

AMENDED IN SENATE JUNE 15, 2005

AMENDED IN ASSEMBLY APRIL 18, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 1742

**Introduced by Committee on Judiciary (Jones (Chair), Evans,
Laird, Levine, Lieber, and Montanez)**

March 2, 2005

An act to amend Section 43.55 of the Civil Code, to amend Sections 116.330, 116.340, 116.780, 128.7, 396b, 415.21, 425.115, and 998 of, and to repeal and add Section 116.725 of, the Code of Civil Procedure, to amend Sections 811.9, 905, 910.4, and 69926.5 of, and to add Section 905.7 to, the Government Code, ~~and~~ to amend Section 123.6 of the Labor Code, *and to amend Sections 16020 and 16058.1 of the Vehicle Code*, relating to courts, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1742, as amended, Committee on Judiciary. Courts: civil procedure.

(1) Under existing law, no liability or cause of action arises against a peace officer making an arrest pursuant to a warrant of arrest regular upon its face, if the peace officer acts without malice and in reasonable belief that the person arrested is the one referred to in the warrant.

This bill would provide that the term "warrant of arrest regular upon its face" includes both a paper arrest warrant issued pursuant to a judicial order and a judicial order entered into an automated warrant system by authorized law enforcement or court personnel, as specified.

(2) Existing law governs procedures in the small claims court. These provisions set forth various time periods for scheduling cases for hearing and specifies methods for service of the claim and order on a defendant. These provisions state that they may not be construed to prevent a court from correcting a clerical error in a judgment or setting aside and vacating a judgment on the ground of an incorrect or erroneous legal basis for the decision.

This bill would provide that, when a claim is filed, the case shall be scheduled for hearing no earlier than 20 days and not more than 70 days from the date of the order, thereby eliminating the various time periods. The bill would require that proof of service of the claim and order be filed at least 5 days before the hearing. The bill would authorize a party to make only one motion to correct a clerical error or set aside and vacate a judgment and provide that a party may have 30 days after the clerk mails notice of entry of judgment to the parties to make that motion.

(3) Existing law requires, until January 1, 2006, that all pleadings filed with a court be signed, except as specified, and that the filing of any paper with a court certifies that specified conditions have been satisfied. Existing law also specifies sanctions for violation of these requirements.

This bill would delete the repeal date of January 1, 2006, contained in these provisions and thereby extend indefinitely the operation of these provisions.

(4) Existing law requires a person to be granted access to a staffed gated community for a reasonable time period for the purpose of performing lawful service of process, as specified.

This bill would also authorize access to a staffed gated community for the purpose of serving a subpoena.

(5) Existing law also governs offers by a party to compromise a dispute that is to be resolved by arbitration.

This bill would require a written offer to compromise to include a provision that allows the accepting party to indicate acceptance of the offer by signing a statement that the offer is accepted, as specified. The bill would also require that any acceptance of the offer, whether made on the document containing the offer or on a separate document of acceptance, to be in writing and signed.

(6) Existing law imposes a surcharge of \$20 for court security in addition to the total court fees collected pursuant to specified provisions and also authorizes the collection of an additional

surcharge in certain cases filed from January 1, 2004 to June 30, 2005, inclusive.

This bill would extend that additional surcharge until June 30, 2006, as specified.

(7) Existing law requires the Judicial Council to provide for the representation or defense of judicial officers and employees by the county counsel or Attorney General, and authorizes such representation or defense of the Judicial Council. Existing law also provides that this representation or defense shall not be the sole basis for the disqualification of a judicial officer or employee in an unrelated action.

This bill would add justices and the Administrative Office of the Courts to the judicial officers to which this provision applies, and specify that representation of the Judicial Council of the Administrative Office of the Courts shall not be the sole basis for disqualification of a judicial officer or employee from an unrelated action.

(8) Existing law sets forth the procedure for filing a claim against a statewide public entity, as specified.

This bill would specify that these procedures also apply to claims against a judicial branch entity.

(9) Existing law authorizes a court in a proceeding for dissolution of marriage or legal separation and prior to the determination of a motion for a change of venue, to consider and make all necessary and proper orders in connection with motions for allowance of temporary spousal support, support of children, and counsel fees and costs.

This bill would revise that provision to additionally apply to proceedings under the Uniform Parentage Act and to authorize the court to consider and determine motions to determine custody of and visitation with children in any of the proceedings to which the provision applies prior to determining the motion for a change of venue.

(10) Existing law requires workers' compensation administrative law judges, as specified, to subscribe to the Code of Judicial Ethics and to not engage in conduct contrary to that code or to the commentary to the Code of Judicial Ethics made by the California Judges Association.

This bill would delete the reference to the California Judges Association within that provision.

(11) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Section 43.55 of the Civil Code is amended to
2 read:

3 43.55. (a) There shall be no liability on the part of, and no
4 cause of action shall arise against, any peace officer who makes
5 an arrest pursuant to a warrant of arrest regular upon its face if
6 the peace officer in making the arrest acts without malice and in
7 the reasonable belief that the person arrested is the one referred
8 to in the warrant.

9 (b) As used in this section, a “warrant of arrest regular upon its
10 face” includes both of the following:

11 (1) A paper arrest warrant that has been issued pursuant to a
12 judicial order.

