

AMENDED IN SENATE JUNE 4, 2002

AMENDED IN ASSEMBLY APRIL 18, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 3027**

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**Introduced by Committee on Judiciary (Corbett (Chair), Dutra,  
Jackson, Longville, Shelley, Steinberg, and Wayne)**

March 12, 2002

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*An act to amend Sections 1812.20 and 2984.4 of the Civil Code, to amend Sections 116.340, 116.370, 116.570, 116.940, 392, 395, 396, 396a, 575.2, 631, 1005, and 2094 of, to repeal Section 402.5 of, and to repeal and add Section 402 of, the Code of Civil Procedure, to amend Sections 1030, 1031, 1032, 1033, and 1034 of, and to amend the heading of Article 8 (commencing with Section 1030) of Chapter 4 of Division 8 of, the Evidence Code, and to amend Section 818.9 of the Government Code, relating to courts.*

LEGISLATIVE COUNSEL'S DIGEST

AB 3027, as amended, Committee on Judiciary. Courts.

(1) Existing law provides that a public entity, its employees, and volunteers are not liable under the Governmental Tort Liability Act for advice provided to small claims litigants.

This bill would provide that independent contractors, as well as employees and volunteers, who provide advice to small claims litigants or potential litigants as a public service on behalf of a court or county are not liable for that advice under that act.

(2) Existing law specifies the deadlines for service of a claim and order on a defendant in small claims court.

This bill would extend those deadlines, as specified, set a deadline for the postponement of a small claims court hearing, and require a request for postponement to be for good cause.

(3) Existing law provides for the unification of municipal and superior courts.

This bill would delete obsolete provisions regarding the transfer of cases between a municipal and superior court.

(4) *Existing law authorizes a superior court in a county in which there is no municipal court to transfer a limited civil case to another branch or location of the superior court in the county.*

*This bill would repeal this provision and enact new provisions regarding the proper location of the superior court in a county in which a particular matter shall be heard. The bill would authorize a superior court, by local rules to designate the nearest or most accessible location for the trial of specified cases, and to provide for the transfer of cases to the proper location in the county. The bill would also make related changes.*

(5) Existing law authorizes a trial court, on the motion of a party or its own motion, to strike a pleading, dismiss an action, enter a default judgment, or impose lesser penalties, as well as to require the opposing party or his or her counsel to pay the reasonable expenses of the moving party.

This bill would prohibit the imposition of any penalty under this provision without prior notice to, and an opportunity to be heard by, the party against whom the penalty is sought to be imposed.

~~(5)~~

(6) Existing law provides for the advance deposit of jury fees and mileage or transportation allowance, and the ways in which a jury trial may be waived for failure to provide these advance deposits, in a civil action. Existing law also provides the ways in which an opposing party may reinstate the jury trial following waiver by the party who originally requested a jury trial.

This bill would revise the provisions for the advance deposit of jury fees and mileage or transportation allowance, and the ways in which a jury trial may be waived for failure to provide these advance deposits, in a civil action. The bill would also delete the provisions for an opposing party to reinstate a jury trial following waiver by the party who originally requested a jury trial.

~~(6)~~



(7) Existing law prescribes the form of an oath, affirmation, or declaration in an action or proceeding.

This bill would make a technical, nonsubstantive change in that provision.

(7)

(8) Existing law specifies the methods for service of papers opposing a motion and all reply papers.

This bill would extend these provisions to apply to opposition and reply papers regarding motions for summary judgment or summary adjudication.

(8)

(9) Existing law establishes the evidentiary privilege between the clergy and their penitents.

This bill would make technical, nonsubstantive changes in 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 1812.10 of the Civil Code is amended to*  
2 *read:*

3 1812.10. (a) An action on a contract or installment account  
4 under the provisions of this chapter shall be tried in the *superior*  
5 *court in the county in which* ~~in which~~ *where* the contract was in fact signed  
6 by the buyer, ~~in the county in which~~ *where* the buyer resided at the  
7 time the contract was entered into, ~~in the county in which~~ *where*  
8 the buyer resides at the commencement of the action, or ~~in the~~  
9 ~~county in which~~ *where* the goods purchased pursuant to the  
10 contract have been so affixed to real property as to become a part  
11 of that real property.

12 ~~If within the county there is a municipal court, having~~  
13 ~~jurisdiction of the subject matter, established in the city and county~~  
14 ~~or judicial district in which~~

15 (b) *In the superior court designated as the proper court in*  
16 *subdivision (a), the proper court location for trial of an action*  
17 *under this chapter is the location where the court tries that type of*  
18 *action that is nearest or most accessible to where* the contract was  
19 in fact signed by the buyer, ~~or in which~~ *where* the buyer resided  
20 at the time the contract was entered into, ~~or in which~~ *where* the



1 buyer resides at the commencement of the action, or ~~in which~~  
2 *where* the goods purchased pursuant to the contract have been so  
3 affixed to real property as to become a part of that real property;  
4 ~~then that court is the proper court for the trial of the action.~~  
5 Otherwise, any court ~~in the county, having jurisdiction of the~~  
6 ~~subject matter,~~ *location of the superior court designated as the*  
7 *proper court in subdivision (a)* is the proper court *location* for the  
8 trial ~~thereof~~ *of the action. The court may specify by local rule the*  
9 *nearest or most accessible court location where the court tries that*  
10 *type of case.*

11 (c) In any action subject to ~~the provisions of~~ this section,  
12 concurrently with the filing of the complaint, the plaintiff shall file  
13 an affidavit stating facts showing that the action has been  
14 commenced in a ~~county or judicial district~~ *superior court and court*  
15 *location* described in this section as a proper place for the trial of  
16 the action. Those facts may be stated in a verified complaint and  
17 shall not be stated on information or belief. When that affidavit is  
18 filed with the complaint, a copy thereof shall be served with the  
19 summons. If a plaintiff fails to file the affidavit or state facts in a  
20 verified complaint required by this section, no further proceedings  
21 ~~shall be had~~ *may occur*, but the court shall, upon its own motion  
22 or upon motion of any party, dismiss the action without prejudice;  
23 ~~however, the.~~ *The court may, on such terms as may be that are just,*  
24 permit the affidavit to be filed subsequent to the filing of the  
25 complaint and a copy of the affidavit shall be served on the  
26 defendant. The time to answer or otherwise plead shall date from  
27 that service.

