

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

AB 3364 (Committee on Judiciary)

Version: August 3, 2020

Hearing Date: August 13, 2020

Fiscal: Yes

Urgency: No

AM

SUBJECT

Judiciary omnibus

DIGEST

This bill makes various noncontroversial changes to existing law, including clarifying existing law, deleting obsolete references, extending sunsets, and removing sunsets thereby indefinitely extending certain provisions of law.

EXECUTIVE SUMMARY

This bill is the biennial Assembly Judiciary 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, clarifies mandatory continuing legal education requirements related to implicit bias for attorneys, clarifies the Fair Employment and Housing Act related to military or veteran status to remove ambiguity in the existing law, and clarifies that existing provisions related to property sales in high and very high fire severity zones is not to be interpreted as limiting the ability of a state or local agency to enforce defensible space requirements. The bill also updates the requirements of a report from the Judicial Council of California to the Legislature to and modernizes various outdated cross-references.

Due to the COVID-19 Pandemic, the unprecedented nature of the 2020 Legislative Session, and the challenges of working under a compressed timeline, provisions of AB 325 (Ramos),¹ AB 3062 (Obernolte),² and AB 3365 (Assembly Committee on Judiciary)³ were amended into this bill.

¹ See Comment 4.

² See Comment 3.

³ See Comment 5.

PROPOSED CHANGES TO THE LAW

Existing law and this bill:

- 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. (Bus. & Prof. Code § 6070.5.)

This bill 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) Provides that property reported to and received by the Controller pursuant to the state's unclaimed property law that 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 Civ. Proc. § 1540.)

This bill clarifies that a school district or community college district is included within the definition of "local agency" for the purposes of the above provision.

- 3) Provides that, among other documentation, a debtor seeking to stop the collection of a debt incurred as a result of identity theft can provide the debt collector with a copy of the Federal Trade Commission's Affidavit of Identity Theft. (Civ. Code § 1788.18(b)(1).)

This bill clarifies that a debtor seeking to stop the collection of a debt incurred as a result of identity theft can provide the debt collector with a copy of a theft report published by the Federal Trade Commission, among other documentation.

- 4) Requires 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.
 - a) If the seller of a real property 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.

- b) These provisions are operative on and after July 1, 2021. (Civ. Code § 1102.19.)

This bill clarifies that nothing in the above provisions is to be interpreted as limiting the ability of a state or local agency to enforce defensible space requirements.

- 5) 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. If a corporation, partnership, association, trust, or other organization is served with an order to appear in court, 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 Civ. Proc. §§ 708.110 & 708.150.)

This bill includes 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) Requires an attorney sending a demand letter, as defined, related to a potential violation of the laws regarding disability access to send a copy of the demand letter and submit information about the demand letter in a specified format to the Commission on Disability Access within five business days of providing the demand letter. (Civ. Code § 55.32.)

This bill restores an erroneously deleted provision of law and corrects outdated cross references to reflect the proper procedure for submitting demand letters and other documents related to disability access claims to the California Commission on Disability Access.

- 7) 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 Civ. Proc. § 1161.2.)

This bill 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.

- 8) 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. Provides that a civil action seeking those penalties 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 & G. Code § 5650.1.)

This bill authorizes the Attorney General to 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 and requires the Attorney General to notify the Department of Fish and Wildlife before bringing an action.

- 9) 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. (Gov. Code § 12921(a).)

This bill clarifies that veteran or military status is a civil right as described above.

- 10) 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. (Gov. Code § 12940.)

This bill clarifies that it is an unlawful employment practice for an employer to discriminate against a person's veteran or military status as described above.

- 11) 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. Defines the criteria a court must apply when removing a trustee on its own motion. Specified certain grounds for removal, including where the sole trustee is a person defined by certain provisions of existing law. (Prob. Code § 15642.)

This bill deletes an outdated cross reference defining a "sole trustee" in the above provisions.

- 12) Requires the Judicial Council to provide two reports each year to the Joint Legislative Budget Committee and the State Auditor that detail information related to procurement of contracts for the judicial branch. (Pub. Contract Code § 19209(a).)
- a) Requires each of the two annual reports 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. (Pub. Contract Code § 19209(b).)
 - b) Requires each of the two annual reports 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. (Pub. Contract Code § 19209(c).)

This bill instead requires only one annual report to be submitted to the Legislature by the Judicial Council and modifies the information required to be in the report regarding trial court procurement contracts to reflect information provided by the courts to the State's Fi\$Cal website.

