 except at the price stipulated by the vendor.

21 (2.) That the vendee or producer require in delivery
22 the person to whom he may resell such commodity to agree
23 that he will not, in turn, resell except at the price
24 stipulated by such vendor or by such vendee.

25 (b) Such provisions in any contract shall be deemed
26 to contain or imply conditions that such commodity may be
27 resold without reference to such agreement in the following
28 cases:

29 (1.) In closing out the owners' stock for the purpose

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1. of discontinuing delivering any such commodity.

2. (2.) When the goods are damaged or deteriorated in
3 quality, and notice is given to the public thereof.

4. (3.) By any officer acting under the orders of any
5 court. (Note: Many authorities believe that "in delivery"
6 above was a draftsman's error. See Wallace H. Martin,
7 "The Fair Trade Act" (1936) 5 Fordham L. R. 50; 53; Note,
8 "Fair Trade Legislation" (1936) 49 Harvard Law Review 811,
9 814, Sec. 1, D. A. 8782, 1931; 278; 583)

10. 16903. See 6. All the provisions of this act chapter
11 shall extend to any commodity sold through vending equip-
12 ment, if such vending equipment bears the trade-mark, brand
13 or name of the producer or owner of such the commodity and
14 if such the commodity is in fair and open competition with
15 commodities of the same general class produced by others.
16 (Note: The last amended form of the bill was altered by a
17 mistake in the enrolled bill. The substitution of the
18 comma for the period restores the section to the form in
19 which it passed both houses. Sec. 6, D. A. 8782, 1937; 843:
20 2364)

21. 16904. See 13. Wilfully and knowingly advertising,
22 offering for sale or selling any commodity at less than the
23 price stipulated in any contract entered into pursuant to
24 ~~the provision of section 1 of~~ this act chapter, whether the
25 person so advertising, offering for sale or selling is or
26 is not a party to such contract, is unfair competition and
27 is actionable at the suit of any person damaged thereby.
28 (Note: This section is constitutional. See Old Dearborn
29 Distributing Co. v. Seagram Distillers Corp. (1936) 299

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1 U. S. 183; Max Factor v. Kunzman (1936) 5 Cal. (2d) 446, 55

2 P. (2d) 177, Aff'd 299 U. S. 198, 81 L. Ed. 122, 57 S. C.

3 147. Sec. 1 $\frac{1}{2}$, D. A. 8782, 1933:250:793).

4 16905. Sec. 2. This act chapter does shall not apply

5 to any contract or agreement between producers or between

6 wholesalers or between retailers as to sale or resale prices.

7 (Sec. 2, D. A. 8782, 1931:278:583)

8 Sec. 4. If any provision of this act is declared un-

9 constitutional it is the intent of the Legislature that

10 the remaining portions thereof shall not be affected but

11 that such remaining portions remain in full force and effect.

12 (Note: Section 24 is the saving clause for the entire code.

13 Sec. 4, D. A. 8782, 1931:278:583)

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1 Chapter 3. Unfair Trade Practices.

2 Article 1. General Provisions.

3 17000. See 14. This act chapter shall be known and
4 designated may be cited as the "Unfair Practices Act."
5 (Sec. 14, D. A. 8781, 1935:477:1546)

6 17001. See 13. The Legislature declares that the
7 purpose of this act chapter is to safeguard the public
8 against the creation or perpetuation of monopolies and to
9 foster and encourage competition, by prohibiting unfair,
10 dishonest, deceptive, destructive, fraudulent and discrimina-
11 tory practices by which fair and honest competition is
12 destroyed or prevented. (Sec. 13, D. A. 8781, 1937:860:
13 2395)

14 17002. This act chapter shall be liberally construed
15 that its beneficial purposes may be subserved. (Sec. 13,
16 D. A. 8781, 1937:860:2395)

17 Article 2. Definitions.

18 17020. The definitions in this article are applicable
19 only to this chapter and such definitions shall not affect
20 the construction of the same terms elsewhere in this code.
21 (New.)

22 17021. See 16. As used in this act, the term "Person"
23 includes any person, firm, association, organization, partner-
24 ship, business trust, company, corporation or municipal or
25 other public corporation. the term (Part of Sec. 16,
26 D. A. 8781, 1937:860:2395)

27 17022. "Sell" includes selling, offering for sale or
28 advertising for sale. the term (Part of Sec. 16, D. A.
29 8781, 1937:860:2395)

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1 17023. "Give" includes giving, offering to give or
2 advertising the intent to give, ~~the term~~ (Part of Sec.
3 16, D. A. 8781, 1937:860:2395)

4 17024. "Article or product" includes any article,
5 product, commodity, thing of value, service or output of
6 a service trade.

7 Motion picture films when licensed for exhibition to
8 motion picture houses shall are not be deemed to be an
9 articles or products under this act chapter.

10 Neither shall anything Nothing in this act chapter
11 ~~be deemed to apply~~ applies:

12 (1) To any service, article or product for which rates
13 are established under the jurisdiction of the Railroad Com-
14 mission of ~~the~~ this state of California and sold or fur-
15 nished by any public utility corporation, or installation
16 and repair services rendered in connection with any ser-
17 vices, articles or products; ex.

18 (2) To any service, article or product sold or fur-
19 nished by a publicly owned public utility and upon which
20 the rates would have been established under the jurisdic-
21 tion of the Railroad Commission of ~~the~~ this state of
22 California if such service, article or product had been
23 sold or furnished by a public utility corporation, or
24 installation and repair services rendered in connection
25 with any services, articles or products. (First para-
26 graph, part of sec. 16, D. A. 8781, 1937:860:2395.
27 Second paragraph, 2d sent., Sec. 1, D. A. 8781, 1937:
28 860:2395. Third, fourth and fifth paragraphs, 3d sent.,
29 Sec. 1, D. A. 8781, 1937:860:2395)

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1 17025. "Vendor" includes any person who performs work
2 upon, renovates, alters or improves any personal property
3 belonging to another person; shall be construed to be a
4 vendor within the meaning of this act. (2d par., Sec. 6,
5 D. A. 8781, 1937:860:2395)

6 17026. The term "Cost" as used in this act as applied
7 to production is hereby defined as including includes the
8 cost of raw materials, labor and all overhead expenses of
9 the producer; and

10 "Cost" as applied to distribution cost shall mean
11 the invoice or replacement cost, whichever is lower, of the
12 article or product to the distributor and vendor, plus the
13 cost of doing business by said the distributor and vendor.
14 (2d par., Sec. 3, D. A. 8781, 1939:175:1424)

15 17027. See 4. In establishing the cost of a given
16 article or product to the distributor and vendor, the in-
17 voice cost of said the article or product purchased at a
18 forced, bankrupt, closeout sale, or other sale outside of
19 the ordinary channels of trade may not be used as a basis
20 for justifying a price lower than one based upon the replace-
21 ment cost as of the date of said the sale of said the
22 article or product replaced through the ordinary channels
23 of trade, unless said the article or product is kept separate
24 from goods purchased in the ordinary channels of trade and
25 unless the said article or product is advertised and sold
26 as merchandise purchased at a forced, bankrupt, closeout
27 sale, or by means other than through the ordinary channels
28 of trade.

29 and said Such advertising shall state the conditions

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1 under which said the goods were so purchased, and the
2 quantity of such the merchandise to be sold or offered for
3 sale. (1st par., sec. 4, D. A. 8781, 1937:860:2395)

4 17028. "Ordinary channels of trade" shall mean those
5 ordinary, regular and daily transactions in the mercantile
6 trade whereby title to an article or product, in no way
7 damaged or deteriorated; is transferred from one person to
8 another.

9 and shall "Ordinary channels of trade" does not include
10 sales of bankrupt stocks; closeout goods; dents; sales of
11 goods bought from a business or merchant retiring from busi-
12 ness, fire sales and sales of damaged or deteriorated goods,
13 which damage or deterioration results from any cause what-
14 soever; provided that. This last listing herein shall not
15 be held to be is not all inclusive but as example only.
16 (2d par., sec. 4, D. A. 8781, 1937:860:2395)

17 17029. The "Cost of doing business" or "overhead
18 expense" as used in this act is defined as means all costs
19 of doing business incurred in the conduct of each the
20 business and must shall include without limitation the follow-
21 ing items of expense: labor (including salaries of execu-
22 tives and officers), rent; interest on borrowed capital,
23 depreciation, selling cost, maintenance of equipment,
24 delivery costs, credit losses, all types of licenses, taxes,
25 insurance and advertising. (3d par., sec. 3, D. A. 8781,
26 1939:175:1424)

27 17030. "Loss leader" as used herein; shall mean
28 any article or product sold at less than cost as herein
29 defined:

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1 (a) Where the purpose is to induce, promote or en-
2 courage, the purchase of other merchandise, or

3 (b) Where the effect is after which may have the ten-
4 dency or capacity to mislead or deceive purchasers or pros-
5 pective purchasers, or

6 (c) Where the effect is to which diverts trade from or
7 otherwise injures competitors. (2d sent., 4th par., sec. 3,
8 D. A. 8781, 1939;175:1424)

9 17031. Section 1. It shall be unlawful for any person;
10 engaged in the production, manufacture, distribution or sale
11 of any article or product of general use or consumption, with
12 the intent to destroy the competition of any regular es-
13 tablished dealer in such article or product, or to prevent
14 the competition of any person, who in good faith, intends and
15 attempts to become such dealer, to discriminate "Locality
16 differential" is discriminating between different sections,
17 communities or cities or portions thereof, or between dif-
18 ferent locations in such sections, communities, cities or
19 portions thereof in this State, by selling or furnishing
20 such an article or product, at a lower price in one section,
21 community, or city, or any portion thereof, or in one location
22 in such section, community, or city or any portion thereof,
23 than in another. (Note: For deleted matter see section
24 17040, 1st pt., 1st sent., Sec. 1, D. A. 8781, 1937:860:
25 2395)

26 Article 3. Offenses Against the Chapter.

27 17040. Section 1. It shall be is unlawful for any
28 person, engaged in the production, manufacture, distribution

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1 or sale of any article or product of general use or con-
2 sumption, with the intent to destroy the competition of
3 any regular established dealer in such article or product,
4 or to prevent the competition of any person who in good
5 faith, intends and attempts to become such dealer, to
6 create locality differentials; discriminate between dif-
7 ferent sections, communities or cities or portions thereof,
8 or between different locations in such sections, communities,
9 cities or portions thereof in this State, by selling or fur-
10 nishing such article or product, at a lower price in one
11 section, community or city, or any portion thereof, or in
12 one location in such section, community, or city or any
13 portion thereof, than in another. (Note: For deleted
14 matter see section 17031, 1st pt., 1st sent., Sec. 1,
15 D. A. 8781, 1937:860:2395).
16 provided, however, that Nothing in this section
17 shall be construed to prohibit the meeting in good faith
18 of a competitive price. (Note: Does "competitive price"
19 here mean the same as legal competitive price in 17050 (b)?
20 2d pt., 2d par., sec. 1, D. A. 8781, 1937:860:2395).
21 17041. provided that Nothing herein contained
22 in this chapter shall prevent prohibits differentials which
23 make allowances for differences, if any, in the grade,
24 quality or quantity when based and justified in the cost
25 of manufacture, sale or delivery, or the actual cost of
26 transportation from the point of production, if a raw
27 product or commodity, or from the point of manufacture,
28 if a manufactured product or commodity, or from the point
29 of shipment to the point of destination. (1st proviso,

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1 1st sent., sec. 1, D. A. 8781, 1937:860:2395)

2 17042, and provided further, that Nothing herein con-

3 tained in this chapter shall prevent prohibits any of the

4 following:

5 (a) A selection of customers, or

6 (b) A functional classification by any person of any

7 customer as broker, jobber, wholesaler or retailer, or

8 (c) A differential in price for any article or product

9 as between any customers in different functional classifica-

10 tions. (2d proviso, 1st sent., sec. 1, D. A. 8781, 1937:860:

11 2395)

12 17043. Sec. 3. It shall be is unlawful for any person

13 engaged in business within this State, to sell any article

14 or product at less than the cost thereof to such vendor, or

15 to give away any article or product, for the purpose of in-

16 juring competitors or destroying competition, and he shall

17 also be guilty of a misdemeanor, and on conviction thereof

18 shall be subject to the penalties set out in section 11 of

19 this act for any such act. (1st par., sec. 3, D. A. 8781,

20 1939:175:1424)

21 17044. The prohibitions of this act shall be deemed

22 among the other purposes and objects of the act to also

23 prohibit The practice of using any article or product as a

24 "loss leader," is included among the prohibitions of this

25 chapter. (1st sent., 4th par., sec. 3, D. A. 8781, 1939:

26 175:1424)

27 17045. Sec. 7. The secret payment or allowance of

28 rebates, refunds, commissions, or unearned discounts,

29 whether in the form of money or otherwise, or secretly ex-

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1 tending to certain purchasers special services or privileges
2 not extended to all purchasers purchasing upon like terms and
3 conditions, to the injury of a competitor and where such pay-
4 ment or allowance tends to destroy competition, is an unfair
5 trade practice unlawful and any person, firm, partnership, cor-
6 poration, or association resorting to such trade practice
7 shall be deemed guilty of a misdemeanor and on conviction
8 thereof shall be subject to the penalties set out in section
9 11 of this act. (Sec. 7, D. A. 8781, 1935:477:1546)

10 17046. Sec. 17. It shall be is unlawful for any per-
11 son to use any threat, intimidation, or boycott, to effec-
12 tuate any violation of any provision of this act chapter.
13 (Part of sec. 17, D. A. 8781, 1939:175:1424)

14 17047. It shall be is unlawful for any manufacturer,
15 wholesaler, distributor, jobber, contractor, broker, re-
16 tailer, or other vendor, or any agent of any such person,
17 to solicit any violation of any provision of this act
18 chapter. (Part of sec. 17, D. A. 8781, 1939:175:1424)

19 17048. It shall be is unlawful for any manufacturer,
20 wholesaler, distributor, jobber, contractor, broker, re-
21 tailer, or other vendor, or any agent of any such person,
22 jointly to jointly participate or collude with any other
23 such person in the violation of any provision of this act
24 chapter. Any person who shall violate any provision of
25 this section is guilty of a misdemeanor and upon convic-
26 tion thereof shall be subject to the penalties set out in
27 section 11 of this act. (Part of sec. 17, D. A. 8781, 1939:
28 175:1424)

29 17049. The inhibition prohibitions of this act chapter

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1 against locality, discrimination and sales below cost shall
2 embrace any scheme of special rebates, collateral contracts
3 or any device of any nature whereby such discrimination
4 or sale below cost is, in substance or fact, effected in vio-
5 lation of the spirit and intent of this section chapter.
6 (Note: The additions to this section are designed to make
7 it cover also the provisions of the 5th par. of section 3
8 shown below in strike-out. 1st pt., 2d par., sec. 1, D. A.
9 8781, 1937:860:2395)

10 The prohibitions of this section shall embrace any
11 scheme of special rebates, collateral contracts or any de-
12 vice of any nature whereby a sale below cost is effected in
13 violation of the spirit and intent of any of the provisions
14 of this act. (5th par., sec. 3, D. A. 8781, 1939:175:1424)
15 17050. See 6. The provisions of sections 1, 3, 4 and
16 5 shall The prohibitions of this chapter against locality
17 discriminations, sales below cost, and loss leaders do not
18 apply to any sale made:

19 (a) In closing out in good faith the owner's stock or
20 any part thereof for the purpose of discontinuing his trade
21 in any such article or product and in the case of the sale of
22 seasonal goods or to the bona fide sale of perishable goods
23 to prevent loss to the vendor by spoilage or depreciation,
24 provided notice is given to the public thereof.