28 SEC. 2. Section 2984.4 of the Civil Code is amended to read:

29 2984.4. (a) An action on a contract or purchase order under  
30 ~~the provisions of~~ this chapter shall be tried in the *superior court*  
31 *in the county in which* ~~in which~~ *where* the contract or purchase order was  
32 in fact signed by the buyer, ~~in the county in which~~ *where* the buyer  
33 resided at the time the contract or purchase order was entered into,  
34 ~~in the county in which~~ *where* the buyer resides at the  
35 commencement of the action, or ~~in the county in which~~ *where* the  
36 motor vehicle purchased pursuant to the contract or purchase order  
37 is permanently garaged.

38 In any action involving multiple claims, or causes of action,  
39 venue shall lie in ~~such counties so long as~~ *those courts if there is*



1 at least one claim or cause of action arising from a contract subject  
2 to ~~the provisions of this chapter.~~

3 ~~If within the county there is a municipal court, having~~  
4 ~~jurisdiction of the subject matter, established in the judicial district~~  
5 ~~in which~~

6 (b) *In the superior court designated as the proper court in*  
7 *subdivision (a), the proper court location for trial of an action*  
8 *under this chapter is the location where the court tries that type of*  
9 *action that is nearest or most accessible to where the contract,*  
10 *conditional sale contract, or purchase order was in fact signed by*  
11 *the buyer, ~~or in which~~ where the buyer resided at the time the*

12 *contract, conditional sale contract, or purchase order was entered*  
13 *into, ~~or in which~~ where the buyer resides at the commencement of*

14 *the action, or ~~in which~~ where the motor vehicle purchased*

15 *pursuant to the contract is permanently garaged, ~~that court is the~~*

16 *proper court for the trial of the action. Otherwise, any location of*  
17 *the superior court in the county, having jurisdiction of the subject*  
18 *matter, designated as the proper superior court in subdivision (a)*  
19 *is the proper court location for the trial of the action. The court*  
20 *may specify by local rule the nearest or most accessible court*  
21 *location where the court tries that type of case.*

22 (c) In any action subject to ~~the provisions of this section,~~  
23 concurrently with the filing of the complaint, the plaintiff shall file  
24 an affidavit stating facts showing that the action has been  
25 commenced in a ~~county or judicial district~~ *superior court and court*  
26 *location* described in this section as a proper place for the trial of  
27 the action. Those facts may be stated in a verified complaint and  
28 shall not be stated on information or belief. When that affidavit is  
29 filed with the complaint, a copy ~~thereof~~ shall be served with the  
30 summons. If a plaintiff fails to file the affidavit or state facts in a  
31 verified complaint required by this section, no further proceedings  
32 ~~shall be had~~ *may occur*, but the court shall, upon its own motion  
33 or upon motion of any party, dismiss the action without prejudice;  
34 ~~however, the.~~ *The court may, on such terms as may be that are just,*  
35 permit the affidavit to be filed subsequent to the filing of the  
36 complaint and a copy of the affidavit shall be served on the  
37 defendant. The time to answer or otherwise plead shall date from  
38 that service.

39 SEC. 3. Section 116.340 of the Code of Civil Procedure is  
40 amended to read:



1 116.340. (a) Service of the claim and order on the defendant  
2 may be made by any one of the following methods:  
3 (1) The clerk may cause a copy of the claim and order to be  
4 mailed to the defendant by any form of mail providing for a return  
5 receipt.  
6 (2) The plaintiff may cause a copy of the claim and order to be  
7 delivered to the defendant in person.  
8 (3) The plaintiff may cause service of a copy of the claim and  
9 order to be made by substituted service as provided in subdivision  
10 (a) or (b) of Section 415.20 without the need to attempt personal  
11 service on the defendant. For these purposes, substituted service  
12 as provided in subdivision (b) of Section 415.20 may be made at  
13 the office of the sheriff or marshal who shall deliver a copy of the  
14 claim and order to any person authorized by the defendant to  
15 receive service, as provided in Section 416.90, who is at least 18  
16 years of age, and thereafter mailing a copy of the claim and order  
17 to the defendant's usual mailing address.  
18 (4) The clerk may cause a copy of the claim to be mailed, the  
19 order to be issued, and a copy of the order to be mailed as provided  
20 in subdivision (b) of Section 116.330.  
21 (b) Service of the claim and order on the defendant shall be  
22 completed at least 15 days before the hearing date if the defendant  
23 resides within the county in which the action is filed, or at least 20  
24 days before the hearing date if the defendant resides outside the  
25 county in which the action is filed.  
26 (c) Service by the methods described in subdivision (a) shall be  
27 deemed complete on the date that the defendant signs the mail  
28 return receipt, on the date of the personal service, as provided in  
29 Section 415.20, or as established by other competent evidence,  
30 whichever applies to the method of service used.  
31 (d) Service shall be made within this state, except as provided  
32 in subdivisions (e) and (f).  
33 (e) The owner of record of real property in California who  
34 resides in another state and who has no lawfully designated agent  
35 in California for service of process may be served by any of the  
36 methods described in this section if the claim relates to that  
37 property.  
38 (f) A nonresident owner or operator of a motor vehicle  
39 involved in an accident within this state may be served pursuant  
40 to the provisions on constructive service in Sections 17450 to



