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Can the California Legislature Retroactively "Declare" What Existing Law Is?

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The California Legislature regularly passes bills that are signed into law by the Governor which make one or more retroactive statutory changes and the Legislature asserts that those statutory changes are "declaratory of existing law." Naturally, this raises the question, by what authority can the Legislature retroactively declare that statutory changes made after the original statute was enacted by a previous Legislature are, in fact, part of the original statute?

A recent example of this phenomenon is contained in an urgency bill[1] from the 2015 Legislative Session. Senate Bill (SB) 327[2] (Hernandez) made changes to state law in order to address a court decision that had invalidated an earlier state statute[3] The question raised by the enactment of SB 327 is whether the changes made to the California Labor Code[4] by SB 327 can be applied retroactively and be deemed to be declaratory of existing law? Or, can those statutory changes only be prospective in their application?

As we all learned in law school, "It is, emphatically, the province and duty of the judicial department, to say what the law is. Those who apply the rule to particular cases must of necessity expound and interpret that rule."[5] As a result, the ultimate determination as to whether SB 327 is permissible, or any future bill enacted by the California Legislature that is intended to be applied retroactively, will be made by a court of law in this state. Nevertheless, there is some guidance for capital lawyering practitioners in this area.

I. General Rules

"Generally, statutes operate prospectively only."[6] Moreover, "the presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic".[7]

A statute is presumed to operate prospectively.[8] In construing statutes, there is a presumption against retroactive application unless the Legislature plainly has directed otherwise by means of the express language of retroactivity or other sources that provide a clear and unavoidable implication that the Legislature intended retroactive application.[9]

In addition, a statute should be construed to preserve its constitutionality.[10] The burden of

establishing the unconstitutionality of a statute rests on the party assailing it, and courts may not declare a legislative classification invalid unless, viewed in the light of facts made known or generally assumed, it is of a character that precludes the assumption that the classification rests upon some rational basis within the knowledge and experience of the legislators.[11]

Based upon recent decisions by the California Supreme Court, the general rule in California is that, if the Legislature clearly indicated its intent that an amendment to a statute is to be applied retroactively, then a court generally must honor that intent unless there is a constitutional objection to doing so. "The presumption against statutory retroactivity has consistently been explained by reference to the unfairness of imposing new burdens on persons after the fact."[12]

This is not to say that a statute may never apply retroactively. "[A] statute's retroactivity is, in the first instance, a policy determination for the Legislature and one to which courts defer absent 'some constitutional objection' to retroactivity."[13] The basic rule in California is that "a statute may be applied retroactively only if it contains express language of retroactivity or if other sources provide a clear and unavoidable implication that the Legislature intended retroactive application."[14]

The California Supreme Court made the statement that "where a statute provides that it clarifies or declares existing law, '[i]t is obvious that such a provision is indicative of a legislative intent that the amendment apply to all existing causes of action from the date of its enactment. In accordance with the general rules of statutory construction, we must give effect to this intention unless there is some constitutional objection thereto'."[15]

California courts look to the text of the bill and legislative materials to determine whether the later enacted bill made a change in the law or whether the later enacted bill clarified existing law. If the bill represents a clarification of existing law, then the bill is applied to all instances, both retroactively and prospectively. If the bill enacts a change in the law, then the court looks to determine whether the Legislature intended for the law change to be applied retroactively. In this regard, the court basically asks, did the Legislature make a clear intent to apply the amendment retroactively?

