

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 on severability, or savings, clauses in California legislation.

On occasion, a bill reader may come across a severability or savings clause contained in a California bill. Basically, the severability clause is a statement by the Legislature that if a part of a law that's enacted is subsequently held to be invalid or unconstitutional, then the unconstitutional provision doesn't invalidate the rest of the remaining law.

It's a type of savings clause because it saves parts of the law that were not invalidated by court action. Some states actually have a general severability clause that's applicable across all statutes. California is not one of them.

A general rule that's been developed and applied by the courts over a long period of time is that if a portion of a statute is invalidated or declared unconstitutional, then generally the remaining portions of the statute remain valid and enforceable. In other words, they stand on their own.

On the other hand, the courts have ruled that if those remaining portions are somehow completely dependent on the stricken portions or those portions of the statute that were invalidated or ruled unconstitutional, then all the remaining portions, the entire statute, is somehow deemed invalid then.

Why are the severability or savings clause used in legislation? Well, sometimes the Legislature wants a statute to either stand or fall on its own. In order to avoid a court interpretation that might allow a statute to continue to remain in force after a portion of that statute has been invalidated, the bill drafter may insert even a non-severability clause that's at or near the end of the bill.

Again, as a general rule, the drafter should only use a severability clause when there's some sort of possibility that the statute may be partially invalidated and that it may not be clear in the language that the intention of the legislature is that the bill, in fact, be severed.

However, there is another school of thought in bill drafting that a severability clause is unnecessary for legal purposes because, again, the courts have repeatedly ruled that generally, regardless of whether a severability clause is absent or is present in a statute, that historically the courts will just sever the invalid portions and keep the remaining valid portions alive and well.

What that means is that some observers argue that a severability clause is not necessary because, again, both statutes and common law or court decisions, make statutory provisions severable by their nature. Nonetheless, we do find a number of these provisions scattered throughout California laws. In fact, there are two sections of the California Constitution that utilize such a provision.

For example, Article I, Section 31(h) provides in part that "Any provision held invalid shall be severable from the remaining portions of this section." In a similar vein, in Article X B, Section 16, it specifies that, "and to this end, the provisions of this article are severable." What we find is that quite a few California statutes, in the hundreds, contain severability clauses.

Of course, we have over half a million statutes in California, so to have several hundred is not surprising. Some of them have them in the general provisions of the codes. There are 29 codes. For example, in Government Code Section 9906, we find it is actually titled "Severability." What does it provide? It says the following.

"If any provision of this chapter, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this chapter to the extent it can be given effect, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this end the provisions of this chapter are severable."

You can find other standardized language. Generally, it says something along the lines of "The provisions of this bill are severable. If any provision of this bill or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application."

Again, because some courts have given some weight to the inclusion of a severability clause in specific statutes, on occasion, it should be included in a measure. It's often used in some of these long and controversial bills or, obviously, when the client legislator specifically requests the inclusion of a severability clause, but in most legislation, these clauses are actually not necessary.

That's our review of severability clauses in California legislation. Thanks for joining today's podcast.