

**ASSEMBLY BILL**

**No. 2394**

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**Introduced by Assembly Member Brownley**

February 19, 2010

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An act to amend Sections 262, 262.1, 262.2, 262.4, 684.130, 687.010, 687.040, 699.060, 699.510, 699.520, 699.530, 699.560, 701.030, 701.660, 706.026, 706.108, 712.020, 712.030, and 1993 of, to add Chapter 2 (commencing with Section 263) to Title 4 of Part 1 of, and to repeal Section 706.033 of, the Code of Civil Procedure, relating to civil procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 2394, as introduced, Brownley. Civil process and notices: ministerial officers.

(1) Existing law provides for the service of process and notices, including a writ or summons issued in the course of judicial proceedings, by the sheriff or other ministerial officer. Certain documents and records relating to the service of process and notices, including any direction or authority by a party or his or her attorney to a sheriff in respect to the execution or return of process and instructions from a judgment creditor to a levying officer, are required to be in writing, as specified.

This bill would generally authorize a levying officer, as defined, to electronically transmit and receive documents and records relating to service of process and notices, including any writ, order, notice, or other paper relating to enforcement of judgments. The bill would require specified information to be included with the electronic transmission, and would require a levying officer to exclude or redact certain identifiers from any document or record made available to the public. The bill would provide additional safeguards and procedures relating

to the electronic transmission of documents and records, and make other conforming changes.

(2) Existing law requires a writ of execution, possession, or sale, and written instructions from a judgment creditor to a levying officer relating to the enforcement of a judgment, to include specified information.

This bill would require those process documents to specify certain additional information, including the type of legal entity of the judgment debtor, if other than a natural person. The bill also would require a writ of execution, possession, or sale to include a statement indicating whether the case is limited or unlimited.

(3) Existing law specifies procedures for issuance and return of, and a 180-day-expiration period for, postjudgment writs of execution. Among other things, the levying officer is required to return the writ to the court, together with a report of his or her actions and an accounting of amounts collected and costs incurred, within specified time periods.

This bill would revise and recast these provisions by, among other things, deleting the 180-day-expiration period and, instead, authorizing a levying officer to enforce a writ in his or her possession. The bill would authorize the levying officer to file with the court a return of his or her actions, amounts collected, and costs incurred, in lieu of returning the paper version of an original writ of execution. The return would be required to be filed, and the writ would expire, within those specified time periods. The bill also would require the levying officer to file with the court an accounting of his or her actions upon the request of the creditor. The bill would make other conforming changes.

(4) Existing law requires an earnings withholding order to be served by personal delivery or by registered or certified mail.

This bill would authorize a levying officer to electronically serve a garnishment levy, including an earnings withholding order, as specified.

(5) The Documentary Transfer Tax Act authorizes the board of supervisors of a county or city and county to impose a tax upon specified instruments that transfer specified interests in real property.

Existing law requires the levying officer conducting the sale of real property that has been levied upon, when the purchaser pays the amount due, to execute and deliver a deed of sale to the purchaser and record a duplicate of the deed of sale in the office of the county recorder.

This bill would clarify that the purchaser of levied upon real property is responsible for paying the documentary transfer tax.

(6) Existing law establishes procedures, as specified, as an alternative to issuing a warrant for contempt, pursuant to which a court may issue an arrest warrant for a witness who failed to appear pursuant to a subpoena or a person who failed to appear pursuant to a court order. Existing law specifies the contents of the arrest warrant, including the signature of the magistrate issuing the warrant.

This bill, instead, would require the arrest warrant to include the signature or name of the judicial officer issuing the warrant.

(7) By increasing the duties of local ministerial officers relating to the service of process and notice, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 SECTION 1. Section 262 of the Code of Civil Procedure is  
2 amended to read:

3 262. ~~No~~*The direction or authority by of a party or his or her*  
4 *attorney to a sheriff, in respect to the execution of process or return*  
5 *thereof, or to any related act or omission relating thereto, is not*  
6 *available to discharge or excuse the sheriff from a liability for*  
7 *neglect or misconduct, unless it is contained in a writing, signed*  
8 *by the attorney of the party, including the signature or name of*  
9 *the attorney of the party, or by the party, if he or she has no*  
10 *attorney. Documents or records described by this section may be*  
11 *transmitted electronically pursuant to Chapter 2 (commencing*  
12 *with Section 263).*

13 SEC. 2. Section 262.1 of the Code of Civil Procedure is  
14 amended to read:

15 262.1. A sheriff or other ministerial officer is justified in the  
16 execution of, and shall execute, all process and orders regular on  
17 their face and issued by competent authority, whatever may be the

1 defect in the proceedings upon which they were issued. *Documents*  
 2 *or records described by this section may be transmitted*  
 3 *electronically pursuant to Chapter 2 (commencing with Section*  
 4 *263).*

5 SEC. 3. Section 262.2 of the Code of Civil Procedure is  
 6 amended to read:

7 262.2. Except as otherwise provided, the officer executing  
 8 process shall, so long as he *or she* retains the original process,  
 9 show it to any *interested* person ~~interested therein~~, upon request.  
 10 ~~He~~ *The officer* shall show ~~it~~ *the process*, with all papers attached,  
 11 at his *or her* office whenever the office is open for business.  
 12 *Documents or records described by this section may be transmitted*  
 13 *electronically pursuant to Chapter 2 (commencing with Section*  
 14 *263).*

