

AMENDED IN ASSEMBLY APRIL 1, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1659

Introduced by Assembly Member Chau

February 12, 2014

An act to amend ~~Section 430.30~~ *Sections 629, 659a, and 663a* of the Code of Civil Procedure, relating to civil procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 1659, as amended, Chau. Civil actions: ~~objections to pleadings post-verdict motions.~~

Existing law establishes procedures by which a court, either on its own motion or on motion of a party against whom a verdict has been rendered, may render judgment in favor of the aggrieved party notwithstanding the verdict. Existing law also establishes the procedures by which a party to a court action may make a motion to set aside and vacate a judgment.

This bill would require that the moving, opposing, and reply briefs and accompanying documents in support or opposition to a motion for judgment notwithstanding the verdict or in support or opposition to a motion to set aside and vacate a judgment be served and filed in accordance with the deadlines applicable to a motion for new trial.

Under existing law, a party in a civil action may object to a complaint, cross-complaint, or answer by demurrer if the ground for the objection appears on the face of the pleading or is from a matter of which the court must or may take judicial notice. If the ground for the objection does not appear on the face of the pleading, existing law permits the objection to be taken by answer. Existing law permits a party objecting

to a complaint or cross-complaint to demur and answer at the same time.

This bill would require that, before filing a demurrer, the demurring party meet and confer with the opposing party, and file a declaration with the demurrer showing a reasonable and good faith attempt at an informal resolution of each issue presented in the demurrer.

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 629 of the Code of Civil Procedure is
2 amended to read:

3 629. ~~The~~(a) The court, before the expiration of its power to
4 rule on a motion for a new trial, either of its own motion, after five
5 days' notice, or on motion of a party against whom a verdict has
6 been rendered, shall render judgment in favor of the aggrieved
7 party notwithstanding the verdict whenever a motion for a directed
8 verdict for the aggrieved party should have been granted had a
9 previous motion been made.

10 ~~A~~

11 (b) A motion for judgment notwithstanding the verdict shall be
12 made within the period specified by Section 659 ~~of this code in~~
13 ~~respect of~~ for the filing and ~~servin~~g service of a notice of intention
14 to move for a new trial. *The moving, opposing, and reply briefs*
15 *and any accompanying documents shall be filed and served within*
16 *the periods specified by Section 659a and the hearing on the motion*
17 *shall be set in the same manner as the hearing on a motion for*
18 *new trial under Section 660. The making of a motion for judgment*
19 *notwithstanding the verdict shall not extend the time within which*
20 *a party may file and serve notice of intention to move for a new*
21 *trial. The court shall not rule upon the motion for judgment*
22 *notwithstanding the verdict until the expiration of the time within*
23 *which a motion for a new trial must be served and filed, and if a*
24 *motion for a new trial has been filed with the court by the aggrieved*
25 *party, the court shall rule upon both motions at the same time. The*
26 *power of the court to rule on a motion for judgment*
27 *notwithstanding the verdict shall not extend beyond the last date*
28 *upon which it has the power to rule on a motion for a new trial. If*
29 *a motion for judgment notwithstanding the verdict is not*

1 determined before ~~such~~ *that* date, the effect shall be a denial of
2 ~~such that~~ motion without further order of the court.

3 If

4 (c) *If* the motion for judgment notwithstanding the verdict ~~be~~
5 *is* denied and if a new trial ~~be~~ *is* denied, the appellate court shall,
6 when it appears that the motion for judgment notwithstanding the
7 verdict should have been granted, order judgment to be so entered
8 on appeal from the judgment or from the order denying the motion
9 for judgment notwithstanding the verdict.

10 Where

11 (d) *If* a new trial is granted to the party moving for judgment
12 notwithstanding the verdict, and the motion for judgment
13 notwithstanding the verdict is denied, the order denying the motion
14 for judgment notwithstanding the verdict shall nevertheless be
15 reviewable on appeal from ~~said~~ *that* order by the aggrieved party.
16 If the court grants the motion for judgment notwithstanding the
17 verdict or of its own motion directs the entry of judgment
18 notwithstanding the verdict and likewise grants the motion for a
19 new trial, the order granting the new trial shall be effective only
20 if, on appeal, the judgment notwithstanding the verdict is reversed,
21 and the order granting a new trial is not appealed from or, if
22 appealed from, is affirmed.

