

8SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 1758 (Committee on Judiciary)

Version: March 2, 2023

Hearing Date: June 27, 2023

Fiscal: Yes

Urgency: No

AM

SUBJECT

Court records: fees

DIGEST

This bill requires a court to make public court records that are maintained in an electronic format available to the public for inspection and copying at a courthouse during hours when the courthouse is open to the public. The bill requires a court to provide remote access to all public court records about civil cases that are maintained by the court in an electronic format, as specified. The bill prohibits a court that provides the public with remote access to these records from charging a fee to search for, download, or copy the records. The bill authorizes a court to charge a fee to a commercial user for viewing, searching, duplicating, downloading, or printing public court records in an electronic format, and requires the Judicial Council, by January 1, 2026, to develop a rule of court establishing statewide commercial user fees or a process for courts to use in developing commercial user fees.

EXECUTIVE SUMMARY

Access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state, as provided by both the California Constitution and statute. It has come to the attention of the author that some courts charge the public to access court records posted online in an electronic format. This policy acts as an impediment to the public being able to effectuate this fundamental right. To address this deficiency, the bill requires a court to provide remote access to all public court records about civil cases maintained by the court in an electronic format, and prohibits the court from charging the public a fee to search for these records. In order to strike a balance, the bill allows courts to charge commercial users fees for accessing those records. This bill is a reintroduction of AB 2962 (Committee on Judiciary, 2022), which passed this Committee but was ultimately held in the Senate Appropriations Committee.

The bill is author sponsored. It is supported by California News Publishers Association, the Consumer Attorneys of California, and the First Amendment Coalition. There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- a) Provides, pursuant to the California Constitution, that the people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies are required to be open to public scrutiny. (Cal. Const. art. I, § 3 (b)(1).)
 - a) Requires a statute that limits the public's right of access to be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. (Cal. const. art. I, § 3(b)(1).)
 - b) Requires a statute to be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. (Cal. const. art. I, § 3(b)(1).)
- b) Governs the disclosure of information collected and maintained by public agencies pursuant to the California Public Records Act (CPRA). (Gov. Code §§ 7920.000 et seq.)
 - a) Provides that all public records are accessible to the public upon request, unless the record requested is exempt from public disclosure. (Gov. Code § 7922.525.)
 - b) Defines "public records" as any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. (Gov. Code § 7920.530.)
 - c) Defines "public agency" as any state or local agency. (Gov. Code § 7920.525(a).)
 - d) Defines "state agency" as every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution. (Gov. Code § 7920.540.)
- c) Requires that, unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this division that is in an electronic format shall make that information available in an electronic format when requested by any person. (Gov. Code § 7922.570.)
- d) Requires that the cost of duplication of an electronic record to be limited to the direct cost of producing a copy of a record in an electronic format. (Gov. Code § 7922.575(a).)

- e) Provides the requester is required to bear the cost of producing a copy of the record, including the cost to construct a record and the cost of programming and computer services necessary to produce a copy of the record, when either of the following applies:
 - a) in order to comply with the CPRA the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals; or
 - b) the request would require data compilation, extraction, or programming to produce the record. (*Id.* at (b).)

- f) Authorizes trial court records to be e created, maintained, and preserved in any form or forms of communication or representation, including paper, optical, electronic, magnetic, micrographic, or photographic media or other technology pursuant to the rules adopted by the Judicial Council. (Gov. Code § 68150(a).)
 - a) Requires the Judicial Council to adopt rules to establish the standards or guidelines for the creation, maintenance, reproduction, or preservation of court records, including records that must be preserved permanently. The standards or guidelines shall reflect industry standards for each medium used, if those standards exist. The standards or guidelines shall ensure that court records are created and maintained in a manner that ensures accuracy and preserves the integrity of the records throughout their maintenance. (*Id.* at (c).)
 - b) Requires these court records to be made reasonably accessible to all members of the public for viewing and duplication as the paper records would have been accessible, unless access is otherwise restricted by law. (*Id.* at (l).)
 - c) Requires reasonable provisions to be made for duplicating the records at cost. Cost consist of all costs associated with duplicating the records as determined by the court. (*Ibid.*)

- g) Provides for courts to charge the following fees related to court records.
 - a) Fifty cents per page to cover the cost of preparing copies of any record, proceeding, or paper on file in the clerk's office.
 - b) One dollar per page, in addition to the fee for the certificate, for comparing with the original on file in the office of the clerk of any court, the copy of any paper, record, or proceeding prepared by another and presented for the clerk's certificate.
 - c) Fifteen dollars for each search of records or files conducted by a court employee that requires more than 10 minutes. (Gov. Code § 70627.)

