

\$10,000 Cap Proposed for Small Claims

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SACRAMENTO — Proposals to raise the jurisdictional limit for small claims courts from the current \$1,500 to as high as \$10,000 are meeting with mixed reactions in the Capitol and a general outcry from judges who say the limit probably should be raised, perhaps to \$2,500, but that a \$10,000 limit would cause turmoil in the courts and unrealistic burdens on judges.

A bill by Assembly Judiciary Committee Chairman Elihu Harris, D-Oakland, would raise the jurisdictional limit of small claims courts to \$10,000 in personal injury and property damage disputes involving money, and to \$2,500 in all other cases.

Measures to raise the limit to \$2,500 have failed in the Legislature in past years, but a proposed ballot initiative to raise the limit in all small claims actions to \$10,000 has given added impetus to a negotiated legislative settlement, probably at the \$2,500 level.

Harris' bill, AB 1913, has been approved by the Assembly Judiciary Committee as well as the full Assembly, and is now headed toward the Senate Judiciary Committee — the traditional burying ground for such legislation in the past.

The proposed ballot initiative was filed with the attorney general's office in January and certified by the secretary of state's office for circulation and signature-gathering on March 7.

The sponsor of the proposal, Alameda County Superior Court Judge Roderic Duncan, conceded that gathering the required 372,000 signatures to place the measure on the November ballot will be difficult, if not impossible.

"The time isn't very long if we want to get on the November ballot," Duncan said. "Whether we're going to make a real effort depends

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on several financing opportunities or persons who have indicated they would underwrite a [professional] signature-gathering effort. There is no way we could do a grass-roots effort [in the time allowed for the November ballot]."

He said that if the professional effort does not materialize — and he would not name potential financial backers — then Duncan said he would mount a grass-roots effort, probably for the June 1990 ballot.

"That's no great tragedy," he said. "We've been trying to get the law amended for years, and it's been an exercise in frustration."

Duncan was involved in his own small claims battle in January. He and his wife filed a claim with Trans World Airlines Inc. for \$1,250 each for lost luggage. The airline offered to pay half, so the Duncans took them to court and won on Jan. 26. TWA threatened to appeal, but Duncan said the company changed its mind and paid the award.

Regarding his initiative, he blamed powerful lobbying interests — primarily insurance industry lobbyist and San Francisco lawyer Clayton R. Jackson, and the lobbyist for collection agencies, Sacramento lobbyist/lawyer Robert Wilson, a former state legislator — for the failure of such measures in the past.

"To try to overcome Mr. Wilson and Mr. Jackson — they're just too strong," Duncan said. "We started three years ago, going to the Legislature to testify in front of one committee or another. A member of the [Senate Judiciary] Committee told me the merits were irrelevant," because of the clout of the special-interest lobbies.

Jackson is the highest paid lobbyist in the state, representing the insurance industry and other interests that contribute heavily to legislative campaigns.

A knowledgeable legislative source who asked not to be identified said previous bills were killed "because of the influence of Bob Wilson and Clay Jackson. They called in all their chits and got the bills killed."

Wilson represents 17 clients, including the California Association of Collectors, which he said contributes only \$15,000 to \$20,000 a year to legislative campaigns. Wilson said Duncan's allegations are unfair and obscure the substantive issues involving small claims court jurisdiction.

"They have a lot of merit on their side," Wilson said of Duncan's effort. "But so do we."

Jackson was unavailable for comment.

Ray LeBov, consultant to the Assembly Judiciary Committee, said the Harris bill probably will be amended to "respond to some of the objections," perhaps limiting the number of times large businesses can use small claims court, with no numerical limit up to the existing jurisdictional limit of \$1,500.

The measure in its present form also is opposed by the California Judges Association, whose committee on court administration voted unanimously against the \$10,000 limit in personal injury cases.

"We're not opposed to \$2,500," said Ellen Zeff, legislative coordinator for the judges association. But she said the increase to \$10,000 would mean that "the litigation would be much more complex, and the kind of work a lawyer would do would be shifted to the judge."

In a written statement opposing the bill in its present form, the judges association said the bill "would bring increasingly complex litigation into the small claims court where parties are not assisted by counsel."

Santa Clara County Municipal Court Judge Stephen Manley, a small claims expert who is chairman of the county's small claims committee and a member of the judges association's court administration committee, said there was "no significant opposition to raising the small claims jurisdiction to \$2,500, but the suggestion to raise it to \$10,000 for property damage and personal injury was a concern."

"We simply don't have the judges to hear small claims cases," Manley said, "and we have to rely on attorneys. The people's court needs resources to make it meaningful. I personally support increasing it to \$2,500, but you need to have at the same time [more] judges. There are strict time limits in hearing small claims matters."

Duncan, who is largely alone among judges in his support for the \$10,000 limit contained in his initiative, does not dispute concerns among judges that such a change would wreak havoc on the courts. "There's no question but that either the Harris bill or the initiative would be a disaster in that the appeals which have to be heard *de novo* in the Superior Court would be substantially increased in what is already a major irritant to Superior Court judges, who have to hear small claims matters on appeal."

"When you're dealing with \$100,000 and \$1-million lawsuits and felony criminal matters, to have to take a half-hour or an hour to hear a \$44 dry cleaning appeal can be a serious problem in running a Superior Court department," Duncan said. "I'm very aware of that and would expect [judges] to oppose [the initiative] for that reason."

Duncan said the increased burden on the courts created by raising the small claims limit to \$10,000 "could be solved in the Legislature without creating the substantive mechanical problems in Superior Court, by a wholesale amendment to the statute providing that appeals be heard in Municipal Court. An appellate division could be created in Municipal Court."

Duncan said in 11 years on the Municipal Court bench before his 1986 election to the Superior Court in 1986, "I probably heard two years of small claims. Frequently, I would see people who had a perfectly good claim of \$2,000 or \$3,000 and would slip it in under the \$1,500 limit, just to get it in."

He said his initiative effort is supported by Ralph Warner of Nolo Press and by "a lot of consumer groups."