23 *SEC. 2. Section 659a of the Code of Civil Procedure is*
24 *amended to read:*

25 659a. Within 10 days of filing the notice, the moving party
26 shall serve upon all other parties and file any ~~affidavits intended~~
27 ~~to be used upon such motion. Such brief and accompanying~~
28 *documents, including affidavits in support of the motion. The other*
29 *parties shall have ten 10 days after such that service within which*
30 *to serve upon the moving party and file any opposing briefs and*
31 *accompanying documents, including counter-affidavits. The time*
32 ~~herein specified~~ *The moving party shall have five days after that*
33 *service to file any reply brief and accompanying documents. These*
34 *deadlines may, for good cause shown by affidavit or by written*
35 *stipulation of the parties, be extended by any judge for an additional*
36 ~~period of not exceeding 20~~ *period not to exceed 10 days.*

37 *SEC. 3. Section 663a of the Code of Civil Procedure is*
38 *amended to read:*

39 663a. (a) A party intending to make a motion to set aside and
40 vacate a judgment, as described in Section 663, shall file with the

1 clerk and serve upon the adverse party a notice of his or her
2 intention, designating the grounds upon which the motion will be
3 made, and specifying the particulars in which the legal basis for
4 the decision is not consistent with or supported by the facts, or in
5 which the judgment or decree is not consistent with the special
6 verdict, either:

7 (1) After the decision is rendered and before the entry of
8 judgment.

9 (2) Within 15 days of the date of mailing of notice of entry of
10 judgment by the clerk of the court pursuant to Section 664.5, or
11 service upon him or her by any party of written notice of entry of
12 judgment, or within 180 days after the entry of judgment,
13 whichever is earliest.

14 (b) Except as otherwise provided in Section 12a, the power of
15 the court to rule on a motion to set aside and vacate a judgment
16 shall expire 60 days from the mailing of notice of entry of judgment
17 by the clerk of the court pursuant to Section 664.5, or 60 days after
18 service upon the moving party by any party of written notice of
19 entry of the judgment, whichever is earlier, or if that notice has
20 not been given, then 60 days after filing of the first notice of
21 intention to move to set aside and vacate the judgment. If that
22 motion is not determined within the 60-day period, or within that
23 period, as extended, the effect shall be a denial of the motion
24 without further order of the court. A motion to set aside and vacate
25 a judgment is not determined within the meaning of this section
26 until an order ruling on the motion is (1) entered in the permanent
27 minutes of the court, or (2) signed by the judge and filed with the
28 clerk. The entry of an order to set aside and vacate the judgment
29 in the permanent minutes of the court shall constitute a
30 determination of the motion; even though that minute order, as
31 entered, expressly directs that a written order be prepared, signed,
32 and filed. The minute entry shall, in all cases, show the date on
33 which the order actually is entered in the permanent minutes, but
34 failure to comply with this direction shall not impair the validity
35 or effectiveness of the order.

36 (c) The provisions of Section 1013 extending the time for
37 exercising a right or doing an act where service is by mail shall
38 not apply to extend the times specified in paragraphs (1) and (2)
39 of subdivision (a).

1 (d) *The moving, opposing, and reply briefs and any*
2 *accompanying documents shall be filed and served within the*
3 *periods specified by Section 659a and the hearing on the motion*
4 *shall be set in the same manner as the hearing on a motion for*
5 *new trial under Section 660.*

6 ~~(d)~~

7 (e) An order of the court granting a motion may be reviewed
8 on appeal in the same manner as a special order made after final
9 judgment.

10 SECTION 1. ~~Section 430.30 of the Code of Civil Procedure~~
11 ~~is amended to read:~~

12 ~~430.30. (a) When any ground for objection to a complaint,~~
13 ~~cross-complaint, or answer appears on the face thereof, or from~~
14 ~~any matter of which the court is required to or may take judicial~~
15 ~~notice, the objection on that ground may be taken by a demurrer~~
16 ~~to the pleading.~~

17 ~~(b) When any ground for objection to a complaint or~~
18 ~~cross-complaint does not appear on the face of the pleading, the~~
19 ~~objection may be taken by answer.~~

20 ~~(c) A party objecting to a complaint or cross-complaint may~~
21 ~~demur and answer at the same time.~~

22 ~~(d) Before filing a demurrer, the demurring party shall meet and~~
23 ~~confer with the opposing party and shall file a declaration~~
24 ~~concurrently with the demurrer evidencing a reasonable and good~~
25 ~~faith attempt to resolve informally each issue presented by the~~
26 ~~demurrer.~~