"[T]he Legislature has no authority to interpret a statute. That is a judicial task. The Legislature may define the meaning of statutory language by a present legislative enactment which, subject to constitutional restraints, it may deem retroactive. But, it has no legislative authority simply to say what it did mean. Courts do take cognizance of such declarations where they are consistent with the original intent. '[A] subsequent expression of the Legislature as to the intent of the prior statutes, although not binding on the court, may properly be used in determining the effect of a prior act."[16]

II. Background on SB 327

During the 2015 Legislative Session, this declaration of existing law approach was taken by the adoption of Senate Bill 327 (Hernandez). Specifically, SB 327 added subdivision (b) to Labor Code Section 516 to read: "(b) Notwithstanding subdivision (a), or any other law, including Section 512, the health care employee meal period waiver provisions in Section 11(D) of Industrial Welfare Commission Wage Orders 4 and 5 were valid and enforceable on and after October 1, 2000, and continue to be valid and enforceable. *This subdivision is declarative of, and clarifies, existing law."* [emphasis added] SB 327 also contains certain findings and declarations language.[17]

Prior to the adoption of SB 327, an appellate court decision earlier in 2015[18] held that Section 11(D) of Wage Order No. 5 was invalid to the extent that it conflicts with Labor Code Section 512 and that the California Industrial Welfare Commission exceeded its authority by creating an exception to

Section 512's meal period requirements. [19] The appellate court ruled that the trial court's decision granting summary judgment in favor of defendant and denying class certification to plaintiffs is reversed and the case is remanded, where: 1) the IWC order is partially invalid to the extent it authorizes second meal break waivers on shifts longer than 12 hours; and 2) the retroactive application of this conclusion must be litigated on remand.

Specifically, Labor Code Section 512 prohibits waiver of the second meal period when an employee works more than 12 hours. Wage Orders 4 and 5, Section 11(d) has allowed such waivers for employees in the healthcare industry since 1993. The appellate court also concluded that its ruling could be applied retroactively.[20]

The appellate court stated: "We see nothing in this legislative history to support hospital's argument the additional regulatory exception embodied in Section 11(D) for shifts longer than 12 hours is consistent with the Legislature's intent. To the contrary, everything in this legislative history evidences the intent to prohibit the IWC from amending its wage orders in ways that conflict with meal period requirements in Section 512, including the proviso second meal periods, may be waived only if the total hours worked is less than 12 hours."[21]

In addition, the appellate court held that the plaintiffs were entitled to seek premium pay under Labor Code Section 226.7 for any failure by the hospital to provide mandatory second meal periods before the decision that falls within the governing three-year statutory period. The appellate court noted, "There is no compelling reason of fairness or public policy that warrants an exception to the general rule of retroactivity for our decision partially invalidating Section 11(D)."[22]

The California Supreme Court granted review on May 20, 2015. The Supreme Court stated the issues on review as follows:

1. Is the healthcare industry meal period waiver provision in Section 11(D) of Industrial Welfare Commission Order No. 5-2001 invalid under Labor Code Section 512, subdivision (a)?
2. Should the decision of the Court of Appeal partially invalidating the Wage Order be applied retroactively?

Concerned that, without immediate clarification, California hospitals would alter their scheduling practices as a result of uncertainties created by the *Gerard* decision[23], the Legislature quickly passed and Governor Brown signed SB 327 on October 5, 2015 to amend Labor Code Section 516 effective immediately.[24] Accordingly, SB 327 provides that the health care employee meal period waiver provisions in Wage Order 5 were valid and enforceable and continue to be valid and enforceable.[25]

The Consumer Attorneys of California (CAOC) opposed SB 327 unless it was amended to be prospective only in its application. CAOC argued that, should the bill be enacted, it would impact pending litigation before the California Supreme Court, overturn a recent California Appellate Court decision, and adversely affect workers by potentially causing them to lose wages as a result of the bill's enactment.[26]

CAOC further argued that SB 327 was simply against public policy to legislatively affect a consumer's existing legal right in a manner that retroactively guts a claim that was already filed, in good faith, with the law on the date of filing. With regards to the pending litigation concern, CAOC argued that the proposed bill language would expressly make the invalidated wage order valid and would state that it is "declaratory of existing law."[27]

Finally, CAOC believed that the effect of this legislation granting hospitals retroactive relief from liability for unpaid wages could be to deny workers past wages that they had already earned. CAOC unsuccessfully argued that the appellate court had already decided to issue a ruling on these issues and they thought it would be best to wait for the Supreme Court to issue its ruling in *Gerard*.

