

Date of Hearing: May 11, 2020

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
AB 3364 (Committee on Judiciary) – As Amended May 4, 2020

PROPOSED CONSENT

SUBJECT: JUDICIARY OMNIBUS

KEY ISSUE: SHOULD VARIOUS NON-CONTROVERSIAL, TECHNICAL CHANGES BE MADE TO MATTERS RELATED TO CIVIL LAW WITHIN THE JURISDICTION OF THE JUDICIARY COMMITTEE?

SYNOPSIS

This non-controversial bill constitutes the biennial civil law omnibus bill of the Assembly Judiciary Committee (Committee). The purpose of the omnibus bill is to increase the efficiency of the legislative process, conserve legislative resources, and eliminate 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 this Committee. This year's effort includes clarifications to two bills heard and approved by this Committee in 2019, related to mandatory continuing legal education training and unclaimed property. Furthermore, this bill clarifies the Fair Employment and Housing Act related to military or veteran status to remove ambiguity in the existing law. Additionally, the bill modernizes the requirements of a report from the Judicial Council of California to the Legislature to reflect accounting system changes implemented as the judicial branch transitioned to the state's troubled Fi\$Cal accounting reporting system, and clarifies provisions of a measure approved by this Committee related to property sales in high and very high fire severity zones. Finally, this bill makes several other technical changes including clarifying the Attorney General's ability to enforce the Fish and Game Code, and modernizing outdated cross-references related to submitting demand letters to the California Commission on Disability Access. As currently in print, this omnibus measure has no known opposition.

SUMMARY: Enacts various technical changes to several of the California codes as part of the Committee's civil law omnibus bill. Specifically, **this bill:**

- 1) Clarifies that the mandatory continuing legal education curriculum related to implicit bias training for California attorneys commences with the compliance period ending after January 31, 2022.
- 2) Restores an erroneously deleted provision of law and corrects outdated cross references to reflect the proper procedure for submitting as demand letters and other documents related to disability access claims to the California Commission on Disability Access.
- 3) Clarifies that nothing in the existing law outlining the disclosures and duties required of property buyers and sellers in high or very high fire severity zones is to be interpreted as limiting the ability of a state or local agency to enforce defensible space requirements.

- 4) Clarifies that, among other documentation, a debtor seeking to stop the collection of a debt incurred as a result of identity theft must provide the debt collector with a copy of an theft report published by the Federal Trade Commission.
- 5) Augments existing law related to debtors examinations to include limited liability companies within the list of corporate entities that must designate one or more officers, directors, managing agents, or other persons who are familiar with its property and debts to appear and be examined.
- 6) Provides that the clerk of a court must allow access to limited civil case records, including the court file, index, and register of actions including in a case of a complaint involving the unlawful detainer of residential property to any other person only if judgment against all defendants has been filed for the plaintiff.
- 7) Clarifies that a school district or community college district is included within the definition of “local agency” for the purposes of the state’s unclaimed property laws thereby permitting property to be transferred by the Controller directly to the school district or community college district without the filing of a claim.
- 8) Provides that the Attorney General may bring a civil action upon their own authority in the name of the people of the State of California, to enforce water pollution laws within the Fish and Game Code, as provided.
- 9) Clarifies that for the purposes of the Fair Employment and Housing Act, military or veteran status is deemed a civil right to be protected by the Act.
- 10) Deletes an outdated cross reference in provisions of the Probate Code defining a “sole trustee” for the purpose of setting forth how a trustee may be removed in accordance with the provisions of a trust document.
- 11) Modifies a report from the Judicial Council to the Legislature regarding trial court procurement contracts to reflect information provided by the courts to the state’s Fi\$Cal website.

