

## Senate Bill No. 243

### CHAPTER 775

An act to amend Section 846.1 of the Civil Code, relating to recreational property.

[Approved by Governor October 7, 1999. Filed  
with Secretary of State October 10, 1999.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 243, McPherson. Recreational property: attorney's fees.

Existing law requires the State Board of Control to allow a claim for reasonable attorney's fees incurred by an owner of any interest in real property or a public entity as a defendant in a specified civil action claiming damages if the owner gives permission to the public to enter or use the property pursuant to a specified agreement regarding recreational trail use or if the public entity gives permission to the public to enter or use the property for recreational purposes, not to exceed a total of \$100,000 per fiscal year.

This bill would also require the State Board of Control to allow a claim for reasonable attorney's fees incurred by an owner of any interest in real property or a public entity as a defendant in a specified civil action seeking to restrict or prevent public use of the property if the owner or public entity gives permission to the public to enter the property pursuant to a specified agreement regarding recreational use. The bill would also limit the total sum of these and the above claims for attorney's fees to \$200,000 per fiscal year.

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

SECTION 1. Section 846.1 of the Civil Code is amended to read:

846.1. (a) Except as provided in subdivision (c), an owner of any estate or interest in real property, whether possessory or nonpossessory, who gives permission to the public for entry on or use of the real property pursuant to an agreement with a public or nonprofit agency for purposes of recreational trail use, and is a defendant in a civil action brought by, or on behalf of, a person who is allegedly injured or allegedly suffers damages on the real property, may present a claim to the State Board of Control for reasonable attorney's fees incurred in this civil action if any of the following occurs:

(1) The court has dismissed the civil action upon a demurrer or motion for summary judgment made by the owner or upon its own motion for lack of prosecution.

(2) The action was dismissed by the plaintiff without any payment from the owner.

(3) The owner prevails in the civil action.

(b) Except as provided in subdivision (c), a public entity, as defined in Section 831.5 of the Government Code, that gives permission to the public for entry on or use of real property for a recreational purpose, as defined in Section 846, and is a defendant in a civil action brought by, or on behalf of, a person who is allegedly injured or allegedly suffers damages on the real property, may present a claim to the State Board of Control for reasonable attorney's fees incurred in this civil action if any of the following occurs:

(1) The court has dismissed the civil action upon a demurrer or motion for summary judgment made by this public entity or upon its own motion for lack of prosecution.

(2) The action was dismissed by the plaintiff without any payment from the public entity.

(3) The public entity prevails in the civil action.

(c) An owner of any estate or interest in real property, whether possessory or nonpossessory, or a public entity, as defined in Section 831.5 of the Government Code, that gives permission to the public for entry on, or use of, the real property for a recreational purpose, as defined in Section 846, pursuant to an agreement with a public or nonprofit agency, and is a defendant in a civil action brought by, or on behalf of, a person who seeks to restrict, prevent, or delay public use of that property, may present a claim to the State Board of Control for reasonable attorney's fees incurred in the civil action if any of the following occurs:

(1) The court has dismissed the civil action upon a demurrer or motion for summary judgment made by the owner or public entity or upon its own motion for lack of prosecution.

(2) The action was dismissed by the plaintiff without any payment from the owner or public entity.

(3) The owner or public entity prevails in the civil action.

(d) The State Board of Control shall allow the claim if the requirements of this section are met. The claim shall be paid from an appropriation to be made for that purpose. Reasonable attorneys' fees, for purposes of this section, may not exceed an hourly rate greater than the rate charged by the Attorney General at the time the award is made, and may not exceed an aggregate amount of twenty-five thousand dollars (\$25,000). This subdivision shall not apply if a public entity has provided for the defense of this civil action pursuant to Section 995 of the Government Code. This subdivision shall also not apply if an owner or public entity has been provided a legal defense by the state pursuant to any contract or other legal obligation.



(e) The total of claims allowed by the board pursuant to this section shall not exceed two hundred thousand dollars (\$200,000) per fiscal year.

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