

AMENDED IN SENATE JULY 9, 2007

AMENDED IN SENATE JUNE 28, 2007

AMENDED IN SENATE JUNE 11, 2007

AMENDED IN SENATE MAY 10, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 310

Introduced by Assembly Member Silva

February 9, 2007

An act to amend Section 21710 of the Business and Professions Code, to amend Section 3154 of the Civil Code, to amend Sections 12a, 222, 396a, 585, 618, 644, 904, 990, 1011, 1015, 1169, and 1986 of the Code of Civil Procedure, to amend Sections 16701, 16701.5, and 16914 of the Corporations Code, to amend Section 17595 of, and to repeal Sections 43040.5 and 43060 of, the Education Code, to amend Sections 8610.13 and 12003.5 of, and to repeal Sections 8610.7 and 8610.8 of, the Fish and Game Code, to amend Sections 7910 and 26801 of the Government Code, to amend Sections 1196, 1207, 1213, and 1326 of the Penal Code, and to amend Sections 1803.3, 23140, and 23229.1 of the Vehicle Code, relating to the maintenance of the codes.

LEGISLATIVE COUNSEL’S DIGEST

AB 310, as amended, Silva. Maintenance of the codes.

Existing law establishes the California Law Revision Commission. Existing law authorizes the commission to recommend changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law and bring the law into harmony with modern conditions. Existing law requires the commission to file a report at each

regular session of the Legislature containing a calendar of topics selected by the commission for study, which is subject to approval by concurrent resolution of the Legislature. Existing law authorizes the commission to recommend revisions to correct technical or minor defects in the statutes without the prior concurrent resolution of the Legislature referring the matter to it for study.

This bill would make technical and minor changes in various provisions of the law to effectuate the recommendations of the commission.

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 21710 of the Business and Professions
- 2 Code is amended to read:
- 3 21710. If a declaration in opposition to the lien sale is received
- 4 prior to the date set forth in the notice of lien sale, the owner may
- 5 enforce the lien as follows:
- 6 (a) An action to enforce the owner's lien shall be commenced
- 7 by the filing of a verified complaint setting forth the facts upon
- 8 which the claim of lien is based. The summons and complaint may
- 9 be served by certified mail, postage prepaid, addressed to the
- 10 occupant at the occupant's last known address, in which case
- 11 service shall be deemed completed on the fifth day after the
- 12 mailing, or in any other manner authorized by Chapter 4
- 13 (commencing with Section 413.10) of Title 2 of Part 2 of the Code
- 14 of Civil Procedure.
- 15 (b) The occupant shall have 10 days in which to respond to the
- 16 complaint after service of the summons is completed, which time
- 17 may be extended for good cause shown.
- 18 (c) If the occupant has not responded to the complaint by answer
- 19 or demurrer within the time allowed after service is completed,
- 20 the clerk, upon application of the owner, shall enter the default of
- 21 the occupant, and thereafter, the owner may apply to the court for
- 22 judgment in the amount of the lien, including costs.
- 23 (d) Any judgment entered on the action on the lien in favor of
- 24 the owner may be enforced by sale of the property by the owner.
- 25 The sale shall be conducted in a commercially reasonable manner,
- 26 and shall take place 10 days or more from the entry of judgment,

1 unless within that time period, or at any time prior to the sale, the
2 occupant pays to the owner the full amount of the judgment.

3 (e) Enforcement of the judgment may be stayed, pending appeal,
4 by the posting of a bond by the occupant in an amount one and
5 one-half times the amount of the judgment, in which case the
6 property may be released to the occupant.

7 SEC. 2. Section 3154 of the Civil Code is amended to read:

8 3154. (a) At any time after the expiration of the time period
9 specified by Section 3144 with regard to the period during which
10 property is bound by a lien after recordation of a claim of lien,
11 where no action has been brought to enforce that lien, the owner
12 of the property or the owner of any interest therein may petition
13 the proper court for a decree to release the property from the lien.

14 (b) The petition shall be verified and shall allege all of the
15 following:

16 (1) The date of recordation of the claim of lien.

17 (2) The legal description of the property affected by the claim
18 of lien.

19 (3) That no action to foreclose the lien is pending, or that no
20 extension of credit has been recorded, and that the time period
21 during which suit can be brought to foreclose the lien has expired.

22 (4) That the lien claimant is unable or unwilling to execute a
23 release of the lien or cannot with reasonable diligence be found.

24 (5) That the owner of the property or interest in the property
25 has not filed for relief under any law governing bankruptcy, and
26 that there exists no other restraint to prevent the lien claimant from
27 filing to foreclose the lien. A certified copy of the claim of lien
28 shall be attached to the petition. The petition shall be deemed
29 controverted by the lien claimant.

30 (c) Upon the filing of the petition, and before any further
31 proceedings are had, the clerk shall set a date for the hearing not
32 more than 30 days following the filing of the petition. The court
33 may continue the hearing beyond the 30-day period, but good
34 cause shall be shown for any continuance.

35 (d) A copy of the petition and the notice setting the date for the
36 hearing shall be served upon the lien claimant at least 10 days prior
37 to the date set for hearing, in the manner in which a summons is
38 required to be served, or by certified or registered mail, postage
39 prepaid, return receipt requested, addressed to the lien claimant at
40 the claimant's address as shown in any of the following:

1 (1) The preliminary 20-day notice served by the claimant
2 pursuant to Section 3097.

3 (2) The records of the registrar of contractors.

4 (3) The contract on which the lien is based.

5 (4) The claim of lien itself.

6 (e) When service is made by mail as provided in this section,
7 service is complete on the fifth day following the day of the deposit
8 of the mail. No decree shall issue in favor of the petitioner unless
9 the petitioner proves that service of the petition and the order fixing
10 the date for hearing was made in compliance with this subdivision.
11 The issue of compliance with this subdivision shall be deemed
12 controverted by the lien claimant.

13 (f) In the event judgment is rendered in favor of the petitioner,
14 the decree shall indicate all of the following:

15 (1) The date the lien was recorded.

