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SB-688 Civil actions: judgments by confession. (2021-2022)

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Senate Bill No. 688

CHAPTER 851

An act to amend Section 1132 of, and to repeal Sections 1133 and 1134 of, the Code of Civil Procedure, to amend Sections 6103, 68085.1, and 70626 of the Government Code, and to amend Section 4459 of the Probate Code, relating to civil actions.

[Approved by Governor September 29, 2022. Filed with Secretary of State September 29, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 688, Wieckowski. Civil actions: judgments by confession.

Existing law provides that a judgment by confession is enforceable and may be entered in any superior court without the filing of a civil action, either for money due or to become due, or to secure any person against a contingent liability on behalf of the defendant, or both. Existing law permits the judgment to be entered only if the defendant has signed and filed a written statement authorizing an entry of judgment, as further specified, and the defendant's attorney has signed and filed a certificate stating the attorney has examined the proposed judgment and advised the defendant of the defendant's waiver of rights and defenses and to utilize the judgment by confession procedure, as further specified. Existing law prescribes the procedure for entering a judgment by confession.

This bill would provide that a judgment by confession is unenforceable and may not be entered in any superior court. The bill would not apply the foregoing provision to a judgment by confession obtained or entered before January 1, 2023. The bill would repeal the provisions setting forth procedures by which a defendant files for, and a superior court enters, a judgment by confession.

This bill would make additional conforming changes.

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

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

SECTION 1. Section 1132 of the Code of Civil Procedure is amended to read:

1132. (a) A judgment by confession is unenforceable and may not be entered in any superior court.

(b) This section does not apply to a judgment by confession obtained or entered before January 1, 2023.

SEC. 2. Section 1133 of the Code of Civil Procedure is repealed.

SEC. 3. Section 1134 of the Code of Civil Procedure is repealed.

SEC. 4. Section 6103 of the Government Code is amended to read:

6103. (a) Neither the state nor any county, city, district, or other political subdivision, nor any public officer or body, acting in the public officer's or body's official capacity on behalf of the state, or any county, city, district, or other political subdivision, shall pay or deposit any fee for the filing of any document or paper, for the performance of any official service, or for the filing of any stipulation or agreement that may constitute an appearance in any court by any other party to the stipulation or agreement. This section does not apply to civil jury fees or civil jury deposits. This section does not apply to the State Compensation Insurance Fund or where a public officer is acting with reference to private assets or obligations that have come under that officer's jurisdiction by virtue of that officer's office, or where it is specifically provided otherwise.

(b) No fee shall be charged to any of the public agencies named in this section to defray the costs of reporting services by court reporters. Such fees shall be recoverable as costs as provided in Section 6103.5.

(c) This section shall apply to probate referees, as described in Part 12 (commencing with Section 400) of Division 2 of the Probate Code.

SEC. 5. Section 68085.1 of the Government Code is amended to read:

68085.1. (a) This section applies to all fees and fines that are collected on or after January 1, 2006, under all of the following:

(1) Sections 177.5, 209, 403.060, 491.150, 631.3, 683.150, 704.750, 708.160, 724.100, 1161.2, 1218, and 1993.2 of, subdivision (g) of Section 411.20 and subdivisions (c) and (g) of Section 411.21 of, subdivision (b) of Section 631 of, and Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of, the Code of Civil Procedure.

(2) Section 3112 of the Family Code.

(3) Section 31622 of the Food and Agricultural Code.

(4) Subdivision (d) of Section 6103.5, Sections 68086 and 68086.1, Sections 68926.1 and 69953.5, and Chapter 5.8 (commencing with Section 70600).

(5) Section 103470 of the Health and Safety Code.

(6) Subdivisions (b) and (c) of Section 166 and Section 1214.1 of the Penal Code.

(7) Sections 1835, 1851.5, 7660, and 13201 of the Probate Code.

(8) Sections 14607.6 and 16373 of the Vehicle Code.

