

September 22, 2016

Signed by Governor Brown today and will go into effect **January 01, 2017**.

ENROLLED AUGUST 25, 2016

PASSED IN SENATE AUGUST 16, 2016

PASSED IN ASSEMBLY AUGUST 23, 2016

AMENDED IN SENATE JUNE 13, 2016

AMENDED IN ASSEMBLY APRIL 13, 2016

AMENDED IN ASSEMBLY APRIL 05, 2016

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2244**

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**Introduced by Assembly Member Gatto**

**February 18, 2016**

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An act to amend Sections 1010.6 and 1033.5 of the Code of Civil Procedure, and to amend Section 6159 of the Government Code, relating to court fees.

## LEGISLATIVE COUNSEL'S DIGEST

AB 2244, Gatto. Court fees: electronic filing.

Existing law authorizes the electronic service of documents in accordance with uniform rules adopted by the Judicial Council, as specified. Upon Judicial Council adoption of the uniform rules, existing law authorizes a superior court, by local rule, to require mandatory electronic filing and service of documents for specified civil actions in accordance with certain requirements including a requirement that any fees charged by the court do not exceed the actual cost of electronic filing and service of documents.

This bill would add the additional requirement that a fee to process a payment that is charged by the court, an electronic filing manager, or an electronic filing service provider, does not exceed the actual costs incurred for processing the payment. The bill would require waiver of fees to process a payment if the court deems waiver appropriate.

Existing law authorizes a court, subject to Judicial Council approval, to accept a credit card, debit card, or electronic funds transfer in payment of designated obligations, including filing fees and other court costs. Existing law authorizes a court, subject to Judicial Council approval, to impose a fee for the use of a credit or debit card or electronic funds transfer, not to exceed the costs incurred by the court in providing for payment by credit or debit card or electronic funds transfer.

This bill would additionally authorize an agent of the court to impose a fee, subject to Judicial Council approval, for the use of a credit or debit card or electronic funds transfer, not to exceed the costs incurred by the court in providing for payment by credit or debit card or electronic funds transfer. For purposes of this provision, the bill would deem an electronic filing service provider who is required to collect and remit a filing fee or other court fee to complete an electronic filing transaction to be an agent of the court solely for that purpose, except as otherwise specified. The bill would require an agent of the court to report its costs in providing for payment by credit or debit card, or electronic funds transfer, as specified, and would require the agent to provide the Judicial Council, or its authorized representative, with access to examine the records and documents of the agency for purposes of verifying report accuracy and compliance with certain requirements. The bill would prohibit an electronic filing service provider from collecting or attempting to collect a fee to complete an electronic filing transaction from a party who is exempt from paying fees but would still require the electronic filing service provider to complete the filing. The bill would require a court, or certain electronic file managers, to accept more than one method of payment from an electronic filing service provider, as specified.

Existing law also enumerates costs that a prevailing party may recover in a civil action.

This bill would authorize a prevailing party to recover fees for the electronic filing or service of documents, or fees for the hosting of electronic documents, charged by an electronic filing service provider, if the court orders or requires electronic filing, service, or hosting of documents.

### DIGEST KEY

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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### BILL TEXT

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

#### **SECTION 1.**

Section 1010.6 of the Code of Civil Procedure is amended to read:

##### **1010.6.**

(a) A document may be served electronically in an action filed with the court as provided in this section, in accordance with rules adopted pursuant to subdivision (e).

(1) For purposes of this section:

(A) “Electronic service” means service of a document, on a party or other person, by either electronic transmission or electronic notification. Electronic service may be performed directly by a party, by an agent of a party, including the party’s attorney, or through an electronic filing service provider.

(B) “Electronic transmission” means the transmission of a document by electronic means to the electronic service address at or through which a party or other person has authorized electronic service.

(C) “Electronic notification” means the notification of the party or other person that a document is served by sending an electronic message to the electronic address at or through which the party or other person has authorized electronic service, specifying the exact name of the document served, and providing a hyperlink at which the served document may be viewed and downloaded.