III. Examples of Retroactivity in California Statutes

There are numerous examples of similar retroactivity language found in bills considered by the California Legislature. AB 1603 (Bustamante) from 1997[28] dealt with liability for tobacco products. This urgency bill[29] provided that California Civil Code Section 1714.45 does not apply to a public entity action brought to recover costs of treating persons injured by a tobacco-related illness caused by a tobacco manufacturer's tortious conduct. AB 1063 contained specified findings and declarations.[30] The bill provided that its provisions are declaratory of existing law relating to tobacco products.[31]

Effective January 1, 2015, California has new protections for victims of child labor law violations. AB 2288[32] (Hernandez), also known as the Child Labor Protection Act of 2014, added Section 1311.5 to the California Labor Code.[33] The new subdivision provided: "The statute of limitations for claims arising under this code shall be tolled until an individual allegedly aggrieved by an unlawful practice attains the age of majority. This subdivision is declaratory of existing law."[34]

California Civil Code Section 1950.5 dealing with security deposits has two separate code sections dealing with retroactivity:

- "p. The amendments to this section made during the 1985 portion of the 1985-86 Regular Session of the Legislature that are set forth in subdivision (e) are declaratory of existing law.
- q. The amendments to this section made during the 2003 portion of the 2003-04 Regular Session of the Legislature that are set forth in paragraph (1) of subdivision (f) are declaratory of existing law."[35]

California Probate Code Section 13116 provides the following: "The procedure provided in this chapter is in addition to and supplemental to any other procedure for (1) collecting money due to a decedent, (2) receiving tangible personal property of a decedent, or (3) having evidence of ownership of property of a decedent transferred. Nothing in this chapter restricts or limits the release of tangible personal property of a decedent pursuant to any other provision of law. This section is declaratory of existing law."[36]

California Civil Code Section 52 provides: "(h) For the purposes of this section, "actual damages" means special and general damages. This subdivision is declaratory of existing law."[37]

California Health & Safety Code Section 11365 was amended to provide: "(a) It is unlawful to visit or to be in any room or place where any controlled substances which are specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) or paragraph (2) of subdivision (d) of Section 11055, or which are narcotic drugs classified in Schedule III, IV, or V, are being unlawfully smoked or used with knowledge that such activity is occurring. (b) This section shall apply only where the defendant aids, assists, or abets the perpetration of the unlawful smoking or use of a controlled substance specified in subdivision (a). This subdivision is declaratory of existing law as expressed in *People v. Cressey* (1970) 2 Cal. 3d 836."[38]

Civil Code Section 1942.6 provides the right of tenants to invite tenant organizers into their apartment. That code section reads: “Any person entering onto residential real property, upon the invitation of an occupant, during reasonable hours or because of emergency circumstances, for the purpose of providing information regarding tenants' rights or to participate in a lessees' association or association of tenants or an association that advocates tenants' rights shall not be liable in any criminal or civil action for trespass. The Legislature finds and declares that this section is declaratory of existing law. Nothing in this section shall be construed to enlarge or diminish the rights of any person under existing law.”[39]

IV. Examples of Retroactivity in California Ballot Measures

A similar approach has been taken in regards to ballot measures approved by the statewide electorate in California. In *Californians for Disability Rights v. Mervyn’s LLC*[40], “It is well settled that a new statute is presumed to operate prospectively absent an express declaration of retrospectivity or a clear indication that the electorate, or the Legislature, intended otherwise.”[41]