16 (2) The county and city, if any, in which the lien was recorded.

17 (3) The book and page of the place in the official records where
18 the lien is recorded.

19 (4) The legal description of the property affected. Upon the
20 recordation of a certified copy of the decree, the property described
21 in the decree shall be released from the lien.

22 (g) The prevailing party shall be entitled to attorneys' fees not
23 to exceed two thousand dollars (\$2,000).

24 (h) Nothing in this section shall be construed to bar any other
25 cause of action or claim for relief by the owner of the property or
26 an interest in the property, nor shall a decree canceling a claimant's
27 lien bar the lien claimant from bringing any other cause of action
28 or claim for relief, other than an action foreclosing the lien.
29 However, no other action or claim shall be joined with the claim
30 for relief established by this section.

31 (i) Chapter 2.5 (commencing with Section 1141.10) of Title 3
32 of Part 3 of the Code of Civil Procedure does not apply to causes
33 commenced pursuant to this section.

34 SEC. 3. Section 12a of the Code of Civil Procedure is amended
35 to read:

36 12a. (a) If the last day for the performance of any act provided
37 or required by law to be performed within a specified period of
38 time is a holiday, then that period is hereby extended to and
39 including the next day that is not a holiday. For purposes of this
40 section, "holiday" means all day on Saturdays, all holidays

1 specified in Section 135 and, to the extent provided in Section 12b,
2 all days that by terms of Section 12b are required to be considered
3 as holidays.

4 (b) This section applies to ~~all Sections 659, 659a, and 921, and~~
5 *to all other* provisions of law providing or requiring an act to be
6 performed on a particular day or within a specified period of time,
7 whether expressed in this or any other code or statute, ordinance,
8 rule, or regulation.

9 SEC. 4. Section 222 of the Code of Civil Procedure is amended
10 to read:

11 222. (a) Except as provided in subdivision (b), when an action
12 is called for trial by jury, the clerk shall randomly select the names
13 of the jurors for voir dire, until the jury is selected or the panel is
14 exhausted.

15 (b) When the jury commissioner has provided the court with a
16 listing of the trial jury panel in random order, the court shall seat
17 prospective jurors for voir dire in the order provided by the panel
18 list.

19 SEC. 5. Section 396a of the Code of Civil Procedure is
20 amended to read:

21 396a. In a case that is subject to Sections 1812.10 and 2984.4
22 of the Civil Code, or subdivision (b) of Section 395 of the Code
23 of Civil Procedure, or in an action or proceeding for an unlawful
24 detainer as defined in Section 1161 of the Code of Civil Procedure:

25 (a) The plaintiff shall state facts in the complaint, verified by
26 the plaintiff's oath, or the oath of the plaintiff's attorney, or in an
27 affidavit of the plaintiff or of the plaintiff's attorney filed with the
28 complaint, showing that the action has been commenced in the
29 proper superior court and the proper court location for the trial of
30 the action or proceeding, and showing that the action is subject to
31 the provisions of Sections 1812.10 and 2984.4 of the Civil Code
32 or subdivision (b) of Section 395 of the Code of Civil Procedure,
33 or is an action for an unlawful detainer. When the affidavit is filed
34 with the complaint, a copy thereof shall be served with the
35 summons. Except as provided in this section, if the complaint or
36 affidavit is not filed pursuant to this subdivision, no further
37 proceedings may occur in the action or proceeding, except to
38 dismiss the action or proceeding without prejudice. However, the
39 court may, on terms that are just, permit the affidavit to be filed
40 after the filing of the complaint, and a copy of the affidavit shall

1 be served on the defendant and the time to answer or otherwise
2 plead shall date from that service.

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

21 (c) In any case where the transfer of the action or proceeding
22 is ordered under subdivision (a) or (b), if summons is served prior
23 to the filing of the action or proceeding in the superior court or
24 court location to which it is transferred, as to any defendant, so
25 served, who has not appeared in the action or proceeding, the time
26 to answer or otherwise plead shall date from service upon that
27 defendant of written notice of the filing.

28 (d) If it appears from the complaint or affidavit of the plaintiff
29 that the superior court and court location where the action or
30 proceeding is commenced are a proper court and court location
31 for the trial thereof, all proper proceedings may be had, and the
32 action or proceeding may be tried in that court at that location.

33 (e) A motion for a transfer of the action or proceeding to a
34 different superior court may be made as in other cases, within the
35 time, upon the grounds, and in the manner provided in this title,
36 and if upon that motion it appears that the action or proceeding is
37 not pending in the proper court, or should for other cause be
38 transferred, the action or proceeding shall be ordered transferred
39 as provided in this title.

1 If any action or proceeding is ordered transferred to another
2 court as provided in this section, proceedings shall be had, and the
3 costs and fees shall be paid, as provided in Sections 398 and 399.

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

8 SEC. 6. Section 585 of the Code of Civil Procedure is amended
9 to read:

10 585. Judgment may be had, if the defendant fails to answer the
11 complaint, as follows:

12 (a) In an action arising upon contract or judgment for the
13 recovery of money or damages only, if the defendant has, or if
14 more than one defendant, if any of the defendants have, been
15 served, other than by publication, and no answer, demurrer, notice
16 of motion to strike of the character specified in subdivision (f),
17 notice of motion to transfer pursuant to Section 396b, notice of
18 motion to dismiss pursuant to Article 2 (commencing with Section
19 583.210) of Chapter 1.5 of Title 8, notice of motion to quash
20 service of summons or to stay or dismiss the action pursuant to
21 Section 418.10, or notice of the filing of a petition for writ of
22 mandate as provided in Section 418.10 has been filed with the
23 clerk of the court within the time specified in the summons, or
24 within further time as may be allowed, the clerk, upon written
25 application of the plaintiff, and proof of the service of summons,
26 shall enter the default of the defendant or defendants, so served,
27 and immediately thereafter enter judgment for the principal amount
28 demanded in the complaint, in the statement required by Section
29 425.11, or in the statement provided for in Section 425.115, or a
30 lesser amount if credit has been acknowledged, together with
31 interest allowed by law or in accordance with the terms of the
32 contract, and the costs against the defendant, or defendants, or
33 against one or more of the defendants. If, by rule of court, a
34 schedule of attorneys' fees to be allowed has been adopted, the
35 clerk may include in the judgment attorneys' fees in accordance
36 with the schedule (1) if the contract provides that attorneys' fees
37 shall be allowed in the event of an action thereon, or (2) if the
38 action is one in which the plaintiff is entitled by statute to recover
39 attorneys' fees in addition to money or damages. The plaintiff shall
40 file a written request at the time of application for entry of the