1 17461, inclusive, of the Vehicle Code without regard to whether  
2 the defendant was a nonresident at the time of the accident or when  
3 the claim was filed. Service shall be made by serving both the  
4 Director of the California Department of Motor Vehicles and the  
5 defendant, and may be made by any of the methods authorized by  
6 this chapter or by registered mail as authorized by Section 17454  
7 or 17455 of the Vehicle Code.

8 (g) If an action is filed against a principal and his or her  
9 guaranty or surety pursuant to a guarantor or suretyship  
10 agreement, a reasonable attempt shall be made to complete service  
11 on the principal. If service is not completed on the principal, the  
12 action shall be transferred to the court of appropriate jurisdiction.

13 ~~SEC. 2.~~

14 *SEC. 4. Section 116.370 of the Code of Civil Procedure is*  
15 *amended to read:*

16 116.370. (a) *Venue and court location requirements* in small  
17 claims actions shall be the same as in other civil actions. *The court*  
18 *may prescribe by local rule the proper court locations for small*  
19 *claims actions.*

20 (b) A defendant may challenge *venue or court location* by  
21 writing to the court and mailing a copy of the challenge to each of  
22 the other parties to the action, without personally appearing at the  
23 hearing.

24 (c) In all cases, including those in which the defendant does not  
25 either challenge *venue or court location* or appear at the hearing,  
26 the court shall inquire into the facts sufficiently to determine  
27 whether *venue is and court location are* proper, and shall make its  
28 determination accordingly.

29 (1) If the court determines that the action was not commenced  
30 in the proper venue, the court, on its own motion, shall dismiss the  
31 action without prejudice, unless all defendants are present and  
32 agree that the action may be heard. *If the court determines that the*  
33 *action was not commenced in the proper court location, the court*  
34 *may transfer the action to a proper location pursuant to local rule.*

35 (2) If the court determines that the action was commenced in  
36 the proper venue *and court location*, the court may hear the case  
37 if all parties are present. If the defendant challenged *venue or court*  
38 *location* and all parties are not present, the court shall postpone the  
39 hearing for at least 15 days and shall notify all parties by mail of  
40 the court's decision and the new hearing date, time, and place.



1 SEC. 5. Section 116.570 of the Code of Civil Procedure is  
2 amended to read:

3 116.570. (a) Any party may submit a written request to  
4 postpone a hearing date for good cause.

5 (1) The written request may be made either by letter or on a  
6 form adopted or approved by the Judicial Council.

7 (2) The request shall be filed at least 10 days before the hearing  
8 date, unless the court determines that the requesting party has good  
9 cause to file the request at a later date.

10 (3) On the date of making the written request, the requesting  
11 party shall mail or personally deliver a copy to each of the other  
12 parties to the action.

13 (4) (A) If the court finds that the interests of justice would be  
14 served by postponing the hearing, the court shall postpone the  
15 hearing, and shall notify all parties by mail of the new hearing date,  
16 time, and place.

17 (B) On one occasion, upon the written request of a defendant  
18 guarantor, the court shall postpone the hearing for at least 30 days,  
19 and the court shall take this action without a hearing. This  
20 subparagraph does not limit the discretion of the court to grant  
21 additional postponements under subparagraph (A).

22 (5) The court shall provide a prompt response by mail to any  
23 person making a written request for postponement of a hearing  
24 date under this subdivision.

25 (b) If service of the claim and order upon the defendant is not  
26 completed within the number of days before the hearing date  
27 required by subdivision (b) of Section 116.340, and the defendant  
28 has not personally appeared and has not requested a postponement,  
29 the court shall postpone the hearing for at least 15 days. If a  
30 postponement is ordered under this subdivision, the clerk shall  
31 promptly notify all parties by mail of the new hearing date, time,  
32 and place.

33 (c) This section does not limit the inherent power of the court  
34 to order postponements of hearings in appropriate circumstances.

35 (d) A fee of ten dollars (\$10) shall be charged and collected for  
36 the filing of a request for postponement and rescheduling of a  
37 hearing date after timely service pursuant to subdivision (b) of  
38 Section 116.340 has been made upon the defendant.

39 ~~SEC. 3.~~



1 SEC. 6. Section 116.940 of the Code of Civil Procedure is  
2 amended to read:

3 116.940. (a) Except as otherwise provided in this section or  
4 in rules adopted by the Judicial Council, the characteristics of the  
5 small claims advisory service required by Section 116.260 shall be  
6 determined by each county in accordance with local needs and  
7 conditions.

8 (b) Each advisory service shall provide the following services:

9 (1) Individual personal advisory services, in person or by  
10 telephone, and by any other means reasonably calculated to  
11 provide timely and appropriate assistance.

12 (2) Recorded telephone messages may be used to supplement  
13 the individual personal advisory services, but shall not be the sole  
14 means of providing advice available in the county.

15 (3) Adjacent counties may provide advisory services jointly.

