

AMENDED IN ASSEMBLY APRIL 28, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2394

Introduced by Assembly Member Brownley

February 19, 2010

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~~, *706.101*, 712.020, ~~712.030~~, and 1993 of, *and* 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 amended, 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 *specified* 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 *retain the original writ or an electronic copy and to electronically file with the court a return of his or her actions, and accounting of amounts collected, and costs incurred, in lieu of returning the paper version of an original writ of execution. The return of the levying officer's actions and the accounting would be required to be filed with the court, 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, instead, would require an earnings withholding order to be served by personal delivery or by first-class mail, 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. The direction or authority of a party or his or her attorney
4 to a sheriff, in respect to the execution of process or return thereof,
5 or to any related act or omission, is not available to discharge or
6 excuse the sheriff from a liability for neglect or misconduct, unless
7 it is contained in ~~a writing~~ *written instructions* by the attorney of
8 the party, including the signature ~~or~~ *and* name of the attorney of
9 the party, or by the party, if he or she has no attorney. ~~Documents~~
10 ~~or records described by this section~~ *Subject to subdivision (c) of*

1 *Section 263, the instructions* may be transmitted electronically
 2 pursuant to Chapter 2 (commencing with Section 263).

3 ~~SEC. 2. Section 262.1 of the Code of Civil Procedure is~~
 4 ~~amended to read:~~

5 ~~262.1. A sheriff or other ministerial officer is justified in the~~
 6 ~~execution of, and shall execute, all process and orders regular on~~
 7 ~~their face and issued by competent authority, whatever may be the~~
 8 ~~defect in the proceedings upon which they were issued. Documents~~
 9 ~~or records described by this section may be transmitted~~
 10 ~~electronically pursuant to Chapter 2 (commencing with Section~~
 11 ~~263).~~

12 ~~SEC. 3.~~

13 *SEC. 2.* Section 262.2 of the Code of Civil Procedure is
 14 amended to read:

15 262.2. Except as otherwise provided, the officer executing
 16 process shall, so long as he or she retains the original process,
 17 show it to any interested person, upon request. The officer shall
 18 show the process, with all papers, *or electronic copies of all papers,*
 19 attached, at his or her office whenever the office is open for
 20 business. ~~Documents or records described by this section may be~~
 21 ~~transmitted electronically pursuant to Chapter 2 (commencing with~~
 22 ~~Section 263).~~

23 ~~SEC. 4.~~

24 *SEC. 3.* Section 262.4 of the Code of Civil Procedure is
 25 amended to read:

26 262.4. If the sheriff sells real estate, under and by virtue of an
 27 execution or order of court, the sheriff, or his or her successors in
 28 office, shall execute and deliver to the purchaser or purchasers all
 29 deeds and conveyances required by law and necessary for the
 30 purpose, and those deeds and conveyances shall be valid in law
 31 as if they had been executed by the sheriff who made the sale.
 32 ~~Documents or records described by this section may be transmitted~~
 33 *The deeds and conveyances may be recorded* electronically
 34 pursuant to Chapter 2 (commencing with Section 263) *if they*
 35 *comply with the Electronic Recording Delivery Act of 2004 (Article*
 36 *6 (commencing with Section 27390) of Chapter 6 of Part 3 of*
 37 *Division 2 of Title 3 of the Government Code).*

38 ~~SEC. 5.~~

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

1 CHAPTER 2. LEVYING OFFICER ELECTRONIC TRANSACTIONS
2 ACT

3
4 263. (a) This chapter may be cited as the Levying Officer
5 Electronic Transactions Act.

6 (b) The Legislature finds and declares that modern technologies
7 offer alternatives to paper-based systems and provide the means
8 to create, store, retrieve, and transmit records and documents in
9 electronic form resulting in increased efficiency, taxpayer savings,
10 and improved public access to levying officers. It is the intent of
11 the Legislature in enacting this act to accommodate current and
12 future technologies based on industry standards.

13 (c) *Nothing in this chapter shall be construed to require a court
14 or levying officer to comply with any of its provisions unless the
15 court and the levying officer have (1) jointly determined that both
16 the court and the sheriff's department have the resources and the
17 technological capacity to do so, and (2) have mutually agreed to
18 electronically process documents as provided in this chapter.*

19 263.1. As used in this chapter, the following terms have the
20 following definitions:

21 ~~(a) "Document" includes, but is not limited to, instructions,
22 release, notice to financial institution, earnings withholding order,
23 modification of an earnings withholding order, garnishment, writ,
24 subpoena, court order, warrant of arrest, or other judicial process
25 electronically created as an original document or as a copy of a
26 paper document.~~

27 ~~(b) "Electronic" means relating to technology having electrical,
28 digital, magnetic, wireless, optical, electromagnetic, or similar
29 capabilities.~~

30 ~~(a) "Electronic mail" or "e-mail" means an electronic message
31 that is sent to an e-mail address and transmitted between two or
32 more telecommunications devices, computers, or electronic devices
33 capable of receiving electronic messages through a local, regional,
34 or global computer network, whether or not the message is
35 converted to hard copy format after receipt, viewed upon
36 transmission, or stored for later retrieval.~~

37 ~~(e)~~
38 (b) "Electronic record" means a document or record created,
39 generated, sent, communicated, received, or stored by electronic
40 means.

