

Introduced by Senator Morrow

February 22, 2001

An act to amend Section 2924j of the Civil Code, to amend Sections 86, 396a, 398, 472b, 564, 631, 638, 912, 1206, and 1281.5 of the Code of Civil Procedure, to amend Section 11937 of the Food and Agricultural Code, to amend Section 946.6 of the Government Code, and to amend Sections 16370, 16373, and 16379 of the Vehicle Code, relating to civil procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 562, as introduced, Morrow. Civil procedure: limited civil cases.

(1) Existing law governs the procedures for a trustee's sale of real property. Under existing law, when a trustee cannot determine the priorities of written claims to real property, the trustee may file a declaration of the unresolved claims and deposit with the clerk of the court that portion of the sales proceeds that cannot be distributed.

This bill would specify that where the amount that a trustee deposits with a clerk is \$25,000 or less, the proceeding described above constitutes a limited civil case.

(2) Existing law establishes the parameters for limited civil cases. Existing law provides that actions to enforce and foreclose liens of mechanics, materialmen, artisans, laborers, and all other persons having mechanics' liens, where the total amount of the liens is \$25,000 or less, constitute limited civil cases.

This bill would include petitions to release mechanics' liens where the total amount of a lien is \$25,000 or less, to the list of proceedings that constitute limited civil cases.

(3) Existing law specifies the circumstances in the court may, on motion change the place of trial. It also specifies the manner of selection of the court to which the place of trial is transferred.

This bill would revise the latter provision to clarify cross-references to the former provision.

(4) Existing law delineates various circumstances in which a superior court may appoint a receiver in a pending action, but limits that authority to cases other than limited civil cases.

This bill would delete the limitation of the provision to superior courts and the limitation of the authority to cases other than limited civil cases.

(5) Existing law establishes the requirements for the enforcement of arbitration agreements in the context of liens on works of improvement. Under existing law, a person who seeks to enforce a claim of lien on a work of improvement does not waive any arbitration rights pursuant to a written agreement if, in filing the complaint in the action, the claimant also provides the court with an application to stay the action pending arbitration.

This bill would provide that a person also does not waive any arbitration rights if the person includes an allegation in the complaint stating the intent not to waive arbitration rights and the intent to move the court for an order to stay proceedings within 30 days after service of the summons and complaint. The bill would additionally require a claimant seeking to preserve arbitration rights to file and serve a motion and notice of motion to stay the action pending arbitration within 30 days after service of the summons and complaint. This bill would also establish that pursuant to these provisions no party is entitled to discovery without leave of court unless the claimant expressly waives the right to arbitration, the court denies the motion for a stay, or the claimant fails to comply with certain requirements, as specified.

(6) Existing law provides that when an application to bring a claim against a public entity or public employee is denied by the governing body of that entity, a person may petition the court for an order relieving the petitioner from the prohibition against bringing a suit against the public entity.

This bill would specify that where an action to which the claim relates would be a limited civil case, the proceeding to petition a court pursuant to these provisions would also constitute a limited civil case.

(7) The bill would also make related changes.



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 2924j of the Civil Code is amended to
2 read:

3 2924j. (a) Unless an interpleader action has been filed, within
4 30 days of the execution of the trustee's deed resulting from a sale
5 in which there are proceeds remaining after payment of the
6 amounts required by paragraphs (1) and (2) of subdivision (a) of
7 Section 2924k, the trustee shall send written notice to all persons
8 with recorded interests in the real property as of the date
9 immediately prior to the trustee's sale who would be entitled to
10 notice pursuant to subdivisions (b) and (c) of Section 2924b. The
11 notice shall be sent by first-class mail in the manner provided in
12 paragraph (1) of subdivision (c) of Section 2924b and inform each
13 entitled person of each of the following:

14 (1) That there has been a trustee's sale of the described real
15 property.

16 (2) That the noticed person may have a claim to all or a portion
17 of the sale proceeds remaining after payment of the amounts
18 required by paragraphs (1) and (2) of subdivision (a) of Section
19 2924k.

20 (3) The noticed person may contact the trustee at the address
21 provided in the notice to pursue any potential claim.

22 (4) That before the trustee can act, the noticed person may be
23 required to present proof that the person holds the beneficial
24 interest in the obligation and the security interest therefor. In the
25 case of a promissory note secured by a deed of trust, proof that the
26 person holds the beneficial interest may include the original
27 promissory note and assignment of beneficial interests related
28 thereto. The noticed person shall also submit a written claim to the
29 trustee, executed under penalty of perjury, stating the following:

30 (A) The amount of the claim to the date of trustee's sale.

31 (B) An itemized statement of the principal, interest, and other
32 charges.

33 (C) That claims must be received by the trustee at the address
34 stated in the notice no later than 30 days after the date the trustee
35 sends notice to the potential claimant.



1 (b) The trustee shall exercise due diligence to determine the
2 priority of the written claims received by the trustee to the trustee's
3 sale surplus proceeds from those persons to whom notice was sent
4 pursuant to subdivision (a). In the event there is no dispute as to
5 the priority of the written claims submitted to the trustee, proceeds
6 shall be paid within 30 days after the conclusion of the notice
7 period. If the trustee has failed to determine the priority of written
8 claims within 90 days following the 30-day notice period, then
9 within 10 days thereafter the trustee shall deposit the funds with
10 the clerk of the court pursuant to subdivision (c) or file an
11 interpleader action pursuant to subdivision (e). Nothing in this
12 section shall preclude any person from pursuing other remedies or
13 claims as to surplus proceeds.