“Proposition 64 did not contain any express declaration of retrospectivity, as Mervyn’s conceded. Proposition 64 is wholly silent on the matter. The terms of the statutory amendments, the legislative analysis, and the ballot arguments make no mention as to whether Proposition 64 is meant to apply retroactively to preexisting lawsuits. The language used in the proposition and ballot materials also fails to provide any implicit indication that the electorate intended the law to be retroactive.”[42]

A similar situation was presented in *Evangelatos v. Superior Court*[43], in which the California Supreme Court held that Proposition 51 could not be applied to actions that accrued before the measure’s effective date. Proposition 51, approved by the voters in 1986, “modified the traditional, common law ‘joint and several liability’ doctrine, limiting an individual tortfeasor’s liability for noneconomic damages to a proportion of such damages equal to the tortfeasor’s own percentage of fault.”[44]

The high court found that “a fair reading of the proposition as a whole makes it clear that the subject of retroactivity or prospectivity was simply not addressed.”[45] The principles that guided the California Supreme Court’s interpretation of Proposition 51 guide our interpretation of Proposition 64, and dictate the same conclusion: “the absence of any express provision directing retroactive application strongly supports prospective operation of the measure.”[46]

V. Prospective Application Is Presumed

The California Supreme Court has explained that “[t]he presumption of prospectivity assures that reasonable reliance on current legal principles will not be defeated in the absence of a clear indication of a legislative intent to override such reliance.”[47] The requirement of clear legislative intent of retroactivity “helps ensure that [the Legislature] itself has determined that the benefits of retroactivity outweigh the potential for disruption or unfairness.”[48]

Unless there is “an express retroactivity provision, a statute will not be applied retroactively unless it is *very clear* from extrinsic sources that the Legislature or the voters must have intended a retroactive application.”[49] “‘[A] statute that is ambiguous with respect to retroactive application is construed . . . to be unambiguously prospective.’ ”[50]

According to the California Supreme Court, the presumption of prospectivity is the controlling principle.[51] Legislative enactments are presumed to be prospective, but the presumption is rebutted if the enactment clearly indicates an intent that it be applied retroactively.[52] If the statute indicates

such an intent, and retroactive application will not violate constitutional provisions, then the new statute (the law in effect) is applied to pending cases.[53]

This is because the “Legislature has no authority to interpret a statute. That is a judicial task. The Legislature may define the meaning of statutory language by a present legislative enactment which, subject to constitutional restraints, it may deem retroactive. But it has no legislative authority simply to say what it did mean.”[54]

A declaration that a statutory amendment merely clarified the law “cannot be given an obviously absurd effect and the court cannot accept the Legislative statement that an unmistakable change in the statute is nothing more than a clarification and restatement of its original terms.”[55]

In *McClung v. Employment Development Department* in 2004, the California Supreme Court stated:

> Under fundamental principles of separation of powers, the legislative branch of government enacts laws. Subject to constitutional constraints, it may change the law. But interpreting the law is a judicial function. After the judiciary definitively and finally interprets a statute, as we did in *Carrisales*, supra, 21 Cal.4th 1132, 90 Cal.Rptr.2d 804, 988 P.2d 1083, the Legislature may amend the statute to say something different. But if it does so, it changes the law; it does not merely state what the law always was. Any statement to the contrary is beyond the Legislature's power. We also conclude this change in the law does not apply retroactively to impose liability for actions not subject to liability when performed.
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> If the amendment merely clarified existing law, no question of retroactivity is presented. “[A] statute that merely clarifies, rather than changes, existing law does not operate retrospectively even if applied to transactions predating its enactment” “because the true meaning of the statute remains the same.” (*Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243, 62 Cal. Rptr.2d 243, 933 P.2d 507.)
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> The legislative power rests with the Legislature. (Cal. Const., art. IV, § 1.) Subject to constitutional constraints, the Legislature may enact legislation. (*Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691, 97 Cal.Rptr. 1, 488 P.2d 161.) But the judicial branch interprets that legislation. “Ultimately, the interpretation of a statute is an exercise of the judicial power the Constitution assigns to the courts.” (*Western Security Bank*, supra, 15 Cal.4th at p. 244, 62 Cal.Rptr.2d 243, 933 P.2d 507; see also *People v. Cruz* (1996) 13 Cal.4th 764, 781, 55 Cal.Rptr.2d 117, 919 P.2d 731.) Accordingly, “it is the duty of this court, when a question of law is properly presented, to state the true meaning of the statute finally and conclusively?” (*Bodinson Mfg. Co. v. California E. Com.*, supra, 17 Cal.2d at p. 326, 109 P.2d 935.)