13 (2) A judicial order that is entered into an automated warrant
14 system by law enforcement or court personnel authorized to
15 make those entries at or near the time the judicial order is made.

16 SEC. 2. Section 116.330 of the Code of Civil Procedure is
17 amended to read:

18 116.330. (a) When a claim is filed, the clerk shall schedule
19 the case for hearing and shall issue an order directing the parties
20 to appear at the time set for the hearing with witnesses and
21 documents to prove their claim or defense. The case shall be
22 scheduled for hearing no earlier than 20 days but not more than
23 70 days from the date of the order.

24 (b) In lieu of the method of setting the case for hearing
25 described in subdivision (a), at the time a claim is filed the clerk
26 may do all of the following:

27 (1) Cause a copy of the claim to be mailed to the defendant by
28 any form of mail providing for a return receipt.

29 (2) On receipt of proof that the claim was served as provided
30 in paragraph (1), issue an order scheduling the case for hearing in
31 accordance with subdivision (a) and directing the parties to
32 appear at the time set for the hearing with witnesses and
33 documents to prove their claim or defense.

1 (3) Cause a copy of the order setting the case for hearing and
2 directing the parties to appear, to be served upon the parties by
3 any form of mail providing for a return receipt.

4 SEC. 3. Section 116.340 of the Code of Civil Procedure is
5 amended to read:

6 116.340. (a) Service of the claim and order on the defendant
7 may be made by any one of the following methods:

8 (1) The clerk may cause a copy of the claim and order to be
9 mailed to the defendant by any form of mail providing for a
10 return receipt.

11 (2) The plaintiff may cause a copy of the claim and order to be
12 delivered to the defendant in person.

13 (3) The plaintiff may cause service of a copy of the claim and
14 order to be made by substituted service as provided in
15 subdivision (a) or (b) of Section 415.20 without the need to
16 attempt personal service on the defendant. For these purposes,
17 substituted service as provided in subdivision (b) of Section
18 415.20 may be made at the office of the sheriff or marshal who
19 shall deliver a copy of the claim and order to any person
20 authorized by the defendant to receive service, as provided in
21 Section 416.90, who is at least 18 years of age, and thereafter
22 mailing a copy of the claim and order to the defendant's usual
23 mailing address.

24 (4) The clerk may cause a copy of the claim to be mailed, the
25 order to be issued, and a copy of the order to be mailed as
26 provided in subdivision (b) of Section 116.330.

27 (b) Proof of service of the claim and order shall be filed with
28 the small claims court at least five days before the hearing.

29 (c) Service of the claim and order on the defendant shall be
30 completed at least 15 days before the hearing date if the
31 defendant resides within the county in which the action is filed,
32 or at least 20 days before the hearing date if the defendant resides
33 outside the county in which the action is filed.

34 (d) Service by the methods described in subdivision (a) shall
35 be deemed complete on the date that the defendant signs the mail
36 return receipt, on the date of the personal service, as provided in
37 Section 415.20, or as established by other competent evidence,
38 whichever applies to the method of service used.

39 (e) Service shall be made within this state, except as provided
40 in subdivisions (f) and (g).

1 (f) The owner of record of real property in California who
2 resides in another state and who has no lawfully designated agent
3 in California for service of process may be served by any of the
4 methods described in this section if the claim relates to that
5 property.

6 (g) A nonresident owner or operator of a motor vehicle
7 involved in an accident within this state may be served pursuant
8 to the provisions on constructive service in Sections 17450 to
9 17461, inclusive, of the Vehicle Code without regard to whether
10 the defendant was a nonresident at the time of the accident or
11 when the claim was filed. Service shall be made by serving both
12 the Director of the California Department of Motor Vehicles and
13 the defendant, and may be made by any of the methods
14 authorized by this chapter or by registered mail as authorized by
15 Section 17454 or 17455 of the Vehicle Code.

16 (h) If an action is filed against a principal and his or her
17 guaranty or surety pursuant to a guarantor or suretyship
18 agreement, a reasonable attempt shall be made to complete
19 service on the principal. If service is not completed on the
20 principal, the action shall be transferred to the court of
21 appropriate jurisdiction.

22 SEC. 4. Section 116.725 of the Code of Civil Procedure is
23 repealed.

24 SEC. 5. Section 116.725 is added to the Code of Civil
25 Procedure, to read:

26 116.725. (a) A motion to correct a clerical error in a judgment
27 or to set aside and vacate a judgment on the ground of an
28 incorrect or erroneous legal basis for the decision may be made
29 as follows:

30 (1) By the court on its own motion at any time.

31 (2) By a party within 30 days after the clerk mails notice of
32 entry of judgment to the parties.

33 (b) Each party may file only one motion to correct a clerical
34 error or to set aside and vacate the judgment on the ground of an
35 incorrect or erroneous legal basis for the decision.

36 SEC. 6. Section 116.780 of the Code of Civil Procedure is
37 amended to read:

38 116.780. (a) The judgment of the superior court after a
39 hearing on appeal is final and not appealable.

