

AMENDED IN ASSEMBLY JUNE 12, 2007

AMENDED IN SENATE MARCH 26, 2007

**SENATE BILL**

**No. 649**

---

---

**Introduced by Committee on Judiciary (Senators Corbett (Chair),  
Ackerman, Harman, Kuehl, and Steinberg)**

February 22, 2007

---

---

An act to amend Sections 6455, 12606, and 12606.2 of the Business and Professions Code, to amend Sections 399, 580, 586, 688.010, 688.030, 904.1, and 904.2 of, and to add Section 904.3 to, the Code of Civil Procedure, to amend Sections 25564, 29733, 43039, and 59289 of the Food and Agricultural Code, to amend Sections 12965 and 12980 of the Government Code, and to amend Sections 977 and 977.2 of the Penal Code, relating to trial court restructuring.

LEGISLATIVE COUNSEL'S DIGEST

SB 649, as amended, Committee on Judiciary. Trial court restructuring.

(1) The California Constitution provides for the abolition of municipal courts and their unification within the superior courts, as specified.

This bill would conform various statutory provisions of law to the abolition of municipal courts and their unification within the superior courts. The bill would also make related statutory changes with respect to the classification of limited civil cases, appeals in limited civil cases and misdemeanor and infraction cases, and arraignment by 2-way electronic audiovideo communication.

(2) The bill would make other technical, nonsubstantive changes.

(3) *This bill would incorporate additional changes in Section 977 of the Penal Code proposed by AB 678 that would become operative only*

*if AB 678 and this bill are both chaptered and become effective on or before January 1, 2008, and this bill is chaptered last.*

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 6455 of the Business and Professions  
2 Code is amended to read:

3 6455. (a) Any consumer injured by a violation of this chapter  
4 may file a complaint and seek redress in superior court for  
5 injunctive relief, restitution, and damages. Attorney’s fees shall  
6 be awarded in this action to the prevailing plaintiff.

7 (b) Any person who violates the provisions of Section 6451 or  
8 6452 is guilty of an infraction for the first violation, which is  
9 punishable upon conviction by a fine of up to two thousand five  
10 hundred dollars (\$2,500) as to each consumer with respect to whom  
11 a violation occurs, and is guilty of a misdemeanor for the second  
12 and each subsequent violation, which is punishable upon conviction  
13 by a fine of two thousand five hundred dollars (\$2,500) as to each  
14 consumer with respect to whom a violation occurs, or imprisonment  
15 in a county jail for not more than one year, or by both that fine and  
16 imprisonment. Any person convicted of a violation of this section  
17 shall be ordered by the court to pay restitution to the victim  
18 pursuant to Section 1202.4 of the Penal Code.

19 SEC. 2. Section 12606 of the Business and Professions Code  
20 is amended to read:

21 12606. (a) No container wherein commodities are packed shall  
22 have a false bottom, false sidewalls, false lid or covering, or be  
23 otherwise so constructed or filled, wholly or partially, as to  
24 facilitate the perpetration of deception or fraud.

25 (b) No container shall be made, formed, or filled as to be  
26 misleading. A container that does not allow the consumer to fully  
27 view its contents shall be considered to be filled as to be misleading  
28 if it contains nonfunctional slack fill. Slack fill is the difference  
29 between the actual capacity of a container and the volume of  
30 product contained therein. Nonfunctional slack fill is the empty  
31 space in a package that is filled to less than its capacity for reasons  
32 other than the following:

33 (1) Protection of the contents of the package.

1 (2) The requirements of machines used for enclosing the  
2 contents of the package.

3 (3) Unavoidable product settling during shipping and handling.

4 (4) The need to utilize a larger than required package or  
5 container to provide adequate space for the legible presentation of  
6 mandatory and necessary labeling information, such as those based  
7 on the regulations adopted by the Food and Drug Administration  
8 or state or federal agencies under federal or state law, laws or  
9 regulations adopted by foreign governments, or under an  
10 industrywide voluntary labeling program.

11 (5) The fact that the product consists of a commodity that is  
12 packaged in a decorative or representational container where the  
13 container is part of the presentation of the product and has value  
14 that is both significant in proportion to the value of the product  
15 and independent of its function to hold the product, such as a gift  
16 combined with a container that is intended for further use after the  
17 product is consumed, or durable commemorative or promotional  
18 packages.

19 (6) An inability to increase the level of fill or to further reduce  
20 the size of the package, such as where some minimum package  
21 size is necessary to accommodate required labeling, discourage  
22 pilfering, facilitate handling, or accommodate tamper-resistant  
23 devices.

24 (7) The product container bears a reasonable relationship to the  
25 actual amount of product contained inside, and the dimensions of  
26 the actual product container, the product, or the amount of product  
27 therein is visible to the consumer at the point of sale, or where  
28 obvious secondary use packaging is involved.

29 (8) The dimensions of the product or immediate product  
30 container are visible through the exterior packaging, or where the  
31 actual size of the product or immediate product container is clearly  
32 and conspicuously depicted on the exterior packaging, accompanied  
33 by a clear and conspicuous disclosure that the representation is the  
34 “actual size” of the product or the immediate product container.

35 (9) The presence of any head space within an immediate product  
36 container necessary to facilitate the mixing, adding, shaking, or  
37 dispensing of liquids or powders by consumers prior to use.

38 (10) The exterior packaging contains a product delivery or  
39 dosing device if the device is visible, or a clear and conspicuous  
40 depiction of the device appears on the exterior packaging, or it is

1 readily apparent from the conspicuous exterior disclosures or the  
2 nature and name of the product that a delivery or dosing device is  
3 contained in the package.

4 (11) The exterior packaging or immediate product container is  
5 a kit that consists of a system, or multiple components, designed  
6 to produce a particular result that is not dependent upon the  
7 quantity of the contents, if the purpose of the kit is clearly and  
8 conspicuously disclosed on the exterior packaging.

9 (12) The exterior packaging of the product is routinely displayed  
10 using tester units or demonstrations to consumers in retail stores,  
11 so that customers can see the actual, immediate container of the  
12 product being sold, or a depiction of the actual size thereof prior  
13 to purchase.

14 (13) The exterior packaging consists of single or ~~multi-unit~~  
15 *multiunit* presentation boxes of holiday or gift packages if the  
16 purchaser can adequately determine the quantity and sizes of the  
17 immediate product container at the point of sale.

18 (14) The exterior packaging is for a combination of one  
19 purchased product, together with a free sample or gift, wherein  
20 the exterior packaging is necessarily larger than it would otherwise  
21 be due to the inclusion of the sample or gift, if the presence of both  
22 products and the quantity of each product are clearly and  
23 conspicuously disclosed on the exterior packaging.

24 (15) The exterior packaging or immediate product container  
25 encloses computer hardware or software designed to serve a  
26 particular computer function, if the particular computer function  
27 to be performed by the computer hardware or software is clearly  
28 and conspicuously disclosed on the exterior packaging.

