

ASSEMBLY BILL

No. 1108

Introduced by Assembly Member Nielsen

February 18, 2011

An act to amend Section 1032 of, and to repeal Section 1034 of, the Code of Civil Procedure, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1108, as introduced, Nielsen. Litigation costs: court rules.

Existing law provides that prejudgment costs shall be claimed and contested in accordance with rules adopted by the Judicial Council. Existing law also requires the Judicial Council to establish by rule allowable costs on appeal and the procedure for claiming those costs.

This bill would repeal those provisions, and make other conforming changes.

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 1032 of the Code of Civil Procedure is
2 amended to read:
3 1032. (a) As used in this section, unless the context clearly
4 requires otherwise:
5 (1) "Complaint" includes a cross-complaint.
6 (2) "Defendant" includes a cross-defendant or a person against
7 whom a complaint is filed.
8 (3) "Plaintiff" includes a cross-complainant or a party who files
9 a complaint in intervention.

1 (4) “Prevailing party” includes the party with a net monetary
 2 recovery, a defendant in whose favor a dismissal is entered, a
 3 defendant where neither plaintiff nor defendant obtains any relief,
 4 and a defendant as against those plaintiffs who do not recover any
 5 relief against that defendant. When any party recovers other than
 6 monetary relief and in situations other than as specified, the
 7 “prevailing party” shall be as determined by the court, and under
 8 those circumstances, the court, in its discretion, may allow costs
 9 or not and, if allowed may apportion costs between the parties on
 10 the same or adverse sides ~~pursuant to rules adopted under Section~~
 11 ~~1034.~~

12 (b) Except as otherwise expressly provided by statute, a
 13 prevailing party is entitled as a matter of right to recover costs in
 14 any action or proceeding.

15 (c) Nothing in this section shall prohibit parties from stipulating
 16 to alternative procedures for awarding costs in the litigation
 17 ~~pursuant to rules adopted under Section 1034.~~

18 SEC. 2. Section 1034 of the Code of Civil Procedure is
 19 repealed.

20 ~~1034. (a) Prejudgment costs allowable under this chapter shall~~
 21 ~~be claimed and contested in accordance with rules adopted by the~~
 22 ~~Judicial Council.~~

23 ~~(b) The Judicial Council shall establish by rule allowable costs~~
 24 ~~on appeal and the procedure for claiming those costs.~~