1 default of the defendant or defendants, to have attorneys' fees fixed
2 by the court, whereupon, after the entry of the default, the court
3 shall hear the application for determination of the attorneys' fees
4 and shall render judgment for the attorneys' fees and for the other
5 relief demanded in the complaint, in the statement required by
6 Section 425.11, or in the statement provided for in Section 425.115,
7 or a lesser amount if credit has been acknowledged, and the costs
8 against the defendant, or defendants, or against one or more of the
9 defendants.

10 (b) In other actions, if the defendant has been served, other than
11 by publication, and no answer, demurrer, notice of motion to strike
12 of the character specified in subdivision (f), notice of motion to
13 transfer pursuant to Section 396b, notice of motion to dismiss
14 pursuant to Article 2 (commencing with Section 583.210) of
15 Chapter 1.5 of Title 8, notice of motion to quash service of
16 summons or to stay or dismiss the action pursuant to Section 418.10
17 or notice of the filing of a petition for writ of mandate as provided
18 in Section 418.10 has been filed with the clerk of the court within
19 the time specified in the summons, or within further time as may
20 be allowed, the clerk, upon written application of the plaintiff,
21 shall enter the default of the defendant. The plaintiff thereafter
22 may apply to the court for the relief demanded in the complaint.
23 The court shall hear the evidence offered by the plaintiff, and shall
24 render judgment in the plaintiff's favor for that relief, not exceeding
25 the amount stated in the complaint, in the statement required by
26 Section 425.11, or in the statement provided for by Section
27 425.115, as appears by the evidence to be just. If the taking of an
28 account, or the proof of any fact, is necessary to enable the court
29 to give judgment or to carry the judgment into effect, the court
30 may take the account or hear the proof, or may, in its discretion,
31 order a reference for that purpose. If the action is for the recovery
32 of damages, in whole or in part, the court may order the damages
33 to be assessed by a jury; or if, to determine the amount of damages,
34 the examination of a long account is involved, by a reference as
35 above provided.

36 (c) In all actions where the service of the summons was by
37 publication, upon the expiration of the time for answering, and
38 upon proof of the publication and that no answer, demurrer, notice
39 of motion to strike of the character specified in subdivision (f),
40 notice of motion to transfer pursuant to Section 396b, notice of

1 motion to dismiss pursuant to Article 2 (commencing with Section
2 583.210) of Chapter 1.5 of Title 8, notice of motion to quash
3 service of summons or to stay or dismiss the action pursuant to
4 Section 418.10, or notice of the filing of a petition for writ of
5 mandate as provided in Section 418.10 has been filed, the clerk,
6 upon written application of the plaintiff, shall enter the default of
7 the defendant. The plaintiff thereafter may apply to the court for
8 the relief demanded in the complaint; and the court shall hear the
9 evidence offered by the plaintiff, and shall render judgment in the
10 plaintiff's favor for that relief, not exceeding the amount stated in
11 the complaint, in the statement required by Section 425.11, or in
12 the statement provided for in Section 425.115, as appears by the
13 evidence to be just. If the defendant is not a resident of the state,
14 the court shall require the plaintiff, or the plaintiff's agent, to be
15 examined, on oath, respecting any payments that have been made
16 to the plaintiff, or to anyone for the plaintiff's use, on account of
17 any demand mentioned in the complaint, in the statement required
18 by Section 425.11, or in the statement provided for in Section
19 425.115, and may render judgment for the amount that the plaintiff
20 is entitled to recover. In all cases affecting the title to or possession
21 of real property, where the service of the summons was by
22 publication and the defendant has failed to answer, no judgment
23 shall be rendered upon proof of mere occupancy, unless the
24 occupancy has continued for the time and has been of the character
25 necessary to confer title by prescription. In all cases where the
26 plaintiff bases a claim upon a paper title, the court shall require
27 evidence establishing the plaintiff's equitable right to judgment
28 before rendering judgment. In actions involving only the possession
29 of real property where the complaint is verified and shows by
30 proper allegations that no party to the action claims title to the real
31 property involved, either by prescription, accession, transfer, will,
32 or succession, but only the possession thereof, the court may render
33 judgment upon proof of occupancy by plaintiff and ouster by
34 defendant.

35 (d) In the cases referred to in subdivisions (b) and (c), or upon
36 an application to have attorneys' fees fixed by the court pursuant
37 to subdivision (a), the court in its discretion may permit the use of
38 affidavits, in lieu of personal testimony, as to all or any part of the
39 evidence or proof required or permitted to be offered, received, or
40 heard in those cases. The facts stated in the affidavit or affidavits

1 shall be within the personal knowledge of the affiant and shall be
2 set forth with particularity, and each affidavit shall show
3 affirmatively that the affiant, if sworn as a witness, can testify
4 competently thereto.