29 (c) Any sealer may seize a container that facilitates the  
30 perpetration of deception or fraud and the contents of the container.  
31 By order of the superior court of the county within which a  
32 violation of this section occurs, the containers seized shall be  
33 condemned and destroyed or released upon conditions the court  
34 may impose to insure against their use in violation of this chapter.  
35 The contents of any condemned container shall be returned to the  
36 owner thereof if the owner furnishes proper facilities for the return.  
37 A proceeding under this section is a limited civil case if the value  
38 of the property in controversy is less than or equal to the maximum  
39 amount in controversy for a limited civil case under Section 85 of  
40 the Code of Civil Procedure.

1 SEC. 3. Section 12606.2 of the Business and Professions Code  
2 is amended to read:

3 12606.2. (a) This section applies to food containers subject to  
4 Section 403 (d) of the Federal Food, Drug, and Cosmetic Act (21  
5 U.S.C. Sec. 343 (d)), and Section 100.100 of Title 21 of the Code  
6 of Federal Regulations. Section 12606 does not apply to food  
7 containers subject to this section.

8 (b) No food containers shall be made, formed, or filled as to be  
9 misleading.

10 (c) A container that does not allow the consumer to fully view  
11 its contents shall be considered to be filled as to be misleading if  
12 it contains nonfunctional slack fill. Slack fill is the difference  
13 between the actual capacity of a container and the volume of  
14 product contained therein. Nonfunctional slack fill is the empty  
15 space in a package that is filled to less than its capacity for reasons  
16 other than the following:

17 (1) Protection of the contents of the package.

18 (2) The requirements of the machines used for enclosing the  
19 contents in the package.

20 (3) Unavoidable product settling during shipping and handling.

21 (4) The need for the package to perform a specific function,  
22 such as where packaging plays a role in the preparation or  
23 consumption of a food, if that function is inherent to the nature of  
24 the food and is clearly communicated to consumers.

25 (5) The fact that the product consists of a food packaged in a  
26 reusable container where the container is part of the presentation  
27 of the food and has value that is both significant in proportion to  
28 the value of the product and independent of its function to hold  
29 the food, such as a gift product consisting of a food or foods  
30 combined with a container that is intended for further use after the  
31 food is consumed or durable commemorative or promotional  
32 packages.

33 (6) Inability to increase the level of fill or to further reduce the  
34 size of the package, such as where some minimum package size  
35 is necessary to accommodate required food labeling exclusive of  
36 any vignettes or other nonmandatory designs or label information,  
37 discourage pilfering, facilitate handling, or accommodate  
38 tamper-resistant devices.

39 (d) This section shall be interpreted consistent with the  
40 comments by the United States Food and Drug Administration on

1 the regulations contained in Section 100.100 of Title 21 of the  
 2 Code of Federal Regulations, interpreting Section 403(d) of the  
 3 Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 343(d)),  
 4 as those comments are reported on pages 64123 to 64137, inclusive,  
 5 of Volume 58 of the Federal Register.

6 (e) If the requirements of this section do not impose the same  
 7 requirements as are imposed by Section 403(d) of the Federal  
 8 Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 343(d)), or any  
 9 regulation promulgated pursuant thereto, then this section is not  
 10 operative to the extent that it is not identical to the federal  
 11 requirements, and for this purpose those federal requirements are  
 12 incorporated into this section and shall apply as if they were set  
 13 forth in this section.

14 (f) Any sealer may seize any container that is in violation of  
 15 this section and the contents of the container. By order of the  
 16 superior court of the county within which a violation of this section  
 17 occurs, the containers seized shall be condemned and destroyed  
 18 or released upon any conditions that the court may impose to ensure  
 19 against their use in violation of this chapter. The contents of any  
 20 condemned container shall be returned to the owner thereof if the  
 21 owner furnishes proper facilities for the return. A proceeding under  
 22 this section is a limited civil case if the value of the property in  
 23 controversy is less than or equal to the maximum amount in  
 24 controversy for a limited civil case under Section 85 of the Code  
 25 of Civil Procedure.

26 SEC. 4. Section 399 of the Code of Civil Procedure is amended  
 27 to read:

28 399. (a) When an order is made transferring an action or  
 29 proceeding under any of the provisions of this title, the clerk shall,  
 30 after expiration of the time within which a petition for writ of  
 31 mandate could have been filed pursuant to Section 400, or if a writ  
 32 petition is filed after judgment denying the writ becomes final,  
 33 and upon payment of the costs and fees, transmit the pleadings  
 34 and papers therein (or if the pleadings be oral a transcript of the  
 35 same) to the clerk of the court to which the same is transferred.  
 36 When the transfer is sought on any ground specified in subdivision  
 37 (b), (c), (d), or (e) of Section 397, the costs and fees thereof, and  
 38 of filing the papers in the court to which the transfer is ordered,  
 39 shall be paid at the time the notice of motion is filed, by the party  
 40 making the motion for the transfer. When the transfer is sought

1 solely, or is ordered, because the action or proceeding was  
2 commenced in a court other than that designated as proper by this  
3 title, those costs and fees (including any expenses and attorney's  
4 fees awarded *to the* defendant pursuant to Section 396b) shall be  
5 paid by the plaintiff before the transfer is made; and if the  
6 defendant has paid those costs and fees at the time of filing a notice  
7 of motion, the same shall be repaid to the defendant, upon the  
8 making of the transfer order. If those costs and fees have not been  
9 so paid by the plaintiff within five days after service of notice of  
10 the transfer order, then any other party interested therein, whether  
11 named in the complaint as a party or not, may pay those costs and  
12 fees, and the clerk shall thereupon transmit the papers and  
13 pleadings therein as if those costs and fees had been originally  
14 paid by the plaintiff, and the same shall be a proper item of costs  
15 of the party so paying the same, recoverable by that party in the  
16 event that party prevails in the action; otherwise, the same shall  
17 be offset against and deducted from the amount, if any, awarded  
18 the plaintiff in the event the plaintiff prevails against that party in  
19 the action. The cause of action shall not be further prosecuted in  
20 any court until those costs and fees are paid. If those costs and fees  
21 are not paid within 30 days after service of notice of the transfer  
22 order, or if a copy of a petition for writ of mandate pursuant to  
23 Section 400 is filed in the trial court, or if an appeal is taken  
24 pursuant to Section 904.2, then within 30 days after notice of  
25 finality of the order of transfer, the court on a duly noticed motion  
26 by any party may dismiss the action without prejudice to the cause  
27 on the condition that no other action on the cause may be  
28 commenced in another court prior to satisfaction of the court's  
29 order for costs and fees. When a petition for writ of mandate or  
30 appeal does not result in a stay of proceedings, the time for  
31 payment of those costs shall be 60 days after service of the notice  
32 of the order.

