

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 2960 (Committee on Judiciary)

Version: June 6, 2022

Hearing Date: June 14, 2022

Fiscal: Yes

Urgency: No

AM

SUBJECT

Judiciary omnibus

DIGEST

This bill makes various noncontroversial changes to existing law, including clarifying existing law, updating obsolete references, and removing a sunset on providing electronic notices of lien sales by self-storage facilities.

EXECUTIVE SUMMARY

This bill is the biennial Assembly Judiciary omnibus bill that makes various noncontroversial changes to existing law with the purpose of increasing efficiencies in the legislative process, conserving legislative resources, and eliminating the need to unnecessarily hear a number of technical, clarifying, or modest stand-alone bills that might otherwise have to be introduced and require individual consideration by the Legislature. The bill, among other things, clarifies that, unless a statute provides otherwise, the statutory disclosure requirements governing a sale of residential real property are those in effect when the buyer and seller enter into the contract, even if these requirements change mid-transaction, and removes the sunset date of January 1, 2023, on provisions authorizing self-storage facility owners to transmit lien notices and other legally-required documents to self-storage unit occupants via electronic mail.

The bill is author sponsored. The bill is supported by the California Association of Realtors, the California Judges Association, the County Recorders' Association of California, the California Self Storage Association, and the Self Storage Association. There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law and this bill:

- 1) Existing law provides that certain provisions authorizing and governing electronic communications between self-storage facility owners and self-storage unit occupants, such as sending preliminary lien notices, notices of lien sale, and blank declarations in opposition to lien sales, sunset on January 1, 2023. (Bus. & Prof. Code § 21701, 21703, 21705, and 21712.)

This bill deletes that sunset thereby indefinitely extending these provisions.

- 2) Existing law requires specified disclosures to be made in connection with sales and other transfers of single-family residential real property. (Civ. Code § 1102-1102.19.)

This bill clarifies that the disclosures to be made are those that are statutorily required on the date the parties enter into a contract, and that if an amendment to the disclosure statutes becomes effective after the date the contract is entered into, that amendment does not affect the disclosures required to be made during the transaction, unless the applicable statute provides otherwise.

- 3) Existing law establishes the Unclaimed Property Law (UPL), provides that it is the intent of the Legislature that property owners be reunited with their property, and prohibits property received by the state under the UPL from permanently escheating to the state. (Code Civ. Proc. §§ 1500 et. seq.; § 1501.5(a) & (c).)
 - a) Existing law provides requirements for escheatment, reporting, and delivery to the State Controller of unclaimed securities under the UPL, and requires the Controller to sell unclaimed securities between 18 to 20 months from the date they were due to be reported to the Controller by the holder. (Code Civ. Proc. § 1516 & 1563.)

This bill clarifies that under the UPL, holders of securities with a per share value of one cent or less do not need to report these securities to the Controller unless the aggregate value of the securities held exceeds \$1,000, and provides that the deadline by which the Controller is required to sell unclaimed securities is 18 to 20 months from the date on which the securities were actually reported to the Controller, not the date on which the report was due to be filed.

- 4) Existing law authorizes joint applicants to the superior court for recognition of a tribal court order that establishes a right to child support, spousal support payments, or marital property rights to be eligible for a \$100 filing fee. (Code Civ. Proc. § 1733.1.)

This bill clarifies that a single applicant is eligible for that \$100 filing fee in addition to joint applicants.

- 5) Existing law authorizes a local child support agency to issue a notice directing that child support payments be made to the agency itself, another county office, or the State Disbursement Unit, and requires this notice to be served on both the parent obligated to pay support and the parent entitled to receive it. (Fam. Code § 4204.)

This bill requires local child support agencies to provide notice to both parents and to the court when they are no longer providing child support-related services. The bill also deletes two references to the “person having custody” of a child in provisions that deal with court-ordered child support and replaces one of the references with “support obligor or obligee,” to clarify that the statute’s application is tied to child support obligations, and not to which parent has custody.

- 6) Existing law establishes procedures for the electronic filing of petitions for domestic violence restraining orders and gun violence restraining orders. (Fam. Code §§ 6307 & 6308; Pen. Code §§ 18122 & 18123, respectively.)

