

AMENDED IN SENATE APRIL 16, 2001

SENATE BILL

No. 110

Introduced by Senator Ackerman

January 23, 2001

An act to amend, repeal, and add Section 116.420 of, and to add Section 116.395 to, the Code of Civil Procedure, relating to small claims court.

LEGISLATIVE COUNSEL'S DIGEST

SB 110, as amended, Ackerman. Small claims court.

Existing law prohibits, with certain exceptions, the filing or maintenance of a claim in small claims court by the assignee of the claim.

The bill would authorize, as of a specified date, the filing or maintenance of a claim in small claims court of no less than ~~\$750~~ \$825, as defined, by an assignee, provided the assignee reduces his or her claim by 10% and pays a special filing fee, to be distributed as specified. This bill would exclude from these provisions claims based on dishonored checks and other specified obligations. These claims would be limited to 5 claims per day, or a lesser number of claims, or no claims, as provided by Judicial Council rule or by local rule of court. The bill would provide for the transfer of the claim to municipal or superior court upon motion of the defendant, *without the payment of an additional filing fee*, or by the court, as specified, and *would set forth the rights of the parties in those circumstances. This bill would require specific information to be included in sworn declarations by obligees making a claim in small claims court.* The bill would require the Judicial Council to adopt rules of court advising parties of their rights under the ~~bill~~ section, *to develop a form which defendants can use for*

the transfer of a case under this section, to develop procedures for the handling of the case after transfer, and to conduct a study on the use of small claims court by assignees, as specified. Existing law establishes different filing fees for claims in small claims courts depending on whether the claim is brought by the original claimant or by an assignee of the claim. Existing law provides that a prevailing party in a small claims action is entitled to the costs of the action. This bill would provide that an assignee of a claim who prevails in a small claims action may not recover the difference between their cost of filing the claim and the amount it would have cost the original claimant to file the action unless the defendant appears at the hearing on the matter.

Existing law requires that service of a claim and order be made on the defendant at least 10 days before the hearing if the defendant resides in the county, and 15 days if the defendant resides outside the county.

This bill would require that service of a claim and order, made under this section, be made at least 30 days before the hearing date.

This bill would also provide that an action brought in small claims court by an individual acting in his or her individual capacity would have an automatic calender preference over all other actions. The provisions added by the bill would become inoperative on July 1, 2005, and would be repealed on January 1, 2006, unless the latter date is deleted or extended by later enacted legislation. ~~This bill would also provide that an action brought in small claims court by an individual acting in his or her individual capacity would have an automatic calender preference over all other actions.~~

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

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

- 1 SECTION 1. Section 116.395 is added to the Code of Civil
- 2 Procedure, to read:
- 3 116.395. An action brought by an individual acting in his or
- 4 her individual capacity shall have calendar preference over all
- 5 other actions. This calendar preference shall be automatic.
- 6 SEC. 2. Section 116.420 of the Code of Civil Procedure is
- 7 amended to read:
- 8 116.420. (a) No claim shall be filed or maintained in small
- 9 claims court by the assignee of the claim, except as authorized in
- 10 this section.



1 (b) This section does not prevent a filing or defense of an action
2 in the small claims court by any one of the following:

3 (1) A trustee in bankruptcy in the exercise of the trustee’s duties
4 as trustee.

5 (2) By the holder of a security agreement, retail installment
6 contract, or lien contract subject to the Unruh Act (Chapter 1
7 (commencing with Section 1801) of Title 2 of Part 4 of Division
8 3 of the Civil Code) or the Automobile Sales Finance Act (Chapter
9 2b (commencing with Section 2981) of Title 14 of Part 4 of
10 Division 3 of the Civil Code), purchased by the holder for the
11 holder’s portfolio of investments, provided that the holder is not
12 an assignee for the purpose of collection.

13 (3) An assignee not authorized to file or maintain an action in
14 small claims court under paragraph (1) or paragraph (2) who,
15 subject to the requirements of this paragraph, may file or maintain
16 an action in the small claims court:

17 (A) Notwithstanding Section 116.230, the filing fee for an
18 assignee under this paragraph shall be the same as the fee for filing
19 the first paper in a limited civil case pursuant to Section 72055 of
20 the Government Code. Twenty dollars (\$20) of this fee shall be
21 transferred to the Judicial Council, and upon appropriation
22 therefor, may be used to provide funding for assistance and advice
23 to people using the small claims court pursuant to Sections
24 116.260 and 116.940. The remainder of this fee shall be deposited
25 upon collection in the special account in the county treasury
26 established pursuant to subdivision (b) of Section 68085 of the
27 Government Code, and transmitted therefrom monthly to the
28 Controller for deposit in the Trial Court Trust Fund.