- 13) Provides that an assignee of a right represented by a judgment may become an assignee of record by filing with the clerk of the court which entered the judgment an acknowledgment of assignment of judgment, as provided. Provides that an assignee of a judgment is not entitled to enforce the judgment unless an acknowledgment of assignment of judgment to that assignee has been filed with the clerk of the court which entered the judgment or the assignee has otherwise become an assignee of record. (Code Civ. Proc. §§ 673 & 681.020.)

This bill requires documentation evidencing authorization to be filed with an acknowledgment of assignment of judgment if an acknowledgment of assignment of judgment purports to be executed or acknowledged by an authorized agent of the judgment creditor or prior assignee of record, and authorizes an assignee of a right represented by a judgment to become an assignee of record by filing with the clerk of the court a court order or other documentation evidencing assignment of judgment by operation of law.

- 14) Requires a notice of sale to be posted before any power of sale may be exercised under the power of sale contained in a deed of trust or mortgage.

This bill, effective March 1, 2021, reenacts a provision of law that was originally enacted under the California Homeowner Bill of Rights that requires a notice to be sent to tenants when a notice of sale is posted on the property that informs the tenant that foreclosure process has begun on the property and what rights the tenants may have under the law.

- 15) Requires, before filing a demurrer, the demurring party to meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer. If an amended complaint, cross-complaint, or answer is filed, the responding party shall meet and confer again with the party who filed the amended pleading before filing a demurrer to the amended pleading. The section requiring this meet-and-confer process remains in effect only until January 1, 2021. (Code Civ. Proc. Sec. 430.41(a), (h).)
- a) Provides that the meet-and-confer requirements regarding demurrers do not apply to actions in which a party not represented by counsel is incarcerated in a local, state, or federal correctional institution or a proceeding in forcible entry, forcible detainer, or unlawful detainer. (Code Civ. Proc. Sec. 430.41(d).)
 - b) Authorizes a party to amend its pleading once without leave of the court at any time before the answer, demurrer, or motion to strike is filed, or after a demurrer or motion to strike is filed but before the demurrer or motion to strike is heard if the amended pleading is filed and served no later than the date for filing an opposition to the demurrer or motion to strike. A party may amend the pleading after the date for filing an opposition to the demurrer or motion to strike, upon stipulation by the parties. This section is set to sunset January 1, 2021. (Code Civ. Proc. Sec. 472.)
 - c) Requires the moving party, before filing a motion for judgment on the pleadings pursuant to this chapter, to meet and confer in person or by telephone with the party who filed the pleading that is subject to the motion for judgment on the pleadings for the purpose of determining if an agreement can be reached that resolves the claims to be raised in the motion for judgment on the pleadings. If an amended pleading is filed, the responding party shall meet and confer again with the party who filed the amended pleading before filing a motion for judgment on the pleadings against the amended pleading. This section is set to sunset January 1, 2021. (Code Civ. Proc. Sec. 439.)
 - d) Establishes meet and confer process requirements applicable to motions to strike similar to those governing motions for judgment on the pleadings pursuant to Section 439. This section is set to sunset January 1, 2021. (Code Civ. Proc. Sec. 435.5.)

This bill removes the sunset on Sections 430.41, 435.5, 439, 472a, and 472 of the Code of Civil Procedure, thereby extending the provisions indefinitely.