15 SEC. 4. Section 262.4 of the Code of Civil Procedure is  
 16 amended to read:

17 262.4. ~~When~~ *If* the sheriff sells real estate, under and by virtue  
 18 of an execution or order of court, ~~he~~ *the sheriff*, or his *or her*  
 19 successors in office, shall execute and deliver to the purchaser or  
 20 purchasers all ~~such~~ deeds and conveyances ~~as are~~ required by law  
 21 and necessary for the purpose, and ~~such~~ *those* deeds and  
 22 conveyances shall be ~~as~~ valid in law as if they had been executed  
 23 by the sheriff who made the sale. *Documents or records described*  
 24 *by this section may be transmitted electronically pursuant to*  
 25 *Chapter 2 (commencing with Section 263).*

26 SEC. 5. Chapter 2 (commencing with Section 263) is added  
 27 to Title 4 of Part 1 of the Code of Civil Procedure, to read:

28  
 29 CHAPTER 2. LEVYING OFFICER ELECTRONIC TRANSACTIONS  
 30 ACT

31  
 32 263. (a) This chapter may be cited as the Levying Officer  
 33 Electronic Transactions Act.

34 (b) The Legislature finds and declares that modern technologies  
 35 offer alternatives to paper-based systems and provide the means  
 36 to create, store, retrieve, and transmit records and documents in  
 37 electronic form resulting in increased efficiency, taxpayer savings,  
 38 and improved public access to levying officers. It is the intent of  
 39 the Legislature in enacting this act to accommodate current and  
 40 future technologies based on industry standards.

1 263.1. As used in this chapter, the following terms have the  
2 following definitions:

3 (a) “Document” includes, but is not limited to, instructions,  
4 release, notice to financial institution, earnings withholding order,  
5 modification of an earnings withholding order, garnishment, writ,  
6 subpoena, court order, warrant of arrest, or other judicial process  
7 electronically created as an original document or as a copy of a  
8 paper document.

9 (b) “Electronic” means relating to technology having electrical,  
10 digital, magnetic, wireless, optical, electromagnetic, or similar  
11 capabilities.

12 (c) “Electronic record” means a document or record created,  
13 generated, sent, communicated, received, or stored by electronic  
14 means.

15 (d) “Electronic signature” means an electronic sound, symbol,  
16 or process attached to, or logically associated with, an electronic  
17 record and executed or adopted by a person with the intent to sign  
18 the electronic record.

19 (e) “Fax” is an abbreviation for “facsimile” and refers, as  
20 indicated by the context, to a facsimile transmission or to a  
21 document so transmitted.

22 (f) “Fax machine” means a machine that can send and receive  
23 a facsimile transmission using industry standards and includes a  
24 fax modem connected to a computer.

25 (g) “Fax transmission” means the electronic transmission and  
26 reconstruction of a document that prints a duplicate of the original  
27 document at the receiving end. “Fax transmission” includes, but  
28 is not limited to, the use of a facsimile machine or the process of  
29 integrating an electronic fax software application to automate the  
30 sending and receiving of a faxed document as an electronic record,  
31 in portable data format, by e-mail or similar electronic means.

32 (h) “Feasible” means a levying officer is required to utilize an  
33 information processing system only to the extent that the levying  
34 officer has the resources and technological capacity to do so.

35 (i) “Information processing system” means an electronic system  
36 for creating, generating, sending, receiving, storing, displaying,  
37 retrieving, or processing information.

38 (j) “Instructions” means a written request to a levying officer  
39 to serve process, perform a levy, execute an arrest warrant, or  
40 perform some other act.

1 (k) "Legal entity" means the legal form of an artificial person  
2 and includes a corporation, defunct corporation, unincorporated  
3 association, partnership, public agency, limited liability company,  
4 joint stock company or association, and limited liability partnership.

5 (l) "Levying officer" means the sheriff or marshal acting as a  
6 ministerial officer pursuant to Section 26608 of the Government  
7 Code.

8 (m) "Person" means a natural or artificial person.

9 (n) "Public access" means the ability of a levying officer to  
10 receive and transmit records or documents in electronic form to  
11 and from the public by means of an information processing system  
12 that is based on industry standards or is in the public domain.

13 (o) "Record" means information that is inscribed on a tangible  
14 medium, or that is stored in an electronic or other medium and is  
15 retrievable in perceivable form.

16 (p) "Release" means a written instruction to a levying officer  
17 to release property under levy.

18 (q) "Technical problem" means the inability of the levying  
19 officer to receive an electronic transmission during regular business  
20 hours on a particular court day.

21 (r) "Transaction" means an action or set of actions occurring  
22 between two or more persons relating to the conduct of business,  
23 commercial, or governmental affairs.

24 (s) "Transmission record" means the electronic record or  
25 document printed by the sending fax machine, stating the telephone  
26 number of the receiving fax machine, the number of pages sent,  
27 the transmission time and date, and an indication of any errors in  
28 transmission.

29 263.2. (a) A levying officer may utilize an information  
30 processing system to create, generate, send, receive, store, display,  
31 retrieve, or process information, electronic records, and documents  
32 when feasible and based on industry standards.

33 (b) If a technical problem prevents the levying officer from  
34 receiving an electronic transmission during regular business hours  
35 on a particular court day, and the electronic sender demonstrates  
36 an attempt to electronically transmit the document on that day, the  
37 levying officer may deem the document or record as filed on that  
38 day.

