

Assembly Bill No. 2394

Passed the Assembly August 19, 2010

Chief Clerk of the Assembly

Passed the Senate August 18, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 262, 262.2, 262.4, 687.010, 699.060, 699.510, 699.520, 699.560, 701.030, 701.660, 706.026, 706.101, 712.020, and 1993 of, and to add Chapter 2 (commencing with Section 263) to Title 4 of Part 1 of, the Code of Civil Procedure, relating to civil procedure.

LEGISLATIVE COUNSEL’S DIGEST

AB 2394, 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 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 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 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 an 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 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, 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.

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

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

262. The direction or authority of a party or his or her attorney to a sheriff, in respect to the execution of process or return thereof, or to any related act or omission, is not available to discharge or excuse the sheriff from a liability for neglect or misconduct, unless it is contained in written instructions by the attorney of the party, including the signature and name of the attorney of the party, or by the party, if he or she has no attorney. Subject to subdivision (c) of Section 263, the instructions may be transmitted electronically pursuant to Chapter 2 (commencing with Section 263).

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

262.2. Except as otherwise provided, the officer executing process shall, so long as he or she retains the original process, show it to any interested person, upon request. The officer shall show the process, with all papers, or electronic copies of all papers, attached, at his or her office whenever the office is open for business.

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

262.4. If the sheriff sells real estate, under and by virtue of an execution or order of court, the sheriff, or his or her successors in office, shall execute and deliver to the purchaser or purchasers all deeds and conveyances required by law and necessary for the purpose, and those deeds and conveyances shall be valid in law as if they had been executed by the sheriff who made the sale. The deeds and conveyances may be recorded electronically pursuant

to Chapter 2 (commencing with Section 263) if they comply with the Electronic Recording Delivery Act of 2004 (Article 6 (commencing with Section 27390) of Chapter 6 of Part 3 of Division 2 of Title 3 of the Government Code).

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

CHAPTER 2. LEVYING OFFICER ELECTRONIC TRANSACTIONS
ACT

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

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

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

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

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

(b) "Electronic record" means a document or record created, generated, sent, communicated, received, or stored by electronic means.

(c) "Electronic signature" means an electronic sound, symbol, or process attached to, or logically associated with, an electronic

record and executed or adopted by a person with the intent to sign the electronic record.

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

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

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

(g) “Information processing system” means an electronic system for creating, generating, sending, receiving, storing, displaying, retrieving, or processing information, but does not include a fax machine.

(h) “Instructions” and “levying officer instructions” mean a written request to a levying officer to serve process, perform a levy, execute an arrest warrant, or perform some other act.

(i) “Legal entity” means the legal form of an artificial person and includes a corporation, defunct corporation, unincorporated association, partnership, public agency, limited liability company, joint stock company or association, and limited liability partnership.

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

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

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

263.2. (a) A levying officer may utilize an information processing system to create, generate, send, receive, store, display, retrieve, or process information, electronic records, and documents

when based on industry standards and only to the extent that the levying officer has the resources and technological capacity to do so.

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

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

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

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

- (1) The name of the sender.
- (2) The fax number of the sender.
- (3) The name of the levying officer.
- (4) The fax number of the levying officer.
- (5) A description of the record or document, including its name, if any, and the number of pages.
- (6) A statement directing the recipient of the faxed document or record to fax to the sender a confirmation, if true, that the fax was properly received.

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

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

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

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

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

(b) An electronic record transmitted to a levying officer shall be accompanied by all of the following information:

- (1) The name of the sender.
 - (2) The electronic address of the sender.
 - (3) The name of the levying officer.
 - (4) The electronic address or fax number of the levying officer.
- (c) The person transmitting the electronic record shall do both

of the following:

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

(d) For the purpose of this section, “transmission” of an electronic record includes sending the electronic record included in, or in conjunction with, an electronic mail message, as defined in Section 263.1.

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

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

- (1) The original paper writ or digital image of the writ.
- (2) The memorandum of garnishee.
- (3) The employer’s return.
- (4) An inventory of the levied property.

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

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

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

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

- (1) Social security number.
- (2) Financial account number.

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

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

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

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

687.010. (a) The judgment creditor shall give the levying officer instructions in writing. The instructions shall include the signature and name of the judgment creditor’s attorney of record or, if the judgment creditor does not have an attorney of record, by the judgment creditor. The instructions shall contain the information needed or requested by the levying officer to comply with this title, including but not limited to:

- (1) An adequate description of any property to be levied upon.
- (2) A statement whether the property is a dwelling.
- (3) If the property is a dwelling, whether it is real or personal property.