25 (b) When the goods are damaged or deteriorated in
26 quality, and notice is given to the public thereof.

27 (c) By an officer acting under the orders of any
28 court.

29 (d) In an endeavor made in good faith to meet the

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1 legal prices of a competitor as herein defined selling the
2 same article or product, in the same locality or trade area
3 and in the ordinary channels of trade as herein defined, or
4 (e) In an endeavor made in good faith by a manufacturer,
5 selling an article or product of his own manufacture, in a
6 transaction and sale to a wholesaler or retailer for resale
7 to meet the legal prices of a competitor selling the same or
8 a similar or comparable article or product, in the same
9 locality or trade area and in the ordinary channels of trade
10 as herein defined.

11 Sec. 6.1. The notice required to be given to the public
12 under this section 6 shall not be sufficient unless the sub-
13 ject of such sales is kept separate from other stocks and
14 clearly and legibly marked with the reason for such sales,
15 and any advertisement of such goods must indicate the same
16 facts and the number of items to be sold. (Note: Compare
17 (d) with 17040 (b). This section allows a differential
18 only to meet a legal (i. e., meeting the requirements of
19 this act) competitive price. 1st par., sec. 6, D. A. 8781,
20 1937:860:2395. Sec. 6.1, D. A. 8781, 1939:175:1424)
21 17051. Sec. 9. Any contract, express or implied,
22 made by any person, firm, or corporation in violation of
23 any of the provisions of sections 1 to 7, inclusive, of
24 this act chapter is declared to be an illegal contract
25 and no recovery thereon shall be had. (Sec. 9, D. A. 8781,
26 1935:477:1546).

27 Article 4. Civil Liability.

28 17070. Sec. 10. Any person, or any trade association,
29 may bring and maintain an action, or actions, to enjoin and

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1 restrain any violation, or violations, of any provision, or
2 provisions, of this act chapter and, in addition thereto, for
3 the recovery of damages. (1st sent., sec. 10, D. A. 8781,
4 1939:175:1424)

5 17071. In all actions brought under the provisions of
6 this act chapter proof of one or more acts of selling or
7 giving away any article or product below cost or at dis-
8 criminatory prices, together with proof of the injurious
9 effect of such acts, shall be is presumptive evidence of
10 the purpose or intent to injure competitors or destroy
11 competition. (2d par., sec. 5, D. A. 8781, 1937:860:2395)

12 17072. Where a particular trade or industry, of which
13 the a person, firm or corporation complained against is a
14 member, has an established cost survey for the locality and
15 vicinity in which the offense is committed, the ~~said~~ that
16 cost survey shall be deemed is competent evidence to be
17 used in ~~proving~~ prove the costs of the such person, firm
18 or corporation ~~complained against~~ within the provisions of
19 this act. (2d sent., 1st par., sec. 5, D. A. 8781, 1937:
20 860:2395)

21 17073. Proof of average overall cost of doing business
22 for any particular inventory period when added to the cost
23 of production of each article or product, as to a producer,
24 or invoice or replacement cost, whichever is lower, of
25 each article or product, as to a distributor, shall be is
26 presumptive evidence of cost as to of each such article or
27 product involved in any action brought under this act
28 chapter and involving the violation of any provisions of
29 sections 3 and 5 of this act. (2d par., sec. 11, D. A.

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1 8781, 1937:860:2395)
2 17074. Proof of transportation tariffs when fixed and
3 approved by the Railroad Commission of the State of Cali-
4 fornia shall be is presumptive evidence of delivery cost
5 as provided in section 3 hereof: (3d par., sec. 11, D. A.
6 8781, 1937:860:2395)

7 17075. ~~Sec. 15~~ (a) In any action brought under
8 the provisions of section 3 hereof where it is alleged and
9 shown that the person complained against is selling below
10 his cost of doing business, and said such person is including
11 labor at less than the prevailing wage scale in the trade in
12 which such person is engaged for the locality or vicinity in
13 which he is doing business, evidence of such prevailing wage
14 scale shall be admissible to prove the intent or purpose of
15 such person to violate the provisions of this act chapter.
16 (1st par., sec. 15, D. A. 8781, 1939:175:1424).

17 17076. In any action brought under the provisions of
18 this act chapter, where persons are employed or performing
19 services for any person or in the conduct of the business
20 wherein such person is charged with a violation of this act
21 chapter, and are so employed or performing such services
22 without compensation or at a wage lower than that prevail-
23 ing at the time and place of the service for the particular
24 services performed, such services shall be charged as an
25 expense of the business in which rendered and at the rate
26 of the wage for the services rendered prevailing at the
27 time of the service at the place where rendered. (2d par.,
28 sec. 15, D. A. 8781, 1939:175:1424).

29 17077. In any action or prosecution for sales below

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1 cost in violation of this chapter, if the defendant acquires
2 his raw materials for a consideration not wholly or defin-
3 itely computable in money, the cost of the raw materials
4 shall be presumed to be the prevailing market price for
5 similar raw materials in the ordinary channels of trade of
6 that vicinity at the time of the acquisition. (New. Based
7 on sec. 15.1, D. A. 8781, 1939:175:1424 shown below in
8 strike-out.)

9 Sec. 15.1. For the purpose of determining the cost of
10 raw materials in any action brought against a producer or
11 manufacturer under the provisions of this act where it is
12 alleged that a producer or manufacturer complained against
13 is selling below his cost as defined in section 3 hereof and
14 said producer or manufacturer is including in said cost raw
15 materials purchased, used or acquired by such person upon
16 terms or conditions whereby the total consideration in full
17 payment thereof is not definitely computable or determinable
18 in money at the time of the purchase, use or acquisition by
19 such producer or manufacturer of said raw materials, the
20 cost of such raw materials shall be presumed to be the pre-
21 vailing market price for which the same or similar raw
22 materials were selling at the time of such purchase, use or
23 acquisition in the usual and ordinary channels of trade in
24 the locality or vicinity in which such raw materials were
25 purchased or acquired. (Sec. 15.1, D. A. 8781, 1939:175:
26 1424)

27 17078. If it shall appear to the court upon any
28 application for a temporary restraining order, or upon the
29 hearing of any order to show cause why a preliminary

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1 injunction should not be issued, or upon the hearing of any
2 motion for a preliminary injunction, or if the court shall
3 find, in any such action, that any defendant therein is
4 violating, or has violated, any ~~provision~~ of this act chapter,
5 then the court ~~must and~~ shall enjoin ~~such~~ the defendant from
6 doing all acts which are prohibited by the section, or sec-
7 tions, of which any provision thereof is being violated, or
8 has been violated, by ~~such~~ the defendant. (1st clause,
9 2d sent., sec. 10, D. A. 8781, 1939:175:1424)

10 17079. and, in addition thereto, The court may, in its
11 discretion, include in any ~~such~~ injunction against a violation
12 of this chapter such other restraint as it may deem ex-
13 pedient in order to deter ~~such~~ the defendant from, and insure
14 against, his committing a future violation of any ~~such~~ sec-
15 tion, or sections, hereof this chapter. (2d clause, 2d
16 sent., sec. 10, D. A. 8781, 1939:175:1424)

17 17080. and, in either event, the said Any injunction
18 against a violation of this chapter, whether interim or
19 final, shall cover every article or product and not merely
20 the particular article or product, ~~or articles or products,~~
21 involved in ~~such~~ the action. (3d clause, 2d sent., sec.
22 10, D. A. 8781, 1939:175:1424)

23 17081. It shall ~~is~~ not be necessary for the plaintiff,
24 in any ~~such~~ action under this chapter, to provide ~~her~~ or
25 file any undertaking or bond for the issuance of any ~~such~~
26 interim or final injunction. (3d sent., sec. 10, D. A. 8781,
27 1939:175:1424)

28 17082. In any ~~such~~ action under this chapter, it shall
29 is not be necessary to allege ~~her~~ or prove actual damages

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1 or the threat thereof, or actual injury or the threat thereof,
2 to the plaintiff. But, in addition to injunctive relief, any
3 plaintiff in any such action shall be is entitled to recover
4 the amount of the actual damages, if any, sustained by such
5 the plaintiff, as well as the actual damages, if any, sus-
6 tained by any person who has assigned to the plaintiff his
7 claim for damages resulting from a violation of this chapter
8 to such plaintiff, which said damages are the result of any
9 violation, or violations, of any provision, or provisions,
10 of this act. (2d par., sec. 10, D. A. 8781, 1939:175:1424)
11 17083. Any party to, or any witness in, any action
12 brought under any provision of this section chapter may be
13 required to testify and give his deposition as if the pro-
14 visions of Part IV, Title III, Chapter III, of the Code of
15 Civil Procedure were applicable to said the party, or wit-
16 ness, and to said the testimony and said the deposition; and,
17 In addition, the books and records of any such party,
18 or of any such witness, may be subpoenaed into court and in-
19 troduced into evidence, or introduced, by reference, into
20 evidence, and may be required to be produced at the taking of
21 any such deposition and there inquired into. (3d par., sec.
22 10, D. A. 8781, 1939:175:1424)

23 17084. Any party to any action brought under any
24 provision of this section may, upon notice, apply to the
25 court in which said the action is pending, or to any judge
26 thereof, for an order requiring any other party to give to
27 the applicant, within a specified time, an inspection and
28 copy, or permission to take a copy, of entries of accounts
29 in any book, or of any documents, papers, or memoranda in

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1 such party's possession or under his control containing
2 evidence relating to the merits of any such action or any
3 defense therein; and.

4 If a compliance with said the order is refused, the
5 court shall exclude the entries of accounts in any such
6 book, or any such document, paper, or memorandum from
7 being given in evidence by such the other party, or if
8 wanted as evidence by the applicant the court shall pre-
9 sume them to be such as the applicant alleges them to be.
10 (4th par., sec. 10, D. A. 8781, 1939:175:1424).

11 17085. If, at any time while any such action for a
12 violation of this chapter is pending, it shall appear
13 to the court that an extensive examination of books, papers,
14 records, or documents, is or may become material or relevant
15 to the issues in any such the action, the court may, in its
16 discretion, upon the application of any party to said the
17 action, or upon its own motion, order a reference to be had
18 in the manner and form provided in Part II, Title VIII,
19 Chapter VI, of the Code of Civil Procedure. (5th par.,
20 sec. 10, D. A. 8781, 1939:175:1424)

21 17086. Provided, however, that no information obtained
22 under any provision of this section article, or under Part
23 IV, Title VI, Chapter II, of the Code of Civil Procedure,
24 may be used against any such party, or any such witness, as
25 a basis for a misdemeanor or felony prosecution in any court
26 of this State. (Note: This immunity section is incomplete
27 and may not be sufficient to compel incriminating testimony.
28 In any event it does not seem to prevent forfeiture of
29 office. 6th par., sec. 10, D.A. 8781, 1939:175:1424)

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1 Article 5. Liability of Agents.
2 17095. See 8. Any person who, either as director,
3 officer or agent of any firm or corporation or as agent of
4 any person, violating the provisions of this act chapter,
5 assists or aids, directly or indirectly, in such violation
6 shall be is responsible therefor equally with the person,
7 firm, or corporation for whom ~~or~~ which he acts. (1st par.,
8 sec. 2, D. A. 8781, 1935;477:1546).
9 17096. See 5. In any injunction proceeding ~~or~~ in the
10 prosecution of against any person as officer, director or
11 agent, it shall be is sufficient to allege and prove the un-
12 lawful intent of the person, firm or corporation for whom ~~or~~
13 which he acts. (Note: Deleted matter covered by section
14 17101, post. 1st sent., 1st par., Sec. 5, D. A. 8781, 1937;
15 860:2395)

16 Article 6. Penal Provisions.

17 17100. See 11. Any person, whether as principal,
18 agent, officer or director, for himself, or for another per-
19 son, or for any firm or corporation, or any corporation, who
20 or which shall violates any of the provisions of sections 1 to
21 7, inclusive, of this act chapter is guilty of a misdemeanor
22 for each single violation and upon conviction thereof, shall
23 be punished by a fine of not less than one hundred dollars
24 ~~(\$100)~~ nor more than one thousand dollars ~~(\$1,000)~~, or by
25 imprisonment not exceeding six months or by both said such
26 fine and imprisonment, in the discretion of the court. (1st
27 par., sec. 11, D. A. 8781, 1937;860:2395)

28 17101. In the prosecution of any person as officer,
29 director or agent, it shall be is sufficient to allege and



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1 prove the unlawful intent of the person, firm or corporation
2 for whom or which he acts. (2d par., sec. 2, D. A. 8781,
3 1935:477:1546)
4 Sec. 12. If any section, sentence, clause or phrase
5 of this act is for any reason held to be unconstitutional,
6 such decision shall not affect the validity of the remaining
7 portions of the act. The Legislature hereby declares that
8 it would have passed this act, and each section, sentence,
9 clause or phrase thereof, irrespective of the fact that any
10 one or more sections, sentences, clauses or phrases be de-
11 clared unconstitutional. (Sec. 12, D. A. 8781, 1937:860:
12 2395)

October 29, 1940

CORRECTIONS TO FIRST DRAFT OF THE
PROPOSED CODIFICATION OF STATUTES REGULATING
BUSINESS GENERALLY INTO THE BUSINESS AND
PROFESSIONS CODE (DIVISION VII).

1. On page 42, line 18:
Make it read "the this State of California"
2. On page 51, lines 8 and 9:
Strike out "of the Railroad Commission"
3. On page 51, line 21:
Strike out "commission" and insert in lieu thereof
"Secretary"
4. On page 51, line 27:
Strike out "it" and insert in lieu thereof
"the secretary"
5. On page 52, line 10:
After "to his" insert "postoffice"
6. On page 56, between lines 1 and 2:
Insert the following:

Chapter 1. Contracts in - Restraint of Trade

✓ 16600. 1673. Except as provided in this chapter, every contract by which anyone is restrained from exercising engaging in a lawful profession, trade, or business of any kind, otherwise than is provided by the next two sections, is to that extent void. (C. C. 1673, 1872 Code.)

16601. 1674. One Any person who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business within a specified county, city, or a part thereof, so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein in that specified county, city, or a part thereof. (C. C. 1674, 1872 Code)

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16602, 1675. Partners may, upon or in anticipation of a dissolution of the partnership, agree that none of them will carry on a similar business within the same city or town, or a specified part thereof, where the partnership business has been transacted or within a specified part thereof.
(C. C. 1675, 1872 Code)

7. On page 56, line 2:

Increase the chapter number by 1.

8. On page 58, line 1-4: Delete all and insert in lieu thereof:

16701 Section 24 of this code shall not determine the separability of the provisions of this chapter, one from another. Such separability shall be determined by whether the provisions of chapter 530 of the Statutes of 1907 and the provisions of chapter 36 of the Statutes of 1909 are separable among themselves and as to each other.

9. On page 60 (a):

Renumber section 16723 to be 16726 and insert 16723-16725 as follows:

16723. Every such trust as is defined herein is declared to be unlawful, against public policy and void, provided that No agreement, combination or association shall be deemed to be is unlawful or within the provisions of this chapter, the object and purpose of which are to conduct its operations at a reasonable profit or to market at a reasonable profit those products which cannot otherwise be so marketed. (1st pt., 2d sent., sec. 1, D. A. 8702, 1909:382;593. Note: This is a part of the 1909 amending act the validity of which is discussed in the introductory note to the chapter.)

16724. provided further, that It shall is not be deemed to be unlawful, or within the provisions of this act chapter, for persons, firms, or corporations engaged in the business of selling or manufacturing commodities of a similar or like character, to employ, form, organize or own any interest in any association, firm or corporation, having which has as its object or purpose the transportation, marketing or delivery of such commodity. (2d pt., 2d sent., sec. 1, D. A. 8702, 1909:362;593. Note: This is a part of the 1909 amending act, the validity of which is discussed in the introductory note to this chapter.)