14 (c) If, after due diligence, the trustee is unable to determine the
15 priority of the written claims received by the trustee to the trustee's
16 sale surplus of multiple persons or if the trustee determines there
17 is a conflict between potential claimants, the trustee may file a
18 declaration of the unresolved claims and deposit with the clerk of
19 the superior or municipal court, as applicable, of the county in
20 which the sale occurred, that portion of the sales proceeds that
21 cannot be distributed, less any fees charged by the clerk pursuant
22 to this subdivision. *Where the amount of the deposit is twenty-five*
23 *thousand dollars (\$25,000) or less, a proceeding pursuant to this*
24 *subdivision is a limited civil case.* The declaration shall specify the
25 date of the trustee's sale, a description of the property, the names
26 and addresses of all persons sent notice pursuant to subdivision (a),
27 a statement that the trustee exercised due diligence pursuant to
28 subdivision (b), that the trustee provided written notice as required
29 by subdivisions (a) and (d) and the amount of the sales proceeds
30 deposited by the trustee with the superior or municipal court.
31 Further, the trustee shall submit a copy of the trustee's sales
32 guarantee and any information relevant to the identity, location,
33 and priority of the potential claimants with the superior or
34 municipal court and shall file proof of service of the notice
35 required by subdivision (d) on all persons described in subdivision
36 (a).

37 The clerk shall deposit the amount with the county treasurer
38 subject to order of the superior or municipal court upon the
39 application of any interested party. The clerk may charge a
40 reasonable fee for the performance of activities pursuant to this



1 subdivision equal to the fee for filing an interpleader action
2 pursuant to Article 2 (commencing with Section 26820) of
3 Division 2 of Title 3 of the Government Code. Upon deposit of that
4 portion of the sale proceeds that cannot be distributed by due
5 diligence, the trustee shall be discharged of further responsibility
6 for the disbursement of sale proceeds. A deposit with the clerk of
7 the superior or municipal court pursuant to this subdivision may
8 be either for the total proceeds of the trustee's sale, less any fees
9 charged by the clerk, if a conflict or conflicts exist with respect to
10 the total proceeds, or that portion that cannot be distributed after
11 due diligence, less any fees charged by the clerk.

12 (d) Before the trustee deposits the funds with the clerk of the
13 court pursuant to subdivision (c), the trustee shall send written
14 notice by first-class mail, postage prepaid, to all persons described
15 in subdivision (a) informing them that the trustee intends to deposit
16 the funds with the clerk of the superior or municipal court, as
17 applicable, and that a claim for the funds must be filed with the
18 court within 30 days from the date of the notice, providing the
19 address of the court in which the funds were deposited, and a phone
20 number for obtaining further information.

21 Within 90 days after deposit with the clerk, the court shall
22 consider all claims filed at least 15 days before the date on which
23 the hearing is scheduled by the court, the clerk shall serve written
24 notice of the hearing by first-class mail on all claimants identified
25 in the trustees' declaration at the addresses specified therein. The
26 court shall distribute the deposited funds to any and all claimants
27 entitled thereto.

28 (e) Nothing in this section restricts the ability of a trustee to file
29 an interpleader action in order to resolve a dispute about the
30 proceeds of a trustee's sale. Once an interpleader action has been
31 filed, thereafter the provisions of this section shall not apply.

32 (f) "Due diligence," for the purposes of this section means that
33 the trustee researched the written claims submitted or other
34 evidence of conflicts and determined that a conflict of priorities
35 exists between two or more claimants which the trustee is unable
36 to resolve.

37 (g) To the extent required by the Unclaimed Property Law, a
38 trustee in possession of surplus proceeds not required to be
39 deposited with the court pursuant to subdivision (b) shall comply



1 with the Unclaimed Property Law (Chapter 7 (commencing with
2 Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure).

3 (h) Prior to July 1, 2000, the Judicial Council shall adopt a form
4 to accomplish the filing authorized by this section.

5 SEC. 2. Section 86 of the Code of Civil Procedure is amended
6 to read:

7 86. (a) The following civil cases and proceedings are limited
8 civil cases:

9 (1) Cases at law in which the demand, exclusive of interest, or
10 the value of the property in controversy amounts to twenty-five
11 thousand dollars (\$25,000) or less. This paragraph does not apply
12 to cases that involve the legality of any tax, impost, assessment,
13 toll, or municipal fine, except actions to enforce payment of
14 delinquent unsecured personal property taxes if the legality of the
15 tax is not contested by the defendant.

16 (2) Actions for dissolution of partnership where the total assets
17 of the partnership do not exceed twenty-five thousand dollars
18 (\$25,000); actions of interpleader where the amount of money or
19 the value of the property involved does not exceed twenty-five
20 thousand dollars (\$25,000).

21 (3) Actions to cancel or rescind a contract when the relief is
22 sought in connection with an action to recover money not
23 exceeding twenty-five thousand dollars (\$25,000) or property of
24 a value not exceeding twenty-five thousand dollars (\$25,000),
25 paid or delivered under, or in consideration of, the contract; actions
26 to revise a contract where the relief is sought in an action upon the
27 contract if the action otherwise is a limited civil case.

28 (4) Proceedings in forcible entry or forcible or unlawful
29 detainer where the whole amount of damages claimed is
30 twenty-five thousand dollars (\$25,000) or less.

31 (5) Actions to enforce and foreclose liens on personal property
32 where the amount of the liens is twenty-five thousand dollars
33 (\$25,000) or less.

