

AMENDED IN ASSEMBLY JUNE 21, 2005

AMENDED IN SENATE MAY 27, 2005

AMENDED IN SENATE MAY 3, 2005

AMENDED IN SENATE APRIL 25, 2005

AMENDED IN SENATE APRIL 20, 2005

**SENATE BILL**

**No. 422**

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**Introduced by Senator Simitian**

February 17, 2005

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An act to amend Sections 116.240, *116.910*, and 116.940 of, and to add Sections 116.221, 116.222, 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. *Under existing law, the filing fee for a small claims action is \$20 if the number of claims previously filed by the party in each court within the previous 12 months is 12 or less, and \$60 for the filing of any additional claims until July 1, 2006, at which time the filing fee for additional claims decreases to \$35.*

This bill would increase the 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 ~~\$100~~ \$75, as specified, with ~~the increase in fees~~ \$23 of the fee to be used ~~for~~ to enhance advisory services, \$2 of the fee to be used to enhance law library services, and the balance to be deposited in the Trial Court Trust Fund.

(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~~ courts on ethics and substantive law under rules adopted by the Judicial Council, covering specified state and federal laws. The bill would authorize the courts to receive assistance from the Department of Consumer Affairs on substantive law.

(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, procedures, including procedures related to the conduct of the hearing, ~~and information on the collection of small claims court judgments, and information about the availability of interpreter services.~~ The

(4) The bill would include other conforming changes and related findings and declarations of the Legislature.

(5) The bill would provide that certain of its provisions described in (1), relating to the increase and distribution of the filing fee for cases in which the jurisdictional limit exceeds \$5,000, shall only become operative if the Uniform Civil Filing Fee Act is not enacted.

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

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

- 1 SECTION 1. (a) The Legislature finds and declares that the
- 2 quality of and access to justice in small claims court in California
- 3 varies widely from jurisdiction to jurisdiction. The small claims
- 4 court system should be improved in the following ways:
- 5 (1) Commissioners and temporary judges adjudicate many
- 6 complex issues including, but not limited to, consumer law, rent

1 deposit law, tort law, and contract law. In its report to the Judicial  
2 Council on the California three track civil litigation study,  
3 Consumers Union maintains a report commissioned by the  
4 Administrative Office of the Courts, entitled the "California  
5 Three Track Civil Litigation Study," Policy Studies, Incorporated  
6 reported that paid court commissioners, "see the full panoply of  
7 issues raised in small claims cases, and part of their job is to  
8 become knowledgeable in the areas of law likely to arise in small  
9 claims court. Further, they have the time and duty to research  
10 issues of law likely to arise in small claims court...[and those]  
11 that arise with which they are not familiar." The potential  
12 knowledge gap between temporary judges and commissioners  
13 should be narrowed through ~~better and timely training~~ *increased*  
14 *use of commissioners and the use of temporary judges in small*  
15 *claims court who serve on a frequent, compensated basis in*  
16 *order to ensure an improved ability to deliver justice.*

17 (2) For advisors, improvements need to be made in the  
18 availability of in-person assistance ~~and~~, in the knowledge and  
19 experience of the advisors, *and in the advice being given or*  
20 *supervised by attorneys, so that the assistance can include advice*  
21 *about how to present and defend a claim.*

22 (3) Qualified interpreters are not available in many  
23 jurisdictions in California. With the increasing linguistic  
24 diversity in California's population in recent decades, the need  
25 for interpreter services has grown proportionately.

26 (b) (1) It is the intent of the Legislature to raise the  
27 jurisdictional limit for natural persons only. *The jurisdictional*  
28 *increase in this measure is limited to natural persons, and is*  
29 *subject to other existing restrictions. It is the intent of the*  
30 *Legislature in limiting the increase to natural persons that other*  
31 *forms of persons, including, but not limited to, corporations,*  
32 *partnerships, unincorporated associations, governmental*  
33 *entities, and such other forms of persons as may now exist or*  
34 *may exist in the future, other than individuals, do not qualify for*  
35 *the jurisdictional increase under this legislation.*

36 (2) It is the intent of the Legislature that the jurisdictional limit  
37 of subdivision (a) of Section 166.231 of the Code of Civil  
38 Procedure and subdivision (c) of Section 116.220 of the Code of  
39 Civil Procedure shall not be changed by this legislation.

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

5 (A) In-person advice from advisors who are legal  
6 professionals.