33 (b) At the time of transmittal of the papers and pleadings, the  
34 clerk shall mail notice to all parties who have appeared in the action  
35 or special proceeding, stating the date on which transmittal  
36 occurred. Promptly upon receipt of the papers and pleadings, the  
37 clerk of the court to which the action or proceeding is transferred  
38 shall mail notice to all parties who have appeared in the action or  
39 special proceeding, stating the date of the filing of the case and  
40 number assigned to the case in the court.

1 (c) The court to which an action or proceeding is transferred  
 2 under this title shall have and exercise over the same the like  
 3 jurisdiction as if it had been originally commenced therein, all  
 4 prior proceedings being saved, and the court may require  
 5 amendment of the pleadings, the filing and service of amended,  
 6 additional, or supplemental pleadings, and the giving of notice, as  
 7 may be necessary for the proper presentation and determination  
 8 of the action or proceeding in the court.

9 SEC. 5. Section 580 of the Code of Civil Procedure is amended  
 10 to read:

11 580. (a) The relief granted to the plaintiff, if there is no answer,  
 12 cannot exceed that demanded in the complaint, in the statement  
 13 required by Section 425.11, or in the statement provided for by  
 14 Section 425.115; but in any other case, the court may grant the  
 15 plaintiff any relief consistent with the case made by the complaint  
 16 and embraced within the issue. The court may impose liability,  
 17 regardless of whether the theory upon which liability is sought to  
 18 be imposed involves legal or equitable principles.

19 (b) Notwithstanding subdivision (a), the following types of relief  
 20 may not be granted in a limited civil case:

21 (1) Relief exceeding the maximum amount in controversy for  
 22 a limited civil case as provided in Section 85, exclusive of  
 23 attorney’s fees, interest, and costs.

24 (2) A permanent injunction, except as otherwise authorized by  
 25 statute.

26 (3) A determination of title to real property.

27 (4) Declaratory relief, except as authorized by Section 86.

28 SEC. 6. Section 586 of the Code of Civil Procedure is amended  
 29 to read:

30 586. (a) In the following cases the same proceedings shall be  
 31 had, and judgment shall be rendered in the same manner, as if the  
 32 defendant had failed to answer:

33 (1) If the complaint has been amended, and the defendant fails  
 34 to answer it, as amended, or demur thereto, or file a notice of  
 35 motion to strike, of the character specified in Section 585, within  
 36 30 days after service thereof or within the time allowed by the  
 37 court.

38 (2) If the demurrer to the complaint is overruled and a motion  
 39 to strike, of the character specified in Section 585, is denied, or  
 40 where only one thereof is filed, if the demurrer is overruled or the

1 motion to strike is denied, and the defendant fails to answer the  
2 complaint within the time allowed by the court.

3 (3) If a motion to strike, of the character specified in Section  
4 585, is granted in whole or in part, and the defendant fails to answer  
5 the unstricken portion of the complaint within the time allowed  
6 by the court, no demurrer having been sustained or being then  
7 pending.

8 (4) If a motion to quash service of summons or to stay or dismiss  
9 the action has been filed, or writ of mandate sought and notice  
10 thereof given, as provided in Section 418.10, and upon denial of  
11 the motion or writ, *the* defendant fails to respond to the complaint  
12 within the time provided in that section or as otherwise provided  
13 by law.

14 (5) If the demurrer to the answer is sustained and the defendant  
15 fails to amend the answer within the time allowed by the court.

16 (6) (A) If a motion to transfer pursuant to Section 396b is denied  
17 and the defendant fails to respond to the complaint within the time  
18 allowed by the court pursuant to subdivision (e) of Section 396b  
19 or within the time provided in subparagraph (C).

20 (B) If a motion to transfer pursuant to Section 396b is granted  
21 and the defendant fails to respond to the complaint within 30 days  
22 of the mailing of notice of the filing and case number by the clerk  
23 of the court to which the action or proceeding is transferred or  
24 within the time provided in subparagraph (C).

25 (C) If the order granting or denying a motion to transfer pursuant  
26 to Section 396a or 396b is the subject of an appeal pursuant to  
27 Section 904.2 in which a stay is granted or of a mandate proceeding  
28 pursuant to Section 400, the court having jurisdiction over the trial,  
29 upon application or on its own motion after the appeal or mandate  
30 proceeding becomes final or upon earlier termination of a stay,  
31 shall allow the defendant a reasonable time to respond to the  
32 complaint. Notice of the order allowing the defendant further time  
33 to respond to the complaint shall be promptly served by the party  
34 who obtained the order or by the clerk if the order is made on the  
35 court's own motion.

36 (7) If a motion to strike the answer in whole, of the character  
37 specified in Section 585, is granted without leave to amend, or if  
38 a motion to strike the answer in whole or in part, of the character  
39 specified in Section 585, is granted with leave to amend and the

1 defendant fails to amend the answer within the time allowed by  
2 the court.

3 (8) If a motion to dismiss pursuant to Section 583.250 is denied  
4 and the defendant fails to respond within the time allowed by the  
5 court.

6 (b) For the purposes of this section, “respond” means to answer,  
7 to demur, or to move to strike.

8 SEC. 7. Section 688.010 of the Code of Civil Procedure is  
9 amended to read:

10 688.010. A proceeding for the purpose of the remedies  
11 provided under this article is a limited civil case if (a) the amount  
12 of liability sought to be collected does not exceed the maximum  
13 amount in controversy for a limited civil case provided in Section  
14 85, and (b) the legality of the liability being enforced is not  
15 contested by the person against whom enforcement is sought.

16 SEC. 8. Section 688.030 of the Code of Civil Procedure is  
17 amended to read:

18 688.030. (a) Whenever pursuant to any provision of the Public  
19 Resources Code, Revenue and Taxation Code (excluding Sections  
20 3201 to 3204, inclusive), or Unemployment Insurance Code,  
21 property is levied upon pursuant to a warrant or notice of levy  
22 issued by the state or by a department or agency of the state for  
23 the collection of a liability:

24 (1) If the debtor is a natural person, the debtor is entitled to the  
25 same exemptions to which a judgment debtor is entitled. Except  
26 as provided in subdivisions (b) and (c), the claim of exemption  
27 shall be made, heard, and determined as provided in Chapter 4  
28 (commencing with Section 703.010) of Division 2 in the same  
29 manner as if the property were levied upon under a writ of  
30 execution.

31 (2) A third person may claim ownership or the right to  
32 possession of the property or a security interest in or lien on the  
33 property. Except as provided in subdivisions (b) and (c) or as  
34 otherwise provided by statute, the third-party claim shall be made,  
35 heard, and determined as provided in Division 4 (commencing  
36 with Section 720.010) in the same manner as if the property were  
37 levied upon under a writ of execution.

38 (b) In the case of a levy pursuant to a notice of levy:

1 (1) The claim of exemption or the third-party claim shall be  
2 filed with the state department or agency that issued the notice of  
3 levy.

