

Date of Hearing: April 7, 2026

ASSEMBLY COMMITTEE ON JUDICIARY  
Ash Kalra, Chair  
AB 2042 (Kalra) – As Amended March 16, 2026

**SUBJECT:** CIVIL ACTIONS: SETTING ASIDE DEFAULT OR DEFAULT JUDGMENT

**KEY ISSUE:** SHOULD THE LEGISLATURE MAKE TECHNICAL AMENDMENTS TO CLARIFY LEGISLATION FROM LAST YEAR THAT SOUGHT TO REFORM SERVICE OF PROCESS IN THE STATE?

**SYNOPSIS**

*To address concerns surrounding fraudulent service, last year the Legislature enacted AB 747 (Kalra) Chap. 563, Stats. 2026, also known as the Service of Process Accountability, Reform, and Equity (SPARE) Act. Despite that bill being heavily negotiated by stakeholders, since the bill's passage, stakeholders have suggested that technical amendments could improve and clarify the law.*

*This bill implements those suggestions in three ways. First, it clarifies that the SPARE Act did not create a new basis for dismissal of a lawsuit when a party has been improperly served. Second, the bill clarifies that the SPARE Act's procedures for defendants to vacate judgments obtained without lawful service apply to proofs of service filed on or after January 1, 2027, and does not alter a court's existing authority in connection with proofs of service filed before that date. Finally, the bill clarifies that the SPARE Act did not alter existing law under the Fair Debt Buying Practices Act with respect to lawsuits that are lawfully served.*

*This bill is supported by the California Low-Income Consumer Coalition and the California Apartment Association. In support of the bill, both groups contend that AB 2042 will provide clarifying and necessary amendments to the SPARE Act. This bill has no opposition on file.*

**SUMMARY:** Makes technical amendments and non-substantive changes to clarify specified provisions of the SPARE Act. Specifically, **this bill:**

- 1) Clarifies that a party that was not served in accordance with the SPARE Act may seek dismissal of a case, as permitted by law.
- 2) Clarifies the bill applies to proof of service filed after January 1, 2027.
- 3) Clarifies that nothing in the SPARE Act alters a court's existing authority to adjudicate a motion made regarding mistaken pleadings, or otherwise to vacate or set aside a judgment, with respect to a proof of service filed before January 1, 2027.

**EXISTING LAW:**

- 1) Provides that a party that was not properly served may file and serve a motion to set aside or vacate the default or default judgment and for leave to defend the action or to move for dismissal. (Code of Civil Procedure Section 473.2 (a).)

- 2) Provides that a party defending against the motion to set aside the default has the burden to establish by a preponderance of the evidence that service of the summons and complaint was lawful. (Code of Civil Procedure Section 473.2 (c).)
- 3) Specifies that the presumption of validity of the service of summons and complaint, as provided, is rebutted when the party alleging non-service proffers evidence that they were not lawfully effected through a sworn affidavit or otherwise. (Code of Civil Procedure 473.2 (b).)
- 4) Requires a court to conduct a hearing and permit oral testimony pursuant to a motion to set aside a default, upon request by either party. Specifies that a court cannot deny a reasonable request by either party. (Code of Civil Procedure 473.2 (d).)
- 5) Provides Section 473.2 of the Code of Civil Procedure, which specifies the kinds of relief an improperly served party can seek after a default or default judgment has been obtained, will become operative on January 1, 2027. (Code of Civil Procedure Section 473.2 (f).)
- 6) Provides that when service of a summons was lawfully effected but has not resulted in actual notice to a party in time to defend the action and a default or default judgment has been entered against the party in the action, the party may serve and file a notice of motion to set aside the default or default judgment and for leave to defend the action. (Code of Civil Procedure Section 473.5 (a).)
- 7) Specifies that notice of motion described in 6) shall be served and filed within a reasonable time, but in no event exceeding the earlier of: two years after entry of a default judgment against the party; or 180 days after service on the party of a written notice that the default or default judgment has been entered. (Code of Civil Procedure Section 473.5 (a).)
- 8) Provides that if service of a summons has not resulted in actual notice to a person in time to defend an action brought by a debt buyer and a default or default judgment has been entered against the person in the action, the person may serve and file a notice of motion and motion to set aside the default or default judgment and for leave to defend the action. (Civil Code Section 1788.61 (a).)
- 9) Provides that the notice of motion described in 7) must be served and filed within a reasonable time, but in no event exceeding the earlier of the following, except as otherwise specified:
  - a) Six years after entry of the default or default judgment against the person.
  - b) One hundred eighty days of the first actual notice of the action. (Civil Code 1788.61 (a).)