(9) Section 71386 of this code, Sections 304, 7851.5, and 9002 of the Family Code, and Section 1513.1 of the Probate Code, if the reimbursement is for expenses incurred by the court.

(10) Section 3153 of the Family Code, if the amount is paid to the court for the cost of counsel appointed by the court to represent a child.

(b) On and after January 1, 2006, each superior court shall deposit all fees and fines listed in subdivision (a), as soon as practicable after collection and on a regular basis, into a bank account established for this purpose by the Administrative Office of the Courts. Upon direction of the Administrative Office of the Courts, the county shall deposit civil assessments under Section 1214.1 of the Penal Code and any other money it collects under the sections listed in subdivision (a) as soon as practicable after collection and on a regular basis into the bank account established for this purpose and specified by the Administrative Office of the Courts. The deposits shall be made as required by rules adopted by, and financial policies and procedures authorized by, the Judicial Council under subdivision (a) of Section 77206. Within 15 days after the end of the month in which the fees and fines are collected, each court, and each county that collects any fines or fees under subdivision (a), shall provide the Administrative Office of the Courts with a report of the fees by categories as specified by the Administrative Office of the Courts. The Administrative Office of the Courts and any court may agree upon a time period greater than 15 days, but in no case more than 30 days after the end of the month in which the fees and fines are collected. The fees and fines listed in subdivision (a) shall be distributed as provided in this section.

(c) (1) Within 45 calendar days after the end of the month in which the fees and fines listed in subdivision (a) are collected, the Administrative Office of the Courts shall make the following distributions:

(A) To the small claims advisory services, as described in subdivision (f) of Section 116.230 of the Code of Civil Procedure.

(B) To dispute resolution programs, as described in subdivision (b) of Section 68085.3 and subdivision (b) of Section 68085.4.

(C) To the county law library funds, as described in Sections 116.230 and 116.760 of the Code of Civil Procedure, subdivision (b) of Section 68085.3, subdivision (b) of Section 68085.4, and Section 70621 of this code, and Section 14607.6 of the Vehicle Code.

(D) To the courthouse construction funds in the Counties of Riverside, San Bernardino, and San Francisco, as described in Sections 70622, 70624, and 70625.

(E) Commencing July 1, 2011, to the Trial Court Trust Fund, as described in subdivision (e) of Section 70626, to be used by the Judicial Council to implement and administer the civil representation pilot program under Section 68651.

(2) If any distribution under this subdivision is delinquent, the Administrative Office of the Courts shall add a penalty to the distribution as specified in subdivision (i).

(d) Within 45 calendar days after the end of the month in which the fees and fines listed in subdivision (a) are collected, the amounts remaining after the distributions in subdivision (c) shall be transmitted to the State Treasury for deposit in the Trial Court Trust Fund and other funds as required by law. This remittance shall be accompanied by a remittance advice identifying the collection month and the appropriate account in the Trial Court Trust Fund or other fund to which it is to be deposited. Upon the receipt of any delinquent payment required under this subdivision, the Controller shall calculate a penalty as provided under subdivision (i).

(e) From the money transmitted to the State Treasury under subdivision (d), the Controller shall make deposits as follows:

(1) Into the Judges' Retirement Fund and the Equal Access Fund, as described in subdivision (c) of Section 68085.3 and subdivision (c) of Section 68085.4.

(2) Into the Health Statistics Special Fund, as described in subdivision (b) of Section 70670 of this code and Section 103730 of the Health and Safety Code.

(3) Into the Family Law Trust Fund, as described in Section 70674.

(4) Into the State Court Facilities Construction Fund, as described in subdivision (c) of Section 68085.3, subdivision (c) of Section 68085.4, subdivision (b) of Section 70657.5, and subdivision (e) of Section 70617.

(5) The remainder of the money shall be deposited into the Trial Court Trust Fund.