This bill makes the following changes to those procedures:

- a) conforms the timing for processing electronically-filed petitions to existing statutory timeframes for processing petitions filed in person;
 - b) replaces the provision of telephone-based information with information through the self-help center and on the court website;
 - c) provides for electronic provision of the notice of court date, copies of the request to serve on the opposing party, and the temporary restraining order, unless the petitioner notes, at the time of electronic filing, that the documents will be picked up from the court; and
 - d) permits a “support person,” as defined, to appear remotely at the hearing on a petition for a domestic violence restraining order.
- 7) Existing law provides that records are only presumptively sealed in cases involving assisted reproduction for actions filed beginning January 1, 2023 under the Uniform Parentage Act. (Fam. Code §§ 7643 & 7643.5.)

This bill clarifies that actions filed on or after January 1, 2023 are only presumptively sealed in cases involving assisted reproduction.

- 8) Existing law authorizes the Department of Fair Employment and Housing to provide assistance to communities and persons therein in resolving disputes, disagreements, or difficulties relating to discriminatory practices based on protected categories under the Fair Employment and Housing Act, but only when, in the Department’s judgment, peaceful relations among the citizens of the community are threatened. (Gov. Code § 12931.)

This bill clarifies that the Department of Fair Employment and Housing can assist in resolving disputes, disagreements, or difficulties when peaceful relations among persons of the community are threatened.

- 9) Existing law provides that citizens are eligible to serve, without pay, on advisory agencies and conciliation councils that work with the Fair Employment and Housing Council. (Gov. Code § 12935.)

This bill clarifies that persons are eligible to serve, without pay, on advisory agencies and conciliation councils that work with the Fair Employment and Housing Council.

- 10) Existing law provides the Department of Fair Employment and Housing a period of either one year or two years, depending on whether the complainant is an individual or a group or class, to investigate a complaint alleging unlawful employment practices. (Gov. Code § 12965.)

This bill tolls (stops) the period in which the Department of Fair Employment and Housing must complete its investigation of a complaint alleging unlawful employment practices during any mandatory or voluntary dispute resolution proceeding.

- 11) Existing law requires the California Commission on Disability Access to make an annual report to the Legislature, by January 31 of each year, regarding accessibility violations alleged in demand letters and court complaints for the preceding calendar year. (Gov. Code § 14985.8.)

This bill changes the date the report is due to March 31 of each year.

- 12) Existing law specifies procedures for the appointment of counsel for conservatees, proposed conservatees, and persons alleged to lack legal capacity who neither have, nor plan to retain, legal counsel. (Prob. Code §§ 1471, 1821, 1823, 1826, 1828, 1894, 1895, 2250.6, 2253, & 2356.5.)

This bill clarifies terminology in these provisions in order to facilitate courts' implementation of these provisions.

- 13) Specifies the duties of trustees if no person holding the power to revoke a trust is competent and the trust instrument does not otherwise address this situation. (Prob. Code § 15800.)

This bill clarifies terminology used in this provision.

- 14) Existing law requires the Judicial Council to adopt rules of court meant to allow for telephonic or other remote appearance options by tribes in child welfare proceedings involving an Indian child, if the federal Indian Child Welfare Act of 1978 applies, by July 1, 2021. (Welf. & Inst. Code § 224.2.)

This bill authorizes courts, in child welfare proceedings involving an Indian child in which the federal Indian Child Welfare Act of 1978 applies, the flexibility to provide for remote appearance by tribes via any method of appearance that is both consistent with court capacity and contractual obligations, and takes into account the capacity of the tribe, so long as the method chosen is sufficient to allow a tribe to fully exercise its rights.

- 15) Existing law provides that when a local child support agency accepts and disburses payments as provided relating to a child who is the subject of a court-issued support order, the local child support agency or Department of Child Support Services must issue a notice that the payments will be directed to the local child support agency on the child support obligor and oblige, and may serve the notice on the court in which the support order was issued. (Fam. Code, § 17404.4.)

This bill would require that notice to be served on the court in which the support order was issued.