- 16) Permits the owner of a self-storage facility (“owner”) to terminate the occupant’s right to occupy a storage space when the occupant has failed to pay all or part of the rent due for 14 consecutive days, by sending a notice (the “initial notice”) with specified information. (Bus. & Prof. Code, § 21703.) If the occupant does not pay the total sum due, an owner’s lien attaches on the occupant’s property. (Bus. & Prof. Code, §§ 21702, 21705(a).)
- a) Permits the owner, after the owner’s lien attaches, to move forward with a lien sale of the property left in the storage space, provided that the owner first sends to the occupant a notice of lien and a blank declaration for the occupant to contest the sale, in a form specified by statute (collectively, the “sale notice”). (Bus. & Prof. Code, § 21705(b).)
 - b) Permits the owner to send the initial notice and/or the sale notice to the occupant via certified mail or first-class mail with a certificate of mailing, or via email when the occupant has provided an email address and certain conditions are met:
 - i. the rental agreement requested, and the occupant provided, an email address to whom preliminary lien and subsequent notices may be sent;
 - ii. the rental agreement states that notices may be sent via email; and
 - iii. the occupant provided a written signature on the rental agreement consenting to receive lien notices via email (Bus. & Prof. Code, §§ 21703, 21705, 21712(b) & (c).)
 - c) Requires the owner, when emailing an initial notice and/or the sale notice to the occupant, to demonstrate that the notice was actually delivered to, and actually received by, the occupant; if the owner is unable to demonstrate actual delivery and receipt, the owner must resend the notice to the occupant via physical mail. (Bus. & Prof. Code, § 21712(c).) The statute sets forth three ways to demonstrate actual delivery and receipt:
 - i. the occupant acknowledges receipt of the electronic transmission of the document by executing an electronic signature;
 - ii. the document is posted on the owner’s secure website, and there is evidence demonstrating that the occupant logged onto the website and downloaded, printed, viewed, or otherwise acknowledged receipt of the document;
 - iii. the document is transmitted to the occupant through an application on a personal electronic device that is secured by password, biometric identifier, or other technology, and there is evidence demonstrating that the occupant logged into the application and viewed or otherwise acknowledged receipt of the document. (Bus. & Prof. Code, § 21712(c)(2).)

- d) Establishes a sunset date on the provisions allowing the owner to send the initial and sale notices via email, repealing those provisions on January 1, 2021. (Bus. & Prof. Code, §§ 21701(g), 21703, 21705, 21712(d).)
- e) Permits the owner to sell the property removed from the occupant's storage space if the owner does not receive the occupant's declaration in opposition to the lien sale, signed under penalty of perjury, prior to the date of the lien sale set forth in the sale notice. (Bus. & Prof. Code, § 21706.)

This bill extends the sunset date on the provisions allowing an owner to opt to send the initial notice and/or sale notice to an occupant via email and to proceed with the lien sale under the existing statutory methods of demonstrating actual delivery and receipt of the emailed notices, to January 1, 2023. The bill adds a new method by which an owner can demonstrate actual receipt of an initial and/or sale notice by the occupant. Under this new method, the owner can demonstrate that the occupant received a notice where the occupant acknowledges receipt of the document by sending a reply email to the owner's email communication, and there is evidence demonstrating the delivery path of the reply email. This addition will also sunset on January 1, 2023.

- 17) Provides for a "confidential marriage," in which two unmarried people, who are not minors, and who have been living together as spouses, may be married. (Fam. Code § 500 et seq.) Requires that a confidential marriage license be issued by the county clerk, as specified, and then returned to the county clerk after the marriage has been solemnized, at which time the license becomes a marriage certificate. (Fam. Code §§ 500.5, 506.)
- a) Provides that if a confidential marriage license is lost, damaged, or destroyed after the performance of the marriage but before it is returned to the county clerk, or deemed unacceptable for registration by the county clerk, the person solemnizing the marriage must obtain a duplicate marriage license by filing an affidavit setting forth the facts with the county clerk. (Fam. Code § 510(a).)
 - b) Prohibits the duplicate license from being issued later than one year after issuance of the original license. Requires that the duplicate license be returned by the person solemnizing the marriage to the county clerk within one year of the issuance date shown on the original marriage license. (*Id.* at (b).)
 - c) For regular marriages, establishes similar requirements applicable to a lost or damaged license but requires that the duplicate license be returned to the county clerk within one year of the date of the marriage. (Fam. Code § 360.)

This bill aligns the timeframes described above by providing that the requirement to return a duplicate confidential license must be done within one year of the date of the confidential marriage, instead of the date of the issuance of the license.

- 18) Creates, until January 1, 2021, a rebuttable presumption that an obligor with net disposable income of less than \$1,500 a month is entitled to a low-income adjustment to their child support obligation. This presumption may be rebutted by evidence showing that application of the adjustment would be unjust or inappropriate in the particular case. Requires, until January 1, 2018, the Judicial Council to annually update the low-income adjustment based on the California Consumer Price Index, as specified. (Fam. Code § 4055(b)(7).)

This bill eliminates the sunset date for the low-income adjustment, thereby extending it indefinitely.

- 19) Generally requires all files, applications, papers, documents, and records established or maintained by a public entity pursuant to the administration and implementation of the child and spousal support enforcement program to be confidential and not be open to examination or released for disclosure for any purpose not directly connected with the administration of the child and spousal support enforcement program. Prohibits a public entity from disclosing any file, application, paper, document, or record, or the information contained therein, except as authorized. (Fam. Code § 17212(b)(1).)