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

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

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

(d) The levying officer instructions may be transmitted electronically to the levying officer pursuant to Chapter 2 (commencing with Section 263) of Title 4 of Part 1.

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

699.060. (a) The levying officer shall release property levied upon when the levying officer receives a written direction to release the property from the judgment creditor’s attorney of record or, if

the judgment creditor does not have an attorney of record, from the judgment creditor, or when the levying officer receives a certified copy of a court order for release, or when otherwise required to release the property. The release shall include the signature and name of the attorney or judgment creditor issuing the release. The release extinguishes any execution lien or attachment lien in favor of the judgment creditor on the property released.

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

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

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

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

(f) The written direction to release property specified in subdivision (a) may be transmitted electronically to the levying

officer pursuant to Chapter 2 (commencing with Section 263) of Title 4 of Part 1.

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

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

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

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

(2) In any case where the writ of execution lists any name other than that listed on the judgment, the person in possession or control of the levied property, if other than the judgment debtor, shall not pay to the levying officer the amount or deliver the property being

levied upon until being notified to do so by the levying officer. The levying officer may not require the person, if other than the judgment debtor, in possession or control of the levied property to pay the amount or deliver the property levied upon until the expiration of 15 days after service of notice of levy.

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

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

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

- (a) The date of issuance of the writ.
- (b) The title of the court where the judgment is entered and the cause and number of the action.
- (c) The name and address of the judgment creditor and the name and last known address of the judgment debtor. If the judgment debtor is other than a natural person, the type of legal entity shall be stated.
- (d) The date of the entry of the judgment and of any subsequent renewals and where entered in the records of the court.
- (e) The total amount of the money judgment as entered or renewed, together with costs thereafter added to the judgment pursuant to Section 685.090 and the accrued interest on the judgment from the date of entry or renewal of the judgment to the date of issuance of the writ, reduced by any partial satisfactions and by any amounts no longer enforceable.
- (f) The amount required to satisfy the money judgment on the date the writ is issued.
- (g) The amount of interest accruing daily on the principal amount of the judgment from the date the writ is issued.
- (h) Whether any person has requested notice of sale under the judgment and, if so, the name and mailing address of that person.

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Subject to the limitations in subdivision (c) of Section 263, a levying officer may electronically file with the court the return,

containing the information required by subdivision (a), pursuant to Chapter 2 (commencing with Section 263) of Title 4 of Part 1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) At least once every two years, the levying officer shall file an accounting with the court, as provided by Section 699.560, for

all amounts collected under the earnings withholding order, including costs and interest added to the amount due. Subject to the limitations in subdivision (c) of Section 263, the levying officer may electronically file the accounting with the court, pursuant to Chapter 2 (commencing with Section 263) of Title 4 of Part 1.

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

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

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

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

(b) Service of an earnings withholding order shall be made by personal delivery as provided in Section 415.10 or 415.20 or by delivery by first-class mail, postage prepaid. When service is made by first-class mail, service is complete at the time of receipt of the earnings withholding order, as indicated in the employer's return, or the date of mailing if the date of receipt is not indicated on the employer's return. If the levying officer attempts service by first-class mail under this subdivision and does not receive the employer's return within 15 days from the date of mailing, the levying officer shall make service as provided in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5. For purposes of this section, "employer's return" refers to the Judicial Council-issued form specified by Section 706.126.

(c) The state may issue an earnings withholding order directly, without the use of a levying officer, for purposes of collecting overpayments of unemployment compensation or disability benefits pursuant to Article 4 (commencing with Section 1375) of Chapter 5 of Part 1 of, and Article 5 (commencing with Section 2735) of Chapter 2 of Part 2 of, Division 1 of the Unemployment Insurance Code. The earnings withholding order shall be served by registered

or certified mail, postage prepaid, with return receipt requested. Service is deemed complete at the time the return receipt is executed by, or on behalf of, the recipient. If the state does not receive a return receipt within 15 days from the date of deposit in the mail of the withholding order, the state shall refer the earnings withholding order to a levying officer for service in accordance with subdivision (b).

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

(e) Notwithstanding subdivision (b), if the judgment creditor so requests, the levying officer shall make service of the earnings withholding order by personal delivery as provided in Section 415.10 or 415.20.

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

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

(a) The date of issuance of the writ.

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

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

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

(e) If the judgment for possession or sale includes a money judgment, the amount required to satisfy the money judgment on the date the writ is issued, and the amount of interest accruing daily on the principal amount of the judgment from the date the

writ is issued may be included on the writ at the option of the creditor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) The amount of bail.

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

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

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

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

Approved _____, 2010

Governor