16 (c) In any county in which the number of small claims actions  
17 filed annually is 1,000 or less as averaged over the immediately  
18 preceding two fiscal years, the county may elect to exempt itself  
19 from the requirements set forth in subdivision (b). This exemption  
20 shall be formally noticed through the adoption of a resolution by  
21 the board of supervisors. If a county so exempts itself, the county  
22 shall nevertheless provide the following minimum advisory  
23 services in accordance with rules adopted by the Judicial Council:

24 (1) Recorded telephone messages providing general  
25 information relating to small claims actions filed in the county  
26 shall be provided during regular business hours.

27 (2) Small claims information booklets shall be provided in the  
28 court clerk's office of each superior court, the county  
29 administrator's office, other appropriate county offices, and in any  
30 other location that is convenient to prospective small claims  
31 litigants in the county.

32 (d) The advisory service shall operate in conjunction and  
33 cooperation with the small claims division, and shall be  
34 administered so as to avoid the existence or appearance of a  
35 conflict of interest between the individuals providing the advisory  
36 services and any party to a particular small claims action or any  
37 judicial officer deciding small claims actions.

38 (e) Advisors may be volunteers, and shall be members of the  
39 State Bar, law students, paralegals, or persons experienced in  
40 resolving minor disputes, and shall be familiar with small claims



1 court rules and procedures. Advisors may not appear in court as an  
 2 advocate for any party.

3 (f) Advisors, including independent contractors, other  
 4 employees, and volunteers have the immunity conferred by  
 5 Section 818.9 of the Government Code with respect to advice  
 6 provided as a public service on behalf of a court or county to small  
 7 claims litigants and potential litigants under this chapter.

8 ~~SEC. 4.~~

9 *SEC. 7. Section 392 of the Code of Civil Procedure is amended*  
 10 *to read:*

11 392. ~~(1)~~-(a) Subject to the power of the court to transfer  
 12 actions and proceedings as provided in this title, the *superior court*  
 13 *in the county in which* where the real property, that is the subject  
 14 of the action, or some part thereof, is situated, is the proper ~~county~~  
 15 *court* for the trial of the following actions:

16 ~~(a)~~

17 (1) For the recovery of real property, or of an estate or interest  
 18 therein, or for the determination in any form, of that right or  
 19 interest, and for injuries to real property;

20 ~~(b)~~.

21 (2) For the foreclosure of all liens and mortgages on real  
 22 property.

23 ~~(2) The proper court for the trial of any such action, in the~~  
 24 ~~county hereinabove designated as the proper county, shall be~~  
 25 ~~determined as follows:~~

26 ~~If there is a municipal court, having jurisdiction of the subject~~  
 27 ~~matter of the action, established in the city and county or judicial~~  
 28 ~~district in which the real property that is the subject of the action,~~  
 29 ~~or some part thereof, is situated, that court is the proper court for~~  
 30 ~~the trial of the action; otherwise any court in the county having~~  
 31 ~~jurisdiction of the subject matter of the action, is a proper court for~~  
 32 ~~the trial thereof.~~

33 (b) *In the court designated as the proper court in subdivision*  
 34 *(a), the proper court location for trial of a proceeding for an*  
 35 *unlawful detainer, as defined in Section 1161, is the location where*  
 36 *the court tries that type of proceeding that is nearest or most*  
 37 *accessible to where the real property that is the subject of the*  
 38 *action, or some part thereof, is situated. Otherwise any location of*  
 39 *the superior court designated as the proper court in subdivision (a)*  
 40 *is a proper court location for the trial. The court may specify by*



1 *local rule the nearest or most accessible court location where the*  
2 *court tries that type of case.*

3 *SEC. 8. Section 395 of the Code of Civil Procedure is amended*  
4 *to read:*

5 395. (a) Except as otherwise provided by law and subject to  
6 the power of the court to transfer actions or proceedings as  
7 provided in this title, the *superior court in the county in which*  
8 *where* the defendants or some of them reside at the commencement  
9 of the action is the proper ~~county~~ court for the trial of the action.  
10 If the action is for injury to person or personal property or for death  
11 from wrongful act or negligence, *the superior court in* either the  
12 county where the injury occurs or the injury causing death occurs  
13 or the county ~~in which~~ *where* the defendants, or some of them  
14 reside at the commencement of the action, ~~shall be~~ *is* a proper  
15 ~~county~~ court for the trial of the action. In a proceeding for  
16 dissolution of marriage, the *superior court in the county in which*  
17 *where* either the petitioner or respondent has been a resident for  
18 three months next preceding the commencement of the proceeding  
19 is the proper ~~county~~ court for the trial of the proceeding. In a  
20 proceeding for nullity of marriage or legal separation of the  
21 parties, the *superior court in the county in which* ~~where~~ either the  
22 petitioner or the respondent resides at the commencement of the  
23 proceeding is the proper ~~county~~ court for the trial of the  
24 proceeding. In a proceeding to enforce an obligation of support  
25 under Section 3900 of the Family Code, the *superior court in the*  
26 ~~county in which~~ *where* the child resides is the proper ~~county~~ court  
27 for the trial of the action. In a proceeding to establish and enforce  
28 a foreign judgment or court order for the support of a minor child,  
29 the *superior court in the county in which* ~~where~~ the child resides  
30 is the proper ~~county~~ court for the trial of the action. Subject to  
31 subdivision (b), ~~when~~ *if* a defendant has contracted to perform an  
32 obligation in a particular county, ~~either the superior court in the~~  
33 ~~county where the obligation is to be performed, or in which~~ *where*  
34 ~~the contract in fact was entered into or the county in which, or~~  
35 ~~where~~ the defendant or any defendant resides at the  
36 commencement of the action ~~shall be~~ *is* a proper ~~county~~ court for  
37 the trial of an action founded on that obligation, and the county ~~in~~  
38 ~~which~~ *where* the obligation is incurred ~~shall be deemed to be~~ *is* the  
39 county ~~in which~~ *where* it is to be performed, unless there is a  
40 special contract in writing to the contrary. If none of the defendants



