

**Introduced by Senator Simitian**

February 17, 2005

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An act to amend ~~Section 116.220~~ of Sections 116.240 and 116.940 of, and to add Sections 116.221, 116.222, 116.223, and 116.232 to, the Code of Civil Procedure, relating to small claims court.

LEGISLATIVE COUNSEL'S DIGEST

SB 422, as amended, Simitian. Small claims court: jurisdiction.

(1) Existing law specifies that the jurisdiction of the small claims court includes various actions in which the demand does not exceed \$5,000, with specified exceptions.

This bill would increase the amount of the possible demand in small claims court from \$5,000 to \$10,000 small claims court jurisdiction over actions brought by a natural person, if the amount does not exceed \$7,500, with specified exceptions. The bill would also require, in small claims court actions to enforce the payment of a debt, that the statement of calculation of liability separately state the original debt, and other payments to the debt, as specified. The bill would increase the filing fee for cases in which the jurisdictional limit exceeds \$5,000 to \$25, as specified, with the increase in fees to be used for advisory services and translator services.

(2) Existing law authorizes small claims court cases to be heard by temporary judges who are members of the State Bar, and who are sworn and empowered to act in this capacity.

The bill would require temporary judges, prior to serving in small claims court, to take a course of study, offered by the Department of Consumer Affairs, covering specified state, federal, and local laws.

(3) Existing law requires each small claims court advisory service, offered without charge to litigants and potential litigants, to provide individual personal advisory services, in person or by telephone, and by any other means reasonably calculated to provide timely and appropriate assistance.

This bill would require the topics covered by individual personal advisory services to include preparation of small claims court filings, filings, procedures, including procedures related to the conduct of the hearing, collection of small claims court judgments, and information about the availability of translation services. The bill would also require the small claims court, in counties with a substantial number of non-English speaking people, as defined, to designate at least 2 court days per month for a court-paid translator to be present, and would require the court to provide notice of the translation service. The bill would include related findings and declarations of the Legislature.

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

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

1     ~~SECTION 1. Section 116.220 of the Code of Civil Procedure~~  
2     ~~is amended to read:~~

3     SECTION 1. (a) *The Legislature finds and declares all of the*  
4     *following:*

5     (1) *The quality of and access to justice in small claims court in*  
6     *California varies widely from jurisdiction to jurisdiction. The*  
7     *small claims court system should be improved in the following*  
8     *ways:*

9     (A) *Commissioners and judges pro tem adjudicate many*  
10    *complex issues including, but not limited to, consumer law,*  
11    *landlord-tenant law, rent control law, tort law, and contract law.*  
12    *In its report to the Judicial Council on the California three track*  
13    *civil litigation study, Consumers Union maintains that paid court*  
14    *commissioners, “see the full panoply of issues raised in small*  
15    *claims cases, and part of their job is to become knowledgeable in*  
16    *the areas of law likely to arise in small claims court. Further,*  
17    *they have the time and duty to research issues of law likely to*  
18    *arise in small claims court...[and those] that arise with which*  
19    *they are not familiar.” The potential knowledge gap between*

1 *judges pro tem and commissioners should be narrowed through*  
2 *better and timely training.*

3 *(B) For advisors, improvements need to be made in the*  
4 *availability of in-person assistance and in the knowledge and*  
5 *experience of the advisors.*

6 *(C) Qualified translators are not available in many*  
7 *jurisdictions in California. With the increasing ethnic diversity in*  
8 *California's population in recent decades, the need for*  
9 *translation services has grown proportionately.*

10 *(b) (1) It is the intent of the Legislature to raise the*  
11 *jurisdictional limit for natural persons only.*

12 *(2) It is the intent of the Legislature that the jurisdictional*  
13 *limit of subdivision (b) of Section 166.231 of the Code of Civil*  
14 *Procedure and subdivision (c) of Section 116.220 of the Code of*  
15 *Civil Procedure shall not be changed by this legislation.*

16 *(3) It is the intent of the Legislature that jurisdictional limits*  
17 *shall not be raised again, particularly with respect to individuals*  
18 *as defendants, until services are funded at a level sufficient to*  
19 *provide all of the following:*

20 *(A) In-person advice from advisors who are legal*  
21 *professionals.*

22 *(B) Staffing levels that are adequate to meet the demand, and*  
23 *also adequate to permit the small claims court advisory service*  
24 *to provide services to both parties in a small claims court case*  
25 *without conflicts of interest.*

26 *(C) Professional, trained decision makers in counties*  
27 *choosing to raise the limits.*

28 *(D) Professional, well-trained decision makers, in small*  
29 *claims courts in all counties in California, who meet standards*  
30 *established by the Judicial Counsel.*

31 *(E) Translation services to the same degree as in superior*  
32 *court in each county.*