(2) If a document may be served by mail, express mail, overnight delivery, or facsimile transmission, electronic service of the document is authorized when a party has agreed to accept service electronically in that action.

(3) In any action in which a party has agreed to accept electronic service under paragraph (2), or in which the court has ordered electronic service under subdivision (c) or (d), the court may electronically serve any document issued by the court that is not required to be personally served in the same manner that parties electronically serve documents. The electronic service of documents by the court shall have the same legal effect as service by mail, except as provided in paragraph (4).

(4) (A) Electronic service of a document is complete at the time of the electronic transmission of the document or at the time that the electronic notification of service of the document is sent. However, any period of notice, or any right or duty to do any act or make any response within any period or on a date certain after the service of the document, which time period or date is prescribed by statute or rule of court, shall be extended after service by electronic means by two court days, but the extension shall not apply to extend the time for filing any of the following:

(i) A notice of intention to move for new trial.

(ii) A notice of intention to move to vacate judgment under Section 663a.

(iii) A notice of appeal.

(B) This extension applies in the absence of a specific exception provided by any other statute or rule of court.

(b) A trial court may adopt local rules permitting electronic filing of documents, subject to rules adopted pursuant to subdivision (e) and the following conditions:

(1) A document that is filed electronically shall have the same legal effect as an original paper document.

(2) (A) When a document to be filed requires the signature, not under penalty of perjury, of an attorney or a self-represented party, the document shall be deemed to have been signed by that attorney or self-represented party if filed electronically.

(B) When a document to be filed requires the signature, under penalty of perjury, of any person, the document shall be deemed to have been signed by that person if filed electronically and if a printed form of the document has been signed by that person before or on the same day as, the date of filing. The attorney or person filing the document represents, by the act of filing, that the declarant has complied with this section. The attorney or person filing the document shall maintain the printed form of the document bearing the original signature and make it available for review and copying upon the request of the court or any party to the action or proceeding in which it is filed.

(3) Any document that is electronically filed with the court after the close of business on any day shall be deemed to have been filed on the next court day. “Close of business,” as used in this paragraph, means 5 p.m. or the time at which the court will not accept filing at the court’s filing counter, whichever is earlier.

(4) The court receiving a document filed electronically shall issue a confirmation that the document has been received and filed. The confirmation shall serve as proof that the document has been filed.

(5) Upon electronic filing of a complaint, petition, or other document that must be served with a summons, a trial court, upon request of the party filing the action, shall issue a summons with the court seal and the case number. The court shall keep the summons in its records and may electronically transmit a copy of the summons to the requesting party. Personal service of a printed form of the electronic summons shall have the same legal effect as personal service of an original summons. If a trial court plans to electronically transmit a summons to the party filing a complaint, the court shall immediately, upon receipt of the complaint, notify the attorney or party that a summons will be electronically transmitted to the electronic address given by the person filing the complaint.

(6) The court shall permit a party or attorney to file an application for waiver of court fees and costs, in lieu of requiring the payment of the filing fee, as part of the process involving the electronic filing of a document. The court shall consider and determine the application in accordance with Article 6 (commencing with Section 68630) of Chapter 2 of Title 8 of the Government Code and shall not require the party or attorney to submit any documentation other than that set forth in Article 6 (commencing with Section 68630) of Chapter 2 of Title 8 of the Government Code. Nothing in this section shall require the court to waive a filing fee that is not otherwise waivable.

(7) A fee, if any, charged by the court, an electronic filing manager, or an electronic filing service provider to process a payment for filing fees and other court fees shall not exceed the costs incurred in processing the payment.

(c) If a trial court adopts rules conforming to subdivision (b), it may provide by order that all parties to an action file and serve documents electronically in a class action, a consolidated action, a group of actions, a coordinated action, or an action that is deemed complex under Judicial Council rules, provided that the trial court's order does not cause undue hardship or significant prejudice to any party in the action.