COMMENTS

1. Stated need for the bill

The author writes:

AB 2960 is the Civil Law omnibus bill, generally introduced by Assembly Judiciary Committee annually or biennially. This year's measure includes a host of topics that are generally non-controversial or technical and have been merged into one vehicle to assist the Legislature in efficiently managing minor Judiciary-related matters this session.

2. Civil law omnibus

According to the author, provisions in the bill were proposed to the Assembly Judiciary Committee by the Attorney General, California Association of Realtors, California Bankers Association, California Commission on Disability Access, California Self Storage Association, California Tribal Families Coalition, County Recordors Association of California, Department of Fair Employment and Housing, Judicial Council of California, and the State Controller's Office.

a. Provisions amended in since the bill was heard in Assembly Judiciary

In order to avoid chaptering out issues with SB 946 (Jones, 2022), which was heard in this Committee and passed out on a vote of 11 to 0, provisions from that bill were amended into this bill. Specifically, changes to Section 17404.4 of the Family Code, which require that notice of collected child support payments be provided to the court in which the order for support was issued. This amendment is intended to provide

courts with consistent notice of when a local child support agency is involved in a case. SB 946 is sponsored by the California Judges Association and supported by the Child Support Directors Association.

b. Extends provisions allowing electronic notices of liens for self-storage facilities indefinitely

Self-storage facilities in California are governed by the California Self-Storage Facility Act (the Act). (Bus. & Prof. Code, §§ 21700-21716.) The Act imposes a lien on any property that an occupant stores in a self-storage unit, in favor of the owner, and sets forth the procedures by which the owner can proceed with the attachment of the lien and a lien of sale if the occupant does not pay the agreed-upon rent. (Bus. & Prof. Code, §§ 21702-21707, & 21710.) Until 2018, the only way an owner could send the preliminary notice of lien, the notice of lien sale, and blank declarations in opposition to lien sales was via certified mail, postage prepaid, or by regular mail if the owner obtained a certificate of mailing indicating the date the notice was mailed, to the occupant's last known address (and to an alternative address, if the occupant provided one). In 2017, the Legislature passed AB 1108 (Daly, Ch. 227, Stats. 2017), which adopted, on a trial basis, alternative procedures by which an owner could send the preliminary lien notices, notices of lien sale, and blank declarations in opposition to lien sales, such as via email. Statutory provisions were put into place that were meant to ensure that facility owners could demonstrate that occupants had actually received and read these emails. A sunset date of January 1, 2023 was put into place in order to verify whether any consumer harm resulted from email notice. The Assembly Judiciary analysis states that neither of its committee staff nor the staff of the Assembly Privacy Committee have received reports of consumer harm from these electronic notices.¹ This bill removes the sunset date on these electronic notice provisions, thereby extending them indefinitely.

c. Clarifies the effect of real estate disclosure statutes on transactions that are in progress

The Civil Code provides for various disclosures that must be made in connection with any sale of a single-family residential real property. (Civ. Code § 1102 et. seq.) This bill would provide that if an amendment to a disclosure statute becomes effective after the date the parties enter into a contract, that amendment does not affect the disclosures required to be made during the transaction – unless the applicable statute specifies otherwise. This latter provision allows the Legislature to designate in statute that particularly-important disclosures are required to be updated mid-transaction and gives the parties to the contract clear guidance on what disclosures are required to be made.

¹ Asm. Comm. on Judiciary, analysis of Asm. Bill No. 2960 (2021-2022 Reg. Sess.) as amended Apr. 7, 2022, at p. 5.

d. Updates to UPL

This bill makes two changes to the UPL. First it clarifies that the deadline for the Controller to sell unclaimed securities begins on the date the required report is received by the Controller, not on the date it was due as is required under existing law. This change ensures the owner of the securities are allotted the same sufficient time to reunite with their property before the securities are sold, regardless of when the holder of the securities files the required report (i.e. in time or late).