5 (e) If a defendant files a cross-complaint against another
6 defendant or the plaintiff, a default may be entered against that
7 party on that cross-complaint if the plaintiff or that cross-defendant
8 has been served with that cross-complaint and has failed to file an
9 answer, demurrer, notice of motion to strike of the character
10 specified in subdivision (f), notice of motion to transfer pursuant
11 to Section 396b, notice of motion to dismiss pursuant to Article 2
12 (commencing with Section 583.210) of Chapter 1.5 of Title 8,
13 notice of motion to quash service of summons or to stay or dismiss
14 the action pursuant to Section 418.10, or notice of the filing of a
15 petition for a writ of mandate as provided in Section 418.10 within
16 the time specified in the summons, or ~~within a time~~ *another time*
17 *period* as may be allowed. However, no judgment may separately
18 be entered on that cross-complaint unless a separate judgment
19 may, in fact, be properly awarded on that cross-complaint and the
20 court finds that a separate judgment on that cross-complaint would
21 not substantially delay the final disposition of the action between
22 the parties.

23 (f) A notice of motion to strike within the meaning of this section
24 is a notice of motion to strike the whole or any part of a pleading
25 filed within the time which the moving party is required otherwise
26 to plead to that pleading. The notice of motion to strike shall
27 specify a hearing date set in accordance with Section 1005. The
28 filing of a notice of motion does not extend the time within which
29 to demur.

30 SEC. 7. Section 618 of the Code of Civil Procedure is amended
31 to read:

32 618. When the jury, or three-fourths of them, have agreed upon
33 a verdict, they must be conducted into court and the verdict
34 rendered by their foreperson. The verdict must be in writing, signed
35 by the foreperson, and must be read to the jury by the clerk, and
36 the inquiry made whether it is their verdict. Either party may
37 require the jury to be polled, which is done by the court or clerk,
38 asking each juror if it is the juror's verdict. If upon inquiry or
39 polling, more than one-fourth of the jurors disagree thereto, the

1 jury must be sent out again, but if no disagreement is expressed,
2 the verdict is complete and the jury discharged from the case.

3 SEC. 8. Section 644 of the Code of Civil Procedure is amended
4 to read:

5 644. (a) In the case of a consensual general reference pursuant
6 to Section 638, the decision of the referee or commissioner upon
7 the whole issue must stand as the decision of the court, and upon
8 filing of the statement of decision with the clerk of the court,
9 judgment may be entered thereon in the same manner as if the
10 action had been tried by the court.

11 (b) In the case of all other references, the decision of the referee
12 or commissioner is only advisory. The court may adopt the
13 referee's recommendations, in whole or in part, after independently
14 considering the referee's findings and any objections and responses
15 thereto filed with the court.

16 SEC. 9. Section 904 of the Code of Civil Procedure is amended
17 to read:

18 904. An appeal may be taken in a civil action or proceeding
19 as provided in Sections 904.1, 904.2, and 904.5.

20 SEC. 9.5. Section 904 of the Code of Civil Procedure is
21 amended to read:

22 904. An appeal may be taken in a civil action or proceeding
23 as provided in Sections 904.1, 904.2, 904.3, and 904.5.

24 SEC. 10. Section 990 of the Code of Civil Procedure is
25 amended to read:

26 990. The summons specified in Section 989 shall be issued by
27 the clerk upon presentation of the affidavit specified in Section
28 991. The summons must describe the judgment, and require the
29 person summoned to show cause why the person should not be
30 bound by it, and must be served in the same manner, and returnable
31 no later than ninety (90) days after the time specified for the return
32 of the original summons. It is not necessary to file a new complaint.

33 SEC. 11. Section 1011 of the Code of Civil Procedure is
34 amended to read:

35 1011. The service may be personal, by delivery to the party or
36 attorney on whom the service is required to be made, or it may be
37 as follows:

38 (a) If upon an attorney, service may be made at the attorney's
39 office, by leaving the notice or other papers in an envelope or
40 package clearly labeled to identify the attorney being served, with

1 a receptionist or with a person having charge thereof. When there
2 is no person in the office with whom the notice or papers may be
3 left for purposes of this subdivision at the time service is to be
4 effected, service may be made by leaving them between the hours
5 of nine in the morning and five in the afternoon, in a conspicuous
6 place in the office, or, if the attorney's office is not open so as to
7 admit of that service, then service may be made by leaving the
8 notice or papers at the attorney's residence, with some person of
9 not less than 18 years of age, if the attorney's residence is in the
10 same county with his or her office, and, if the attorney's residence
11 is not known or is not in the same county with his or her office,
12 or being in the same county it is not open, or a person 18 years of
13 age or older cannot be found at the attorney's residence, then
14 service may be made by putting the notice or papers, enclosed in
15 a sealed envelope, into the post office or a mail box, subpost office,
16 substation, or mail chute or other like facility regularly maintained
17 by the Government of the United States directed to the attorney at
18 his or her office, if known and otherwise to the attorney's residence,
19 if known. If neither the attorney's office nor residence is known,
20 service may be made by delivering the notice or papers to the
21 address of the attorney or party of record as designated on the court
22 papers, or by delivering the notice or papers to the clerk of the
23 court, for the attorney.

24 (b) If upon a party, service shall be made in the manner
25 specifically provided in particular cases, or, if no specific provision
26 is made, service may be made by leaving the notice or other paper
27 at the party's residence, between the hours of eight in the morning
28 and six in the evening, with some person of not less than 18 years
29 of age. If at the time of attempted service between those hours a
30 person 18 years of age or older cannot be found at the party's
31 residence, the notice or papers may be served by mail. If the party's
32 residence is not known, then service may be made by delivering
33 the notice or papers to the clerk of the court, for that party.

34 SEC. 12. Section 1015 of the Code of Civil Procedure is
35 amended to read:

36 1015. When a plaintiff or a defendant, who has appeared,
37 resides out of the state, and has no attorney in the action or
38 proceeding, the service may be made on the clerk of the court, for
39 that party. But in all cases where a party has an attorney in the
40 action or proceeding, the service of papers, when required, must

be upon the attorney instead of the party, except service of subpoenas, of writs, and other process issued in the suit, and of papers to bring the party into contempt. If the sole attorney for a party is removed or suspended from practice, then the party has no attorney within the meaning of this section. If the party's sole attorney has no known office in this state, notices and papers may be served by leaving a copy thereof with the clerk of the court, unless the attorney has filed in the cause an address of a place at which notices and papers may be served on the attorney, in which event they may be served at that place.