- h) Defines "court record" as consisting of the following:
 - a) all filed papers and documents in the case folder, but if no case folder is created by the court, all filed papers and documents that would have been in the case folder if one had been created;

- b) administrative records filed in an action or proceeding, depositions, transcripts, including preliminary hearing transcripts, and recordings of electronically recorded proceedings filed, lodged, or maintained in connection with the case, unless disposed of earlier in the case pursuant to law; or
- c) other records listed under subdivision (g) of Section 68152. (Gov. Code § 68151(a).)

This bill:

- 1) Requires a court to make public court records maintained in an electronic format available to the public, in either electronic or paper form, for inspection and copying at a courthouse during hours when the courthouse is open to the public, unless otherwise prohibited by law.
- 2) Requires a court to provide remote access to all public court records about civil cases that are maintained by the court in an electronic format, except as provided.
- 3) Authorizes a court to provide the public with remote access to the records by means that include, but are not limited to, an internet website maintained by the court or a third party on behalf of the court.
- 4) Exempts a court from providing access to documents required by 2), above, in either of the following circumstances:
 - a) it is not reasonably feasible for the court to make the records available by remote means because the court lacks either the resources or the technical capacity to do so; or
 - b) the record is about one of the types of civil cases listed in the California Rules of Court as a type of civil case to which a court may not provide remote access.
- 5) Prohibits a court that provides the public with remote access to the records described in 2), above, from charging a fee to search for, download, or copy public court records.
 - a) Notwithstanding the above prohibition, authorizes a court to charge a fee to a commercial user for viewing, searching, duplicating, downloading, or printing public court records in an electronic format.
- 6) Requires the Judicial Council, by January 1, 2026, to develop a rule of court establishing statewide commercial user fees or a process for courts to use in developing commercial user fees.
- 7) Defines the following for the purpose of this section:

- a) "Commercial user" means a person or entity, or any person acting on behalf of an entity, that has viewed, downloaded, or printed at least 100 individual electronic court records during a 12-month period for commercial purposes.
- b) None of the following are considered a commercial user:
 - i. An entity formally organized as a nonprofit corporation, including, but not limited to, a nonprofit organization providing legal services to the persons whose records are obtained.
 - ii. An attorney or law firm that obtains a record about a client.
- c) A person who attests that the records are needed for a scholarly, journalistic, political, or government use.
- d) "Court record" has the same meaning as existing provisions of the Government Code.
- e) "Public court record" means a court record that is not sealed by court order, made exempt from remote public access under the California Rules of Court, or otherwise confidential by law.

COMMENTS

1. Stated need for the bill

The author writes:

AB 1758 ensures that the public will have the same access to electronic court records that they now have to other electronic public records; requiring that the public can search for, download, and copy electronic court records without paying unreasonable fees.

2. Public access to court records posted online

- a. *Access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state*

Access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Cod § 7921.000.) In 2004, the right of public access was enshrined in the California Constitution (*hereafter* Constitution) with the passage of Proposition 59 (Nov. 3, 2004, statewide gen. elec.),¹ which amended the Constitution to specifically protect the right of the public to access and obtain government records: "The people have the right of access to information concerning the conduct of the people's business, and therefore the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny." (Cal. Const., art. I, sec. 3 (b)(1).) The Constitution mandates that a statute,

¹ Prop. 59 was placed on the ballot by a unanimous vote of both houses of the Legislature. (SCA 1 (Burton, Ch. 1, Stats. 2004).

court rule, or other authority is to be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. (*Ibid.*) Additionally, it requires a statute that limits the public's right of access to be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. (*Ibid.*) Under the CPRA, a public record is defined as any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any public agency regardless of physical form or characteristics. (Gov. Code § 7920.530.) A "state agency" is defined as every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.² (Gov. Code § 7920.540.) The CPRA therefore specifically exempts its provisions from applying to the courts.

Even though the CPRA does not specifically apply to court records, the California Supreme Court has held that there is a common law right of access to court records in which there is a legitimate public interest, if not outweighed by strong countervailing reasons, and further noted that "the general principles regarding public access to the records of public entities established in the statutes and [applicable] case law [...] continue to apply in the context of court records."³ (*Sander v. State Bar of California*, (2013) 58 Cal.4th 300, 318-323.) The court has found that the Constitutional provisions related to the people having the right of access to information regarding the people's business and the mandate that limitation on access be narrowly construed also applies to court records. In *Savaglio v. Wal-Mart Stores, Inc.*, the court stated: "With the passage of Proposition 59 effective November 3, 2004, the people's right of access to information in public settings now has state constitutional stature, grounding the presumption of openness in civil court proceedings with state constitutional roots." ((2007) 149 Cal. App. 4th 588, 597.) In *Sander v. State Bar of California*, the California Supreme Court recognized that Article I, § 3 of the California Constitution applies to records of the judicial branch and applied the narrow construction rule to certain State Bar records at issue in that case. (*Sander v. State Bar of California*, *supra* at 312-313.)