- 1 ~~(d)~~
- 2 (c) “Electronic signature” means an electronic sound, symbol,
- 3 or process attached to, or logically associated with, an electronic
- 4 record and executed or adopted by a person with the intent to sign
- 5 the electronic record.
- 6 ~~(e)~~
- 7 (d) “Fax” is an abbreviation for “facsimile” and refers, as
- 8 indicated by the context, to a facsimile transmission or to a
- 9 document so transmitted.
- 10 ~~(f)~~
- 11 (e) “Fax machine” means a machine that can send and receive
- 12 a facsimile transmission using industry standards and includes a
- 13 fax modem connected to a computer.
- 14 ~~(g)~~
- 15 (f) “Fax transmission” means the electronic transmission and
- 16 reconstruction of a document that prints a duplicate of the original
- 17 document at the receiving end. “Fax transmission” includes, but
- 18 is not limited to, the use of a facsimile machine or the process of
- 19 integrating an electronic fax software application to automate the
- 20 sending and receiving of a faxed document as an electronic record,
- 21 in portable data format, by e-mail or similar electronic means.
- 22 ~~(h) “Feasible” means a levying officer is required to utilize an~~
- 23 ~~information processing system only to the extent that the levying~~
- 24 ~~officer has the resources and technological capacity to do so.~~
- 25 ~~(i)~~
- 26 (g) “Information processing system” means an electronic system
- 27 for creating, generating, sending, receiving, storing, displaying,
- 28 retrieving, or processing information, *but does not include a fax*
- 29 *machine.*
- 30 ~~(j) “Instructions” means~~
- 31 (h) “Instructions” and “levying officer instructions” mean a
- 32 written request to a levying officer to serve process, perform a
- 33 levy, execute an arrest warrant, or perform some other act.
- 34 ~~(k)~~
- 35 (i) “Legal entity” means the legal form of an artificial person
- 36 and includes a corporation, defunct corporation, unincorporated
- 37 association, partnership, public agency, limited liability company,
- 38 joint stock company or association, and limited liability partnership.
- 39 ~~(l)~~

1 (j) “Levying officer” means the sheriff or marshal acting as a
2 ministerial officer pursuant to Section 26608 of the Government
3 Code.

4 (m) “Person” means a natural or artificial person.

5 (n) “Public access” means the ability of a levying officer to
6 receive and transmit records or documents in electronic form to
7 and from the public by means of an information processing system
8 that is based on industry standards or is in the public domain.

9 (o)

10 (k) “Record” means information that is inscribed on a tangible
11 medium, or that is stored in an electronic or other medium and is
12 retrievable in perceivable form.

13 (p) “Release” means a written instruction to a levying officer
14 to release property under levy.

15 (q) “Technical problem” means the inability of the levying
16 officer to receive an electronic transmission during regular business
17 hours on a particular court day.

18 (r) “Transaction” means an action or set of actions occurring
19 between two or more persons relating to the conduct of business,
20 commercial, or governmental affairs.

21 (s)

22 (l) “Transmission record” means the electronic record or
23 document printed by the sending fax machine, stating the telephone
24 number of the receiving fax machine, the number of pages sent,
25 the transmission time and date, and an indication of any errors in
26 transmission.

27 263.2. (a) A levying officer may utilize an information
28 processing system to create, generate, send, receive, store, display,
29 retrieve, or process information, electronic records, and documents
30 ~~when feasible and based on industry standards.~~ *when based on*
31 *industry standards and only to the extent that the levying officer*
32 *has the resources and technological capacity to do so.*

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

1 263.3. ~~(a) Whenever the fax transmission of a document or~~
2 ~~record to a levying officer is authorized pursuant to this chapter,~~
3 ~~all of the following shall apply:~~

4 ~~(a) A levying officer may process act upon an electronic record~~
5 ~~or document transmitted by a facsimile machine in the same~~
6 ~~manner as the paper record or document upon which the electronic~~
7 ~~record or document is based.~~

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

10 ~~(1) The name of the sender.~~

11 ~~(2) The fax number of the sender.~~

12 ~~(3) The name of the levying officer.~~

13 ~~(4) The fax number of the levying officer.~~

14 ~~(5) A description of the record or document, including its name,~~
15 ~~if any, and the number of pages.~~

16 ~~(6) A statement directing the recipient of the faxed document~~
17 ~~or record to fax to the sender a confirmation, if true, that the fax~~
18 ~~was properly received.~~