SEC. 13. Section 1169 of the Code of Civil Procedure is amended to read:

1169. If, at the time appointed, any defendant served with a summons does not appear and defend, the clerk, upon written application of the plaintiff and proof of the service of summons and complaint, shall enter the default of any defendant so served, and, if requested by the plaintiff, immediately shall enter judgment for restitution of the premises and shall issue a writ of execution thereon. The application for default judgment and the default judgment shall include a place to indicate that the judgment includes tenants, subtenants, if any, named claimants, if any, and any other occupants of the premises. Thereafter, the plaintiff may apply to the court for any other relief demanded in the complaint, including the costs, against the defendant, or defendants, or against one or more of the defendants.

SEC. 14. Section 1986 of the Code of Civil Procedure is amended to read:

1986. ~~(a)~~—A subpoena is obtainable as follows:

~~(1)~~

(a) To require attendance before a court, or at the trial of an issue therein, or upon the taking of a deposition in an action or proceeding pending therein, it is obtainable from the clerk of the court in which the action or proceeding is pending.

~~(2)~~

(b) To require attendance before a commissioner appointed to take testimony by a court of a foreign country, or of the United States, or of any other state in the United States, or before any officer or officers empowered by the laws of the United States to take testimony, it may be obtained from the clerk of the superior court of the county in which the witness is to be examined.

1 ~~(3)~~

2 (c) To require attendance out of court, in cases not provided for
3 in ~~paragraph (1)~~ subdivision (a), before a judge, justice, or other
4 officer authorized to administer oaths or take testimony in any
5 matter under the laws of this state, it is obtainable from the judge,
6 justice, or other officer before whom the attendance is required.

7 ~~(b)~~ If the subpoena is to require attendance before a court, or at
8 the trial of an issue therein, it is obtainable from the clerk, as of
9 course, upon the application of the party desiring it. If it is obtained
10 to require attendance before a commissioner or other officer upon
11 the taking of a deposition, it must be obtained, as of course, from
12 the clerk of the superior court of the county wherein the attendance
13 is required upon the application of the party requiring it.

14 SEC. 15. Section 16701 of the Corporations Code is amended
15 to read:

16 16701. Except as provided in Section 16701.5, all of the
17 following shall apply:

18 (a) If a partner is dissociated from a partnership, the partnership
19 shall cause the dissociated partner's interest in the partnership to
20 be purchased for a buyout price determined pursuant to subdivision
21 (b).

22 (b) The buyout price of a dissociated partner's interest is the
23 amount that would have been distributable to the dissociating
24 partner under subdivision (b) of Section 16807 if, on the date of
25 dissociation, the assets of the partnership were sold at a price equal
26 to the greater of the liquidation value or the value based on a sale
27 of the entire business as a going concern without the dissociated
28 partner and the partnership was wound up as of that date. Interest
29 shall be paid from the date of dissociation to the date of payment.

30 (c) Damages for wrongful dissociation under Section 16602,
31 and all other amounts owing, whether or not presently due, from
32 the dissociated partner to the partnership, shall be offset against
33 the buyout price. Interest shall be paid from the date the amount
34 owed becomes due to the date of payment.

35 (d) A partnership shall indemnify a dissociated partner whose
36 interest is being purchased against all partnership liabilities,
37 whether incurred before or after the dissociation, except liabilities
38 incurred by an act of the dissociated partner under Section 16702.

39 (e) If no agreement for the purchase of a dissociated partner's
40 interest is reached within 120 days after a written demand for

1 payment, the partnership shall pay, or cause to be paid, in cash to
2 the dissociated partner the amount the partnership estimates to be
3 the buyout price and accrued interest, reduced by any offsets and
4 accrued interest under subdivision (c).

5 (f) If a deferred payment is authorized under subdivision (h),
6 the partnership may tender a written offer to pay the amount it
7 estimates to be the buyout price and accrued interest, reduced by
8 any offsets under subdivision (c), stating the time of payment, the
9 amount and type of security for payment, and the other terms and
10 conditions of the obligation.

11 (g) The payment or tender required by subdivision (e) or (f)
12 shall be accompanied by all of the following:

13 (1) A statement of partnership assets and liabilities as of the
14 date of dissociation.

15 (2) The latest available partnership balance sheet and income
16 statement, if any.

17 (3) An explanation of how the estimated amount of the payment
18 was calculated.

19 (4) Written notice that the payment is in full satisfaction of the
20 obligation to purchase unless, within 120 days after the written
21 notice, the dissociated partner commences an action to determine
22 the buyout price, any offsets under subdivision (c), or other terms
23 of the obligation to purchase.

24 (h) A partner who wrongfully dissociates before the expiration
25 of a definite term or the completion of a particular undertaking is
26 not entitled to payment of any portion of the buyout price until the
27 expiration of the term or completion of the undertaking, unless the
28 partner establishes to the satisfaction of the court that earlier
29 payment will not cause undue hardship to the business of the
30 partnership. A deferred payment shall be adequately secured and
31 bear interest.

32 (i) A dissociated partner may maintain an action against the
33 partnership, pursuant to subparagraph (B) of paragraph (2) of
34 subdivision (b) of Section 16405, to determine the buyout price
35 of that partner's interest, any offsets under subdivision (c), or other
36 terms of the obligation to purchase. The action shall be commenced
37 within 120 days after the partnership has tendered payment or an
38 offer to pay or within one year after written demand for payment
39 if no payment or offer to pay is tendered. The court shall determine
40 the buyout price of the dissociated partner's interest, any offset

1 due under subdivision (c), and accrued interest, and enter judgment
2 for any additional payment or refund. If deferred payment is
3 authorized under subdivision (h), the court shall also determine
4 the security for payment and other terms of the obligation to
5 purchase. The court may assess reasonable attorney's fees and the
6 fees and expenses of appraisers or other experts for a party to the
7 action, in amounts the court finds equitable, against a party that
8 the court finds acted arbitrarily, vexatiously, or not in good faith.
9 The finding may be based on the partnership's failure to tender
10 payment or an offer to pay or to comply with subdivision (g).