39 263.3. (a) A levying officer may process an electronic record  
40 or document transmitted by a facsimile machine in the same

1 manner as the paper record or document upon which the electronic  
2 record or document is based.

3 (b) A facsimile cover sheet shall accompany the faxed record  
4 or document and include all of the following information:

- 5 (1) The name of the sender.
- 6 (2) The fax number of the sender.
- 7 (3) The name of the levying officer.
- 8 (4) The fax number of the levying officer.
- 9 (5) A description of the record or document, including its name,  
10 if any, and the number of pages.

11 (c) The person faxing the record or document shall do all of the  
12 following:

- 13 (1) Retain the paper version of the record or document.
- 14 (2) Print or otherwise retain a transmission record of the fax  
15 transmission.
- 16 (3) Deliver the paper version of the record, document, or  
17 transmission record to the levying officer within five days after a  
18 request to do so has been mailed to the sender by the levying  
19 officer.

20 (d) The levying officer shall retain the facsimile cover sheet  
21 together with the faxed record or document.

22 (e) The levying officer may electronically copy and store the  
23 printed cover sheet, record, or document as an electronic record.

24 (f) The fax is deemed to be received by the levying officer at  
25 the time of transmission if both of the following apply:

- 26 (1) The transmission is made between 8 a.m. and 4 p.m.,  
27 inclusive, on a day other than Saturday, Sunday, or a court holiday.
- 28 (2) The levying officer does not receive an electronic reply  
29 indicating the transaction was unsuccessful.

30 (g) The fax is deemed to be received by the levying officer on  
31 the next court day after the transmission if both of the following  
32 apply:

- 33 (1) The transmission is made after 4 p.m., or on Saturday,  
34 Sunday, or a court holiday.
- 35 (2) The levying officer does not receive an electronic reply  
36 indicating the transaction was unsuccessful.

37 263.4. (a) A levying officer may print or process an electronic  
38 record in the place of, and in the same manner as, the paper record  
39 or document upon which the electronic record is based.

- 1 (b) An electronic record sent to a levying officer shall be
- 2 accompanied with all of the following information:
- 3 (1) The name of the sender.
- 4 (2) The electronic address of the sender.
- 5 (3) The name of the levying officer.
- 6 (4) The electronic address or fax number of the levying officer.
- 7 (c) The person transmitting the electronic record shall do both
- 8 of the following:
- 9 (1) Retain the paper version of the record or document.
- 10 (2) Deliver the paper version of the record or document to the
- 11 levying officer within five days after a request to do so has been
- 12 mailed to the sender by the levying officer.
- 13 (d) An electronic signature is not required for any electronic
- 14 record transmitted to or from the levying officer.
- 15 263.5. (a) In addition to any other law, a levying officer may
- 16 electronically serve a garnishment levy, including an earnings
- 17 withholding order, if all of the following apply:
- 18 (1) The garnishee provides the levying officer with an electronic
- 19 address or fax number at which the garnishee agrees to accept
- 20 service.
- 21 (2) The garnishee is located within the county of the levying
- 22 officer.
- 23 (3) The garnishee has not notified the levying officer that the
- 24 garnishee will no longer accept service electronically.
- 25 (4) The levying officer retains an electronic record of the
- 26 transaction.
- 27 (b) Electronic service is deemed complete at the time of
- 28 transmission if both of the following apply:
- 29 (1) The transmission is made between 8 a.m. and 4 p.m.,
- 30 inclusive, on a day other than Saturday, Sunday, or a court holiday.
- 31 (2) The levying officer does not receive an electronic reply
- 32 indicating the transaction was unsuccessful.
- 33 (c) Electronic service is deemed complete on the next court day
- 34 after the transmission if both of the following apply:
- 35 (1) The transmission is made after 4 p.m., or on Saturday,
- 36 Sunday, or a court holiday.
- 37 (2) The levying officer does not receive an electronic reply
- 38 indicating the transaction was unsuccessful.
- 39 (d) A garnishee may electronically transmit a memorandum of
- 40 garnishee, employer's return, or other document, in a portable data



1 format, to the levying officer at the electronic address or fax  
2 number provided by the levying officer.

3 (e) The levying officer may electronically transmit additional  
4 orders and documents, including instructions to release some or  
5 all funds under levy to the garnishee.

6 (f) An electronic signature is not required for any document  
7 electronically transmitted to or from the levying officer.

8 (g) The software for reading electronic documents shall be in  
9 the public domain or generally available at a reasonable cost.

10 263.6. (a) In lieu of returning to court the paper version of an  
11 original writ of execution, the levying officer may retain the  
12 original writ or an electronic copy of the original writ and file only  
13 a return of the levying officer's actions.

14 (b) If the original writ is not returned to court as provided in  
15 subdivision (a), the levying officer shall retain, for not less than  
16 two years after the levying officer's return is filed with court, each  
17 of the following, as applicable:

18 (1) The original paper writ or digital image of the writ.

19 (2) The memorandum of garnishee.

20 (3) The employer's return.

21 (4) An inventory of the levied property.

22 (c) A creditor seeking the issuance of a writ directed to another  
23 county may direct the levying officer to file an accounting of the  
24 levying officer's actions with the court.

25 (1) The filing of the accounting described in this subdivision  
26 does not constitute a return of the writ.

27 (2) The accounting shall indicate that the levying officer is in  
28 possession of an active writ.

29 263.7. (a) A levying officer shall exclude or redact the  
30 following identifiers from any record or document made available  
31 to the public:

32 (1) Social security number.

