

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 1578 (Committee on Judiciary)

Version: June 18, 2021

Hearing Date: July 6, 2021

Fiscal: Yes

Urgency: No

ME

SUBJECT

Judiciary omnibus

DIGEST

This is the annual Assembly Judiciary Committee omnibus bill.

EXECUTIVE SUMMARY

This bill is the Assembly Judiciary Committee omnibus bill that makes various noncontroversial changes to existing law with the purpose of increasing efficiencies in the legislative process, conserving legislative resources, and eliminating the need to unnecessarily hear a number of technical, clarifying, or modest stand-alone bills that might otherwise have to be introduced and require individual consideration by the Legislature. The bill, among other things, codifies a California Supreme Court holding, corrects code references, clarifies existing law, extends a sunset, increases a statute of limitation, codifies best practices with regard to remote administrative proceedings, and clarifies procedures for petitioning for a change of name or gender for minors in probate guardianships or under the jurisdiction of juvenile courts. The bill is supported by California Insurance Commissioner Ricardo Lara and the Juvenile Court Judges of California and has no known opposition.

PROPOSED CHANGES TO THE LAW

With regard to comment 2, below:

Existing law provides that in any case upon which the entry and activities subject a person having the power of eminent domain to liability, before making such entry and undertaking such activities, the person must secure the written consent of the owner to enter upon the owner's property and to undertake such activities; or an order for entry from the superior court, as provided. (Code Civ. Proc. § 1245.020.)

Existing law provides that if the entry and activities upon property cause actual damage to or substantial interference with the possession or use of the property, whether or not a claim has been presented in compliance with eminent domain law, the owner may recover for such damage or interference in a civil action or by application to the court, as provided. (Code Civ. Proc. § 1245.060 (a).)

Existing law provides that in an eminent domain proceeding funds are on deposit as provided, upon application of the owner, the court must determine and award the amount the owner is entitled to recover under the law and order that amount be paid out of the funds on deposit. (Code Civ. Proc. § 1245.060 (c).)

Existing law provides that if a defendant seeks compensation in an eminent domain action, the answer to the complaint must include a statement that the defendant claims compensation, but the answer need not specify the amount of that compensation. (Code of Civ. Proc. § 1250.230.)

Existing law provides that in an action regarding eminent domain, the defendant is entitled to the following damages: compensation for the property taken; compensation for the amount of the damage, if any, to the remainder of the property; compensation for the amount of the benefit, if any, to the remainder of the property; and compensation for loss of goodwill, if any. (Code of Civ. Proc. § 1260.230.)

This bill codifies the California Supreme Court's holding in *Property Reserve Inc. v. Superior Court* (2016) 1 Cal. 5th 151, providing that a property owner subject to an eminent domain action may seek to recover damages as a defendant and that the property owner possess a waivable right to a jury trial to seek compensation for pre-condemnation damages.

With regard to comment 3, below:

Existing law provides for an administrative law process for adjudicating proceedings related to the dismissal or suspension initiated against a permanent school employee. (Education Code § 44944.)

Existing law provides that an administrative law hearing is to be open to public observation, and to the extent a hearing is conducted by telephone, television, or other electronic means the meeting is considered open to the public if both of the following apply: the public, at reasonable times, may hear or inspect the agency's record, and inspect any transcript obtained by the agency; and the public is permitted to be physically present at the place where the presiding officer is conducting the hearing. (Gov't. Code § 11425.20.)

Existing law provides that the service of a writing to, or giving of a notice to, a person in an administrative hearing must adhere to the following: the writing or notice is sent by mail or other means to the person's last known address or, if the person is a party with

an attorney or other authorized representative of record in the proceeding, to the party's attorney or other authorized representative; and unless otherwise specified, the form of mail, service or notice by mail may be by first-class mail, registered mail, or certified mail, by mail delivery service, by facsimile transmission if complete and without error, or by other electronic means as provided by regulation, in the discretion of the sender. (Gov't Code § 11440.20.)

Existing law specifies timelines and procedures governing discovery in an administrative hearing. (Gov't Code § 11507.6.)

Existing law provides that a state agency involved in an administrative hearing, must consult the Office of Administrative Hearings, and subject to the availability of its staff, determine the time and place of the hearing. (Gov't Code § 11508.)

Existing law provides that the hearing must be held at a hearing facility maintained by the Office of Administrative Hearings in Sacramento, Oakland, Los Angeles, or San Diego and must be held at the facility that is closest to the location where the transaction giving rise to the matter occurred or the respondent resides. (Gov't Code § 11508.)