This bill clarifies that “public entity” for these purposes does not include courts. The bill states that these changes are declaratory of existing law.

- 20) Requires the Judicial Council to establish a court-appointed special advocate (CASA) program to train and supervise volunteers who help the court determine the best interest of children in foster care, and sets forth guidelines to be adopted and incorporated into local rules of court by each participating superior court as a prerequisite to receiving state funding. (Welf. & Inst. Code § 100; Ca. Rule Ct. 5.655(b).) Requires the Judicial Council to establish a request-for-proposal process to establish, maintain, or expand local CASA programs and require local matching funds or in-kind funds equal to the proposal request. Sets the maximum state grant per county program at \$70,000 if the population is less than 700,000, and \$100,000, if the population is 700,000 or more. (*Id.*)

This bill provides that, in administering the request-for-proposal process the Judicial Council may, instead of must, require local matching funds or in-kind funds equal to the amount requested. The bill also allows for the proposal amount to be less than equal to the amount requested.

COMMENTS

1. Stated need for the bill

The Assembly Judiciary Committee, as author of the bill, writes:

This non-controversial bill constitutes the biennial civil law omnibus bill of the Assembly Judiciary 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. Furthermore, in the wake of the disruptions to the legislative process posed by COVID-19, this measure includes several provisions of other legislation that was merged into this bill for efficiencies.

2. Civil law omnibus

Since this bill was heard in the Assembly Judiciary Committee it was amended to add three additional changes relating to civil law that have not been analyzed by a policy committee and, therefore, this analysis will focus on analyzing those additional changes.⁴

a. Posting of notice of pending foreclosure sale

The first change is to reenact, effective March 1, 2021, a provision of law that was originally enacted under the California Homeowner Bill of Rights in 2008 (Ch. 69, Stats. 2008) that requires a notice to be posted to tenants when a notice of sale is posted on the property that informs the tenant that foreclosure process has begun on the property and what rights the tenants may have under the law. The prior provision had a sunset of January 1, 2020, which was not extended. This posting notice provides important information to tenants that live in residential property that is being foreclosed on about their rights under the law and should be reenacted to continue to provide protections to tenants.

The notice informs the tenant that the property may be sold at foreclosure and that the new owner may either give the tenants a new lease or rental agreement or provide the tenants a 90-day eviction notice. Further, the notice states that if the tenant has a fixed-term lease the new owner must honor the lease unless the new owner will occupy the property as a primary residence and under other limited circumstances. The notice also provides information that in some cases under “just cause for eviction” laws the tenant may not have to move at all and that all rights and obligations under the lease,

⁴ See Asm. Jud. Analysis for AB 3364 (Assembly Judiciary Committee), May 11, 2020.

including to pay rent, continue after the foreclosure. Lastly, the notice informs the tenants that may wish to contact a lawyer or local legal aid office or housing counseling agency to discuss any rights the tenant may have.

The bill provides that the notice will only apply to loans secured by residential real property, and if the billing address for the mortgage note is different than the property address. The bill requires the Department of Consumer Affairs to make available translations of the notice which may be used by a mortgagee, trustee, beneficiary, or authorized agent to satisfy these requirements. Lastly, the bill makes it an infraction to tear down the notice within 72 hours of posting and makes a violation subject to a \$100 fine.

b. Acknowledgement of assignment of judgment

Existing civil law allows a judgment to be assigned to another and that the assigned may become an assignee of record by filing with the clerk of the court that entered judgment an acknowledgment of assignment of judgment that contains specified information. This bill requires an acknowledgment of assignment of judgment that purports to be executed or acknowledged by an authorized agent of the judgment creditor or an authorized agent of a prior assignee of record to include documentation sufficient to evidence that authorization, which must be filed with the acknowledgment of assignment of judgment. The bill also allows an assignee of a right represented by a judgment to become an assignee of record by filing with the clerk of the court that entered judgment a court order or other documentation that evidences assignment of judgment by operation of law. The bill also makes a nonsubstantive change to update a cross reference to these provisions.

c. Attorney General's authority to enforce water pollution laws

The bill, when it passed the Assembly, provided 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, and required the Attorney General to consult with the Department of Fish and Wildlife before bringing a complaint. Existing law authorizes the Attorney General to bring a complaint only upon a complaint of the Department of Fish and Wildlife but allows district attorneys to file actions upon their own authority. The bill was amended to instead require the Attorney General to notify the Department of Fish and Wildlife before bringing a complaint instead of consulting the Department of Fish and Wildlife.