16725. See 28. It shall be is not unlawful to enter into agreements or form associations or combinations, the purpose and effect of which shall be is to promote, encourage or increase competition in any trade or industry, or which are in furtherance of trade. (Sec. 28, D. A. 8702, 1909:362:593. Note: This is a part of the 1909 amending act, the validity of which is discussed in the introductory note to this chapter.)

Note: In view of the controversy over the effect of the 1909 amendments, it has been decided to restore the provisions formerly omitted from the codification. The legislature may repeal them if it chooses. See, in this connection, sec. 16701.

10. On page 66, line 1:

Increase the chapter number by 1.

11. On page 66, line 12:

Strike out "content" and insert in lieu thereof "container"

12. On page 68, after line 13:

Add the following

"16906. Any person, corporation, firm, partnership, joint stock company, or any other association or organization which violates or proposes to violate this chapter may be enjoined by any court of competent jurisdiction.

Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney in this State in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public. (New. Based on C.C. 3369, 1933:953:2482)."

13. Note: The scope of the application of C. C. 3369 is difficult to determine. However, since the Fair Trade Act and the statutes relating to unfair advertising are clearly within its scope, and are frequently enforced under its provisions, it seems desirable to incorporate them here.

It is proposed to amend O. C. 3369 as follows by changing the last paragraph as follows:

3. As used in this section, unfair competition shall mean and includes unfair, or fraudulent business practice and unfair, untrue or misleading advertising and any act denounced by Penal Code sections 654a, 654b or 654c.

14. On page 69, line 1:
Increase the chapter number by 1.
15. On page 69, lines 18-20:
Strike out lines 18 to 20, inclusive, and insert in lieu thereof:
"17020. The definitions in this article shall be used in construing this chapter."
16. On page 73, lines 15 and 16:
Strike out "Locality differential" is discriminating" and insert in lieu thereof "price differential" means a discrimination"
17. On page 74, line 6:
Delete "locality" and insert in lieu thereof "price"
18. On page 79, lines 13 and 17 and 18:
Strike out "firm or corporation"
19. On page 79, lines 16 and 17:
Restore to ordinary "be used in proving" and delete "prove"
20. On page 81, lines 5 and 6:
Delete "of that vicinity" and substitute "in the locality or vicinity in which such raw materials were acquired,"

21. On page 83, lines 11-22:

Strike out lines 11 to 22, inclusive, and insert in lieu thereof

"17083.. The testimony of any witness in any action brought under this chapter may be taken by deposition even though the case is not one specified in Section 2021 of the Code of Civil Procedure, but otherwise the provisions of Part IV, Title III, Chapter III of the Code of Civil Procedure are applicable to the witness, his testimony and deposition.

In addition, the books and records of any party, or of any such witness, may be subpoenaed into court and introduced into evidence, or introduced, by reference, into evidence, and may be required to be produced at the taking of the deposition of any party or of any such witness and there inquired into. (New. Based on 3d par., sec. 10, D. A. 5761, 1939:175:1424)"

22. On page 83, line 24:

After "section" insert "Chapter"

23. On page 90, lines 9 and 10:

Restore to ordinary type "or anything of any nature whatsoever"

24. On page 90, lines 15 and 16:

Make it read "shall to make, publish, or disseminate, circulate, or cause to be made, published, or disseminated or circulated, or in"

25. On page 90, lines 17 and 18:

Make it read "any manner, place or cause to be placed, before the public in the this state of California, in any newspaper, magazine,"

26. On page 94, after line 24:

Add the following:

"17535. Any person, corporation, firm, partnership, joint stock company, or any other association or organization which violates or proposes to violate

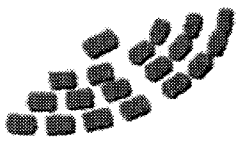


this chapter may be enjoined by any court of competent jurisdiction.

Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney in this State in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public. (New. Based on C. C. 3369, 1953: 953:2482).

27. See note to Sec. 18906.

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DECLARATION OF JENNY S. LILLGE

I, Jenny S. Lillge, declare:

I am an attorney licensed to practice in California, State Bar No. 265046, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain all documents relevant to the 1872 enactment of former Civil Code section 1673.

The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on the 1872 enactment of former Civil Code section 1673. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service, Inc. and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service, Inc. In compiling this collection, the staff of Legislative Intent Service, Inc. operated under directions to locate and obtain all available material on the bill.

EXHIBIT A - 1872 CIVIL CODE SECTION 1673:

1. Excerpt regarding former Civil Code section 1673 from the rejected edition of the *Revised Laws of the State of California*, 1871;
2. Excerpt regarding former Civil Code section 1673 from *Amendments to the Civil Code of the State of California*, 1871;
3. Excerpt regarding former Civil Code section 1673 from *The Civil Code of the State of California*, annotated by Haymond and Burch, Volume I, 1872;
4. *Report of the Joint Committee on Revision on the Civil Code*;
5. Excerpt regarding Senate Bill 430 from the *Journal of the Senate*, 1872;
6. Excerpt regarding Senate Bill 430 from the *Journal of the Assembly*, 1872;

7. News articles regarding the Revision Commission from the *Sacramento Daily Union*, November 13, 1871 and January 1, March 9, 16, and 18, 1872;
8. Excerpt regarding proposed Civil Code section 833 from the 1865 draft of *The Civil Code of the State of New York*, 1865;
9. Procedural History of the 1872 California Civil Code, prepared by Legislative Intent Service, Inc.;
10. California Code Commentaries (1872), by Charles Lindley, a summary prepared by Legislative Intent Service, Inc.;
11. Brief articles on David Dudley Field, and the Code Napoleon, as follows:
 - a. "Field, David Dudley," available online at: www.britannica.com,
 - b. "Field, David Dudley," available online at: www.factmonster.com,
 - c. "Code Napoleon (The Civil Code)," available online at: www.frenchculture.minigco.com,
 - d. "Code Napoleon (The Civil Code)," available online at: www.frenchculture.about.com.

EXHIBIT B - 1872 ANNOTATIONS:

1. *Dunlop v. Gregory* (1851) 6 Selden 241;
2. *Whittaker v. Howe* (1840) 3 Beavan 383;
3. *California Steam Navigation Co. v. Wright* (1858) 6 Booraem 258;
4. *Wright v. Ryder* (1868) 36 Hale 342;
5. *More v. Bonnet* (1870) 40 Thompson 251;
6. *The Law of Contracts in Restraint of Trade*, by George Patterson, 1891;
7. Excerpt regarding former Civil Code section 1673 from *The Codes of California*, Volume II, Civil Code, annotated by James M. Kerr, 1908;
8. Excerpt regarding contracts in restraint of trade from *The Law of Combinations* by Arthur Eddy, 1901;
9. *Contracts and Combinations in Restraint of Trade*, by Albert Kales, 1918.

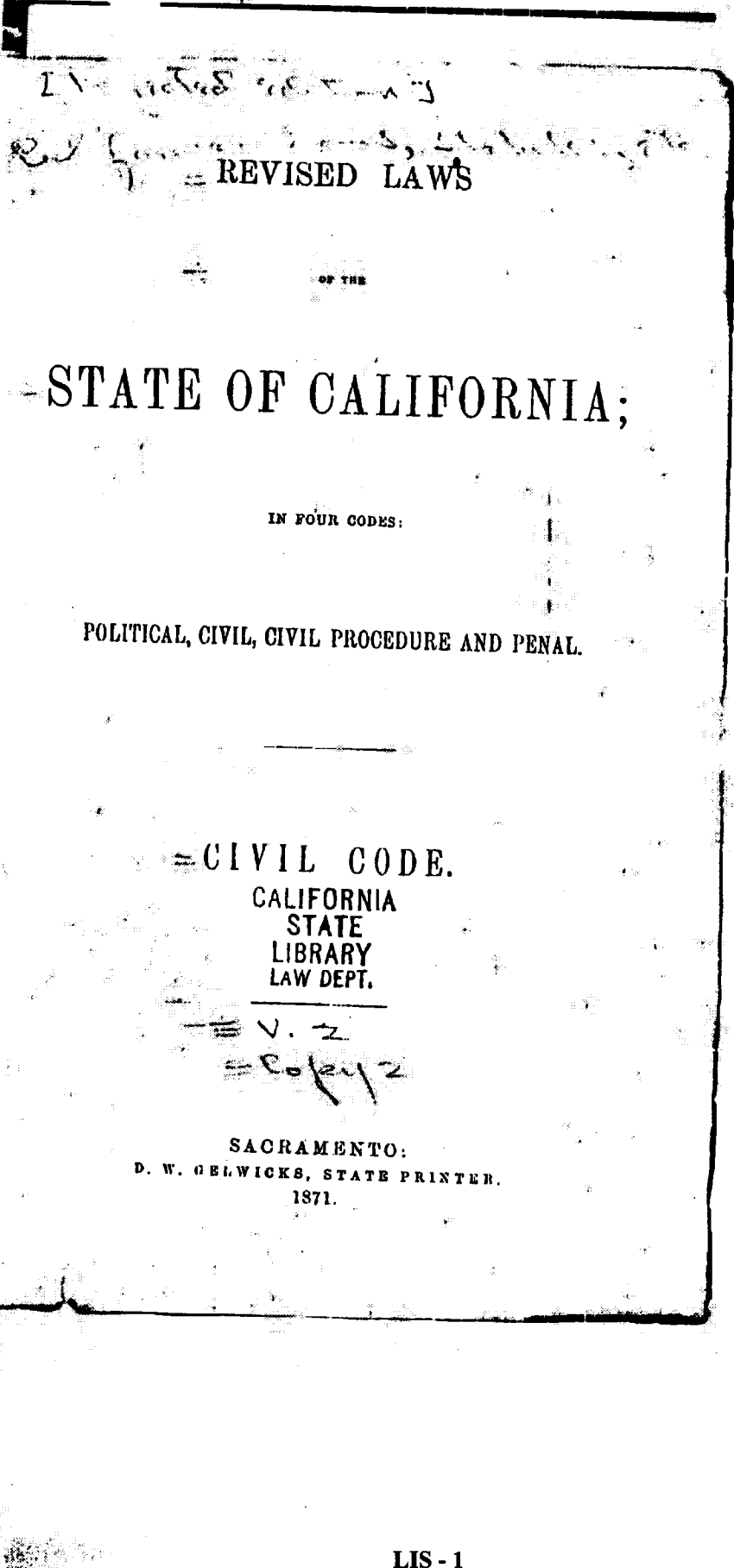
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 17th day of September, 2019 at Woodland, California.



JENNY S. LILLGE

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EXHIBIT A



21 - revised 1971

Revised Laws
REVISED LAWS

OF THE

STATE OF CALIFORNIA;

IN FOUR CODES:

POLITICAL, CIVIL, CIVIL PROCEDURE AND PENAL.

CIVIL CODE.

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1871.

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PREFACE.

This, the CIVIL CODE, must, in the main, speak for itself. There is so much urgent labor to be performed by the Commission before the meeting of the Legislature, that a more elaborate exposition must be left to a future occasion. It contains four grand Divisions. These are divided into Parts, Parts into Titles, Titles into chapters, chapters into articles, and the *whole* is sectionized consecutively, from the beginning to the end of the Code. Sections have been left in blank at the end of each chapter and article, for future declaration of rules or amendments.

Our Act adopting the Common Law of England (Stats. 1850, 219) is as follows: "The Common Law of England, so far as it is not repugnant to, or inconsistent with, the Constitution of the United States, or the Constitution or laws of the State of California, shall be the rule of decision in all the Courts of this State." The Courts hold that this Act does not mean Common Law of England, but of the United States—"American Common Law;" the Common Law of England, as *modified* by the respective States. There are as many authoritative modifications as there are States in the Union. Rules upon the same subjects differ much in different States. When they so differ, or when they need modifications to suit our conditions, the Court, not the Legislature, establishes the law.

JN 188

PREFACE.

This "unwritten" law is a system quite complete, but its expression is most fragmentary. It is found scattered throughout thousands of volumes of English and American reports and digests, from the Year Books down to the present time. The Civil Law, with Mexican modifications, prevailed in this State up to the time of the adoption of the Common Law. The history of civilization does not furnish a parallel, of placing upon a conquered people a whole system of "unwritten" laws, foreign to them and their language, and which could only be found by searching out its disintegrated elements. The Legislature has never provided for a translation of the Common Law into Spanish. The citizen and the lawyer alike complain over the want of a condensed methodical expression of the law. The Civil Code of New York—a monument of legal wisdom and patient industry—is a collection of Common Law rules and principles, combined with a consolidation of statutes like our own, all concisely stated, logically and harmoniously arranged, in order of subjects corresponding to Blackstone's Commentaries. We "supply the defect" in our Act adopting the Common Law, by specifying the general rules already embraced in its very general terms, and for this purpose avail ourselves of the exhaustive labors of the New York Commission. Most of our statutes have been taken, from time to time, from sister States, and mostly from New York. The chapters on *Special Partnerships* (Stats. 1870, 123) and *Adoption of Children* (Stats. 1870, 530) were taken bodily from the Civil Code of New York. The sharp lines between statute law and the Common Law, remaining unexpressed in Code form, are toned down. The Code and the Common Law are but harmonious parts of one system, differing only in name—in the terms employed, indicating the different modes of adoption.

The work of revising such of our statutes as pertain to this Code, and giving them conciseness in harmony with the general style of that Code, and of incorporating them in their appro-

PREFACE.

prate places, has been performed with all reasonable care. The law on marriage and divorce has been more fully declared; the distinction between sealed and unsealed instruments has been abolished; married women authorized to convey separate property without the signatures of their husbands; conveyances and acknowledgments simplified, and all parts of the Code made to harmonize with these changes. It is believed that in the main the work is well done. Doubtless some defects or omissions will be discovered on final examination after printing as a whole, which the Commission, Committee or Examining Board will correct before presentation to the Legislature in bill form.

The Code can be considered and be accepted or rejected as a whole, or those Acts of our statutes which have been revised and incorporated into the Code can be considered and passed by themselves. The Legislature can take its choice as between the whole volume or the revised Titles from the statutes. Alternate bills can be prepared to carry out either plan. Those who choose to follow the Commission through this Code should obtain a copy of the New York Civil Code, as a better means of testing the accuracy of our work. Its numerous references to leading cases, in which the particular principle declared has been adjudicated, and the copious notes, afford the highest guarantee of the correctness of that work.

We make acknowledgments to Judges O. C. Pratt, S. H. Dwinelle, E. D. Sawyer and T. Reed; also, to Messrs. Williams and Thornton, S. Wilson and J. B. Harmon, for examinations and suggestions concerning some portions of the work.

CHARLES LINDLEY,

JNO. C. BURCH,

CREED HAYMOND,

Commissioners.

OFFICE REVISION COMMISSION,
Sacramento, October 2d, 1871.

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NATURE OF A CONTRACT.

- CHAPTER I. DEFINITION.
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CHAPTER I.

DEFINITION.

Section 1549. Contract, what.

1550. Essential elements of contract.

Sec. 1549. A contract is an agreement to do or not to do a certain thing.

Contract,
what.

N. Y. C. C., Sec. 714.

Sec. 1550. It is essential to the existence of a contract that there should be—

Essential
elements of
contract.

1. Parties capable of contracting.
2. Their consent.
3. A lawful object; and,
4. A sufficient cause or consideration.

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Sec. 1657. If no time is specified for the performance of an act required to be performed, a reasonable time is allowed. If the act is in its nature capable of being done instantly, as for example, if it consists in the payment of money only, it must be performed immediately upon the thing to be done being exactly ascertained.