19 ~~(e) The person faxing the record or document shall do all of the~~

20 ~~(c) A person authorized to fax a record or document to the~~
21 ~~levying officer pursuant to this chapter shall do all of the following:~~

22 ~~(1) Retain the paper version of the record or document.~~

23 ~~(2) Print or otherwise retain a transmission record of the fax~~
24 ~~transmission.~~

25 ~~(3) Deliver the paper version of the record, document, or~~
26 ~~transmission record to the levying officer within five days after a~~
27 ~~request to do so has been mailed to the sender by the levying~~
28 ~~officer.~~

29 ~~(d) The levying officer shall retain the facsimile cover sheet~~
30 ~~together with the faxed record or document.~~

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

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

35 ~~(1) The transmission is made between 8 a.m. and 4 p.m.,~~
36 ~~inclusive, on a day other than Saturday, Sunday, or a court holiday.~~

37 ~~(2) The levying officer does not receive an electronic reply~~
38 ~~indicating the transaction was unsuccessful.~~

1 ~~(g) The fax is deemed to be received by the levying officer on~~
2 ~~the next court day after the transmission if both of the following~~
3 ~~apply:~~

4 ~~(1) The transmission is made after 4 p.m., or on Saturday,~~
5 ~~Sunday, or a court holiday.~~

6 ~~(2) The levying officer does not receive an electronic reply~~
7 ~~indicating the transaction was unsuccessful.~~

8 263.4. (a) A levying officer may ~~print or process~~ *create, store,*
9 *print, or transmit* an electronic record in the place of, and in the
10 same manner as, the paper record or document upon which the
11 electronic record is based.

12 (b) An electronic record ~~sent~~ *transmitted* to a levying officer
13 shall be accompanied ~~with~~ *by* all of the following information:

14 (1) The name of the sender.

15 (2) The electronic address of the sender.

16 (3) The name of the levying officer.

17 (4) The electronic address or fax number of the levying officer.

18 (c) The person transmitting the electronic record shall do both
19 of the following:

20 (1) Retain the paper version of the record or document.

21 (2) Deliver the paper version of the record or document to the
22 levying officer within five days after a request to do so has been
23 mailed to the sender by the levying officer.

24 ~~(d) An electronic signature is not required for any electronic~~
25 ~~record transmitted to or from the levying officer.~~

26 *(d) For the purpose of this section, "transmission" of an*
27 *electronic record includes sending the electronic record included*
28 *in, or in conjunction with, an electronic mail message, as defined*
29 *in Section 263.1.*

30 ~~263.5. (a) In addition to any other law, a levying officer may~~
31 ~~electronically serve a garnishment levy, including an earnings~~
32 ~~withholding order, if all of the following apply:~~

33 ~~(1) The garnishee provides the levying officer with an electronic~~
34 ~~address or fax number at which the garnishee agrees to accept~~
35 ~~service.~~

36 ~~(2) The garnishee is located within the county of the levying~~
37 ~~officer.~~

38 ~~(3) The garnishee has not notified the levying officer that the~~
39 ~~garnishee will no longer accept service electronically.~~

- 1 ~~(4) The levying officer retains an electronic record of the~~
2 ~~transaction.~~
- 3 ~~(b) Electronic service is deemed complete at the time of~~
4 ~~transmission if both of the following apply:~~
- 5 ~~(1) The transmission is made between 8 a.m. and 4 p.m.,~~
6 ~~inclusive, on a day other than Saturday, Sunday, or a court holiday.~~
- 7 ~~(2) The levying officer does not receive an electronic reply~~
8 ~~indicating the transaction was unsuccessful.~~
- 9 ~~(c) Electronic service is deemed complete on the next court day~~
10 ~~after the transmission if both of the following apply:~~
- 11 ~~(1) The transmission is made after 4 p.m., or on Saturday,~~
12 ~~Sunday, or a court holiday.~~
- 13 ~~(2) The levying officer does not receive an electronic reply~~
14 ~~indicating the transaction was unsuccessful.~~
- 15 ~~(d) A garnishee may electronically transmit a memorandum of~~
16 ~~garnishee, employer's return, or other document, in a portable data~~
17 ~~format, to the levying officer at the electronic address or fax~~
18 ~~number provided by the levying officer.~~
- 19 ~~(e) The levying officer may electronically transmit additional~~
20 ~~orders and documents, including instructions to release some or~~
21 ~~all funds under levy to the garnishee.~~
- 22 ~~(f) An electronic signature is not required for any document~~
23 ~~electronically transmitted to or from the levying officer.~~
- 24 ~~(g) The software for reading electronic documents shall be in~~
25 ~~the public domain or generally available at a reasonable cost.~~
- 26 263.6. (a) In lieu of returning to court the paper version of an
27 original writ of execution, the levying officer may retain the
28 original writ or an electronic copy of the original writ and file only
29 a return of the levying officer's actions.
- 30 (b) If the original writ is not returned to court as provided in
31 subdivision (a), the levying officer shall retain, for not less than
32 two years after the levying officer's return is filed with court, each
33 of the following, as applicable:
- 34 (1) The original paper writ or digital image of the writ.
35 (2) The memorandum of garnishee.
36 (3) The employer's return.
37 (4) An inventory of the levied property.
- 38 (c) A creditor seeking the issuance of a writ directed to another
39 county may direct the levying officer to file an accounting of the
40 levying officer's actions with the court.