34 (6) Actions to enforce and foreclose, *or petitions to release*,
35 liens of mechanics, materialmen, artisans, laborers, and of all other
36 persons to whom liens are given under the provisions of Chapter
37 2 (commencing with Section 3109) of Title 15 of Part 4 of Division
38 3 of the Civil Code, or to enforce and foreclose an assessment lien
39 on a common interest development as defined in Section 1351 of
40 the Civil Code, where the amount of the liens is twenty-five



1 thousand dollars (\$25,000) or less. However, where an action to
2 enforce the lien affects property that is also affected by a similar
3 pending action that is not a limited civil case, or where the total
4 amount of the liens sought to be foreclosed against the same
5 property aggregates an amount in excess of twenty-five thousand
6 dollars (\$25,000), the action is not a limited civil case, and if the
7 action is pending in a municipal court, upon motion of any
8 interested party, the municipal court shall order the action or
9 actions pending therein transferred to the proper superior court.
10 Upon making the order, the same proceedings shall be taken as are
11 provided by Section 399 with respect to the change of place of trial.

12 (7) Actions for declaratory relief when brought pursuant to
13 either of the following:

14 (A) By way of cross-complaint as to a right of indemnity with
15 respect to the relief demanded in the complaint or a
16 cross-complaint in an action or proceeding that is otherwise a
17 limited civil case.

18 (B) To conduct a trial after a nonbinding fee arbitration
19 between an attorney and client, pursuant to Article 13
20 (commencing with Section 6200) of Chapter 4 of Division 3 of the
21 Business and Professions Code, where the amount in controversy
22 is twenty-five thousand dollars (\$25,000) or less.

23 (8) Actions to issue temporary restraining orders and
24 preliminary injunctions, *and* to take accounts, ~~and to appoint~~
25 ~~receivers~~ where necessary to preserve the property or rights of any
26 party to a limited civil case; to appoint a receiver and to make any
27 order or perform any act, pursuant to Title 9 (commencing with
28 Section 680.010) of Part 2 (enforcement of judgments) in a limited
29 civil case; to determine title to personal property seized in a limited
30 civil case.

31 (9) Actions under Article 3 (commencing with Section
32 708.210) of Chapter 6 of Division 2 of Title 9 of Part 2 for the
33 recovery of an interest in personal property or to enforce the
34 liability of the debtor of a judgment debtor where the interest
35 claimed adversely is of a value not exceeding twenty-five
36 thousand dollars (\$25,000) or the debt denied does not exceed
37 twenty-five thousand dollars (\$25,000).

38 (10) Arbitration-related petitions filed pursuant to either of the
39 following:



1 (A) Article 2 (commencing with Section 1292) of Chapter 5 of
2 Title 9 of Part 3, except for uninsured motorist arbitration
3 proceedings in accordance with Section 11580.2 of the Insurance
4 Code, if the petition is filed before the arbitration award becomes
5 final and the matter to be resolved by arbitration is a limited civil
6 case under paragraphs (1) to (9), inclusive, of subdivision (a) or if
7 the petition is filed after the arbitration award becomes final and
8 the amount of the award and all other rulings, pronouncements,
9 and decisions made in the award are within paragraphs (1) to (9),
10 inclusive, of subdivision (a).

11 (B) To confirm, correct, or vacate a fee arbitration award
12 between an attorney and client that is binding or has become
13 binding, pursuant to Article 13 (commencing with Section 6200)
14 of Chapter 4 of Division 3 of the Business and Professions Code,
15 where the arbitration award is twenty-five thousand dollars
16 (\$25,000) or less.

17 (b) The following cases in equity are limited civil cases:

18 (1) Cases to try title to personal property when the amount
19 involved is not more than twenty-five thousand dollars (\$25,000).

20 (2) Cases when equity is pleaded as a defensive matter in any
21 case that is otherwise a limited civil case.

22 (3) Cases to vacate a judgment or order of the court obtained in
23 a limited civil case through extrinsic fraud, mistake, inadvertence,
24 or excusable neglect.

25 SEC. 3. Section 396a of the Code of Civil Procedure is
26 amended to read:

27 396a. (a) In a limited civil case that is subject to Sections
28 1812.10 and 2984.4 of the Civil Code, or subdivision (b) of
29 Section 395 of the Code of Civil Procedure, or is an action or
30 proceeding for an unlawful detainer as defined in Section 1161 of
31 the Code of Civil Procedure, the plaintiff shall state facts in the
32 complaint, verified by the plaintiff's oath, or the oath of the
33 plaintiff's attorney, or in an affidavit of the plaintiff or of the
34 plaintiff's attorney filed with the complaint, showing that the
35 action has been commenced in the proper court for the trial of the
36 action or proceeding, and showing that the action is subject to the
37 provisions of Sections 1812.10 and 2984.4 of the Civil Code or
38 subdivision (b) of Section 395 of the Code of Civil Procedure, or
39 is an action for an unlawful detainer. When the affidavit is filed
40 with the complaint, a copy thereof shall be served with the



1 summons. Except as herein provided, if the complaint or affidavit
2 be not so filed, no further proceedings shall be had in the action or
3 proceeding, except to dismiss ~~the same~~ without prejudice.
4 However, the court may, on ~~such~~ terms as may be just, permit the
5 affidavit to be filed subsequent to the filing of the complaint, and
6 a copy of the affidavit shall be served on the defendant and the time
7 to answer or otherwise plead shall date from that service. ~~¶~~