33 *(4) It is the intent of the Legislature that commissioners and*  
34 *judges pro tem should be knowledgeable of state and federal*  
35 *consumer laws, landlord-tenant laws, along with any applicable*  
36 *county specific laws or ordinances, the state and federal Fair*  
37 *Debt Collection Practices Acts, the federal Truth in Lending Act,*  
38 *the federal Fair Credit Billing Act, the federal Electronic Fund*  
39 *Transfer Act, tort law, online purchasing law and other contract*  
40 *law, defenses to contract claims, and defenses to debts.*

1 SEC. 2. Section 116.221 is added to the Code of Civil  
2 Procedure, to read:

3 116.221. In addition to the jurisdiction conferred by Section  
4 116.220, the small claims court has jurisdiction in an action  
5 brought by a natural person, if the amount of the demand does  
6 not exceed seven thousand five hundred dollars (\$7,500), except  
7 for actions otherwise prohibited by subdivision (c) of Section  
8 116.220 or subdivision (b) of Section 116.231.

9 SEC. 3. Section 116.222 is added to the Code of Civil  
10 Procedure, to read:

11 116.222. If the action is to enforce the payment of a debt, the  
12 statement of calculation of liability shall separately state the  
13 original debt, each payment credited to the debt, each fee and  
14 charge added to the debt, each payment credited against those  
15 fees and charges, all other debits or charges to the account, and  
16 an explanation of the nature of those fees, charges, debits, and  
17 all other credits to the debt, by source and amount.

18 SEC. 4. Section 116.223 is added to the Code of Civil  
19 Procedure, to read:

20 116.223. (a) In a county with a substantial number of  
21 non-English speaking people, as defined in Section 7296.2 of the  
22 Government Code, the small claims court shall designate at least  
23 two court days per month for a court-paid translator to be  
24 present and shall notify the commissioners and judges pro tem of  
25 those designated days.

26 (b) Notice of translation services shall be posted in the court's  
27 office and printed in Spanish and other languages in which  
28 translation services are provided. The notice shall state that  
29 translation services will be available on designated days and that  
30 any party has the right to request the setting of his or her case  
31 for a day on which translation services are available.

32 SEC. 5. Section 116.232 is added to the Code of Civil  
33 Procedure, to read:

34 116.232. (a) The filing fee for cases in which the  
35 jurisdictional limit exceeds five thousand dollars (\$5,000) shall  
36 be twenty-five dollars (\$25). The five dollar (\$5) increase above  
37 the filing fee set forth in subdivision (a) of Section 116.230 shall  
38 be used to enhance advisory services and translator services.

39 (b) This fee increment shall supplement, not replace, existing  
40 funding sources for advisory services.

1 (c) *Notwithstanding the provisions of this section, the law*  
2 *library fee in effect in the jurisdiction in which a small claims*  
3 *case is filed shall be applicable to all civil filings in which the*  
4 *plaintiff's claim is five thousand dollars (\$5,000) or more.*

5 SEC. 6. *Section 116.240 of the Code of Civil Procedure is*  
6 *amended to read:*

7 116.240. (a) *With the consent of the parties who appear at*  
8 *the hearing, the court may order a case to be heard by a*  
9 *temporary judge who is a member of the State Bar, and who has*  
10 *been sworn and empowered to act until final determination of the*  
11 *case.*

12 (b) *Prior to serving as a temporary judge in small claims*  
13 *court, and at least every three years thereafter, each temporary*  
14 *judge shall take the course of study, which shall be offered by the*  
15 *Department of Consumer Affairs. The course shall include, but*  
16 *not be limited to, state and federal consumer laws,*  
17 *landlord-tenant law along with any applicable county specific*  
18 *laws or ordinances, the state and federal Fair Debt Collection*  
19 *Practices Acts, the federal Truth in Lending Act, the federal Fair*  
20 *Credit Billing Act, the federal Electronic Fund Transfer Act, tort*  
21 *law, contract law, including defenses to contracts and defenses to*  
22 *debts.*

23 SEC. 7. *Section 116.940 of the Code of Civil Procedure is*  
24 *amended to read:*

25 116.940. (a) *Except as otherwise provided in this section or*  
26 *in rules adopted by the Judicial Council, which are consistent*  
27 *with the requirements of this section, the characteristics of the*  
28 *small claims advisory service required by Section 116.260 shall*  
29 *be determined by each county in accordance with local needs and*  
30 *conditions.*

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

32 (1) *Individual personal advisory services, in person or by*  
33 *telephone, and by any other means reasonably calculated to*  
34 *provide timely and appropriate assistance. The topics covered by*  
35 *individual personal advisory services shall include, but not be*  
36 *limited to, preparation of small claims court filings, procedures,*  
37 *including procedures related to the conduct of the hearing,*  
38 *collection of small claims court judgments, and information*  
39 *about the availability of translation services.*

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

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

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

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

17 (2) Small claims information booklets shall be provided in the  
18 court clerk's office of each superior court, the county  
19 administrator's office, other appropriate county offices, and in  
20 any other location that is convenient to prospective small claims  
21 litigants in the county.