4 (2) The state department or agency that issued the notice of levy  
5 shall perform the duties of the levying officer, except that the state  
6 department or agency need not give itself the notices that the  
7 levying officer is required to serve on a judgment creditor or  
8 creditor or the notices that a judgment creditor or creditor is  
9 required to give to the levying officer. The state department or  
10 agency in performing the duties of the levying officer under this  
11 paragraph has no obligation to search public records or otherwise  
12 seek to determine whether any lien or encumbrance exists on  
13 property sold or collected.

14 (c) A claim of exemption or a third-party claim pursuant to this  
15 section shall be heard and determined in the superior court in the  
16 county where the property levied upon is located.

17 SEC. 9. Section 904.1 of the Code of Civil Procedure is  
18 amended to read:

19 904.1. (a) An appeal, other than in a limited civil case, is to  
20 the court of appeal. An appeal, other than in a limited civil case,  
21 may be taken from any of the following:

22 (1) From a judgment, except (A) an interlocutory judgment,  
23 other than as provided in paragraphs (8), (9), and (11), or (B) a  
24 judgment of contempt that is made final and conclusive by Section  
25 1222.

26 (2) From an order made after a judgment made appealable by  
27 paragraph (1).

28 (3) From an order granting a motion to quash service of  
29 summons or granting a motion to stay the action on the ground of  
30 inconvenient forum, or from a written order of dismissal under  
31 Section 581d following an order granting a motion to dismiss the  
32 action on the ground of inconvenient forum.

33 (4) From an order granting a new trial or denying a motion for  
34 judgment notwithstanding the verdict.

35 (5) From an order discharging or refusing to discharge an  
36 attachment or granting a right to attach order.

37 (6) From an order granting or dissolving an injunction, or  
38 refusing to grant or dissolve an injunction.

39 (7) From an order appointing a receiver.

1 (8) From an interlocutory judgment, order, or decree, hereafter  
2 made or entered in an action to redeem real or personal property  
3 from a mortgage thereof, or a lien thereon, determining the right  
4 to redeem and directing an accounting.

5 (9) From an interlocutory judgment in an action for partition  
6 determining the rights and interests of the respective parties and  
7 directing partition to be made.

8 (10) From an order made appealable by the provisions of the  
9 Probate Code or the Family Code.

10 (11) From an interlocutory judgment directing payment of  
11 monetary sanctions by a party or an attorney for a party if the  
12 amount exceeds five thousand dollars (\$5,000).

13 (12) From an order directing payment of monetary sanctions  
14 by a party or an attorney for a party if the amount exceeds five  
15 thousand dollars (\$5,000).

16 (13) From an order granting or denying a special motion to  
17 strike under Section 425.16.

18 (b) Sanction orders or judgments of five thousand dollars  
19 (\$5,000) or less against a party or an attorney for a party may be  
20 reviewed on an appeal by that party after entry of final judgment  
21 in the main action, or, at the discretion of the court of appeal, may  
22 be reviewed upon petition for an extraordinary writ.

23 SEC. 10. Section 904.2 of the Code of Civil Procedure is  
24 amended to read:

25 904.2. An appeal of a ruling by a superior court judge or other  
26 judicial officer in a limited civil case is to the appellate division  
27 of the superior court. An appeal of a ruling by a superior court  
28 judge or other judicial officer in a limited civil case may be taken  
29 from any of the following:

30 (a) From a judgment, except (1) an interlocutory judgment, or  
31 (2) a judgment of contempt that is made final and conclusive by  
32 Section 1222.

33 (b) From an order made after a judgment made appealable by  
34 subdivision (a).

35 (c) From an order changing or refusing to change the place of  
36 trial.

37 (d) From an order granting a motion to quash service of  
38 summons or granting a motion to stay the action on the ground of  
39 inconvenient forum, or from a written order of dismissal under

1 Section 581d following an order granting a motion to dismiss the  
2 action on the ground of inconvenient forum.

3 (e) From an order granting a new trial or denying a motion for  
4 judgment notwithstanding the verdict.

5 (f) From an order discharging or refusing to discharge an  
6 attachment or granting a right to attach order.

7 (g) From an order granting or dissolving an injunction, or  
8 refusing to grant or dissolve an injunction.

9 (h) From an order appointing a receiver.

10 SEC. 11. Section 904.3 is added to the Code of Civil Procedure,  
11 to read:

12 904.3. An appeal shall not be taken from a judgment of the  
13 appellate division of a superior court granting or denying a petition  
14 for issuance of a writ of mandamus or prohibition directed to the  
15 superior court, or a judge thereof, in a limited civil case or a  
16 misdemeanor or infraction case. An appellate court may, in its  
17 discretion, upon petition for extraordinary writ, review the  
18 judgment.

19 SEC. 12. Section 25564 of the Food and Agricultural Code is  
20 amended to read:

21 25564. If the lot of poultry meat that is held is perishable or  
22 subject to rapid deterioration, the enforcing officer may file a  
23 verified petition in superior court to destroy the lot or otherwise  
24 abate the nuisance. The petition shall show the condition of the  
25 lot, that the lot is situated within the county, that the lot is held,  
26 and that notice of noncompliance has been served pursuant to this  
27 chapter. The court may thereupon order that the lot be forthwith  
28 destroyed or the nuisance otherwise abated as set forth in the order.  
29 A proceeding under this section is a limited civil case if the value  
30 of the property in controversy is less than or equal to the maximum  
31 amount in controversy for a limited civil case under Section 85 of  
32 the Code of Civil Procedure.

33 SEC. 13. Section 29733 of the Food and Agricultural Code is  
34 amended to read:

35 29733. If a packer or owner of honey, or the agent of either,  
36 after notification to the packer, owner, or agent that the honey and  
37 its containers are a public nuisance, refuses, or fails within a  
38 reasonable time, to recondition or remark the honey so as to comply  
39 with all requirements of this chapter, the honey and its containers:

40 (a) May be seized by the director or any enforcement officer.

1 (b) By order of the superior court of the county within which  
2 the honey and its containers may be *located*, shall be condemned  
3 and destroyed, or released upon conditions the court, in its  
4 discretion, may impose to ensure that it will not be packed,  
5 delivered for shipment, shipped, transported, or sold in violation  
6 of this chapter. A proceeding under this section is a limited civil  
7 case if the value of the property in controversy is less than or equal  
8 to the maximum amount in controversy for a limited civil case  
9 under Section 85 of the Code of Civil Procedure.

