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RN 11 01461 PAGE 1

An act to add Section 68906 to the Government Code, relating to courts.



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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) Ninety percent of California appellate opinions are not allowed to be cited or mentioned in, to, or by any California state court. These opinions are labeled as “Not Certified for Publication” or the like, but are, in fact, published on the California Judicial Council Internet Web site and indexed by computer-based legal research systems.

(b) The United States Supreme Court on December 1, 2006, promulgated Federal Rule of Appellate Procedure 32.1, which bans restrictions on citation of “judicial opinions, orders, judgments, or other written dispositions” that have been “designated as ‘unpublished,’ ‘not for publication,’ ‘non-precedential,’ ‘not precedent,’ or the like.”

(c) While Rule 32.1 applies prospectively to federal opinions issued on or after January 1, 2007, this act includes past state opinions issued before its effective date because the California Constitution has always required state opinions to be “in writing with reasons stated,” and therefore, the body of unpublished opinions contains much valuable legal reasoning. However, there is a risk that the body of opinions issued by California appellate courts with the expectation that those opinions would never be cited to, or by, any court in the future, may contain significant errors or otherwise be misleading. To lessen the risk that California judges will feel compelled to follow opinions issued under the expectation created by no-citation rules, this act would legislatively deprive opinions formerly subject to no-citation rules of value as legal precedent binding upon any judge. Accordingly, this act would substantially conform California court practice to that required of all federal courts by the United States



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Supreme Court pursuant to Rule 32.1, and overwhelmingly adopted by the federal Advisory Committee on Appellate Rules, as advocated by its then chairman, Samuel Alito, now United States Supreme Court Justice, and by its then member, John Roberts, now Chief Justice of the United States.

(d) Attorneys cannot be expected to locate opinions not actually published by the court, or upon locating such an opinion, may believe those opinions to be erroneous or misleading. Accordingly, this act protects attorneys from professional liability for failure to find or cite opinions formerly subject to no-citation rules.

SEC. 2. Section 68906 is added to the Government Code, to read:

68906. (a) All opinions of the Supreme Court, a court of appeal, an appellate department of a superior court, or a superior court may be cited to or by any court for any persuasive value they may have.

(b) Opinions issued before the effective date of this section that have not been certified for publication in the official reports shall have no precedential effect.

(c) The failure to locate, cite, or rely upon an opinion that has not been certified for publication in the official reports issued prior to the effective date of this section does not constitute professional negligence.



LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, _____.

General Subject: Appellate opinions: citation.

The California Constitution requires the Legislature to provide for the prompt publication of those opinions of the Supreme Court and courts of appeal as the Supreme Court deems appropriate. Existing law provides that those opinions of the Supreme Court, the courts of appeal, and the appellate divisions of the superior courts, as the Supreme Court may deem expedient, shall be published in the official reports under the general supervision of the Supreme Court. The official reports are required to be published under contract, as specified, on the terms most advantageous to the state and the public.

This bill would provide that all opinions of the Supreme Court, a court of appeal, an appellate department of a superior court, or a superior court may be cited to or by any court for any persuasive value they may have. The bill would provide, however, that opinions issued on or before the effective date of this bill that have not been certified



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for publication in the official reports shall have no precedential effect. The bill would also provide that the failure to locate, cite, or rely upon an opinion that has not been certified for publication in the official reports does not constitute professional negligence.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.



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