

Assembly Bill No. 2192

Passed the Assembly August 24, 2016

Chief Clerk of the Assembly

Passed the Senate August 18, 2016

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 8000, 8005, 8030.2, 8030.4, 8030.6, 8030.8, and 8031 of, to add Section 8030.1 to, to add and repeal Section 8030.9 of, and to repeal Section 8030.5 of, the Business and Professions Code, relating to professions and vocations, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2192, Salas. Court Reporters Board of California: Shorthand reporters fees: Transcript Reimbursement Fund.

(1) Existing law provides for the licensure and regulation of shorthand reporters by the Court Reporters Board of California, which is within the Department of Consumer Affairs, and authorizes the board to appoint an executive officer and committees and to employ other employees, as specified. Existing law repeals these provisions on January 1, 2017.

This bill would extend the operation of the board and the authorization of the board to appoint specified personnel and committees until January 1, 2020.

(2) Existing law authorizes the board, by resolution, to establish a fee for the renewal of a certificate issued by the board, and prohibits the fee from exceeding \$125, as specified. Under existing law, all fees and revenues received by the board are deposited into the Court Reporters' Fund, which is a continuously appropriated fund as it pertains to fees collected by the board.

This bill would raise that fee limit to \$250. By authorizing an increase in a fee deposited into a continuously appropriated fund, this bill would make an appropriation.

(3) 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, which is established as a continuously appropriated 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, including that

total disbursements are prohibited from exceeding \$30,000 annually and \$1,500 per case. Existing law requires the board, until January 1, 2017, to publicize the availability of the Transcript Reimbursement 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.

The bill would provide that the Transcript Reimbursement Fund is to be funded by a transfer of funds from the Court Reporters' Fund in the amount of \$300,000 annually and authorizes the board to transfer funds in increments of \$100,000. The bill would provide that the board may use existing resources to publicize the availability of the Transcript Reimbursement Fund to prospective applicants, as specified. The bill would instead prohibit disbursements from the Transcript Reimbursement Fund to pro se litigants from exceeding \$75,000 annually. The bill would prohibit a vexatious litigant, as defined, from receiving funds from the Transcript Reimbursement Fund, except as specified. The bill would require the board to prepare and submit a report to the Legislature on or before November 1, 2018, regarding the condition of the Court Reporters' Fund, the condition of the Transcript Reimbursement Fund, and alternative funding sources to cover the costs associated with transcripts provided to indigent litigants, as specified. This bill would extend the operation of the provisions regarding the Transcript Reimbursement Fund until January 1, 2020, and recast and revise certain provisions regarding that fund.

By extending the operation of the Transcript Reimbursement Fund, which is a continuously appropriated fund, the bill would make an appropriation.

(4) This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

Appropriation: yes.

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

SECTION 1. Section 8000 of the Business and Professions Code is amended to read:

8000. (a) There is in the Department of Consumer Affairs a Court Reporters Board of California, which consists of five members, three of whom shall be public members and two of whom shall be holders of certificates issued under this chapter who have been actively engaged as shorthand reporters within this state for at least five years immediately preceding their appointment.

(b) This section shall remain in effect only until January 1, 2020, and as of that date is repealed.

(c) Notwithstanding any other law, repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

SEC. 2. Section 8005 of the Business and Professions Code is amended to read:

8005. (a) The Court Reporters Board of California is charged with the executive functions necessary for effectuating the purposes of this chapter. It may appoint committees as it deems necessary or proper. The board may appoint, prescribe the duties, and fix the salary of an executive officer. Except as provided by Section 159.5, the board may also employ other employees as may be necessary, subject to civil service and other law.

(b) This section shall remain in effect only until January 1, 2020, and as of that date is repealed.

SEC. 3. Section 8030.1 is added to the Business and Professions Code, to read:

8030.1. The board may use existing resources to undertake efforts to publicize the availability of the Transcript Reimbursement Fund, established pursuant to Section 8030.2, to prospective applicants through appropriate entities serving these applicants, including the State Bar of California, the California Commission on Access to Justice, and the Legal Aid Association of California. These efforts shall be described in the report required by Section 8030.9.

