

**ASSEMBLY BILL**

**No. 1796**

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**Introduced by Assembly Member Wilk  
(Coauthor: Assembly Member Wagner)**

February 4, 2016

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An act to amend Sections 387, 1032, and 1038 of the Code of Civil Procedure, relating to civil procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 1796, as introduced, Wilk. Civil actions: intervention.

Under existing law, any person who has an interest in a matter in litigation, or in the success of either of the parties, or an interest against both, may intervene in the action or proceeding. Existing law provides that a third person may become a party to an action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, uniting with the defendant in resisting the claims of the plaintiff, or demanding anything adversely to both the plaintiff and the defendant, by filing a complaint setting forth the grounds upon which the intervention rests, as specified.

This bill would require that a person permitted to intervene file a complaint, answer, or both, setting forth the grounds upon which the intervention rests, and would make conforming changes to other provisions of law.

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

3 387. (a) Upon timely application, any ~~person~~, *person* who has  
 4 an interest in the matter in litigation, or in the success of either of  
 5 the parties, or an interest against both, may intervene in the action  
 6 or proceeding. An intervention takes place when a third person is  
 7 permitted to become a party to an action or proceeding between  
 8 other persons, either by joining the plaintiff in claiming what is  
 9 sought by the complaint, or by uniting with the defendant in  
 10 resisting the claims of the plaintiff, or by demanding anything  
 11 adversely to both the plaintiff and the defendant, and is made by  
 12 complaint, *answer*, or *both*, setting forth the grounds upon which  
 13 the intervention rests, filed by leave of the court and served upon  
 14 the parties to the action or proceeding who have not appeared in  
 15 the same manner as upon the commencement of an original action,  
 16 and upon the attorneys of the parties who have appeared, or upon  
 17 the party if he has appeared without an attorney, in the manner  
 18 provided for service of summons or in the manner provided by  
 19 Chapter 5 (commencing with Section 1010) Title 14 of Part 2. A  
 20 party served with a complaint *or answer* in intervention may within  
 21 30 days after service move, demur, or otherwise plead to the  
 22 complaint *or answer* in the same manner as to an original complaint  
 23 *or answer*.

24 (b) If any provision of law confers an unconditional right to  
 25 intervene or if the person seeking intervention claims an interest  
 26 relating to the property to transaction which is the subject of the  
 27 action and that person is so situated that the disposition of the  
 28 action may as a practical matter impair or impede that person’s  
 29 ability to protect that interest, unless that person’s interest is  
 30 adequately represented by existing parties, the court shall, upon  
 31 timely application, permit that person to intervene.

32 SEC. 2. Section 1032 of the Code of Civil Procedure is  
 33 amended to read:

34 1032. (a) As used in this section, unless the context clearly  
 35 requires otherwise:

36 (1) “Complaint” includes a cross-complaint.

1 (2) “Defendant” includes a cross-defendant or, a person against  
2 whom a complaint is ~~filed~~: *filed, or a party who files an answer*  
3 *in intervention.*

4 (3) “Plaintiff” includes a cross-complainant or a party who files  
5 a complaint in intervention.

6 (4) “Prevailing party” includes the party with a net monetary  
7 recovery, a defendant in whose favor a dismissal is entered, a  
8 defendant where neither plaintiff nor defendant obtains any relief,  
9 and a defendant as against those plaintiffs who do not recover any  
10 relief against that defendant. ~~When~~ *If* any party recovers other than  
11 monetary relief and in situations other than as specified, the  
12 “prevailing party” shall be as determined by the court, and under  
13 those circumstances, the court, in its discretion, may allow costs  
14 or not and, if allowed, may apportion costs between the parties on  
15 the same or adverse sides pursuant to rules adopted under Section  
16 1034.

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

20 (c) Nothing in this section shall prohibit parties from stipulating  
21 to alternative procedures for awarding costs in the litigation  
22 pursuant to rules adopted under Section 1034.

23 SEC. 3. Section 1038 of the Code of Civil Procedure is  
24 amended to read:

25 1038. (a) In any civil proceeding under the Government Claims  
26 Act (Division 3.6 (commencing with Section 810) of Title 1 of the  
27 Government Code) or for express or implied indemnity or for  
28 contribution in any civil action, the court, upon motion of the  
29 defendant or cross-defendant, shall, at the time of the granting of  
30 any summary judgment, motion for directed verdict, motion for  
31 judgment under Section 631.8, or any nonsuit dismissing the  
32 moving party other than the plaintiff, petitioner, cross-complainant,  
33 or intervenor, or at a later time set forth by rule of the Judicial  
34 Council adopted under Section 1034, determine whether or not  
35 the plaintiff, petitioner, cross-complainant, or intervenor brought  
36 the proceeding with reasonable cause and in the good faith belief  
37 that there was a justifiable controversy under the facts and law  
38 which warranted the filing of the complaint, petition,  
39 cross-complaint, or complaint *or answer* in intervention. If the  
40 court should determine that the proceeding was not brought in

1 good faith and with reasonable cause, an additional issue shall be  
2 decided as to the defense costs reasonably and necessarily incurred  
3 by the party or parties opposing the proceeding, and the court shall  
4 render judgment in favor of that party in the amount of all  
5 reasonable and necessary defense costs, in addition to those costs  
6 normally awarded to the prevailing party. An award of defense  
7 costs under this section shall not be made except on notice  
8 contained in a party’s papers and an opportunity to be heard.

9 (b) “Defense costs,” as used in this section, shall include  
10 reasonable ~~attorneys’~~ *attorney’s* fees, expert witness fees, the  
11 expense of services of experts, advisers, and consultants in defense  
12 of the proceeding, and where reasonably and necessarily incurred  
13 in defending the proceeding.

14 (c) This section shall be applicable only on motion made ~~prior~~  
15 ~~to~~ *before* the discharge of the jury or entry of judgment, and any  
16 party requesting the relief pursuant to this section waives any right  
17 to seek damages for malicious prosecution. Failure to make the  
18 motion shall not be deemed a waiver of the right to pursue a  
19 malicious prosecution action.

20 (d) This section shall only apply if the defendant or  
21 cross-defendant has made a motion for summary judgment,  
22 judgment under Section 631.8, directed verdict, or nonsuit and the  
23 motion is granted.