33 (2) Financial account number.

34 (b) If an identifier is redacted, only the last four digits of the  
35 number may be used.

36 (c) A levying officer also shall exclude or redact the identifiers  
37 listed in subdivision (a) from any writ return filed with the court.

38 (d) The term "public" does not include the creditor, debtor,  
39 garnishee, or third-party claimant.

1 (e) The levying officer shall not be liable for inadvertently  
2 failing to exclude or redact an identifier after making a reasonable  
3 effort to do so.

4 SEC. 6. Section 684.130 of the Code of Civil Procedure is  
5 amended to read:

6 684.130. (a) If the levying officer is required by ~~any provision~~  
7 ~~of this title~~ to serve any writ, order, notice, or other paper on any  
8 person, the judgment creditor shall include in the instructions to  
9 the levying officer the correct name and address of the person. The  
10 judgment creditor shall use reasonable diligence to ascertain the  
11 correct name and address of the person.

12 (b) Unless the levying officer has actual knowledge that the  
13 name or address included in the instructions is incorrect, the  
14 levying officer shall rely on the instructions in serving the writ,  
15 order, notice, or other paper on the person.

16 (c) *Documents or records described by this section may be*  
17 *transmitted electronically pursuant to Chapter 2 (commencing*  
18 *with Section 263) of Title 4 of Part 1.*

19 SEC. 7. Section 687.010 of the Code of Civil Procedure is  
20 amended to read:

21 687.010. (a) The judgment creditor shall give the levying  
22 officer instructions in writing. The instructions shall ~~be signed by~~  
23 *include the signature or name of the judgment creditor's attorney*  
24 *of record or, if the judgment creditor does not have an attorney of*  
25 *record, by the judgment creditor. The instructions shall contain*  
26 *the information needed or requested by the levying officer to*  
27 *comply with the provisions of this title, including but not limited*  
28 *to:*

29 (1) An adequate description of any property to be levied upon.

30 (2) A statement whether the property is a dwelling.

31 (3) If the property is a dwelling, whether it is real or personal  
32 property.

33 (4) *The name of the judgment debtor. If the judgment debtor is*  
34 *other than a natural person, the type of legal entity shall be stated.*

35 (b) Subject to subdivision (c), the levying officer shall act in  
36 accordance with the written instructions to the extent the actions  
37 are taken in conformance with the provisions of this title.

38 (c) Except to the extent the levying officer has actual knowledge  
39 that the information is incorrect, the levying officer may rely on  
40 any information contained in the written instructions.

1 *(d) Documents or records described by this section may be*  
2 *transmitted electronically pursuant to Chapter 2 (commencing*  
3 *with Section 263) of Title 4 of Part 1.*

4 SEC. 8. Section 687.040 of the Code of Civil Procedure is  
5 amended to read:

6 687.040. (a) The levying officer or registered process server  
7 is not liable for actions taken in conformance with ~~the provisions~~  
8 ~~of this title, including actions taken in conformance with the~~  
9 ~~provisions of this title~~ in reliance on information contained in the  
10 written instructions of the judgment creditor, or in reliance on  
11 information provided to the levying officer by a registered process  
12 server pursuant to subdivision (d) of Section 699.080 ~~or~~,  
13 subdivision (e) of Section 706.101 ~~or~~, subdivision (b) of Section  
14 715.040, or *any* other provision, except to the extent the levying  
15 officer or registered process server has actual knowledge that the  
16 information is incorrect. Nothing in this subdivision limits any  
17 liability the judgment creditor may have if the levying officer or  
18 registered process server acts on the basis of incorrect information  
19 given in the written instructions.

20 (b) Unless the levying officer is negligent in the care or handling  
21 of the property, the levying officer is not liable to either the  
22 judgment debtor or the judgment creditor for loss by fire, theft,  
23 injury, or damage of any kind to personal property while (1) in the  
24 possession of the levying officer, either in a warehouse or other  
25 storage place or in the custody of a keeper, or (2) in transit to or  
26 from a warehouse or other storage place.

27 *(c) Documents or records described by this section may be*  
28 *transmitted electronically pursuant to Chapter 2 (commencing*  
29 *with Section 263) of Title 4 of Part 1.*

30 SEC. 9. Section 699.060 of the Code of Civil Procedure is  
31 amended to read:

32 699.060. (a) The levying officer shall release property levied  
33 upon when the levying officer receives a written direction to release  
34 the property from the judgment creditor's attorney of record or, if  
35 the judgment creditor does not have an attorney of record, from  
36 the judgment creditor, or when the levying officer receives a  
37 certified copy of a court order for release, or when otherwise  
38 required to release the property. *The release shall include the*  
39 *signature or name of the attorney or judgment creditor issuing the*

1 *release*. The release extinguishes any execution lien or attachment  
2 lien in favor of the judgment creditor on the property released.

3 (b) If the property to be released has been taken into custody  
4 under the levy, it shall be released to the person from whom it was  
5 taken unless otherwise ordered by the court. If the person does not  
6 claim the property to be released, the levying officer shall retain  
7 custody of the property and shall serve on ~~such~~ *the* person a notice  
8 of where possession of the property may be obtained. Service shall  
9 be made personally or by mail. If the person does not claim the  
10 property within 30 days after the notice is served, the levying  
11 officer shall sell the property ~~(other than cash which does not have~~  
12 ~~a value exceeding its face value)~~ in the manner provided by Article  
13 6 (commencing with Section 701.510), *other than cash, which*  
14 *does not have a value exceeding its face value*. The levying officer  
15 shall deposit the proceeds of sale and cash, after first deducting  
16 the levying officer's costs, with the county treasurer of the county  
17 where the property is located, payable to the order of the person.  
18 If the amount deposited is not claimed by the person, or the legal  
19 representative of the person, within five years after the deposit is  
20 made; by making application to the treasurer or other official  
21 designated by the county, it shall be paid into the general fund of  
22 the county.

