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AB-692 Attorneys: arbitration of attorney's fees. (2019-2020)

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Assembly Bill No. 692

CHAPTER 13

An act to amend Section 6206 of the Business and Professions Code, and to amend Section 340.6 of the Code of Civil Procedure, relating to attorneys.

[Approved by Governor June 26, 2019. Filed with Secretary of State June 26, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 692, Maienschein. Attorneys: arbitration of attorney's fees.

Existing law relating to arbitration of attorney's fees tolls the time for filing a civil action seeking judicial resolution of a dispute subject to arbitration from the time an arbitration is initiated in accordance with rules adopted by the board of trustees of the State Bar of California until 30 days after receipt of notice of the award of the arbitrators or receipt of notice that the arbitration is otherwise terminated, whichever comes first. Existing law prohibits commencement of arbitration if a civil action requesting the same relief would be barred by existing law governing the time of commencing civil actions. Existing law establishes an exception to that prohibition for a request for arbitration by a client pursuant to specified provisions for arbitration of attorney's fees, following the filing of a civil action by the attorney.

This bill would instead allow commencement of arbitration upon a request for arbitration by a client pursuant to those provisions, following the commencement of an action in any court or any other proceeding by the attorney.

Existing law, except for certain claims where there is an underlying criminal charge, requires that an action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services must be commenced within one year after the plaintiff discovers, or should have discovered, the wrongful act or omission, or 4 years from the date of the wrongful act or omission, whichever occurs first. Under existing law, that period is tolled if certain conditions exist.

This bill would additionally toll that period if a dispute between the lawyer and client concerning fees, costs, or both is pending resolution under existing law relating to arbitration of attorney's fees. The bill would define "pending" for that purpose.

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

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

SECTION 1. Section 6206 of the Business and Professions Code is amended to read:

6206. The time for filing a civil action seeking judicial resolution of a dispute subject to arbitration under this article shall be tolled from the time an arbitration is initiated in accordance with the rules adopted by the board of trustees until (a) 30 days after receipt of notice of the award of the arbitrators, or (b) receipt of notice that the arbitration is otherwise terminated, whichever comes first. Arbitration shall not be commenced under this article if a civil action requesting the same relief would be barred by Title 2

(commencing with Section 312) of Part 2 of the Code of Civil Procedure; provided that this limitation shall not apply to a request for arbitration by a client, pursuant to subdivision (b) of Section 6201, following the commencement of an action in any court or any other proceeding by the attorney.

SEC. 2. Section 340.6 of the Code of Civil Procedure is amended to read:

340.6. (a) An action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services shall be commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first. If the plaintiff is required to establish the plaintiff's factual innocence for an underlying criminal charge as an element of the plaintiff's claim, the action shall be commenced within two years after the plaintiff achieves postconviction exoneration in the form of a final judicial disposition of the criminal case. Except for a claim for which the plaintiff is required to establish the plaintiff's factual innocence, the time for commencement of legal action shall not exceed four years except that the period shall be tolled during the time that any of the following exist:

(1) The plaintiff has not sustained actual injury.

(2) The attorney continues to represent the plaintiff regarding the specific subject matter in which the alleged wrongful act or omission occurred.

(3) The attorney willfully conceals the facts constituting the wrongful act or omission when those facts are known to the attorney, except that this subdivision shall toll only the four-year limitation.

(4) The plaintiff is under a legal or physical disability that restricts the plaintiff's ability to commence legal action.

(5) A dispute between the lawyer and client concerning fees, costs, or both is pending resolution under Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code. As used in this paragraph, "pending" means from the date a request for arbitration is filed until 30 days after receipt of notice of the award of the arbitrators, or receipt of notice that the arbitration is otherwise terminated, whichever occurs first.

(b) In an action based upon an instrument in writing, the effective date of which depends upon some act or event of the future, the period of limitations provided for by this section shall commence to run upon the occurrence of that act or event.