1 reside in the state or if ~~residing~~ *they reside* in the state and the  
2 county ~~in which~~ *where* they reside is unknown to the plaintiff, the  
3 action may be tried in *the superior court* in any county that the  
4 plaintiff may designate in his or her complaint, and, if the  
5 defendant is about to depart from the state, the action may be tried  
6 in *the superior court* in any county where either of the parties  
7 reside or service is made. If any person is improperly joined as a  
8 defendant or has been made a defendant solely for the purpose of  
9 having the action tried in *the superior court* in the county ~~or~~  
10 ~~judicial district~~ where he or she resides, his or her residence shall  
11 not be considered in determining the proper place for the trial of  
12 the action.

13 (b) Subject to the power of the court to transfer actions or  
14 proceedings as provided in this title, in an action arising from an  
15 offer or provision of goods, services, loans or extensions of credit  
16 intended primarily for personal, family or household use, other  
17 than an obligation described in Section 1812.10 or Section 2984.4  
18 of the Civil Code, or an action arising from a transaction  
19 consummated as a proximate result of either an unsolicited  
20 telephone call made by a seller engaged in the business of  
21 consummating transactions of that kind or a telephone call or  
22 electronic transmission made by the buyer or lessee in response to  
23 a solicitation by the seller, *the superior court in the county in which*  
24 *where* the buyer or lessee in fact signed the contract, ~~the county in~~  
25 ~~which~~ *where* the buyer or lessee resided at the time the contract was  
26 entered into, or ~~the county in which~~ *where* the buyer or lessee  
27 resides at the commencement of the action is the proper ~~county~~  
28 *court for the trial thereof of the action.*

29 (c) ~~If within the county there is a municipal court having~~  
30 ~~jurisdiction of the subject matter established, in the cases~~  
31 ~~mentioned in subdivision (a), in the judicial district in which the~~  
32 ~~defendant or any defendant resides, in which the injury to person~~  
33 ~~or personal property or the injury causing death occurs, or, in~~  
34 ~~which the obligation was contracted to be performed or, in cases~~  
35 ~~mentioned in subdivision (b), in the judicial district in which~~ *In the*  
36 *superior court designated in this subdivision as the proper court,*  
37 *the proper court location for trial of a case is the location where*  
38 *the court tries that type of case that is nearest or most accessible*  
39 *to where* the buyer or lessee resides, ~~in which~~ *where* the buyer or  
40 lessee in fact signed the contract, ~~in which~~ *where* the buyer or



1 lessee resided at the time the contract was entered into, or ~~in which~~  
2 *where* the buyer or lessee resides at the commencement of the  
3 action, ~~then that court is the proper court for the trial of the action.~~  
4 Otherwise, any ~~court in the county having jurisdiction of the~~  
5 ~~subject matter~~ *location of the superior court designated as the*  
6 *proper court in this subdivision is a proper court location for the*  
7 *trial thereof. The court may specify by local rule the nearest or*  
8 *most accessible court location where the court tries that type of*  
9 *case.*

10 ~~(d)~~

11 (c) Any provision of an obligation described in subdivision (b)  
12 ~~or (e) waiving those subdivisions that subdivision is void and~~  
13 ~~unenforceable.~~

14 *SEC. 9.* Section 396 of the Code of Civil Procedure is  
15 amended to read:

16 396. (a) If an action or proceeding is commenced in a court  
17 that lacks jurisdiction of the subject matter thereof, as determined  
18 by the complaint or petition, if there is a court of this state that has  
19 subject matter jurisdiction, the action or proceeding shall not be  
20 dismissed (except as provided in Section 399, and paragraph (1)  
21 of subdivision (b) of Section 581) but shall, on the application of  
22 either party, or on the court's own motion, be transferred to a court  
23 having jurisdiction of the subject matter that may be agreed upon  
24 by the parties, or, if they do not agree, to a court having subject  
25 matter jurisdiction that is designated by law as a proper court for  
26 the trial or determination thereof, and it shall thereupon be entered  
27 and prosecuted in the court to which it is transferred as if it had  
28 been commenced therein, all prior proceedings being saved. In ~~any~~  
29 ~~such that~~ case, if summons is served prior to the filing of the action  
30 or proceeding in the court to which it is transferred, as to any  
31 defendant, so served, who has not appeared in the action or  
32 proceeding, the time to answer or otherwise plead shall date from  
33 service upon that defendant of written notice of filing of the action  
34 or proceeding in the court to which it is transferred.

35 (b) If an action or proceeding is commenced in or transferred  
36 to a court that has jurisdiction of the subject matter thereof as  
37 determined by the complaint or petition, and it thereafter appears  
38 from the verified pleadings, or at the trial, or hearing, that the  
39 determination of the action or proceeding, or of a cross-complaint,  
40 will necessarily involve the determination of questions not within



1 the jurisdiction of the court, in which the action or proceeding is  
2 pending, the court, whenever that lack of jurisdiction appears,  
3 must suspend all further proceedings therein and transfer the  
4 action or proceeding and certify the pleadings (or if the pleadings  
5 be oral, a transcript of the same), and all papers and proceedings  
6 therein to a court having jurisdiction thereof that may be agreed  
7 upon by the parties, or, if they do not agree, to a court having  
8 subject matter jurisdiction that is designated by law as a proper  
9 court for the trial or determination thereof.