10 SEC. 14. Section 43039 of the Food and Agricultural Code is  
11 amended to read:

12 43039. If the lot which is held is perishable or subject to rapid  
13 deterioration, the enforcing officer may file a verified petition in  
14 superior court to destroy the lot or otherwise abate the nuisance.  
15 The petition shall show the condition of the lot, that the lot is  
16 situated within the county, that the lot is held, and that notice of  
17 noncompliance has been served as provided in this article. The  
18 court may thereupon order that the lot be forthwith destroyed or  
19 the nuisance otherwise abated as set forth in the order. A  
20 proceeding under this section is a limited civil case if the value of  
21 the property in controversy is less than or equal to the maximum  
22 amount in controversy for a limited civil case under Section 85 of  
23 the Code of Civil Procedure.

24 SEC. 15. Section 59289 of the Food and Agricultural Code is  
25 amended to read:

26 59289. (a) The enforcing officer may file a verified petition  
27 in superior court requesting permission to divert the lot to any  
28 other available lawful use or to destroy the lot. The verified petition  
29 shall show all of the following:

- 30 (1) The condition of the lot.
- 31 (2) That the lot is situated within the territorial jurisdiction of  
32 the court in which the petition is being filed.
- 33 (3) That the lot is held, and that the notice of noncompliance  
34 has been served as provided in Section 59285.
- 35 (4) That the lot has not been reconditioned as required.
- 36 (5) The name and address of the owner and the person in  
37 possession of the lot.
- 38 (6) That the owner has refused permission to divert or to destroy  
39 the lot.

1 (b) A proceeding under this section is a limited civil case if the  
2 value of the property in controversy is less than or equal to the  
3 maximum amount in controversy for a limited civil case under  
4 Section 85 of the Code of Civil Procedure.

5 SEC. 16. Section 12965 of the Government Code is amended  
6 to read:

7 12965. (a) In the case of failure to eliminate an unlawful  
8 practice under this part through conference, conciliation, or  
9 persuasion, or in advance thereof if circumstances warrant, the  
10 director in his or her discretion may cause to be issued in the name  
11 of the department a written accusation. The accusation shall contain  
12 the name of the person, employer, labor organization, or  
13 employment agency accused, which shall be known as the  
14 respondent, shall set forth the nature of the charges, shall be served  
15 upon the respondent together with a copy of the verified complaint,  
16 as amended, and shall require the respondent to answer the charges  
17 at a hearing.

18 For any complaint treated by the director as a group or class  
19 complaint for purposes of investigation, conciliation, and  
20 accusation pursuant to Section 12961, an accusation shall be issued,  
21 if at all, within two years after the filing of the complaint. For any  
22 complaint alleging a violation of Section 51.7 of the Civil Code,  
23 an accusation shall be issued, if at all, within two years after the  
24 filing of the complaint. For all other complaints, an accusation  
25 shall be issued, if at all, within one year after the filing of a  
26 complaint. If the director determines, pursuant to Section 12961,  
27 that a complaint investigated as a group or class complaint under  
28 Section 12961 is to be treated as a group or class complaint for  
29 purposes of conciliation and accusation as well, that determination  
30 shall be made and shall be communicated in writing within one  
31 year after the filing of the complaint to each person, employer,  
32 labor organization, employment agency, or public entity alleged  
33 in the complaint to have committed an unlawful practice.

34 (b) If an accusation is not issued within 150 days after the filing  
35 of a complaint, or if the department earlier determines that no  
36 accusation will issue, the department shall promptly notify, in  
37 writing, the person claiming to be aggrieved that the department  
38 shall issue, on his or her request, the right-to-sue notice. This notice  
39 shall indicate that the person claiming to be aggrieved may bring  
40 a civil action under this part against the person, employer, labor

1 organization, or employment agency named in the verified  
2 complaint within one year from the date of that notice. If the person  
3 claiming to be aggrieved does not request a right-to-sue notice,  
4 the department shall issue the notice upon completion of its  
5 investigation, and not later than one year after the filing of the  
6 complaint. A city, county, or district attorney in a location having  
7 an enforcement unit established on or before March 1, 1991,  
8 pursuant to a local ordinance enacted for the purpose of prosecuting  
9 HIV/AIDS discrimination claims, acting on behalf of any person  
10 claiming to be aggrieved due to HIV/AIDS discrimination, may  
11 also bring a civil action under this part against the person,  
12 employer, labor organization, or employment agency named in  
13 the notice. The superior courts of the State of California shall have  
14 jurisdiction of those actions, and the aggrieved person may file in  
15 these courts. An action may be brought in any county in the state  
16 in which the unlawful practice is alleged to have been committed,  
17 in the county in which the records relevant to the practice are  
18 maintained and administered, or in the county in which the  
19 aggrieved person would have worked or would have had access  
20 to the public accommodation but for the alleged unlawful practice,  
21 but if the defendant is not found within any of these counties, an  
22 action may be brought within the county of the defendant's  
23 residence or principal office. A copy of any complaint filed  
24 pursuant to this part shall be served on the principal offices of the  
25 department and of the commission. The remedy for failure to send  
26 a copy of a complaint is an order to do so. Those actions may not  
27 be filed as class actions or may not be maintained as class actions  
28 by the person or persons claiming to be aggrieved where those  
29 persons have filed a civil class action in the federal courts alleging  
30 a comparable claim of employment discrimination against the  
31 same defendant or defendants. In actions brought under this section,  
32 the court, in its discretion, may award to the prevailing party  
33 reasonable attorney's fees and costs, including expert witness fees,  
34 except where the action is filed by a public agency or a public  
35 official, acting in an official capacity.

36 (c) (1) If an accusation includes a prayer either for damages  
37 for emotional injuries as a component of actual damages, or for  
38 administrative fines, or for both, or if an accusation is amended  
39 for the purpose of adding a prayer either for damages for emotional  
40 injuries as a component of actual damages, or for administrative

1 fines, or both, the respondent may within 30 days after service of  
2 the accusation or amended accusation, elect to transfer the  
3 proceedings to a court in lieu of a hearing pursuant to subdivision  
4 (a) by serving a written notice to that effect on the department, the  
5 commission, and the person claiming to be aggrieved. The  
6 commission shall prescribe the form and manner of giving written  
7 notice.

8 (2) No later than 30 days after the completion of service of the  
9 notice of election pursuant to paragraph (1), the department shall  
10 dismiss the accusation and shall, either itself or, at its election,  
11 through the Attorney General, file in the appropriate court an action  
12 in its own name on behalf of the person claiming to be aggrieved  
13 as the real party in interest. In this action, the person claiming to  
14 be aggrieved shall be the real party in interest and shall have the  
15 right to participate as a party and be represented by his or her own  
16 counsel. Complaints filed pursuant to this section shall be filed in  
17 the superior court in any county in which unlawful practices are  
18 alleged to have been committed, in the county in which records  
19 relevant to the alleged unlawful practices are maintained and  
20 administered, or in the county in which the person claiming to be  
21 aggrieved would have worked or would have had access to public  
22 accommodation, but for the alleged unlawful practices. If the  
23 defendant is not found in any of these counties, the action may be  
24 brought within the county of the defendant's residence or principal  
25 office. Those actions shall be assigned to the court's delay  
26 reduction program, or otherwise given priority for disposition by  
27 the court in which the action is filed.