8 (b) *If it appears from the complaint or affidavit, or otherwise,*
9 *that the court in which the action or proceeding is commenced is*
10 *not the proper court for the trial thereof, the court in which the*
11 *action or proceeding is commenced, or a judge thereof, shall,*
12 *whenever that fact appears, transfer it to the proper court, on its*
13 *own motion, or on motion of the defendant, unless the defendant*
14 *consents in writing, or in open court (consent in open court being*
15 *entered in the minutes or ~~docket~~ of the court), to the keeping of the*
16 *action or proceeding in the court where commenced. If that*
17 *consent be given, the action or proceeding may continue in the*
18 *court where commenced. Notwithstanding the provisions of*
19 *Section 1801.1 and subdivision (f) of Section 2983.7 of the Civil*
20 *Code, that consent may be given by a defendant who is represented*
21 *by counsel at the time the consent is given, and where an action or*
22 *proceeding is subject to subdivision (b) of Section 395 or is for an*
23 *unlawful detainer, that consent may only be given by a defendant*
24 *who is represented by counsel at the time the consent is given. In*
25 *any case where the transfer of the action or proceeding is ordered*
26 *under the provisions of this paragraph, if summons is served prior*
27 *to the filing of the action or proceeding in the court to which it is*
28 *transferred, as to any defendant, so served, who has not appeared*
29 *in the action or proceeding, the time to answer or otherwise plead*
30 *shall date from service upon that defendant of written notice of the*
31 *filing.*

32 (c) *When it appears from the complaint or affidavit of the*
33 *plaintiff that the court in which the action or proceeding is*
34 *commenced is a proper court for the trial thereof, all proper*
35 *proceedings may be had, and the action or proceeding may be tried*
36 *therein; provided, however, that a motion for a transfer of the*
37 *action or proceeding may be made as in other cases, within the*
38 *time, upon the grounds, and in the manner provided in this title,*
39 *and if upon that motion it appears that the action or proceeding is*
40 *not pending in the proper court, or should for other cause be*



1 transferred, the same shall be ordered transferred as provided in
2 this title.

3 (d) When any action or proceeding is ordered transferred as
4 herein provided, proceedings shall be had, and the costs and fees
5 shall be paid, as provided in Sections 398 and 399 ~~of this code~~.

6 SEC. 4. Section 398 of the Code of Civil Procedure is
7 amended to read:

8 398. (a) If, for any cause, specified in ~~subdivisions 2, 3 and~~
9 ~~4 of section subdivision (b), (c), or (d) of Section 397~~, the court
10 orders the transfer of an action or proceeding, it must be
11 transferred to a court having jurisdiction of the subject matter of
12 the action which the parties may agree upon, by stipulation in
13 writing, or made in open court and entered in the minutes ~~or~~
14 ~~docket~~; or, if they do not so agree, then to the nearest or most
15 accessible court, where the like objection or cause for making the
16 order does not exist.

17 (b) If an action or proceeding is commenced in a court, other
18 than one designated as a proper court for the trial ~~thereof~~ by the
19 provisions of this title, and the same be ordered transferred for that
20 reason, it ~~must~~ shall be transferred to any ~~such~~ proper court which
21 the parties may agree upon by stipulation in writing, or made in
22 open court and entered in the minutes ~~or docket~~; if the parties do
23 not so agree, then to any ~~such~~ proper court in the county in which
24 the action or proceeding was commenced which the defendant
25 may designate, or, if there be no ~~such~~ proper court in such county,
26 to any ~~such~~ proper court, in a proper county, designated by the
27 defendant; if the parties do not so agree, and the defendant does not
28 so designate the court, as herein provided, or where the court
29 orders the transfer of an action on its own motion as provided in
30 this title, to ~~such~~ the proper court as the court in which the action
31 or proceeding is pending may determine.

32 (c) The designation of the court by the defendant, herein
33 provided for, may be made in the notice of motion for change of
34 venue or in open court, entered in the minutes or docket, at the time
35 the order for transfer is made.

36 SEC. 5. Section 472b of the Code of Civil Procedure is
37 amended to read:

38 472b. When a demurrer to any pleading is sustained or
39 overruled, and time to amend or answer is given, the time so given
40 runs from the service of notice of the decision or order, unless the



1 notice is waived in open court, and the waiver entered in the
2 minutes ~~or docket~~. When an order sustaining a demurrer without
3 leave to amend is reversed or otherwise remanded by any order
4 issued by a reviewing court, any amended complaint shall be filed
5 within 30 days after the clerk of the reviewing court mails notice
6 of the issuance of the remittitur.

7 SEC. 6. Section 564 of the Code of Civil Procedure is
8 amended to read:

9 564. (a) A receiver may be appointed, in the manner
10 provided in this chapter, by the court in which an action or
11 proceeding is pending in any case in which the court is empowered
12 by law to appoint a receiver.

13 (b) ~~In superior court~~ A receiver may be appointed by the court
14 in which an action or proceeding is pending, or by a judge thereof,
15 in the following cases, ~~other than in a limited civil case~~:

16 (1) In an action by a vendor to vacate a fraudulent purchase of
17 property, or by a creditor to subject any property or fund to the
18 creditor's claim, or between partners or others jointly owning or
19 interested in any property or fund, on the application of the
20 plaintiff, or of any party whose right to or interest in the property
21 or fund, or the proceeds thereof, is probable, and where it is shown
22 that the property or fund is in danger of being lost, removed, or
23 materially injured.

24 (2) In an action by a secured lender for the foreclosure of ~~the~~
25 a deed of trust or mortgage and sale of ~~the~~ property upon which
26 there is a lien under a deed of trust or mortgage, where it appears
27 that the property is in danger of being lost, removed, or materially
28 injured, or that the condition of the deed of trust or mortgage has
29 not been performed, and that the property is probably insufficient
30 to discharge the deed of trust or mortgage debt.

31 (3) After judgment, to carry the judgment into effect.

