

AMENDED IN SENATE JUNE 23, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1522

Introduced by Committee on Judiciary (Assembly Members Mark Stone (Chair), Alejo, Chau, Chiu, Cristina Garcia, Holden, and O'Donnell)

March 10, 2015

An act to amend Sections ~~3485 and 3486.5~~ of the Civil Code, relating to real property; 8030.2, 8030.4, 8030.5, 8030.6, and 8030.8 of the Business and Professions Code, relating to shorthand reporters, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1522, as amended, Committee on Judiciary. ~~Unlawful detainer; nuisance. Transcript Reimbursement Fund: renewal.~~

Existing law provides for the licensure and regulation of shorthand reporters by the Court Reporters Board of California within the Department of Consumer Affairs. Existing law requires, until January 1, 2017, certain fees and revenues collected by the board from licensees to be deposited into the Transcript Reimbursement Fund to be available to provide reimbursement for the cost of providing shorthand reporting services to low-income litigants in civil cases. Existing law authorizes, until January 1, 2017, low-income persons appearing pro se to apply for funds from the Transcript Reimbursement Fund, subject to specified requirements and limitations. Existing law requires the board, until January 1, 2017, to publicize the availability of the fund to prospective applicants. Existing law requires the unencumbered funds remaining

in the Transcript Reimbursement Fund as of January 1, 2017, to be transferred to the Court Reporters' Fund.

This bill would extend the operation of these provisions until January 1, 2021. By extending the operation of the Transcript Reimbursement Fund, which is a continuously appropriated fund, the bill would make an appropriation.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law establishes the criteria for determining when a tenant is guilty of unlawful detainer, including, but not limited to, conduct involving illegally selling a controlled substance, or the commission of an offense involving the unlawful possession or use of illegal weapons or ammunition or the use of the premises to further that purpose. Any of those acts may be deemed to constitute committing a nuisance on the premises.~~

~~Existing law authorizes, for real property situated in prescribed localities, a city prosecutor or city attorney to file an action for unlawful detainer in the name of the people against any person who is in violation of the nuisance or the illegal purpose provisions.~~

~~Existing law requires the city attorney or city prosecutor to provide prescribed information pertaining to action taken pursuant to these provisions to the California Research Bureau, and requires the bureau to report to the Senate and Assembly Committees on Judiciary once on or before March 20, 2016, and once on or before March 20, 2018, summarizing the information collected pursuant to these provisions.~~

~~This bill would, instead, require that the bureau report once on or before April 20, 2016, and once on or before April 20, 2018.~~

Vote: ~~majority~~^{2/3}. Appropriation: ~~no~~-yes. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

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

- 1 SECTION 1. Section 8030.2 of the Business and Professions
- 2 Code is amended to read:
- 3 8030.2. (a) To provide shorthand reporting services to
- 4 low-income litigants in civil cases, who are unable to otherwise
- 5 afford those services, funds generated by fees received by the board
- 6 pursuant to subdivision (c) of Section 8031 in excess of funds
- 7 needed to support the board's operating budget for the fiscal year
- 8 in which a transfer described below is made shall be used by the

1 board for the purpose of establishing and maintaining a Transcript
2 Reimbursement Fund. The Transcript Reimbursement Fund shall
3 be established by a transfer of funds from the Court Reporters'
4 Fund in the amount of three hundred thousand dollars (\$300,000)
5 at the beginning of each fiscal year. Notwithstanding any other
6 provision of this article, a transfer to the Transcript Reimbursement
7 Fund in excess of the fund balance established at the beginning of
8 each fiscal year shall not be made by the board if the transfer will
9 result in the reduction of the balance of the Court Reporters' Fund
10 to an amount less than six months' operating budget.

11 (b) All moneys held in the Court Reporters' Fund on the
12 effective date of this section in excess of the board's operating
13 budget for the 1996–97 fiscal year shall be used as provided in
14 subdivision (a).

15 (c) Refunds and unexpended funds that are anticipated to remain
16 in the Transcript Reimbursement Fund at the end of the fiscal year
17 shall be considered by the board in establishing the fee assessment
18 pursuant to Section 8031 so that the assessment shall maintain the
19 level of funding for the Transcript Reimbursement Fund, as
20 specified in subdivision (a), in the following fiscal year.

21 (d) The Transcript Reimbursement Fund is hereby created in
22 the State Treasury. Notwithstanding Section 13340 of the
23 Government Code, moneys in the Transcript Reimbursement Fund
24 are continuously appropriated for the purposes of this chapter.