11 SEC. 16. Section 16701.5 of the Corporations Code is amended
12 to read:

13 16701.5. (a) Section 16701 shall not apply to any dissociation
14 that occurs within 90 days prior to a dissolution under Section
15 16801.

16 (b) For dissociations occurring within 90 days prior to the
17 dissolution, both of the following shall apply:

18 (1) All partners who dissociated within 90 days prior to the
19 dissolution shall be treated as partners under Section 16807.

20 (2) Any damages for wrongful dissociation under Section 16602
21 and all other amounts owed by the dissociated partner to the
22 partnership, whether or not presently due, shall be taken into
23 account in determining the amount distributable to the dissociated
24 partner under Section 16807.

25 SEC. 17. Section 16914 of the Corporations Code is amended
26 to read:

27 16914. (a) When a merger takes effect, all of the following
28 apply:

29 (1) The separate existence of the disappearing partnerships and
30 disappearing other business entities ceases and the surviving
31 partnership or surviving other business entity shall succeed, without
32 other transfer, act, or deed, to all the rights and property whether
33 real, personal, or mixed, of each of the disappearing partnerships
34 and disappearing other business entities and shall be subject to all
35 the debts and liabilities of each in the same manner as if the
36 surviving partnership or surviving other business entity had itself
37 incurred them.

38 (2) All rights of creditors and all liens upon the property of each
39 of the constituent partnerships and constituent other business
40 entities shall be preserved unimpaired and may be enforced against

1 the surviving partnership or the surviving other business entity to
2 the same extent as if the debt, liability, or duty that gave rise to
3 that lien had been incurred or contracted by it, provided that those
4 liens upon the property of a disappearing partnership or
5 disappearing other business entity shall be limited to the property
6 affected thereby immediately prior to the time the merger is
7 effective.

8 (3) Any action or proceeding pending by or against any
9 disappearing partnership or disappearing other business entity may
10 be prosecuted to judgment, which shall bind the surviving
11 partnership or surviving other business entity, or the surviving
12 partnership or surviving other business entity may be proceeded
13 against or be substituted in the disappearing partnership's or the
14 disappearing other business entity's place.

15 (b) (1) Unless a certificate of merger has been filed to effect
16 the merger, the surviving foreign entity shall promptly notify the
17 Secretary of State of the mailing address of its agent for service
18 of process and its chief executive office, and of any change of
19 address. To enforce an obligation of a partnership that has merged
20 with a foreign partnership or foreign other business entity, the
21 Secretary of State shall only be the agent for service of process in
22 an action or proceeding against the surviving foreign partnership
23 or foreign other business entity, if the agent designated for the
24 service of process for that entity is a natural person and cannot be
25 located with due diligence or if the agent is a corporation and no
26 person to whom delivery may be made can be located with due
27 diligence, or if no agent has been designated and if no one of the
28 officers, partners, managers, members, or agents of the entity can
29 be located after diligent search, and it is so shown by affidavit to
30 the satisfaction of the court. The court then may make an order
31 that service be made by personal delivery to the Secretary of State
32 or to an assistant or deputy Secretary of State of two copies of the
33 process together with two copies of the order, and the order shall
34 set forth an address to which the process shall be sent by the
35 Secretary of State. Service in this manner is deemed complete on
36 the 10th day after delivery of the process to the Secretary of State.

37 (2) Upon receipt of the process and order and the fee set forth
38 in subdivision (c) of Section 12197 of the Government Code, the
39 Secretary of State shall give notice to the entity of the service of
40 the process by forwarding by certified mail, return receipt

1 requested, a copy of the process and order to the address specified
2 in the order.

3 (3) The Secretary of State shall keep a record of all process
4 served upon the Secretary of State and shall record therein the time
5 of service and the Secretary of State's action with respect thereto.
6 The certificate of the Secretary of State, under the Secretary of
7 State's official seal, certifying to the receipt of process, the giving
8 of notice thereof to the entity, and the forwarding of the process,
9 shall be competent and prima facie evidence of the matters stated
10 therein.

11 (c) A partner of the surviving partnership or surviving limited
12 partnership, a member of the surviving limited liability company,
13 a shareholder of the surviving corporation, or a holder of equity
14 securities of the surviving other business entity, is liable for all of
15 the following:

16 (1) All obligations of a party to the merger for which that person
17 was personally liable before the merger.

18 (2) All other obligations of the surviving entity incurred before
19 the merger by a party to the merger, but those obligations may be
20 satisfied only out of property of the entity.

21 (3) All obligations of the surviving entity incurred after the
22 merger takes effect, but those obligations may be satisfied only
23 out of property of the entity if that person is a limited partner, a
24 shareholder in a corporation, or, unless expressly provided
25 otherwise in the articles of organization or other constituent
26 documents, a member of a limited liability company or a holder
27 of equity securities in a surviving other business entity.

28 (d) If the obligations incurred before the merger by a party to
29 the merger are not satisfied out of the property of the surviving
30 partnership or surviving other business entity, the general partners
31 of that party immediately before the effective date of the merger,
32 to the extent that party was a partnership or a limited partnership,
33 shall contribute the amount necessary to satisfy that party's
34 obligations to the surviving entity in the manner provided in
35 Section 16807 or in the limited partnership act of the jurisdiction
36 in which the party was formed, as the case may be, as if the merged
37 party were dissolved.