23 (c) If the property to be released has not been taken into custody  
24 under the levy, the levying officer shall release the property by  
25 issuing a written notice of release and serving it on the person who  
26 was served with a copy of the writ and a notice of levy to create  
27 the lien. Service shall be made personally or by mail.

28 (d) If the property to be released was levied upon by recording  
29 or filing a copy of the writ and a notice of levy, the levying officer  
30 shall record or file a written notice of release in the same office.

31 (e) The levying officer is not liable for releasing property in  
32 accordance with this section nor is any other person liable for  
33 acting in conformity with the release.

34 (f) *Documents or records described by this section may be*  
35 *transmitted electronically pursuant to Chapter 2 (commencing*  
36 *with Section 263) of Title 4 of Part 1.*

37 SEC. 10. Section 699.510 of the Code of Civil Procedure is  
38 amended to read:

39 699.510. (a) Subject to subdivision (b), after entry of a money  
40 judgment, a writ of execution shall be issued by the clerk of the

1 court, upon application of the judgment creditor, and shall be  
2 directed to the levying officer in the county where the levy is to  
3 be made and to any registered process server. The clerk of the  
4 court shall give priority to the application for, and issuance of,  
5 writs of execution on orders or judgments for child support and  
6 spousal support. A separate writ shall be issued for each county  
7 where a levy is to be made. Writs may be issued successively until  
8 the money judgment is satisfied, except that a new writ may not  
9 be issued for a county ~~until the expiration of 180 days after the~~  
10 ~~issuance of a prior writ for that county~~ unless the prior writ is first  
11 returned.

12 (b) If the judgment creditor seeks a writ of execution to enforce  
13 a judgment made, entered, or enforceable pursuant to the Family  
14 Code, in addition to the requirements of this article, the judgment  
15 creditor shall satisfy the requirements of any applicable provisions  
16 of the Family Code.

17 (c) (1) The writ of execution shall be issued in the name of the  
18 judgment debtor as listed on the judgment and ~~may~~ shall include  
19 the additional name or names, *and the type of legal entity*, by which  
20 the judgment debtor is known, as set forth in the affidavit of  
21 identity, as defined in Section 680.135, filed by the judgment  
22 creditor with the application for issuance of the writ of execution.  
23 Prior to the clerk of the court issuing a writ of execution containing  
24 any additional name or names by which the judgment debtor is  
25 known that are not listed on the judgment, the court shall approve  
26 the affidavit of identity. If the court determines, without a hearing  
27 or a notice, that the affidavit of identity states sufficient facts upon  
28 which the judgment creditor has identified the additional names  
29 of the judgment debtor, the court shall authorize the issuance of  
30 the writ of execution with the additional name or names.

31 (2) In any case where the writ of execution lists any name other  
32 than that listed on the judgment, the person in possession or control  
33 of the levied property, if other than the judgment debtor, shall not  
34 pay to the levying officer the amount or deliver the property being  
35 levied upon until being notified to do so by the levying officer.  
36 The levying officer may not require the person, if other than the  
37 judgment debtor, in possession or control of the levied property  
38 to pay the amount or deliver the property levied upon until the  
39 expiration of 15 days after service of notice of levy.

1 (3) If a person who is not the judgment debtor has property  
 2 erroneously subject to an enforcement of judgment proceeding  
 3 based upon an affidavit of identity, the person shall be entitled to  
 4 the recovery of reasonable attorney’s fees and costs from the  
 5 judgment creditor incurred in releasing the person’s property from  
 6 a writ of execution, in addition to any other damages or penalties  
 7 to which an aggrieved person may be entitled to by law, including  
 8 the provisions of Division 4 (commencing with Section 720.010).

9 SEC. 11. Section 699.520 of the Code of Civil Procedure is  
 10 amended to read:

11 699.520. The writ of execution shall require the levying officer  
 12 to whom it is directed to enforce the money judgment and shall  
 13 include the following information:

- 14 (a) The date of issuance of the writ.
- 15 (b) The title of the court where the judgment is entered and the  
 16 cause and number of the action.
- 17 (c) The name and address of the judgment creditor and the name  
 18 and last known address of the judgment debtor. *If the judgment*  
 19 *debtor is other than a natural person, the type of legal entity shall*  
 20 *be stated.*
- 21 (d) The date of the entry of the judgment and of any subsequent  
 22 renewals and where entered in the records of the court.
- 23 (e) The total amount of the money judgment as entered or  
 24 renewed, together with costs thereafter added to the judgment  
 25 pursuant to Section 685.090 and the accrued interest on the  
 26 judgment from the date of entry or renewal of the judgment to the  
 27 date of issuance of the writ, reduced by any partial satisfactions  
 28 and by any amounts no longer enforceable.
- 29 (f) The amount required to satisfy the money judgment on the  
 30 date the writ is issued.
- 31 (g) The amount of interest accruing daily on the principal  
 32 amount of the judgment from the date the writ is issued.
- 33 (h) Whether any person has requested notice of sale under the  
 34 judgment and, if so, the name and mailing address of ~~such~~ *that*  
 35 person.
- 36 (i) The sum of the fees and costs added to the judgment pursuant  
 37 to Section 6103.5 or 68511.3 of the Government Code, and which  
 38 is in addition to the amount owing to the judgment creditor on the  
 39 judgment.