Time of performance of contract.

N. Y. C. C., Sec. 822.

Sec. 1658. Time is never considered as of the essence of a contract, unless by its terms expressly so provided.

Time, when of essence.

This provision is new. As to the present law upon the subject, see Story Eq. Jur., Sec. 776. It is involved in so much difficulty, that the Commissioners deem it wise to adopt this more stringent rule.

N. Y. C. C., Sec. 823.

Sec. 1659. Where all the parties who unite in a promise receive some benefit from the consideration, whether past or present, their promise is presumed to be joint and several.

When joint and several.

N. Y. C. C., Sec. 824.

Sec. 1660. A promise, made in the singular number, but executed by several persons, is presumed to be joint and several.

Same.

N. Y. C. C., Sec. 825.

Sec. 1661. An executed contract is one, the object of which is fully performed. All others are executory.

Executed and executory contracts, what.

N. Y. C. C., Sec. 826.

TITLE IV.

UNLAWFUL CONTRACTS.

SECTION 1667. What is unlawful.

1668. Certain contracts unlawful.

1669. Penalties void.

1670. Contract fixing damages, void.

1671. Exception.

1672. Restraints upon legal proceedings.

1673. Contract in restraint of trade, void.

1674. Exception in favor of sale of good will.

1675. Exception in favor of partnership arrangements.

1676. Contract in restraint of marriage, void.

The first part of this section is acknowledged law. A covenant in a contract, not to sue for a breach thereof, is void. The latter provision is new. The question involved has been variously decided in different tribunals, with a preponderance of opinion in favor of the right to limit the time of commencing actions, as a matter of law, but with frequent disapprobation of the practice. In support of the right, see *Kullua vs. New York Insurance Co.*, 7 Gray, 9; *Brown vs. Kogur Williams Insurance Co.*, 5 R. I. 394; *Northwest-ern Insurance Co. vs. Phoenix O. & C. Co.*, 31 Penn. St., 448; *Porters Insurance Co. vs. West*, 5 Ohio St., 599; *Wilson vs. Union Insurance Co.*, 27 Verm., 99; also, *Ames vs. New York Insurance Co.*, 14 N. Y., 266. Against it, see *Kogur Insurance Co. vs. Lafayette Insurance Co.*, 9 Ind., 483; *Branch vs. Lafayette Insurance Co.*, 5 McLean, 461. The law itself, and the law alone, should regulate the limitations of actions.

N. Y. C. C., Sec. 832.

Sec. 1673. Every contract by which any one is restrained from exercising a lawful profession, trade, or business of any kind, otherwise than is provided by the next two sections, is to that extent void.

Contract in restraint of trade, void.

Contracts in restraint of trade have been allowed by modern decisions to a very dangerous extent. In *Dunlop vs. Gregory* (10 N. Y., 241), a contract not to run a certain steamboat above Saugerties, on the Hudson, was enforced, although there was no sale of a good will, nor any circumstance to justify the contract, except that it was made upon a sale of vessels by an association of persons who had previously used it to an above Saugerties, and wished to avoid competition. In *Whitaker vs. Howe* (3 Heav., 387), a contract not to practice law anywhere in England was specifically enforced. Such a contract manifestly tends to enforce illiberal, and deprives the State of the services of its citizens.

N. Y. C. C., Sec. 833.

Sec. 1674. One who sells the good will of a business may agree with the buyer to refrain from carrying on a similar business within a specified county, so long as the buyer, or any person deriving title to the good will from him, carries on a like business therein.

Exception in favor of sale of good will.

The district within which a party may exclude himself from carrying on business should be accurately defined by law; and no division of the State appears to this Commission to be more reasonable or convenient for this purpose than a county. And no one should be allowed to prevent another from carrying on a business unless he himself prevents the public with the same advantage in the same county.

N. Y. C. C., Sec. 331.

Sec. 1675. Partners may, upon or in anticipation of a dissolution of the partnership, agree that none of them will carry on a similar business within the same city or

Exception in favor of partnership arrangement.



AMENDMENTS

TO THE

CIVIL CODE.

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THE
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OF THE
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THE
CIVIL CODE
OF THE
STATE OF CALIFORNIA.

AN ACT
TO ESTABLISH A CIVIL CODE.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

TITLE OF THE ACT.

SECTION 1. This Act shall be known as the Civil Code of the State of California, and is in four Divisions, as follows:

- I.—THE FIRST RELATING TO PERSONS.
- II.—THE SECOND TO PROPERTY.
- III.—THE THIRD TO OBLIGATIONS.
- VI.—THE FOURTH CONTAINS GENERAL PROVISIONS RELATING TO THE THREE PRECEDING DIVISIONS.

The bill relative to the Civil Code, prepared and to be presented to the Legislature for its action, differs from the printed volume in the following respects:

NOTE.—Part V of the Civil Code, and all preceding Part I are omitted. In place thereof the sections following from 1 to 22, inclusive, are inserted immediately preceding Division I. The provisions of the omitted parts relative to law and common law are, in a different form, inserted in Part V of the Political Codes, and made applicable to the four Codes.

from him. The second is that which connects a person with those from whom he descends.

Note.—Louisiana Code, Article 885.

Sec. 1392. In the direct line there are as many degrees as there are generations. Thus, the son is, with regard to the father, in the first degree; the grandson in the second; and vice versa with regard to the father and grandfather toward the sons and grandsons.

Louisiana Code, Art. 887.

Sec. 1393. In the collateral line the degrees are counted by generations, from one of the relations up to the common ancestor, and from the common ancestor to the other relations. In such computation the decedent is excluded, the relative included, and the ancestor counted but once. Thus, brothers are related in the second degree; uncle and nephew in the third degree; cousins german in the fourth, and so on.

Note.—Montesq. *Esprit des Loix*, Liv. 27; Louisiana Code, Art. 888.

Sec. 1394. Kindred of the half blood inherit equally with those of the whole blood in the same degree, unless the inheritance come to the intestate by descent, devise, or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestors must be excluded from such inheritance.

Stats. 1896, p. 221, Sec. 4.

Sections 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, and 1403 become 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, and 1408.

Sec. 1409. "Must" substituted for "shall," in line one.

Sec. 1410. "Shall" stricken out, and "desires" substituted for "desire," in line two; "must" for "shall," in line five, and "will" for "shall," in line thirteen.

Sec. 1411. The term "improvement," as used in this Title, includes superstructures, and nothing more.

Sec. 1412. "Shall" stricken out, and "prevents" inserted instead of "prevent," in line one.

Sec. 1614. A written instrument is presumptive evidence of a consideration.

Note.—This is part of Sec. 1086 of the printed volume. As it stood, it was under the head of "The Mode of Transfer of Real Property." Its appropriate place is here, with the other rules relating to consideration.

Sec. 1615. The burden of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it.

Note.—This section stood in the printed volume as Sec. 1617, under the head of "The Mode of Transfer of Real Property." It is placed here, with the other provisions relative to "consideration."

Sec. 1624. The following contracts, or some memorandum thereof, expressing the parties, their consent, and the object of the contract, must be in writing, sufficient for the purpose:

1. An agreement that by its terms cannot be fully performed within one year.
2. An agreement made upon consideration of marriage, other than mutual promises to marry.

Note.—Subdivision 2, as it stood in the printed volume, was stricken out, because not in harmony with Sections 2781 and 2782. Subdivision 4, as it stood in the printed volume, was stricken out.

Sec. 1628. All distinctions between sealed and unsealed instruments are abolished.

Note.—This section is part of 1086 of the printed volume. The latter part of that section has been made Sec. 1614, and this portion is taken from under the head "Mode of Transfer of Real Property," and placed here. Sec. 1629 of the printed volume is omitted.

Section 1733, omitted; fully provided for in Secs. 1091, 2309, and 1741.

Section 1733 becomes:

Sec. 1732. An agreement to sell real property binds the seller to execute a grant in the form prescribed by Sec. 1092.

Section 1734 becomes:

Sec. 1733. An agreement on the part of a seller of real property to give the usual covenants binds him to insert in the grant covenants of "seizin," "quiet enjoy."

are now in bill form, and so far as the action of this Commission is concerned, are completed. The Political Code is in press. The work will speak for itself, and must stand or fall upon its merits or demerits. Of it we are only permitted to say that it has been done as well as this Commission can do it.

CREED HAYMOND,
JOHN C. BURCH,
CHARLES LINDLEY,

Commissioners.

SACRAMENTO, December 25th, 1871.



THE
CIVIL CODE

OF THE

STATE OF CALIFORNIA.

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ANNOTATED BY

GREED HAYMOND AND JOHN C. BURCH,

OF THE

CALIFORNIA CODE COMMISSION.

June 10 1893

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In Two Volumes.

VOL. I.

FIRST EDITION.

26

SACRAMENTO:

H. S. CROCKER & CO., BOOK AND JOB PRINTERS.

1872.

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CHAPTER I.

DEFINITION.

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1550. Essential elements of contract.

1549. A contract is an agreement to do or not to do a certain thing.
Contract, what.

NOTE.—McNally vs. Prentice, 25 Harb., ¶ 204;
Sturges vs. Crowninshield, 4 Wheat., p. 197. A Judg-



surety, such a presumption will not be indulged. The responsibility will not, in such a case, be extended, without proof of an express agreement.—*Id.*; see, also, *Hunt vs. Rousmanier*, 8 *Whart.*, p. 164.

1660. A promise, made in the singular number, *same*, but executed by several persons, is presumed to be joint and several.

NOTE.—*Van Alstyne vs. Van Slyck*, 10 *Barb.*, p. 383. A promissory note, "I promise to pay," in due form, signed by two persons, held to be a joint and several note.—*Homonway vs. Stone*, 7 *Mass.*, p. 58.

1661. An executed contract is one, the object of which is fully performed. All others are executory.

NOTE.—An executory contract is one in which a party binds himself to do or not to do a particular thing. A contract executed is one in which the object of contract is performed; and this, says Blackstone, differs in nothing from a grant. A contract executed, as well as one which is executory, contains obligations binding on the parties. A grant, in its own nature, amounts to an extinguishment of the right of the grantor, and implies a contract not to reassert that right.—*Fletcher vs. Peck*, 6 *Crauch*, p. 136.

TITLE IV.

UNLAWFUL CONTRACTS.

- SECTION 1667. What is unlawful.
1668. Certain contracts unlawful.
1669. Penalties void.
1670. Contract fixing damages, void.
1671. Exception.
1672. Restraints upon legal proceedings.
1673. Contract in restraint of trade, void.
1674. Exception in favor of sale of good will.
1675. Exception in favor of partnership arrangements.
1676. Contract in restraint of marriage, void.

1667. That is not lawful which is:

1. Contrary to an express provision of law;

What is unlawful.



Fish vs. Fowler, 10 Cal., p. 512. The use of the phrase "liquidated damages" leads frequently to an evasion of the law in respect to penalties. The Courts, not venturing to declare such contracts void, constantly discourage them. They are oppressive and unconscionable, except in the cases permitted above, and ought not to be allowed. The restrictions imposed by this section are, however, new. See *Dingley vs. Pedro*, 16 N. Y., p. 409. See, also, cases cited in note to Sec. 1668.

Restraints upon legal proceedings.

1672. Every stipulation or condition in a contract, by which any party thereto is restricted from enforcing his rights under the contract by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void.

NOTE.—The first part of this section is acknowledged law. A covenant in a contract, not to sue for a breach thereof, is void. The latter provision is new. The question involved has been variously decided in different tribunals, with a preponderance of opinion in favor of the right to limit the time of commencing actions, as a matter of law, but with frequent disapprobation of the practice. In support of the right, see *Fullam vs. New York Insurance Co.*, 7 Gray, p. 6; *Brown vs. Roger Williams Insurance Co.*, 5 R. I., p. 394; *Northwestern Insurance Co. vs. Phenix O. & C. Co.*, 31 Penn. St., p. 448; *Portage Insurance Co. vs. West*, 6 Ohio St., p. 599; *Wilson vs. Etna Insurance Co.*, 27 Verm., p. 99; also, *Annes vs. New York Insurance Co.*, 14 N. Y., p. 266. Against it, see *Eagle Insurance Co. vs. Lafayette Insurance Co.*, 9 Ind., p. 443; *French vs. Lafayette Ins. Co.*, 5 McLean, p. 461. The law itself, and the law alone, should regulate the limitations of actions.

Contract in restraint of trade, void.

1673. Every contract by which any one is restrained from exercising a lawful profession, trade, or business of any kind, otherwise than is provided by the next two sections, is to that extent void.

NOTE.—Contracts in restraint of trade have been allowed by modern decisions to a very dangerous extent. In *Dunlop vs. Gregory*, 10 N. Y., p. 241, a contract not to run a certain steamboat above Saugerties,

on the Hudson, was enforced, although there was no sale of a good will, nor any circumstance to justify the contract, except that it was made upon a sale of a vessel by an association of persons who had previously used it to run above Saugerties, and wished to avoid competition. In the case of *Cal. Steam Nav. Co. vs. Wright*, 6 Cal., p. 258, it was held that a contract not to run boats on a certain line of travel was not void, as being against public policy and in restraint of trade, when a consideration was paid therefor. In such a case the doctrine was said to be that there must not only be a consideration for the contract, but there must be some good reason for entering into it; and it must impose no restraint upon any party which is not beneficial to the other. It was held that such a contract gave no monopoly, giving an exclusive enjoyment of the business only as against a single individual, while all the world beside was left at full liberty to enter upon the same enterprise. Yet this is a contract restraining an individual from exercising a lawful trade. By the terms of this section, and by the following section, the restraint imposed would seem to be obliged to be limited to a specified county; and to this effect, also, are the cases of *Wright vs. Ryder*, 35 Cal., p. 342, and *Moore vs. Bonnet*, 40 Cal., p. 251. In *Whittaker vs. Howe*, 3 Beav., p. 387, a contract not to practice law anywhere in England was specifically enforced. Such a contract manifestly tends to enforce idleness, and deprives the State of the services of its citizens.

1674. One who sells the good will of a business may agree with the buyer to refrain from carrying on a similar business within a specified county, city, or a part thereof, so long as the buyer, or any person deriving title to the good will from him, carries on a like business therein.

Exception
in favor of
sale of good
will.

Note.—The district within which a party may exclude himself from carrying on business should be accurately defined by law. And no one should be allowed to prevent another from carrying on a business unless he himself provides the public with the same advantages in the same county or city, or part thereof.—*Moore vs. Bonnet*, 40 Cal., p. 251; *Wright vs. Ryder*, 35 Cal., p. 342.

1675. Partners may, upon or in anticipation of a



Exception
in favor of
partnership
arrange-
ments.

dissolution of the partnership, agree that none of them will carry on a similar business within the same city or town where the partnership business has been transacted, or within a specified part thereof.

NOTE.—An agreement of this description, operating equally upon all the partners, gives to all an opportunity to start anew in business upon equal terms. In such cases, an agreement excluding them all from the county would have been too broad. It may even be doubted whether "ward" should not have been substituted for "city" in the text.

Contract in
restraint of
marriage,
void.

1676. Every contract in restraint of the marriage of any person, other than a minor, is void.

NOTE.—Contracts in general restraint of marriage are certainly void.—*Lowe vs. Peers*, 4 Burr, 2225; *Hartley vs. Rice*, 10 East., p. 22; *Baker vs. White*, 2 Verm., p. 218; *Sterling vs. Sinnickson*, 2 South., p. 750; see *Conrad vs. Williams*, 6 Hill, p. 444. Perhaps a contract simply in restraint of remarrage of the wife of one of the parties would heretofore have been held valid in analogy to the rule concerning wills, but experience has shown that such stipulations tend to immorality. Restraints upon the marriage of minors are perhaps sometimes promotive of prudence, without being burdensome. For a discussion of this subject see note to Sec. 710, ante.