10 (c) An action or proceeding that is transferred under the  
11 provisions of this section shall be deemed to have been  
12 commenced at the time the complaint or petition was filed in the  
13 court from which it was originally transferred.

14 (d) This section may not be construed to preclude or affect the  
15 right to amend the pleadings as provided in this code.

16 (e) Upon the making of an order for transfer, proceedings shall  
17 be had as provided in Section 399, the costs and fees thereof, and  
18 of filing the case in the court to which transferred, to be paid by the  
19 party filing the pleading in which the question outside the  
20 jurisdiction of the court appears unless the court ordering the  
21 transfer shall otherwise direct.

22 ~~SEC. 5.~~

23 *SEC. 10. Section 396a of the Code of Civil Procedure is*  
24 *amended to read:*

25 396a. In a ~~limited-civil~~ case that is subject to Sections 1812.10  
26 and 2984.4 of the Civil Code, or subdivision (b) of Section 395 of  
27 the Code of Civil Procedure, or ~~is in~~ an action or proceeding for  
28 an unlawful detainer as defined in Section 1161 of the Code of  
29 Civil Procedure, ~~the~~:

30 (a) *The* plaintiff shall state facts in the complaint, verified by  
31 the plaintiff's oath, or the oath of the plaintiff's attorney, or in an  
32 affidavit of the plaintiff or of the plaintiff's attorney filed with the  
33 complaint, showing that the action has been commenced in the  
34 proper *superior court and the proper court location* for the trial of  
35 the action or proceeding, and showing that the action is subject to  
36 the provisions of Sections 1812.10 and 2984.4 of the Civil Code  
37 or subdivision (b) of Section 395 of the Code of Civil Procedure,  
38 or is an action for an unlawful detainer. When the affidavit is filed  
39 with the complaint, a copy thereof shall be served with the  
40 summons. Except as ~~herein~~ provided *in this section*, if the



1 complaint or affidavit ~~be~~ is not ~~so~~ filed pursuant to this  
2 subdivision, no further proceedings shall be had may occur in the  
3 action or proceeding, except to dismiss the ~~same~~ action or  
4 proceeding without prejudice. However, the court may, on such  
5 terms as may be that are just, permit the affidavit to be filed  
6 subsequent to after the filing of the complaint, and a copy of the  
7 affidavit shall be served on the defendant and the time to answer  
8 or otherwise plead shall date from that service. If

9 (b) If it appears from the complaint or affidavit, or otherwise,  
10 that the superior court in which or court location where the action  
11 or proceeding is commenced is not the proper court or court  
12 location for the trial thereof, the court in which where the action  
13 or proceeding is commenced, or a judge thereof, shall, whenever  
14 that fact appears, transfer it to the proper court or court location,  
15 on its own motion, or on motion of the defendant, unless the  
16 defendant consents in writing, or in open court (consent in open  
17 court being entered in the minutes or docket of the court), to the  
18 keeping of the action or proceeding in the court or court location  
19 where commenced. If that consent ~~be~~ is given, the action or  
20 proceeding may continue in the court or court location where  
21 commenced. Notwithstanding the provisions of Section 1801.1  
22 and subdivision (f) of Section 2983.7 of the Civil Code, that  
23 consent may be given by a defendant who is represented by  
24 counsel at the time the consent is given, and ~~where~~ if an action or  
25 proceeding is subject to subdivision (b) of Section 395 or is for an  
26 unlawful detainer, that consent may only be given by a defendant  
27 who is represented by counsel at the time the consent is given. If

28 (c) In any case where the transfer of the action or proceeding  
29 is ordered under the provisions of this paragraph subdivision (a)  
30 or (b), if summons is served prior to the filing of the action or  
31 proceeding in the superior court or court location to which it is  
32 transferred, as to any defendant, so served, who has not appeared  
33 in the action or proceeding, the time to answer or otherwise plead  
34 shall date from service upon that defendant of written notice of the  
35 filing.

36 ~~When~~  
37 (d) If it appears from the complaint or affidavit of the plaintiff  
38 that the superior court in which and court location where the action  
39 or proceeding is commenced ~~is~~ are a proper court and court  
40 location for the trial thereof, all proper proceedings may be had,



1 and the action or proceeding may be tried ~~therein; provided,~~  
2 ~~however, that a~~ *in that court at that location.*

3 (e) A motion for a transfer of the action or proceeding *to a*  
4 *different superior court* may be made as in other cases, within the  
5 time, upon the grounds, and in the manner provided in this title,  
6 and if upon that motion it appears that the action or proceeding is  
7 not pending in the proper court, or should for other cause be  
8 transferred, the ~~same~~ *action or proceeding* shall be ordered  
9 transferred as provided in this title.

10 ~~When~~

11 *If any action or proceeding is ordered transferred to another*  
12 *court as* ~~herein~~ *provided in this section*, proceedings shall be had,  
13 and the costs and fees shall be paid, as provided in Sections 398 and  
14 399 ~~of this code.~~

15 (f) *If a motion is made for transfer of an action or proceeding*  
16 *to a different court location within the same superior court as*  
17 *provided in this section*, proceedings shall be had as provided by  
18 *local rules of the superior court.*

19 *SEC. 11. Section 402 of the Code of Civil Procedure is*  
20 *repealed.*

21 ~~402. The presiding judge of a municipal court district may~~  
22 ~~order, for the convenience of the court, that any case pending trial~~  
23 ~~be transferred to a contiguous municipal court district in the same~~  
24 ~~county if the presiding judge in the district to which the case is~~  
25 ~~proposed to be transferred consents to the transfer and notice~~  
26 ~~thereof is given to the parties or their attorneys at least 10 days in~~  
27 ~~advance of the date fixed for trial.~~

28 ~~No fees shall be charged for the transfer of any case pursuant to~~  
29 ~~this section.~~

30 *SEC. 12. Section 402 is added to the Code of Civil Procedure,*  
31 *to read:*

32 *402. (a) Except as otherwise provided by law:*

33 *(1) A superior court may specify by local rule the locations*  
34 *where certain types of actions or proceedings are to be filed.*

35 *(2) A superior court may specify by local rule the locations*  
36 *where certain types of actions or proceedings are to be heard or*  
37 *tried.*

38 *(3) A superior court may not dismiss a case, and the clerk may*  
39 *not reject a case for filing, because it is filed, or a person seeks to*  
40 *file it, in a court location other than the location specified by local*



1 rule. However, the court may transfer the case on its own motion  
2 to the proper court location.