1 (b) Article 6 (commencing with Section 116.610) on
2 judgments of the small claims court applies to judgments of the
3 superior court after a hearing on appeal, except as provided in
4 subdivisions (c) and (d).

5 (c) For good cause and where necessary to achieve substantial
6 justice between the parties, the superior court may award a party
7 to an appeal reimbursement of (1) attorney's fees actually and
8 reasonably incurred in connection with the appeal, not exceeding
9 one hundred fifty dollars (\$150), and (2) actual loss of earnings
10 and expenses of transportation and lodging actually and
11 reasonably incurred in connection with the appeal, not exceeding
12 one hundred fifty dollars (\$150).

13 SEC. 7. Section 128.7 of the Code of Civil Procedure is
14 amended to read:

15 128.7. (a) Every pleading, petition, written notice of motion,
16 or other similar paper shall be signed by at least one attorney of
17 record in the attorney's individual name, or, if the party is not
18 represented by an attorney, shall be signed by the party. Each
19 paper shall state the signer's address and telephone number, if
20 any. Except when otherwise provided by law, pleadings need not
21 be verified or accompanied by affidavit. An unsigned paper shall
22 be stricken unless omission of the signature is corrected promptly
23 after being called to the attention of the attorney or party.

24 (b) By presenting to the court, whether by signing, filing,
25 submitting, or later advocating, a pleading, petition, written
26 notice of motion, or other similar paper, an attorney or
27 unrepresented party is certifying that to the best of the person's
28 knowledge, information, and belief, formed after an inquiry
29 reasonable under the circumstances, all of the following
30 conditions are met:

31 (1) It is not being presented primarily for an improper purpose,
32 such as to harass or to cause unnecessary delay or needless
33 increase in the cost of litigation.

34 (2) The claims, defenses, and other legal contentions therein
35 are warranted by existing law or by a nonfrivolous argument for
36 the extension, modification, or reversal of existing law or the
37 establishment of new law.

38 (3) The allegations and other factual contentions have
39 evidentiary support or, if specifically so identified, are likely to

1 have evidentiary support after a reasonable opportunity for
2 further investigation or discovery.

3 (4) The denials of factual contentions are warranted on the
4 evidence or, if specifically so identified, are reasonably based on
5 a lack of information or belief.

6 (c) If, after notice and a reasonable opportunity to respond, the
7 court determines that subdivision (b) has been violated, the court
8 may, subject to the conditions stated below, impose an
9 appropriate sanction upon the attorneys, law firms, or parties that
10 have violated subdivision (b) or are responsible for the violation.
11 In determining what sanctions, if any, should be ordered, the
12 court shall consider whether a party seeking sanctions has
13 exercised due diligence.

14 (1) A motion for sanctions under this section shall be made
15 separately from other motions or requests and shall describe the
16 specific conduct alleged to violate subdivision (b). Notice of
17 motion shall be served as provided in Section 1010, but shall not
18 be filed with or presented to the court unless, within 21 days after
19 service of the motion, or any other period as the court may
20 prescribe, the challenged paper, claim, defense, contention,
21 allegation, or denial is not withdrawn or appropriately corrected.
22 If warranted, the court may award to the party prevailing on the
23 motion the reasonable expenses and attorney's fees incurred in
24 presenting or opposing the motion. Absent exceptional
25 circumstances, a law firm shall be held jointly responsible for
26 violations committed by its partners, associates, and employees.

27 (2) On its own motion, the court may enter an order describing
28 the specific conduct that appears to violate subdivision (b) and
29 directing an attorney, law firm, or party to show cause why it has
30 not violated subdivision (b), unless, within 21 days of service of
31 the order to show cause, the challenged paper, claim, defense,
32 contention, allegation, or denial is withdrawn or appropriately
33 corrected.

34 (d) A sanction imposed for violation of subdivision (b) shall
35 be limited to what is sufficient to deter repetition of this conduct
36 or comparable conduct by others similarly situated. Subject to the
37 limitations in paragraphs (1) and (2), the sanction may consist of,
38 or include, directives of a nonmonetary nature, an order to pay a
39 penalty into court, or, if imposed on motion and warranted for
40 effective deterrence, an order directing payment to the movant of

1 some or all of the reasonable attorney’s fees and other expenses
2 incurred as a direct result of the violation.

3 (1) Monetary sanctions may not be awarded against a
4 represented party for a violation of paragraph (2) of subdivision
5 (b).

6 (2) Monetary sanctions may not be awarded on the court’s
7 motion unless the court issues its order to show cause before a
8 voluntary dismissal or settlement of the claims made by or
9 against the party that is, or whose attorneys are, to be sanctioned.

10 (e) When imposing sanctions, the court shall describe the
11 conduct determined to constitute a violation of this section and
12 explain the basis for the sanction imposed.

13 (f) In addition to any award pursuant to this section for
14 conduct described in subdivision (b), the court may assess
15 punitive damages against the plaintiff upon a determination by
16 the court that the plaintiff’s action was an action maintained by a
17 person convicted of a felony against the person’s victim, or the
18 victim’s heirs, relatives, estate, or personal representative, for
19 injuries arising from the acts for which the person was convicted
20 of a felony, and that the plaintiff is guilty of fraud, oppression, or
21 malice in maintaining the action.