28 (3) A court may grant as relief in any action filed pursuant to  
29 this subdivision any relief a court is empowered to grant in a civil  
30 action brought pursuant to subdivision (b), in addition to any other  
31 relief that, in the judgment of the court, will effectuate the purpose  
32 of this part. This relief may include a requirement that the employer  
33 conduct training for all employees, supervisors, and management  
34 on the requirements of this part, the rights and remedies of those  
35 who allege a violation of this part, and the employer's internal  
36 grievance procedures.

37 (4) The department may amend an accusation to pray for either  
38 damages for emotional injury or for administrative fines, or both,  
39 provided that the amendment is made within 30 days of the  
40 issuance of the original accusation.

1 (d) (1) Notwithstanding subdivision (b), the one-year statute  
2 of limitations, commencing from the date of the right-to-sue notice  
3 by the Department of Fair Employment and Housing, to the person  
4 claiming to be aggrieved, shall be tolled when all of the following  
5 requirements have been met:

6 (A) A charge of discrimination or harassment is timely filed  
7 concurrently with the Equal Employment Opportunity Commission  
8 and the Department of Fair Employment and Housing.

9 (B) The investigation of the charge is deferred by the  
10 Department of Fair Employment and Housing to the Equal  
11 Employment Opportunity Commission.

12 (C) A right-to-sue notice is issued to the person claiming to be  
13 aggrieved upon deferral of the charge by the Department of Fair  
14 Employment and Housing to the Equal Employment Opportunity  
15 Commission.

16 (2) The time for commencing an action for which the statute of  
17 limitations is tolled under paragraph (1) expires when the federal  
18 right-to-sue period to commence a civil action expires, or one year  
19 from the date of the right-to-sue notice by the Department of Fair  
20 Employment and Housing, whichever is later.

21 (3) This subdivision is intended to codify the holding in *Downs*  
22 *v. Department of Water and Power of City of Los Angeles* (1997)  
23 58 Cal.App.4th 1093.

24 (e) (1) Notwithstanding subdivision (b), the one-year statute  
25 of limitations, commencing from the date of the right-to-sue notice  
26 by the Department of Fair Employment and Housing, to the person  
27 claiming to be aggrieved, shall be tolled when all of the following  
28 requirements have been met:

29 (A) A charge of discrimination or harassment is timely filed  
30 concurrently with the Equal Employment Opportunity Commission  
31 and the Department of Fair Employment and Housing.

32 (B) The investigation of the charge is deferred by the Equal  
33 Employment Opportunity Commission to the Department of Fair  
34 Employment and Housing.

35 (C) After investigation and determination by the Department  
36 of Fair Employment and Housing, the Equal Employment  
37 Opportunity Commission agrees to perform a substantial weight  
38 review of the determination of the department or conducts its own  
39 investigation of the claim filed by the aggrieved person.

1 (2) The time for commencing an action for which the statute of  
2 limitations is tolled under paragraph (1) shall expire when the  
3 federal right-to-sue period to commence a civil action expires, or  
4 one year from the date of the right-to-sue notice by the Department  
5 of Fair Employment and Housing, whichever is later.

6 SEC. 17. Section 12980 of the Government Code is amended  
7 to read:

8 12980. This article governs the procedure for the prevention  
9 and elimination of discrimination in housing made unlawful  
10 pursuant to Article 2 (commencing with Section 12955) of Chapter  
11 6.

12 (a) Any person claiming to be aggrieved by an alleged violation  
13 of Section 12955, 12955.1, or 12955.7 may file with the department  
14 a verified complaint in writing that shall state the name and address  
15 of the person alleged to have committed the violation complained  
16 of, and that shall set forth the particulars of the alleged violation  
17 and contain any other information required by the department.

18 The filing of a complaint and pursuit of conciliation or remedy  
19 under this part shall not prejudice the complainant's right to pursue  
20 effective judicial relief under other applicable laws, but if a civil  
21 action has been filed under Section 52 of the Civil Code, the  
22 department shall terminate proceedings upon notification of the  
23 entry of final judgment unless the judgment is a dismissal entered  
24 at the complainant's request.

25 (b) The Attorney General or the director may, in a like manner,  
26 make, sign, and file complaints citing practices that appear to  
27 violate the purpose of this part or any specific provisions of this  
28 part relating to housing discrimination.

29 No complaint may be filed after the expiration of one year from  
30 the date upon which the alleged violation occurred or terminated.

31 (c) The department may thereupon proceed upon the complaint  
32 in the same manner and with the same powers as provided in this  
33 part in the case of an unlawful practice, except that where the  
34 provisions of this article provide greater rights and remedies to an  
35 aggrieved person than the provisions of Article 1 (commencing  
36 with Section 12960), the provisions of this article shall prevail.

37 (d) Upon the filing of a complaint, the department shall serve  
38 notice upon the complainant of the time limits, rights of the parties,  
39 and choice of forums provided for under the law.

1 (e) The department shall commence proceedings with respect  
2 to a complaint within 30 days of filing of the complaint.

3 (f) An investigation of allegations contained in any complaint  
4 filed with the department shall be completed within 100 days after  
5 receipt of the complaint, unless it is impracticable to do so. If the  
6 investigation is not completed within 100 days, the complainant  
7 and respondent shall be notified, in writing, of the department's  
8 reasons for not doing so.

9 (g) Upon the conclusion of each investigation, the department  
10 shall prepare a final investigative report containing all of the  
11 following:

12 (1) The names of any witnesses and the dates of any contacts  
13 with those witnesses.

14 (2) A summary of the dates of any correspondence or other  
15 contacts with the aggrieved persons or the respondent.

16 (3) A summary of witness statements.

17 (4) Answers to interrogatories.

18 (5) A summary description of other pertinent records.

19 A final investigative report may be amended if additional  
20 evidence is later discovered.

21 (h) If an accusation is not issued within 100 days after the filing  
22 of a complaint, or if the department earlier determines that no  
23 accusation will issue, the department shall promptly notify the  
24 person claiming to be aggrieved. This notice shall, in any event,  
25 be issued no more than 30 days after the date of the determination  
26 or 30 days after the date of the expiration of the 100-day period,  
27 whichever date first occurs. The notice shall indicate that the person  
28 claiming to be aggrieved may bring a civil action under this part  
29 against the person named in the verified complaint within the time  
30 period specified in Section 12989.1. The notice shall also indicate,  
31 unless the department has determined that no accusation will be  
32 issued, that the person claiming to be aggrieved has the option of  
33 continuing to seek redress for the alleged discrimination through  
34 the procedures of the department if he or she does not desire to  
35 file a civil action. The superior courts of the State of California  
36 shall have jurisdiction of these actions, and the aggrieved person  
37 may file in these courts. The action may be brought in any county  
38 in the state in which the violation is alleged to have been  
39 committed, or in the county in which the records relevant to the  
40 alleged violation are maintained and administered, but if the

1 defendant is not found within that county, the action may be  
2 brought within the county of the defendant’s residence or principal  
3 office. A copy of any complaint filed pursuant to this part shall be  
4 served on the principal offices of the department and of the  
5 commission. The remedy for failure to send a copy of a complaint  
6 is an order to do so. In a civil action brought under this section,  
7 the court, in its discretion, may award to the prevailing party  
8 reasonable ~~attorneys’~~ *attorney’s* fees.

