JUDICIAL COUNCIL OF CALIFORNIA
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April 3, 2018

Hon. Jim Frazier, Chair
Assembly Transportation Committee
State Capitol, Room 3091
Sacramento, California 95814

Subject: Assembly Bill 3246 (Committee on Transportation), as amended April 2, 2018 – Support/Sponsor Section 19
Hearing: Assembly Transportation Committee – April 16, 2018

Dear Assembly Member Frazier:

The Judicial Council supports, and is one of the sponsors of, AB 3246, which makes a series of non-substantive, highly technical adjustments to code sections that impact roadways and transportation. Among the proposals in the 2018 bill is a provision, in subsection 19, that would clarify the numbering and internal references of Vehicle Code section 16028 so that citations to the proof of insurance provisions properly align with the intent of the statute.

Under current law, Vehicle Code section 16028 requires drivers to provide proof of insurance to law enforcement officers in two situations. Subdivision (b) requires proof of insurance when a vehicle is stopped for any other violation of the Vehicle Code. Subdivision (c) requires proof of insurance at the scene of an accident.

Courts encounter problems within section 16028 because subdivisions (b) and (c) cite different authority for their respective offenses. Subdivision (b) cites subdivision (a), a blanket requirement whose fines are statutorily governed and requires that drivers present proof of

insurance when asked by law enforcement officers. Subdivision (c), however, cites itself. Guidance on base fines and correctability is provided only for subdivision (a) by section 16029, leaving an apparent incongruity between the two situations. Confusion about which subdivision to charge has proven problematic for at least one large court.

Vehicle Code section 16028 contains two offenses regarding failures to show proof of insurance, which cite different authority. Because it is included in section 16029, section 16028(a) provides specific statutory guidance regarding the base fines for, and correctability of, failure to show proof of insurance when a driver is stopped for any Vehicle Code infraction. (Pen. Code § 16028(b).) It does not, however, cover failure to show proof of insurance at the scene of an accident. (Pen. Code § 16028(c).) As a result, the penalties for subdivision (b) and (c) appear incongruous. Section 16028, subdivision (a) requires "every person who drives a motor vehicle upon a highway [to] provide evidence of financial responsibility for the vehicle that is in effect at the time the demand is made." (Veh. Code § 16028, subd. (a).) Section 16028(b) is triggered when a driver fails to show proof of insurance after any alleged Vehicle Code violation and explicitly is a violation of subdivision (a), failure to provide evidence of financial responsibility.[1] Subdivision (c) is triggered when a driver fails to show proof of insurance at the scene of an accident but explicitly is a violation of itself.[2]

Legislative history suggests that a drafting error may have occurred in an omnibus revision of subdivision (c). Earlier versions reference subdivision (a).[3] In 1997, an omnibus revision intended only to make non-controversial, corrective and technical changes to transportation-related laws, amended subdivision (c) to add "traffic collision investigators" to the types of individuals allowed to cite drivers for this violation.[4] However, the omnibus revision also

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[1] Subdivision (b) reads, in relevant part: "If a notice to appear is issued for *any alleged violation of this code* … the cited driver shall furnish written evidence of financial responsibility …. If the cited driver fails to provide evidence of financial responsibility at the time the notice to appear is issued, the peace officer may issue the driver a notice to appear for *violation of subdivision (a)*...."

[2] Subdivision (c) reads, in relevant part: "….If the driver fails to provide evidence of financial responsibility when requested [at the scene of a collision], the peace officer may issue the driver a notice to appear for violation of this subdivision..."

[3] See, for example, Stats. 1996, c. 1126 (Assem. Bill No. 650), § 6, operative Jan. 1, 1997: Subdivision (c) stated: "Whenever a peace officer is summoned to the scene of an accident described in Section 16000, the driver of any motor vehicle that is in any manner involved in the accident shall furnish written evidence of financial responsibility upon the request of the peace officer. If the driver fails to provide evidence of financial responsibility when requested, the peace officer may issue the driver a notice to appear for violation of subdivision (a)."

[4] Assembly Bill No. 1561 was "the Assembly Transportation Committee's annual omnibus measure that makes noncontroversial, corrective and technical changes to transportation-related laws." (Assem. Com. on Appropriations, Bill Analysis of Assem. Bill No. 1561 (1996-1997 Reg. Sess.) as amended May 1, 1997, at p. 1; Assem. Com. on Transportation, Bill Analysis of Assem. Bill No. 1561 (1996-1997 Reg. Sess.) as amended May 1, 1997, at p. 1 [describing the bill as "the Assembly Transportation Committee's annual omnibus bill of noncontroversial and technical provisions"].) Assembly Bill No. 1561 contained 33 sections, which amended, added, or repealed 32 statutes. (Stats. 1997, c. 945 (Assem. Bill No. 1561), §§ 1-33.) The Assembly Committees described the amendment to section 16028 as: "15) Allows certified county- or city-authorized certified traffic

changed the authority cited in subdivision (c) from subdivision (a) to itself by deleting the "a" and inserting "this" to the phrase:

> "If the driver fails to provide evidence of financial responsibility when requested, the peace officer may issue the driver a notice to appear for violation of *this* subdivision ~~(a)~~.