SEC. 4. Section 8030.2 of the Business and Professions Code is amended to read:

8030.2. (a) To provide shorthand reporting services to low-income litigants in civil cases, who are unable to otherwise afford those services, funds generated by fees received by the board pursuant to subdivision (c) of Section 8031 in excess of funds needed to support the board's operating budget for the fiscal year

in which a transfer described below is made shall be used by the board for the purpose of establishing and maintaining a Transcript Reimbursement Fund. The Transcript Reimbursement Fund shall be funded by a transfer of funds from the Court Reporters' Fund in the amount of three hundred thousand dollars (\$300,000) annually. The board is authorized to transfer funds in increments of one hundred thousand dollars (\$100,000) for a total of three hundred thousand dollars (\$300,000). Notwithstanding any other provision of this article, a transfer to the Transcript Reimbursement Fund in excess of the fund balance established at the beginning of each fiscal year shall not be made by the board if the transfer will result in the reduction of the balance of the Court Reporters' Fund to an amount less than six months' operating budget.

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

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

(d) (1) Applicants who have been reimbursed pursuant to this chapter for services provided to litigants and who are awarded court costs or attorney's fees by judgment or by settlement agreement shall refund the full amount of that reimbursement to the fund within 90 days of receipt of the award or settlement.

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

(e) Subject to the limitations of this chapter, the board shall maintain the fund at a level that is sufficient to pay all qualified claims. To accomplish this objective, the board shall utilize all refunds, unexpended funds, fees, and any other moneys received by the board.

(f) Notwithstanding Section 16346 of the Government Code, all unencumbered funds remaining in the Transcript Reimbursement Fund as of January 1, 2019, shall be transferred to the Court Reporters' Fund.

(g) This section shall remain in effect only until January 1, 2020, and as of that date is repealed.

SEC. 5. Section 8030.4 of the Business and Professions Code is amended to read:

8030.4. As used in this chapter:

(a) "Applicant" means a qualified legal services project, qualified support center, other qualified project, or pro bono attorney applying to receive funds from the Transcript Reimbursement Fund established by this chapter. The term "applicant" includes an indigent person appearing pro se to represent himself or herself at any stage of the case and applying to receive funds from the Transcript Reimbursement Fund established in Section 8030.2.

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

(c) "Certified shorthand reporter" means a shorthand reporter certified pursuant to Article 3 (commencing with Section 8020) performing shorthand reporting services pursuant to Section 8017.

(d) "Developmentally Disabled Assistance Act" means the Developmentally Disabled Assistance and Bill of Rights Act of 1975 (Public Law 94-103), as amended.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(p) “Vexatious litigant” means a person as defined in subdivision (b) of Section 391 of the Code of Civil Procedure.

(q) This section shall remain in effect only until January 1, 2020, and as of that date is repealed.

SEC. 6. Section 8030.5 of the Business and Professions Code is repealed.

SEC. 7. Section 8030.6 of the Business and Professions Code is amended to read:

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

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

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

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

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

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

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

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

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

(d) A vexatious litigant shall be ineligible to receive funds from the Transcript Reimbursement Fund. However, a vexatious litigant may become eligible to receive funds if he or she is no longer subject to the provisions of Title 3A of Part 2 of the Code of Civil Procedure pursuant to Section 391.8 of Code of Civil Procedure.

(e) Total disbursements to cover the costs of providing transcripts to all applicants appearing pro se pursuant to this section shall not exceed seventy-five thousand dollars (\$75,000) annually and shall not exceed one thousand five hundred dollars (\$1,500) per case.

(f) If entitled, and funds are available, the board shall disburse the appropriate sum to the applicant or the certified shorthand reporter when the documentation described in Section 8030.8 accompanies the application. A notice shall be sent to the recipient requiring the recipient to file a notice with the court in which the action is pending stating the sum of reimbursement paid pursuant to this section. The notice filed with the court shall also state that if the sum is subsequently included in any award of costs made in the action, that the sum is to be ordered refunded by the applicant to the Transcript Reimbursement Fund whenever the sum is actually recovered as costs. The court shall not consider whether

payment has been made from the Transcript Reimbursement Fund in determining the appropriateness of any award of costs to the parties. The board shall also notify the applicant that the reimbursed sum has been paid to the certified shorthand reporter and shall notify the applicant of the duty to refund any of the sum actually recovered as costs in the action.

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

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

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

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

(k) This section shall remain in effect only until January 1, 2020, and as of that date is repealed.

SEC. 8. Section 8030.8 of the Business and Professions Code is amended to read:

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

(1) The case name and number and that the litigant or litigants requesting the reimbursement are indigent persons. If the applicant is an indigent person appearing pro se the application shall be accompanied by a copy of the fee waiver form approved by the court in the matter for which the applicant seeks reimbursement.