22 (g) This section shall not apply to disclosures and discovery
23 requests, responses, objections, and motions.

24 (h) A motion for sanctions brought by a party or a party’s
25 attorney primarily for an improper purpose, such as to harass or
26 to cause unnecessary delay or needless increase in the cost of
27 litigation, shall itself be subject to a motion for sanctions. It is the
28 intent of the Legislature that courts shall vigorously use its
29 sanctions authority to deter that improper conduct or comparable
30 conduct by others similarly situated.

31 (i) This section shall apply to a complaint or petition filed on
32 or after January 1, 1995, and any other pleading, written notice of
33 motion, or other similar paper filed in that matter.

34 SEC. 8. Section 396b of the Code of Civil Procedure is
35 amended to read:

36 396b. (a) Except as otherwise provided in Section 396a, if an
37 action or proceeding is commenced in a court having jurisdiction
38 of the subject matter thereof, other than the court designated as
39 the proper court for the trial thereof, under this title, the action
40 may, notwithstanding, be tried in the court where commenced,

1 unless the defendant, at the time he or she answers, demurs, or
2 moves to strike, or, at his or her option, without answering,
3 demurring, or moving to strike and within the time otherwise
4 allowed to respond to the complaint, files with the clerk, a notice
5 of motion for an order transferring the action or proceeding to the
6 proper court, together with proof of service, upon the adverse
7 party, of a copy of those papers. Upon the hearing of the motion
8 the court shall, if it appears that the action or proceeding was not
9 commenced in the proper court, order the action or proceeding
10 transferred to the proper court.

11 (b) In its discretion, the court may order the payment to the
12 prevailing party of reasonable expenses and attorney's fees
13 incurred in making or resisting the motion to transfer whether or
14 not that party is otherwise entitled to recover his or her costs of
15 action. In determining whether that order for expenses and fees
16 shall be made, the court shall take into consideration (1) whether
17 an offer to stipulate to change of venue was reasonably made and
18 rejected, and (2) whether the motion or selection of venue was
19 made in good faith given the facts and law the party making the
20 motion or selecting the venue knew or should have known. As
21 between the party and his or her attorney, those expenses and
22 fees shall be the personal liability of the attorney not chargeable
23 to the party. Sanctions shall not be imposed pursuant to this
24 subdivision except on notice contained in a party's papers, or on
25 the court's own noticed motion, and after opportunity to be
26 heard.

27 (c) The court in a proceeding for dissolution of marriage or
28 legal separation or under the Uniform Parentage Act (Part 3
29 (commencing with Section 7600) of Division 12 of the Family
30 Code) may, prior to the determination of the motion to transfer,
31 consider and determine motions for allowance of temporary
32 spousal support, support of children, and counsel fees and costs,
33 and motions to determine custody of and visitation with children,
34 and may make all necessary and proper orders in connection
35 therewith.

36 (d) In any case, if an answer is filed, the court may consider
37 opposition to the motion to transfer, if any, and may retain the
38 action in the county where commenced if it appears that the
39 convenience of the witnesses or the ends of justice will thereby
40 be promoted.

1 (e) If the motion to transfer is denied, the court shall allow the
2 defendant time to move to strike, demur, or otherwise plead if the
3 defendant has not previously filed a response.

4 SEC. 9. Section 415.21 of the Code of Civil Procedure is
5 amended to read:

6 415.21. (a) Notwithstanding any other provision of law, any
7 person shall be granted access to a gated community for a
8 reasonable period of time for the purpose of performing lawful
9 service of process or service of a subpoena, upon identifying to
10 the guard the person or persons to be served, and upon displaying
11 a current driver’s license or other identification, and one of the
12 following:

13 (1) A badge or other confirmation that the individual is acting
14 in his or her capacity as a representative of a county sheriff or
15 marshal.

16 (2) Evidence of current registration as a process server
17 pursuant to Chapter 16 (commencing with Section 22350) of
18 Division 8 of the Business and Professions Code.

19 (b) This section shall only apply to a gated community that is
20 staffed at the time service of process is attempted by a guard or
21 other security personnel assigned to control access to the
22 community.

23 ~~SEC. 10. Section 425.115 of the Code of Civil Procedure is~~
24 ~~amended to read:~~

25 ~~425.115. (a) As used in this section:~~

26 ~~(1) “Complaint” includes a cross-complaint.~~

27 ~~(2) “Plaintiff” includes a cross-complainant.~~

28 ~~(3) “Defendant” includes a cross-defendant.~~

29 ~~(b) The plaintiff preserves the right to seek punitive damages~~
30 ~~pursuant to Section 3294 of the Civil Code on a default judgment~~
31 ~~by serving upon the defendant the following statement, or its~~
32 ~~substantial equivalent:~~

33
34 NOTICE TO _____:

35 (Insert name of defendant or cross-defendant) —

36 _____ reserves the right to seek

37 (Insert name of plaintiff or

38 cross-complainant)

39 \$ _____ in punitive damages

40 (Insert dollar amount)

1 when _____ seeks a judgment in the
 2 _____ (Insert name of plaintiff or
 3 _____ cross-complainant)
 4 suit filed against you.