38 (e) A partner of a domestic disappearing partnership who does
39 not vote in favor of the merger and does not agree to become a
40 partner, member, shareholder, or holder of interest or equity

1 securities of the surviving partnership or surviving other business
2 entity shall have the right to dissociate from the partnership as of
3 the date the merger takes effect. Within 10 days after the approval
4 of the merger by the partners as required under this article, each
5 domestic disappearing partnership shall send notice of the approval
6 of the merger to each partner that has not approved the merger,
7 accompanied by a copy of Section 16701 and a brief description
8 of the procedure to be followed under that section if the partner
9 wishes to dissociate from the partnership. A partner that desires
10 to dissociate from a disappearing partnership shall send written
11 notice of that dissociation within 30 days after the date of the notice
12 of the approval of the merger. The disappearing partnership shall
13 cause the partner's interest in the entity to be purchased under
14 Section 16701. The surviving entity is bound under Section 16702
15 by an act of a general partner dissociated under this subdivision,
16 and the partner is liable under Section 16703 for transactions
17 entered into by the surviving entity after the merger takes effect.
18 The dissociation of a partner in connection with a merger pursuant
19 to the terms of this subdivision shall not be deemed a wrongful
20 dissociation under Section 16602.

21 SEC. 18. Section 17595 of the Education Code is amended to
22 read:

23 17595. Nothing in this code shall preclude the governing board
24 of any school district from purchasing materials, equipment, or
25 supplies through the Department of General Services pursuant to
26 subdivision (b) of Section 10299 of the Public Contract Code.

27 SEC. 19. Section 43040.5 of the Education Code is repealed.

28 SEC. 20. Section 43060 of the Education Code is repealed.

29 SEC. 21. Section 8610.7 of the Fish and Game Code is
30 repealed.

31 SEC. 22. Section 8610.8 of the Fish and Game Code is
32 repealed.

33 SEC. 23. Section 8610.13 of the Fish and Game Code is
34 amended to read:

35 8610.13. The penalty for a violation of Section 8610.3 or
36 8610.4 is as specified in Section 12003.5.

37 SEC. 24. Section 12003.5 of the Fish and Game Code is
38 amended to read:

39 12003.5. (a) The penalty for a first violation of Section 8610.3
40 or 8610.4 is a fine of not less than one thousand dollars (\$1,000)

1 and not more than five thousand dollars (\$5,000) and a mandatory
2 suspension of any license, permit, or stamp to take, receive,
3 transport, purchase, sell, barter, or process fish for commercial
4 purposes for six months. The penalty for a second or subsequent
5 violation of Section 8610.3 or 8610.4 is a fine of not less than two
6 thousand five hundred dollars (\$2,500) and not more than ten
7 thousand dollars (\$10,000) and a mandatory suspension of any
8 license, permit, or stamp to take, receive, transport, purchase, sell,
9 barter, or process fish for commercial purposes for one year.

10 (b) If a person convicted of a violation of Section 8610.3 or
11 8610.4, is granted probation, the court shall impose as a term or
12 condition of probation, in addition to any other term or condition
13 of probation, a requirement that the person pay at least the
14 minimum fine prescribed in this section.

15 SEC. 25. Section 7910 of the Government Code is amended
16 to read:

17 7910. (a) Each year the governing body of each local
18 jurisdiction shall, by resolution, establish its appropriations limit
19 and make other necessary determinations for the following fiscal
20 year pursuant to Article XIII B of the California Constitution at a
21 regularly scheduled meeting or noticed special meeting. Fifteen
22 days prior to the meeting documentation used in the determination
23 of the appropriations limit and other necessary determinations shall
24 be available to the public. The determinations made pursuant to
25 this section are legislative acts.

26 (b) A judicial action or proceeding to attack, review, set aside,
27 void, or annul the action of the governing body taken pursuant to
28 this section shall be commenced within 45 days of the effective
29 date of the resolution.

30 (c) A court in which an action described in subdivision (b) is
31 pending, including any court reviewing the action on appeal from
32 the decision of a lower court, shall give the action preference over
33 all other civil actions, in the manner of setting the action for hearing
34 or trial and in hearing the action, to the end that the action shall
35 be quickly heard and determined.

36 SEC. 26. Section 26801 of the Government Code is amended
37 to read:

38 26801. Except as otherwise provided by law, the county clerk
39 shall act as clerk of the board of supervisors in the county.

40 SEC. 27. Section 1196 of the Penal Code is amended to read:

1 1196. (a) The clerk must, at any time after the order, issue a
2 bench warrant into one or more counties.

3 (b) The clerk shall require the appropriate agency to enter each
4 bench warrant issued on a private surety-bonded felony case into
5 the national warrant system (National Crime Information Center
6 (NCIC)). If the appropriate agency fails to enter the bench warrant
7 into the national warrant system (NCIC), and the court finds that
8 this failure prevented the surety or bond agent from surrendering
9 the fugitive into custody, prevented the fugitive from being arrested
10 or taken into custody, or resulted in the fugitive's subsequent
11 release from custody, the court having jurisdiction over the bail
12 shall, upon petition, set aside the forfeiture of the bond and declare
13 all liability on the bail bond to be exonerated.

14 SEC. 28. Section 1207 of the Penal Code is amended to read:

15 1207. When judgment upon a conviction is rendered, the clerk
16 must enter the judgment in the minutes, stating briefly the offense
17 for which the conviction was had, and the fact of a prior conviction,
18 if any. A copy of the judgment of conviction shall be filed with
19 the papers in the case.

20 SEC. 29. Section 1213 of the Penal Code is amended to read:

21 1213. (a) When a probationary order or a judgment, other than
22 of death, has been pronounced, a copy of the entry of that portion
23 of the probationary order ordering the defendant confined in a city
24 or county jail as a condition of probation, or a copy of the entry
25 of the judgment, or, if the judgment is for imprisonment in the
26 state prison, either a copy of the minute order or an abstract of the
27 judgment as provided in Section 1213.5, certified by the clerk of
28 the court, and a Criminal Investigation and Identification (CII)
29 number shall be forthwith furnished to the officer whose duty it
30 is to execute the probationary order or judgment, and no other
31 warrant or authority is necessary to justify or require its execution.

32 (b) If a copy of the minute order is used as the commitment
33 document, the first page or pages shall be identical in form and
34 content to that prescribed by the Judicial Council for an abstract
35 of judgment, and other matters as appropriate may be added
36 thereafter.