(d) (1) Notwithstanding subdivision (b), the Orange County Superior Court may, by local rule and until July 1, 2014, establish a pilot project to require parties to specified civil actions to electronically file and serve documents, subject to the requirements set forth in paragraphs (1), (2), (4), (5), and (6) of subdivision (b), rules adopted pursuant to subdivision (e), and the following conditions:

(A) The court shall have the ability to maintain the official court record in electronic format for all cases where electronic filing is required.

(B) The court and the parties shall have access to more than one electronic filing service provider capable of electronically filing documents with the court or to electronic filing access directly through the court. The court may charge fees of no more than the actual cost of the electronic filing and service of the documents. Any fees charged by an electronic filing service provider shall be reasonable. The court, an electronic filing manager, or an electronic filing service provider shall waive any fees charged if the court deems a waiver appropriate, including in instances where a party has received a fee waiver.

(C) The court shall have a procedure for the filing of nonelectronic documents in order to prevent the program from causing undue hardship or significant prejudice to any party in an action, including, but not limited to, unrepresented parties.

(D) A court that elects to require electronic filing pursuant to this subdivision may permit documents to be filed electronically until 12 a.m. of the day after the court date that the filing is due, and the filing shall be considered timely. However, if same day service of a document is required, the document shall be electronically filed by 5 p.m. on the court date that the filing is due. Ex parte documents shall be electronically filed on the same date and within the same time period as would be required for the filing of a hard copy of the ex parte documents at the clerk's window in the participating county. Documents filed on or after 12 a.m., or filed upon a noncourt day, will be deemed filed on the soonest court day following the filing.

(2) If a pilot project is established pursuant to paragraph (1), the Judicial Council shall conduct an evaluation of the pilot project and report to the Legislature, on or before December 31, 2013, on the results of the evaluation. The evaluation shall review, among other things, the cost of the program to participants, cost-effectiveness for the court, effect on unrepresented parties and parties with fee waivers, and ease of use for participants.

(e) The Judicial Council shall adopt uniform rules for the electronic filing and service of documents in the trial courts of the state, which shall include statewide policies on vendor contracts, privacy, and access to public records, and rules relating to the integrity of electronic service. These rules shall conform to the conditions set forth in this section, as amended from time to time.

(f) The Judicial Council shall, on or before July 1, 2014, adopt uniform rules to permit the mandatory electronic filing and service of documents for specified civil actions in the trial courts of the state, which shall be informed by any study performed pursuant to paragraph (2) of subdivision (d) and which shall include statewide policies on vendor contracts, privacy, access to public records, unrepresented parties, parties with fee waivers, hardships, reasonable exceptions to electronic filing, and rules relating to the integrity of electronic service. These rules shall conform to the conditions set forth in this section, as amended from time to time.

(g) (1) Upon the adoption of uniform rules by the Judicial Council for mandatory electronic filing and service of documents for specified civil actions in the trial courts of the state, as specified in subdivision (f), a superior court may, by local rule, require mandatory electronic filing, pursuant to paragraph (2).

(2) A superior court that elects to adopt mandatory electronic filing shall do so pursuant to the requirements and conditions set forth in this section, including, but not limited to, paragraphs (1), (2), (4), (5), (6), and (7) of subdivision (b), and subparagraphs (A), (B), and (C) of paragraph (1) of subdivision (d), and pursuant to the rules adopted by the Judicial Council, as specified in subdivision (f).