7 (B) Staffing levels that are adequate to meet the demand, and  
8 also adequate to permit the small claims court advisory service to  
9 provide services to both parties in a small claims court case  
10 without conflicts of interest.

11 (C) Professional, well-trained decisionmakers, in small claims  
12 courts in all counties in California, who meet standards  
13 established by the Judicial Council.

14 ~~(D) Interpreter services shall be made available to~~  
15 ~~non-English-speaking litigants.~~

16 (4) It is the intent of the Legislature that temporary judges  
17 should be knowledgeable of state and federal consumer laws,  
18 rent deposit law, 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, online purchasing law and other contract law, defenses to  
22 contract claims, ~~and~~ defenses to debts, *and other law determined*  
23 *by the Judicial Council and the courts to be important in the*  
24 *adjudication of small claims cases.*

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

27 116.221. In addition to the jurisdiction conferred by Section  
28 116.220, the small claims court has jurisdiction in an action  
29 brought by a natural person, if the amount of the demand does  
30 not exceed seven thousand five hundred dollars (\$7,500), except  
31 for actions otherwise prohibited by subdivision (c) of Section  
32 116.220 or subdivision (a) of Section 116.231.

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

35 116.222. If the action is to enforce the payment of a debt, the  
36 statement of calculation of liability shall separately state the  
37 original debt, each payment credited to the debt, each fee and  
38 charge added to the debt, each payment credited against those  
39 fees and charges, all other debits or charges to the account, and

1 an explanation of the nature of those fees, charges, debits, and all  
2 other credits to the debt, by source and amount.

3 SEC. 4. Section 116.232 is added to the Code of Civil  
4 Procedure, to read:

5 116.232. (a) The filing fee for cases in which the  
6 jurisdictional limit exceeds five thousand dollars (\$5,000) shall  
7 ~~be one hundred dollars (\$100). A portion of the fee that exceeds~~  
8 ~~the filing fee set forth in subdivision (a) of Section 116.230 shall~~  
9 ~~be used to enhance advisory services. This portion shall be no~~  
10 ~~less than five dollars (\$5).~~

11 ~~(b) This fee increment be seventy-five dollars (\$75).~~

12 ~~(b) Twenty-three dollars (\$23) of the fee authorized in~~  
13 ~~subdivision (a) shall be used to enhance advisory services. This~~  
14 ~~portion of the fee shall be deposited with the treasurer of the city~~  
15 ~~and county or county in whose jurisdiction the court is located in~~  
16 ~~accordance with Section 116.910, and shall supplement, not~~  
17 ~~replace, existing funding sources for advisory services.~~

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

22 ~~(c) Fifty dollars (\$50) of the fee authorized in subdivision (a)~~  
23 ~~shall be deposited upon collection in the special account in the~~  
24 ~~county treasury established pursuant to subdivision (b) of Section~~  
25 ~~68085 of the Government Code, and transmitted therefrom~~  
26 ~~monthly to the Controller for deposit in the Trial Court Trust~~  
27 ~~Fund.~~

28 ~~(d) Two dollars (\$2) of the fee authorized in subdivision (a)~~  
29 ~~shall be used to enhance law library services. This portion of the~~  
30 ~~fee shall be deposited with the treasurer of the county, pursuant~~  
31 ~~to Section 6320 of the Business and Professions Code, and shall~~  
32 ~~supplement, not replace, existing funding sources for law~~  
33 ~~libraries.~~

34 SEC. 5. Section 116.240 of the Code of Civil Procedure is  
35 amended to read:

36 116.240. (a) With the consent of the parties who appear at  
37 the hearing, the court may order a case to be heard by a  
38 temporary judge who is a member of the State Bar, and who has  
39 been sworn and empowered to act until final determination of the  
40 case.

1 (b) Prior to serving as a temporary judge in small claims court,  
2 *effective on and after July 1, 2006*, and at least every three years  
3 thereafter, each temporary judge shall take the course of study  
4 offered by the ~~Department of Consumer Affairs~~ *courts on ethics*  
5 *and substantive law under rules adopted by the Judicial Council*.  
6 The course shall include, but not be limited to, state and federal  
7 consumer laws, rent deposit law, the state and federal Fair Debt  
8 Collection Practices Acts, the federal Truth in Lending Act, the  
9 federal Fair Credit Billing Act, the federal Electronic Fund  
10 Transfer Act, tort law, and contract law, including defenses to  
11 contracts and defenses to debts. *On substantive law, the*  
12 *Department of Consumer Affairs may provide assistance to the*  
13 *courts, to the extent the department is fiscally able to provide*  
14 *that assistance*.