3. Creating efficiencies in civil litigation

These provisions were in AB 3062 (Oberholte), which passed the Assembly Judiciary Committee on a vote of 10-0, the Assembly Appropriations Committee on a vote of 18-0, and the Assembly Floor on a vote of 76-0.

In civil litigation, there are various, formal procedural devices for resolving relevant disputes between the parties, including demurrers, motions to strike, and motions for judgment on the pleadings. In recent years, those intimately involved with the everyday operation of our civil justice system recognized that many of these disputes could be resolved more efficiently, and without extensive court involvement, if parties conferred with each other and sought to resolve or pare down the issues in conflict.

To accomplish this, SB 383 (Wieckowski, Ch. 418, Stats. 2015) was enacted into law, creating Section 430.41 of the Code of Civil Procedure. This statute requires a party, before filing a demurrer, to meet and confer in person or over the phone with the party who filed the relevant pleading. The statute requires the parties to discuss the basis for their respective positions. The parties must meet and confer according to a specified timeline and the demurring party must file a declaration with the demurrer that details the meet-and-confer process and the objections raised that were not resolved; or state that the party who filed the pleading subject to demurrer failed to respond to the meet-and-confer request or failed to otherwise meet and confer in good faith. The demurring party cannot bring a subsequent demurrer to a later-amended pleading on grounds that it could have asserted to the earlier-challenged pleading.

In an effort to extend the benefits of the system created by SB 383, AB 644 (Berman, Ch. 273, Stats. 2017) created Sections 435.5 and 439. These statutes applied nearly identical meet-and-confer requirements and procedures to two additional methods of responding to pleadings – motions to strike and motions for judgment on the pleadings. These changes were supported by the overwhelming feedback that the meet and confer requirements were working effectively to reduce the number of unnecessary motions and to streamline the motions that remained.

However, many of these provisions are set to expire on January 1, 2021. Given the success of these mechanisms, this bill removes the sunset dates, indefinitely extending the procedures currently required in our courts. Both SB 383 and AB 644 were supported and/or sponsored by the California Judges Association, the Consumer Attorneys of California, and California Defense Counsel. These same groups support the removal of the sunsets effectuated by this bill.

4. Self-storage facilities

These provisions were in AB 325 (Ramos), which was sponsored by the Self Storage Association. AB 325 (Ramos) passed the Assembly Privacy and Consumer Protection Committee on a vote of 11-0, the Assembly Judiciary Committee on a vote of 11-0, and the Assembly Floor on a vote of 76-0.

This bill will extend the sunset provision on the existing email notice provisions, until January 1, 2023. This Committee has not received any information suggesting the existing email notice provisions have been ineffective or harmed occupants in any way.

Thus, while allowing owners to send notices via email could, in theory, lead to more notices going unseen by occupants, it appears that the safeguards protecting occupants (such as requiring express consent to use email) have been effective. Additionally, allowing an email option provides an important alternative method of contact for occupants for whom contact at a physical address might be less reliable than via email, e.g., unhoused persons or victims of domestic violence. Extending the sunset clause on the existing email provisions therefore appears to be good policy.

This bill also adds one more method by which the owner can demonstrate occupant receipt of an emailed notice. Specifically, it would allow the owner to show that an occupant received a notice where the occupant responded to the email sending the notice *and* the owner can present evidence of the email's delivery path. The "delivery path" of an email is the technical information showing the route an email traveled as it was transmitted from the sender's email program to the recipient's inbox, which generally includes a range of servers, computers, and programs. While it is not impossible to forge an email delivery path, it is more difficult to do so than to simply forge the "to" and "from" lines of an email, and therefore could provide a sufficient level of protection against unscrupulous owners attempting to fake reply emails from occupants.

The bill includes a sunset provision for this new method of proof, set for January 1, 2023. In the absence of opposition to the addition of this method, it appears appropriate to adopt this measure on a temporary basis and revisit it in two years, along with the existing email delivery provisions, when there is evidence of how this method has worked in practice.