1 (j) Whether the writ of execution includes any additional names  
2 of the judgment debtor pursuant to an affidavit of identity, as  
3 defined in Section 680.135.

4 (k) *A statement indicating whether the case is limited or*  
5 *unlimited.*

6 SEC. 12. Section 699.530 of the Code of Civil Procedure is  
7 amended to read:

8 699.530. (a) Upon delivery of the writ of execution to the  
9 levying officer to whom the writ is directed, together with the  
10 written instructions of the judgment creditor, the levying officer  
11 shall execute the writ in the manner prescribed by law.

12 (b) The levying officer ~~may~~ *shall* not levy upon, *sell, or file a*  
13 *lien on* any property ~~under the writ after the expiration of 180 days~~  
14 ~~from the date the writ was issued unless the writ is in the levying~~  
15 ~~officer's possession.~~

16 (c) *Documents or records described by this section may be*  
17 *transmitted electronically pursuant to Chapter 2 (commencing*  
18 *with Section 263) of Title 4 of Part 1.*

19 SEC. 13. Section 699.560 of the Code of Civil Procedure is  
20 amended to read:

21 699.560. (a) Except as provided in subdivisions (b) and (c),  
22 *the writ expires, and* the levying officer to whom the writ of  
23 execution is delivered shall return the writ to the court, ~~together~~  
24 ~~with a report of~~ *or store the writ as provided in Section 263.6, and*  
25 *file a return with the court reporting* the levying officer's actions  
26 ~~and an accounting of,~~ amounts collected, and costs incurred, at the  
27 earliest of the following times:

28 (1) Two years from the date of issuance of the writ, *unless*  
29 *paragraph (1) of subdivision (a) of Section 706.022 is applicable.*

30 (2) Promptly after all of the duties under the writ are performed.

31 (3) When return is requested in writing by the judgment creditor.

32 (4) If no levy takes place under the writ within 180 days after  
33 its issuance, promptly after the expiration of the 180-day period.

34 (5) Upon expiration of the time for enforcement of the money  
35 judgment.

36 (b) If a levy has been made under Section 700.200 upon an  
37 interest in personal property in the estate of a decedent, the writ  
38 shall be returned within the time prescribed in Section 700.200.

39 (c) If a levy has been made under Section 5103 of the Family  
40 Code on the judgment debtor's right to the payment of benefits

1 from an employee pension benefit plan, the writ shall be returned  
2 within the time prescribed in that section.

3 ~~(d) If a levy has been made under the Wage Garnishment Law~~  
4 ~~(Chapter 5 (commencing with Section 706.010)), and the earnings~~  
5 ~~withholding order remains in effect, the writ of execution shall be~~  
6 ~~returned as provided in subdivision (a) and a supplemental return~~  
7 ~~shall be made as provided in Section 706.033.~~

8 *(d) A levying officer shall file an accounting containing the*  
9 *information required in a levying officer's return, as provided by*  
10 *subdivision (a), if both of the following apply:*

11 *(1) The levying officer continues to retain possession of the writ.*

12 *(2) The judgment creditor requests the levying officer to file an*  
13 *accounting with the court in anticipation of applying for the*  
14 *issuance of a writ to another county.*

15 *The accounting may be transmitted electronically pursuant to*  
16 *Chapter 2 (commencing with Section 263) of Title 4 of Part 1.*

17 SEC. 14. Section 701.030 of the Code of Civil Procedure is  
18 amended to read:

19 701.030. (a) At the time of service of a copy of the writ of  
20 execution and a notice of levy on a third person, the levying officer  
21 shall request the third person to give the levying officer a  
22 garnishee's memorandum containing the information required by  
23 this section. Within 10 days after the request is made, the third  
24 person shall mail or deliver the garnishee's memorandum to the  
25 levying officer whether or not the levy is effective.

26 (b) The garnishee's memorandum shall be executed under oath  
27 and shall contain the following information:

28 (1) A description of any property of the judgment debtor sought  
29 to be levied upon that is not delivered to the levying officer and  
30 the reason for not delivering the property.

31 (2) A description of any property of the judgment debtor not  
32 sought to be levied upon that is in the possession or under the  
33 control of the third person at the time of levy.

34 (3) A statement of the amount and terms of any obligation to  
35 the judgment debtor sought to be levied upon that is due and  
36 payable and is not paid to the levying officer, and the reason for  
37 not paying the obligation.

38 (4) A statement of the amount and terms of any obligation to  
39 the judgment debtor sought to be levied upon that is not due and  
40 payable at the time of levy.



1 (5) A statement of the amount and terms of any obligation to  
2 the judgment debtor at the time of levy not sought to be levied  
3 upon.

4 (6) A description of claims and rights of other persons to the  
5 property or obligation levied upon that are known to the third  
6 person and the names and addresses of ~~such~~ *those* other persons.