Existing law requires that a fair hearing, dealing with public benefit denials and appeals, to be held at a time and place reasonably convenient to the claimant and the authorized representative, and that the claimant or the authorized representative of the claimant and the regional center must agree on the location of the fair hearing. (Welf. & Inst. Code § 1712 (e).)

This bill provides that the parties to an administrative hearing regarding the discipline of a full-time educational staff person may mutually agree to conduct the hearing by telephone, videoconference, or other electronic means.

This bill provides that to the extent an administrative hearing is conducted by telephone, television, or other electronic means, and is not closed as otherwise required by law, the requirement that the meeting is open to public observation may be satisfied by doing both of the following: permitting a member of the public, at reasonable times, hear or inspect the agency's record, and inspect any transcript obtained by the agency; and be physically present at the place where the presiding officer is conducting the hearing, unless the presiding officer is conducting the hearing from a private home or other location not normally accessible to the public. If the presiding officer conducts the hearing from a private home or other location not normally accessible to the public, a location shall be designated from which members of the public can observe the hearing or a live audio or video feed of the hearing must be made available to the public on the internet.

This bill permits electronic service of notices and other communications in an administrative hearing.

This bill permits discovery of all evidence, as provided, may be conducted electronically by means prescribed by the administrative law judge overseeing the matter.

This bill permits administrative hearings involving state agencies to hold hearings virtually by telephone, videoconference, or other electronic means, after consultation with the Office of Administrative Hearings.

This bill provides that a fair hearing, dealing with public benefit denials and appeals, may be conducted by telephone, videoconference, or other electronic means, upon the agreement of the parties.

With regard to comment 4, below:

Existing law prohibits, in accordance with the Automobile Sales Finance Act, the seller or holder of a conditional sale contract for a motor vehicle from accelerating the maturity of any part or all of the amount due under the contract or repossessing the vehicle in the absence of default in the performance of any of the buyer's obligations under the contract. The existing law vests the buyer with a right to reinstate a conditional sale contract for a motor vehicle after default, and in all cases requires reimbursing the seller or holder for all reasonable and necessary collection and repossession costs and fees incurred. (Civ. Code § 2983.3.)

This bill clarifies that a buyer that seeks to reclaim a repossessed automobile in a dispute governed by the Automobile Sales Finance Act is only liable for costs actually incurred to a seller in the process of retaking, storing, and reselling the vehicle.

With regard to comment 5, below:

Existing law states that all petitions for the change of the name of a minor submitted by a guardian appointed by the juvenile court or probate court, or by a court-appointed dependency attorney appointed as a guardian ad litem, must be made according to specified rules. (Code Civ. Proc. § 1276(e), (f).) Establishes a similar provision related to petitions for change of gender, but specifically requires such petitions to be made in the appointing court. (Health & Saf. Code § 103430 (f), (g).)

This bill clarifies that the name and gender change petitions described above must be made in the court with jurisdiction over the minor. Enables the attorney for a ward in the juvenile justice system to sign the petition on behalf of the ward. Provides that the publication requirement applicable to petitions for name changes does not apply if the petition is filed for a minor who is under the jurisdiction of the juvenile court.

With regard to comment 6, below:

This bill extends the sunset date of the Limited Examination and Appointment Program, managed by the State Council on Developmental Disabilities until January 1, 2023.

With regard to comment 7, below:

Existing law provides that a civil action for cost recovery against a person who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by that person to escape must be filed within two years. (Health & Saf. Code § 13009 & § 13009.1.)

This bill extends from two to three years the statute of limitations for bringing a civil action for cost recovery against a person who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by that person to escape.

With regard to comment 8, below:

This bill permits the Fair Employment and Housing Council to adopt regulations to carry out its mandates as provided in SB 973 (Jackson), Ch. 363, Stats. 2020, regarding the collection of pay data from employers.

Existing law provides that at the time of filing a petition for approval of a sale of a structured settlement by the court, the transferee of the settlement must transmit notice to the Attorney General. (Ins. Code § 10139.)

This bill eliminates the requirement that a transferee of a structured settlement file a notice of transfer with the Attorney General and replaces the requirement with a requirement that the transferee retain documentation of the transfer for at least three years.