EXISTING LAW:

- 1) Requires that the mandatory continuing legal education curriculum for all attorney licensees include training on implicit bias and the promotion of bias-reducing strategies to address how unintended biases regarding race, ethnicity, gender identity, sexual orientation, socioeconomic status, or other characteristics undermine confidence in the legal system, and requires a licensee to meet the implicit bias requirements for each compliance period ending after January 31, 2023. (Business and Professions Code Section 6070.5.)
- 2) Requires an attorney sending a demand letter related to a potential violation of the laws regarding disability access, within five business days of providing the demand letter, to send a copy of the demand letter, and submit information about the demand letter in a standard format specified by the California Commission on Disability Access on the commission’s web site. (Civil Code Section 55.32.)

- 3) Provides that, among other documentation, a debtor seeking to stop the collection of a debt incurred as a result of identity theft must provide the debt collector with a copy of the Federal Trade Commission's Affidavit of Identity Theft. (Civil Code Section 1788.18 (b)(1).)
- 4) Requires that, on and after July 1, 2021, a seller of a real property that is located in a high or very high fire hazard severity zone, as identified by the Director of Forestry and Fire Protection, to provide to the buyer documentation stating that the property is in compliance with Public Resources Code provisions related to defensible space or local vegetation management ordinances. (Civil Code Section 1102.19 (a).)
- 5) Requires that, on and after July 1, 2021, if the seller of a real property described in 4), has not obtained documentation of compliance, then the seller and the buyer must enter into a written agreement pursuant to which the buyer agrees to obtain documentation of compliance with the Public Resources Code or a local vegetation management ordinance. (Civil Code Section 1102.19 (b).)
- 6) Permits a judgment creditor to apply to the court for an order requiring the judgment debtor to appear before the court, or before a referee appointed by the court, at a time and place specified in the order, to furnish information to aid in enforcement of the money judgment. (Code of Civil Procedure Section 708.110 (a).)
- 7) Provides that if a corporation, partnership, association, trust, or other organization is served with an order to appear for an examination in accordance with 6), the entity is to designate one or more officers, directors, managing agents, or other persons who are familiar with its property and debts to appear and be examined. (Code of Civil Procedure Section 708.150 (a).)
- 8) Requires the clerk of a court to allow access to limited civil case records, including the court file, index, and register of actions including in a case of a complaint involving the unlawful detainer of residential property to any other person, if 60 days have elapsed since the complaint was filed with the court, and, as of that date, judgment against all defendants has been entered for the plaintiff, after a trial. (Code of Civil Procedure Section 1161.2.)
- 9) Provides that property reported to, and received by, the Controller pursuant to the state's unclaimed property law, is unclaimed in the name of a state agency, including the University of California and the California State University, or a local agency, may be transferred by the Controller directly to the state or local agency without the filing of a claim. (Code of Civil Procedure Section 1540.)
- 10) Imposes a civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each violation of the Fish and Game Code related to placing specified pollutants into the waters of the state. (Fish and Game Code Section 5650.1 (a).)
- 11) Provides that a civil action seeking the penalties described in 10) must be brought by the Attorney General upon complaint by the department, or by the district attorney or city attorney in the name of the people of the State of California, and any actions relating to the same violation may be joined or consolidated. (Fish and Game Code Section 5650.1 (d).)
- 12) Recognizes and declares that the opportunity to seek, obtain, and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical

disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status is a civil right. (Government Code Section 12921 (a).)

