

RESOLUTION 05-04-2016 (As Amended)

DIGEST

Government Code: Limit Government Trail Immunity

Amends Government Code section 831.4 to limit a governmental entity's immunity from liability for injury only to users of unimproved dirt trails and not all trails.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Government Code section 831.4 to read as follows:

§831.4

1 A public entity, public employee, or a grantor of a public easement to a public entity for
2 any of the following purposes, is not liable for an injury caused by a condition of:

3 (a) Any unpaved road which provides access to fishing, hunting, camping, hiking, riding,
4 including animal and all types of vehicular riding, water sports, recreational or scenic areas and
5 which is not a (1) city street or highway or (2) county, state or federal highway or (3) public
6 street or highway of a joint highway district, boulevard district, bridge and highway district or
7 similar district formed for the improvement or building of public streets or highways.

8 (b) Any unpaved trail used for the above purposes.

9 (c) Any paved trail, walkway, path, or sidewalk on an easement of way which has been
10 granted to a public entity, which easement provides access to any unimproved property, so long
11 as such public entity shall reasonably attempt to provide adequate warnings of the existence of
12 any condition of the paved trail, walkway, path, or sidewalk which constitutes a hazard to health
13 or safety. Warnings required by this subdivision shall only be required where pathways are
14 paved, and such requirement shall not be construed to be a standard of care for any unpaved
15 pathways or roads.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

The Problem: Those who choose to avoid main thoroughfares by taking to trails and bikeways are at risk of serious injury, because no city, county or state government entity in California bears any legal responsibility for maintaining safe riding conditions on a Class I or Class II bikeway. This odd result stems from court rulings that define the word "trail" to include paved bike paths in the case of Prokop v. City of Los Angeles (2007) 150 Cal.App.4th 1332.

Prokop argued that the City was not immune from liability because the bicycle path was a "Class I bikeway" under California Streets and Highways Code section 890.4, and therefore the City was required to conform to Chapter 1000 of the California Highway Design Manual, entitled Bikeway Planning and Design, which it did not do.

The trial court granted summary judgment in favor of the City, concluding the matter was controlled by *Farnham v. City of Los Angeles* (1998) 68 Cal.App.4th 1097, which held that a class I bikeway, as defined in Streets and Highways Code section 890.4, is a "trail" under section 831.4, subdivision (b).

The Solution: Section 831.4 has been interpreted, in a series of cases, to apply to bike paths, both paved and unpaved, to trails providing access to recreational activities, and to trails on which the activities take place. (E.g., *Carroll v. County of Los Angeles* (1997) 60 Cal.App.4th 606, 609-610 [paved bicycle path is a trail under § 831.4, subd. (b); immunity under subd. (b) is not limited to access trails, but extends to a trail whose use is the object of the recreational activity (citing cases)].) This Resolution would define "trail" in Government Code Section 831.4 to mean only unimproved dirt trails.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

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RESOLUTIONS COMMITTEE RECOMMENDATION

The CCBA's Resolutions Committee recommended Disapproval of this resolution. The resolution was amended to address ResComm's concerns, and the full Conference approved the resolution as amended.