VI. Application to SB 327

Applying these cases to the Legislature’s enactment of SB 327, because the state Supreme Court had not yet determined this matter, a court could very well give consideration to the SB 327 statement of legislative intent and hold that the bill did, in fact, apply retroactively. On the other hand, had the Supreme Court decided the issue already, then the high court would likely reject the legislative intent statement in SB 327.

"Requiring clear intent assures that [the legislative body] itself has affirmatively considered the potential unfairness of retroactive application and determined that it is an acceptable price to pay for the countervailing benefits."[56]

In the 1997 case of *Western Security Bank v. Superior Court*[57], the California Supreme Court granted review of an appellate court decision in light of a newly-adopted law which was deemed to be declaratory of existing law. Because the Legislature had acted promptly to address the issue, the high court approved the statutory change as applying retroactively.

On the other hand, in the 2004 decision of *McClung v. EDD*[58], the state Supreme Court held that the proposed statutory amendment was not declaratory of existing law because the high court had finally and definitively interpreted the law and so the court determined that no such "declaration of existing law" could be made by the Legislature.[59]

Essentially, then, the California appellate courts have determined that, where there is still an appeal opportunity regarding a statutory interpretation, the Legislature can properly make a retroactive change to the law. However, when a final determination has been made by the state's highest court, then the Legislature cannot make such a retroactive determination of existing law.

This point was made clear in the 2004 case of *Salazar v. Diversified Para Transit*[60] where the appellate court reviewed an amendment to the Fair Employment & Housing Act[61] that had been made by the Legislature while an appeal was pending before the California Supreme Court. The appellate court ruled that the legislative enactment was retroactive because the statute (prior to its amendment) was ambiguous and the legislative change occurred shortly after the court decision, but before a final determination by the highest court.[62]

A similar determination was made in December 2015 in the case of *People v. Tirey*[63], where the appellate court ruled that the Legislature enacted a statutory change while the case was pending and so making a retroactive change was deemed appropriate.[64]

Finally, the case of *Children's Hospital of LA v. Superior Court*[65] was another example of the appellate courts looking at the intent of the Legislature when it adopted a statutory change. Finally, in the case of *In re Marriage of Buol*[66] , the court ruled that it will apply a statutory change retroactively if the court finds that the Legislature intended the change to be retroactive unless it would be unconstitutional to do so. In that case, the court posed four instances where retroactivity would be impermissible:

1. Is it an ex post facto law? If yes, it is prohibited from being retroactive.
2. Does it impair the obligation of contract? If yes, it is prohibited from being retroactive.
3. Is a vested right deprived without due process? If yes, it is prohibited from being retroactive.
4. Would it violate separation of powers? If yes, it is prohibited from being retroactive.

VII. Practical Guidance to Practitioners

As a result of these appellate court decisions, three main points can be taken guidance to lawmakers and capital lawyering practitioners when attempting to make retroactive changes to California statutes:

1. Did the Legislature enact the change in law promptly after the adverse court decision? In

most instances, the legislative change needs to be made within a few months of the court decision.
2. Has the Supreme Court rendered a final decision? If yes, then the legislative enactment is most likely to be deemed only prospective in application.
3. Is there some amount of ambiguity in the statute that was amended? The courts are usually more inclined to allow a retroactive law change when an ambiguous statute was amended by the Legislature.