25 (e) (1) Applicants, including applicants pursuant to Section
26 8030.5, who have been reimbursed pursuant to this chapter for
27 services provided to litigants and who are awarded court costs or
28 attorney's fees by judgment or by settlement agreement shall refund
29 the full amount of that reimbursement to the fund within 90 days
30 of receipt of the award or settlement.

31 (2) An applicant pursuant to Section 8030.5 who has been
32 reimbursed for services provided to litigants under this chapter
33 shall refund the full amount reimbursed if a court orders the
34 applicant's fee waiver withdrawn or denied retroactively pursuant
35 to Section 68636 of the Government Code, within 90 days of the
36 court's order withdrawing or denying the fee waiver.

37 (f) Subject to the limitations of this chapter, the board shall
38 maintain the fund at a level that is sufficient to pay all qualified
39 claims. To accomplish this objective, the board shall utilize all

1 refunds, unexpended funds, fees, and any other moneys received
2 by the board.

3 (g) Notwithstanding Section 16346 of the Government Code,
4 all unencumbered funds remaining in the Transcript
5 Reimbursement Fund as of January 1, 2017, shall be transferred
6 to the Court Reporters’ Fund.

7 (h) This section shall remain in effect only until January 1, ~~2017,~~
8 2021, and as of that date is repealed, unless a later enacted statute,
9 that is enacted before January 1, ~~2017,~~ 2021, deletes or extends
10 that date.

11 *SEC. 2. Section 8030.4 of the Business and Professions Code*
12 *is amended to read:*

13 8030.4. As used in this chapter:

14 (a) “Applicant” means a qualified legal services project,
15 qualified support center, other qualified project, or pro bono
16 attorney applying to receive funds from the Transcript
17 Reimbursement Fund established by this chapter. The term
18 “applicant” shall not include a person appearing pro se to represent
19 himself or herself at any stage of a case.

20 (b) “Case” means a single legal proceeding from its inception,
21 through all levels of hearing, trial, and appeal, until its ultimate
22 conclusion and disposition.

23 (c) “Certified shorthand reporter” means a shorthand reporter
24 certified pursuant to Article 3 (commencing with Section 8020)
25 performing shorthand reporting services pursuant to Section 8017.

26 (d) “Developmentally Disabled Assistance Act” means the
27 Developmentally Disabled Assistance and Bill of Rights Act of
28 1975 (Public Law 94-103), as amended.

29 (e) “Fee-generating case” means any case or matter that, if
30 undertaken on behalf of an eligible client by an attorney in private
31 practice, reasonably may be expected to result in payment of a fee
32 for legal services from an award to a client, from public funds, or
33 from an opposing party. A reasonable expectation as to payment
34 of a legal fee exists wherever a client enters into a contingent fee
35 agreement with his or her lawyer. If there is no contingent fee
36 agreement, a case is not considered fee generating if adequate
37 representation is deemed to be unavailable because of the
38 occurrence of any of the following circumstances:

39 (1) If the applicant has determined that referral is not possible
40 because of any of the following:

1 (A) The case has been rejected by the local lawyer referral
2 service, or if there is no such service, by two private attorneys who
3 have experience in the subject matter of the case.

4 (B) Neither the referral service nor any lawyer will consider the
5 case without payment of a consultation fee.

6 (C) The case is of the type that private attorneys in the area
7 ordinarily do not accept, or do not accept without prepayment of
8 a fee.

9 (D) Emergency circumstances compel immediate action before
10 referral can be made, but the client is advised that, if appropriate
11 and consistent with professional responsibility, referral will be
12 attempted at a later time.

13 (2) If recovery of damages is not the principal object of the case
14 and a request for damages is merely ancillary to an action for
15 equitable or other nonpecuniary relief or inclusion of a
16 counterclaim requesting damages is necessary for effective defense
17 or because of applicable rules governing joinder of counterclaims.

18 (3) If a court appoints an applicant or an employee of an
19 applicant pursuant to a statute or a court rule or practice of equal
20 applicability to all attorneys in the jurisdiction.

21 (4) In any case involving the rights of a claimant under a
22 public-supported benefit program for which entitlement to benefit
23 is based on need.

24 (f) (1) “Indigent person” means any of the following:

25 (A) A person whose income is 125 percent or less of the current
26 poverty threshold established by the United States Office of
27 Management and Budget.

28 (B) A person who is eligible for supplemental security income.

29 (C) A person who is eligible for, or receiving, free services
30 under the federal Older Americans Act or the Developmentally
31 Disabled Assistance Act.