- 13) Provides that it is an unlawful employment practice for an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment. (Government Code Section 12940.)
- 14) Provides that a trustee may be removed in accordance with the trust instrument, by the court on its own motion, or on petition of a settlor, cotrustee, or beneficiary, and defines the criteria a court must apply when removing a trustee on its own motion. (Probate Code Section 15642.)
- 15) Requires, beginning in 2012, the Judicial Council to provide two reports a year to the Joint Legislative Budget Committee and the State Auditor that detail information related to procurement of contracts for the judicial branch. Requires the first report be provided no later than February 1 of each year, covering the period from July 1 through December 31 of the prior year, and the second report to be provided no later than August 1 of each year, covering the period from January 1 through June 30 of the same year. (Public Contract Code Section 19209 (a).)
- 16) Requires each of the two annual reports detailed in 15) to include a list of all vendors or contractors receiving payments from any judicial branch entities, and for each vendor or contractor receiving any payment during the reporting period, the report to provide a separate listing for each distinct contract between that vendor or contractor and a judicial branch entity and further identify the amount of payment to the contractor or vendor, the type of service or good provided, and the judicial branch entity or entities with which the vendor or contractor was contracted to provide that service or good. (Public Contract Code Section 19209 (b).)
- 17) Requires each of the two annual reports detailed in 15) to include a list of all contract amendments made during the report period, and for each amendment to identify the vendor or contractor, the type of service or good provided under the contract, the nature of the amendment, the duration of the amendment, and the cost of the amendment. (Public Contract Code Section 19209 (c).)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: This bill is the Assembly Judiciary Committee's biennial omnibus civil law bill. The purpose of the omnibus bill is intended to increase the efficiency of the legislative process, conserve legislative resources, and eliminate the need to unnecessarily hear a number of technical, clarifying, or modest stand-alone bills that might otherwise have to be introduced and heard separately by this Committee. Although it appears that most—if not all of these provisions—are non-controversial, this analysis provides a brief review of most of this bill's provisions.

Clarifies the implementation date of the new anti-bias curriculum for attorney’s mandatory continuing legal education requirements. In 2019, the Legislature enacted AB 242 (Kamlager-Dove), Chap. 418, Stats. 2019, that required all attorneys licensed in California to study, as a part of the mandatory continuing legal education curriculum, implicit bias and strategies for the promotion of bias reduction. That bill intended for the training to commence in 2022, and thus required the State Bar of California to adopt implementing regulations to mandate the training by January 1, 2022. However, that bill provided that attorneys would not need to take or report the training until the mandatory continuing legal education reporting period beginning after January 31, 2023. Due to the nature and timing of the State Bar of California’s mandatory continuing legal education reporting cycles, the existing law’s implementation timeline essentially permits those attorneys for which 2022 is the final year of the reporting cycle to avoid taking the implicit bias training, despite the requirement that State Bar of California adopt the regulations mandating the training by January 2022 (presumably to ensure that attorneys would begin taking the training in 2022). It appears that this was an unintentional oversight in AB 242 stemming from the annual January 31st compliance deadline for mandatory continuing legal education reporting. This bill corrects the oversight by requiring attorneys to take implicit bias training for all reporting cycles ending after January 31, 2022.

Clarifying the scope of a “local agency” for the purpose of California unclaimed property laws. Last year, the Legislature enacted AB 1637 (Smith), Chap. 320, Stats. 2019, which among other reforms, deemed specified state and local government entities eligible for automatic payments and transfers of unclaimed property held by the State Controller. The bill did not expressly include of K-12 school districts and community college districts in the group of eligible government entities. However, case law has long classified these districts as government agencies and thus it was presumed that in adopting AB 1637 they too would be eligible to receive unclaimed property automatically from the State Controller. Despite the case law, concerns have been raised to the State Controller that without modifications to the existing law, school districts and community college districts may not be eligible for the automatic property transfers authorized by AB 1637. Accordingly, this bill will simply clarify the law and expressly include school districts and community college districts within the group of state and local agencies eligible for automatic property transfers.

Clarifies that recent changes in property sales disclosures in high or very high fire hazard severity zones do not impact enforcement of defensible space requirements imposed by a state or local agency. Last year, this Committee approved AB 38 (Wood) Chap. 391, Stats. 2019, a bill meant to increase property owners’ compliance with laws requiring them to maintain defensible space around their properties located in high and very high fire hazard severity zones. That bill addressed the duties of sellers and buyers of real property located in high and very high fire hazard zones, and was meant to ensure that buyers were aware of fire dangers and their responsibilities to mitigate these dangers. That bill required a home seller to obtain a certificate of compliance with various state and local defensible safe laws, or enter into an agreement with the buyer requiring the buyer to obtain the certificate. At the end of the 2019 legislative session, concerns were raised that some may, wrongfully, believe the certificate was sufficient for ongoing compliance with the law.