Based upon these appellate court decisions and the guidance issued thereunder, the answer to the initial question posed in this article is yes, the Legislature does have the authority to retroactively declare that certain statutory changes can be applied retroactively, but only in certain specified instances. The most important point is that the California Supreme Court must not have ruled on the statute in question. Otherwise, the Legislature can only make a prospective change in the law.

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1. Legislation that contains an urgency clause takes effect immediately upon the Governor signing the bill and it being assigned a chapter number by the Secretary of State.

2. Chapter 506 of the Statutes of 2015.

3. SB 327 provides that the health care employee meal period waiver provisions in specified wage orders were valid and enforceable on and after October 1, 2000, and continue to be valid and enforceable. SB 327 states that the bill is declarative of, and clarifies, existing law. This bill also declared that it is to take effect immediately as an urgency statute.

4. SB 327 amended Section 516 of the Labor Code.

5. Marbury v. Madison (1803) 1 Cranch 137, 5 U.S. 137, 177, 2 L.Ed. 60.

6. Myers, 28 Cal.4th at p. 840, 123 Cal.Rptr.2d 40, 50 P.3d 751; see also Evangelatos v. Superior Court, 44 Cal.3d at pp. 1206-1208, 246 Cal.Rptr. 629, 753 P.2d 585.

7. McClung case.

8. Quarry v. Doe I(2012) 53 Cal.4th 945, 955.

9. Id.

10. In re York (1995) 9 Cal.4th 1133, 1152.

11. Id.

12. Landgraf, at p. 270, 114 S.Ct. 1483.

13. Myers, 28 Cal.4th at p. 841, 123 Cal.Rptr.2d 40, 50 P.3d 751.

14. Myers, at p. 844, 123 Cal.Rptr.2d 40, 50 P.3d 751.

15. Western Security Bank, 15 Cal.4th at p. 244, 62 Cal.Rptr.2d 243, 933 P.2d 507, quoting California Emp. etc. Com. v. Payne, 31 Cal.2d at p. 214, 187 P.2d 702.

16. Del Costello v. State of California (1982) 135 Cal.App.3d 887, 893. See also Eu v. Chacon (1976) 16 Cal.3d 465, 470 and Tyler v. California (1982) 134 Cal.App.3d 973, 977.

17. Section 1 of SB 327 reads: “The Legislature finds and declares the following: (a) From 1993 through 2000, Industrial Welfare Commission Wage Orders 4 and 5 contained special meal period waiver rules for employees in the health care industry. Employees were allowed to waive voluntarily one of the two meal periods on shifts exceeding 12 hours. On June 30, 2000, the Industrial Welfare Commission adopted regulations allowing those rules to continue in place. Since that time, employees in the health care industry and their employers have relied on those rules to allow employees to waive voluntarily one of their two meal periods on shifts exceeding 12 hours. (b) Given the uncertainty caused by a recent appellate court decision, Gerard v. Orange Coast Memorial Medical Center (2015) 234 Cal.App.4th 285, without immediate clarification, hospitals will alter scheduling practices.”

18. The decision was issued February 10, 2015.

19. Gerard v. Orange Coast Memorial Medical Center, 234 Cal.App.4th 285 (2015).

20. Id.

21. Id.

22. Id.

23. According to the Senate Floor Analysis of SB 327, “Therefore, the provisions of the statute and of the Wage Order appear to conflict on their face. The Wage Order language authorizes health care employees to waive their second meal period for any shift over eight hours. However, the language of the statute provides that the second meal period may be waived only if the total hours worked does not exceed 12 hours. Proponents of this bill argue the need for clarification in order to preserve the status quo preferred by both hospitals and their employees for over 20 years, as confirmed by the IWC in 2000. This bill provides that the health care employee meal period wavier provisions in the existing wage orders were valid and enforceable on and after October 1, 2000, and continue to be valid and enforceable. This bill states that it is declarative of, and clarifies, existing law.”