7 (c) If a garnishee's memorandum is received from the third  
8 person, the levying officer shall *retain a copy and* promptly mail  
9 or deliver a copy of the memorandum to the judgment creditor ~~and~~  
10 ~~attach the original to the writ when it is returned to the court. If a~~  
11 ~~garnishee's memorandum is not received from the third person,~~  
12 ~~the levying officer shall so state in the return.~~

13 (d) Except as provided in subdivisions (e) and (f), if a third  
14 person does not give the levying officer a garnishee's memorandum  
15 within the time provided in subdivision (a), or does not provide  
16 complete information, the third person may, in the court's  
17 discretion, be required to pay the costs and reasonable attorney's  
18 fees incurred in any proceedings to obtain the information required  
19 in the garnishee's memorandum.

20 (e) Notwithstanding subdivision (a), when the levy is made  
21 upon a deposit account or upon property in a safe deposit box, the  
22 financial institution need not give a garnishee's memorandum to  
23 the levying officer if the financial institution fully complies with  
24 the levy and, if a garnishee's memorandum is required, the  
25 garnishee's memorandum need provide information with respect  
26 only to property ~~which~~ *that* is carried on the records available at  
27 the office or branch where the levy is made.

28 (f) Notwithstanding subdivision (a), the third person need not  
29 give a garnishee's memorandum to the levying officer if both of  
30 the following conditions are satisfied:

31 (1) The third person has delivered to the levying officer all of  
32 the property sought to be levied upon.

33 (2) The third person has paid to the levying officer the amount  
34 due at the time of levy on any obligation to the judgment debtor  
35 that was levied upon, and there is no additional amount that  
36 thereafter will become payable on the obligation levied upon.

37 (g) *Documents or records described by this section may be*  
38 *transmitted electronically pursuant to Chapter 2 (commencing*  
39 *with Section 263) of Title 4 of Part 1.*

1 SEC. 15. Section 701.660 of the Code of Civil Procedure is  
 2 amended to read:

3 701.660. When the purchaser of an interest in real property  
 4 pays the amount due *to the levying officer, including any amount*  
 5 *required to be paid as a documentary transfer tax pursuant to*  
 6 *Section 11911 of the Revenue and Taxation Code*, the levying  
 7 officer conducting the sale shall execute and deliver a deed of sale  
 8 to the purchaser ~~and~~, record a duplicate of the deed of sale in the  
 9 office of the county recorder, *and forward to the county or city*  
 10 *and county any documentary transfer tax paid by the purchaser.*

11 SEC. 16. Section 706.026 of the Code of Civil Procedure is  
 12 amended to read:

13 706.026. (a) The levying officer shall receive and account for  
 14 all amounts paid by the employer pursuant to Section 706.025 and  
 15 shall pay the amounts so received over to the person entitled thereto  
 16 at least once every 30 days.

17 (b) ~~At least once every two years, the~~ *The* levying officer shall  
 18 ~~file an account a return with the court, as provided by Section~~  
 19 ~~699.560, for all amounts collected under the earnings withholding~~  
 20 ~~order, including costs and interest added to the amount due.~~

21 SEC. 17. Section 706.033 of the Code of Civil Procedure is  
 22 repealed.

23 ~~706.033. If the writ is returned before the earnings withholding~~  
 24 ~~order terminates, on termination of the earnings withholding order~~  
 25 ~~the levying officer shall make a supplemental return on the writ.~~  
 26 ~~The supplemental return shall contain the same information as an~~  
 27 ~~original return pursuant to Section 699.560.~~

28 SEC. 18. Section 706.108 of the Code of Civil Procedure is  
 29 amended to read:

30 706.108. (a) If a writ of execution has been issued to the county  
 31 where the judgment debtor’s employer is to be served, and the  
 32 ~~time specified in subdivision (b) of Section 699.530 for levy on~~  
 33 ~~property under the writ has not expired~~ *writ has not been returned*  
 34 *to the court by the levying officer*, a judgment creditor may deliver  
 35 an application for issuance of an earnings withholding order to a  
 36 registered process server who may then issue an earnings  
 37 withholding order.

38 (b) If the registered process server has issued the earnings  
 39 withholding order, the registered process server, before serving  
 40 the earnings withholding order, shall deposit with the levying

1 officer a copy of the writ of execution, the application for issuance  
2 of an earnings withholding order, and a copy of the earnings  
3 withholding order, and shall pay the fee provided by Section 26750  
4 of the Government Code.

5 (c) A registered process server may serve an earnings  
6 withholding order on an employer whether the earnings  
7 withholding order was issued by a levying officer or by a registered  
8 process server, ~~but no earnings withholding order may be served~~  
9 ~~after the time specified in subdivision (b) of Section 699.530.~~ In  
10 performing this function, the registered process server shall serve  
11 upon the designated employer all of the following:

12 (1) The original and one copy of the earnings withholding order.

13 (2) The form for the employer's return.

14 (3) The notice to the employee of the earnings withholding  
15 order.

16 (4) A copy of the employer's instructions referred to in Section  
17 706.127, except as otherwise prescribed in rules adopted by the  
18 Judicial Council.

19 (d) Within five court days after service under this section, all  
20 of the following shall be filed with the levying officer:

21 (1) The writ of execution, if it is not already in the hands of the  
22 levying officer.

23 (2) Proof of service on the employer of the papers listed in  
24 subdivision (c).

25 (3) Instructions in writing, as required by the provisions of  
26 Section 687.010.

27 (e) If the fee provided by Section 26750 of the Government  
28 Code has been paid, the levying officer shall perform all other  
29 duties required by this chapter as if the levying officer had served  
30 the earnings withholding order. If the registered process server  
31 does not comply with ~~subdivisions~~ *subdivision* (b), where  
32 applicable, and *subdivision* (d), the service of the earnings  
33 withholding order is ineffective, and the levying officer is not  
34 required to perform any duties under the order and may terminate  
35 the order and ~~may~~ release any withheld earnings to the judgment  
36 debtor.

