

ASSEMBLY BILL

No. 1590

Introduced by Assembly Member Simitian

February 23, 2001

An act to amend Section 1013a of the Code of Civil Procedure, relating to service of process.

LEGISLATIVE COUNSEL'S DIGEST

AB 1590, as introduced, Simitian. Service of process: unlawful detainer.

Existing law provides the methods by which proof of service by mail may be executed. Existing law further specifies the procedures for a clerk of a court to effectuate service of process.

This bill would require the court clerk to serve responsive pleadings on behalf of a defendant in an unlawful detainer case if the defendant provides the clerk with a copy of the pleading and a preaddressed envelope with first class postage prepaid.

By imposing new duties on court personnel, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,

reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1013a of the Code of Civil Procedure is
2 amended to read:

3 1013a. Proof of service by mail may be made by one of the
4 following methods:

5 ~~(1)~~

6 (a) An affidavit setting forth the exact title of the document
7 served and filed in the cause, showing the name and residence or
8 business address of the person making the service, showing that he
9 or she is a resident of or employed in the county where the mailing
10 occurs, that he or she is over the age of 18 years and not a party to
11 the cause, and showing the date and place of deposit in the mail,
12 the name and address of the person served as shown on the
13 envelope, and also showing that the envelope was sealed and
14 deposited in the mail with the postage thereon fully prepaid.

15 ~~(2)~~

16 (b) A certificate setting forth the exact title of the document
17 served and filed in the cause, showing the name and business
18 address of the person making the service, showing that he or she
19 is an active member of the State Bar of California and is not a party
20 to the cause, and showing the date and place of deposit in the mail,
21 the name and address of the person served as shown on the
22 envelope, and also showing that the envelope was sealed and
23 deposited in the mail with the postage thereon fully prepaid.

24 ~~(3)~~

25 (c) An affidavit setting forth the exact title of the document
26 served and filed in the cause, showing (A) the name and residence
27 or business address of the person making the service, (B) that he
28 or she is a resident of, or employed in, the county where the mailing
29 occurs, (C) that he or she is over the age of 18 years and not a party
30 to the cause, (D) that he or she is readily familiar with the business'
31 practice for collection and processing of correspondence for
32 mailing with the United States Postal Service, (E) that the
33 correspondence would be deposited with the United States Postal



1 Service that same day in the ordinary course of business, (F) the
2 name and address of the person served as shown on the envelope,
3 and the date and place of business where the correspondence was
4 placed for deposit in the United States Postal Service, and (G) that
5 the envelope was sealed and placed for collection and mailing on
6 that date following ordinary business practices. Service made
7 pursuant to this paragraph, upon motion of a party served, shall be
8 presumed invalid if the postal cancellation date or postage meter
9 date on the envelope is more than one day after the date of deposit
10 for mailing contained in the affidavit.

11 ~~(4)~~

12 (d) In case of service by the clerk of a court of record, a
13 certificate by that clerk setting forth the exact title of the document
14 served and filed in the cause, showing the name of the clerk and
15 the name of the court of which he or she is the clerk, and that he
16 or she is not a party to the cause, and showing the date and place
17 of deposit in the mail, the name and address of the person served
18 as shown on the envelope, and also showing that the envelope was
19 sealed and deposited in the mail with the postage thereon fully
20 prepaid. This form of proof is sufficient for service of process in
21 which the clerk or deputy clerk signing the certificate places the
22 document for collection and mailing on the date shown thereon, so
23 as to cause it to be mailed in an envelope so sealed and so addressed
24 on that date following standard court practices. Service made
25 pursuant to this paragraph, upon motion of a party served and a
26 finding of good cause by the court, shall be deemed to have
27 occurred on the date of postage cancellation or postage meter
28 imprint as shown on the envelope if that date is more than one day
29 after the date of deposit for mailing contained in the certificate. *In*
30 *unlawful detainer cases, responsive pleadings shall be served by*
31 *the clerk if the defendant provides the clerk with a copy of the*
32 *pleading and a preaddressed envelope with first class postage*
33 *prepaid.*

34 SEC. 2. Notwithstanding Section 17610 of the Government
35 Code, if the Commission on State Mandates determines that this
36 act contains costs mandated by the state, reimbursement to local
37 agencies and school districts for those costs shall be made pursuant
38 to Part 7 (commencing with Section 17500) of Division 4 of Title
39 2 of the Government Code. If the statewide cost of the claim for
40 reimbursement does not exceed one million dollars (\$1,000,000),



- 1 reimbursement shall be made from the State Mandates Claims
- 2 Fund.

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