

Hi, this is Chris Micheli with the Sacramento governmental relations firm of Aprea & Micheli and an adjunct professor at McGeorge School of Law. Today's podcast is an examination of California's reenactment rule, which is what?

In California's Constitution, Article IV Section 9, in its second clause, it provides, "A section of a statute may not be amended unless the section is reenacted as amended." What exactly does that mean?

Essentially, according to the courts, the purpose of the constitutional reenactment rule -- which, again, essentially prohibits amending a section of code unless that section has been reenacted as proposed to be amended -- is to avoid enactment of statutes in terms so blind that legislators themselves are deceived in regard to their effect.

Basically, the rule applies to bills which are amending some former act or some existing statute. Now, note that the reenactment rule in California does not apply to the addition of new code sections or the enactment of entirely independent acts that may somehow impliedly impact other code sections.

In other words, when you're adding a new code section, a legislature is not required to reenact other code sections that may have been affected by that change. There have been a number of court decisions that have looked at California's reenactment rule and how it is to be applied.

At least one state court has opined that non-substantive amendments cannot serve to reenact substantive provisions of an otherwise invalid statute. The court, in the *People v. Barrows* case in 2012, essentially said that the bill that was at issue in this case made a non-substantive technical amendment to an invalid statute.

It could not likely have served to reenact the substantive provisions of the otherwise invalid statute. In 2015, in the case of the *Gillette Company v. the Franchise Tax Board*, the California Supreme Court addressed a specific Rev and Tax code, Section 25128.

They addressed the question of whether or not that code section violated our state constitution's reenactment rule. What they said was is that one purpose of the reenactment rule is to ensure that legislators are made aware of proposed statutory changes when they adopt legislation, as well as to ensure that the public has been apprised of the proposed changes in the law.

On this issue -- again, this Rev and Tax Code section that was at issue -- the court found that, even without enacting or reenacting the specific section to address a change made to the other code section that the court felt that the Legislature and the public were reasonably notified of the changes in law.

The reason they made that determination is because of the one section, 25128, expressly referenced a compact that was contained in Section 38006, and that it applied notwithstanding Section 38006. Again, under this provision of the California Constitution in Article IV, Section 9, the Legislature is required to reenact a code section when it amends that particular code section.

In reviewing the contents of a bill that amends an existing code section, this rule ensures that the reader of the legislation, of the bill, can readily identify what changes are being proposed by the bill in existing law, because those amendments to the code section, all of them are set forth as proposed changes within the context of the current, existing statute.

That's our look at California's constitutional reenactment rule.

Thanks for joining today's podcast.