b. Some courts charge the public to access public court records posted online in an electronic format

Some courts in the state charge the public to access to their public court records which are posted online in an electronic format. The Judicial Council states the reason is to cover costs associated with the creation, maintenance, and management of their electronic systems that allow for public access to those electronic records. According to the Judicial Council, in 2021 almost \$30 million dollars was collected by various courts

² The CPRA does specifically provide that an itemized statement of the total expenditures and disbursement of any agency provided for in Article VI of the California Constitution shall be open for inspection. (Gov. Code § 7928.720.)

³ See also *City of San Jose v. Superior Court*, (2017) 2 Cal.5th 608, 617; *American Civil Liberties Union Foundation of Southern California v. Superior Court*, (2017) 3 Cal.5th 1032, 1036-37.

in fees for providing access to electronic records online. The exact number of courts that do this is unclear, as the Judicial Council is unable to provide details about how common the practice is. This issue was encountered first hand by staff of the Assembly Judiciary Committee, sponsor of the bill, when they were searching for Sacramento County court records related to that Committee's work. Staff were unable to even search for the records they were trying to obtain without paying an initial fee. Under the CPRA, public agencies are prohibited from charging the public more than the "direct cost of producing a copy of a record in an electronic format," and generally cannot charge for the staff costs of searching for records, redacting nonpublic information, or monitoring the public viewing of records, even though such costs can be substantial. (Gov. Code 7922.575.)

c. This bill is a reintroduction of AB 2962 (Committee on Judiciary, 2022)

This bill is a reintroduction of AB 2962 (Committee on Judiciary, 2022). AB 2962 passed this Committee on a vote of 10 to 0 with amendments to address several issues raised by stakeholders and the Judicial Council. These included:

- extending the date upon which the Judicial Council is to develop a rule of court establishing statewide commercial user fees or a process for courts to use in developing user fees to two years after the bill becomes operative;
- removing provisions that were duplicative of existing law;
- clarifying, consistent with California Rule of Court 2.503, that a court is required to provide remote access to all public court records about civil cases that are maintained by the court in electronic format unless it is not feasible for the court to make the records available remotely due to lack of resources or technical capacity or if they are the types of records specifically listed in the California Rules of Court as records for which remote access is not to be granted; and
- providing that a commercial user does not include an attorney or law firm that obtains a record about a client or a person who attests that the records are needed for a scholarly, journalistic, political, or government use.

All of these amendments are included in the bill that is before the Committee.

3. Statements in support

The Consumer Attorneys of California write in support stating:

Unfortunately, a number of courts in the state charge the public and attorneys representing their clients to access public court records that are posted online in an electronic format, charging fees to search for, download and copy records. They do so, according to the JCC, in order to cover their costs associated with the creation, maintenance, and management of their electronic systems that allow for public access to those electronic records. This seems to directly conflict with the CPRA,

under which public agencies are prohibited from charging such fees and from passing on their administrative costs to the public. [...]

AB 1758 places reasonable limits on the access to sensitive and personal information within court records. It does not authorize public access to court records that have been sealed by court order or that are confidential by law. Finally, in addition to defining relevant terms, AB 1758 ensures that public court records maintained in an electronic format are available for inspection and copying at a courthouse during hours when the courthouse is open to the public.

The California News Publishers Association and the First Amendment Coalition, supporters of the bill, write:

Unfortunately, the charges levied by some California courts to search for, view and download electronic public court records amount to just such an arbitrary barrier to access clearly public records. For example, some courts charge .50 cents per page to simply view electronic records on Superior Court websites. For journalists who do the important work of informing the public about developments in our courts, such charges are in practical effect a complete barrier to accessing public court records.

When journalists cannot access court records due to excessive fees, our entire state loses. Ready access to court documents is consistent with the First Amendment and long-standing tradition of transparency in our judicial system.

AB 1758 puts important limits on what courts can pass on to the press and public for accessing electronic records remotely, thereby removing real barriers to this important right of access.

SUPPORT

California News Publishers Association
Consumer Attorneys of California
First Amendment Coalition

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: AB 2962 (Committee on Judiciary, 2022), *see* Comment 2), above.

PRIOR VOTES

Assembly Floor (Ayes 79, Noes 0)

Assembly Appropriations Committee (Ayes 15, Noes 0)

Assembly Judiciary Committee (Ayes 11, Noes 0)
