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AB-1693 Civil actions: intervention. (2017-2018)

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Assembly Bill No. 1693

CHAPTER 131

An act to amend Sections 387, 1032, and 1038 of the Code of Civil Procedure, relating to civil procedure.

[Approved by Governor July 24, 2017. Filed with Secretary of State July 24, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1693, Committee on Judiciary. Civil actions: intervention.

Under existing law, any person who has an interest in a matter in litigation, or in the success of either of the parties, or an interest against both, may intervene in the action or proceeding. Existing law provides that a third person may become a party to an action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, uniting with the defendant in resisting the claims of the plaintiff, or demanding anything adversely to both the plaintiff and the defendant, by filing a complaint setting forth the grounds upon which the intervention rests, as specified.

This bill would require that a nonparty seeking to intervene in an action or proceeding, deemed the intervenor, petition the court for leave to intervene by noticed motion or ex parte application setting forth the grounds upon which the intervention rests, and would require the intervenor to include a copy of the proposed complaint in intervention or answer in intervention with the petition. If leave to intervene is granted by the court, the bill would also require the intervenor to serve the order, or notice of the court's decision or order, granting leave to intervene and the pleadings in intervention on all other parties in the action or proceeding, as specified. The bill would also recast some provisions of existing law and make conforming changes to other provisions of law.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 387 of the Code of Civil Procedure is amended to read:

387. (a) For purposes of this section:

- (1) "Defendant" includes a cross-defendant.
- (2) "Plaintiff" includes a cross-complainant.

(b) An intervention takes place when a nonparty, deemed an intervenor, becomes a party to an action or proceeding between other persons by doing any of the following:

- (1) Joining a plaintiff in claiming what is sought by the complaint.
- (2) Uniting with a defendant in resisting the claims of a plaintiff.

(3) Demanding anything adverse to both a plaintiff and a defendant.

(c) A nonparty shall petition the court for leave to intervene by noticed motion or ex parte application. The petition shall include a copy of the proposed complaint in intervention or answer in intervention and set forth the grounds upon which intervention rests.

(d) (1) The court shall, upon timely application, permit a nonparty to intervene in the action or proceeding if either of the following conditions is satisfied:

(A) A provision of law confers an unconditional right to intervene.

(B) The person seeking intervention claims an interest relating to the property or transaction that is the subject of the action and that person is so situated that the disposition of the action may impair or impede that person's ability to protect that interest, unless that person's interest is adequately represented by one or more of the existing parties.

(2) The court may, upon timely application, permit a nonparty to intervene in the action or proceeding if the person has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both.

(e) If leave to intervene is granted by the court, the intervenor shall do both of the following:

(1) Separately file the complaint in intervention, answer in intervention, or both.

(2) Serve a copy of the order, or notice of the court's decision or order, granting leave to intervene and the pleadings in intervention as follows:

(A) A party to the action or proceeding who has not yet appeared shall be served in the same manner for service of summons pursuant to Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2.

(B) A party who has appeared in the action or proceeding, whether represented by an attorney or not represented by an attorney, shall be served in the same manner for service of summons pursuant to Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2, or in the manner provided by Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

(f) Within 30 days after service of a complaint in intervention or answer in intervention, a party may move, demur, or otherwise plead to the complaint in intervention or answer in intervention in the same manner as to an original complaint or answer.

SEC. 2. Section 1032 of the Code of Civil Procedure is amended to read:

1032. (a) As used in this section, unless the context clearly requires otherwise:

(1) "Complaint" includes a cross-complaint.

(2) "Defendant" includes a cross-defendant, a person against whom a complaint is filed, or a party who files an answer in intervention.

(3) "Plaintiff" includes a cross-complainant or a party who files a complaint in intervention.

(4) "Prevailing party" includes the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. If any party recovers other than monetary relief and in situations other than as specified, the "prevailing party" shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not and, if allowed, may apportion costs between the parties on the same or adverse sides pursuant to rules adopted under Section 1034.

(b) Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding.

(c) Nothing in this section shall prohibit parties from stipulating to alternative procedures for awarding costs in the litigation pursuant to rules adopted under Section 1034.

SEC. 3. Section 1038 of the Code of Civil Procedure is amended to read:

1038. (a) In any civil proceeding under the Government Claims Act (Division 3.6 (commencing with Section 810) of Title 1 of the Government Code) or for express or implied indemnity or for contribution in any civil action, the court, upon motion of the defendant or cross-defendant, shall, at the time of the granting of any summary judgment, motion for directed verdict, motion for judgment under Section 631.8, or any nonsuit dismissing the moving party other than the plaintiff, petitioner, cross-complainant, or intervenor, or at a later time set forth by rule of the Judicial Council adopted under Section 1034, determine whether or not the

plaintiff, petitioner, cross-complainant, or intervenor brought the proceeding with reasonable cause and in the good faith belief that there was a justifiable controversy under the facts and law which warranted the filing of the complaint, petition, cross-complaint, or complaint or answer in intervention. If the court should determine that the proceeding was not brought in good faith and with reasonable cause, an additional issue shall be decided as to the defense costs reasonably and necessarily incurred by the party or parties opposing the proceeding, and the court shall render judgment in favor of that party in the amount of all reasonable and necessary defense costs, in addition to those costs normally awarded to the prevailing party. An award of defense costs under this section shall not be made except on notice contained in a party's papers and an opportunity to be heard.

(b) "Defense costs," as used in this section, shall include reasonable attorney's fees, expert witness fees, the expense of services of experts, advisers, and consultants in defense of the proceeding, and where reasonably and necessarily incurred in defending the proceeding.

(c) This section shall be applicable only on motion made before the discharge of the jury or entry of judgment, and any party requesting the relief pursuant to this section waives any right to seek damages for malicious prosecution. Failure to make the motion shall not be deemed a waiver of the right to pursue a malicious prosecution action.

(d) This section shall only apply if the defendant or cross-defendant has made a motion for summary judgment, judgment under Section 631.8, directed verdict, or nonsuit and the motion is granted.