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

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

5 263.7. (a) A levying officer shall exclude or redact the
6 following identifiers from any record or document made available
7 to the public:

8 (1) Social security number.

9 (2) Financial account number.

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

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

14 (d) The term “public” does not include the creditor, debtor,
15 garnishee, or third-party claimant.

16 ~~(e) The levying officer shall not be liable for inadvertently
17 failing to exclude or redact an identifier after making a reasonable
18 effort to do so.~~

19 ~~SEC. 6. Section 684.130 of the Code of Civil Procedure is
20 amended to read:~~

21 ~~684.130. (a) If the levying officer is required by this title to
22 serve any writ, order, notice, or other paper on any person, the
23 judgment creditor shall include in the instructions to the levying
24 officer the correct name and address of the person. The judgment
25 creditor shall use reasonable diligence to ascertain the correct name
26 and address of the person.~~

27 ~~(b) Unless the levying officer has actual knowledge that the
28 name or address included in the instructions is incorrect, the
29 levying officer shall rely on the instructions in serving the writ,
30 order, notice, or other paper on the person.~~

31 ~~(c) Documents or records described by this section may be
32 transmitted electronically pursuant to Chapter 2 (commencing with
33 Section 263) of Title 4 of Part 1.~~

34 ~~SEC. 7.~~

35 ~~SEC. 5. Section 687.010 of the Code of Civil Procedure is
36 amended to read:~~

37 ~~687.010. (a) The judgment creditor shall give the levying
38 officer instructions in writing. The instructions shall include the
39 signature ~~or~~ and name of the judgment creditor’s attorney of record
40 or, if the judgment creditor does not have an attorney of record,~~

1 by the judgment creditor. The instructions shall contain the
 2 information needed or requested by the levying officer to comply
 3 with this title, including but not limited to:

- 4 (1) An adequate description of any property to be levied upon.
- 5 (2) A statement whether the property is a dwelling.
- 6 (3) If the property is a dwelling, whether it is real or personal
 7 property.
- 8 (4) The name of the judgment debtor. If the judgment debtor is
 9 other than a natural person, the type of legal entity shall be stated.

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

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

16 (d) ~~Documents or records described by this section~~ *The levying*
 17 *officer instructions* may be transmitted electronically *to the levying*
 18 *officer* pursuant to Chapter 2 (commencing with Section 263) of
 19 Title 4 of Part 1.

20 ~~SEC. 8. Section 687.040 of the Code of Civil Procedure is~~
 21 ~~amended to read:~~

22 ~~687.040. (a) The levying officer or registered process server~~
 23 ~~is not liable for actions taken in conformance with this title,~~
 24 ~~including actions taken in conformance with this title in reliance~~
 25 ~~on information contained in the written instructions of the judgment~~
 26 ~~creditor, or in reliance on information provided to the levying~~
 27 ~~officer by a registered process server pursuant to subdivision (d)~~
 28 ~~of Section 699.080, subdivision (e) of Section 706.101, subdivision~~
 29 ~~(b) of Section 715.040, or any other provision, except to the extent~~
 30 ~~the levying officer or registered process server has actual~~
 31 ~~knowledge that the information is incorrect. Nothing in this~~
 32 ~~subdivision limits any liability the judgment creditor may have if~~
 33 ~~the levying officer or registered process server acts on the basis~~
 34 ~~of incorrect information given in the written instructions.~~

35 (b) ~~Unless the levying officer is negligent in the care or handling~~
 36 ~~of the property, the levying officer is not liable to either the~~
 37 ~~judgment debtor or the judgment creditor for loss by fire, theft,~~
 38 ~~injury, or damage of any kind to personal property while (1) in the~~
 39 ~~possession of the levying officer, either in a warehouse or other~~

1 ~~storage place or in the custody of a keeper, or (2) in transit to or~~
2 ~~from a warehouse or other storage place.~~

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

6 ~~SEC. 9.~~

7 *SEC. 6.* Section 699.060 of the Code of Civil Procedure is
8 amended to read:

9 699.060. (a) The levying officer shall release property levied
10 upon when the levying officer receives a written direction to release
11 the property from the judgment creditor's attorney of record or, if
12 the judgment creditor does not have an attorney of record, from
13 the judgment creditor, or when the levying officer receives a
14 certified copy of a court order for release, or when otherwise
15 required to release the property. The release shall include the
16 signature ~~or~~ and name of the attorney or judgment creditor issuing
17 the release. The release extinguishes any execution lien or
18 attachment lien in favor of the judgment creditor on the property
19 released.

