

**SENATE JUDICIARY COMMITTEE**  
**Senator Hannah-Beth Jackson, Chair**  
**2019-2020 Regular Session**

AB 2723 (Chiu)  
Version: May 4, 2020  
Hearing Date: August 18, 2020  
Fiscal: No  
Urgency: No  
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**SUBJECT**

Civil actions: entry of judgment: written stipulation

**DIGEST**

This bill authorizes attorneys or agents of insurers to stipulate to settlements on behalf of the parties they represent.

**EXECUTIVE SUMMARY**

Section 664.6 of the Code of Civil Procedure (Section 664.6) authorizes courts to enter judgment pursuant to the terms of a settlement stipulated to by the parties to a civil action. Upon request by the parties, courts are authorized to retain jurisdiction over those parties in the event the court is needed to enforce the terms of such a settlement until full performance.

Currently the parties themselves must stipulate in writing or orally before the court to the terms of the settlement. This bill authorizes attorneys, on behalf of their clients, and the agents of insurers, on behalf of the insurer, to so stipulate. The bill trades some procedural protections for efficiencies in the judicial system.

The bill is sponsored by the Consumer Attorneys of California and supported by the California Defense Counsel. There is currently no known opposition.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Provides that, if parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. (Code Civ. Proc. § 664.6.)
- 2) Authorizes the court, if requested by the parties, to retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement. (Code Civ. Proc. § 664.6.)
- 3) Requires that, when trial by jury has been had, judgment be entered by the clerk, in conformity to the verdict within 24 hours after the rendition of the verdict, whether or not a motion for judgment notwithstanding the verdict be pending, unless the court orders the case to be reserved for argument or further consideration, or grants a stay of proceedings. (Code Civ. Proc. § 664.)
- 4) Requires that, if the trial has been had by the court, judgment must be entered by the clerk, in conformity to the decision of the court, immediately upon the filing of such decision. It further provides that a judgment is not effectual for any purpose until entered. (Code Civ. Proc. § 664.)
- 5) Defines an agent as one who represents another, called the principal, in dealings with third persons. Such representation is called agency. (Civ. Code § 2295.)
- 6) Permits an agent to be authorized to do any acts which his principal might do, except those to which the latter is bound to give his personal attention. (Civ. Code § 2304.)
- 7) Empowers an agent with the authority to do everything necessary or proper and usual, in the ordinary course of business, for effecting the purpose of his agency; and to make a representation respecting any matter of fact, not including the terms of his authority, but upon which his right to use his authority depends, and the truth of which cannot be determined by the use of reasonable diligence on the part of the person to whom the representation is made. (Civ. Code § 2319.)

This bill authorizes an attorney representing a party or an agent of an insurer, where the insurer is a party, to stipulate in writing on behalf of the party they represent to the terms of a settlement.

## COMMENTS

### 1. Amending the process for conditional settlements

Current law prescribes the manner of giving and entering judgment in civil actions. (Code Civ. Proc. § 664 et seq.) It lays out processes for entering judgment specific to whether a trial is had by a jury or by the court. It also lays out the process for when judgment comes pursuant to terms of a settlement agreed to by the parties.

Currently parties can stipulate in a writing signed by the parties or orally before the court for settlement of civil matters and request the court enter judgment pursuant thereto. (§ 664.6.) The parties can further request that the court retain jurisdiction over them, enabling the court to enforce the settlement until its terms have been fully satisfied.

The California Supreme Court has detailed the history behind Section 664.6:

Section 664.6 was enacted in 1981. As this court noted recently . . . , prior to 1981 the Courts of Appeal had expressed conflicting views concerning the proper procedures to enforce settlement agreements in pending litigation.

Under one line of authority, settlement agreements preceding the enactment of section 664.6 in 1981 could be enforced only by a motion for summary judgment, a separate suit in equity, or an amendment to the pleadings. This became the dominant view. It was based on the theory that nonstatutory motions to enforce settlements were motions based on facts outside the pleadings and, under this court's decisions had to be treated as motions for summary judgment that could be granted only if all of the papers submitted showed there was no triable issue of fact.

A second line of authority permitted motions to enforce settlements based on facts outside the pleadings if the fact of settlement and the terms of the settlement were not subject to reasonable dispute. The theory underlying this approach was that the statutory means of enforcing settlements by motions for summary judgment, separate suits in equity, or amendments to pleadings were inadequate, and that a court therefore must have authority to enforce settlements as a means of controlling proceedings before the court and protecting the interests of the parties.

The conflict was resolved in 1981 when the Legislature enacted section 664.6, which created a summary, expedited procedure to enforce settlement agreements when certain requirements that decrease the likelihood of misunderstandings are met.

(*Levy v. Superior Court* (1995) 10 Cal. 4th 578, 584-586, internal citations omitted.)

2. Delegating authority to settle cases on behalf of the parties

Principles of efficiency and economy promote the settlement of civil disputes by the parties, involving the court and expending its resources only where absolutely needed. This bill seeks to streamline the procedure provided for in Section 664.6 by explicitly granting the authority to stipulate to settlements to attorneys, on behalf of the parties they represent, and to agents of insurers, where the insurer is a party to the settlement. However, this removes the existing procedural protection requiring more direct client involvement.

Currently, Section 664.6 requires that the *parties* must stipulate to the settlement underlying the motion. The California Supreme Court specifically addressed the issue of whether motions pursuant to Section 664.6 require the signature (or oral testimony) of the parties themselves, concluding that they do. As indicated in the quote above, the court found that the expedited procedure provided for by Section 664.6 required certain protective measures to “decrease the likelihood of misunderstandings.” The court held that the “parties” had to “stipulate in writing or orally before the court that they have settled the case.”

