

What's New: SB 1102's Amendments to the Punitive Damages Statutes and Claim Statutes

On August 16, 2004, with little if any fanfare or publicity, Senate Bill 1102 --the 2004-2005 "general government omnibus Budget trailer bill" -- went into effect. This bill made profound changes to California's punitive-damages law; and also imposed an important (albeit possibly accidental) change on claims procedures under the Tort Claim Act.

Every year the California legislature enacts a "general government omnibus Budget trailer bill" to conform statutory law to the annual budget. Since litigation and government claim issues affect the state budget, amendments to the Civil Code, the Code of Civil Procedure, and the Government Code can sometimes be found in these bills.

This year, the most important change -- for both private and public defendants -- is the addition of section 3294.5 to the Civil Code. Section 3294.5 apportions 75% of all punitive damages awarded in cases filed after August 16, 2004 (and before the statute's sunset date of July 1, 2006) to the state. The section prescribes rules for calculating attorney fees in cases where punitives are awarded; and addresses what juries will be told about the apportionment during trial. Although this provision was debated extensively in the press when Governor Schwarzenegger's administration proposed it, there was little coverage of its actual enactment into law.

Although public entities themselves are immune from punitive damages, public employees are not -- and public employers have the option of immunizing their employees for punitive damage judgments. This provision will obviously affect how public entities defend and settle suits seeking punitive damages.

SB 1102 also makes a mysterious change to claim procedure. Those who deal with claims may recall that before 2002, Government Code section 910.4 provided that claim forms were optional for both public entities and claimants: public entities could (but weren't required to) provide claims; and if the entity provided them, the claimant didn't have to use them if his or her claim otherwise met the statutory requirements for claims. In 2002, the legislature amended section 910.4 (effective March 2003) to *require* public entities to provide claim forms; and required claimants to use them:

"The board shall provide forms specifying the information to be contained in claims *against the public entity*. The person presenting a claim shall use the form in order that his or her claim is deemed in conformity with Sections 910 and 910.2. A claim may be returned to the person if it was not presented using the form. Any claim returned to a person may be resubmitted using the appropriate form." (Emphasis added.)

The new bill, however, amends section 910.4 again, apparently to require only the *state* to provide claim forms, and claimants against the state to use them:

“The board shall provide forms specifying the information to be contained in claims *against the state*. The person presenting a claim shall use the form in order that his or her claim is deemed in conformity with Sections 910 and 910.2. A claim may be returned to the person if it was not presented using the form. Any claim returned to a person may be resubmitted using the appropriate form.” (Emphasis added.)

Why the change? The only clue is the bill’s amendment of Government Code section 905.2 to impose a \$25 filing fee on claims against the state. The claim-form provision might have been seen as a means to further control the procedure for presenting claims to the state. But since the previous statute applied to claims against *any* public entity -- including the state -- the change would have been unnecessary. The change might also have been an attempt to save local public entities the cost of providing claim forms, and returning claims not presented on the requisite forms. (On the other hand, the 2002 version of the statute might have ultimately saved local entities money by giving them a new ground for rejecting claims.)

The bill also amends Government Code section 910.8 (permitting notices of claim insufficiency) to specifically refer to claims that are defective because they fail to substantially comply “with the requirements of a form provided under Section 910.4.” Since section 910.4 now apparently addresses only claims to the state, however, that provision likewise would only apply to state claims.

Finally, the bill also amends section 910.8 to apply to claims that are defective because no filing fee is included; and alters section 911 (barring claim-insufficiency defenses where no notice is given) to specifically except a claimant’s failure to pay a filing fee for a claim. Since only claims to the state require a filing fee, these changes only apply to such claims.