20 (b) If the property to be released has been taken into custody
21 under the levy, it shall be released to the person from whom it was
22 taken unless otherwise ordered by the court. If the person does not
23 claim the property to be released, the levying officer shall retain
24 custody of the property and shall serve on the person a notice of
25 where possession of the property may be obtained. Service shall
26 be made personally or by mail. If the person does not claim the
27 property within 30 days after the notice is served, the levying
28 officer shall sell the property in the manner provided by Article 6
29 (commencing with Section 701.510), other than cash, which does
30 not have a value exceeding its face value. The levying officer shall
31 deposit the proceeds of sale and cash, after first deducting the
32 levying officer's costs, with the county treasurer of the county
33 where the property is located, payable to the order of the person.
34 If the amount deposited is not claimed by the person, or the legal
35 representative of the person, within five years after the deposit is
36 made by making application to the treasurer or other official
37 designated by the county, it shall be paid into the general fund of
38 the county.

39 (c) If the property to be released has not been taken into custody
40 under the levy, the levying officer shall release the property by

1 issuing a written notice of release and serving it on the person who
2 was served with a copy of the writ and a notice of levy to create
3 the lien. Service shall be made personally or by mail.

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

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

10 ~~(f) Documents or records described by this section may be~~
11 *(f) The written direction to release property specified in*
12 *subdivision (a) may be transmitted electronically to the levying*
13 *officer pursuant to Chapter 2 (commencing with Section 263) of*
14 *Title 4 of Part 1.*

15 ~~SEC. 10.~~

16 *SEC. 7.* Section 699.510 of the Code of Civil Procedure is
17 amended to read:

18 699.510. (a) Subject to subdivision (b), after entry of a money
19 judgment, a writ of execution shall be issued by the clerk of the
20 court, upon application of the judgment creditor, and shall be
21 directed to the levying officer in the county where the levy is to
22 be made and to any registered process server. The clerk of the
23 court shall give priority to the application for, and issuance of,
24 writs of execution on orders or judgments for child support and
25 spousal support. A separate writ shall be issued for each county
26 where a levy is to be made. Writs may be issued successively until
27 the money judgment is satisfied, except that a new writ may not
28 be issued for a county *until the expiration of 180 days after the*
29 *issuance of a prior writ for that county unless the prior writ is first*
30 *returned.*

31 (b) If the judgment creditor seeks a writ of execution to enforce
32 a judgment made, entered, or enforceable pursuant to the Family
33 Code, in addition to the requirements of this article, the judgment
34 creditor shall satisfy the requirements of any applicable provisions
35 of the Family Code.

36 (c) (1) The writ of execution shall be issued in the name of the
37 judgment debtor as listed on the judgment and shall include the
38 additional name or names, and the type of legal entity, by which
39 the judgment debtor is known, as set forth in the affidavit of
40 identity, as defined in Section 680.135, filed by the judgment

1 creditor with the application for issuance of the writ of execution.
2 Prior to the clerk of the court issuing a writ of execution containing
3 any additional name or names by which the judgment debtor is
4 known that are not listed on the judgment, the court shall approve
5 the affidavit of identity. If the court determines, without a hearing
6 or a notice, that the affidavit of identity states sufficient facts upon
7 which the judgment creditor has identified the additional names
8 of the judgment debtor, the court shall authorize the issuance of
9 the writ of execution with the additional name or names.

10 (2) In any case where the writ of execution lists any name other
11 than that listed on the judgment, the person in possession or control
12 of the levied property, if other than the judgment debtor, shall not
13 pay to the levying officer the amount or deliver the property being
14 levied upon until being notified to do so by the levying officer.
15 The levying officer may not require the person, if other than the
16 judgment debtor, in possession or control of the levied property
17 to pay the amount or deliver the property levied upon until the
18 expiration of 15 days after service of notice of levy.

19 (3) If a person who is not the judgment debtor has property
20 erroneously subject to an enforcement of judgment proceeding
21 based upon an affidavit of identity, the person shall be entitled to
22 the recovery of reasonable attorney's fees and costs from the
23 judgment creditor incurred in releasing the person's property from
24 a writ of execution, in addition to any other damages or penalties
25 to which an aggrieved person may be entitled to by law, including
26 Division 4 (commencing with Section 720.010).

27 ~~SEC. 11.~~

28 *SEC. 8.* Section 699.520 of the Code of Civil Procedure is
29 amended to read:

30 699.520. The writ of execution shall require the levying officer
31 to whom it is directed to enforce the money judgment and shall
32 include the following information:

- 33 (a) The date of issuance of the writ.
- 34 (b) The title of the court where the judgment is entered and the
35 cause and number of the action.
- 36 (c) The name and address of the judgment creditor and the name
37 and last known address of the judgment debtor. If the judgment
38 debtor is other than a natural person, the type of legal entity shall
39 be stated.