32 (4) After judgment, to dispose of the property according to the
33 judgment, or to preserve it during the pendency of an appeal, or
34 pursuant to Title 9 (commencing with Section 680.010)
35 (enforcement of judgments), or after sale of real property pursuant
36 to a decree of foreclosure, during the redemption period, to collect,
37 expend, and disburse rents as directed by the court or otherwise
38 provided by law.



1 (5) ~~In the cases when~~ *Where* a corporation has been dissolved,
2 or is insolvent, or in imminent danger of insolvency, or has
3 forfeited its corporate rights.

4 (6) In an action of unlawful detainer.

5 (7) At the request of the Public Utilities Commission pursuant
6 to Sections 855 and 5259.5 of the Public Utilities Code.

7 (8) In all other cases where *necessary to preserve the property*
8 *or rights of any party, or where* receivers have heretofore been
9 appointed by the usages of courts of equity.

10 (9) At the request of the Office of Statewide Health Planning
11 and Development, or the Attorney General, pursuant to Section
12 ~~436.222~~ *129173* of the Health and Safety Code.

13 (10) In an action by a secured lender for ~~specified~~ *specific*
14 performance of an assignment of rents provision in a deed of trust,
15 mortgage, or separate assignment document. ~~In addition, that~~ *The*
16 *appointment* may be continued after entry of a judgment for
17 specific performance ~~in that action~~, if appropriate to protect,
18 operate, or maintain real property encumbered by ~~the a~~ deed of
19 trust or mortgage or to collect ~~the~~ rents therefrom while a pending
20 nonjudicial foreclosure under power of sale in ~~the a~~ deed of trust
21 or mortgage is being completed.

22 (11) In a case brought by an assignee under an assignment of
23 leases, rents, issues, or profits pursuant to subdivision (g) of
24 Section 2938 of the Civil Code.

25 (c) A receiver may be appointed, in the manner provided in this
26 chapter, including, but not limited to, Section 566, by the superior
27 court in an action ~~other than a limited civil case~~ brought by a
28 secured lender to enforce the rights provided in Section 2929.5 of
29 the Civil Code, to enable the secured lender to enter and inspect the
30 real property security for the purpose of determining the existence,
31 location, nature, and magnitude of any past or present release or
32 threatened release of any hazardous substance into, onto, beneath,
33 or from the real property security. The secured lender shall not
34 abuse the right of entry and inspection or use it to harass the
35 borrower or tenant of the property. Except in case of an emergency,
36 when the borrower or tenant of the property has abandoned the
37 premises, or if it is impracticable to do so, the secured lender shall
38 give the borrower or tenant of the property reasonable notice of the
39 secured lender's intent to enter and shall enter only during the
40 borrower's or tenant's normal business hours. Twenty-four hours'



1 notice shall be presumed to be reasonable notice in the absence of
2 evidence to the contrary.

3 (d) Any action by a secured lender to appoint a receiver
4 pursuant to this section shall not constitute an action within the
5 meaning of subdivision (a) of Section 726.

6 (e) For purposes of this section:

7 (1) “Borrower” means the trustor under a deed of trust, or a
8 mortgagor under a mortgage, where the deed of trust or mortgage
9 encumbers real property security and secures the performance of
10 the trustor or mortgagor under a loan, extension of credit,
11 guaranty, or other obligation. The term includes any
12 successor-in-interest of the trustor or mortgagor to the real
13 property security before the deed of trust or mortgage has been
14 discharged, reconveyed, or foreclosed upon.

15 (2) “Hazardous substance” means (A) any “hazardous
16 substance” as defined in subdivision (f) of Section 25281 of the
17 Health and Safety Code as effective on January 1, 1991, or as
18 subsequently amended, (B) any “waste” as defined in subdivision
19 (d) of Section 13050 of the Water Code as effective on January 1,
20 1991, or as subsequently amended, or (C) petroleum, including
21 crude oil or any fraction thereof, natural gas, natural gas liquids,
22 liquefied natural gas, or synthetic gas usable for fuel, or any
23 mixture thereof.

24 (3) “Real property security” means any real property and
25 improvements, other than a separate interest and any related
26 interest in the common area of a residential common interest
27 development, as the terms “separate interest,” “common area,”
28 and “common interest development” are defined in Section 1351
29 of the Civil Code, or real property consisting of one acre or less that
30 contains 1 to 15 dwelling units.

31 (4) “Release” means any spilling, leaking, pumping, pouring,
32 emitting, emptying, discharging, injecting, escaping, leaching,
33 dumping, or disposing into the environment, including continuing
34 migration, of hazardous substances into, onto, or through soil,
35 surface water, or groundwater.

36 (5) “Secured lender” means the beneficiary under a deed of
37 trust against the real property security, or the mortgagee under a
38 mortgage against the real property security, and any
39 successor-in-interest of the beneficiary or mortgagee to the deed
40 of trust or mortgage.



1 SEC. 7. Section 631 of the Code of Civil Procedure is
2 amended to read:

3 631. (a) Trial by jury may be waived by the several parties to
4 an issue of fact in any of the following ways:

5 (1) By failing to appear at the trial.

6 (2) By written consent filed with the clerk or judge.

7 (3) By oral consent, in open court, entered in the minutes ~~or~~
8 ~~docket~~.

9 (4) By failing to announce that a jury is required, at the time the
10 cause is first set for trial, if it is set upon notice or stipulation, or
11 within five days after notice of setting if it is set without notice or
12 stipulation.