TITLE V.

EXTINCTION OF CONTRACTS.

CHAPTER I. *Contracts, how Extinguished.*

II. *Rescission.*

III. *Alteration and Cancellation.*

CHAPTER I.

CONTRACTS, HOW EXTINGUISHED.

SECTION 1682. Contract, how extinguished.

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REPORT

OF
The Joint Committee on Revision

ON THE

CIVIL CODE.



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REPORT.

To the Honorable the Legislature of the State of California:

The Joint Committee on Revision, appointed by the Legislature to examine the Code of Civil Procedure, Civil and Penal Code, beg leave to make the following report:

Your committee have examined the bill for a Civil Code, prepared by the Revision Commission and approved by Messrs. Johnson and Tuttle, the Advisory Board, and take great pleasure in concurring in their report.

We give to this Code our unqualified approval and indorsement, and herewith report it to the Legislature and recommend its adoption.

W. W. PENDEGAST, Chairman;
A. COMTE, JR.,
J. T. FARLEY,
JAMES VAN NESS,
Senate Committee.

C. G. W. FRENCH, Chairman;
F. E. SPENCER,
Assembly Committee.

T. A. SPRINGER.....STATE PRINTER.

We, the Committee on the Political Code, concur fully in the above report and recommendation.

WILLIAM IRWIN, Chairman;
GEORGE OULTON,
M. P. O'CONNOR,
S. C. HUTCHINGS,
GEORGE C. PERKINS,
Senate Committee.

WM. R. WHEATON, Chairman;
E. B. MOTT, JR.,
W. N. DE HAVEN,
J. A. EAGAN,
J. K. LUTTRELL,
Assembly Committee.

LEGISLATIVE PRINTING SERVICE (800) 826-1917

THE
JOURNAL OF THE SENATE

DURING THE
NINETEENTH SESSION

OF THE
LEGISLATURE OF THE STATE OF CALIFORNIA,

1871-72.

BEGAN ON MONDAY, THE FOURTH DAY OF DECEMBER, EIGHTEEN HUNDRED
AND SEVENTY-ONE, AND ENDED ON MONDAY, THE FIRST DAY OF
APRIL, EIGHTEEN HUNDRED AND SEVENTY-TWO.



SACRAMENTO:
T. A. SPRINGER, STATE PRINTER.
1872.

LEGISLATIVE INTENT SERVICE (800) 666-1917

MESSAGES FROM THE GOVERNOR.

The following messages were received from the Governor:

STATE OF CALIFORNIA, EXECUTIVE DEPARTMENT,
Sacramento, January 5th, 1872.

To the Senate of the State of California:

I have to inform your honorable body that I have appointed James Hunter, State Gauger, vice Rogers, resigned, and respectfully ask that the appointment be confirmed.

NEWTON BOOTH, Governor.

STATE OF CALIFORNIA, EXECUTIVE DEPARTMENT,
Sacramento, January 5th, 1872.

To the Senate of the State of California:

I herewith transmit to your honorable body, for legislative action, copies of resolutions passed by the Revision Commission.

NEWTON BOOTH, Governor.

The following are the resolutions transmitted by the Governor:

At a meeting of the Revision Commission held January first, eighteen hundred and seventy-two, the following resolutions were adopted:

1. Resolved, That the Penal Code of Civil Procedure, and Civil Codes are now complete, and that the Commission are ready to report the same in bill form to the Legislature, in such manner as it may direct, and are willing to attend before the Legislature or any committees thereof to give such information respecting the Codes as may be desired.
2. Resolved, That the work upon the Political Code has so far progressed that the Examining Board and Legislative Committees may commence the examination thereof, and prosecute such examination without delay.
3. Resolved, That in the opinion of this Commission it would be desirable to have the Codes mentioned in the first resolution examined in the order in which they are named therein.
4. Resolved, That his Excellency, the Governor, is respectfully requested to transmit copies of these resolutions to each House of the Legislature.

CAMERON H. KING, Secretary.

STATE OF CALIFORNIA, EXECUTIVE DEPARTMENT,
Sacramento, January 8th, 1872.

To the Senate of the State of California:

I have to inform your honorable body that I have approved Senate Bill No. 25—An Act to define and establish the boundary line of the City of Sonora.

Also, Senate Bill No. 3—An Act to establish and define the powers and duties of the Board of Education of the City of Petaluma.

NEWTON BOOTH, Governor.

CONSIDERATION OF GOVERNOR'S MESSAGE

Transmitting appointment of James Hunter as State Gauger. Upon the question, "Will the Senate advise and consent to the appointment of James Hunter as State Gauger?" the roll was called, with the following result:

AYES—Messrs. Bayard, Beck, Betge, Boggs, Boucher, Comte, Crane, Duffy, Dyer, Evans, Finney, Fowler, Garratt, Goodale, Hutchings, Irwin, Keys, Machy, McCoy, McKaieck, Neff, O'Connor, Oulton, Pennington, Perkins, Tompkins, Turner, Tuttle, Van Ness, Wand, Wilson, and Wing
NOES—None.

LEAVE TO INTRODUCE A BILL.

Mr. Tompkins had leave to introduce the following bill—An Act in relation to the revision of the laws.

Read first and second times, rules suspended, bill considered engrossed, read a third time and passed, and ordered transmitted immediately to the Assembly.

GENERAL FILE.

At twelve o'clock M., the Senate took up the consideration of the General File, as follows:

Senate Concurrent Resolution No. 6—Appointing a Committee on Revision of the Laws.
Adopted.

Assembly Bill No. 25—An Act to amend an Act entitled an Act concerning Courts of justice of this State and judicial officers, approved April twentieth, eighteen hundred and sixty-three.

Read a third time and passed.

Assembly Bill No. 26—An Act to amend an Act entitled an Act concerning the distribution of the reports of the decisions of the Supreme Court and the statutes of this State, approved March third, eighteen hundred and sixty-six.

Considered in Committee of the Whole and amended.

IN SENATE.

Amendments made in Committee of the Whole concurred in by the Senate, bill read a third time, and passed.

had under consideration Senate Bills Nos. 373 and 411, report the same back, and recommend their passage.

BETIGE, Chairman.

GENERAL FILE

Senate Bill No. 371—An Act to provide for the settlement of school property in several school districts that were adjacent to the City of Stockton, and which was by Act of the Legislature, etc.

Rules suspended, bill considered engrossed, read a third time and passed.

Senate Bill No. 367—An Act to empower the City of Stockton to fund its school debt.

Amendment reported by the Judiciary Committee adopted.

Rules suspended, bill considered engrossed, read a third time and passed.

Mr. Minis verbally reported Assembly Bill No. 349, and recommended its passage.

Rules suspended, and Assembly Bill No. 349, above reported, read a third time and passed.

Mr. Neff had leave to withdraw Senate Bill No. 421, this day introduced by him, for the purpose of correcting a clerical error.

Mr. Tuttle verbally reported Assembly Bill No. 419, with amendments, and recommended its passage as amended.

At five o'clock and forty minutes P. M., on motion of Mr. Wand, the Senate adjourned.

R. FRANK, Secretary.

J. T. FARLEY,

President pro tem.

IN SENATE.

SENATE CHAMBER,
Friday, March 15th, 1872.

Senate met pursuant to adjournment.

President pro tem in the chair.

Roll called.

Quorum present.

Prayer by the Chaplain.

Journal of yesterday read and approved.

REPORTS.

Reports were made as follows:

By Mr. Banvard:

Mr. President: The Committee on Finance, to whom was referred Assembly Bill No. 438—An Act to provide for the redemption of the bonded indebtedness of Calaveras County—have had the same under consideration, and herewith report it back with an amendment, and recommend the passage of the bill as amended.

BANVARD, Chairman.

By Mr. Pendegast:

Mr. President: The Committee on Counties and County Boundaries have had under consideration Senate Bill No. 368—An Act to create the County of San Benito, define its boundaries, and provide for its organization—and herewith return the same to the Senate and report as follows:

The object of the bill is to establish a new county in a portion of the territory now within the limits of Monterey County. The committee have already expressed their views against the formation of new counties, except in cases where a strong necessity for such action is made apparent, and when but little or no objection is made by the people in the territory to be affected.

The weak and embarrassed condition of some of the counties as at present organized is, in the opinion of the committee, a warning to the Legislature to be very cautious in the creation of others.

The information gleaned by the committee, by the petitions, remonstrances, and oral arguments, reveals a somewhat singular state of affairs. Quite a large number of persons resident in that portion of the territory which, if this bill should pass, would still be in Monterey County, petition for this legislation, while almost an equal number residing in the territory sought to be detached protest against the change.

There is a contest evidently impending between several sites in Monterey County, as at present constituted, for the location of the county seat.

It is the opinion of the committee that the petitions and remonstrances affecting this bill were signed, in a very great degree, with reference more to this county seat contest than to the real merits or demerits of the question of division.

It is made apparent to the committee that there is a want of harmony between two large and wealthy sections of the county, and we do not doubt that the proposed new county will in time, and perhaps in a short time, become a matter of sound policy. But we are not willing to recommend its creation at the present time, in the face of the fact that a very respectable minority of the citizens and taxpayers in the territory of the proposed new county earnestly object to it.

It may be well to state further that a bill precisely similar in character to this was introduced at an early day of the present session in the Assembly by the member from Monterey County, and that notwithstanding the powerful advocacy of the local member, who is also the Chairman of the Committee on Counties and County Boundaries in that body, the Assembly, after full consideration, refused to pass it.

We have no reason to believe that that body will reverse its action, and it would seem to be idle for this body to pass a measure which there is little or no probability would receive favorable consideration from our cordials.

We therefore respectfully recommend that the bill do not pass.

PENDEGAST, Chairman.

By Mr. Pendegast:

Mr. President: The Committee on Counties and County Boundaries have had under consideration Senate Bill No. 315 and Assembly Bill No. 516, bearing the same title, to wit—An Act to permanently locate the

By Mr. Pendegast—An Act to establish a Civil Code.
Read first and second times, rules suspended, bill considered engrossed, read a third time and passed, and ordered transmitted immediately to the Assembly.
By Mr. Boggs—An Act to provide for collecting a poll hospital tax in the County of Colusa.
Read first and second times and referred to the Committee on State and County Revenue, and ordered printed.
By Mr. Comte—An Act to authorize the State Controller to issue a duplicate warrant.
Read first and second times and referred to the Committee on Claims.
By Mr. Fowler—An Act concerning the taxation of live stock.
Read first and second times and referred to the Judiciary Committee.

REPORT.

Mr. Farley verbally reported a substitute for Assembly Bill No. 171, and recommended the passage of the substitute.
On motion of Mr. Farley, the rules were suspended, and substitute for Assembly Bill No. 171, above reported, was adopted, read a third time and passed.
[President pro tem in the chair.]

GENERAL FILE.

Senate Bill No. 256—An Act to encourage silk culture and manufacture.
Upon ordering the bill engrossed, the yeas and nays were demanded by Messrs. Larkin, Maclay, and Banvard, and the Senate refused by the following vote:

AYES—Messrs. Boucher, Duffy, Finney, Kent, and Maclay—5.
NOES—Messrs. Banvard, Beck, Boggs, Comte, Crane, Dyer, Evans, Farley, Fowler, Goodale, Gwin, Hutchings, Irwin, Keys, Larkin, McCoy, McMurry, Minis, O'Connor, Oulton, Perkins, Turner, Tuttle, Van Ness, Wand, Wilson, and Wing—27.

Assembly Bill No. 418—An Act to legalize and confirm the election of school officers in the City of Vallejo, and other matters.
Senate refused a third reading.
[Mr. O'Connor in the chair.]

SPECIAL ORDER.

Senate Bill No. 294—An Act for the relief of W. B. Norman and A. C. Bradford.
Upon the adoption of the report of the Committee on Claims recommending that the bill do not pass, the yeas and nays were demanded by Messrs. Larkin, Betge, and Farley, and the Senate so ordered by the following vote:

AYES—Messrs. Crane, Duffy, Evans, Finney, Fowler, Garratt, Goodale, Kent, Keys, Larkin, McKusick, McMurry, Minis, Neff, O'Connor, Oulton, Perkins, Tompkins, Turner, Tuttle, and Wing—21.
NOES—Messrs. Andross, Banvard, Betge, Boggs, Boucher, Comte,

Dyer, Farley, Gwin, Hutchings, Maclay, McCoy, Pendegast, Van Ness, Wand, and Wilson—16.

At one o'clock and ten minutes P. M. the Senate took a recess until two o'clock P. M.

REASSEMBLED.

Senate reassembled at two o'clock P. M.
President pro tem in the chair.

Roll called.
Quorum present.

SPECIAL ORDERS.

Consideration of Governor's message, vetoing Assembly Bill No. 273—An Act supplemental to an Act entitled an Act to authorize the County of Sonoma to donate bonds to a railroad company, and to provide for the payment of the same, approved March eighteenth, eighteen hundred and sixty-eight.

Mr. Van Ness moved to lay the whole matter on the table, upon which the yeas and nays were demanded by Messrs. Tuttle, O'Connor, and McMurry, and the Senate so ordered by the following vote:

AYES—Messrs. Andross, Banvard, Beck, Betge, Boggs, Comte, Duffy, Dyer, Evans, Finney, Garratt, Gwin, Hutchings, Kent, Keys, Maclay, McCoy, Minis, Pendegast, Tompkins, Van Ness, Wilson, and Wing—23.
NOES—Messrs. Boucher, Crane, De Haven, Farley, Fowler, Goodale, Irwin, Larkin, McKusick, McMurry, Neff, O'Connor, Oulton, Perkins, Turner, Tuttle, and Wand—17.

Senate Bill No. 209—An Act concerning the military of the State of California.

Considered in Committee of the Whole and amended.

IN SENATE.

Amendments made in Committee of the Whole concurred in by the Senate.

Mr. Irwin moved to amend the bill by striking out "sixty," as relates to the number of companies, and insert, in lieu thereof "twenty," upon which the yeas and nays were demanded by Messrs. Larkin, Irwin, and Oulton, and the Senate refused by the following vote:

AYES—Messrs. Banvard, Boggs, Boucher, Farley, Fowler, Goodale, Hutchings, Irwin, Larkin, McMurry, Minis, O'Connor, Oulton, Turner, Tuttle, and Wilson—16.

NOES—Messrs. Andross, Betge, Comte, Crane, Duffy, Dyer, Evans, Finney, Garratt, Gwin, Kent, Maclay, McCoy, McKusick, Neff, Pendegast, Perkins, Tompkins, Van Ness, Wand, and Wing—21.

Mr. Fowler moved to amend the bill by striking out "sixty" and inserting "twenty-five," upon which the yeas and nays were demanded by Messrs. Fowler, Larkin, and O'Connor, and the Senate refused by the following vote:

AYES—Messrs. Banvard, Boucher, Farley, Fowler, Goodale, Hutchings,

Mr. Tuttle moved to lay the whole subject matter upon the table. Upon which the ayes and noes were demanded by Messrs. O'Connor, Larkin, and Betge, and the Senate so ordered by the following vote:

Ayes—Messrs. Andrews, Banvard, Comte, Crane, Dyer, Fowler, Goodale, Larkin, MacIay, McCoy, McKusick, Neff, O'Connor, Oulton, Pendegast, Turner, Tuttle, Van Ness, Wand, and Wing—20.
Noes—Messrs. Beck, Betge, Boggs, Boucher, De Haven, Duffy, Evans, Farley, Garratt, Gwin, Hutchings, Irwin, McMurry, Minis, Perkins, Tompkins, and Wilson—17.