22 (d) The advisory service shall operate in conjunction and  
23 cooperation with the small claims division, and shall be  
24 administered so as to avoid the existence or appearance of a  
25 conflict of interest between the individuals providing the  
26 advisory services and any party to a particular small claims  
27 action or any judicial officer deciding small claims actions.

28 (e) Advisors may be volunteers, and shall be members of the  
29 State Bar, law students, paralegals, or persons experienced in  
30 resolving minor disputes, and shall be familiar with small claims  
31 court rules and procedures. Advisors may not appear in court as  
32 an advocate for any party.

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

38 ~~116.220. (a) The small claims court has jurisdiction in the~~  
39 ~~following actions:~~

1 ~~(1) Except as provided in subdivisions (c), (c), and (f), for~~  
2 ~~recovery of money, if the amount of the demand does not exceed~~  
3 ~~ten thousand dollars (\$10,000).~~

4 ~~(2) Except as provided in subdivisions (c), (c), and (f), to~~  
5 ~~enforce payment of delinquent unsecured personal property taxes~~  
6 ~~in an amount not to exceed ten thousand dollars (\$10,000), if the~~  
7 ~~legality of the tax is not contested by the defendant.~~

8 ~~(3) To issue the writ of possession authorized by Sections~~  
9 ~~1861.5 and 1861.10 of the Civil Code, if the amount of the~~  
10 ~~demand does not exceed ten thousand dollars (\$10,000).~~

11 ~~(4) To confirm, correct, or vacate a fee arbitration award not~~  
12 ~~exceeding ten thousand dollars (\$10,000) between an attorney~~  
13 ~~and client that is binding or has become binding, or to conduct a~~  
14 ~~hearing de novo between an attorney and client after nonbinding~~  
15 ~~arbitration of a fee dispute involving no more than ten thousand~~  
16 ~~dollars (\$10,000) in controversy, pursuant to Article 13~~  
17 ~~(commencing with Section 6200) of Chapter 4 of Division 3 of~~  
18 ~~the Business and Professions Code.~~

19 ~~(b) In any action seeking relief authorized by subdivision (a),~~  
20 ~~the court may grant equitable relief in the form of rescission,~~  
21 ~~restitution, reformation, and specific performance, in lieu of, or~~  
22 ~~in addition to, money damages. The court may issue a~~  
23 ~~conditional judgment. The court shall retain jurisdiction until full~~  
24 ~~payment and performance of any judgment or order.~~

25 ~~(e) Notwithstanding subdivision (a), the small claims court has~~  
26 ~~jurisdiction over a defendant guarantor who is required to~~  
27 ~~respond based upon the default, actions, or omissions of another,~~  
28 ~~only if the demand does not exceed (1) two thousand five~~  
29 ~~hundred dollars (\$2,500), or (2) on and after January 1, 2000,~~  
30 ~~four thousand dollars (\$4,000), if the defendant guarantor~~  
31 ~~charges a fee for its guarantor or surety services or the defendant~~  
32 ~~guarantor is the Registrar of the Contractors' State License~~  
33 ~~Board.~~

34 ~~(d) In any case in which the lack of jurisdiction is due solely to~~  
35 ~~an excess in the amount of the demand, the excess may be~~  
36 ~~waived, but any waiver is not operative until judgment.~~

37 ~~(e) Notwithstanding subdivision (a), in any action filed by a~~  
38 ~~plaintiff incarcerated in a Department of Corrections facility or a~~  
39 ~~Youth Authority facility, the small claims court has jurisdiction~~  
40 ~~over a defendant only if the plaintiff has alleged in the complaint~~

1 ~~that he or she has exhausted his or her administrative remedies~~  
2 ~~against that department, including compliance with Sections~~  
3 ~~905.2 and 905.4 of the Government Code. The final~~  
4 ~~administrative adjudication or determination of the plaintiff's~~  
5 ~~administrative claim by the department may be attached to the~~  
6 ~~complaint at the time of filing in lieu of that allegation.~~

7 ~~(f) In any action governed by subdivision (e), if the plaintiff~~  
8 ~~fails to provide proof of compliance with the requirements of~~  
9 ~~subdivision (e) at the time of trial, the judicial officer shall, at his~~  
10 ~~or her discretion, either dismiss the action or continue the action~~  
11 ~~to give the plaintiff an opportunity to provide that proof.~~

12 ~~(g) For purposes of this section, "department" includes an~~  
13 ~~employee of a department against whom a claim has been filed~~  
14 ~~under this chapter arising out of his or her duties as an employee~~  
15 ~~of that department.~~