The Assembly Judiciary Committee analysis provides the following statement from the Controller:

Under current law, all securities regardless of value, must escheat to the State of California. The SCO's unclaimed property securities portfolio contains a large number of securities that have been deemed worthless due to inactive trading. Worthless securities are securities that have a market value of zero or whose cost of delivery would exceed the value of the security on the date a report is due. These can include publicly traded or privately held stocks or bonds.

As of June 30, 2021, SCO held 1.3 billion shares with a value less than one cent. In the last three fiscal years, an annual average of 390 million worthless securities were remitted, representing 96% of the total securities remitted. Additionally, 72% of shares in the unclaimed property securities portfolio are worthless securities.

Receiving worthless securities has negative impacts on SCO and claimants. First, there are workload increases to...staff. Staff must complete numerous tasks for the remitted securities, such as loading them into SCO's system, evaluating claim requests, and researching posted corporate action transactions in order to reconcile SCO's account with the contracted brokerage account. Consequently...staff spends considerable time maintaining properties that claimants have minimal interest in claiming due to their low value.

Second, when claimants do file a claim for their shares, they later learn these shares are worthless and cannot be transferred. Property owners often face unforeseen expenses and long wait times for their claims to be processed, resulting in a frustrating experience when owners receive a letter from the SCO stating their shares do not have any value.²

In response to these issues, the bill clarifies that securities with a per share value of one cent or less are not required to be reported the Controller unless the aggregate value of the security held exceeds \$1,000. Securities that do not meet this criteria will continue to be maintained by the holder in the name of the owner, and, if the securities gain value,

² *Id.* at 6.

the holder will be required to report and deliver the securities during the next reporting cycle.

- e. Requires local child support agencies to provide notice to parents and to the court when terminating services*

The Assembly Judiciary Committee analysis provides the following statement from the Judicial Council:

Currently, local child support agencies (LCSAs) are required to give notice to the parties and file notice with the court when they start to provide services and become the payee in a preexisting child support case. This is accomplished by using form FL-632. However, there is currently no requirement to give notice when the local child support agency is getting out of a case. This causes confusion for the courts and the parents because hearings need to be set in the proper courtroom...and the court has no way of knowing if the LCSA is still involved in the case unless the notice is also filed when the LCSA leaves a case.³

To address this issue, the bill requires LCSAs to provide notice to both parents and the court when no longer providing services with the goal streamlining court scheduling, assisting parents in understanding the child support process, and establishing a consistent procedure among LCSAs.

- f. Electronic filing of domestic violence restraining orders and gun violence restraining order petitions*

SB 538 (Rubio, Ch. 686, Stats. 2021) established procedures meant to allow parties to file petitions electronically for domestic violence restraining orders and gun violence restraining orders. According to the Judicial Council, the bill language did not conform to existing court processes and has created some difficulties for the courts in implementing its provisions. The Judicial Council states that the bill:

[C]onforms the author's intentions regarding the electronic filing of domestic and gun violence restraining order petitions with court procedures.... Specifically, the proposal (1) refers to existing timeframes in the law for processing domestic and gun violence restraining order petitions submitted electronically; (2) provides the manner in which the petitioner receives notice of court date, copies to serve on respondent, and other documents related to the electronic filing of domestic and gun violence restraining orders; (3) changes from a telephone service to online and self-help center information about domestic and gun violence restraining orders, including information about how to file petitions for domestic and gun violence restraining orders electronically; and (4) adds "support person" as defined in Family

³ *Id.* at 7.

Code section 6303 to the entities permitted to appear remotely on a petition for a domestic violence restraining order.⁴

g. Updating a tolling provision in the Fair Employment and Housing Act

The bill clarifies that the Department of Fair Housing and Employment (DFEH) may toll (pause) the statute of limitations under Section 12965 of the Government Code for bringing a civil action for unlawful employment practices during a mandatory or voluntary dispute resolution proceeding. The tolling begins on the date DFEH refers the case to its dispute resolution division and ends on the date the dispute resolution division closes its mediation record and returns the case to the division that referred it. According to DFEH, SB 807 (Wieckowski, Ch. 278, Stats. 2021) required a civil action to be tolled during a referral to DFEH's dispute resolution division with the goal of encouraging mediation and settlement.⁵ DFEH notes that subdivision (c) of Section 12965 requires DFEH to issue a right-to-sue notice within one or two years of the date the complaint was filed, depending on the type of complaint. DFEH writes that the bill:

[...] would merely clarify that DFEH may take any applicable tolling into account when calculating the deadline to issue the right-to-sue [notice]. Otherwise, DFEH may have to issue the right-to-sue notices before its timely investigations are complete, which could render the tolling provided by SB 807 or tolling agreements meaningless.