The Supreme Court specifically extolled the virtues of such a requirement:

The litigants’ direct participation tends to ensure that the settlement is the result of their mature reflection and deliberate assent. This protects the parties against hasty and improvident settlement agreements by impressing upon them the seriousness and finality of the decision to settle, and minimizes the possibility of conflicting interpretations of the settlement. It also protects parties from impairment of their substantial rights without their knowledge and consent.

(*Levy*, 10 Cal. 4th at 585.) For these reasons, the court concluded “the term ‘parties’ as used in section 664.6 . . . means the litigants themselves, and does not include their attorneys of record.” (*Id.* at 586.)

This bill eliminates the requirement that parties themselves must personally sign or orally stipulate to these settlements and instead allows counsel for the parties to so stipulate on their behalf and further authorizes agents of insurers to stipulate on the insurer’s behalf. The virtues outlined by the Supreme Court notwithstanding, the author and the sponsor, the Consumer Attorneys of California (CAOC), now seek to streamline this process in order to meet the goals of efficiency and economy.

According to the author:

Attorneys act on behalf of their clients during the mediation and settlement process, oftentimes without their clients present. However, under current law, attorneys and adjusters who come to an agreement in mediation without their clients cannot enforce the settlements reached until they get their clients' signature, adding an extra and unnecessary step to the settlement process.

CAOC echoes this sentiment in their letter of support and provide the following insights to illustrate the import of the bill:

For example, as a practical matter, many times plaintiffs' counsel will represent heirs in a wrongful death case, where the heirs are scattered about the country and it would be impractical to fly them all into town for mediation. This change would allow a settlement agreement signed by an attorney for plaintiffs to be legally enforceable by the court. Under the current law, if it isn't signed by all the parties, it is not enforceable.

Similarly on the defense side more often than not, defendants are not present at mediation. Therefore the defense attorney (or insurance adjuster if the matter is pre-litigation) should similarly be able to sign an agreement and have it legally enforceable by the judge. Again, under current law, even if the plaintiff is present and signs the agreement, if the actual defendant(s) are not present and do not sign the agreement, it is not enforceable by a judge.

AB 2723 will streamline settlement procedures.

The changes made by the bill are especially productive in the context of the agents of insurers. Often adjusters act as agents of insurers, handling nearly all of the details of potential and ongoing litigation. Given that insurers are usually sophisticated parties, often involved in litigation, there is little concern that their interests are not being properly represented.

Legal guidelines exist in the Business and Professions Code and in the California Rules of Professional Conduct requiring attorneys to act in their clients' best interests and to avoid self-dealing, mitigating somewhat the loss of the existing protection. This bill, by allowing for counsel to make a request pursuant to Section 664.6, will streamline the process and obviate the need for counsel to track down their clients before progressing toward a settlement of a civil dispute. However, this shifts the burden to attorneys to "impress[] upon [their clients] the seriousness and finality of the decision to settle," and to "minimize[] the possibility of conflicting interpretations of the settlement." Concerns

have been raised about eliminating this procedural protection, which has been heralded by the courts.

Specifically, concerns have been raised by the Southern California Chapter of the American Academy of Matrimonial Lawyers (AAML). They wrote in opposition to the bill “based on a concern that allowing judgments to be entered based on a writing signed by an attorney only will eliminate important consumer protection safeguards available to family law and other litigants under the current language of Code of Civil Procedure Section 664.6.” They further assert:

Marital settlement agreements can be complex documents, dealing with important issues like domestic violence, child custody and visitation, child support, spousal support and the division of assets and debts.

Marital settlement agreements routinely include an acknowledgment by a party that they have read the agreement, they understand the agreement and they have had sufficient time to discuss this agreement with their counsel. These representations would become meaningless if such agreements are signed by counsel and not the family law litigant.

After further negotiation and consideration, the author has agreed to the following amendment that limits the application of the changes made by this bill so that the procedural protections of existing law continue to apply in cases for which they are particularly needed. With this amendment, AAML has withdrawn their opposition.

#### Amendment

Add subdivision (c) to read: “Subdivisions (b)(2) and (b)(3) shall not apply to civil harassment actions, any action brought under the Family Code, any action brought under the Probate Code, or any matter that is being adjudicated in Juvenile or Dependency Court.”

In addition, there were concerns raised that more needed to be done to prevent attorney misconduct, namely signing on behalf of clients without clients’ express authorization. To address this, the author has agreed to the following amendment that highlights that such misconduct is grounds for a finding of professional negligence and legal malpractice:

#### Amendment

Add subdivision (d) to read: “In addition to any available civil remedies, an attorney who signs the writing on behalf of a client pursuant to subdivision (b) without the client’s express authorization shall be subject to professional discipline absent good cause.”

**SUPPORT**

Consumer Attorneys of California (sponsor)  
California Defense Counsel

**OPPOSITION**

None known

**RELATED LEGISLATION**

Pending Legislation: SB 1105 (Umberg, 2020) authorizes attorneys, on behalf of their clients, to stipulate to a settlement of the case and request the court retain jurisdiction of the case on behalf of their clients and makes clear that the court may dismiss the case without prejudice upon granting a Section 664.6 request. This bill is currently in the Assembly Judiciary Committee.

Prior Legislation: None known.

**PRIOR VOTES:**

Assembly Floor (Ayes 75, Noes 0)  
Assembly Judiciary Committee (Ayes 10, Noes 0)

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