This bill will clarify that nothing in AB 38, including a party’s possession of a certificate of compliance or agreement to obtain the certificate, impairs the ability of the Department of Forestry and Fire Protection or a local firefighting agency from enforcing any state or local defensible space statute or ordinance.

Clarifying the ability of the Attorney General to enforce anti-pollution provisions of the Fish and Game Code. Existing provisions of the Fish and Game Code provide for civil penalties up to \$25,000 per violation for any person found liable for discharging any substance or material deleterious to fish, plant life, mammals, or bird life into waters of the state. (Fish and Game Code Section 5650.) The Attorney General is authorized to file enforcement actions in accordance with Fish and Game Code Section 5650 only upon a “complaint of the Department” of Fish and Wildlife. This provision runs counter to the existing law that freely permits local district attorneys to file actions upon their own authority. The Department of Justice notes that limits imposed on the Attorney General that do not apply to local district attorneys may conflict with the California Constitution which authorizes the Attorney General to step in the shoes of a district attorney if the district attorney is not adequately enforcing state law. To clarify the existing law, and resolve any conflict in the Attorney General’s authority, this bill would authorize the Attorney General to file actions to recover civil penalties for violations of Fish and Game Section 5650 on their own accord while encouraging the Attorney General to consult with the Department of Fish and Wildlife before pursuing such actions.

Ensuring that the veterans or members of the military are properly classified within the Fair Employment and Housing Act. In 2013, the Legislature enacted AB 556 (Salas), Chap. 691, Stats. 2013, which provided that “military and veteran status” was a protected class within the provisions of the Fair Employment and Housing Act. (Government Code 12900 *et seq.*) Although the term “military and veteran” status is an odd phrase, given that unless a person is serving as a reservist, typically one is either an active duty member of the military or a veteran, it nonetheless appears that courts have successfully understood the Legislature’s intent to protect persons serving in the military or with veterans status in employment and housing related matters. However, last year the Legislature enacted SB 222 (Hill), Chap. 601, Stats. 2019, which further strengthened protections for military members and veterans in the Fair Employment and Housing Act but referred to this class as persons as having “military or veterans” status.

Given that the existing law now refers to persons with “military *and* veterans” status as well as those with “military *or* veterans” status, the inelegance of classifying a person with “military and veterans” status becomes potentially problematic. When examining the legislative records of both AB 556 and SB 222, there is no evidence to suggest that the Legislature intended to treat military members or veterans differently within the context of the Fair Employment and Housing Act. Accordingly, to ensure that no conflicts arise due to the two different phrases currently deployed in existing law, this bill proposes to amend the Fair Employment and Housing Act to ensure that all references to active members of the military or veterans will now read “military or veterans” status.

Modifications to the statutorily required documentations necessary to avoid debts related to identity theft must be enacted after the federal administration eliminated a critical form.

Presently, should a victim of identity theft seek to avoid incurring debts related to the theft, the existing law details a number of steps the victim must take to avoid being charged with the debt. Existing law states that a debtor can cause a debt collector to pause collection of a debt and complete a required review of the debt by providing the debt collector with a police report and a written statement. The statute provides that a “Federal Trade Commission’s Affidavit of Identity Theft” as one of the items that can constitute a written statement. The present federal administration has discontinued the use of the Affidavit of Identity Theft, thus presenting victims of identity theft with a conundrum: use the updated forms that may not comply with California law or provide other written statements that may not carry the weight of the federal form. To

assist identity theft victims, this bill simply replaces the existing reference to the Affidavit of Identity Theft with a reference to the “identity theft report published by the Federal Trade Commission” thus incorporating current Federal Trade Commission practices and likely providing greater statutory flexibility should the federal government again modify its documents related to identity theft.