9 (i) All agreements reached in settlement of any housing  
10 discrimination complaint filed pursuant to this section shall be  
11 made public, unless otherwise agreed by the complainant and  
12 respondent, and the department determines that the disclosure is  
13 not required to further the purposes of the act.

14 (j) All agreements reached in settlement of any housing  
15 discrimination complaint filed pursuant to this section shall be  
16 agreements between the respondent and complainant, and shall be  
17 subject to approval by the department.

18 SEC. 18. Section 977 of the Penal Code is amended to read:

19 977. (a) (1) In all cases in which the accused is charged with  
20 a misdemeanor only, he or she may appear by counsel only, except  
21 as provided in paragraphs (2) and (3). If the accused agrees, the  
22 initial court appearance, arraignment, and plea may be by video,  
23 as provided by subdivision (c).

24 (2) If the accused is charged with a misdemeanor offense  
25 involving domestic violence, as defined in Section 6211 of the  
26 Family Code, or a misdemeanor violation of Section 273.6, the  
27 accused shall be present for arraignment and sentencing, and at  
28 any time during the proceedings when ordered by the court for the  
29 purpose of being informed of the conditions of a protective order  
30 issued pursuant to Section 136.2.

31 (3) If the accused is charged with a misdemeanor offense  
32 involving driving under the influence, in an appropriate case, the  
33 court may order a defendant to be present for arraignment, at the  
34 time of plea, or at sentencing. For purposes of this paragraph, a  
35 misdemeanor offense involving driving under the influence shall  
36 include a misdemeanor violation of any of the following:

37 (A) Paragraph (3) of subdivision (c) of Section 192.

38 (B) Section 23103 as specified in Section 23103.5 of the Vehicle  
39 Code.

40 (C) Section 23152 of the Vehicle Code.

1 (D) Section 23153 of the Vehicle Code.

2 (b) (1) In all cases in which a felony is charged, the accused  
3 shall be present at the arraignment, at the time of plea, during the  
4 preliminary hearing, during those portions of the trial when  
5 evidence is taken before the trier of fact, and at the time of the  
6 imposition of sentence. The accused shall be personally present  
7 at all other proceedings unless he or she shall, with leave of court,  
8 execute in open court, a written waiver of his or her right to be  
9 personally present, as provided by paragraph (2). If the accused  
10 agrees, the initial court appearance, arraignment, and plea may be  
11 by video, as provided by subdivision (c).

12 (2) The accused may execute a written waiver of his or her right  
13 to be personally present, approved by his or her counsel, and the  
14 waiver shall be filed with the court. However, the court may  
15 specifically direct the defendant to be personally present at any  
16 particular proceeding or portion thereof. The waiver shall be  
17 substantially in the following form:

18

19 “Waiver of ~~Defendant’s~~ *Defendant’s* Personal Presence”

20

21 “The undersigned defendant, having been advised of his or her  
22 right to be present at all stages of the proceedings, including, but  
23 not limited to, presentation of and arguments on questions of fact  
24 and law, and to be confronted by and cross-examine all witnesses,  
25 hereby waives the right to be present at the hearing of any motion  
26 or other proceeding in this cause. The undersigned defendant  
27 hereby requests the court to proceed during every absence of the  
28 defendant that the court may permit pursuant to this waiver, and  
29 hereby agrees that his or her interest is represented at all times by  
30 the presence of his or her attorney the same as if the defendant  
31 were personally present in court, and further agrees that notice to  
32 his or her attorney that his or her presence in court on a particular  
33 day at a particular time is required is notice to the defendant of the  
34 requirement of his or her appearance at that time and place.”

35 (c) The court may permit the initial court appearance and  
36 arraignment of defendants held in any state, county, or local facility  
37 within the county on felony or misdemeanor charges, except for  
38 those defendants who were indicted by a grand jury, to be  
39 conducted by two-way electronic audiovideo communication  
40 between the defendant and the courtroom in lieu of the physical

1 presence of the defendant in the courtroom. If the defendant is  
2 represented by counsel, the attorney shall be present with the  
3 defendant at the initial court appearance and arraignment, and may  
4 enter a plea during the arraignment. However, if the defendant is  
5 represented by counsel at an arraignment on an information in a  
6 felony case, and if the defendant does not plead guilty or nolo  
7 contendere to any charge, the attorney shall be present with the  
8 defendant or if the attorney is not present with the defendant, the  
9 attorney shall be present in court during the hearing. The defendant  
10 shall have the right to make his or her plea while physically present  
11 in the courtroom if he or she so requests. If the defendant decides  
12 not to exercise the right to be physically present in the courtroom,  
13 he or she shall execute a written waiver of that right. A judge may  
14 order a defendant's personal appearance in court for the initial  
15 court appearance and arraignment. In a misdemeanor case, a judge  
16 may, pursuant to this subdivision, accept a plea of guilty or no  
17 contest from a defendant who is not physically in the courtroom.  
18 In a felony case, a judge may, pursuant to this subdivision, accept  
19 a plea of guilty or no contest from a defendant who is not  
20 physically in the courtroom if the parties stipulate thereto.

21 (d) Notwithstanding subdivision (c), if the defendant is  
22 represented by counsel, the attorney shall be present with the  
23 defendant in any county exceeding 4,000,000 persons in  
24 population.

25 *SEC. 18.5. Section 977 of the Penal Code is amended to read:*

26 977. (a) (1) In all cases in which the accused is charged with  
27 a misdemeanor only, he or she may appear by counsel only, except  
28 as provided in paragraphs (2) and (3). If the accused agrees, the  
29 initial court appearance, arraignment, and plea may be by video,  
30 as provided by subdivision (c).

31 (2) If the accused is charged with a misdemeanor offense  
32 involving domestic violence, as defined in Section 6211 of the  
33 Family Code, or a misdemeanor violation of Section 273.6, the  
34 accused shall be present for arraignment and sentencing, and at  
35 any time during the proceedings when ordered by the court for the  
36 purpose of being informed of the conditions of a protective order  
37 issued pursuant to Section 136.2.