(f) The amounts collected by each superior court under Section 116.232, subdivision (g) of Section 411.20, and subdivision (g) of Section 411.21 of the Code of Civil Procedure, Sections 304, 3112, 3153, 7851.5, and 9002 of the Family Code, subdivision (d) of Section 6103.5, Sections 68926.1, 69953.5, 70627, 70631, 70640, 70661, 70678, and 71386 of this code, and Sections 1513.1, 1835, and 1851.5 of the Probate Code shall be added to the monthly apportionment for that court under subdivision (a) of Section 68085.

(g) If any of the fees provided in subdivision (a) are partially waived by court order or otherwise reduced, and the fee is to be divided between the Trial Court Trust Fund and any other fund or account, the amount of the reduction shall be deducted from the amount to be distributed to each fund in the same proportion as the amount of each distribution bears to the total amount of the fee. If the fee is paid by installment payments, the amount distributed to each fund or account from each installment shall bear the same proportion to the installment payment as the full distribution to that fund or account does to the full fee. If a court collects a fee that was incurred before January 1, 2006, under a provision that was the predecessor to one of the paragraphs contained in subdivision (a), the fee may be deposited as if it were collected under the paragraph of subdivision (a) that corresponds to the predecessor of that paragraph and distributed in prorated amounts to each fund or account to which the fee in subdivision (a) must be distributed.

(h) Except as provided in Sections 470.5 and 6322.1 of the Business and Professions Code, and Sections 70622, 70624, and 70625 of this code, an agency shall not take action to change the amounts allocated to any of the funds described in subdivision (c), (d), or (e).

(i) The amount of the penalty on any delinquent payment under subdivision (c) or (d) shall be calculated by multiplying the amount of the delinquent payment at a daily rate equivalent to $1\frac{1}{2}$ percent per month for the number of days the payment is delinquent. The penalty shall be paid from the Trial Court Trust Fund. Penalties on delinquent payments under subdivision (d) shall be calculated only on the amounts to be distributed to the Trial Court Trust Fund and the State Court Facilities Construction Fund, and each penalty shall be distributed proportionately to the funds to which the delinquent payment was to be distributed.

(j) If a delinquent payment under subdivision (c) or (d) results from a delinquency by a superior court under subdivision (b), the court shall reimburse the Trial Court Trust Fund for the amount of the penalty. Notwithstanding Section 77009, any penalty on a delinquent payment that a court is required to reimburse pursuant to this section shall be paid from the court operations fund for that court. The penalty shall be paid by the court to the Trial Court Trust Fund no later than 45 days after the end of the month in which the penalty was calculated. If the penalty is not paid within the specified time, the Administrative Office of the Courts may reduce the amount of a subsequent monthly allocation to the court by the amount of the penalty on the delinquent payment.

(k) If a delinquent payment under subdivision (c) or (d) results from a delinquency by a county in transmitting fees and fines listed in subdivision (a) to the bank account established for this purpose, as described in subdivision (b), the county shall reimburse the Trial Court Trust Fund for the amount of the penalty. The penalty shall be paid by the county to the Trial Court Trust Fund no later than 45 days after the end of the month in which the penalty was calculated.

SEC. 6. Section 70626 of the Government Code is amended to read:

70626. (a) The fee for each of the following services is forty dollars (\$40). Subject to subdivision (e), amounts collected shall be distributed to the Trial Court Trust Fund under Section 68085.1.

- (1) Issuing a writ of attachment, a writ of mandate, a writ of execution, a writ of sale, a writ of possession, a writ of prohibition, or any other writ for the enforcement of any order or judgment.
- (2) Issuing an abstract of judgment.
- (3) Issuing a certificate of satisfaction of judgment under Section 724.100 of the Code of Civil Procedure.
- (4) Certifying a copy of any paper, record, or proceeding on file in the office of the clerk of any court.
- (5) Taking an affidavit, except in criminal cases or adoption proceedings.
- (6) Acknowledgment of any deed or other instrument, including the certificate.
- (7) Recording or registering a license or certificate, or issuing a certificate in connection with a license, required by law, for which a charge is not otherwise prescribed.
- (8) Issuing a certificate for which the fee is not otherwise fixed.