1 (d) The date of the entry of the judgment and of any subsequent
2 renewals and where entered in the records of the court.

3 (e) The total amount of the money judgment as entered or
4 renewed, together with costs thereafter added to the judgment
5 pursuant to Section 685.090 and the accrued interest on the
6 judgment from the date of entry or renewal of the judgment to the
7 date of issuance of the writ, reduced by any partial satisfactions
8 and by any amounts no longer enforceable.

9 (f) The amount required to satisfy the money judgment on the
10 date the writ is issued.

11 (g) The amount of interest accruing daily on the principal
12 amount of the judgment from the date the writ is issued.

13 (h) Whether any person has requested notice of sale under the
14 judgment and, if so, the name and mailing address of that person.

15 (i) The sum of the fees and costs added to the judgment pursuant
16 to Section 6103.5 or 68511.3 of the Government Code, and which
17 is in addition to the amount owing to the judgment creditor on the
18 judgment.

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

22 (k) A statement indicating whether the case is limited or
23 unlimited.

24 ~~SEC. 12. Section 699.530 of the Code of Civil Procedure is~~
25 ~~amended to read:~~

26 ~~699.530. (a) Upon delivery of the writ of execution to the~~
27 ~~levying officer to whom the writ is directed, together with the~~
28 ~~written instructions of the judgment creditor, the levying officer~~
29 ~~shall execute the writ in the manner prescribed by law.~~

30 ~~(b) The levying officer shall not levy upon, sell, or file a lien~~
31 ~~on any property unless the writ is in the levying officer's~~
32 ~~possession.~~

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

36 ~~SEC. 13.~~

37 ~~SEC. 9. Section 699.560 of the Code of Civil Procedure is~~
38 ~~amended to read:~~

39 ~~699.560. (a) Except as provided in subdivisions (b) and (c),~~
40 ~~the writ expires, and the levying officer to whom the writ of~~

1 execution is delivered shall return the writ to the court, or store
2 the writ as provided in Section 263.6, and file a return with the
3 court reporting the levying officer's actions; *and an accounting of*
4 amounts collected, and costs incurred, at the earliest of the
5 following times:

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

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

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

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

12 (5) Upon expiration of the time for enforcement of the money
13 judgment.

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

17 (c) If a levy has been made under Section 5103 of the Family
18 Code on the judgment debtor's right to the payment of benefits
19 from an employee pension benefit plan, the writ shall be returned
20 within the time prescribed in that section.

21 ~~(d) A levying officer shall file an accounting containing the~~
22 ~~information required in a levying officer's return, as provided by~~
23 ~~subdivision (a), if both of the following apply:~~

24 ~~(1) The levying officer continues to retain possession of the~~
25 ~~writ.~~

26 ~~(2) The judgment creditor requests the levying officer to file an~~
27 ~~accounting with the court in anticipation of applying for the~~
28 ~~issuance of a writ to another county.~~

29 ~~The accounting may be transmitted electronically pursuant to~~
30 ~~Chapter 2 (commencing with Section 263) of Title 4 of Part 1.~~

31 *(d) If a levy has been made under the Wage Garnishment Law*
32 *(Chapter 5 (commencing with Section 706.010)), and the earnings*
33 *withholding order remains in effect, the writ of execution shall be*
34 *returned as provided in subdivision (a) and a supplemental return*
35 *shall be made as provided in Section 706.033.*

36 *(e) A levying officer may electronically file with the court the*
37 *return, containing the information required by subdivision (a),*
38 *pursuant to Chapter 2 (commencing with Section 263) of Title 4*
39 *of Part 1.*

1 ~~SEC. 14.~~

2 *SEC. 10.* Section 701.030 of the Code of Civil Procedure is
3 amended to read:

4 701.030. (a) At the time of service of a copy of the writ of
5 execution and a notice of levy on a third person, the levying officer
6 shall request the third person to give the levying officer a
7 garnishee’s memorandum containing the information required by
8 this section. Within 10 days after the request is made, the third
9 person shall mail or deliver the garnishee’s memorandum to the
10 levying officer whether or not the levy is effective.

11 (b) The garnishee’s memorandum shall be executed under oath
12 and shall contain the following information:

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

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

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

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

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

29 (6) A description of claims and rights of other persons to the
30 property or obligation levied upon that are known to the third
31 person and the names and addresses of those other persons.

32 (c) If a garnishee’s memorandum is received from the third
33 person, the levying officer shall retain a copy and promptly mail
34 or deliver a copy of the memorandum to the judgment creditor.

35 (d) Except as provided in subdivisions (e) and (f), if a third
36 person does not give the levying officer a garnishee’s memorandum
37 within the time provided in subdivision (a), or does not provide
38 complete information, the third person may, in the court’s
39 discretion, be required to pay the costs and reasonable attorney’s

1 fees incurred in any proceedings to obtain the information required
2 in the garnishee's memorandum.