## **SEC. 2.**

Section 1033.5 of the Code of Civil Procedure is amended to read:

### **1033.5.**

(a) The following items are allowable as costs under Section 1032:

- (1) Filing, motion, and jury fees.
- (2) Juror food and lodging while they are kept together during trial and after the jury retires for deliberation.
- (3) (A) Taking, video recording, and transcribing necessary depositions, including an original and one copy of those taken by the claimant and one copy of depositions taken by the party against whom costs are allowed.  
(B) Fees of a certified or registered interpreter for the deposition of a party or witness who does not proficiently speak or understand the English language.  
(C) Travel expenses to attend depositions.
- (4) Service of process by a public officer, registered process server, or other means, as follows:
  - (A) When service is by a public officer, the recoverable cost is the fee authorized by law at the time of service.
  - (B) If service is by a process server registered pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code, the recoverable cost is the amount actually incurred in effecting service, including, but not limited to, a stakeout or other means employed in locating the person to be served, unless those charges are successfully challenged by a party to the action.
  - (C) When service is by publication, the recoverable cost is the sum actually incurred in effecting service.
  - (D) When service is by a means other than that set forth in subparagraph (A), (B), or (C), the recoverable cost is the lesser of the sum actually incurred, or the amount allowed to a public officer in this state for that service, except that the court may allow the sum actually incurred in effecting service upon application pursuant to paragraph (4) of subdivision (c).
- (5) Expenses of attachment including keeper's fees.
- (6) Premiums on necessary surety bonds.
- (7) Ordinary witness fees pursuant to Section 68093 of the Government Code.
- (8) Fees of expert witnesses ordered by the court.
- (9) Transcripts of court proceedings ordered by the court.

(10) Attorney's fees, when authorized by any of the following:

(A) Contract.

(B) Statute.

(C) Law.

(11) Court reporter fees as established by statute.

(12) Court interpreter fees for a qualified court interpreter authorized by the court for an indigent person represented by a qualified legal services project, as defined in Section 6213 of the Business and Professions Code, or a pro bono attorney, as defined in Section 8030.4 of the Business and Professions Code.

(13) Models and enlargements of exhibits and photocopies of exhibits may be allowed if they were reasonably helpful to aid the trier of fact.

(14) Fees for the electronic filing or service of documents through an electronic filing service provider if a court requires or orders electronic filing or service of documents.

(15) Fees for the hosting of electronic documents if a court requires or orders a party to have documents hosted by an electronic filing service provider. This paragraph shall become inoperative on January 1, 2022.

(16) Any other item that is required to be awarded to the prevailing party pursuant to statute as an incident to prevailing in the action at trial or on appeal.

(b) The following items are not allowable as costs, except when expressly authorized by law:

(1) Fees of experts not ordered by the court.

(2) Investigation expenses in preparing the case for trial.

(3) Postage, telephone, and photocopying charges, except for exhibits.

(4) Costs in investigation of jurors or in preparation for voir dire.

(5) Transcripts of court proceedings not ordered by the court.

(c) An award of costs shall be subject to the following:

(1) Costs are allowable if incurred, whether or not paid.

(2) Allowable costs shall be reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation.

(3) Allowable costs shall be reasonable in amount.

(4) Items not mentioned in this section and items assessed upon application may be allowed or denied in the court's discretion.

(5) (A) If a statute of this state refers to the award of "costs and attorney's fees," attorney's fees are an item and component of the costs to be awarded and are allowable as costs pursuant to subparagraph (B) of paragraph (10) of subdivision (a). A claim not based upon the court's established schedule of attorney's fees for actions on a contract shall bear the burden of proof. Attorney's fees allowable as costs pursuant to subparagraph (B) of paragraph (10) of subdivision (a) may be fixed as follows: (i) upon a noticed motion, (ii) at the time a statement of decision is rendered, (iii) upon application supported by affidavit made concurrently with a claim for other costs, or (iv) upon entry of default judgment. Attorney's fees allowable as costs pursuant to subparagraph (A) or (C) of paragraph (10) of subdivision

(a) shall be fixed either upon a noticed motion or upon entry of a default judgment, unless otherwise provided by stipulation of the parties.

(B) Attorney's fees awarded pursuant to Section 1717 of the Civil Code are allowable costs under Section 1032 of this code as authorized by subparagraph (A) of paragraph (10) of subdivision (a).

### **SEC. 3.**

Section 6159 of the Government Code is amended to read:

#### **6159.**

(a) The following definitions apply for purposes of this section:

(1) "Credit card" means a card, plate, coupon book, or other credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, labor, or services on credit.