FURTHER INTRODUCTION OF BILLS.

By Mr. Comte—An Act for the relief of the Central Pacific Railroad Company.

Read first and second times, rules suspended, bill considered engrossed, read a third time and passed.

By Mr. Duffy—An Act to authorize suit against the Board of Supervisors of the County of Sacramento.

Read first and second times, and referred to the Judiciary Committee. At one o'clock P. M., on motion of Mr. Pendegast, the usual daily recess was postponed for one half hour.

MESSAGE FROM THE ASSEMBLY.

The following message was received from the Assembly:

ASSEMBLY CHAMBER,
March 16th, 1872.

Mr. PRESIDENT: I am directed to inform your honorable body that the Assembly, on the sixteenth day of March, passed Assembly Bill No. 633—An Act supplementary to an Act entitled an Act to provide terminal depot grounds for the Terminal Central Pacific Railway Company, approved March twenty-eighth, eighteen hundred and sixty-eight.

Also, on the same day, passed Assembly Bill No. 637—An Act supplemental to an Act entitled an Act to incorporate the City of Sacramento, approved April twenty-fifth, eighteen hundred and sixty-three.

Also, on the same day, passed Senate Bill No. 430—An Act to establish a Civil Code.

BORUCK, Chief Clerk.

CONSIDERATION OF ASSEMBLY MESSAGE.

Assembly Bill No. 634, above reported, read first and second times and referred to the Sacramento delegation.

Assembly Bill No. 633, above reported, read first and second times, rules suspended, bill read a third time and passed.

On motion of Mr. Garratt, Assembly Bill No. 453—An Act granting certain privileges to the North Beach and Mission Railroad Company—was taken from the file and referred to the San Francisco delegation.

By Mr. Comte—An Act supplementary to an Act creating the office of Insurance Commissioner, approved March twenty-sixth, eighteen hundred and sixty-eight.
Read first and second times and referred to the Judiciary Committee.

RECONSIDERATION.

Pursuant to notice, Mr. Duffy moved to reconsider the vote by which the Senate on yesterday refused to pass Assembly Bill No. 387.

Mr. Comte moved to indefinitely postpone the motion to reconsider. Upon which the ayes and noes were demanded by Messrs. Comte, Duffy, and Tuttle, and the Senate refused by the following vote:

Ayes—Messrs. Beck, Boucher, Comte, Crane, Farley, Fowler, Garratt, Goodale, Irwin, McKusick, McMurry, Minis, O'Connor, Oulton, Tuttle, and Wilson—16.

Noes—Messrs. Andrews, Banvard, Betge, Boggs, De Haven, Duffy, Dyer, Evans, Hutchings, MacIay, McCoy, Neff, Pendegast, Tompkins, Van Ness, Wand, and Wing—17.

Upon the motion to reconsider, the ayes and noes were demanded by Messrs. Comte, Beck, and Fowler, and the Senate refused by the following vote:

Ayes—Messrs. Andrews, Banvard, De Haven, Duffy, Dyer, Evans, Hutchings, MacIay, Pendegast, Tompkins, Van Ness, and Wand—13.
Noes—Messrs. Beck, Boucher, Comte, Crane, Farley, Fowler, Garratt, Goodale, McKusick, McMurry, Minis, Neff, O'Connor, Oulton, Tuttle, and Wilson—17.

On motion of Mr. Dyer, Assembly Bill No. 438—An Act to provide for the redemption of the bonded indebtedness of Calaveras County—was made the special order for Tuesday next, at eleven o'clock and thirty minutes A. M.

SPECIAL ORDER.

Motion to reconsider Senate Bill No. 245—An Act in relation to gaming.

On motion of Mr. Minis, the special order was discharged, and made the special order for Wednesday next, at two o'clock P. M.

RESOLUTION.

By Mr. Fowler:

Resolved, That when the Senate adjourns this day, (Saturday, March sixteenth), it adjourns to meet on Tuesday next, (March nineteenth), in honor of "St. Patrick's day."

Mr. MacIay offered the following substitute for the resolution:

Resolved, That the Senate adjourn to-day at one o'clock and thirty minutes P. M., and that it adjourn to Monday next, at two o'clock and thirty minutes P. M.

Lost.

New York, March 18th, 1872.
To Messrs. CREED HAYMOND, JOHN C. BURCH, AND CHARLES LINDLEY,
Commissioners for Revision of Laws of California:

All honor to you for your great work accomplished. It will be the boast of California that, first of English speaking States, she set the example of written laws as the necessary complement of a written Constitution for a free people.

DAVID DUDLEY FIELD.

REPORTS.

Reports were made as follows:

By Mr. Evans:

Mr. President: The San Joaquin delegation, to whom was referred Assembly Bill No. 558—An Act to regulate the salaries and fix the compensation of the county officers of San Joaquin County—have had the same under consideration, and after due examination, although of the opinion that the salaries of some of the officers named in the bill are fixed at too low a rate commensurate with the duties imposed and the bonds required, still, in consideration of the fact that a change should be made from the present system and that the session is so near to a close that by amending the bill now and sending it back to the Assembly for concurrence the whole proposed change might be endangered, the bill is reported back with a recommendation that it do pass.

EVANS, for Delegation.

By Mr. Hutchings:

Mr. President: Your Committee on Enrollment would respectfully report that they have examined and find correctly enrolled Senate Bill No. 387—An Act concerning the office of Secretary of the Fire Department of the City of Sacramento.
Also, Senate Bill No. 352—An Act amulatory of and supplementary to an Act entitled an Act to reincorporate the City of Placerville and extend the limits thereof, approved April sixth, eighteen hundred and sixty three.
Also, Senate Bill No. 383—An Act to authorize the transfer of the Indian Fund of Siskiyou County to the School Fund of the county.
Also, Senate Bill No. 264—An Act concerning the San Diego and Gila Southern Pacific and Atlantic Railroad Company, and to extend the time of performing certain acts.
Also, Senate Bill No. 296—An Act to amend an Act entitled an Act concerning roads and highways in the County of San Mateo, approved March twenty-fifth, eighteen hundred and sixty-eight.
Also, Senate Bill No. 405—An Act to provide for the opening of Santa Clara and Saratoga Avenue, in the County of Santa Clara.
Also, Senate Bill No. 219—An Act to amend an Act entitled an Act to regulate fees of offices and salaries of certain officers in the County of San Luis Obispo, approved March twenty-ninth, eighteen hundred and seventy.
Also, Senate Bill No. 404—An Act authorizing certain persons to improve a portion of King's River, and to erect booms thereon.

And have presented the same to the Governor for his signature this day at twelve o'clock and twenty minutes P. M.
By Mr. Betge: HUTCHINGS.

Mr. President: The Committee on Commerce and Navigation, to whom was referred Senate Bill No. 424—An Act supplemental to an Act entitled an Act to survey and dispose of certain salt marsh and tide lands belonging to the State of California, approved March thirtieth, eighteen hundred and sixty-eight, and an Act supplementary and amendatory thereof, approved April first, eighteen hundred and seventy—have had the same under consideration, and a majority thereof report the same back and recommend its passage.

BETGE, for Majority.

MESSAGE FROM THE GOVERNOR.

The following message was received from the Governor:

STATE OF CALIFORNIA, EXECUTIVE DEPARTMENT,
Sacramento, March 18th, 1872.

To the Senate of the State of California:

I hereby nominate John F. Swift, of the City of San Francisco, a Regent of the University of California, vice John T. Doyle, term expired, and respectfully ask your honorable body to confirm the same; commission to take effect March nineteenth, eighteen hundred and seventy-two.

NEWTON BOOTH, Governor.

CONSIDERATION OF GOVERNOR'S MESSAGE.

The Senate went into executive session for the consideration of the message; and, upon the question, "Will the Senate advise and consent to the appointment of John F. Swift as Regent of the University?" the roll was called with the following result:

Ayes—Messrs. Barnard, Boucher, Comte, Crane, De Haven, Dyer, Evans, Farley, Goshale, Hutchings, Irwin, Kent, Keys, Larkin, McCoy, McKusick, Minis, Neff, O'Connor, Oulton, Tuttle, Van Ness, Wand, and Wing—24.
Noes—None.

INTRODUCTION OF BILLS.

Bills were introduced as follows:

By Mr. Irwin—An Act to authorize a special tax in Siskiyou and Klamath Counties, for the construction of a wagon road from Scott Valley, in Siskiyou County, to Sawyer's Bar, in Klamath County.
Read first and second times, rules suspended, bill considered engrossed, read a third time and passed.
By Mr. Wing—An Act to protect growing crops and grain in the County of Inyo.

and correctly engrossed Senate Bill No. 361—An Act to provide a system of common schools.

TUTTLE, for Committee.

Mr. Tuttle verbally reported Assembly Bill No. 629, and recommended its passage.

The rules were suspended, and Assembly Bill No. 629, above reported, was read a third time and passed.

Mr. Irwin verbally reported Assembly Bill No. 570, and recommended its passage.

The rules were suspended, and Assembly Bill No. 570, above reported, was read a third time and passed.

By Mr. Neff:

Mr. President: The Committee on Engraving have examined and find correctly engrossed Senate Bill No. 450—An Act to amend an Act entitled an Act concerning estrays and animals found running at large in the County of Santa Clara, passed April twenty-seventh, eighteen hundred and sixty-three.

Also, Senate Bill No. 451—An Act to amend an Act entitled an Act for the incorporation of water companies, approved April twenty-second, eighteen hundred and fifty-eight.

NEFF, for Committee.

By Mr. Van Ness:

Mr. President: The Committee on Federal Relations have had under consideration Assembly Joint Resolution No. 20—Relative to fortifications in San Diego Harbor.

Also, Assembly Joint Resolution No. 30—Relative to establishing a monthly mail between San Francisco and the Island of Tahiti.

Also, Assembly Memorial and Joint Resolution No. 16—Relative to occupation of Hoopa Valley, in Klamath County, as an Indian Reservation.

Also, Assembly Memorial and Joint Resolution No. 28—Relative to asking Congress for an appropriation to improve Humboldt Harbor.

Also, Assembly Joint Resolution No. 29—Relative to establishing a weekly mail from Fort Jones, in Siskiyou County, to Orleans Bar.

Also, Assembly Memorial to Congress, to accompany Assembly Resolution No. 29.

Also, Assembly Joint Resolution No. 13—Relating to instructing our Senators and requesting our Representatives in Congress to urge upon the Congress of the United States to adopt such legislation as will authorize the collection of a foreign miners' tax, etc.

Also, Joint Resolution of the Senate, No. 6—Relative to requesting Congress to have surveyed certain lands in this State.

And report the same back and recommend their passage.

VAN NESS, Chairman.

Mr. Maclay verbally reported Assembly Bill No. 683, and recommended its passage.

The rules were suspended, and Assembly Bill No. 683, above reported, was read a third time and passed.

By Mr. Duffy:

Mr. President: Your Committee on State Library, to whom was referred Senate Bill No. 323—An Act in relation to a special Fund for the State Library—beg leave to report a substitute for same, and respectfully recommend the passage of the substitute.

DUFFY, Chairman.

Mr. Minis verbally reported Assembly Bill No. 306, and recommended its passage.

The rules were suspended, and Assembly Bill No. 306 was amended, read a third time and passed. Title amended, and amendment adopted.

Mr. Evans verbally reported Senate Bill No. 454, with amendments, and recommended its passage as amended.

The rules were suspended for the consideration of Senate Bill No. 454, above reported, amendments reported by the San Joaquin delegation adopted, bill considered engrossed, read a third time and passed, and ordered to be transmitted to the Assembly.

Mr. Wand verbally reported Senate Bill No. 259, with amendments, and recommended its passage.

The rules were suspended and amendments reported by the San Francisco delegation to Senate Bill No. 259, above reported, were adopted, bill considered engrossed, read a third time and passed, and ordered to be transmitted to the Assembly.

MESSAGE FROM THE GOVERNOR.

The following message was received from the Governor:

STATE OF CALIFORNIA, EXECUTIVE DEPARTMENT,
Sacramento, March 21st, 1872.

To the Senate of the State of California:

I have to inform your honorable body that I have approved Senate Bill No. 399—An Act to amend an Act entitled an Act to incorporate the Town of Wilmington, in the County of Los Angeles, in the State of California, approved February twelfth, eighteen hundred and seventy-two.

Also, Senate Bill No. 387—An Act concerning the office of Secretary of the Fire Department of the City of Sacramento.

Also, Senate Bill No. 170—An Act for the encouragement of agriculture and other industries.

Also, Senate Bill No. 340—An Act to authorize the Board of Supervisors of the County of San Luis Obispo to audit and allow the claim of M. B. Harrison.

Also, Senate Bill No. 114—An Act for the relief of George W. Reamer and his associates.

Also, Senate Bill No. 61—An Act to repeal an Act entitled an Act to empower the Board of Supervisors of the several counties of this State to aid in the construction of a railroad in their respective counties, approved April fourth, eighteen hundred and seventy; and an Act entitled an Act supplemental to an Act to empower the Board of Supervisors of the several counties of this State to aid in the construction of a

By Mr. Pendegast—An Act to authorize the Napa Ladies' Seminary to grant diplomas.
 Read first and second times, rules suspended, bill considered engrossed, read a third time and passed.

PETITION.

The President of the Senate presented a petition from Alfred Monih. The petition, with accompanying documents, was referred to the Judiciary Committee.

RESOLUTION AND MOTION.

By Mr. Tompkins:

Resolved by the Senate, the Assembly concurring, That the Governor be and he hereby is authorized and required to appoint three Commissioners, who, without compensation or expense to the State, shall represent the State of California at the International Exposition, to be held at the City of Vienna, during the year eighteen hundred and seventy-three. The duty of said Commissioners shall be to facilitate, as far as practicable, the exhibition at said Exposition by citizens of California, of any of the products or manufactures of the State.

Adopted.

On motion of Mr. Wand, Assembly Bill No. 382—An Act to amend an Act to change the time for holding municipal elections in the City and County of San Francisco—was taken from the file, read a third time and passed.

FURTHER INTRODUCTION OF BILLS.

By Mr. Garratt—An Act to amend an Act entitled an Act to regulate fees in office.
 Read first and second times and referred to the San Francisco delegation.

By Mr. Comte—An Act concerning the office of District Attorney of Sacramento County.
 Read first and second times and referred to the Sacramento delegation.

RECONSIDERATION.

Pursuant to notice, Mr. Betge moved to reconsider the vote by which the Senate on yesterday adopted the report of the Committees on Counties and County Boundaries, recommending that Senate Bill No. 368—An Act to create the County of San Benito, etc., do not pass.

Mr. Betge moved to indefinitely postpone the motion to reconsider, upon which the ayes and noes were demanded by Messrs. Larkin, Evans, and Betge, and the Senate so ordered by the following vote:

Ayes—Messrs. Andross, Banvard, Betge, Duffy, Dyer, Evans, Farley, Finney, Fowler, Goodale, Kent, Keys, Larkin, Macloy, Pendegast, Perkins, Wilson, and Wing—18.
 Noes—Messrs. Beck, Boucher, Comte, Crane, Garratt, Gwin, Hutchings, Irwin, McCoy, McKusick, McKurry, Ness, O'Connor, Oulton, Tompkins, Tuttle, and Wand—17.

On motion of Mr. Betge, Assembly Bill No. 383—An Act to provide

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railroad in their respective counties, approved April fourth, eighteen hundred and seventy, approved April fourth, eighteen hundred and seventy, except to certain counties therein named.
 Also, Senate Bill No. 312—An Act supplementary to and amendatory of an Act entitled an Act to incorporate the Town of Santa Cruz, approved March thirty-first, eighteen hundred and sixty-six.
 Also, Senate Bill No. 430—An Act to establish a Civil Code.