32 (D) A person whose income is 75 percent or less of the
33 maximum level of income for lower income households as defined
34 in Section 50079.5 of the Health and Safety Code, for purposes of
35 a program that provides legal assistance by an attorney in private
36 practice on a pro bono basis.

37 (E) A person who qualifies for a waiver of fees pursuant to
38 Section 68632 of the Government Code.

1 (2) For the purposes of this subdivision, the income of a person
2 who is disabled shall be determined after deducting the costs of
3 medical and other disability-related special expenses.

4 (g) “Lawyer referral service” means a lawyer referral program
5 authorized by the State Bar of California pursuant to the rules of
6 professional conduct.

7 (h) “Legal Services Corporation” means the Legal Services
8 Corporation established under the Legal Services Corporation Act
9 of 1974 (Public Law 93-355), as amended.

10 (i) “Older Americans Act” means the Older Americans Act of
11 1965 (Public Law 89-73), as amended.

12 (j) “Other qualified project” means a nonprofit organization
13 formed for charitable or other public purposes, that does not receive
14 funds from the Legal Services Corporation or pursuant to the
15 federal Older Americans Act, and provides free legal services to
16 indigent persons.

17 (k) “Pro bono attorney” means any attorney, law firm, or legal
18 corporation, licensed to practice law in this state, that undertakes,
19 without charge to the party, the representation of an indigent
20 person, referred by a qualified legal services project, qualified
21 support center, or other qualified project, in a case not considered
22 to be fee generating, as defined in this chapter.

23 (l) “Qualified legal services project” means a nonprofit project,
24 incorporated and operated exclusively in California, that provides
25 as its primary purpose and function legal services without charge
26 to indigent persons, has a board of directors or advisory board
27 composed of both attorneys and consumers of legal services, and
28 provides for community participation in legal services
29 programming. A legal services project funded, either in whole or
30 in part, by the Legal Services Corporation or with the federal Older
31 Americans Act funds is presumed to be a qualified legal services
32 project for the purposes of this chapter.

33 (m) “Qualified support center” means an incorporated nonprofit
34 legal services center that has an office or offices in California that
35 provide legal services or technical assistance without charge to
36 qualified legal services projects and their clients on a multicounty
37 basis in California. A support center funded, either in whole or in
38 part, by the Legal Services Corporation or with the federal Older
39 Americans Act funds is presumed to be a qualified legal services
40 project for the purposes of this chapter.

1 (n) “Rules of professional conduct” means those rules adopted
2 by the State Bar of California pursuant to Sections 6076 and 6077.

3 (o) “Supplemental security income recipient” means an
4 individual receiving or eligible to receive payments under Title
5 XVI of the Social Security Act (Public Law 92-603), as amended,
6 or payment under Chapter 3 (commencing with Section 12000) of
7 Part 3 of Division 9 of the Welfare and Institutions Code.

8 (p) This section shall remain in effect only until January 1, ~~2017~~,
9 2021, and as of that date is repealed, unless a later enacted statute,
10 that is enacted before January 1, ~~2017~~, 2021, deletes or extends
11 that date.

12 *SEC. 3. Section 8030.5 of the Business and Professions Code*
13 *is amended to read:*

14 8030.5. (a) Notwithstanding subdivision (a) of Section 8030.4,
15 as used in this chapter the term “applicant” also means an indigent
16 person, as defined in subdivision (f) of Section 8030.4, appearing
17 pro se to represent himself or herself at any stage of the case and
18 applying to receive funds from the Transcript Reimbursement
19 Fund established by this chapter.

20 (b) Notwithstanding Section 8030.6, total disbursements to
21 cover the cost of providing transcripts to all applicants pursuant
22 to this section shall not exceed thirty thousand dollars (\$30,000)
23 annually and shall not exceed one thousand five hundred dollars
24 (\$1,500) per case.

25 (c) The board shall provide a report to the Senate and Assembly
26 Committees on Judiciary by March 1, 2012, that includes a
27 summary of the expenditures and claims relating to this article,
28 including the initial fund balance as of January 1, 2011; all funds
29 received, including the amount of, and reason for, any refunds
30 pursuant to subdivision (e) of Section 8030.2; all claims received,
31 including the type of case, court involved, service for which
32 reimbursement was sought, amount paid, and amount denied, if
33 any, and the reason for denial; and all administrative fees. This
34 report shall be provided using existing resources.