13 (5) By failing to deposit with the clerk, or judge, advance jury
14 fees 25 days prior to the date set for trial, except in unlawful
15 detainer actions where the fees shall be deposited at least five days
16 prior to the date set for trial, or as provided by subdivision (b). An
17 advance jury fee deposited pursuant to this paragraph may not
18 exceed a total of one hundred fifty dollars (\$150).

19 (6) By failing to deposit with the clerk or judge, promptly after
20 the impanelment of the jury, a sum equal to the mileage or
21 transportation (if allowed by law) of the jury accrued up to that
22 time.

23 (7) By failing to deposit with the clerk or judge, at the
24 beginning of the second and each succeeding day's session a sum
25 equal to one day's fees of the jury, and the mileage or
26 transportation, if any.

27 (b) In a superior court action, other than a limited civil case, if
28 a jury is demanded by either party in the memorandum to set the
29 cause for trial and the party, prior to trial, by announcement or by
30 operation of law, waives a trial by jury, then all adverse parties
31 shall have five days following the receipt of notice of the waiver
32 to file and serve a demand for a trial by jury and to deposit any
33 advance jury fees that are then due.

34 (c) When the party who has demanded trial by jury either (1)
35 waives the trial upon or after the assignment for trial to a specific
36 department of the court, or upon or after the commencement of the
37 trial, or (2) fails to deposit the fees as provided in paragraph (6) of
38 subdivision (a), trial by jury shall be waived by the other party by
39 either failing promptly to demand trial by jury before the judge in
40 whose department the waiver, other than for the failure to deposit



1 the fees, was made, or by failing promptly to deposit the fees
2 described in paragraph (6) of subdivision (a).

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

5 SEC. 8. Section 638 of the Code of Civil Procedure is
6 amended to read:

7 638. A referee may be appointed upon the agreement of the
8 parties filed with the clerk, or judge, or entered in the minutes ~~or~~
9 ~~in the docket~~, or upon the motion of a party to a written contract
10 or lease that provides that any controversy arising therefrom shall
11 be heard by a referee if the court finds a reference agreement exists
12 between the parties:

13 (a) To hear and determine any or all of the issues in an action
14 or proceeding, whether of fact or of law, and to report a statement
15 of decision ~~thereon~~.

16 (b) To ascertain a fact necessary to enable the court to
17 determine an action or proceeding.

18 (c) In any matter in which a referee is appointed pursuant to this
19 section, a copy of the order shall be forwarded to the office of the
20 presiding judge. The Judicial Council shall, by rule, collect
21 information on the use of these referees. The Judicial Council shall
22 also collect information on fees paid by the parties for the use of
23 referees to the extent that information regarding those fees is
24 reported to the court. The Judicial Council shall report thereon to
25 the Legislature by January 1, 2003. This subdivision shall become
26 inoperative on January 1, 2004.

27 SEC. 9. Section 912 of the Code of Civil Procedure is
28 amended to read:

29 912. Upon final determination of an appeal by the reviewing
30 court, the clerk of the court shall remit to the trial court a certified
31 copy of the judgment or order of the reviewing court and of its
32 opinion, if any. The clerk of the trial court shall file the certified
33 copy of the judgment and opinion of the reviewing court, shall
34 attach the same to the judgment roll if the appeal was from a
35 judgment, and shall enter a note of the judgment of the reviewing
36 court stating whether the judgment or order appealed from has
37 been affirmed, reversed or modified, in the margin of the original
38 entry of the judgment or order, and also in the register of actions
39 ~~or docket~~.

1 SEC. 10. Section 1206 of the Code of Civil Procedure is
2 amended to read:

3 1206. (a) Upon the levy under a writ of attachment or
4 execution not founded upon a claim for labor, any miner,
5 mechanic, salesman, servant, clerk, laborer or other person who
6 has performed work or rendered personal services for the
7 defendant within 90 days prior to the levy may file a verified
8 statement of the claim therefor with the officer executing the writ,
9 file a copy thereof with the court that issued the writ, and give
10 copies thereof, containing his or her address, to the plaintiff and the
11 defendant, or any attorney, clerk or agent representing them, or
12 mail copies to them by registered mail at their last known address,
13 return of which by the post office undelivered shall be deemed a
14 sufficient service if no better address is available, and that claim,
15 not exceeding nine hundred dollars (\$900), unless disputed, must
16 be paid by the officer, immediately upon the expiration of the time
17 for dispute of the claim as prescribed in Section 1207, from the
18 proceeds of the levy remaining in the officer's hands at the time of
19 the filing of the statement or collectible by the officer on the basis
20 of the writ.

21 (b) The court issuing the writ must make a notation ~~on its~~
22 ~~docket~~ *in the register of actions* of every preferred labor claim of
23 which it receives a copy and must endorse on any writ of execution
24 or abstract of judgment issued subsequently in the case that it is
25 issued subject to the rights of a preferred labor claimant or
26 claimants ~~thereunder~~ and giving the names and amounts of all
27 preferred labor claims of which it has notice. In levying under any
28 writ of execution the officer making the levy shall include in the
29 amount due under the execution any and all preferred labor claims
30 that have been filed in the action and of which the officer has
31 notice, except any claims that may have been finally disallowed by
32 the court under the procedure provided for herein and of which
33 disallowance the officer has actual notice. The amount due on
34 preferred labor claims that have not been finally disallowed by the
35 court shall be considered a part of the sum due under any writ of
36 attachment or execution in augmentation of the amount thereof
37 and it shall be the duty of any person, firm, association or
38 corporation on whom a writ of attachment or execution is levied
39 to immediately pay to the levying officer the amount of the
40 preferred labor claims, out of any money belonging to the



1 defendant in the action, before paying the principal sum called for
2 in the writ.