5 _____
 6 (Insert name of attorney or (date)
 7 party appearing in propria persona)

8
 9 ~~(e) Where the plaintiff seeks punitive damages pursuant to~~
 10 ~~Section 3294 of the Civil Code, and where the defendant appears~~
 11 ~~in the action, the plaintiff shall not be limited to the amount set~~
 12 ~~forth in the statement served on the defendant pursuant to this~~
 13 ~~section.~~

14 ~~(d) A plaintiff who serves a statement on the defendant~~
 15 ~~pursuant to this section shall be deemed to have complied with~~
 16 ~~Sections 425.10 and 580 of this code and Section 3295 of the~~
 17 ~~Civil Code.~~

18 ~~(e) The plaintiff may serve a statement upon the defendant~~
 19 ~~pursuant to this section, and may serve the statement as part of~~
 20 ~~the statement required by Section 425.11.~~

21 ~~(f) The plaintiff shall serve the statement upon the defendant~~
 22 ~~pursuant to this section before a default may be taken, where the~~
 23 ~~motion for default judgment includes a request for punitive~~
 24 ~~damages.~~

25 ~~(g) The statement referred to in subdivision (b) shall be served~~
 26 ~~by one of the following methods:~~

27 ~~(1) If the party has not appeared in the action, the statement~~
 28 ~~shall be served in the same manner as a summons pursuant to~~
 29 ~~Article 3 (commencing with Section 415.10) of Chapter 4 of~~
 30 ~~Title 5 of Part 2 of the Code of Civil Procedure.~~

31 ~~(2) If the party has appeared in the action, the statement shall~~
 32 ~~be served upon his or her attorney, or upon the party if he or she~~
 33 ~~has appeared without an attorney, either in the same manner as a~~
 34 ~~summons pursuant to Article 3 (commencing with Section~~
 35 ~~415.10) of Chapter 4 or in the manner provided by Chapter 5~~
 36 ~~(commencing with Section 1010) of Title 14.~~

37 *SEC. 10. Section 425.115 of the Code of Civil Procedure is*
 38 *amended to read:*

39 425.115. (a) As used in this section:

40 (1) "Complaint" includes a cross-complaint.

1 (2) “Plaintiff” includes a cross-complainant.

2 (3) “Defendant” includes a cross-defendant.

3 (b) The plaintiff preserves the right to seek punitive damages
4 pursuant to Section 3294 of the Civil Code on a default judgment
5 by serving upon the defendant the following statement, or its
6 substantial equivalent:

7
8 NOTICE TO _____:

9 (Insert name of defendant or cross-defendant)

10 _____ reserves the right to seek

11 (Insert name of plaintiff or
12 cross-complainant)

13 \$ _____ in punitive damages

14 (Insert dollar amount)

15 when _____ seeks a judgment in the

16 (Insert name of plaintiff or
17 cross-complainant)

18 suit filed against you.

19 _____

20 (Insert name of attorney or (date)(Date)

21 party appearing in propria persona)

22
23 (c) ~~Where~~ *If* the plaintiff seeks punitive damages pursuant to
24 Section 3294 of the Civil Code, and ~~where~~ *if* the defendant
25 appears in the action, the plaintiff shall not be limited to the
26 amount set forth in the statement served on the defendant
27 pursuant to this section.

28 (d) A plaintiff who serves a statement on the defendant
29 pursuant to this section shall be deemed to have complied with
30 Sections 425.10 and 580 of this code and Section 3295 of the
31 Civil Code.

32 (e) The plaintiff may serve a statement upon the defendant
33 pursuant to this section, and may serve the statement as part of
34 the statement required by Section 425.11.

35 (f) The plaintiff shall serve the statement upon the defendant
36 pursuant to this section before a default may be taken, ~~where~~ *if*
37 the motion for default judgment includes a request for punitive
38 damages.

39 (g) The statement referred to in subdivision (b) shall be served
40 by one of the following methods:

1 (1) If the party has not appeared in the action, the ~~motion~~
2 *statement* shall be served in the same manner as a summons
3 pursuant to Article 3 (commencing with Section 415.10) of
4 Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure.

5 (2) If the party has appeared in the action, the ~~motion~~
6 *statement* shall be served upon his or her attorney, or upon the
7 party if he or she has appeared without an attorney, either in the
8 same manner as a summons pursuant to Article 3 (commencing
9 with Section 415.10) of Chapter 4 ~~of Title 5 of the Code of Civil~~
10 ~~Procedure~~ or in the manner provided by Chapter 5 (commencing
11 with Section 1010) of Title 14 ~~of Part 2 of the Code of Civil~~
12 ~~Procedure~~.

13 SEC. 11. Section 998 of the Code of Civil Procedure is
14 amended to read:

15 998. (a) The costs allowed under Sections 1031 and 1032
16 shall be withheld or augmented as provided in this section.

17 (b) Not less than 10 days prior to commencement of trial or
18 arbitration (as provided in Section 1281 or 1295) of a dispute to
19 be resolved by arbitration, any party may serve an offer in
20 writing upon any other party to the action to allow judgment to
21 be taken or an award to be entered in accordance with the terms
22 and conditions stated at that time. The written offer shall include,
23 after the statement of the offer containing the terms and
24 conditions of the judgment *or award*, a provision that allows the
25 accepting party to indicate acceptance of the offer by signing a
26 statement that the offer is accepted. Any acceptance of the offer,
27 whether made on the document containing the offer or on a
28 separate document of acceptance, shall be in writing and shall be
29 signed *by the accepting party*.