NEWTON BOOTH, Governor.

INTRODUCTION OF BILLS.

Bills were introduced as follows:

By Mr. Macloy—An Act concerning streams in the County of Santa Clara.
 Read first and second times, rules suspended, bill considered engrossed, read a third time and passed.

By Mr. Wand—An Act to appropriate money to assist the Abrial Steam Navigation Company of California.
 Read first and second times and referred to the Finance Committee.

By Mr. Oulton—An Act authorizing the Board of State Harbor Commissioners to reduce or abolish the rates of dockage, wharfage, and tolls.
 Read first and second times, rules suspended, bill considered engrossed, read a third time and passed.

REPORT.

By Mr. Tuttle:

Mr. PARSONS: The Committee on Engrsment have examined and find correctly engrossed Senate Bill No. 59—An Act to legalize the assessment of taxes for the years A. D. eighteen hundred and sixty-nine, eighteen hundred and seventy, and eighteen hundred and seventy-one, in the County of Sierra.

Also, Senate Bill No. 396—An Act to repeal an Act concerning roads and highways in the County of Sierra, approved March twenty-fifth, eighteen hundred and seventy.
 Also, Senate Bill No. 395—An Act concerning the office of Treasurer of Sierra County.

Also, Senate Bill No. 348—An Act to establish meteorological stations in the various counties of this State.
 Also, Senate Bill No. 390—An Act in relation to the State Printer.

Also, Senate Bill No. 157—An Act to regulate the erection of public buildings and structures.
 Also, Senate Bill No. 328—An Act to provide for the establishment of a public highway and ferry on the San Joaquin River, in the County of Stanislaus.

TUTTLE, for Committee.

FURTHER INTRODUCTION OF BILLS.

By Mr. Minis—An Act for the relief of Isaac Hobbs, ex-Sheriff of Solano County.
 Read first and second times, rules suspended, bill considered engrossed, read a third time and passed.



LEGISLATIVE INTENT SERVICE

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Number	TITLE.	Introduced.....	Passed Senato..	Passed Assem- bly.....
1	An Act to repeal an Act entitled an Act to empower the Board of Supervisors of the several counties of the State to aid in the constructing of a railroad in their respective counties, approved April fourth, eighteen hundred and seventy. Evans.....	33		
2	An Act to amend an Act entitled an Act to authorize and direct the County Judges of the several counties of this State to execute certain trusts in relation to the town lands granted to the unincorporated towns in this State, by the Act of Congress entitled an Act for the relief of the inhabitants of cities and towns upon the public lands, approved March second, eighteen hundred and sixty-seven, approved March thirtieth, eighteen hundred and sixty-eight. Nef.....	33		
3	An Act to establish and define the powers and duties of the Board of Education of the City of Petaluma. Tuttle.....	33	123	144
4	An Act concerning section eleven of an Act to protect agriculture and to prevent the trespassing of animals upon private property, approved March twenty-sixth, eighteen hundred and sixty-six. Duffy.....	33		
5	An Act to amend an Act entitled an Act to provide for the incorporation of railroad companies and the management of the affairs thereof and other matters relating thereto, approved May twenty, eighteen hundred and sixty-one. Larkin.....	105		
6	Proposed amendment to the Constitution of the State of California. Larkin.....	105		
7	An Act to repeal an Act entitled an Act to protect litigants, approved March twenty-ninth, eighteen hundred and seventy. Wilson.....	105		

SENATE BILLS.

Number	TITLE.	Introduced	Passed Senate	Passed Assembly
425	supplementary and amendatory thereof, approved April first, eighteen hundred and seventy. Garratt.	550	550	509
426	An Act to prevent hogs from running at large in the Town of Red Bluff. Boggs	560	560	509
427	An Act to expedite the settlement of title to land sold by the State. Keys	561		
428	An Act in regard to Washington Drainage District of Yolo County. Alnis	561	570	
429	An Act to amend an Act entitled an Act to regulate proceedings in civil cases in Courts of justice of this State, passed April twenty-ninth, eighteen hundred and fifty-one. O'Connor	561	605	
430	An Act to amend an Act entitled an Act to grant Guillermino Carrizo and his assigns the right to supply the inhabitants of the Town of Santa Barbara with fresh water, approved May third, eighteen hundred and sixty-one. Van Ness	561	578	720
431	An Act to establish a Civil Code. Pendegast	562	562	575
432	An Act to provide for collecting a poll hospital tax in the County of Colusa. Boggs	562	681	715
433	An Act to authorize the State Controller to issue a duplicate warrant. Combs	562	740	
434	An Act concerning the taxation of live stock. Fowler	562		
435	An Act to provide for the payment of general taxes in two instalments, semi-annually. Gwin	573		
436	An Act to provide for the release of lost stock certificates of mining companies. Gwin	573		
437	An Act to amend an Act entitled an Act to authorize the issuance of bonds by the County of San Luis Obispo to erect county buildings and to provide a site for the same, approved April fourth, eighteen hundred and seventy. Van Ness	573	573	658
438	An Act concerning persons under sentence of imprisonment in the County Jail in the County of Napa. Pendegast	573	650	676

SENATE BILLS.

Number	TITLE.	Introduced	Passed Senate	Passed Assembly
439	An Act to empower the Trustees of the Mountain View Cemetery Association to mortgage certain lands. Tompkins	573	573	645
440	An Act supplementary to an Act creating the office of Insurance Commissioner, approved March twenty-sixth, eighteen hundred and sixty-eight. Combs	574		
441	An Act for the relief of the Central Pacific Railroad Company. Combs	575	575	
442	An Act to authorize suit against the Board of Supervisors of the County of Sacramento. Duffy	575	578	
443	An Act to authorize a special tax in Siskiyou and Klamath Counties for the construction of a wagon road from Scott Valley, in Siskiyou County, to Sawyer's Bar, in Klamath County. Irwin	581	581	612
444	An Act to protect growing crops and grain in the County of Inyo. Wing	581	625	689
445	An Act to protect fish in the waters of Sierra and Plumas Counties. Turner	582	579	711
446	An Act to authorize Charles Lyndall to sell and convey real estate. Alcazar	582		
447	An Act to amend an Act to regulate the rights of owners of mines, approved April first, eighteen hundred and seventy. Alcazar	582	627	
448	An Act for the relief of John J. Conlin. Garratt	588	630	711
449	An Act concerning the office of Sheriff of Humboldt County. De Haven	588	679	697
450	An Act to amend an Act entitled an Act concerning estrays and animals found running at large in the County of Santa Clara, passed April twenty-seventh, eighteen hundred and sixty-three. Alcazar	588	595	643
451	An Act to amend an Act entitled an Act for the incorporation of water companies, approved April twenty-second, eighteen hundred and fifty-eight. Tompkins	588	595	
452	An Act supplementary to an Act entitled an Act to authorize the Board of Supervisors of the City and County of San Francisco to modify the grade of certain streets, approved March thirteenth, eighteen hundred and sixty-eight; and an Act entitled an Act amendatory of and supplemental to an Act entitled an Act to authorize the Board of Supervisors of the City and County of San Francisco to modify the grade of certain streets, approved March thirteenth, eighteen hundred and sixty-eight; approved February first, eighteen hundred and seventy, to relieve certain	588	595	

THE
JOURNAL OF THE ASSEMBLY

DURING THE
NINETEENTH SESSION

OF THE
LEGISLATURE OF THE STATE OF CALIFORNIA,

1871-72.

BEGAN ON MONDAY, THE FOURTH DAY OF DECEMBER, EIGHTEEN HUNDRED
AND SEVENTY-ONE, AND ENDED ON MONDAY, THE FIRST DAY OF
APRIL, EIGHTEEN HUNDRED AND SEVENTY-TWO.



SACRAMENTO:
T. A. SPRINGER, STATE PRINTER.

1872.

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LEGISLATIVE INTENT

X re SB 430

JN 221

CONSIDERATION OF THE MESSAGE.

Senate Bill No. 385, above reported, read first and second times and referred to the Committee on Swamp and Overflowed Lands.
Senate Bill No. 408, above reported, read first and second times and referred to the Napa delegation.
Senate Bill No. 400, above reported, read first and second times and placed on file.

Assembly Bill No. 434, above reported, with Senate amendments.
The House concurred in the first and third reported Senate amendments.
On concurring in the second, the ayes and noes were demanded by Messrs. Whiting, Berry, and Baird, and the House refused to concur by the following vote:

AYES—Messrs. Andrews, Bayley, Berry, Burekhalter, Caldwell, Connolly, Cooper, Dannals, Eagan, Gibson, Henshaw, Little, Luttrell, Mathers, Mott of Los Angeles, Sargent of Santa Clara, Schrack, Sensa-baugh, Slaughter, Timin, Walker, and Whiting—22.

NOES—Messrs. Aldrich, Bacon, Baird, Barker, Barklage, Barnes, Bell, Bradley, Bockius, Brown, Center, Chalmers, Coleman, Crane, De Haven, Edgar, Everett, Franck, Freeman, French, Goodall, Gray, Harvey, Hayes, Hopper, James, Johnston, Lee, Lofton, Long, Mccler, Mott of Sacramento, McCullough, Pardee, Reed, Rice, Sammons, Sargent of San Jose, Spencer, Spivale, Stillwagon, Turner, Welty, Wheaton, Whitney, Woodward, Wright, and Mr. Speaker—48.

Senate Bill No. 407, above reported, read first and second times and referred to the Committee on State Hospitals.

Mr. Davis, for the Committee on Public Lands, reported back Senate Bill No. 338, with a recommendation that it be referred to the Committee on Swamp and Overflowed Lands, and it was so ordered.

There being no further business, at five o'clock and twenty minutes P. M., on motion of Mr. Meeker, the House adjourned.

M. D. Bonuck, Chief Clerk.

P. J. HOPPER,
Speaker pro tem.

IN ASSEMBLY.

HOUSE OF ASSEMBLY,
Friday, March 15th, 1872.

House met pursuant to adjournment.

Speaker in the chair.

Roll called.

Quorum present.

Prayer by the Chaplain.

Journal of yesterday read and approved.

PETITION.

Mr. Mott of Sacramento presented a petition from the Managers of the Sacramento Protestant Orphan Asylum for State aid in support of the institution under their management.
Referred to the Committee on Ways and Means.

REPORTS OF STANDING COMMITTEES.

Reports from standing committees were made as follows:

By Mr. Mott of Sacramento:

Mr. SPEAKER: The Committee on Claims, to whom was referred Senate Bill No. 336—An Act to provide for the payment of expenses incurred in the construction of the new State Arsenary, and for services rendered in cleaning and restoring State military property—beg leave to report it back and recommend that it do pass.

MOTT, Chairman.

The rules were suspended, and the bill above reported taken up and considered in the Committee of the Whole House.

IN ASSEMBLY.

Reported, and passage recommended.
Rules suspended, bill considered engrossed, read a third time and passed.

By Mr. Harvey:

Mr. SPEAKER: The Placer and Sacramento delegations, to whom was referred Senate Bill No. 114—An Act for the relief of George W. Reamer and his associates—have had the same under consideration, report it back and recommend its passage.

HARVEY, for Delegations.

The rules were suspended, and the bill above reported considered, and read a third time and passed.

By Mr. Gibson:

Mr. SPEAKER: Your Committee on Enrollment beg leave to report that they have examined and found correctly enrolled Assembly Bill No. 430—An Act for the preservation of fish in the waters of Siskiyou County.

Also, Assembly Bill No. 120—An Act to regulate practice in the Supreme Court.

Also, Assembly Bill No. 316—An Act to amend an Act entitled an Act to regulate proceedings in criminal cases, passed May first, eighteen hundred and fifty-one.

Also, Assembly Bill No. 429—An Act to authorize the Board of Supervisors of Merced County to levy a special tax for the purpose of constructing a bridge across the Merced River.

On motion of Mr. Egan, the resolution was laid on the table.
By Mr. Stillwagon:

Resolved, That each member of the Assembly be allowed one additional newspaper.

Referred to Committee on Accounts and Expenditures.

Mr. Crane offered the following:

Resolved, That when this House does adjourn to-day that it adjourns to meet on Monday next, at two o'clock and thirty minutes P. M.

Mr. Jost moved to lay the resolution on the table.

Thereupon the ayes and noes were demanded by Messrs. Center, Daniels, and Whiting, and the House refused by the following vote:

Ayes—Messrs. Barklage, Barnes, Bayley, Bradley, Center, Chalmers, Dannals, Days, Egan, Edgar, Ellis, Everett, Goodall, Jost, Lee, Luttrell, Mott of Los Angeles, Reed, Seibe, Slaughter, Walker, Whiting, Wilcox, and Mr. Speaker—24.
Noes—Messrs. Aldrich, Andrews, Baird, Barker, Bell, Berry, Bockius, Brown, Burchhalter, Caldwell, Coleman, Connolly, Cooper, Crane, De Haven, French, Gibson, Gray, Harvey, Hayes, Henshaw, Hopper, James, Johnston, Little, Lofton, Long, Mathers, Meeker, Mott of Sacramento, Pardee, Rice, Russ, Sammons, Schrack, Spencer, Tinnin, Ward, Welby, Whitney, and Woodward—42.

Mr. Days moved to amend the resolution by substituting the word "to-morrow" for "to-day," and Tuesday for Monday.

The amendment was accepted, and the resolution as amended was adopted.

On motion of Mr. Barker, Assembly Bill No. 456 was ordered placed on top of the file for Tuesday next.

RECONSIDERATION.

Mr. Pardee moved a reconsideration of the vote whereby, on yesterday, the House passed Assembly Bill No. 613.

Mr. Wheaton moved to indefinitely postpone the motion to reconsider, and it was so ordered.

Mr. Wheaton moved a reconsideration of the vote on the passage, yesterday, of Senate Bill No. 291.

Laid on the table.

MESSAGE FROM THE SENATE.

The following message was received from the Senate:

SENATE CHAMBER,
March 15th, 1872.

MR. SPEAKER: I am directed to inform your honorable body that the Senate, on this fifteenth day of March, passed Senate Bill No. 430—An Act to establish a Civil Code—and ordered the same transmitted to the Assembly without engrossment.

CONSIDERATION OF THE MESSAGE.

Senate Bill No. 430, above reported, read first and second times and ordered to head of the file for to-morrow.

INTRODUCTION OF BILLS.

Bills were introduced as follows:

By Mr. Ward—An Act relating to the salary and duties of the Assessor of Tehama County.

Read first and second times and placed on file.

By Mr. Berry—An Act supplementary to an Act entitled an Act to provide for the protection of certain lands in the County of Sutter from overflow, approved March twenty-fifth, eighteen hundred and sixty-eight.

Read first and second times and referred to the Sutter delegation.

By Mr. French—An Act supplemental to an Act entitled an Act to incorporate the City of Sacramento.

Read first and second times and referred to Sacramento delegation.

By Mr. Ellis—An Act in relation to the fees of jurors and witnesses in Los Angeles County.

Read first and second times and placed on file.

By Mr. French—An Act to authorize the citizens of Sacramento, to provide themselves with a better supply of water.

Read first and second times and referred to Sacramento-delegation, and ordered printed.

By Mr. Reed—An Act amendatory of an Act entitled an Act relating to the Board of Supervisors of the City and County of San Francisco, and more particularly defining its powers and duties, approved March thirtieth, eighteen hundred and sixty-eight.

Read first and second times and referred to San Francisco delegation.

GENERAL FILE.

Assembly Bill No. 519—An Act in relation to the death penalty.