3 (b) A superior court may transfer an action or proceeding filed  
4 in one location to another location of the superior court. This  
5 section does not affect the authority of the presiding judge to  
6 apportion the business of the court as provided by the California  
7 Rules of Court.

8 SEC. 13. Section 402.5 of the Code of Civil Procedure is  
9 repealed.

10 ~~402.5. The superior court in a county in which there is no~~  
11 ~~municipal court may transfer a limited civil case to another branch~~  
12 ~~or location of the superior court in the same county.~~

13 SEC. 14. Section 575.2 of the Code of Civil Procedure is  
14 amended to read:

15 575.2. (a) Local rules promulgated pursuant to Section 575.1  
16 may provide that if any counsel, a party represented by counsel, or  
17 a party if in pro se, fails to comply with any of the requirements  
18 thereof, the court on motion of a party or on its own motion may  
19 strike out all or any part of any pleading of that party, or, dismiss  
20 the action or proceeding or any part thereof, or enter a judgment  
21 by default against that party, or impose other penalties of a lesser  
22 nature as otherwise provided by law, and may order that party or  
23 his or her counsel to pay to the moving party the reasonable  
24 expenses in making the motion, including reasonable attorney  
25 fees. No penalty may be imposed under this section without prior  
26 notice to, and an opportunity to be heard by, the party against  
27 whom the penalty is sought to be imposed.

28 (b) It is the intent of the Legislature that if a failure to comply  
29 with these rules is the responsibility of counsel and not of the party,  
30 any penalty shall be imposed on counsel and shall not adversely  
31 affect the party's cause of action or defense thereto.

32 ~~SEC. 6.~~

33 SEC. 15. Section 631 of the Code of Civil Procedure is  
34 amended to read:

35 631. (a) The right to a trial by jury as declared by Section 16  
36 of Article I of the California Constitution shall be preserved to the  
37 parties inviolate. In civil cases, a jury may only be waived pursuant  
38 to subdivision (d).

39 (b) Each party demanding a jury trial shall deposit advance jury  
40 fees with the clerk or judge. The total amount of the advance jury



1 fees may not exceed one hundred fifty dollars (\$150) for each  
2 party. The deposit shall be made at least 25 calendar days before  
3 the date initially set for trial, except that in unlawful detainer  
4 actions the fees shall be deposited at least five days before the date  
5 set for trial.

6 (c) The parties demanding a jury trial shall deposit with the  
7 clerk or judge, at the beginning of the second and each succeeding  
8 day’s session, a sum equal to that day’s fees and mileage of the jury,  
9 including the fees and mileage for the trial jury panel if the trial  
10 jury has not yet been selected and sworn. If more than one party  
11 has demanded a jury, the respective amount to be paid daily by  
12 each party demanding a jury shall be determined by stipulation of  
13 the parties or by order of the court.

14 (d) A party waives trial by jury in any of the following ways:

- 15 (1) By failing to appear at the trial.
- 16 (2) By written consent filed with the clerk or judge.
- 17 (3) By oral consent, in open court, entered in the minutes or  
18 ~~docket~~ *register of actions*.
- 19 (4) By failing to announce that a jury is required, at the time the  
20 cause is first set for trial, if it is set upon notice or stipulation, or  
21 within five days after notice of setting if it is set without notice or  
22 stipulation.
- 23 (5) By failing to deposit with the clerk, or judge, advance jury  
24 fees as provided in subdivision (b).

25 (6) By failing to deposit with the clerk or judge, at the  
26 beginning of the second and each succeeding day’s session, the  
27 sum provided in subdivision (c).

28 (e) The court may, in its discretion upon just terms, allow a trial  
29 by jury although there may have been a waiver of a trial by jury.

30 ~~SEC. 7.~~

31 *SEC. 16.* Section 1005 of the Code of Civil Procedure is  
32 amended to read:

33 1005. (a) Written notice shall be given, as prescribed in  
34 subdivisions (b) and (c), for the following motions:

- 35 (1) Notice of Application and Hearing for Writ of Attachment  
36 under Section 484.040.
- 37 (2) Notice of Application and Hearing for Claim and Delivery  
38 under Section 512.030.
- 39 (3) Notice of Hearing for Claim of Exemption under Section  
40 706.105.



1 (4) Motion to Quash Summons pursuant to subdivision (b) of  
2 Section 418.10.

3 (5) Motion for Determination of Good Faith Settlement  
4 pursuant to Section 877.6.

5 (6) Hearing for Discovery of Peace Officer Personnel Records  
6 pursuant to Section 1043 of the Evidence Code.

7 (7) Notice of Hearing of Third-Party Claim pursuant to Section  
8 720.320.

9 (8) Motion for an Order to Attend Deposition more than 150  
10 miles from deponent's residence pursuant to paragraph (3) of  
11 subdivision (e) of Section 2025.