35 (d) The Legislature finds and declares that there are funds
36 available for indigent pro se parties under this article only because
37 the Transcript Reimbursement Fund has not been fully utilized in
38 recent years by the eligible applicants for whom its use has been
39 intended, despite the evident financial need among legal services
40 organizations and pro bono attorneys. Accordingly, the board shall,

1 using existing resources, undertake further efforts to publicize the
2 availability of the Transcript Reimbursement Fund to prospective
3 applicants, as defined in subdivision (a) of Section 8030.4, through
4 appropriate entities serving these applicants, including the State
5 Bar of California, the California Commission on Access to Justice,
6 and the Legal Aid Association of California. These efforts shall
7 be described in the report required by subdivision (c).

8 (e) This section shall remain in effect only until January 1, ~~2017~~,
9 2021, and as of that date is repealed, unless a later enacted statute
10 that is enacted before January 1, ~~2017~~, 2021, deletes or extends
11 that date.

12 *SEC. 4. Section 8030.6 of the Business and Professions Code*
13 *is amended to read:*

14 8030.6. The board shall disburse funds from the Transcript
15 Reimbursement Fund for the costs, exclusive of per diem charges
16 by official reporters, of preparing either an original transcript and
17 one copy thereof, or where appropriate, a copy of the transcript,
18 of court or deposition proceedings, or both, incurred as a
19 contractual obligation between the shorthand reporter and the
20 applicant, for litigation conducted in California. If there is no
21 deposition transcript, the board may reimburse the applicant or the
22 certified shorthand reporter designated in the application for per
23 diem costs. The rate of per diem for depositions shall not exceed
24 seventy-five dollars (\$75) for one-half day, or one hundred
25 twenty-five dollars (\$125) for a full day. If a transcript is ordered
26 within one year of the date of the deposition, but subsequent to
27 the per diem having been reimbursed by the Transcript
28 Reimbursement Fund, the amount of the per diem shall be deducted
29 from the regular customary charges for a transcript. Reimbursement
30 may be obtained through the following procedures:

31 (a) The applicant or certified shorthand reporter shall promptly
32 submit to the board the certified shorthand reporter's invoice for
33 transcripts together with the appropriate documentation as is
34 required by this chapter.

35 (b) Except as provided in subdivision (c), the board shall
36 promptly determine if the applicant or the certified shorthand
37 reporter is entitled to reimbursement under this chapter and shall
38 make payment as follows:

1 (1) Regular customary charges for preparation of original
2 deposition transcripts and one copy thereof, or a copy of the
3 transcripts.

4 (2) Regular customary charges for expedited deposition
5 transcripts up to a maximum of two thousand five hundred dollars
6 (\$2,500) per case.

7 (3) Regular customary charges for the preparation of original
8 transcripts and one copy thereof, or a copy of transcripts of court
9 proceedings.

10 (4) Regular customary charges for expedited or daily charges
11 for preparation of original transcripts and one copy thereof or a
12 copy of transcripts of court proceedings.

13 (5) The charges shall not include notary or handling fees. The
14 charges may include actual shipping costs and exhibits, except
15 that the cost of exhibits may not exceed thirty-five cents (\$0.35)
16 each or a total of thirty-five dollars (\$35) per transcript.

17 (c) The maximum amount reimbursable by the fund under
18 subdivision (b) shall not exceed twenty thousand dollars (\$20,000)
19 per case per year.

20 (d) If entitled, and funds are available, the board shall disburse
21 the appropriate sum to the applicant or the certified shorthand
22 reporter when the documentation described in Section 8030.8
23 accompanies the application. A notice shall be sent to the recipient
24 requiring the recipient to file a notice with the court in which the
25 action is pending stating the sum of reimbursement paid pursuant
26 to this section. The notice filed with the court shall also state that
27 if the sum is subsequently included in any award of costs made in
28 the action, that the sum is to be ordered refunded by the applicant
29 to the Transcript Reimbursement Fund whenever the sum is
30 actually recovered as costs. The court shall not consider whether
31 payment has been made from the Transcript Reimbursement Fund
32 in determining the appropriateness of any award of costs to the
33 parties. The board shall also notify the applicant that the reimbursed
34 sum has been paid to the certified shorthand reporter and shall
35 notify the applicant of the duty to refund any of the sum actually
36 recovered as costs in the action.

37 (e) If not entitled, the board shall return a copy of the invoice
38 to the applicant and the designated certified shorthand reporter
39 together with a notice stating the grounds for denial.

1 (f) The board shall complete its actions under this section within
2 30 days of receipt of the invoice and all required documentation,
3 including a completed application.

4 (g) Applications for reimbursements from the fund shall be filed
5 on a first-come-first-served basis.