There is no recorded evidence that the Legislature intended to remove violations of subdivision (c) from one of the offenses chargeable under subdivision (a), nor does the legislative history describe that the technical changes were also to include changes in authority or correctability.

As a result of subdivision (c)'s change in the authority for the offense from subdivision (a) to itself, however, only violations of subdivision (b) [failure to provide proof of insurance after any alleged Vehicle Code violation] are provided with statutory guidance for setting the base fine amounts. Section 16029 sets forth specific punishments for failure to show proof of financial responsibility. It provides, in relevant part:

> Notwithstanding any other provision of law, a violation of subdivision (a) of Section 16028 is an infraction and shall be punished as follows:
> (a) Upon a first conviction, by a fine of not less than one hundred dollars ($100) and not more than two hundred dollars ($200), plus penalty assessments.
> (b) Upon a subsequent conviction, occurring within three years of a prior conviction, by a fine of not less than two hundred dollars ($200) and not more than five hundred dollars ($500), plus penalty assessments.

Section 16029 also makes violations of subdivision (a) correctable offenses.

Without inclusion in section 16029, section 16028(c) does not have statutory guidance on either setting its base fine, or on whether the offense is correctable.

For these reasons, the Judicial Council supports Section 19 of AB 3246.

Should you have any questions or require additional information, please contact Andi Liebenbaum at 916-323-3121.

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collision investigators to request proof of financial responsibility in cases of traffic collisions." (Assem. Com. on Transportation, Bill Analysis of Assem. Bill No. 1561 (1996-1997 Reg. Sess.) as amended May 1, 1997, at p. 2; Assem. Com. on Appropriations, Bill Analysis of Assem. Bill No. 1561 (1996-1997 Reg. Sess.) as amended May 1, 1997, at p. 2.)

Sincerely,

Mailed on April 3, 2018

Cory T. Jasperson
Director, Governmental Affairs

CTJ/AL/yc-s
cc: Members, Assembly Transportation Committee
Ms. Cynthia Alvarez, Consultant, Assembly Transportation Committee
Mr. Daniel Ballon, Consultant, Assembly Republican Office of Policy
Mr. Michael Martinez, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California

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TANI G. CANTIL-SAKAUYE
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CORY T. JASPERSON
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June 15, 2018

Hon. Hannah-Beth Jackson, Chair
Senate Judiciary Committee
State Capitol, Room 2032
Sacramento, California 95814

Subject: Assembly Bill 3176 (Waldron), as amended May 25, 2018 – Support
Hearing: Senate Judiciary Committee – June 26, 2018

Dear Senator Jackson:

The Judicial Council supports AB 3176, which requires California to conform its laws to the federal Indian Child Welfare Act (ICWA). Among other things, the bill requires a party seeking placement of an Indian child to send notice, as defined, of specified hearings to each tribe in which the child is or may be a member. The bill clarifies the role of the state court in helping to determine which tribe the child has the most significant contact with.

Until 2006, California's implementation of ICWA into state law had been piecemeal, and, as a result, parties had to look not just to state statutes, but also to court rules, federal statutes and regulations, and BIA-issued guidelines, in addition to case law, to determine how to comply with the terms of ICWA. SB 678 (Ducheny), Stats. 2006, ch. 838, revised portions of state code addressing Indian child custody proceedings by codifying into state law various provisions of ICWA, the Bureau of Indian Affairs Guidelines for State Courts, and state Rules of Court.

This bill codifies recent changes required by the new Bureau of Indian Affairs regulations into the Welfare & Institutions Code. This codification will make it easier for courts, attorneys, and social workers to understand and comply with the federal law. For the most part, the bill follows

the federal standard. However, as permitted by law, where California has a higher standard, that standard prevails. (25 U.S.C. Section 1921.) It is worth noting that, pursuant to the conforming elements in this bill, California has a higher standard for determining if a child *may b*e an Indian child and requires that further inquiry must be undertaken for those children. (Section 224.3.) Once a child is identified as an Indian child, however, the identical federal and state requirements dictate the process.

For these reasons, the Judicial Council supports AB 3176.