30 (1) If the offer is accepted, the offer with proof of acceptance
31 shall be filed and the clerk or the judge shall enter judgment
32 accordingly. In the case of an arbitration, the offer with proof of
33 acceptance shall be filed with the arbitrator or arbitrators who
34 shall promptly render an award accordingly.

35 (2) If the offer is not accepted prior to trial or arbitration; *or*
36 within 30 days after it is made, whichever occurs first, it shall be
37 deemed withdrawn, and cannot be given in evidence upon the
38 trial or arbitration.

39 (3) For purposes of this subdivision, a trial or arbitration shall
40 be deemed to be actually commenced at the beginning of the

1 opening statement of the plaintiff or counsel, and if there is no
2 opening statement, then at the time of the administering of the
3 oath or affirmation to the first witness, or the introduction of any
4 evidence.

5 (c) (1) If an offer made by a defendant is not accepted and the
6 plaintiff fails to obtain a more favorable judgment or award, the
7 plaintiff shall not recover his or her postoffer costs and shall pay
8 the defendant's costs from the time of the offer. In addition, in
9 any action or proceeding other than an eminent domain action,
10 the court or arbitrator, in its discretion, may require the plaintiff
11 to pay a reasonable sum to cover costs of the services of expert
12 witnesses, who are not regular employees of any party, actually
13 incurred and reasonably necessary in either, or both, preparation
14 for trial or arbitration, or during trial or arbitration, of the case by
15 the defendant.

16 (2) (A) In determining whether the plaintiff obtains a more
17 favorable judgment, the court or arbitrator shall exclude the
18 postoffer costs.

19 (B) It is the intent of the Legislature in enacting subparagraph
20 (A) to supersede the holding in *Encinitas Plaza Real v. Knight*,
21 209 Cal. App.3d 996, that attorney's fees awarded to the
22 prevailing party were not costs for purposes of this section but
23 were part of the judgment.

24 (d) (1) If an offer made by a plaintiff is not accepted and the
25 defendant fails to obtain a more favorable judgment or award in
26 any action or proceeding other than an eminent domain action,
27 the court or arbitrator, in its discretion, may require the defendant
28 to pay a reasonable sum to cover *post-offer* costs of the services
29 of expert witnesses, who are not regular employees of any party,
30 actually incurred and reasonably necessary in either, or both,
31 preparation for trial or arbitration, or during trial or arbitration, of
32 the case by the plaintiff, in addition to plaintiff's costs.

33 (2) (A) *In determining whether the plaintiff obtains a more*
34 *favorable judgement, the court or arbitrator shall exclude the*
35 *post-offer costs.*

36 (B) *It is the intent of the Legislature in enacting subparagraph*
37 *(A) to supersede the holding in Encinitas Plaza Real v. Knight*
38 *(1989) 209 Cal.App.3d 996 that attorney's fees awarded to the*
39 *prevailing party are not costs for purposes of this section, but are*
40 *part of the judgement.*

1 (e) If an offer made by a defendant is not accepted and the
2 plaintiff fails to obtain a more favorable judgment or award, the
3 costs under this section, from the time of the offer, shall be
4 deducted from any damages awarded in favor of the plaintiff. If
5 the costs awarded under this section exceed the amount of the
6 damages awarded to the plaintiff the net amount shall be awarded
7 to the defendant and judgment or award shall be entered
8 accordingly.

9 (f) Police officers shall be deemed to be expert witnesses for
10 the purposes of this section; ~~plaintiff~~. *For purposes of this*
11 *section, “plaintiff”* includes a cross-complainant and ~~defendant~~
12 *“defendant”* includes a cross-defendant. Any judgment or award
13 entered pursuant to this section shall be deemed to be a
14 compromise settlement.

15 (g) This chapter does not apply to either of the following:

16 (1) An offer that is made by a plaintiff in an eminent domain
17 action.

18 (2) Any enforcement action brought in the name of the people
19 of the State of California by the Attorney General, a district
20 attorney, or a city attorney, acting as a public prosecutor.

21 (h) The costs for services of expert witnesses for trial under
22 subdivisions (c) and (d) shall not exceed those specified in
23 Section 68092.5 of the Government Code.

24 (i) This section shall not apply to labor arbitrations filed
25 pursuant to memoranda of understanding under the Ralph C.
26 Dills Act (Chapter 10.3 (commencing with Section 3512) of
27 Division 4 of Title 1 of the Government Code).