6 (h) Applications for reimbursement that cannot be paid from
7 the fund due to insufficiency of the fund for that fiscal year shall
8 be held over until the next fiscal year to be paid out of the renewed
9 fund. Applications held over shall be given a priority standing in
10 the next fiscal year.

11 (i) This section shall remain in effect only until January 1, ~~2017~~,
12 2021, and as of that date is repealed, unless a later enacted statute,
13 that is enacted before January 1, ~~2017~~, 2021, deletes or extends
14 that date.

15 *SEC. 5. Section 8030.8 of the Business and Professions Code*
16 *is amended to read:*

17 8030.8. (a) For purposes of this chapter, documentation
18 accompanying an invoice is sufficient to establish entitlement for
19 reimbursement from the Transcript Reimbursement Fund if it is
20 filed with the executive officer on an application form prescribed
21 by the board that is complete in all respects, and that establishes
22 all of the following:

23 (1) The case name and number and that the litigant or litigants
24 requesting the reimbursement are indigent persons. If the applicant
25 is an indigent person applying pursuant to Section 8030.5, the
26 application shall be accompanied by a copy of the fee waiver form
27 approved by the court in the matter for which the applicant seeks
28 reimbursement.

29 (2) The applicant is qualified under the provisions of this
30 chapter.

31 (3) The case is not a fee-generating case, as defined in Section
32 8030.4.

33 (4) The invoice or other documentation shall evidence that the
34 certified shorthand reporter to be reimbursed was, at the time the
35 services were rendered, a duly licensed certified shorthand reporter.

36 (5) The invoice shall be accompanied by a statement, signed by
37 the applicant, stating that the charges are for transcripts actually
38 provided as indicated on the invoice.

39 (6) The applicant has acknowledged, in writing, that as a
40 condition of entitlement for reimbursement that the applicant agrees

1 to refund the entire amount disbursed from the Transcript
2 Reimbursement Fund from any costs or attorney's fees awarded
3 to the applicant by the court or provided for in any settlement
4 agreement in the case.

5 (7) The certified shorthand reporter's invoice for transcripts
6 shall include separate itemizations of charges claimed, as follows:

7 (A) Total charges and rates for customary services in preparation
8 of an original transcript and one copy or a copy of the transcript
9 of depositions.

10 (B) Total charges and rates for expedited deposition transcripts.

11 (C) Total charges and rates in connection with transcription of
12 court proceedings.

13 (b) For an applicant claiming to be eligible pursuant to
14 subdivision (j), (l), or (m) of Section 8030.4, a letter from the
15 director of the project or center, certifying that the project or center
16 meets the standards set forth in one of those subdivisions and that
17 the litigant or litigants are indigent persons, is sufficient
18 documentation to establish eligibility.

19 (c) For an applicant claiming to be eligible pursuant to
20 subdivision (k) of Section 8030.4, a letter certifying that the
21 applicant meets the requirements of that subdivision, that the case
22 is not a fee-generating case, as defined in subdivision (e) of Section
23 8030.4, and that the litigant or litigants are indigent persons,
24 together with a letter from the director of a project or center defined
25 in subdivision (j), (l), or (m) of Section 8030.4 certifying that the
26 litigant or litigants had been referred by that project or center to
27 the applicant, is sufficient documentation to establish eligibility.

28 (d) The applicant may receive reimbursement directly from the
29 board if the applicant has previously paid the certified shorthand
30 reporter for transcripts as provided in Section 8030.6. To receive
31 payment directly, the applicant shall submit, in addition to all other
32 required documentation, an itemized statement signed by the
33 certified shorthand reporter performing the services that describes
34 payment for transcripts in accordance with the requirements of
35 Section 8030.6.

36 (e) The board may prescribe appropriate forms to be used by
37 applicants and certified shorthand reporters to facilitate these
38 requirements.

1 (f) This chapter does not restrict the contractual obligation or
2 payment for services, including, but not limited to, billing the
3 applicant directly, during the pendency of the claim.

4 (g) This section shall remain in effect only until January 1, ~~2017~~,
5 2021, and as of that date is repealed, unless a later enacted statute,
6 that is enacted before January 1, ~~2017~~, 2021, deletes or extends
7 that date.

8 *SEC. 6. This act is an urgency statute necessary for the*
9 *immediate preservation of the public peace, health, or safety within*
10 *the meaning of Article IV of the Constitution and shall go into*
11 *immediate effect. The facts constituting the necessity are:*

12 *In order for the indigent to have continued access to court*
13 *reporters, it is necessary that this act take effect immediately.*

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**All matter omitted in this version of the bill
appears in the bill as introduced in the
Assembly, March 10, 2015. (JR11)**