

AMENDED IN ASSEMBLY JUNE 30, 2016

AMENDED IN SENATE MARCH 28, 2016

**SENATE BILL**

**No. 1065**

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**Introduced by Senator Monning**

February 16, 2016

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An act to ~~amend Sections 36 and 1294 of~~ *add Section 1294.4 to the Code of Civil Procedure, relating to arbitration.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1065, as amended, Monning. Dismissal or denial of petitions to compel arbitration: ~~appeals.~~ *appeals: Elder and Dependent Adult Civil Protection Act.*

Existing law, the Elder and Dependent Adult Civil Protection Act, establishes various procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse, and *it sets forth specific provisions governing civil actions arising from the abuse of elderly or dependent adults. Existing law permits a party to a civil action who is over 70 years of age to petition the court for preference under certain circumstances. Under existing law, an aggrieved party may appeal certain orders and judgments, including an order dismissing or denying a petition to compel arbitration. Existing law specifies the time in which specified actions must occur during an appeal.*

This bill would ~~provide that if a party~~ *establish an expedited process by which a party, who has filed a claim pursuant to the Elder and Dependent Adult Civil Protection Act and has been granted a preference; no preference may appeal may be taken by an opposing party from an order dismissing or denying a petition to compel arbitration. This bill would shorten the time in which specified actions in the appeal must*

occur, but would authorize the parties or the court of appeal to extend or waive these time limitations, as specified.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: no.

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

1     SECTION 1. *The Legislature finds and declares all of the*  
 2 *following:*

3     (a) *Elders and dependent adults are vulnerable to abuse,*  
 4 *neglect, or abandonment and this state has a responsibility to*  
 5 *protect these persons.*

6     (b) *This state has enacted special protections for elderly persons,*  
 7 *including the enactment of the Elder and Dependent Adult Civil*  
 8 *Protection Act (Chapter 11 (commencing with Section 15600) of*  
 9 *Part 3 of Division 9 of the Welfare and Institutions Code).*

10    (c) *This state has also enacted Section 36 of the Code of Civil*  
 11 *Procedure, under which a party to a civil action who is over 70*  
 12 *years of age may petition the court for a preference.*

13    (d) *The Legislature, therefore, consistent with the joint goals*  
 14 *of the Elder and Dependent Adult Civil Protection Act and Section*  
 15 *36 of the Code of Civil Procedure, wishes to enact a limited*  
 16 *expedited appeal process for those persons filing claims under the*  
 17 *Elder and Dependent Adult Civil Protection Act who have received*  
 18 *preferences in court in order to expedite these claims.*

19    SEC. 2. *Section 1294.4 is added to the Code of Civil Procedure,*  
 20 *to read:*

21    1294.4. (a) *Except as provided in subdivision (b), in an appeal*  
 22 *filed pursuant to subdivision (a) of Section 1294 in which a party*  
 23 *filed the underlying claim pursuant to the Elder and Dependent*  
 24 *Adult Civil Protection Act (Chapter 11 (commencing with Section*  
 25 *15600) of Part 3 of Division 9 of the Welfare and Institutions Code)*  
 26 *and was granted a preference pursuant to Section 36 of this code,*  
 27 *all of the following shall apply:*

28    (1) *No later than 15 days after service of a notice of entry of*  
 29 *the judgment, the appellant shall file the notice of appeal and the*  
 30 *notice designating the record on appeal.*

31    (2) (A) *No later than 10 days after receipt of a notice*  
 32 *designating the record on appeal that requests the clerk's*  
 33 *transcript, the clerk of the trial court shall prepare and file the*

1 clerk's transcript pursuant to Rule 8.832 of the California Rules  
2 of Court. The clerk shall send the transcription by the most  
3 expedited means available, including by email.

4 (B) In lieu of the clerk's transcript filed by the clerk, a party  
5 may elect to use an appendix to file and serve the notice  
6 designating the record on appeal pursuant to Rule 8.124 of the  
7 California Rules of Court.

8 (3) (A) Immediately upon receipt of a notice designating the  
9 record on appeal that requests the reporter's transcript, the clerk  
10 of the trial court shall provide the notice to the reporter by the  
11 most expedited means available, including by email. No later than  
12 10 days after receipt of the notice from the clerk, the reporter shall  
13 prepare, certify, and file in the trial court the reporter's transcript  
14 pursuant to Rule 8.834 of the California Rules of Court.  
15 Immediately after filing the reporter's transcript, the reporter shall  
16 notify all parties to the appeal by the most expedited means  
17 available, including by email, that the transcript is complete.

18 (B) In lieu of this reporter's transcript filed by the reporter, the  
19 appellant may elect to file certified copies of previously prepared  
20 transcripts with his or her opening brief, provided that he or she  
21 indicated that in his or her notice designating the record on appeal.

22 (4) (A) No later than 20 days after filing a complete and  
23 accurate record of the trial court proceedings in the court of  
24 appeal, or, if the appellant elects to file transcripts pursuant to  
25 clause (A) of paragraph (2) and clause (A) of paragraph (3), no  
26 later than 40 days after filing the notice of appeal, the appellant  
27 shall file and serve his or her opening brief, which shall be filed  
28 and served by the most expedited means available, including by  
29 email. At the time he or she files the opening brief, the appellant  
30 shall either expressly request or waive oral argument.