37 (f) The fee for services of a registered process server under this  
38 section shall be allowed as a recoverable cost pursuant to Section  
39 1033.5.

1 SEC. 19. Section 712.020 of the Code of Civil Procedure is  
2 amended to read:

3 712.020. A writ of possession or sale issued pursuant to this  
4 division shall require the levying officer to whom it is directed to  
5 enforce the judgment and shall include the following information:

6 (a) The date of issuance of the writ.

7 (b) The title of the court where the judgment for possession or  
8 sale is entered and the cause and number of the action.

9 (c) The name and address of the creditor and the name and last  
10 known address of the judgment debtor. *If the judgment debtor is*  
11 *other than a natural person, the type of legal entity shall be stated.*

12 (d) The date the judgment was entered, and the date of any  
13 subsequent renewals, and where entered in the records of the court.

14 (e) If the judgment for possession or sale includes a money  
15 judgment, the amount required to satisfy the money judgment on  
16 the date the writ is issued, and the amount of interest accruing  
17 daily on the principal amount of the judgment from the date the  
18 writ is issued may be included on the writ at the option of the  
19 creditor.

20 (f) Whether any person has requested notice of sale under the  
21 judgment and, if so, the name and address of ~~such~~ *that* person.

22 (g) Any other information required to be included in the  
23 particular writ.

24 (h) *A statement indicating whether the case is limited or*  
25 *unlimited.*

26 SEC. 20. Section 712.030 of the Code of Civil Procedure is  
27 amended to read:

28 712.030. (a) Upon delivery of the writ of possession or sale  
29 to the levying officer to whom the writ is directed, together with  
30 the written instructions of the judgment creditor, the levying officer  
31 shall execute the writ in the manner prescribed by law.

32 (b) The levying officer ~~may~~ *shall* not levy upon or ~~otherwise~~  
33 ~~seize property under the writ after the expiration of 180 days from~~  
34 ~~the date the writ was issued~~ *sell any property unless the writ is in*  
35 *the levying officer's possession.*

36 (c) *Documents or records described by this section may be*  
37 *transmitted electronically pursuant to Chapter 2 (commencing*  
38 *with Section 263) of Title 4 of Part 1.*

39 SEC. 21. Section 1993 of the Code of Civil Procedure is  
40 amended to read:

1 1993. (a) (1) As an alternative to issuing a warrant for  
2 contempt pursuant to paragraph (5) or (9) of subdivision (a) of  
3 Section 1209, the court may issue a warrant for the arrest of a  
4 witness who failed to appear pursuant to a subpoena or a person  
5 who failed to appear pursuant to a court order. The court, upon  
6 proof of the service of the subpoena or order, may issue a warrant  
7 to the sheriff of the county in which the witness or person may be  
8 located and the sheriff shall, upon payment of fees as provided for  
9 in Section 26744.5 of the Government Code, arrest the witness or  
10 person and bring him or her before the court.

11 (2) Before issuing a warrant for a failure to appear pursuant to  
12 a subpoena pursuant to this section, the court shall issue a “failure  
13 to appear” notice informing the person subject to the subpoena  
14 that a failure to appear in response to the notice may result in the  
15 issuance of a warrant. This notice requirement may be omitted  
16 only upon a showing that the appearance of the person subject to  
17 the subpoena is material to the case and that urgency dictates the  
18 person’s immediate appearance.

19 (b) The warrant shall contain all of the following:

20 (1) The title and case number of the action.

21 (2) The name and physical description of the person to be  
22 arrested.

23 (3) The last known address of the person to be arrested.

24 (4) The date of issuance and county in which it is issued.

25 (5) The signature of the ~~magistrate~~ *or name of the judicial officer*  
26 issuing the warrant, the title of his or her office, and the name of  
27 the court.

28 (6) A command to arrest the person for failing to appear pursuant  
29 to the subpoena or court order, and specifying the date of service  
30 of the subpoena or court order.

31 (7) A command to bring the person to be arrested before the  
32 issuing court, or the nearest court if in session, for the setting of  
33 bail in the amount of the warrant or to release on the person’s own  
34 recognizance. Any person so arrested shall be released from  
35 custody if he or she cannot be brought before the court within 12  
36 hours of arrest, and the person shall not be arrested if the court  
37 will not be in session during the 12-hour period following the  
38 arrest.

39 (8) A statement indicating the expiration date of the warrant as  
40 determined by the court.

1 (9) The amount of bail.

2 (10) An endorsement for nighttime service if good cause is  
3 shown, as provided in Section 840 of the Penal Code.

4 (11) A statement indicating whether the person may be released  
5 upon a promise to appear, as provided by Section 1993.1. The  
6 court shall permit release upon a promise to appear, unless it makes  
7 a written finding that the urgency and materiality of the person's  
8 appearance in court precludes use of the promise to appear process.

9 (12) The date and time to appear in court if arrested and released  
10 pursuant to paragraph (11).

11 SEC. 22. If the Commission on State Mandates determines  
12 that this act contains costs mandated by the state, reimbursement  
13 to local agencies and school districts for those costs shall be made  
14 pursuant to Part 7 (commencing with Section 17500) of Division  
15 4 of Title 2 of the Government Code.