15 *SEC. 6. Section 116.910 of the Code of Civil Procedure is*  
16 *amended to read:*

17 116.910. (a) Except as provided in this chapter (including,  
18 but not limited to, Section 116.230), no fee or charge shall be  
19 collected by any officer for any service provided under this  
20 chapter.

21 (b) All fees collected under this chapter shall be deposited  
22 with the treasurer of the city and county or county in whose  
23 jurisdiction the court is located.

24 (c) Six dollars (\$6) of each fifteen dollar (\$15) fee and  
25 fourteen dollars (\$14) of each thirty dollar (\$30) fee charged and  
26 collected under subdivision (a) of Section 116.230 shall be  
27 deposited by each county in a special account. Of the money  
28 deposited in this account:

29 (1) In counties with a population of less than 4,000,000, a  
30 minimum of 50 percent shall be used to fund the small claims  
31 adviser service described in Section 116.940. The remainder of  
32 these funds shall be used for court and court-related programs.  
33 Records of these moneys shall be available for inspection by the  
34 public on request.

35 (2) In counties with a population of at least 4,000,000, not less  
36 than five hundred thousand dollars (\$500,000) shall be used to  
37 fund the small claims adviser service described in Section  
38 116.940. That amount shall be increased each fiscal year by an  
39 amount equal to the percentage increase in revenues derived from  
40 small claims court filing fees over the prior fiscal year. The

1 remainder of these funds shall be used for court and court-related  
2 programs. Records of these moneys shall be available for  
3 inspection by the public on request.

4 (d) This section and Section 116.940 shall not be applied in  
5 any manner that results in a reduction of the level of services, or  
6 the amount of funds allocated for providing the services  
7 described in Section 116.940, that are in existence in each county  
8 during the fiscal year 1989–90. Nothing in this section shall  
9 preclude the county from procuring other funding, including state  
10 court block grants, to comply with the requirements of Section  
11 116.940.

12 (e) *All funds for advisory services pursuant to Section 116.232*  
13 *are in addition to the funds described in, and shall not be subject*  
14 *to, subdivision (c) of this section.*

15 ~~SEC. 6.—~~

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

18 116.940. (a) Except as otherwise provided in this section or  
19 in rules adopted by the Judicial Council, which are consistent  
20 with the requirements of this section, the characteristics of the  
21 small claims advisory service required by Section 116.260 shall  
22 be determined by each county in accordance with local needs and  
23 conditions.

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

25 (1) Individual personal advisory services, in person or by  
26 telephone, and by any other means reasonably calculated to  
27 provide timely and appropriate assistance. The topics covered by  
28 individual personal advisory services shall include, but not be  
29 limited to, preparation of small claims court filings, procedures,  
30 including procedures related to the conduct of the hearing, *and*  
31 *information on the* collection of small claims court judgments;  
32 ~~and information about the availability of interpreter services.~~

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

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

37 (c) In any county in which the number of small claims actions  
38 filed annually is 1,000 or less as averaged over the immediately  
39 preceding two fiscal years, the county may elect to exempt itself  
40 from the requirements set forth in subdivision (b). This

1 exemption shall be formally noticed through the adoption of a  
2 resolution by the board of supervisors. If a county so exempts  
3 itself, the county shall nevertheless provide the following  
4 minimum advisory services in accordance with rules adopted by  
5 the Judicial Council:

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

9 (2) Small claims information booklets shall be provided in the  
10 court clerk's office of each superior court, the county  
11 administrator's office, other appropriate county offices, and in  
12 any other location that is convenient to prospective small claims  
13 litigants in the county.

14 (d) The advisory service shall operate in conjunction and  
15 cooperation with the small claims division, and shall be  
16 administered so as to avoid the existence or appearance of a  
17 conflict of interest between the individuals providing the  
18 advisory services and any party to a particular small claims  
19 action or any judicial officer deciding small claims actions.

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

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

30 *SEC. 8. Section 4 of this act, which adds Section 116.232 to*  
31 *the Code of Civil Procedure, shall become operative only if the*  
32 *measure implementing the Uniform Civil Filing Fee Act is not*  
33 *enacted. If that measure is enacted and becomes effective on or*  
34 *before January 1, 2006, Section 4 of this bill shall not become*  
35 *operative.*