Read a third time and passed.

Substitute for Assembly Bill No. 134—An Act to provide for the construction of a wagon road from and to the Yosemite Valley and Big Tree Grove, in Mariposa County.

Amended and read a third time.

On the passage of the bill, the ayes and noes were demanded by Messrs. Mathers, Turner, and Berry, with the following result:

Ayes—Messrs. Bacon, Baird, Bell, Bockius, Brown, Burchhalter, Caldwell, Connolly, Cooper, Crane, Dannals, De Haven, French, Galloway, Goodall, Gray, Hopper, Johnston, Jost, Meeker, Mott of Los Angeles, Mott of Sacramento, McCullough, Pardee, Reed, Rice, Russ, Sargent, Santa Clara, Schrack, Seibe, Sensabaugh, Slaughter, Spivale, Stillwagon, Tinnin, Turner, Walker, Welby, Wheaton, Whiting, Wilcox, Wright, and Mr. Speaker—43.
Noes—Messrs. Aldrich, Andrews, Barker, Barklage, Barnes, Bayley, Berry, Center, Chalmers, Coleman, Days, Edgar, Everet, French, Noss—Messrs. Aldrich, Andrews, Barker, Barklage, Barnes, Bayley, Berry, Center, Chalmers, Coleman, Days, Edgar, Everet, French, Noss—Messrs. Aldrich, Andrews, Barker, Barklage, Barnes, Bayley, Berry, Center, Chalmers, Coleman, Days, Edgar, Everet, French, Noss—

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Assembly Bill No. 627—An Act to authorize the Trustees of Red Bluff School District, in Tehama County, to borrow money for the maintenance of the school therein.

Rules suspended, bill considered engrossed, read a third time and passed.

Assembly Bill No. 634—An Act to authorize John Rann or S. C. Long, of Yuba County, State of California, to remove certain remains of deceased persons.

Rules suspended, bill considered engrossed, read a third time and passed.

Assembly Bill No. 631—An Act to authorize William A. Findley, of Yuba County, State of California, to remove certain bodies to a public graveyard.

Rules suspended, bill considered engrossed, read a third time and passed.

REPORT.

Mr. Wheaton had leave to make the following report:

Mr. SPEAKER: The San Francisco delegation herewith report Assembly Bill No. 203—An Act to aid in providing a supply of pure fresh water from Lake Bigler (sometimes called Lake Tahoe) for the use of inhabitants of the City and County of San Francisco—together with a substitute which the delegation have adopted, and report back with said bill, without recommendation, for the consideration of the House.

WHEATON, Chairman.

The substitute adopted by the delegation for the bill above reported was ordered printed, and the bill and substitute ordered placed second on the file for Tuesday next.

There being no further business, at one o'clock P. M., on motion of Mr. Days, the House adjourned.

T. B. SHANNON, Speaker.

M. D. Bonuck, Chief Clerk.

IN ASSEMBLY.

HOUSE OF ASSEMBLY, Saturday, March 16th, 1872.

House met pursuant to adjournment. Speaker in the chair.

Roll called.

Quorum present.

Prayer by the Chaplain.

Journal of yesterday read and approved.

LEAVE OF ABSENCE.

Leave of absence for one day each was granted to Messrs. Connolly, Ward, Bockius, and Sargent of San Joaquin.

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Harvey, Henshaw, Lee, Little, Long, Mathers, Sammons, Ward, White, and Woodward—24.

The title of the bill was also amended.

RESOLUTION.

Mr. Wheaton offered the following:

Resolved, That the Committee on Claims be allowed three days leave of absence, from Saturday, March seventeenth, for the purpose of examining the Second street Cut in San Francisco, and that said committee have power to send for persons and papers, and that they be not allowed any mileage.

Laid on the table, on motion of Mr. Pardee.

GENERAL FILE RESUMED.

Assembly Bill No. 551—Proposed amendment to the Constitution of the State of California.

Mr. Barklage moved a call of the House, but the House refused so to order.

On the passage of the bill, the roll was called, with the following result:

- AYES—Messrs. Baird, Barker, Barklage, Barnes, Bockius, Brown, Caldwell, Center, Chalmers, Coleman, Cooper, Crane, Dannals, Days, Eagan, Everett, Franck, French, Gray, Harvey, Hopper, Johnston, Lof-ton, Meeker, Mott of Sacramento, Pardee, Reed, Rice, Russ, Sammons, Sargent of Santa Clara, Seibe, Spencer, Spirato, Turner, Wely, Wheaton, Whitney, Wilcox, Woodward, and Mr. Speaker—41.
- NOES—Messrs. Andrews, Bayley, Berry, Bradley, Burckhalter, De Haven, Edgar, Ellis, Galloway, Gibson, Goodall, Hayes, Henshaw, Jost, Little, Long, Mott of Los Angeles, Munday, Schrack, Sensabaugh, Slaughter, Stillwagon, Tinnin, Ward, and Whiting—25.

Mr. Spencer gave notice of a motion to reconsider.

LEAVE OF ABSENCE.

Leave of absence was granted to Messrs. Freeman and Connolly for one day each, and to Mr. Rector for two days.

GENERAL FILE RESUMED.

Senate Bill No. 400—An Act to authorize the Board of Supervisors of Los Angeles County to locate and build bridges across the Los Angeles River and the New San Gabriel and Old San Gabriel Rivers, in Los Angeles County, and to issue bonds for the payment of the same. Read a third time and passed.

Assembly Bill No. 616—An Act validating certain contracts in relation to the excavation of Putah Creek Canals and extending the time of performing the same. Ordered engrossed.

LEGISLATIVE INTENT SERV

Senate Bill No. 406, above reported, read first and second times and referred to the Judiciary Committee.
 Senate Bill No. 416, above reported, read first and second times and referred to the Committee on Ways and Means.
 The House concurred in Senate amendments to Assembly Bill No. 538, above reported.
 Assembly Bill No. 191, above reported, with Senate amendment, referred to Sacramento delegation.
 The House also concurred in Senate substitute for Assembly Bill No. 171, above reported.
 Senate Bill No. 312, above reported, read first and second times and referred to Santa Cruz delegation.
 Senate Bill No. 420, above reported, read first and second times and referred to Judiciary Committee.
 Senate Bill No. 297, above reported, read first and second times and referred to Committee on Claims.
 Senate Bill No. 322, above reported, read first and second times and referred to Committee on Education.
 Senate Bill No. 371, above reported, read first and second times and referred to San Joaquin delegation.
 Senate Bill No. 372, above reported, read first and second times and referred to San Francisco delegation.
 Senate Bill No. 425, above reported, read first and second times and referred to Tehama delegation.

RECONSIDERATION.

Mr. Spencer, in accordance with previous notice, moved to reconsider the vote whereby, on yesterday, the House passed Assembly Bill No. 531.—Proposed amendment to the Constitution.
 The motion was made the subject of consideration for Tuesday next, at three o'clock P. M.

INTRODUCTION OF BILLS.

Bills were introduced as follows:

By Mr. Day's—An Act to take preliminary steps for calling a Convention to amend, remodel, or propose a new Constitution for the State of California.
 Read first and second times, placed on file, and ordered printed.
 By Mr. Woodward—An Act to authorize road districts in San Joaquin County to levy special tax.
 Read first and second times and referred to San Joaquin delegation.
 By Mr. Caldwell—An Act to authorize Isaac Rutxome to remove from his private property on the Rancho de Alacatlan, in Sonoma County, certain dead bottles to a public graveyard.
 Read first and second times and placed on file.
 By Mr. Reed—An Act to provide for the support of men belonging to the Paid Fire Department of the City and County of San Francisco who may be disabled in the performance of their duties.
 Read first and second times and referred to San Francisco delegation.
 By Mr. Spivale—An Act to prevent the wholesale destruction of certain fish in the Bay of San Francisco and the adjacent bays and gulches.

Read first and second times and referred to San Francisco delegation, and ordered printed.
 By Mr. Hayes—An Act supplementary to an Act entitled an Act to regulate the settlement of the estates of deceased persons, passed May first, eighteen hundred and fifty-one.
 Read first and second times and referred to Judiciary Committee.
 Also, an Act to fix the terms of the County Court of the County of Monterey.
 Read first and second times and placed on file.
 By Mr. Goodall—An Act supplementary to an Act entitled an Act to provide for the incorporation of colleges, approved April, twentieth, eighteen hundred and sixty.
 Read first and second times and referred to Committee on Education.
 Also, an Act in relation to the water front of the City and County of San Francisco.
 Read first and second times and referred to San Francisco delegation, and ordered printed.
 By Mr. Burekhalter—An Act to amend an Act entitled an Act amendatory of and supplementary to an Act to provide for the construction of canals for drainage and reclaiming certain swamp and overflowed lands in Tulare Valley, passed April first, eighteen hundred and fifty-seven, approved April tenth, eighteen hundred and sixty-two.
 Read first and second times and placed on file.
 Also, an Act to authorize the Supervisors of Kern County to levy a special tax for the County General Fund.
 Read first and second times and placed on file.
 By Mr. Wright—An Act to provide for the education of the children in the State of California.
 Read first and second times and referred to the Committee on Education.
 By Mr. Johnston—An Act to provide funds for the further reclamation of Swamp Land Districts Numbers Fifty and Fifty-four, in Sacramento County.
 Read first and second times and referred to the Committee on Swamp and Overflowed Lands, and ordered printed.
 By Mr. Russ—An Act to annex the territory now comprising the County of Klamath to the Counties of Siskiyou and Humboldt.
 Read first and second times and, with petitions, referred to the Siskiyou, Klamath, Del Norte, and Humboldt delegations.
 By Mr. Sabe—An Act to authorize the Board of Supervisors of the City and County of San Francisco to appropriate money for the improvement of Washington Plaza, in said city and county.
 Read first and second times and referred to the San Francisco delegation.
 By Mr. Gray—An Act to amend the Penal Code.
 Read first and second times and placed on file.
 By Mr. Baird—An Act for the encouragement of agricultural interests of this State.
 Read first and second times and referred to the Committee on Agriculture.
 Senate Bill No. 430—An Act to establish a Civil Code.
 Read a third time and passed.

They have examined and found correctly enrolled Assembly Bill No. 112—An Act to amend an Act entitled an Act to regulate proceedings in civil cases in the Courts of Justice of this State, passed April twenty-ninth, eighteen hundred and fifty-one—and that the same has, this first day of April, A. D. eighteen hundred and seventy-two, at eleven o'clock and thirty-five minutes, been transmitted to the Governor for his approval.

GIBSON, Chairman.

Mr. James offered a resolution to pay the gas men of the Capitol one hundred and twenty dollars each for the session.

Mr. Spivato offered a resolution to pay E. Johnson and Lawrence Mack, porters, seventy-five dollars each extra.

FINALE.

Shortly before midnight the Secretary of the Senate came into the Assembly Chamber and informed the House that the Senate had transacted all its business, and was about to adjourn sine die.

Mr. Wilcox, from the committee to wait on His Excellency the Governor, reported that the committee had performed that duty, and that the Governor informed the committee that he had no further communication to make.

VALEDICTORY.

The hour of twelve o'clock having arrived, the Speaker addressed the House as follows: My fellow citizens, I have the honor to preside over you this evening in the Assembly.

When human nature and human wisdom shall have attained perfection, unobjectionable legislation may be anticipated. Until then, conflicting interests and geographical antagonisms will assert themselves in the State councils, and divide men into parties and subdivisions of parties.

As the hour of final adjournment has arrived, in obedience to custom, I am expected to make some remarks to those with whom I have been associated, and over whose deliberations I have presided. Some of our determinations have not seemed to meet with universal approbation, and yet I apprehend that experience will demonstrate that no positively mischievous or oppressive measure has passed into statute this session. A watchful press has notified the people that much has been done in this direction, while little credit is vouchsafed for the inauguration of measures which must exert an influence favorable to the development of our resources and the equitable adjustment of the burdens of government.

We have taken such action in relation to revenue laws as must tend towards a more just equalization of taxation, and, consequently, to reduce taxes. The reduction of harbor dues lightens restrictions upon commerce, and greatly reduces charges heretofore burdensome upon the agriculturist and manufacturer. We have relieved those sections of the State demanding its repeal from the operations of the so-called Five Per Cent. Law, and retained its provisions in an improved and guarded form

for those growing and expanding districts whose people demanded its retention with a pronounced unanimity that no faithful representative could afford to ignore.

We have responded to the voice of the metropolis, and placed within her power and control the means of securing such railway connections as her position and necessities require, and as are calculated to further her interests if judiciously used. If in years past similar provisions had been made for terminal purposes, a whole community would have been spared the anxiety of the past few days, and probably the taxable property of San Francisco would have been many millions in excess of its present standard.

A code of laws has been enacted, in the preparation of which much time has been employed. The Legislature has assumed that it comprised a system adapted to the requirements of the community, and the good or bad results which future experience shall develop, will mainly rest upon the Commissioners charged with its preparation. I apprehend that in the main it will be found to work well. If not, subsequent legislation can readily remedy defects, guided by the intervening experience under its workings.

I must be indulged in reprobatng that selfish and narrow spirit which combined to defeat a new legislative apportionment. Since the last apportionment the agricultural and commercial centers have steadily advanced in wealth and increased in population, while in the remaining sections of the State the reverse is the rule. The disposition to cling to power is natural, but in this instance its exercise, and as exercised by one branch of the Legislature, is to deny the right of representation. It is the assertion of the right of taxation without representation. It is indirectly the revival of colonial subordination. No free and intelligent people will submit to so plain and palpable an outrage; and time will avenge this gross wrong, unless there is a called session to enforce obedience to constitutional rights.

In conclusion, I recur with great pleasure to matters personal to myself. The uniform kindness extended to me places me under obligations to each member of this body. Gentlemen, you have my thanks, and best wishes for your health and prosperity in life.

NO. S256927

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

IXCHEL PHARMA, LLC
PLAINTIFF AND APPELLANT,

V.

BIOGEN, INC.
DEFENDANT AND RESPONDENT.

[PROPOSED] ORDER GRANTING RESPONDENT'S MOTION
FOR JUDICIAL NOTICE IN SUPPORT OF ITS ANSWER
BRIEF ON THE MERITS

GOOD CAUSE APPEARING, RESPONDENT BIOGEN, INC.'S
MOTION FOR JUDICIAL NOTICE IS GRANTED.

DATED: _____

Chief Justice

EXHIBIT C

EXHIBIT C

The Patent License between Respondent and Forward Pharma
FA Aps, as filed with the U.S. Securities and Exchange
Commission, is available at no charge through the SEC's public
website at

https://www.sec.gov/Archives/edgar/data/1604924/000110465917002473/a17-2604_1ex99d2.htm.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On December 17, 2019, I served the foregoing document described as: **RESPONDENT BIOGEN, INC.'S MOTION FOR JUDICIAL NOTICE IN SUPPORT OF ITS ANSWER BRIEF ON THE MERITS; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF LAURIE J. HEPLER, LISA R. HERMES AND JENNY S. LILLGE; [PROPOSED] ORDER** on the parties in this action by serving:

Christopher Banys (SBN 230038)
cdb@banyspc.com
BANYS, P.C.
567 Marsh Street
San Luis Obispo, CA 93401
Tel: (650) 308-8505

Clerk of the Court
Ninth Circuit Court of Appeals
The James R. Browning Courthouse
95 7th Street
San Francisco, CA 94102
Case No. 18-15258

*Counsel for Appellant IXCHEL
PHARMA, LLC*

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

(X) By Federal Express, I caused to be delivered such envelope via Federal Express Overnight to the office(s) of the addressee(s) noted above.

Executed on December 17, 2019, at Los Angeles, California.

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



Francene Wilson