28 SEC. 12. Section 811.9 of the Government Code is amended
29 to read:

30 811.9. (a) Notwithstanding any other provision of law,
31 judges, subordinate judicial officers, and court executive officers
32 of the superior courts are state officers for purposes of Part 1
33 (commencing with Section 810) to Part 7 (commencing with
34 Section 995), inclusive, and trial court employees are employees
35 of the trial court for purposes of Part 1 (commencing with
36 Section 810) to Part 7 (commencing with Section 995), inclusive.
37 The Judicial Council shall provide for representation, defense,
38 and indemnification of those individuals and the court pursuant
39 to Part 1 (commencing with Section 810) to Part 7 (commencing
40 with Section 995), inclusive. The Judicial Council shall provide

1 for that representation or defense through the county counsel, the
2 Attorney General, or other counsel. The county counsel and the
3 Attorney General may, but are not required to, provide
4 representation or defense for the Judicial Council. The fact that a
5 justice, judge, subordinate judicial officer, court executive
6 officer, court employee, the court, the Judicial Council, or the
7 Administrative Office of the Courts is or was represented or
8 defended by the county counsel, the Attorney General, or other
9 counsel shall not be the sole basis for a judicial determination of
10 disqualification of a justice, judge, subordinate judicial officer,
11 the county counsel, the Attorney General, or other counsel in
12 unrelated actions.

13 (b) To promote the cost-effective, prompt, and fair resolution
14 of actions, proceedings, and claims affecting the trial courts, the
15 Judicial Council shall adopt rules of court requiring the
16 Administrative Office of the Courts to manage actions,
17 proceedings, and claims that affect the trial courts and involve
18 superior courts, superior court judges, subordinate judicial
19 officers, court executive officers, or trial court employees in
20 consultation with the affected courts and individuals. The
21 Administrative Office of the Courts' management of these
22 actions, proceedings, and claims shall include, but not be limited
23 to, case management and administrative responsibilities such as
24 selection of counsel and making strategic and settlement
25 decisions.

26 (c) Nothing in this section shall be construed to affect the
27 employment status of subordinate judicial officers, court
28 executive officers, and trial court employees related to any
29 matters not covered by subdivision (a).

30 SEC. 13. Section 905 of the Government Code is amended to
31 read:

32 905. There shall be presented in accordance with Chapter 1
33 (commencing with Section 900) and Chapter 2 (commencing
34 with Section 910) of this part all claims for money or damages
35 against local public entities except:

36 (a) Claims under the Revenue and Taxation Code or other
37 statute prescribing procedures for the refund, rebate, exemption,
38 cancellation, amendment, modification or adjustment of any tax,
39 assessment, fee or charge or any portion thereof, or of any
40 penalties, costs or charges related thereto.

1 (b) Claims in connection with which the filing of a notice of
2 lien, statement of claim, or stop notice is required under any
3 provision of law relating to mechanics', laborers' or
4 materialmen's liens.

5 (c) Claims by public employees for fees, salaries, wages,
6 mileage or other expenses and allowances.

7 (d) Claims for which the ~~worker's~~ *workers'* compensation
8 authorized by Division 4 (commencing with Section 3200) of the
9 Labor Code is the exclusive remedy.

10 (e) Applications or claims for any form of public assistance
11 under the Welfare and Institutions Code or other provisions of
12 law relating to public assistance programs, and claims for goods,
13 services, provisions or other assistance rendered for or on behalf
14 of any recipient of any form of public assistance.

15 (f) Applications or claims for money or benefits under any
16 public retirement or pension system.

17 (g) Claims for principal or interest upon any bonds, notes,
18 warrants, or other evidences of indebtedness.

19 (h) Claims that relate to a special assessment constituting a
20 specific lien against the property assessed and that are payable
21 from the proceeds of the assessment, by offset of a claim for
22 damages against it or by delivery of any warrant or bonds
23 representing it.

24 (i) Claims by the state or by a state department or agency or by
25 another local public entity or by a judicial branch entity.

26 (j) Claims arising under any provision of the Unemployment
27 Insurance Code, including but not limited to claims for money or
28 benefits, or for refunds or credits of employer or worker
29 contributions, penalties, or interest, or for refunds to workers of
30 deductions from wages in excess of the amount prescribed.

31 (k) Claims for the recovery of penalties or forfeitures made
32 pursuant to Article 1 (commencing with Section 1720) of
33 Chapter 1 of Part 7 of Division 2 of the Labor Code.

34 (l) Claims governed by the Pedestrian Mall Law of 1960, Part
35 1 (commencing with Section 11000) of Division 13 of the Streets
36 and Highways Code.

37 SEC. 14. Section 905.7 is added to the Government Code, to
38 read:

39 905.7. All claims against a judicial branch entity for money
40 or damages based upon an express contract or for an injury for

1 which the judicial branch entity is liable shall be presented in
2 accordance with Chapter 1 (commencing with Section 900) and
3 Chapter 2 (commencing with Section 910) of this part. The
4 provisions of this section are declaratory of existing law.

5 SEC. 15. Section 910.4 of the Government Code is amended
6 to read:

7 910.4. The board shall provide forms specifying the
8 information to be contained in claims against the state or a
9 judicial branch entity. The person presenting a claim shall use the
10 form in order that his or her claim is deemed in conformity with
11 Sections 910 and 910.2. A claim may be returned to the person if
12 it was not presented using the form. Any claim returned to a
13 person may be resubmitted using the appropriate form.