37 SEC. 30. Section 1326 of the Penal Code is amended to read:

38 1326. (a) The process by which the attendance of a witness
39 before a court or magistrate is required is a subpoena. It may be
40 signed and issued by any of the following:

1 (1) A magistrate before whom a complaint is laid or his or her
2 clerk, the district attorney or his or her investigator, or the public
3 defender or his or her investigator, for witnesses in the state.

4 (2) The district attorney, his or her investigator, or, upon request
5 of the grand jury, any judge of the superior court, for witnesses in
6 the state, in support of an indictment or information, to appear
7 before the court in which it is to be tried.

8 (3) The district attorney or his or her investigator, the public
9 defender or his or her investigator, or the clerk of the court in which
10 a criminal action is to be tried. The clerk shall, at any time, upon
11 application of the defendant, and without charge, issue as many
12 blank subpoenas, subscribed by him or her, for witnesses in the
13 state, as the defendant may require.

14 (4) The attorney of record for the defendant.

15 (b) A subpoena issued in a criminal action that commands the
16 custodian of records or other qualified witness of a business to
17 produce books, papers, documents, or records shall direct that
18 those items be delivered by the custodian or qualified witness in
19 the manner specified in subdivision (b) of Section 1560 of the
20 Evidence Code. Subdivision (e) of Section 1560 of the Evidence
21 Code shall not apply to criminal cases.

22 (c) In a criminal action, no party, or attorney or representative
23 of a party, may issue a subpoena commanding the custodian of
24 records or other qualified witness of a business to provide books,
25 papers, documents, or records, or copies thereof, relating to a
26 person or entity other than the subpoenaed person or entity in any
27 manner other than that specified in subdivision (b) of Section 1560
28 of the Evidence Code. When a defendant has issued a subpoena
29 to a person or entity that is not a party for the production of books,
30 papers, documents, or records, or copies thereof, the court may
31 order an in camera hearing to determine whether or not the defense
32 is entitled to receive the documents. The court may not order the
33 documents disclosed to the prosecution except as required by
34 Section 1054.3.

35 (d) This section shall not be construed to prohibit obtaining
36 books, papers, documents, or records with the consent of the person
37 to whom the books, papers, documents, or records relate.

38 SEC. 31. Section 1803.3 of the Vehicle Code is amended to
39 read:

1 1803.3. (a) The clerk of any court that reverses a conviction
2 for an offense described in subdivision (a) of Section 1803, which
3 is not exempted under subdivision (b) of that section, shall prepare
4 and forward to the department at its office in Sacramento an
5 abstract of the record of the court covering the case in which the
6 conviction was reversed. In addition, if a court dismisses a charge
7 of a violation of Section 40508 for which a notice was given to
8 the department pursuant to Section 40509 or 40509.5, the court
9 shall notify the department of the dismissal.

10 (b) The abstract shall be forwarded within 30 days of the date
11 the judgment of reversal becomes final. The notice of dismissal
12 shall be given to the department not later than 30 days after the
13 dismissal. Within 30 days of receiving the abstract or notice, the
14 department shall remove any record of that conviction, or notice
15 received pursuant to Section 40509 or 40509.5, from the driver's
16 record.

17 (c) As used in this section, "reverse" includes any action by
18 which a conviction is nullified or set aside.

19 SEC. 32. Section 23140 of the Vehicle Code is amended to
20 read:

21 23140. (a) It is unlawful for a person under the age of 21 years
22 who has 0.05 percent or more, by weight, of alcohol in his or her
23 blood to drive a vehicle.

24 (b) A person may be found to be in violation of subdivision (a)
25 if the person was, at the time of driving, under the age of 21 years
26 and under the influence of, or affected by, an alcoholic beverage
27 regardless of whether a chemical test was made to determine that
28 person's blood-alcohol concentration and if the trier of fact finds
29 that the person had consumed an alcoholic beverage and was
30 driving a vehicle while having a concentration of 0.05 percent or
31 more, by weight, of alcohol in his or her blood.

32 (c) Notwithstanding any provision of law to the contrary, upon
33 a finding that a person has violated this section, the clerk of the
34 court shall prepare within 10 days after the finding and immediately
35 forward to the department an abstract of the record of the court in
36 which the finding is made. That abstract shall be a public record
37 and available for public inspection in the same manner as other
38 records reported under Section 1803.

39 SEC. 33. Section 23229.1 of the Vehicle Code is amended to
40 read:

1 23229.1. (a) Subject to subdivision (b), Sections 23223 and
2 23225 apply to any charter-party carrier of passengers, as defined
3 in Section 5360 of the Public Utilities Code, operating a limousine
4 for hire when the driver of the vehicle transports any passenger
5 under the age of 21.

6 (b) For purposes of subdivision (a), it is not a violation of
7 Section 23225 for any charter-party carrier of passengers operating
8 a limousine for hire that is licensed pursuant to the Public Utilities
9 Code to keep any bottle, can, or other receptacle containing any
10 alcoholic beverage in a locked utility compartment within the area
11 occupied by the driver and passengers.

12 (c) In addition to the requirements of Section 1803, every clerk
13 of a court in which any driver in subdivision (a) was convicted of
14 a violation of Section 23225 shall prepare within 10 days after
15 conviction, and immediately forward to the Public Utilities
16 Commission at its office in San Francisco, an abstract of the record
17 of the court covering the case in which the person was convicted.
18 If sentencing is not pronounced in conjunction with the conviction,
19 the abstract shall be forwarded to the commission within 10 days
20 after sentencing, and the abstract shall be certified, by the person
21 required to prepare it, to be true and correct. For the purposes of
22 this subdivision, a forfeiture of bail is equivalent to a conviction.

23 SEC. 34. Section 9.5 of this bill shall only become operative
24 if (1) this bill and SB 649 are both enacted and become effective
25 on or before January 1, 2008, and (2) SB 649 adds Section 904.3
26 of the Code of Civil ~~Procedure Code~~, *Procedure*, in which case
27 Section 9 of this bill shall not become operative.