Existing law provides that it is an unlawful employment practice for any employer, as defined, to refuse to grant a request by any employee with more than 12 months of service with the employer, and who has at least 1,250 hours of service with the employer during the previous 12-months for up to 2 workweeks in any 12-month period for family care and medical leave. (Gov't Code § 12945.2 (a).)

Existing law provides that a person requesting leave in accordance with the above may use the leave to care for a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner who has a serious health condition. (Gov't Code § 12945.2 (b).)

This bill clarifies that caring for a parent-in-law qualifies as a permissible family member for the purposes of being able to utilize up to two weeks of family leave in accordance with the California Family Rights Act.

Existing law establishes the Tom Bane Civil Rights Act, which prohibits a person from interfering by threat, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States or of the rights secured by the Constitution or laws of this state. (Civ. Code § 52.1.)

This bill modifies and corrects several inaccurate cross references to the Tom Bane Civil Rights Act. Modifies and corrects an inaccurate cross-reference in the Financial Code provisions dealing with loans secured by a lien upon a motor vehicle.

COMMENTS

1. Stated need for the bill

According to the author:

This bill represents the Judiciary Committee's biennial civil law omnibus bill. Due to the ongoing limits on legislative hearings and capacity, the Committee introduced the bill this year to serve as a vehicle that could combine numerous technical or otherwise non-controversial proposals into one measure, thus promoting legislative efficiencies.

2. Codifies California Supreme Court decision regarding eminent domain

In 2016, the California Supreme Court decided *Property Reserve Inc. v. Superior Court* (2016) 1 Cal. 5th 151, a case regarding eminent domain proceedings. The Court determined that a landowner defendant has the right to collect damages and that the defendant is entitled to specified pre-condemnation damages sustained by their property.

The California Law Revision Commission released a report in 2020 suggesting code updates to reflect the *Property Reserve Inc.* decision. The California Law Revision Commission's suggestions. The Supreme Court's holding in *Property Reserve Inc.* is already the controlling law in the State of California. This bill simply amends the existing law to reflect the court's interpretation of the statute.

3. Codifies best practices of remote administrative hearings

Administrative hearings in California began to take place remotely after Governor Newsom issued stay at home orders in March 2020. Through a series of emergency regulations and other temporary reforms, made possible in large part by the Governor's temporary Executive Orders, most administrative hearings were conducted remotely. By holding hearings remotely, witness, parties, and attorneys were able to travel less and lessen their exposure to COVID-19.

This bill codifies many of the best practices and procedures with regard to remote administrative hearings. The bill permits electronic discovery, explicitly permits remote hearings permanently, and requires that hearings provide the public a physical location to attend the hearing or live stream the proceedings.

4. Clarifies owner payments during repossession of cars

Existing law provides for a process whereby a seller can seek to repossess a car in the event that the buyer is deficient in specified payments. As a part of the process, however, the existing law provides that a buyer may seek to reinstate the contract, and reclaim their automobile, after paying off certain debts. In addition to paying off the delinquent amount of payments on the automobile loan, the buyer is also responsible for paying the reasonable costs and fees “incurred” by the seller related to repossessing the vehicle in the first place. (Civ. Code § 2983.3 (d)(5).) Courts however, have interpreted this language to permit these costs to be generally estimated. (See, *Lobel Financial Corp. v. Guiam* (2019) Santa Clara Co. Super. Ct. No. 1-15-CV-275251.) Given that many of those seeking to reclaim their automobile after repossession are lower income Californians, estimating costs may result in these buyers being forced to pay more than the costs actually paid by the seller as a result of the repossession.

Accordingly, this bill proposes to replace “incurred” language in the existing Civil Code Section 2983.3 with language requiring the repayment of the “actual costs paid” by the seller while repossessing the automobile. This language will require a more exact accounting of the costs related to the repossession, potentially making it easier for lower income Californians to regain access to their automobiles.

5. Clarifies procedures for petitioning for a change of name or gender for minors in probate guardianships or under the jurisdiction of juvenile courts

In order to live safe, full, and authentic lives, it is essential that transgender and gender nonconforming people have access to identity documents that accurately reflect their true name, gender identity, and gender expression. In recent years, the Legislature has addressed some of the hurdles faced by the transgender community in changing these documents. AB 1121 (Atkins, Ch. 651, Stats. 2013) required courts to grant petitions for a change of name sought to conform with the individual’s gender identity, without a hearing if no timely objection is made. The legislation also exempted such petitions from the publication requirement ordinarily applicable to name change petitions. SB 179 (Atkins, Ch. 853, Stats. 2017) enacted the landmark Gender Recognition Act, which streamlined procedures for transgender and gender non-conforming individuals, including minors, to change their name and gender marker to conform with their gender identity in several government identity documents, including birth certificates and driver’s licenses or state identification cards. AB 3250 (Committee on Judiciary; Ch. 776, Stats. 2018) added provisions governing petitions for name or gender changes signed a minor’s behalf by a guardian appointed by the probate or juvenile court.