38 (3) If the accused is charged with a misdemeanor offense  
39 involving driving under the influence, in an appropriate case, the  
40 court may order a defendant to be present for arraignment, at the

1 time of plea, or at sentencing. For purposes of this paragraph, a  
2 misdemeanor offense involving driving under the influence shall  
3 include a misdemeanor violation of any of the following:

4 (A) ~~Paragraph (3) of subdivision (e) of Section 192-Subdivision~~  
5 ~~(b) of Section 191.5.~~

6 (B) Section 23103 as specified in Section 23103.5 of the Vehicle  
7 Code.

8 (C) Section 23152 of the Vehicle Code.

9 (D) Section 23153 of the Vehicle Code.

10 (b) (1) In all cases in which a felony is charged, the accused  
11 shall be present at the arraignment, at the time of plea, during the  
12 preliminary hearing, during those portions of the trial when  
13 evidence is taken before the trier of fact, and at the time of the  
14 imposition of sentence. The accused shall be personally present  
15 at all other proceedings unless he or she shall, with leave of court,  
16 execute in open court, a written waiver of his or her right to be  
17 personally present, as provided by paragraph (2). If the accused  
18 agrees, the initial court appearance, arraignment, and plea may be  
19 by video, as provided by subdivision (c).

20 (2) The accused may execute a written waiver of his or her right  
21 to be personally present, approved by his or her counsel, and the  
22 waiver shall be filed with the court. However, the court may  
23 specifically direct the defendant to be personally present at any  
24 particular proceeding or portion thereof. The waiver shall be  
25 substantially in the following form:

26  
27 “Waiver of ~~Defendant’s~~ *Defendant’s* Personal Presence”

28  
29 “The undersigned defendant, having been advised of his or her  
30 right to be present at all stages of the proceedings, including, but  
31 not limited to, presentation of and arguments on questions of fact  
32 and law, and to be confronted by and cross-examine all witnesses,  
33 hereby waives the right to be present at the hearing of any motion  
34 or other proceeding in this cause. The undersigned defendant  
35 hereby requests the court to proceed during every absence of the  
36 defendant that the court may permit pursuant to this waiver, and  
37 hereby agrees that his or her interest is represented at all times by  
38 the presence of his or her attorney the same as if the defendant  
39 were personally present in court, and further agrees that notice to  
40 his or her attorney that his or her presence in court on a particular

1 day at a particular time is required is notice to the defendant of the  
2 requirement of his or her appearance at that time and place.”

3 (c) The court may permit the initial court appearance and  
4 arraignment ~~in municipal or superior court~~ of defendants held in  
5 any state, county, or local facility within the county on felony or  
6 misdemeanor charges, except for those defendants who were  
7 indicted by a grand jury, to be conducted by two-way electronic  
8 audiovideo communication between the defendant and the  
9 courtroom in lieu of the physical presence of the defendant in the  
10 courtroom. If the defendant is represented by counsel, the attorney  
11 shall be present with the defendant at the initial court appearance  
12 and arraignment, and may enter a plea during the arraignment.  
13 However, if the defendant is represented by counsel at an ~~initial~~  
14 ~~hearing in superior court~~ *arraignment on an information* in a felony  
15 case, and if the defendant does not plead guilty or nolo contendere  
16 to any charge, the attorney shall be present with the defendant or  
17 if the attorney is not present with the defendant, the attorney shall  
18 be present in court during the hearing. The defendant shall have  
19 the right to make his or her plea while physically present in the  
20 courtroom if he or she so requests. If the defendant decides not to  
21 exercise the right to be physically present in the courtroom, he or  
22 she shall execute a written waiver of that right. A judge may order  
23 a defendant’s personal appearance in court for the initial court  
24 appearance and arraignment. In a misdemeanor case, a judge may,  
25 pursuant to this subdivision, accept a plea of guilty or no contest  
26 from a defendant who is not physically in the courtroom. In a  
27 felony case, a judge may, pursuant to this subdivision, accept a  
28 plea of guilty or no contest from a defendant who is not physically  
29 in the courtroom if the parties stipulate thereto.

30 (d) Notwithstanding subdivision (c), if the defendant is  
31 represented by counsel, the attorney shall be present with the  
32 defendant in any county exceeding 4,000,000 persons in  
33 population.

34 SEC. 19. Section 977.2 of the Penal Code is amended to read:

35 977.2. (a) Notwithstanding Section 977 or any other law, in  
36 any case in which the defendant is charged with a misdemeanor  
37 or a felony and is currently incarcerated in the state prison, the  
38 Department of Corrections may arrange for all court appearances  
39 in superior court, except for the preliminary hearing, trial, judgment  
40 and sentencing, and motions to suppress, to be conducted by

1 two-way electronic audiovideo communication between the  
2 defendant and the courtroom in lieu of the physical presence of  
3 the defendant in the courtroom. Nothing in this section shall be  
4 interpreted to eliminate the authority of the court to issue an order  
5 requiring the defendant to be physically present in the courtroom  
6 in those cases where the court finds circumstances that require the  
7 physical presence of the defendant in the courtroom. For those  
8 court appearances that the department determines to conduct by  
9 two-way electronic audiovideo communication, the department  
10 shall arrange for two-way electronic audiovideo communication  
11 between the superior court and any state prison facility located in  
12 the county. The department shall provide properly maintained  
13 equipment and adequately trained staff at the prison as well as  
14 appropriate training for court staff to ensure that consistently  
15 effective two-way communication is provided between the prison  
16 facility and the courtroom for all appearances that the department  
17 determines to conduct by two-way electronic audiovideo  
18 communication.

19 (b) If the defendant is represented by counsel, the attorney shall  
20 be present with the defendant at the initial court appearance and  
21 arraignment, and may enter a plea during the arraignment.  
22 However, if the defendant is represented by counsel at an  
23 arraignment on an information or indictment in a felony case, and  
24 if the defendant does not plead guilty or nolo contendere to any  
25 charge, the attorney shall be present with the defendant or if the  
26 attorney is not present with the defendant, the attorney shall be  
27 present in court during the hearing.

28 (c) In lieu of the physical presence of the defendant's counsel  
29 at the institution with the defendant, the court and the department  
30 shall establish a confidential telephone and facsimile transmission  
31 line between the court and the institution for communication  
32 between the defendant's counsel in court and the defendant at the  
33 institution. In this case, counsel for the defendant shall not be  
34 required to be physically present at the institution during any court  
35 appearance that is conducted via electronic audiovideo  
36 communication. Nothing in this section shall be construed to  
37 prohibit the physical presence of the defense counsel with the  
38 defendant at the state prison.

39 *SEC. 20. Section 18.5 of this bill incorporates amendments to*  
40 *Section 977 of the Penal Code proposed by both this bill and AB*

1 678. *It shall only become operative if (1) both bills are enacted*  
2 *and become effective on or before January 1, 2008, (2) each bill*  
3 *amends Section 977 of the Penal Code, and (3) this bill is enacted*  
4 *after AB 678, in which case Section 18 of this bill shall not become*  
5 *operative.*

O