

**ASSEMBLY BILL**

**No. 1403**

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**Introduced by Committee on Judiciary (Feuer (Chair), Atkins,  
Dickinson, Huber, Huffman, Monning, and Wieckowski)**

March 7, 2011

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An act to amend Sections 222.5 and 662.5 of the Code of Civil Procedure, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1403, as introduced, Committee on Judiciary. Civil actions.

(1) Existing law requires a trial judge to examine prospective jurors, and, upon completion of the judge's examination, grants counsel for each party the right to examine, by oral and direct questioning, any prospective juror in order to enable counsel to intelligently exercise peremptory challenges and challenges for cause. Existing law provides that when examination is conducted by counsel for the parties, the trial judge should permit liberal and probing examination calculated to discover bias or prejudice, as specified.

This bill would require the trial judge to permit liberal and probing examination calculated to discover bias or prejudice.

(2) Existing law authorizes the trial court, in its discretion, in any civil action where after trial by jury an order granting a new trial limited to the issue of damages would be proper, to make a conditional order granting a new trial. If the ground for granting a new trial is inadequate damages, the order granting the new trial may be subject to the condition that the motion for a new trial is denied if the party against whom the verdict has been rendered consents to an increased verdict, as specified. If the ground for granting a new trial is excessive damages, the order granting the new trial may be subject to the condition that the motion

for a new trial is denied if the party in whose favor the verdict has been rendered consents to a reduction of the verdict, as specified.

This bill would provide that the deadline for acceptance or rejection of the addition or reduction of damages is 30 days from the date the conditional order is issued, if a deadline is not set forth in the conditional order. The bill would provide that failure to respond to the order shall be deemed a rejection of the addition or reduction of damages, and a new trial limited to the issue of damages shall be granted automatically. The bill would require a party serving an acceptance of a conditionally ordered addition or reduction of damages to prepare an amended judgment reflecting the modified judgment amount, as well as any other uncontested judgment awards.

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

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

1 SECTION 1. Section 222.5 of the Code of Civil Procedure is  
 2 amended to read:  
 3 222.5. To select a fair and impartial jury in civil jury trials, the  
 4 trial judge shall examine the prospective jurors. Upon completion  
 5 of the judge’s initial examination, counsel for each party shall have  
 6 the right to examine, by oral and direct questioning, any of the  
 7 prospective jurors in order to enable counsel to intelligently  
 8 exercise both peremptory challenges and challenges for cause.  
 9 During any examination conducted by counsel for the parties, the  
 10 trial judge ~~should~~ *shall* permit liberal and probing examination  
 11 calculated to discover bias or prejudice with regard to the  
 12 circumstances of the particular case. The fact that a topic has been  
 13 included in the judge’s examination should not preclude additional  
 14 nonrepetitive or nonduplicative questioning in the same area by  
 15 counsel.  
 16 The scope of the examination conducted by counsel shall be  
 17 within reasonable limits prescribed by the trial judge in the judge’s  
 18 sound discretion. In exercising his or her sound discretion as to  
 19 the form and subject matter of voir dire questions, the trial judge  
 20 should consider, among other criteria, any unique or complex  
 21 elements, legal or factual, in the case and the individual responses  
 22 or conduct of jurors which may evince attitudes inconsistent with  
 23 suitability to serve as a fair and impartial juror in the particular

1 case. Specific unreasonable or arbitrary time limits shall not be  
2 imposed.

3 The trial judge should permit counsel to conduct voir dire  
4 examination without requiring prior submission of the questions  
5 unless a particular counsel engages in improper questioning. For  
6 purposes of this section, an “improper question” is any question  
7 which, as its dominant purpose, attempts to precondition the  
8 prospective jurors to a particular result, indoctrinate the jury, or  
9 question the prospective jurors concerning the pleadings or the  
10 applicable law. A court should not arbitrarily or unreasonably  
11 refuse to submit reasonable written questionnaires, the contents  
12 of which are determined by the court in its sound discretion, when  
13 requested by counsel.

14 In civil cases, the court may, upon stipulation by counsel for all  
15 the parties appearing in the action, permit counsel to examine the  
16 prospective jurors outside a judge’s presence.

17 SEC. 2. Section 662.5 of the Code of Civil Procedure is  
18 amended to read:

19 662.5. (a) In any civil action where after trial by jury an order  
20 granting a new trial limited to the issue of damages would be  
21 proper, the trial court may in its discretion:

22 (a)

23 (1) If the ground for granting a new trial is inadequate damages,  
24 make its order granting the new trial subject to the condition that  
25 the motion for a new trial is denied if the party against whom the  
26 verdict has been rendered consents to an addition of so much  
27 thereto as the court in its independent judgment determines from  
28 the evidence to be fair and reasonable.

29 (b)

30 (2) If the ground for granting a new trial is excessive damages,  
31 make its order granting the new trial subject to the condition that  
32 the motion for a new trial is denied if the party in whose favor the  
33 verdict has been rendered consents to a reduction of so much  
34 thereof as the court in its independent judgment determines from  
35 the evidence to be fair and reasonable.

36 (b) *If a deadline for acceptance or rejection of the addition or*  
37 *reduction of damages is not set forth in the conditional order, the*  
38 *deadline is 30 days from the date the conditional order is issued.*  
39 *Failure to respond to the order in accordance with this section*  
40 *shall be deemed a rejection of the addition or reduction of damages*

1 *and a new trial limited to the issue of damages shall be granted*  
2 *automatically.*  
3 *(c) A party serving an acceptance of a conditionally ordered*  
4 *addition or reduction of damages shall prepare an amended*  
5 *judgment reflecting the modified judgment amount, as well as any*  
6 *other uncontested judgment awards.*

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