(2) "Card issuer" means a person, or his or her agent, who issues a credit card and purchases credit card drafts.

(3) "Cardholder" means a person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.

(4) "Debit card" means a card or other means of access to a debit card cardholder's account that may be used to initiate electronic funds transfers from that account.

(5) "Draft purchaser" means a person who purchases credit card drafts.

(6) "Electronic funds transfer" means a method by which a person permits electronic access to, and transfer of, money held in an account by that person.

(b) Subject to subdivisions (c) and (d), a court, city, county, city and county, or other public agency may authorize the acceptance of a credit card, debit card, or electronic funds transfer for any of the following:

(1) The payment for the deposit of bail for any offense not declared to be a felony or for a court-ordered fee, fine, forfeiture, penalty, assessment, or restitution. Use of a card or electronic funds transfer pursuant to this paragraph may include a requirement that the defendant be charged an administrative fee charged by the company issuing the card or processing the account for the cost of the transaction.

(2) The payment of a filing fee or other court fee.

(3) The payment of towage or storage costs for a vehicle that has been removed from a highway, or from public or private property, as a result of parking violations.

(4) The payment of child, family, or spousal support, including reimbursement of public assistance, related fees, costs, or penalties, with the authorization of the cardholder or accountholder.

(5) The payment for services rendered by a city, county, city and county, or other public agency.

(6) The payment of a fee, charge, or tax due a city, county, city and county, or other public agency.

(7) The payment of moneys payable to the sheriff pursuant to a levy under a writ of attachment or writ of execution. If the use of a card or electronic funds transfer pursuant to this paragraph includes any administrative fee charged by the company issuing the card or processing the account for the cost of the transaction, that fee shall be paid by the person who pays the money to the sheriff pursuant to the levy.

(8) The payment of a donation, gift, bequest, or devise made to or in favor of a county, or to or in favor of a county board of supervisors, pursuant to Section 25355.

(c) A court desiring to authorize the use of a credit card, debit card, or electronic funds transfer pursuant to subdivision (b) shall obtain the approval of the Judicial Council. A city desiring to authorize the use of a credit card, debit card, or electronic funds transfer pursuant to subdivision (b) shall obtain the approval of its city council. Any other public agency desiring to authorize the use of a credit card, debit card, or electronic funds transfer pursuant to subdivision (b) shall obtain the approval of the governing body that has fiscal responsibility for that agency.

(d) After approval is obtained, a contract may be executed with one or more credit card issuers, debit card issuers, electronic funds transfer processors, or draft purchasers. The contract shall provide for the following matters:

(1) The respective rights and duties of the court, city, county, city and county, or other public agency and card issuer, funds processor, or draft purchaser regarding the presentment, acceptability, and payment of credit and debit card drafts and electronic funds transfer requests.

(2) The establishment of a reasonable means by which to facilitate payment settlements.

(3) The payment to the card issuer, funds processor, or draft purchaser of a reasonable fee or discount.

(4) Any other matters appropriately included in contracts with respect to the purchase of credit and debit card drafts and processing of electronic funds transfer requests as may be agreed upon by the parties to the contract.

(e) The honoring of a credit card, debit card, or electronic funds transfer pursuant to subdivision (b) constitutes payment of the amount owing to the court, city, county, city and county, or other public agency as of the date the credit or debit card is honored or the electronic funds transfer is processed, if the credit or debit card draft is paid following its due presentment to a card issuer or draft purchaser or the electronic funds transfer is completed with transfer to the agency requesting the transfer.

(f) If a credit or debit card draft is not paid following due presentment to a card issuer or draft purchaser or is charged back to the court, city, county, city and county, or other public agency for any reason, any record of payment made by the court, city, or other public agency honoring the credit or debit card shall be void. If an electronic funds transfer request is not completed with transfer to the agency requesting the transfer or is charged back to the agency for any reason, any record of payment made by the agency processing the electronic funds transfer shall be void. A receipt issued in acknowledgment of payment shall also be void. The obligation of the cardholder or accountholder shall continue as an outstanding obligation as if no payment had been attempted.