24. The bill contained an urgency clause. Section 3 of SB 327 reads: “This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are: In order to confirm and clarify the law applicable to meal period waivers for employees in the health care industry throughout the state, it is necessary that this act take effect immediately.”

25. See Labor Code Section 516(b).

26. See Senate Floor Analysis of SB 327.

27. Id.

28. Chapter 25 of the Statutes of 1997.

29. Section 3 of AB 1603 reads: “This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are: In order to ensure that California files a civil action similar to the civil actions filed by 22 other states and recovers tobacco-related costs incurred by the state at the earliest possible time, it is necessary that this act take effect immediately.”

30. Section 1 of AB 1603 reads: “The Legislature hereby finds and declares both of the following: (a) That the Attorney General of the State of California has not joined the 22 other state attorneys general who have filed civil actions against tobacco companies to recover the tobacco-related costs incurred by their states because the Attorney General asserts that a clarification of Section 1714.45 of the Civil Code is necessary before such a civil action can be filed. (b) That, although there is a difference of opinion over whether any clarification of Section 1714.45 is necessary, the Legislature recognizes that the filing of such a civil action would be facilitated by a clarification of the law relating to tobacco products.”

31. Civil Code Section 1714.45(d) reads, in part: “This subdivision does not constitute a change in, but is declaratory of, existing law relating to tobacco products.”

32. Chapter 96 of the Statutes of 2014.

33. See Section 1 of the bill.

34. Labor Code Section 1311.5(a).

35. Amended by Stats. 2013, Ch. 76, Sec. 12. Effective January 1, 2014.

36. Enacted by Stats. 1990, Ch. 79.

37. Amended by Stats. 2014, Ch. 910, Sec. 3. Effective January 1, 2015.

38. Amended by Stats. 1991, Ch. 551, Sec. 1.

39. Added by Stats. 1999, Ch. 590, Sec. 1. Effective January 1, 2000.

40. California Court of Appeal, First Appellate District, 2/1/05.

41. Tapia v. Superior Court (1991) 53 Cal.3d 282, 287.

42. Id.

43. (1988) 44 Cal.3d 1188.

44. Id. at p. 1192.

45. Id. at p. 1209.

46. Id.

47. Evangelatos v. Superior Court, supra, 44 Cal.3d at p. 1214.

48. Landgraf v. USI Film Products, supra, 511 U.S. at p. 268.

49. Evangelatos, supra, at p. 1209, italics added.

50. Myers v. Philip Morris Companies, Inc., supra, 28 Cal.4th at p. 841, quoting INS v. St. Cyr (2001) 533 U.S. 289, 320-321, fn. 45.

51. Evangelatos v. Superior Court, supra, 44 Cal.3d at pp. 1207-1208.

52. Landgraf, supra, at p. 273.

53. Id. at pp. 267-268, 273.

54. Del Costello v. State of California, supra, at p. 893, fn. 8, 185 Cal.Rptr. 582, cited with approval in People v. Cruz, supra, 13 Cal.4th at p. 781, 55 Cal.Rptr.2d 117, 919 P.2d 731.

55. California Emp. etc. Com. v. Payne (1947) 31 Cal.2d 210, 214, 187 P.2d 702.

56. Landgraf, supra, 511 U.S. at pp. 272-273, 114 S.Ct. 1483.

57. (1997) 15 Cal.4th 232, 244, 62 Cal.Rptr.2d 243, 933 P.2d 507.

58. 99 P.3d 1015 (Cal. 2004).

59. Id.

60. 117 Cal.App. 4th 318.

61. See California Government Code Sections 12900, et seq.

62. 117 Cal.App. 4th 318.

63. 242 Cal.App.4th 1255 (2015).

64. Id.

65. 74 Cal.App.3rd 445

66. 39 Cal.3rd 751.

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