29 (B) An assignee may not maintain or file a claim for any of the
30 following:

31 (i) An amount less than ~~seven hundred fifty dollars (\$750)~~ *eight*
32 *hundred twenty-five dollars (\$825)*. In determining the
33 jurisdictional minimum, interest, late charges, collection charges,
34 and all other fees, charges, and penalties related to the default shall
35 be excluded.

36 (ii) Any fees, charges, or damages assessed pursuant to Section
37 1719 of the Civil Code.

38 (iii) Any obligation or liability barred by the applicable statute
39 of limitations.



1 (iv) Any obligation or liability that has been revived after
2 having been barred by the applicable statute of limitations.

3 (v) Any obligation or liability based on a debt reaffirmed in
4 connection with a bankruptcy proceeding.

5 (vi) Any obligation or liability incurred in connection with the
6 receipt of any medical or health care service, equipment, or
7 prescription drugs.

8 (C) An assignee subject to this paragraph shall reduce the total
9 amount claimed by 10 percent.

10 (D) An assignee may not file more than five claims per day.
11 However, the Judicial Council by rule, or in absence of a Judicial
12 Council rule, the court by local rule, may reduce the number of
13 claims that may be filed or completely prohibit the filing of claims
14 by an assignee under this paragraph.

15 (E) A defendant sued under this paragraph shall have the option
16 of transferring the action to the municipal court, or to the superior
17 court if the action is filed or maintained in a county in which there
18 is no municipal court.

19 (i) The assignee shall notify the defendant at the time of service
20 of the claim and order on the defendant of the defendant's option
21 to transfer the action and that if the defendant does not transfer the
22 action, evidence of the assignment and of the amount owing to the
23 original obligee may be presented by sworn declaration *of the*
24 *original obligee*. The Judicial Council shall establish the form of
25 notice which shall be written in English and Spanish and printed
26 in at least 10-point typeface.

27 (ii) If the defendant transfers the action, or if the plaintiff does
28 not file or maintain an action under this paragraph, both the
29 plaintiff and defendant shall be entitled to all rights and
30 responsible for all obligations, including their respective fees and
31 costs, as though the action had been originally filed and maintained
32 in the superior court as a limited civil case; and for purposes of
33 ~~awarding~~ *determining eligibility for the award of costs and*
34 *attorney's fees, the plaintiff shall be conclusively deemed a party*
35 *that could not have brought the action in the small claims court. If*
36 *the defendant transfers the case, no filing fee shall be payable by*
37 *the defendant in connection with the transfer or with the filing of*
38 *the new complaint.*

39 (iii) If the defendant does not transfer the action, the plaintiff
40 shall not be entitled to attorney's fees.



1 ~~(F) The judge, in a case involving the collection of debt~~
2 ~~incurred in connection with, or as the result of, the provision of~~
3 ~~medical services may, at the request of the defendant, transfer the~~
4 ~~case at any time if the judge determines that it is too complex and~~
5 ~~time-consuming to be fairly and efficiently handled in the small~~
6 ~~claims court.~~

7 *(F) If the debt is to be proven by declaration rather than by*
8 *testimony of the original obligee, the sworn declaration shall be*
9 *made by the original obligee. The declaration shall include all of*
10 *the following:*

11 *(i) A demonstration of compliance with the jurisdictional*
12 *minimum as described in clause (i) of subparagraph (B).*

13 *(ii) A statement of the amount owed at the time of assignment,*
14 *and either a statement that the amount sought consists solely of*
15 *principal and interest, or a statement describing the amount of*
16 *principal and interest sought and, with respect to any other*
17 *charges permitted by law to be sought, a statement that identifies*
18 *and itemize each charge type and amount.*

19 *(iii) If the original creditor was required to prepare an*
20 *explanation of the calculation of deficiency under Section 9616 of*
21 *the Commercial Code, a copy of that notice shall be attached to the*
22 *declaration.*