Should you have any questions or require additional information, please contact Andi Liebenbaum at 916-323-3121.

Sincerely,

Mailed on June 15, 2018

Cory T. Jasperson
Director, Governmental Affairs

CTJ/AL/yc-s
cc: Members, Senate Judiciary Committee
Hon. Marie Waldron, Member of the Assembly
Dr. Joaquin Arambula, Member of the Assembly, Coauthor
Hon. Tom E. Daly, Member of the Assembly, Coauthor
Hon. Brian Maienschein, Member of the Assembly, Coauthor
Hon. Devon J. Mathis, Member of the Assembly, Coauthor
Hon. Eloise Gomez Reyes, Member of the Assembly, Coauthor
Hon. Blanca E. Rubio, Member of the Assembly, Coauthor
Ms. Delia Sharpe, Executive Director, California Tribal Families Coalition
Ms. Margie Estrada Caniglia, Chief Counsel, Senate Judiciary Committee
Mr. Mike Petersen, Consultant, Senate Republican Office of Policy
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California

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CORY T. JASPERSON
Director, Governmental Affairs

August 10, 2018

Hon. Edmund G. Brown, Jr.
Governor of California
State Capitol, First Floor
Sacramento, California 95814

Subject: Assembly Bill 3246 (Committee on Transportation) – Request for Signature

Dear Governor Brown:

The Judicial Council respectfully requests your signature on AB 3246, which makes a series of non-substantive, highly technical adjustments to code sections that impact roadways and transportation. Among the proposals in the 2018 bill is a provision, in subsection 22, that would clarify the numbering and internal references of Vehicle Code section 16028 so that citations to the proof of insurance provisions properly align with the intent of the statute.

Under current law, Vehicle Code section 16028 requires drivers to provide proof of insurance to law enforcement officers in two situations. Subdivision (b) requires proof of insurance when a vehicle is stopped for any other violation of the Vehicle Code. Subdivision (c) requires proof of insurance at the scene of an accident.

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leaving an apparent incongruity between the two situations. Confusion about which subdivision to charge has proven problematic for at least one large court.

Vehicle Code section 16028 contains two offenses regarding failures to show proof of insurance, which cite different authority. Because it is included in section 16029, section 16028(a) provides specific statutory guidance regarding the base fines for, and correctability of, failure to show proof of insurance when a driver is stopped for any Vehicle Code infraction. (Pen. Code § 16028(b).) It does not, however, cover failure to show proof of insurance at the scene of an accident. (Pen. Code § 16028(c).) As a result, the penalties for subdivision (b) and (c) appear incongruous. Section 16028, subdivision (a) requires "every person who drives a motor vehicle upon a highway [to] provide evidence of financial responsibility for the vehicle that is in effect at the time the demand is made." (Veh. Code § 16028, subd. (a).) Section 16028(b) is triggered when a driver fails to show proof of insurance after any alleged Vehicle Code violation and explicitly is a violation of subdivision (a), failure to provide evidence of financial responsibility.[1] Subdivision (c) is triggered when a driver fails to show proof of insurance at the scene of an accident but explicitly is a violation of itself.[2]

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individuals allowed to cite drivers for this violation.[4] However, the omnibus revision also changed the authority cited in subdivision (c) from subdivision (a) to itself by deleting the "a" and inserting "this" to the phrase:

> "If the driver fails to provide evidence of financial responsibility when requested, the peace officer may issue the driver a notice to appear for violation of *this* subdivision ~~(a)~~.

There is no recorded evidence that the Legislature intended to remove violations of subdivision (c) from one of the offenses chargeable under subdivision (a), nor does the legislative history describe that the technical changes were also to include changes in authority or correctability.

As a result of the subdivision (c) change in authority for the offense from subdivision (a) to itself, however, only violations of subdivision (b) [failure to provide proof of insurance after any alleged Vehicle Code violation] are provided with statutory guidance for setting the base fine amounts. Section 16029 sets forth specific punishments for failure to show proof of financial responsibility. It provides, in relevant part:

> Notwithstanding any other provision of law, a violation of subdivision (a) of Section 16028 is an infraction and shall be punished as follows:
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Without inclusion in section 16029, section 16028(c) does not have statutory guidance on either setting its base fine, or on whether the offense is correctable.

For these reasons, the Judicial Council requests your signature on AB 3246.

Should you have any questions or require additional information, please contact Andi Liebenbaum at 916-323-3121.

Sincerely,

Mailed on August 10, 2018

Cory T. Jasperson
Director, Governmental Affairs

CTJ/AL/yc-s
cc: Ms. Cynthia Alvarez, Consultant, Assembly Transportation Committee
Mr. Michael Martinez, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California