31 (B) No later than 20 days after the opening brief is filed and  
32 served, the respondent shall file and serve his or her brief, which  
33 shall be filed and served by the most expedited means available,  
34 including by email. At the time he or she files the brief, the  
35 respondent shall either expressly request or waive oral argument.

36 (C) No later than 20 days after the respondent's brief is filed  
37 and served, the appellant may file and serve his or her reply brief,  
38 which shall be filed and served by the most expedited means  
39 available, including by email.

1 (5) If either party requests oral argument, the court of appeal  
2 shall set oral argument to be held no later than 30 days after the  
3 reply brief is filed and served or, if a reply brief is not filed and  
4 served, no later than 20 days after the respondent's brief is filed  
5 and served.

6 (6) No later than 15 days after the submission of the matter to  
7 the court of appeal for decision, the court of appeal shall issue its  
8 decision.

9 (b) (1) The parties to the appeal may, by stipulation, extend or  
10 waive any time limitation set forth in this section by filing a written  
11 agreement signed by all parties with the trial court if extending  
12 or waiving the time limitation for filing the notice of appeal or  
13 with the court of appeal if extending or waiving any other time  
14 limitation in this section. The parties shall not extend any time  
15 limitation in this section to be longer than the time limitation set  
16 forth in statute or the California Rules of Court for all other  
17 appeals filed pursuant to subdivision (a) of Section 1294.

18 (2) The court of appeal may extend any time limitation set forth  
19 in this section upon a showing of extraordinary good cause.

20 SECTION 1. ~~Section 36 of the Code of Civil Procedure is~~  
21 ~~amended to read:~~

22 ~~36. (a) A party to a civil action who is over 70 years of age~~  
23 ~~may petition the court for a preference, which the court shall grant~~  
24 ~~if the court makes both of the following findings:~~

25 ~~(1) The party has a substantial interest in the action as a whole.~~

26 ~~(2) The health of the party is such that a preference is necessary~~  
27 ~~to prevent prejudicing the party's interest in the litigation.~~

28 ~~(b) A civil action to recover damages for wrongful death or~~  
29 ~~personal injury shall be entitled to preference upon the motion of~~  
30 ~~any party to the action who is under 14 years of age unless the~~  
31 ~~court finds that the party does not have a substantial interest in the~~  
32 ~~case as a whole. A civil action subject to subdivision (a) shall be~~  
33 ~~given preference over a case subject to this subdivision.~~

34 ~~(c) Unless the court otherwise orders:~~

35 ~~(1) A party may file and serve a motion for preference supported~~  
36 ~~by a declaration of the moving party that all essential parties have~~  
37 ~~been served with process or have appeared.~~

38 ~~(2) At any time during the pendency of the action, a party who~~  
39 ~~reaches 70 years of age may file and serve a motion for preference.~~

1 ~~(d) In its discretion, the court may also grant a motion for~~  
2 ~~preference that is accompanied by clear and convincing medical~~  
3 ~~documentation that concludes that one of the parties suffers from~~  
4 ~~an illness or condition raising substantial medical doubt of survival~~  
5 ~~of that party beyond six months, and that satisfies the court that~~  
6 ~~the interests of justice will be served by granting the preference.~~

7 ~~(e) Notwithstanding any other provision of law, the court may~~  
8 ~~in its discretion grant a motion for preference that is supported by~~  
9 ~~a showing that satisfies the court that the interests of justice will~~  
10 ~~be served by granting this preference.~~

11 ~~(f) Upon the granting of such a motion for preference, the court~~  
12 ~~shall set the matter for trial not more than 120 days from that date~~  
13 ~~and there shall be no continuance beyond 120 days from the~~  
14 ~~granting of the motion for preference except for physical disability~~  
15 ~~of a party or a party's attorney, or upon a showing of good cause~~  
16 ~~stated in the record. Any continuance shall be for no more than 15~~  
17 ~~days and no more than one continuance for physical disability may~~  
18 ~~be granted to any party.~~

19 ~~(g) Upon the granting of a motion for preference pursuant to~~  
20 ~~subdivision (b), a party in an action based upon a health provider's~~  
21 ~~alleged professional negligence, as defined in Section 364, shall~~  
22 ~~receive a trial date not sooner than six months and not later than~~  
23 ~~nine months from the date that the motion is granted.~~

24 ~~(h) If a party has filed a claim pursuant to the Elder and~~  
25 ~~Dependent Adult Civil Protection Act (Chapter 11 (commencing~~  
26 ~~with Section 15600) of Part 3 of Division 9 of the Welfare and~~  
27 ~~Institutions Code) and has been granted a preference pursuant to~~  
28 ~~this section, an opposing party shall not appeal from an order~~  
29 ~~dismissing or denying a petition to compel arbitration pursuant to~~  
30 ~~subdivision (a) of Section 1294 arising from that claim.~~

31 ~~SEC. 2. Section 1294 of the Code of Civil Procedure is~~  
32 ~~amended to read:~~

33 ~~1294. Except as provided in subdivision (h) of Section 36, an~~  
34 ~~aggrieved party may appeal from:~~

35 ~~(a) An order dismissing or denying a petition to compel~~  
36 ~~arbitration.~~

37 ~~(b) An order dismissing a petition to confirm, correct or vacate~~  
38 ~~an award.~~

39 ~~(c) An order vacating an award unless a rehearing in arbitration~~  
40 ~~is ordered.~~

- 1 ~~(d) A judgment entered pursuant to this title.~~
- 2 ~~(e) A special order after final judgment.~~

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