23 *(iv) The filing of a declaration in compliance with this section*
24 *does not prevent the court from exercising its powers under Section*
25 *116.520.*

26 *(G) The Judicial Council shall adopt rules to insure that*
27 *plaintiffs and defendants are advised of their rights under this*
28 *section. The Judicial Council shall develop a form which*
29 *defendants can use for the transfer of a case under this section, and*
30 *shall develop procedures for the handling of the case after transfer.*

31 *(H) The Judicial Council shall conduct a study of the use of*
32 *small claims court by assignees under this paragraph and the*
33 *impact of that use on defendants. The study shall include, but not*
34 *be limited by, the matters set forth in this subparagraph. The study*
35 *shall examine the number of small claims court cases filed*
36 *pursuant to this paragraph (i) that were filed each year, (ii) that*
37 *resulted in the entry of default judgments, (iii) that were contested*
38 *and resulted in judgment for the claimant, (iv) that were contested*
39 *and resulted in judgment for the defendant, (v) that were filed in*
40 *an improper venue, (vi) that were removed to the municipal or*



1 superior court, and (vii) that were appealed. The study shall also
2 examine the number of municipal and superior court cases
3 involving collection of consumer debt that could have been filed
4 by assignees in small claims court under this paragraph and the
5 amount of attorney's fees awarded in these cases. The study shall
6 further include a reasonable investigation, including oral
7 interviews, of defendants sued for the collection of consumer debt
8 in small claims court under this paragraph to determine if these
9 defendants understood their rights to appear and defend in small
10 claims court, to seek assistance of the small claims court advisory
11 service, to transfer the case to municipal or superior court, and to
12 retain a lawyer to appear for the defendant if the case was
13 transferred. For the purpose of this subparagraph, "consumer
14 debt" means an obligation incurred primarily for personal, family,
15 or household purposes.

16 (I) The portion of the filing fee provided by this paragraph for
17 the small claims court advisory service shall supplement, but not
18 supplant, the funding required under Section 116.910.

19 (J) Notwithstanding subdivision (g) of Section 116.610, an
20 assignee who prevails in an action filed under this paragraph shall
21 not be entitled to recover the portion of the filing fee provided in
22 this section for the small claims court advisory service and the
23 study to be performed by the Judicial Council.

24 (K) *Notwithstanding subdivision (g) of Section 116.610, an*
25 *assignee who prevails in an action filed in small claims court may*
26 *not recover the portion of the filing fee which exceeds the amount*
27 *of the filing fee for an action in small claims court by an original*
28 *obligee unless the defendant appears at the hearing on the matter.*

29 (L) *Notwithstanding subdivision (b) of Section 116.340, the*
30 *service by an assignee of the claim and order on the defendant shall*
31 *be completed at least 30 days before the hearing date.*

32 (c) This section does not prevent a filing in small claims court
33 by a local government which is self-insured for purposes of
34 workers' compensation and is seeking subrogation pursuant to
35 Section 3852 of the Labor Code.

36 (d) The amendments to this section adopted at the first year of
37 the 2001–2002 Regular Session shall become operative on July 1,
38 2002, and shall become inoperative on July 1, 2005. This section
39 shall be repealed on January 1, 2006, unless a later enacted statute,



1 which becomes effective on or before January 1, 2006, deletes or
2 extends the dates on which it becomes inoperative and is repealed.

3 SEC. 3. Section 116.420 is added to the Code of Civil
4 Procedure, to read:

5 116.420. (a) No claim shall be filed or maintained in small
6 claims court by the assignee of the claim.

7 (b) This section does not prevent the filing or defense of an
8 action in the small claims court by (1) a trustee in bankruptcy in
9 the exercise of the trustee's duties as trustee, or (2) by the holder
10 of a security agreement, retail installment contract, or lien contract
11 subject to the Unruh Act (Chapter 1 (commencing with Section
12 1801) of Title 2 of Part 4 of Division 3 of the Civil Code) or the
13 Automobile Sales Finance Act (Chapter 2b (commencing with
14 Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code),
15 purchased by the holder for the holder's portfolio of investments,
16 provided that the holder is not an assignee for the purpose of
17 collection.

18 (c) This section does not prevent the filing in small claims court
19 by a local government which is self-insured for purposes of
20 workers' compensation and is seeking subrogation pursuant to
21 Section 3852 of the Labor Code.

22 (d) This section shall be operative January 1, 2006.