3 (c) If any claim is disputed within the time, and in the manner
4 prescribed in Section 1207, and a copy of the dispute is mailed by
5 registered mail to the claimant or the claimant's attorney at the
6 address given in the statement of claim and the registry receipt is
7 attached to the original of the dispute when it is filed with the
8 levying officer, or is handed to the claimant or the claimant's
9 attorney, the claimant, or the claimant's assignee, must within 10
10 days after the copy is deposited in the mail or is handed to the
11 claimant or the claimant's attorney petition the court having
12 jurisdiction of the action on which the writ is based, for a hearing
13 before it to determine the claim for priority, or the claim to priority
14 is barred. If more than one attachment or execution is involved, the
15 petition shall be filed in the court having jurisdiction over the
16 senior attachment or execution. The hearing shall be held within
17 20 days from the filing of the petition unless the court continues
18 it for good cause. Ten days' notice of the hearing shall be given by
19 the petitioner to the plaintiff and the defendant, and to all parties
20 claiming an interest in the property, or their attorneys. The notice
21 may be informal and need specify merely the name of the court,
22 names of the principal parties to the senior attachment or execution
23 and name of the wage claimant or claimants on whose behalf it is
24 filed but shall specify that the hearing is for the purpose of
25 determining the claim for priority. The plaintiff or the defendant,
26 or any other party claiming an interest may contest the amount or
27 validity of the claim in spite of any confession of judgment or
28 failure to appear or to contest the claim on the part of any other
29 person.

30 (d) There shall be no cost for filing or hearing the petition and
31 the hearing on the petition shall be informal but all parties
32 testifying must be sworn. Any claimant may appear on the
33 claimant's own behalf at the hearing and may call and examine
34 witnesses to substantiate his or her claim. An appeal may be taken
35 from a judgment in a proceeding under this section in the manner
36 provided for appeals from judgments of the court where the
37 proceeding is had, in an action of the same jurisdictional
38 classification.

39 (e) The officer shall retain in possession until the
40 determination of the claim for priority so much of the proceeds of



1 the writ as may be necessary to satisfy the claim, and if the claim
2 for priority is allowed, the officer shall pay the amount due,
3 including the claimant's cost of suit, from such proceeds,
4 immediately after the order allowing the claim becomes final.

5 SEC. 11. Section 1281.5 of the Code of Civil Procedure is
6 amended to read:

7 1281.5. (a) Any person who proceeds to record and enforce
8 a claim of lien by commencement of an action pursuant to Title 15
9 (commencing with Section 3082) of Part 4 of Division 3 of the
10 Civil Code, ~~shall~~ *does* not thereby waive any right of arbitration
11 ~~which~~ that *the* person may have pursuant to a written agreement
12 to arbitrate, if, in filing an action to enforce the claim of lien, the
13 claimant ~~at~~ *does either of the following:*

14 (1) *Includes an allegation in the complaint that the claimant*
15 *does not intend thereby to waive any right of arbitration, and*
16 *intends to move the court, within 30 days after service of the*
17 *summons and complaint, for an order to stay further proceedings*
18 *in the action.*

19 (2) ~~At the same time presents to the court that the complaint is~~
20 ~~filed, the claimant files an application that the action be stayed~~
21 ~~pending the arbitration of any issue, question, or dispute which~~
22 ~~that is claimed to be arbitrable under the agreement and which that~~
23 ~~is relevant to the action to enforce the claim of lien. In a county in~~
24 ~~which there is a municipal court, the applicant may join with the~~
25 ~~application for the stay, pending arbitration, a claim of lien~~
26 ~~otherwise within the jurisdiction of the municipal court.~~

27 (b) *Within 30 days after service of the summons and complaint,*
28 *the claimant shall file and serve a motion and notice of motion*
29 *pursuant to Section 1281.4 to stay the action pending arbitration*
30 *of any issue, question, or dispute that is claimed to be arbitrable*
31 *under the agreement and that is relevant to the action to enforce*
32 *the claim of lien.*

33 (c) *Notwithstanding Article 3 (commencing with Section 2016)*
34 *of Chapter 3 of Title 3 of Part 4, if the claimant complies with*
35 *subdivision (a), no party to the action is entitled to discovery*
36 *without leave of court, until one of the following occurs:*

37 (1) *The claimant expressly waives the right to arbitration.*

38 (2) *The court denies the motion for a stay.*

39 (3) *The claimant fails to comply with subdivision (b).*



1 (d) The failure of a defendant to file a petition pursuant to
2 Section 1281.2 at or before the time ~~he or she~~ *the defendant*
3 answers the complaint filed pursuant to subdivision (a) ~~shall~~
4 ~~constitute~~ *is a waiver of that party's the defendant's* right to compel
5 arbitration.

6 SEC. 12. Section 11937 of the Food and Agricultural Code is
7 amended to read:

8 11937. Upon the expiration of 30 days after any judgment
9 becomes final, which is not stayed or satisfied in any action which
10 results in a judgment for damages, the clerk of a court, ~~or the judge~~
11 ~~of a court which has no clerk~~, shall forward to the director a
12 certified copy of the judgment or a certified copy of the ~~docket~~
13 ~~entries in the action~~ *register of actions*, and a certificate of facts
14 relative to ~~such~~ *the* judgment, on a form which is provided by the
15 director.