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

**COMMENTS:** Improper or fraudulent service of process undermines one of the most basic principles of due process: the right of a defendant to receive service and be heard. When service is invalid, defendants are effectively stripped of their rights, unable to defend themselves or their property in court, leading to judgments without their knowledge, participation, or consent. The California Supreme Court has recognized the systemic nature of this injustice, particularly in debt collection and unlawful detainer actions, where improper service is so widespread it has earned the name “sewer service” – so denominated because the “server throws the documents

‘down the sewer’ and then falsifies its affidavit of service.” (*California Capital Ins. Co. v. Hoehn* (2024) 17 Cal.5th 207, 217, quoting Fed. Trade Com., *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration* (July 2010) p. 8, fn. 22, <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-bureau-consumer-protection-staff-report-repairing-broken-system-protecting/debtcollectionreport.pdf>.)

Because of the scale and impact of fraudulent service, the Legislature enacted AB 747 (Kalra) Chap. 563, Stats. 2025, to address this “sewer service” problem. Among other things, the bill strengthened procedural protections for defendants by increasing accountability for process servers, and enhanced post-judgment relief when parties are unlawfully served. However, since the bill’s passage, stakeholders have suggested technical amendments to clarify the bill’s intent and existing law. This bill has been drafted to address those concerns and ensure the true intent of the SPARE Act is achieved.

In support of the bill, the author states:

Proper service of summons and complaints is a fundamental requirement of due process and ensures defendants are notified of a claim against them so they can properly prepare a defense. To address concerns around fraudulent service, the Legislature passed AB 747, which modernized and standardized service of process by requiring evidence of personal and substitute service, defining reasonable diligence when attempting personal service, and clarifying the timing and method of challenging defective service.

However, input from stakeholders since the bill’s passage has suggested that clarifying changes are needed. As such, AB 2042 provides clearer guidance to the courts as it relates to the implementation of AB 747 (Kalra, Chapter 563, Statutes of 2025). Specifically, the bill clarifies AB 747 does not create a new basis for dismissal upon the vacating or setting aside of a default judgment, does not alter a court’s existing authority with respect to cases filed before January 1, 2027, and does not alter the Fair Debt Buying Practices Act with respect to lawsuits that were lawfully served.

***This bill*** addresses stakeholder concerns in three ways. First, there were concerns that the SPARE Act created a new basis for dismissal in civil cases where a party was improperly served. Specifically, stakeholders opined that the Act could suggest that parties could seek dismissal of a case for improper service alone, which is contrary to the author’s original intent. The bill addresses this issue by clarifying that an improperly served party may serve a motion to set aside or vacate the default or default judgment and for leave to defend the action or *for dismissal as permitted by law*. In other words, improperly served parties seeking to vacate or set aside a default judgment can move to dismiss the case on its merits, just like any other properly served party.

Second, the bill clarifies that the SPARE Act’s provisions related to how an improperly served party may obtain relief after a default or default judgment apply to proofs of service filed on or after January 1, 2027.

Finally, bill clarifies that the SPARE Act did not alter existing law under the Fair Debt Buying Practices Act with respect to lawsuits that are lawfully served. Currently, the Fair Debt Buying Practices Act allows a defendant, in a debt collection suit brought by debt-buyer, to file a motion to set aside default or default judgment and for leave to defend the action if they did not receive actual notice in time to defend the lawsuit. (Civil Code Section 1788.61 (a).) This bill would

clarify that a defendant who did not receive actual notice may still do so even if the service of the summons of the action was lawfully effected.

**ARGUMENTS IN SUPPORT:** This bill is supported by the California Low-Income Consumer Coalition. The Coalition writes:

Last year’s SPARE Act addressed the pernicious and long-standing problem of fraudulent service of process, a practice that contributes to over 90% of debt collection defendants not responding to lawsuits against them. The Act created a clear standard for effecting and proving lawful service and codified California appellate case law that allows a Defendant to challenge at any time a judgment obtained without proper service (i.e., there is no time limit on when a person can ask a court to vacate a judgment obtained through unlawful service of process). The Act also codified existing case law that clarifies the procedure for defendants to follow when seeking to vacate judgments against them in cases when they were never served with the lawsuit.

AB 2042 specifies that AB 747’s procedure for defendants to vacate judgments obtained without lawful services applies only to proofs of service filed after the effective date of AB 747 (January 1, 2027).

AB 2042 also includes amendments designed to facilitate implementation of the bill by the Judicial Council of California.

This bill also enjoys the support of the California Apartment Association, who similarly state that AB 2042 “makes clear in the law that a party who was not served with a summons and complaint in accordance with the law may file and serve a motion to set aside or vacate the default or default judgment and for leave to defend the action or move for dismissal as permitted by law.” The Association further posits that the bill “ensure that the appropriate remedy for improper service is to set aside the default or quash service—not to dismiss the case outright.”

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California Apartment Association  
California Low-Income Consumer Coalition

### **Opposition**

None on file

**Analysis Prepared by:** Kristian Wright and Manuela Boucher / JUD. / (916) 319-2334