(g) If a credit card, debit card draft, electronic funds transfer, or other payment offered in payment is returned without payment, for any reason, a reasonable charge for the charge back or return, not to exceed the actual costs incurred by the public agency, may be imposed to recover the public agency's processing and collection costs. This charge may be added to, and become part of, any underlying obligation other than an obligation that constitutes a lien on real property, and a different method of payment for that payment and future payments by this person may be prescribed.

(h) (1) Notwithstanding Title 1.3 (commencing with Section 1747) of Part 4 of Division 3 of the Civil Code, a court or agent of the court, city, county, city and county, or any other public agency may impose a fee for the use of a credit or debit card or electronic funds transfer, not to exceed the costs incurred by the agency or agent in providing for payment by credit or debit card or electronic funds transfer. These costs may include, but shall not be limited to, the payment of fees or discounts as specified in paragraph (3) of subdivision (d). A fee imposed by a court or agent of the court pursuant to this subdivision shall be approved by the Judicial Council. A fee imposed by any other public agency pursuant to this subdivision for the use of a credit or debit card or electronic funds transfer shall be approved by the governing body responsible for the fiscal decisions of the public agency.

(2) For purposes of this subdivision, an electronic filing service provider who is required to collect and remit a payment described in paragraph (2) of subdivision (b) to complete an electronic filing transaction is deemed an agent of the court. Unless otherwise specified, the electronic filing service provider is deemed an agent of the court for the sole purpose of collecting and remitting a payment described in paragraph (2) of subdivision (b) for an electronic filing transaction.

(3) A court shall not be held liable for the actions of an agent of the court under this subdivision.

(4) An agent of the court shall report its costs in providing for payment by credit or debit card, or electronic funds transfer. These reports shall be issued pursuant to guidelines adopted by the Judicial Council. For purposes of verifying the accuracy of these reports and compliance with this subdivision, the Judicial Council, or its authorized representative, shall have the right to access and examine the records and documents of an agent of the court. The agent of the court shall provide the Judicial Council with all relevant information requested, and shall permit access to its premises at reasonable times for purposes of interviewing employees, and inspecting and copying any relevant records. The agent of the court shall maintain all records and documents relating to its fees and costs for a minimum of four years from the date the fee is imposed, or until the verification process is completed, whichever occurs later.

(i) Fees or discounts provided for under paragraph (3) of subdivision (d) shall be deducted or accounted for before any statutory or other distribution of funds received from the card issuer, funds processor, or draft purchaser to the extent not recovered from the cardholder or accountholder pursuant to subdivision (h).

(j) The Judicial Council may enter into a master agreement with one or more credit or debit card issuers, funds processors, or draft purchasers for the acceptance and payment of credit or debit card drafts and electronic funds transfer requests received by the courts. A court may join in any of these master agreements or may enter into a separate agreement with a credit or debit card issuer, funds processor, or draft purchaser.

(k) An electronic filing service provider, as described in subdivision (h), shall not collect or attempt to collect a fee to complete an electronic filing transaction, including a fee to process a payment, a filing fee or other court fee, or a fee charged by the electronic filing service provider for electronically filing documents, from a party who is exempt from paying fees; provided, however, that the electronic filing service provider shall complete the filing notwithstanding the fee exemption.

(l) A court, or an electronic filing manager that provides a court, pursuant to a contract, with a system for accepting electronically transmitted documents and associated filing and other court fees, shall accept more than one method of payment from an electronic filing service provider described in paragraph (2) of subdivision (h). The court shall determine the methods of payment that will be accepted by the court and the electronic filing manager. The methods of payment may include credit or debit cards, electronic funds transfers, electronic networks for financial transactions such as Automated Clearing House (ACH), and other payment methods that do not charge a transaction cost.