(b) The fee for each of the following services is forty-five dollars (\$45). Subject to subdivision (e), amounts collected shall be distributed to the Trial Court Trust Fund under Section 68085.1.

- (1) Issuing an order of sale.
- (2) Receiving and filing an abstract of judgment rendered by a judge of another court and subsequent services based on it, unless the abstract of judgment is filed under Section 704.750 or 708.160 of the Code of Civil Procedure.
- (3) Filing an application for renewal of judgment under Section 683.150 of the Code of Civil Procedure.
- (4) Issuing a commission to take a deposition in another state or place under Section 2026.010 of the Code of Civil Procedure, or issuing a subpoena under Section 2029.300 to take a deposition in this state for purposes of a proceeding pending in another jurisdiction.
- (5) Filing and entering an award under the Workers' Compensation Law (Division 4 (commencing with Section 3200) of the Labor Code).
- (6) Filing an affidavit of publication of notice of dissolution of partnership.
- (7) Filing an appeal of a determination whether a dog is potentially dangerous or vicious under Section 31622 of the Food and Agricultural Code.
- (8) Filing an affidavit under Section 13200 of the Probate Code, together with the issuance of one certified copy of the affidavit under Section 13202 of the Probate Code.
- (9) Filing and indexing all papers for which a charge is not elsewhere provided, other than papers filed in actions or special proceedings, official bonds, or certificates of appointment.

(c) The fee for filing a first petition under Section 2029.600 or 2029.620 of the Code of Civil Procedure, if the petitioner is not a party to the out-of-state case, is eighty dollars (\$80). Amounts collected shall be distributed to the Trial Court Trust Fund pursuant to Section 68085.1.

(d) The fee for delivering a will to the clerk of the superior court in which the estate of a decedent may be administered, as required by Section 8200 of the Probate Code, is fifty dollars (\$50).

(e) An amount equivalent to twenty-five dollars (\$25) of each fee collected pursuant to subdivisions (a) and (b) shall be used by the Judicial Council for the expenses of the Judicial Council in implementing and administering the civil representation program under Section 68651.

SEC. 7. Section 4459 of the Probate Code is amended to read:

4459. In a statutory form power of attorney, the language with respect to claims and litigation empowers the agent to do all of the following:

(a) Assert and prosecute before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, cross-complaint, or offset, and defend against an individual, a legal entity, or government, including suits to recover property or other thing of value, to recover damages sustained by the principal, to eliminate or modify tax liability, or to seek an injunction, specific performance, or other relief.

(b) Bring an action to determine adverse claims, intervene in litigation, and act as amicus curiae.

(c) In connection with litigation:

(1) Procure an attachment, garnishment, libel, order of arrest, or other preliminary, provisional, or intermediate relief and use any available procedure to effect, enforce, or satisfy a judgment, order, or decree.

(2) Perform any lawful act, including acceptance of tender, offer of judgment, admission of facts, submission of a controversy on an agreed statement of facts, consent to examination before trial, and binding the principal in litigation.

(d) Submit to arbitration, settle, and propose or accept a compromise with respect to a claim or litigation.

(e) Waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon whom process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive and execute and file or deliver a consent, waiver, release, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation.

(f) Act for the principal with respect to bankruptcy or insolvency proceedings, whether voluntary or involuntary, concerning the principal or some other person, or with respect to a reorganization proceeding, or with respect to an assignment for the benefit of creditors, receivership, or application for the appointment of a receiver or trustee which affects an interest of the principal in property or other thing of value.

(g) Pay a judgment against the principal or a settlement made in connection with litigation and receive and conserve money or other thing of value paid in settlement of or as proceeds of a claim or litigation.