Updating the process to submit demand letters to the California Commission on Disability Access. As a part of the package of reforms to California’s disability access litigation process the California Commission on Disability Access was tasked with receiving demand letters sent in potential disability access cases. Currently the Commission receives and processes over six thousand complaints, pre-litigation letters and case resolutions annually. When the Commission was moved into the Department of General Services, some then-existing laws were moved and otherwise modified, thus inadvertently creating an ambiguity regarding the Commission’s authority to design a format and procedure to receive the disability access case documents in an efficient manner. Furthermore, the Commission’s ability to properly notice these procedures was also jeopardized by cross-reference errors created by the reforms. This bill will remedy these errors in the code to ensure that the Commission has full legal authority to complete its mandated work.

Ensuring that Limited Liability Companies are subject to debtor’s examination laws. Existing law permits a creditor to seek to examine the financial records of a debtor by requesting the court order a debtor’s examination. In the business context, the law requires various corporate entities to make available their records, as well as corporate officers who are versed in the corporate entities financial history. The existing law lists the type of business entities subject to examination, including corporations and partnerships. Notably, the existing law does not specifically list limited liability companies in the statute enabling debtor examinations of corporate entities. This bill would add limited liability companies to the list of entities subject to the examination, to ensure that a company cannot evade the law simply due to their corporate form.

Clarifying record availability in housing rental cases. Existing law requires court clerks to allow access to court records in rental unlawful detainer actions, “if the plaintiff prevails in the action within 60 days of the filing of the complaint.” This provision is ambiguous as to whether records should be unsealed in cases in which a landlord sues multiple tenants, but only prevails against some of them. For example, one roommate might successfully defend against an unlawful detainer, while the other roommate loses as the result of a default judgment. Conversely, the existing law related to post-foreclosure unlawful detainers requires the court clerk to allow access to the records after, “60 days have elapsed since the complaint was filed with the court, and, as of that date, judgment against all defendants has been entered for the plaintiff, after a trial.” This is a clear standard: records should be unsealed in cases in which a property owner sues multiple tenants, and prevails against all of them. This bill seeks to standardize the record provisions for various forms unlawful detainer by requiring access to records only after a plaintiff has prevailed against all defendants.

Modernizing Judicial Council procurement reports to reflect the realities of the Fi\$Cal system. Existing provisions of the Public Contract Code require the Judicial Council of California to report biennially on all judicial branch contracts and contract amendments. These reporting provisions were enacted in 2011 following a critical audit of the judicial branch’s finances in 2010. During fiscal year 2018-19, the state-level entities within the judicial branch, including

the Judicial Council, the California Supreme Court, the California Courts of Appeal, and the Habeas Corpus Resource Center, migrated to the state's much-maligned Fi\$Cal system for managing accounting and procurement transactions. This transition was conducted in accordance with the existing law requiring state-level agencies and departments to adopt the new system. As a result of this transition, the Judicial Council has indicated to this Committee that many of the reporting requirements specified in existing law are in conflict with one-size-fits-all reporting capacities of the Fi\$Cal system and the information required of the trial courts. Specifically, the judicial branch reports difficulties generating much of the vendor-specific data required by existing law given the constraints of the Fi\$Cal system. This bill proposes to recast the provisions of the Public Contract Code to better align the reporting requirements placed on the court with the reporting capabilities of the Fi\$Cal system. Finally, given that Fi\$Cal data is publically available, on-demand, through the state's Fi\$Cal website, to generate efficiencies for the courts, this bill proposes to limit the reporting to the Legislature to one annually generated document.

REGISTERED SUPPORT / OPPOSITION:**Support**

None on file

Opposition

None on file

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