

**Introduced by Senator Morrell
(Coauthors: Senators Anderson and Gaines)**

February 24, 2015

An act to amend Section 1717.5 of the Civil Code, relating to attorney's fees.

LEGISLATIVE COUNSEL'S DIGEST

SB 363, as introduced, Morrell. Attorney's fees: book accounts.

Under existing law, in any action on a contract based on a book account, as defined, that does not provide for attorney's fees and costs, the prevailing party on the contract is entitled to reasonable attorney's fees and costs, and the court is required to fix the attorney's fees in an amount that does not exceed the lesser of \$800 for book accounts that are maintained for personal, family, or household purposes of a natural person, and \$1,000 for book accounts that are maintained for all other purposes, or 25% of the principal obligation owing on the contract, as applicable.

This bill would increase these maximum attorneys fees to an amount not to exceed the lesser of \$960 for book accounts that are maintained for personal, family, or household purposes of a natural person, and \$1,200 for book accounts that are maintained for all other purposes, or 25% of the principal obligation owing on the contract, as applicable.

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 1717.5 of the Civil Code is amended to
2 read:

1 1717.5. (a) Except as otherwise provided by law or where
2 waived by the parties to an agreement, in any action on a contract
3 based on a book account, as defined in Section 337a of the Code
4 of Civil Procedure, entered into on or after January 1, 1987, which
5 does not provide for attorney's fees and costs, as provided in
6 Section 1717, the party who is determined to be the party prevailing
7 on the contract shall be entitled to reasonable attorney's fees, as
8 provided below, in addition to other costs. The prevailing party
9 on the contract shall be the party who recovered a greater relief in
10 the action on the contract. The court may determine that there is
11 no party prevailing on the contract for purposes of this section.

12 Reasonable attorney's fees awarded pursuant to this section for
13 the prevailing party bringing the action on the book account shall
14 be fixed by the court in an amount that shall not exceed the lesser
15 of: (1) ~~eight hundred dollars (\$800)~~ *nine hundred sixty dollars*
16 *(\$960)* for book accounts based upon an obligation owing by a
17 natural person for goods, moneys, or services which were primarily
18 for personal, family, or household purposes; and one thousand
19 ~~dollars (\$1,000)~~ *two hundred dollars (\$1,200)* for all other book
20 accounts to which this section applies; or (2) 25 percent of the
21 principal obligation owing under the contract.

22 For the party against whom the obligation on the book account
23 was asserted in the action subject to this section, if that party is
24 found to have no obligation owing on a book account, the court
25 shall award that prevailing party reasonable attorney's fees not to
26 exceed ~~eight hundred dollars (\$800)~~ *nine hundred sixty dollars*
27 *(\$960)* for book accounts based upon an obligation owing by a
28 natural person for goods, moneys, or services which were primarily
29 for personal, family, or household purposes, and one thousand
30 ~~dollars (\$1,000)~~ *two hundred dollars (\$1,200)* for all other book
31 accounts to which this section applies. These attorney's fees shall
32 be an element of the costs of the suit.

33 If there is a written agreement between the parties signed by the
34 person to be charged, the fees provided by this section may not be
35 imposed unless that agreement contains a statement that the
36 prevailing party in any action between the parties is entitled to the
37 fees provided by this section.

38 (b) The attorney's fees allowed pursuant to this section shall be
39 the lesser of either the maximum amount allowed by this section,
40 the amount provided by any default attorney's fee schedule adopted

1 by the court applicable to the suit, or an amount as otherwise
2 provided by the court. Any claim for attorney's fees pursuant to
3 this section in excess of the amounts set forth in the default
4 attorney's fee schedule shall be reasonable attorney's fees, as
5 proved by the party, as actual and necessary for the claim that is
6 subject to this section.

7 (c) This section does not apply to any action in which an
8 insurance company is a party nor shall an insurance company,
9 surety, or guarantor be liable under this section, in the absence of
10 a specific contractual provision, for the attorney's fees and costs
11 awarded a prevailing party against its insured.

12 This section does not apply to any action in which a bank, a
13 savings association, a federal association, a state or federal credit
14 union, or a subsidiary, affiliate, or holding company of any of those
15 entities, or an authorized industrial loan company, a licensed
16 consumer finance lender, or a licensed commercial finance lender,
17 is a party.