5. Family law

These provisions were in AB 3365 (Assembly Committee on Judiciary), which passed the Assembly Judiciary Committee on a vote of 10-0, the Assembly Appropriations Committee on a vote of 18-0, and the Assembly Floor on a vote of 76-0.

a. Aligns timeframes for lost licenses in confidential marriages and regular marriages

If a marriage license is lost or damaged after the marriage ceremony but before the license is returned to the county recorder, the person solemnizing the marriage can obtain and complete a duplicate license within prescribed timeframes. The timeframe differs for regular and confidential marriages: a duplicate confidential marriage license may not be issued more than a year after the issuance of the original, whereas a duplicate marriage license may not be issued more than a year after the marriage takes place.

To alleviate any confusion, this bill aligns the timeframes described above by providing that the requirement to return a duplicate confidential license must be done within one

year of the date of the confidential marriage, instead of the date of the issuance of the license.

b. Removes the sunset on the low-income adjustment to the child support guideline

To determine the appropriate amount of child support, courts must use the “statewide uniform child support guideline” (Fam. Code §§ 4050 et seq., 4051, 4052), which establishes a formula for calculating a person’s child support obligation. To prevent low-income obligors from being overwhelmed with child support obligations, the guideline provides that an obligor whose net income is less than \$1,500 is rebuttably presumed to be entitled to a low-income adjustment of the guideline amount. The low-income adjustment was originally established at \$1,000 in 1993. (AB 923 (Speier), Ch. 906, Stats. 1994.) Beginning in 2013, it was raised to \$1,500, with an annual adjustment for inflation and a January 1, 2018 sunset. (AB 2393 (Davis), Ch. 646, Stats. 2012.)⁵ That sunset was extended to January 1, 2021 by SB 469 (Skinner, Ch. 730, Stats. 2017).

This bill lifts the 2021 sunset so the increase in the low-income adjustment increase will remain in effect and help ensure that low-income obligors can sustain themselves, while still contributing to the support of their children.

Extending the low-income adjustment is consistent with federal law, which requires child support calculations to take into consideration the basic subsistence needs of the noncustodial parent who has a limited ability to pay, by incorporating a low-income adjustment or other method determined by each state. (45 C.F.R. § 302.56(c)(1).) Furthermore, the accumulation of uncollectible debt, along with the reduction in current support payments, reduces the state’s performance on federal child support measures, which can reduce the incentive funding California receives from the federal government for its child support program. Finally, research suggests that the accumulation of arrears for low-income obligors is frequently counter-productive, and has negative consequences for the obligor, their family, and the state.⁶

In support, the California Association of Certified Family Law Specialists writes that the low-income adjustment “is good law and it makes sense to increase the net disposable income threshold indefinitely.”

⁵ AB 2393 not only increased the low-income adjustment from \$1,000 to \$1,500 net income a month, it also established an annual inflation adjustment. As a result, the Judicial Council has updated the low-income adjustment annually, based on changes to the California Consumer Price Index. In 2019, the low income adjustment was \$1,755.

⁶ Elaine Sorensen, *Examining Child Support Arrears in California: The Collectibility Study* (March 2003) Urban Institute.

c. Clarifies that child support court records are open to the public

Under existing law, child support court records are not confidential. However, there is confusion in some counties because non-court child support records belonging to the Department of Child Support Services and the local child support agencies are confidential.

This bill clarifies that court records are not confidential child support records and states that the clarification is declarative of existing law.

d. Provides financial flexibility for court-appointed special advocates programs

In many cases, children in the foster care system are served by “court appointed special advocates” (CASA), trained and supervised volunteers who represent children and aid the court in better understanding the needs of the children. To assist county CASA programs, the Judicial Council runs a county grant program of up to \$70,000 for small counties and \$100,000 for large counties. CASA programs must provide local matching funds or in-kind funds equal to the proposal request. Because of the COVID-19 pandemic and ensuing economic crisis, some CASA programs will have a difficult time meeting this requirement.

This bill allows, but no longer requires, the Judicial Council to mandate matching funds, and allows for the proposal amount to be less than equal to the amount requested.

SUPPORT

These organizations support the provisions addressed in Comment 3 above:

California Judges Association
California Defense Counsel
Consumer Attorneys of California

This organization supports the provisions in Comment 4 above:

Self Storage Association

This organization supports the provisions in Comment 5b above:

California Association of Certified Family Law Specialists

OPPOSITION

None known

PRIOR VOTES:

Assembly Floor (Ayes 76, Noes 0)
Assembly Appropriations Committee (Ayes 18, Noes 0)
Assembly Judiciary Committee (Ayes 10, Noes 0)
