

AMENDED IN SENATE JUNE 20, 2016

AMENDED IN ASSEMBLY MARCH 14, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1796

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

February 4, 2016

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 amended, 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~~ *seeking* to intervene in an action or proceeding, deemed the intervenor, ~~file a complaint, answer, or both, setting forth the grounds upon which the intervention rests.~~ *petition the court for leave to intervene by noticed motion or ex parte application setting forth the grounds upon which the intervention rests, and would require the intervenor to include a copy of the proposed complaint in intervention or answer in intervention with the petition.*

The bill would also require the intervenor to serve the order, or notice of the court’s decision or order, granting leave to intervene and the pleadings in intervention on all other parties in the action or proceeding, as specified. The bill would also recast some provisions of existing law and 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) For purposes of this section:
 4 (1) “Defendant” includes a cross-defendant.
 5 (2) “Plaintiff” includes a cross-complainant.
 6 (b) An intervention takes place when a third-person *person*,
 7 deemed an intervenor, becomes a party to an action or proceeding
 8 between other-~~other~~ persons by doing any of the following:
 9 (1) Joining a plaintiff in claiming what is sought-~~in~~ *by* the
 10 complaint.
 11 (2) Uniting with a defendant in resisting the claims of a plaintiff.
 12 (3) Demanding anything adverse to both a plaintiff and a
 13 defendant.
 14 (c) A third person seeking leave of court to intervene in an action
 15 or proceeding shall timely do the following:
 16 (1) ~~Set~~ *Petition the court for leave to intervene by noticed motion*
 17 *or ex parte application. The petition shall set forth the grounds*
 18 *upon which the intervention rests and attach shall include a copy*
 19 *of a the proposed complaint in intervention, intervention or answer*
 20 *in intervention, or both. intervention.*
 21 (2) Serve a copy of the documents submitted to the court in
 22 support of the request for intervention on all other parties who
 23 have appeared in the action or proceeding in the manner provided
 24 by Chapter 5 (commencing with Section 1010) of Title 14 of Part
 25 ~~2~~ *2, or as prescribed by the California Rules of Court applicable*
 26 *to ex parte applications.*
 27 (d) (1) The court shall, upon timely application, permit a third
 28 person to intervene in the action or proceeding if either of the
 29 following conditions is satisfied:

1 (A) A provision of law confers an unconditional right to
2 intervene.

3 (B) The person seeking intervention claims an interest relating
4 to the property or transaction that is the subject of the action and
5 that person is so situated that the disposition of the action may
6 impair or impede that person’s ability to protect that interest, unless
7 that person’s interest is adequately represented by one or more of
8 the existing parties.

9 (2) The court may, upon timely application, permit a third person
10 to intervene in the action or proceeding if the person has an interest
11 in the matter in litigation, or in the success of either of the parties,
12 or an interest against both.

13 (e) If leave to intervene is granted to the court, the intervenor
14 shall do both of the following:

15 (1) Separately file the complaint in intervention, answer in
16 intervention, or both.

17 (2) Serve a copy of the order, or the notice of the court’s decision
18 or order, granting leave to intervene and the pleadings in
19 intervention on all other parties in the action or proceeding,
20 including any parties who have not appeared, in the same manner
21 for service of summons pursuant to Article 3 (commencing with
22 Section 415.10) of Chapter 4 of Title 5 of Part 2, or in the manner
23 provided by Chapter 5 (commencing with Section 1010) of Title
24 14 of Part 2.

25 (f) Within 30 days after service of a complaint in intervention
26 or answer in intervention, a party may move, demur, or otherwise
27 plead to the complaint in intervention or answer in intervention in
28 the same manner as to an original complaint or answer.

29 ~~(g) This section shall not be construed to prevent a third person
30 from seeking leave of court to intervene by an ex parte application
31 in the manner prescribed by the rules of court adopted by the
32 Judicial Council for ex parte applications.~~

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

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

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

38 (2) “Defendant” includes a cross-defendant, a person against
39 whom a complaint is filed, or a party who files an answer in
40 intervention.

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

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

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

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

20 SEC. 3. Section 1038 of the Code of Civil Procedure is
21 amended to read:

22 1038. (a) In any civil proceeding under the Government Claims
23 Act (Division 3.6 (commencing with Section 810) of Title 1 of the
24 Government Code) or for express or implied indemnity or for
25 contribution in any civil action, the court, upon motion of the
26 defendant or cross-defendant, shall, at the time of the granting of
27 any summary judgment, motion for directed verdict, motion for
28 judgment under Section 631.8, or any nonsuit dismissing the
29 moving party other than the plaintiff, petitioner, cross-complainant,
30 or intervenor, or at a later time set forth by rule of the Judicial
31 Council adopted under Section 1034, determine whether or not
32 the plaintiff, petitioner, cross-complainant, or intervenor brought
33 the proceeding with reasonable cause and in the good faith belief
34 that there was a justifiable controversy under the facts and law
35 which warranted the filing of the complaint, petition,
36 cross-complaint, or complaint or answer in intervention. If the
37 court should determine that the proceeding was not brought in
38 good faith and with reasonable cause, an additional issue shall be
39 decided as to the defense costs reasonably and necessarily incurred
40 by the party or parties opposing the proceeding, and the court shall

1 render judgment in favor of that party in the amount of all
2 reasonable and necessary defense costs, in addition to those costs
3 normally awarded to the prevailing party. An award of defense
4 costs under this section shall not be made except on notice
5 contained in a party's papers and an opportunity to be heard.

6 (b) "Defense costs," as used in this section, shall include
7 reasonable attorney's fees, expert witness fees, the expense of
8 services of experts, advisers, and consultants in defense of the
9 proceeding, and where reasonably and necessarily incurred in
10 defending the proceeding.

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

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