

AMENDED IN ASSEMBLY APRIL 30, 2012

AMENDED IN SENATE MARCH 25, 2011

SENATE BILL

No. 491

Introduced by Senator Evans

February 17, 2011

~~An act to amend Section 8250 of the Probate Code, relating to civil procedure.~~ *An act to add Section 1589.5 to the Civil Code, relating to contracts.*

LEGISLATIVE COUNSEL'S DIGEST

SB 491, as amended, Evans. ~~Civil procedure: probate of wills.~~ *Contracts: claims.*

Existing law generally regulates the nature of contracts, including the nature of consent to terms within a contract.

This bill would provide that any term in a contract of adhesion purporting to waive the right to join or consolidate claims, or to bring a claim as a representative member of a class or in a private attorney general capacity shall be deemed to lack the necessary consent to waive that right, and is void. The bill would provide that these provisions apply to contracts that are entered into on or after January 1, 2013.

~~Under existing law, when a will is contested, the contestant is required to file with the court an objection to probate of the will. A summons is required to be issued and served, with a copy of the objection, on specified persons. Existing law establishes the procedure for the issuance and service of a summons, and authorizes a plaintiff to have the clerk of the court issue one or more summons for any defendant.~~

~~This bill would clarify that the provisions that authorize a clerk to issue a summons are applicable when a person files an objection to the probate of a will by adding a cross-reference to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 1589.5 is added to the Civil Code, to read:

2 1589.5. (a) Any term in a contract of adhesion purporting to
3 waive the right to join or consolidate claims, or to bring a claim
4 as a representative member of a class or in a private attorney
5 general capacity shall be deemed to lack the necessary consent to
6 waive that right, and is void.

7 (b) This section shall apply to contracts that are entered into
8 on or after January 1, 2013.

9 SECTION 1. ~~Section 8250 of the Probate Code is amended to~~
10 ~~read:~~

11 ~~8250. (a) When a will is contested under Section 8004, the~~
12 ~~contestant shall file with the court an objection to probate of the~~
13 ~~will. Thereafter, a summons shall be issued and served, with a~~
14 ~~copy of the objection, on the persons required by Section 8110 to~~
15 ~~be served with notice of hearing of a petition for administration~~
16 ~~of the decedent's estate. The summons shall be issued and served~~
17 ~~as provided in Chapter 3 (commencing with Section 412.10) and~~
18 ~~Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2~~
19 ~~of the Code of Civil Procedure. The summons shall contain a~~
20 ~~direction that the persons summoned file with the court a written~~
21 ~~pleading in response to the contest within 30 days after service of~~
22 ~~the summons.~~

23 ~~(b) A person named as executor in the will is under no duty to~~
24 ~~defend a contest until the person is appointed personal~~
25 ~~representative.~~