This bill clarifies the scope of this process in three ways. First, the bill would specify that such petitions must be made in the court that has jurisdiction over the minor. Second, the bill would enable the attorney for a ward in the juvenile justice system to sign the petition on behalf of the ward. This aligns with existing provisions that enable a court-appointed dependency attorney appointed as a guardian ad litem to sign the petition on behalf of a dependent in the child welfare system. Finally, juvenile court proceedings are presumptively closed to the public to ensure sensitive information regarding the youth is kept confidential. (*See* Welf. & Inst. Code §§ 346, 676(a).) The bill clarifies that the publication requirement applicable to petitions for name changes does not apply if the petition is filed for a minor who is under the jurisdiction of the juvenile court.

By clarifying this process, these changes will help protect LGBTQ youth, who are overrepresented in guardianships, foster care, and the juvenile justice system. An inability to obtain accurate identity documents, swiftly and privately, subjects them to additional discrimination and trauma.

6. Extends the sunset date of the Limited Examination and Appointment Program

The Limited Examination and Appointment Program (LEAP) is a state-run program that permits Californians with disabilities to demonstrate skills necessary for state employment through on-the-job testing and training instead of the traditional state civil service examination process. This program ensures that Californians with disabilities can successfully join the state workforce. This program sunsets at the end of 2021. This bill extends the sunset to January 1, 2023.

7. Extending from two to three years the statute of limitations for bringing a civil action for cost recovery against a person who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by that person to escape

Existing law provides the Department of Forestry and Fire Protection (Department) with the ability to seek civil cost recovery against a person who negligently sets or negligently permits a fire to escape its boundaries in order for the Department to recoup its costs in fighting and investigating the fire. Existing case law provides that these civil actions must be filed within two years of the *ignition* of the fire. (*See, e.g. People v. Wilson* (1966) 240 Cal.App.2d 574.) This bill would extend from two years to three years the time frame in which these civil actions must be filed.

The Assembly Judiciary Committee staff analysis explains that in recent years, the quantity and severity of wildland fires has increased dramatically. “Accordingly, not only are fires becoming more complicated to investigate but the investigative resources maintained by the Department are increasingly stretched thin. As a result of the recent changes in California’s fire patterns and behavior, fully investigating a fire and building an actionable case against a person alleged to have started the fire takes more time, thus

making the existing two-year statute of limitations harder to meet. This bill would simply increase the time to file civil actions for wildfire cost recovery actions from two years to three years, providing the Department with sufficient time to investigate fires, build cases, and ensure that the public is not forced to unnecessarily absorb the cost of fighting wildfires started by negligent human behavior.”

8. Other changes to law, including technical fixes

This year’s Assembly Judiciary Committee omnibus bill updates code sections to properly reflect the intent of the Legislature. Additionally, this bill fixes erroneous cross references that were generated after the Legislature codified the naming of the Tom Bane Civil Rights Act in the 2018 Civil Law Omnibus. Similarly, this bill remedies an omission of a reference to “parent-in-law” in last year’s SB 1383 (Jackson, Ch. 86, Stats. 2020) which established the California Family Rights Act and sets forth the provisions for taking family leave in California. The bill also makes a technical change in how structured settlements are reviewed by the California Attorney General. Current law requires notice of transmission of the settlement rights to be filed with the Attorney General. The Department of Justice indicates that there is little else the Department can do with these filings. This bill requires the transferee of the settlement to retain the notice of transfer and produce the documentation upon request of authorities.

SUPPORT

California Insurance Commissioner Ricardo Lara
Juvenile Court Judges of California

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: AB 3364 (Committee on Judiciary, Ch. 36, Stats. 2020) Assembly Committee on Judiciary omnibus bill.

PRIOR VOTES:

Assembly Floor (Ayes 66, Noes 1)
Assembly Appropriations Committee (Ayes 13, Noes 1)
Assembly Judiciary Committee (Ayes 9, Noes 1)