16 SEC. 13. Section 946.6 of the Government Code is amended
17 to read:

18 946.6. (a) Where an application for leave to present a claim
19 is denied or deemed to be denied pursuant to Section 911.6, a
20 petition may be made to the court for an order relieving the
21 petitioner from Section 945.4. The proper court for filing the
22 petition is a court which would be a competent court for the trial
23 of an action on the cause of action to which the claim relates and
24 which is located in a county or judicial district which would be a
25 proper place for the trial of the action, and if the petition is filed
26 in a court which is not a proper court for the determination of the
27 matter, the court, on motion of any party, shall transfer the
28 proceeding to a proper court. *Where an action on the cause of*
29 *action to which the claim relates would be a limited civil case, a*
30 *proceeding pursuant to this section is a limited civil case.*

31 (b) The petition shall show each of the following:

32 (1) That application was made to the board under Section 911.4
33 and was denied or deemed denied.

34 (2) The reason for failure to present the claim within the time
35 limit specified in Section 911.2.

36 (3) The information required by Section 910.

37 The petition shall be filed within six months after the application
38 to the board is denied or deemed to be denied pursuant to Section
39 911.6.



1 (c) The court shall relieve the petitioner from Section 945.4 if
2 the court finds that the application to the board under Section 911.4
3 was made within a reasonable time not to exceed that specified in
4 subdivision (b) of Section 911.4 and was denied or deemed denied
5 pursuant to Section 911.6 and that one or more of the following is
6 applicable:

7 (1) The failure to present the claim was through mistake,
8 inadvertence, surprise, or excusable neglect unless the public
9 entity establishes that it would be prejudiced in the defense of the
10 claim if the court relieves the petitioner from Section 945.4.

11 (2) The person who sustained the alleged injury, damage or loss
12 was a minor during all of the time specified in Section 911.2 for
13 the presentation of the claim.

14 (3) The person who sustained the alleged injury, damage or loss
15 was physically or mentally incapacitated during all of the time
16 specified in Section 911.2 for the presentation of the claim and by
17 reason of that disability failed to present a claim during that time.

18 (4) The person who sustained the alleged injury, damage or loss
19 died before the expiration of the time specified in Section 911.2 for
20 the presentation of the claim.

21 (d) A copy of the petition and a written notice of the time and
22 place of hearing ~~thereof~~ shall be served before the hearing as
23 prescribed by subdivision (b) of Section 1005 of the Code of Civil
24 Procedure on (1) the clerk or secretary or board of the local public
25 entity, if the respondent is a local public entity, or (2) the Attorney
26 General, if the respondent is the state. However, if the petition
27 involves a claim arising out of alleged actions or inactions of the
28 Department of Transportation, service of the petition and notice of
29 the hearing shall be made on the Attorney General or the Director
30 of Transportation. Service on the Attorney General may be
31 accomplished at any of the Attorney General's offices in Los
32 Angeles, Sacramento, San Diego, or San Francisco. Service on the
33 Director of Transportation may be accomplished only at the
34 Department of Transportation's headquarters office in
35 Sacramento.

36 (e) The court shall make an independent determination upon
37 the petition. The determination shall be made upon the basis of the
38 petition, any affidavits in support of or in opposition to the
39 petition, and any additional evidence received at the hearing on the
40 petition.



1 (f) If the court makes an order relieving the petitioner from
2 Section 945.4, suit on the cause of action to which the claim relates
3 shall be filed with the court within 30 days thereafter.

4 SEC. 14. Section 16370 of the Vehicle Code is amended to
5 read:

6 16370. The department shall suspend the privilege of any
7 person to operate a motor vehicle upon receiving a certified copy
8 of a judgment, ~~or a certified copy of the docket entries~~ *register of*
9 *actions (or a comparable court record of another jurisdiction)* in
10 an action resulting in a judgment for damages, and a certificate of
11 facts relative to the judgment, on a form provided by the
12 department, indicating that the person has failed for a period of 30
13 days to satisfy a judgment rendered against him or her.

14 SEC. 15. Section 16373 of the Vehicle Code is amended to
15 read:

16 16373. (a) The clerk of a court, ~~or the judge of a court which~~
17 ~~has no clerk,~~ shall, subject to subdivision (b), issue upon the
18 request of a judgment creditor a certified copy of any judgment or
19 a certified copy of the ~~docket entries~~ *register of actions (or a*
20 *comparable court record of another jurisdiction)* in an action
21 resulting in a judgment for damages, and a certificate of facts
22 relative to the judgment on a form provided by the department.

23 (b) The judgment creditor may pay the required fees and
24 request the documents specified in subdivision (a) upon the
25 expiration of 30 days after the judgment has become final, if the
26 judgment has not been stayed or satisfied within the amounts
27 specified in this chapter as shown by the records of the court. The
28 court shall determine the required fees, which shall be
29 commensurate with the cost incurred by the court in carrying out
30 this section.

31 SEC. 16. Section 16379 of the Vehicle Code is amended to
32 read:

33 16379. (a) The department shall not suspend a license and
34 shall restore any suspended license following nonpayment of a
35 final judgment when the judgment debtor gives proof of financial
36 responsibility for future damages and when the trial court in which
37 the judgment was rendered orders the payment of the judgment in
38 installments and while the payment of any installment payment is
39 not in default.



- 1 (b) Whenever the trial court orders the payment of a judgment
2 in installments as provided in this section, upon payment of the
3 required fees by the judgment creditor, it shall forward a certified
4 copy of the order to the department, together with a certified copy
5 of *the* judgment or *a* certified copy of the ~~docket entries register~~
6 *of actions (or a comparable court record of another jurisdiction)*
7 in an action resulting in a judgment for damages and a certificate
8 of facts relative to the judgment on a form provided by the
9 department.
- 10 (c) The court shall determine the required fees, which shall be
11 commensurate with the cost incurred by the court in carrying out
12 the provisions of this section.