3 (e) Notwithstanding subdivision (a), when the levy is made
4 upon a deposit account or upon property in a safe deposit box, the
5 financial institution need not give a garnishee's memorandum to
6 the levying officer if the financial institution fully complies with
7 the levy and, if a garnishee's memorandum is required, the
8 garnishee's memorandum need provide information with respect
9 only to property that is carried on the records available at the office
10 or branch where the levy is made.

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

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

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

20 ~~(g) Documents or records described by this section may be
21 transmitted electronically~~

22 (g) *The garnishee may electronically transmit the garnishee's*
23 *memorandum to the levying officer pursuant to Chapter 2*
24 *(commencing with Section 263) of Title 4 of Part 1.*

25 ~~SEC. 15.~~

26 *SEC. 11.* Section 701.660 of the Code of Civil Procedure is
27 amended to read:

28 701.660. When the purchaser of an interest in real property
29 pays the amount due to the levying officer, including any amount
30 required to be paid as a documentary transfer tax pursuant to
31 Section 11911 of the Revenue and Taxation Code, the levying
32 officer conducting the sale shall execute and deliver a deed of sale
33 to the purchaser, record a duplicate of the deed of sale in the office
34 of the county recorder, and forward to the county or city and county
35 any documentary transfer tax paid by the purchaser.

36 ~~SEC. 16.~~

37 *SEC. 12.* Section 706.026 of the Code of Civil Procedure is
38 amended to read:

39 706.026. (a) The levying officer shall receive and account for
40 all amounts paid by the employer pursuant to Section 706.025 and

1 shall pay the amounts so received over to the person entitled thereto
 2 at least once every 30 days.

3 (b) ~~The~~ *At least once every two years, the* levying officer shall
 4 ~~file a return~~ *an accounting* with the court, as provided by Section
 5 699.560, for all amounts collected under the earnings withholding
 6 order, including costs and interest added to the amount due. *The*
 7 *levying officer may electronically file the accounting with the court,*
 8 *pursuant to Chapter 2 (commencing with Section 263) of Title 4*
 9 *of Part 1.*

10 ~~SEC. 17. Section 706.033 of the Code of Civil Procedure is~~
 11 ~~repealed.~~

12 ~~SEC. 18. Section 706.108 of the Code of Civil Procedure is~~
 13 ~~amended to read:~~

14 ~~706.108. (a) If a writ of execution has been issued to the county~~
 15 ~~where the judgment debtor's employer is to be served, and the writ~~
 16 ~~has not been returned to the court by the levying officer, a judgment~~
 17 ~~creditor may deliver an application for issuance of an earnings~~
 18 ~~withholding order to a registered process server who may then~~
 19 ~~issue an earnings withholding order.~~

20 ~~(b) If the registered process server has issued the earnings~~
 21 ~~withholding order, the registered process server, before serving~~
 22 ~~the earnings withholding order, shall deposit with the levying~~
 23 ~~officer a copy of the writ of execution, the application for issuance~~
 24 ~~of an earnings withholding order, and a copy of the earnings~~
 25 ~~withholding order, and shall pay the fee provided by Section 26750~~
 26 ~~of the Government Code.~~

27 ~~(c) A registered process server may serve an earnings~~
 28 ~~withholding order on an employer whether the earnings~~
 29 ~~withholding order was issued by a levying officer or by a registered~~
 30 ~~process server. In performing this function, the registered process~~
 31 ~~server shall serve upon the designated employer all of the~~
 32 ~~following:~~

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

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

35 ~~(3) The notice to the employee of the earnings withholding~~
 36 ~~order.~~

37 ~~(4) A copy of the employer's instructions referred to in Section~~
 38 ~~706.127, except as otherwise prescribed in rules adopted by the~~
 39 ~~Judicial Council.~~

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

3 ~~(1) The writ of execution, if it is not already in the hands of the~~
4 ~~levying officer.~~

5 ~~(2) Proof of service on the employer of the papers listed in~~
6 ~~subdivision (e).~~

7 ~~(3) Instructions in writing, as required by the provisions of~~
8 ~~Section 687.010.~~

9 ~~(e) If the fee provided by Section 26750 of the Government~~
10 ~~Code has been paid, the levying officer shall perform all other~~
11 ~~duties required by this chapter as if the levying officer had served~~
12 ~~the earnings withholding order. If the registered process server~~
13 ~~does not comply with subdivision (b), where applicable, and~~
14 ~~subdivision (d), the service of the earnings withholding order is~~
15 ~~ineffective, and the levying officer is not required to perform any~~
16 ~~duties under the order and may terminate the order and release any~~
17 ~~withheld earnings to the judgment debtor.~~

18 ~~(f) The fee for services of a registered process server under this~~
19 ~~section shall be allowed as a recoverable cost pursuant to Section~~
20 ~~4033.5.~~

21 *SEC. 13. Section 706.101 of the Code of Civil Procedure is*
22 *amended to read:*

23 706.101. (a) An earnings withholding order shall be served
24 by the levying officer upon the employer by delivery of the order
25 to any of the following:

26 (1) The managing agent or person in charge, at the time of
27 service, of the branch or office where the employee works or the
28 office from which the employee is paid. In the case of a state
29 employee, the office from which the employee is paid does not
30 include the Controller's office unless the employee works directly
31 for the Controller's office.