SB 807 failed to apply the new tolling provisions to the deadline for DFEH to issue the right-to-sue notice. This was merely a technical oversight.⁶

h. Various other technical changes

The bill makes various other nonsubstantive and technical changes to update cross-references and terminology and various changes to clarify existing law. These changes include, among others:

- Updating definitions and cross-references in the Data Broker Registration Law enacted by AB 1202 (Chau, Ch. 753, Stats. 2019) in order to conform them to statutory changes that become effective on January 1, 2023 enacted by Proposition 24 (Nov. 3, 2020, gen. elec.)
- Clarifying that both a single applicant and joint applicants are eligible for the \$100 filing fee related to making an application to the superior court for recognition of a tribal court order that establishes a right to child support, spousal support payments, or marital property rights.

⁴ *Ibid.*

⁵ *Id.* at 8.

⁶ *Ibid.*

- Clarifying that the procedures under the Uniform Parentage Act in existence before the enactment of AB 429 (Dahle, Ch. 52, Stats. 2021) apply to actions filed before January 1, 2023, and that procedures enacted by AB 429 apply to actions filed on or after January 1, 2023.
- Replaces references to citizens with person in various sections of law.
- Adds omitted terms and corrects typographic errors and cross-references in provisions enacted by AB 1466 (McCarty, Ch. 359, Stats. 2021) which eliminated restrictive covenants from recorded title documents.
- Changes the date the California Commission on Disability Access must make its annual report to the Legislature regarding accessibility violations alleged in demand letters and court complaints to March 31.
- Clarifies terminology in statutes that address mandatory appointment of counsel for conservatees, proposed conservatees, and persons alleged to lack legal capacity who neither have, nor plan to retain, legal counsel.
- Clarifies terminology in statutes that address the duties of trustees in situations when no person holding the power to revoke a trust is competent.
- Grants flexibility to provide for remote appearance by tribes via any method of appearance that is both consistent with court capacity and contractual obligations, and takes into account the capacity of the tribe so long as the method chosen is sufficient to allow a tribe to fully exercise its rights in in child welfare proceedings involving an Indian child in which the federal Indian Child Welfare Act of 1978 applies.

3. Statements in support

In support of the bill the California Association of Realtors writes:

Among other provisions, AB 2960 clarifies what disclosures are required by law in a real estate transaction when a real estate contract is entered into at one point during the year and closes escrow at another point after a new disclosure law has gone into effect.

There has been confusion in the past about this issue that has caused buyers to attempt to back out of transactions. It is in the best interest of both consumers and the real estate industry to bring clarity to the law.

In support of the bill the California Self Storage Association and Self Storage Association write:

In 2017, the California Legislature enacted AB 1108 (Daly), which authorized self storage owners to send statutory lien notices by electronic mail. At the time, policymakers expressed some apprehension about adopting electronic mail technology for important statutory notices to consumers. Therefore, a sunset was included giving the Legislature an opportunity to evaluate the utilization

and effectiveness of electronic notice in the self-storage context before allowing it in perpetuity. [...]

Since then, no feedback has been reported that emailed notices have caused harm to self-storage unit occupants. Thus, AB 2960 simply seeks to allow, on an ongoing basis, electronic mail as an optional method for sending lien notices to customers for those who opt in.

SUPPORT

California Association of Realtors
California Judges Association
County Recorders' Association of California
California Self Storage Association
Self Storage Association

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: SB 946 (Jones), *see* 2)a) above.

PRIOR VOTES:

Assembly Floor (Ayes 65, Noes 0)
Assembly Appropriations Committee (Ayes 14, Noes 0)
Assembly Judiciary Committee (Ayes 9, Noes 0)
