

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.

This bill would prohibit a state court from prohibiting or restricting the citation of state judicial opinions, orders, judgments, or other written dispositions that have been designated as "unpublished," "not for publication," "nonprecedential," "not precedent," or other similar designation. The bill would require a party that cites to a state judicial opinion, order, judgment, or other written disposition that is not available



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in a publicly accessible electronic database, to file and serve a copy of that opinion, order, judgment, or disposition with the brief or other paper in which it is cited.

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



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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 published, and are not allowed to be cited or mentioned in court. This percentage may be reduced pursuant to Rule 8.1105 of the California Rules of Court, urging more publication, but unpublished opinions will remain numerous and uncitable.

(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on citation of “judicial opinions, orders, judgments, or other written dispositions” that have been “designated as ‘unpublished,’ ‘not for publication,’ ‘non-precedential,’ ‘not precedent,’ or the like.”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. The California Constitution has always required state opinions to be “in writing with reasons stated.” Accordingly, this act would conform California court practice to that required of all federal courts by the United States Supreme Court pursuant to Rule 32.1, and overwhelmingly adopted by the federal Advisory Committee on Appellate Rules, advocated by its then chairman, now United States Supreme Court Justice Samuel Alito, and by its then member, now Chief Justice of the United States John Roberts.

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

68906. (a) A court shall not prohibit or restrict the citation of state judicial opinions, orders, judgments, or other written dispositions that have been designated as “unpublished,” “not for publication,” “nonprecedential,” “not precedent,” or other similar designation.



(b) If a party cites a state judicial opinion, order, judgment, or other written disposition that is not available in a publicly accessible electronic database, the party shall file and serve a copy of that opinion, order, judgment, or disposition with the brief or other paper in which it is cited.

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