32 (2) Any person to whom a copy of the summons and of the
33 complaint may be delivered to make service on the employer under
34 Article 4 (commencing with Section 416.10) of Chapter 4 of Title
35 5.

36 (b) Service of an earnings withholding order shall be made by
37 personal delivery as provided in Section 415.10 or 415.20 or by
38 delivery by ~~registered or certified mail, postage prepaid, with return~~
39 ~~receipt requested~~ *first-class mail, postage prepaid*. When service
40 is made by *first-class* mail, service is complete at the time ~~the~~

1 ~~return receipt is executed by or on behalf of the recipient of receipt~~
2 ~~of the earnings withholding order, as indicated in the employer's~~
3 ~~return, or the date of mailing if the date of receipt is not indicated~~
4 ~~on the employer's return.~~ If the levying officer attempts service
5 by *first-class* mail under this subdivision and does not receive a
6 ~~return receipt within 15 days from the date of deposit in the mail~~
7 ~~of the earnings withholding order~~ *the employer's return within 15*
8 *days from the date of mailing*, the levying officer shall make service
9 as provided in Article 3 (commencing with Section 415.10) of
10 Chapter 4 of Title 5. *For purposes of this section, "employer's*
11 *return" refers to the Judicial Council-issued form specified by*
12 *Section 706.126.*

13 (c) The state may issue an earnings withholding order directly,
14 without the use of a levying officer, for purposes of collecting
15 overpayments of unemployment compensation or disability benefits
16 pursuant to Article 4 (commencing with Section 1375) of Chapter
17 5 of Part 1 of, and Article 5 (commencing with Section 2735) of
18 Chapter 2 of Part 2 of, Division 1 of the Unemployment Insurance
19 Code. The earnings withholding order shall be served by registered
20 or certified mail, postage prepaid, with return receipt requested.
21 Service is deemed complete at the time the return receipt is
22 executed by, or on behalf of, the recipient. If the state does not
23 receive a return receipt within 15 days from the date of deposit in
24 the mail of the withholding order, the state shall refer the earnings
25 withholding order to a levying officer for service in accordance
26 with subdivision (b).

27 (d) Except as provided in subdivision (b) or (c), service of any
28 notice or document under this chapter may be made by first-class
29 mail, postage prepaid. If service is made on the employer after the
30 employer's return has been received by the levying officer, the
31 service shall be made by first-class mail, postage prepaid, on the
32 person designated in the employer's return to receive notices and
33 at the address indicated in the employer's return, whether or not
34 that address is within the county. This subdivision does not
35 preclude service by personal delivery (1) on the employer before
36 the employer's return has been received by the levying officer or
37 (2) on the person designated in the employer's return after its
38 receipt.

39 (e) Notwithstanding subdivision (b), if the judgment creditor
40 so requests, the levying officer shall make service of the earnings

1 withholding order by personal delivery as provided in Section
2 415.10 or 415.20.

3 ~~SEC. 19.~~

4 *SEC. 14.* Section 712.020 of the Code of Civil Procedure is
5 amended to read:

6 712.020. A writ of possession or sale issued pursuant to this
7 division shall require the levying officer to whom it is directed to
8 enforce the judgment and shall include the following information:

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

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

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

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

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

23 (f) Whether any person has requested notice of sale under the
24 judgment and, if so, the name and address of that person.

25 (g) Any other information required to be included in the
26 particular writ.

27 (h) A statement indicating whether the case is limited or
28 unlimited.

29 ~~SEC. 20.~~ Section 712.030 of the Code of Civil Procedure is
30 amended to read:

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

35 (b) ~~The levying officer shall not levy upon or sell any property~~
36 ~~unless the writ is in the levying officer's possession.~~

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

1 ~~SEC. 21.~~

2 *SEC. 15.* Section 1993 of the Code of Civil Procedure is
3 amended to read:

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

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

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

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

24 (2) The name and physical description of the person to be
25 arrested.

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

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

28 (5) The signature or name of the judicial officer issuing the
29 warrant, the title of his or her office, and the name of the court.

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

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

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

3 (9) The amount of bail.

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

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

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

13 ~~SEC. 22.~~

14 *SEC. 16.* If the Commission on State Mandates determines that
15 this act contains costs mandated by the state, reimbursement to
16 local agencies and school districts for those costs shall be made
17 pursuant to Part 7 (commencing with Section 17500) of Division
18 4 of Title 2 of the Government Code.

19

20

21 **CORRECTIONS:** _____

22 **Title—Line 2.**

23 _____