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

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

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

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

(6) The applicant has acknowledged, in writing, that as a condition of entitlement for reimbursement that the applicant agrees to refund the entire amount disbursed from the Transcript Reimbursement Fund from any costs or attorney's fees awarded to the applicant by the court or provided for in any settlement agreement in the case.

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

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

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

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

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

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

(d) The applicant may receive reimbursement directly from the board if the applicant has previously paid the certified shorthand reporter for transcripts as provided in Section 8030.6. To receive payment directly, the applicant shall submit, in addition to all other required documentation, an itemized statement signed by the

certified shorthand reporter performing the services that describes payment for transcripts in accordance with the requirements of Section 8030.6.

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

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

(g) This section shall remain in effect only until January 1, 2020, and as of that date is repealed.

SEC. 9. Section 8030.9 is added to the Business and Professions Code, to read:

8030.9. (a) The board shall prepare and submit to the Legislature, on or before November 1, 2018, a report on the condition of the Court Reporters' Fund, the condition of the Transcript Reimbursement Fund, and alternative funding sources to cover the costs associated with transcripts provided to indigent litigants, including, but not limited to, shorthand reporting services, such as transcript processing. The report shall include all of the following:

(1) Expenditures and claims relating to this article, including the initial balance of the Transcript Reimbursement Fund as of January 1, 2017.

(2) Funds received, including the amount of, and reason for, any refunds pursuant to Section 8030.2.

(3) Claims received, including the type of case, court involved, service for which reimbursement was sought, amount paid, and amount denied, if any, and the reason for denial.

(4) Efforts pursuant to Section 8030.1 to publicize the availability of the funds in the Transcript Reimbursement Fund to prospective applicants.

(5) Administrative fees.

(6) An analysis of the condition of the Transcript Reimbursement Fund, including a five-year projection of its fiscal solvency based on the licensee fee level for those years.

(7) Whether the amount transferred annually to the Transcript Reimbursement Fund is sufficient to maintain the fund at a level that is sufficient to pay all qualified claims.

(A) If the amount transferred annually is not sufficient to pay all qualified claims, the board shall recommend a level that would be sufficient.

(B) If the amount transferred annually is not sufficient to pay all qualified claims, the board shall investigate and recommend alternative sources of funding, if any.

(b) The report shall be provided using existing resources.

(c) The report prepared pursuant to subdivision (a) shall be submitted in accordance with Section 9795 of the Government Code.

(d) This section shall remain in effect only until January 1, 2020, and as of that date is repealed.

SEC. 10. Section 8031 of the Business and Professions Code is amended to read:

8031. The amount of the fees required by this chapter is that fixed by the board in accordance with the following schedule:

(a) The fee for filing an application for each examination shall be no more than forty dollars (\$40).

(b) The fee for examination and reexamination for the written or practical part of the examination shall be in an amount fixed by the board, which shall be equal to the actual cost of preparing, administering, grading, and analyzing the examination, but shall not exceed seventy-five dollars (\$75) for each separate part, for each administration.

(c) The initial certificate fee is an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the certificate is issued, except that, if the certificate will expire less than 180 days after its issuance, then the fee is 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the certificate is issued, or fifty dollars (\$50), whichever is greater. The board may, by appropriate regulation, provide for the waiver or refund of the initial certificate fee where the certificate is issued less than 45 days before the date on which it will expire.

(d) By a resolution adopted by the board, a renewal fee may be established in such amounts and at such times as the board may deem appropriate to meet its operational expenses and funding responsibilities as set forth in this chapter. The renewal fee shall not be more than two hundred fifty dollars (\$250) nor less than ten dollars (\$10) annually, with the following exception:

Any person who is employed full time by the State of California as a hearing reporter and who does not otherwise render shorthand reporting services for a fee shall be exempt from licensure while in state employment and shall not be subject to the renewal fee provisions of this subdivision until 30 days after leaving state employment. The renewal fee shall, in addition to the amount fixed by this subdivision, include any unpaid fees required by this section plus any delinquency fee.

(e) The duplicate certificate fee shall be no greater than ten dollars (\$10).

(f) The penalty for failure to notify the board of a change of name or address as required by Section 8024.6 shall be no greater than fifty dollars (\$50).

Approved _____, 2016

Governor