

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2025-2026 Regular Session**

AB 78 (Chen)  
Version: December 18, 2024  
Hearing Date: June 24, 2025  
Fiscal: No  
Urgency: No  
CK

**SUBJECT**

Attorney's fees: book accounts

**DIGEST**

This bill increases the maximum attorney's fees available to a prevailing party in any action on a contract based on a book account that does not provide for attorney's fees and costs.

**EXECUTIVE SUMMARY**

The term "book account" means a detailed statement which constitutes the principal record of one or more transactions between a debtor and a creditor arising out of either a contract or a fiduciary relationship, and shows the debits and credits in connection therewith, and against whom and in favor of whom entries are made, is entered in the regular course of business as conducted by such creditor or fiduciary, and is kept in a reasonably permanent form and manner, as provided. It does not include "consumer debt," as defined.

Civil Code section 1717.5 establishes the right to recover attorney's fees in contract actions based on a book account where the underlying contract does not contain an attorney's fees provision. Currently the base amounts set by statute are \$960 and \$1,200, depending on the type of obligations upon which the book account is based.

This bill raises those amounts to \$1,200 and \$1,600, respectively.

The bill is sponsored by the California Association of Collectors. No timely support or opposition has been received by the Committee.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Provides that the term “book account” means a detailed statement which constitutes the principal record of one or more transactions between a debtor and a creditor arising out of a contract or some fiduciary relation, and shows the debits and credits in connection therewith, and against whom and in favor of whom entries are made, is entered in the regular course of business as conducted by such creditor or fiduciary, and is kept in a reasonably permanent form and manner and is (1) in a bound book, or (2) on a sheet or sheets fastened in a book or to backing but detachable therefrom, or (3) on a card or cards of a permanent character, or is kept in any other reasonably permanent form and manner. (Code Civ. Proc. § 337a(a).)
- 2) Excludes “consumer debt” from the above definition. “Consumer debt” means any obligation or alleged obligation, incurred on or after July 1, 2024, of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services that are the subject of the transaction are primarily for personal, family, or household purposes and where the obligation to pay appears on the face of a note or in a written contract. (Code Civ. Proc. § 337a.)
- 3) Provides that, except as otherwise provided by law or where waived by the parties to an agreement, in any action on a contract based on a book account, which does not provide for attorney’s fees and costs, the party who is determined to be the party prevailing on the contract shall be entitled to reasonable attorney’s fees, as provided, in addition to other costs. The prevailing party on the contract shall be the party who recovered a greater relief in the action on the contract. The court may determine that there is no party prevailing on the contract for purposes hereof. Fees for a prevailing party bringing the action shall not exceed the lesser of: (1) \$960 for book accounts based upon an obligation owing by a natural person for goods, moneys, or services which were primarily for personal, family, or household purposes; and \$1,200 for all other book accounts to which this applies; or (2) 25 percent of the principal obligation owing under the contract. If the defendant is found to have no obligation owing on a book account, the court shall award that prevailing party reasonable attorney’s fees not to exceed \$960 for book accounts based upon an obligation owing by a natural person for goods, moneys, or services which were primarily for personal, family, or household purposes, and \$1,200 for all other book accounts to which this section applies. These attorney’s fees shall be an element of the costs of the suit. (Civ. Code § 1717.5(a).)

- 4) Clarifies that the above does not apply to any action in which an insurance company is a party nor shall an insurance company, surety, or guarantor be liable thereunder for the attorney's fees and costs, except as provided. It also does not apply to any action in which a bank, a savings association, a federal association, a state or federal credit union, or a subsidiary, affiliate, or holding company of any of those entities, or an authorized industrial loan company, a licensed consumer finance lender, or a licensed commercial finance lender, is a party. (Civ. Code § 1717.5(c).)

This bill raises the above fees available in actions on a contract based on a book account from \$960 and \$1,200 to \$1,200 and \$1,600, respectively.

### COMMENTS

#### 1. Common counts and book accounts

The term "book account" means a detailed statement which constitutes the principal record of one or more transactions between a debtor and a creditor arising out of either a contract or a fiduciary relationship, and shows the debits and credits in connection therewith, and against whom and in favor of whom entries are made, is entered in the regular course of business as conducted by such creditor or fiduciary, and is kept in a reasonably permanent form and manner, as provided.

Last session, AB 1414 (Kalra, Ch. 688, Stats. 2023) prohibited the use of common counts in actions for collection of consumer debt. It also excluded consumer debt from the definition of "book account." "Consumer debt" for these purposes is defined as any obligation or alleged obligation, incurred on or after July 1, 2024, of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services that are the subject of the transaction are primarily for personal, family, or household purposes and where the obligation to pay appears on the face of a note or in a written contract.

Currently, in any action on a contract based on a book account that does not provide for attorney's fees and costs, the party who is determined to be the party prevailing on the contract is entitled to reasonable attorney's fees, in addition to other costs. The prevailing party on the contract is the party who recovered a greater relief in the action on the contract. The court may determine that there is no party prevailing.

For the prevailing party bringing the action on the book account, fees are not to exceed the lesser of: (1) \$960 for book accounts based upon an obligation owing by a natural person for goods, moneys, or services which were primarily for personal, family, or household purposes and \$1,200 for all others; or (2) 25 percent of the principal obligation owing under the contract. Similarly, if the prevailing party is the one against whom the obligation on the book account was asserted, the court shall award that

prevailing party reasonable attorney's fees not to exceed \$960 for book accounts based upon an obligation owing by a natural person for goods, moneys, or services which were primarily for personal, family, or household purposes, and \$1,200 for all others.

The \$960 and \$1,200 amounts were raised last by SB 363 (Morrell, Ch. 80, Stats. 2015) in 2015 from \$800 and \$1,000, respectively.

This bill again raises these amounts significantly to \$1,200 and \$1,600, respectively.

## 2. Stakeholder positions

According to the author:

The intent of AB 78 is to ensure that prevailing parties receive fair compensation for attorney fees in actions based on book accounts. Attorney fees can present a significant financial burden, particularly for individuals who are not in breach of contract yet must hire legal representation. This bill aims to ensure that the prevailing party in such actions is appropriately compensated for attorney fees. Our goal is to increase the compensation amount, as attorney fees have risen in recent years. The current compensation rate has not kept pace with economic changes, and it has been nine years since this system was last updated to reflect the current economy.

The California Association of Collectors, the sponsor of the bill, writes:

California law established statutory attorneys' fees for the prevailing party in any action on a contract based on a book account. Because the amount is fixed in statute it can only be increased by a bill.

The last bill to increase the set fees was SB 363 (Morrell) 2015. It has been ten years since the amount was adjusted.

AB 78 simply increases the established fee based on the CPI over ten years.

## SUPPORT

California Association of Collectors (sponsor)

## OPPOSITION

None received

**RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation:

AB 1414 (Kalra, Ch. 688, Stats. 2023) *See* Comment 1.

SB 363 (Morrell, Ch. 80, Stats. 2015) *See* Comment 1.

**PRIOR VOTES:**

Assembly Floor (Ayes 72, Noes 0)

Assembly Judiciary Committee (Ayes 12, Noes 0)

\*\*\*\*\*