12 (9) Notice of Hearing of Application for Relief pursuant to  
13 Section 946.6 of the Government Code.

14 (10) Motion to Set Aside Default or Default Judgment and for  
15 Leave to Defend Actions pursuant to Section 473.5.

16 (11) Motion to Expunge Notice of Pendency of Action  
17 pursuant to Section 405.30.

18 (12) Motion to Set Aside Default and for Leave to Amend  
19 pursuant to Section 585.5.

20 (13) Any other proceeding under this code in which notice is  
21 required and no other time or method is prescribed by law or by  
22 court or judge.

23 (b) Unless otherwise ordered or specifically provided by law,  
24 all moving and supporting papers shall be served and filed at least  
25 21 calendar days before the hearing. The moving and supporting  
26 papers served shall be a copy of the papers filed or to be filed with  
27 the court. However, if the notice is served by mail, the required  
28 21-day period of notice before the hearing shall be increased by  
29 five calendar days if the place of mailing and the place of address  
30 are within the State of California, 10 calendar days if either the  
31 place of mailing or the place of address is outside the State of  
32 California but within the United States, and 20 calendar days if  
33 either the place of mailing or the place of address is outside the  
34 United States, and if the notice is served by facsimile transmission,  
35 express mail, or another method of delivery providing for  
36 overnight delivery, the required 21-day period of notice before the  
37 hearing shall be increased by two calendar days. Section 1013,  
38 which extends the time within which a right may be exercised or  
39 an act may be done, does not apply to a notice of motion, papers  
40 opposing a motion, or reply papers governed by this section. All



1 papers opposing a motion so noticed shall be filed with the court  
2 and a copy served on each party at least 10 calendar days, and all  
3 reply papers at least five calendar days before the hearing.

4 The court, or a judge thereof, may prescribe a shorter time.

5 (c) Notwithstanding any other provision of this section, all  
6 papers opposing a motion and all reply papers shall be served by  
7 personal delivery, facsimile transmission, express mail, or other  
8 means consistent with Sections 1010, 1011, 1012, and 1013, and  
9 reasonably calculated to ensure delivery to the other party or  
10 parties not later than the close of the next business day after the  
11 time the opposing papers or reply papers, as applicable, are filed.  
12 This subdivision applies to the service of opposition and reply  
13 papers regarding motions for summary judgment or summary  
14 adjudication, in addition to the motions listed in subdivision (a).

15 The court, or a judge thereof, may prescribe a shorter time.

16 ~~SEC. 8.~~

17 *SEC. 17.* Section 2094 of the Code of Civil Procedure is  
18 amended to read:

19 2094. (a) An oath, affirmation, or declaration in an action or  
20 a proceeding, may be administered by obtaining an affirmative  
21 response to one of the following questions:

22 (1) “Do you solemnly state that the evidence you shall give in  
23 this issue (or matter) shall be the truth, the whole truth, and nothing  
24 but the truth, so help you God?”

25 (2) “Do you solemnly state, under penalty of perjury, that the  
26 evidence that you shall give in this issue (or matter) shall be the  
27 truth, the whole truth, and nothing but the truth?”

28 (b) In the alternative to the forms prescribed in subdivision (a),  
29 the court may administer an oath, affirmation, or declaration in an  
30 action or a proceeding in a manner that is calculated to awaken the  
31 person’s conscience and impress the person’s mind with the duty  
32 to tell the truth. The court shall satisfy itself that the person  
33 testifying understands that his or her testimony is being given  
34 under penalty of perjury.

35 ~~SEC. 9.~~

36 *SEC. 18.* The heading of Article 8 (commencing with Section  
37 1030) of Chapter 4 of Division 8 of the Evidence Code is amended  
38 to read:

39



Article 8. Clergy Penitent Privileges

~~SEC. 10.~~

*SEC. 19.* Section 1030 of the Evidence Code is amended to read:

1030. As used in this article, a “member of the clergy” means a priest, minister, religious practitioner, or similar functionary of a church or of a religious denomination or religious organization.

~~SEC. 11.~~

*SEC. 20.* Section 1031 of the Evidence Code is amended to read:

1031. As used in this article, “penitent” means a person who has made a penitential communication to a member of the clergy.

~~SEC. 12.~~

*SEC. 21.* Section 1032 of the Evidence Code is amended to read:

1032. As used in this article, “penitential communication” means a communication made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who, in the course of the discipline or practice of the clergy member’s church, denomination, or organization, is authorized or accustomed to hear ~~such~~ *those* communications and, under the discipline or tenets of his *or her* church, denomination, or organization, has a duty to keep ~~such~~ *those* communications secret.

~~SEC. 13.~~

*SEC. 22.* Section 1033 of the Evidence Code is amended to read:

1033. Subject to Section 912, a penitent, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a penitential communication if he or she claims the privilege.

~~SEC. 14.~~

*SEC. 23.* Section 1034 of the Evidence Code is amended to read:

1034. Subject to Section 912, a member of the clergy, whether or not a party, has a privilege to refuse to disclose a penitential communication if he or she claims the privilege.

~~SEC. 15.~~



1     *SEC. 24.* Section 818.9 of the Government Code is amended  
2 to read:  
3     818.9. A court or county, its employees, independent  
4 contractors, and volunteers shall not be liable because of any  
5 advice provided to small claims court litigants or potential litigants  
6 as a public service on behalf of the court or county pursuant to the  
7 Small Claims Act (Chapter 5.5 (commencing with Section  
8 116.110) of Title 1 of Part 1 of the Code of Civil Procedure).

O