14 SEC. 16. Section 69926.5 of the Government Code is
15 amended to read:

16 69926.5. (a) To ensure and maintain adequate funding for
17 court security, a surcharge of twenty dollars (\$20) is added to the
18 total fee collected pursuant to Section 26820.4, 26826, 26827,
19 72055, or 72056.

20 (b) In addition to the surcharge in subdivision (a), a surcharge
21 of twenty dollars (\$20) is added to the total filing fee collected in
22 a case pursuant to Section 26820.4, 26826, or 26827, a surcharge
23 of twenty dollars (\$20) is added to the total filing fee collected in
24 a limited civil case pursuant to Section 72055 or 72056 where the
25 amount demanded, excluding attorney's fees and costs, is in
26 excess of ten thousand dollars (\$10,000), and a surcharge of ten
27 dollars (\$10) is added to the total filing fee collected in a limited
28 civil case pursuant to Section 72055 or 72056 where the amount
29 demanded, excluding attorney's fees and costs, is ten thousand
30 dollars (\$10,000), or less. The surcharges in this subdivision shall
31 be collected in cases filed from January 1, 2004, to June 30,
32 2006, inclusive. The purpose of this surcharge is to stabilize
33 funding for court security at the current level and is not intended
34 to increase the funding available for court security in the
35 2004-05 and 2005-06 fiscal years. This subdivision shall
36 become inoperative on July 1, 2006, or upon the enactment of a
37 uniform filing fee, whichever is earlier.

38 (c) Notwithstanding any other provision of law, the surcharges
39 collected pursuant to subdivisions (a) and (b) shall all be
40 deposited in a special account in the county treasury, and

1 transmitted therefrom monthly to the Controller for deposit in the
2 Trial Court Trust Fund.

3 SEC. 17. Section 123.6 of the Labor Code is amended to
4 read:

5 123.6. (a) All workers' compensation administrative law
6 judges employed by the administrative director and supervised
7 by the court administrator shall subscribe to the Code of Judicial
8 Ethics adopted by the Supreme Court pursuant to subdivision (m)
9 of Section 18 of Article VI of the California Constitution for the
10 conduct of judges and shall not otherwise, directly or indirectly,
11 engage in conduct contrary to that code or to the commentary to
12 the Code of Judicial Ethics.

13 In consultation with both the court administrator and the
14 Commission on Judicial Performance, the administrative director
15 shall adopt regulations to enforce this section. Existing
16 regulations shall remain in effect until new regulations based on
17 the recommendations of the court administrator and the
18 Commission on Judicial Performance have become effective. To
19 the extent possible, the rules shall be consistent with the
20 procedures established by the Commission on Judicial
21 Performance for regulating the activities of state judges, and, to
22 the extent possible, with the gift, honoraria, and travel
23 restrictions on legislators contained in the Political Reform Act
24 of 1974 (Title 9 (commencing with Section 81000) of the
25 Government Code). The court administrator shall have the
26 authority to enforce the rules adopted by the administrative
27 director.

28 (b) Honoraria or travel allowed by the court administrator, and
29 not otherwise prohibited by this section in connection with any
30 public or private conference, convention, meeting, social event,
31 or like gathering, the cost of which is significantly paid for by
32 attorneys who practice before the board, may not be accepted
33 unless the court administrator has provided prior approval in
34 writing to the workers' compensation administrative law judge
35 allowing him or her to accept those payments.

36 SEC. 18. Section 16020 of the Vehicle Code is amended to
37 read:

38 16020. (a) Every driver and every owner of a motor vehicle
39 shall at all times be able to establish financial responsibility
40 pursuant to Section 16021, and shall at all times carry in the

1 vehicle evidence of the form of financial responsibility in effect
2 for the vehicle.

3 (b) “Evidence of financial responsibility” means any of the
4 following:

5 (1) A form issued by an insurance company or charitable risk
6 pool, as specified by the department pursuant to Section 4000.37.

7 (2) If the owner is a self-insurer, as provided in Section 16052
8 or a depositor, as provided in Section 16054.2, the certificate of
9 self-insurance or the assignment of deposit letter issued by the
10 department.

11 (3) An insurance covering note or binder pursuant to Section
12 382 or 382.5 of the Insurance Code.

13 (4) A showing that the vehicle is owned or leased by, or under
14 the direction of, the United States or any public entity, as defined
15 in Section 811.2 of the Government Code.

16 (c) For purposes of this section, “evidence of financial
17 responsibility” also may be obtained by a law enforcement
18 officer *and court personal* from an electronic reporting system
19 when that system becomes available for use by law enforcement
20 officers.

21 (d) For purposes of this section, “evidence of financial
22 responsibility” also includes any of the following:

23 (1) The name of the insurance company and the number of an
24 insurance policy or surety bond that was in effect at the time of
25 the accident or at the time that evidence of financial
26 responsibility is required to be provided pursuant to Section
27 16028, if that information is contained in the vehicle registration
28 records of the department.

29 (2) The identifying motor carrier of property permit number
30 issued by the Department of the California Highway Patrol to the
31 motor carrier of property as defined in Section 34601, and
32 displayed on the motor vehicle in the manner specified by the
33 Department of the California Highway Patrol.

34 (3) The identifying number issued to the household goods
35 carrier, passenger stage carrier, or transportation charter party
36 carrier by the Public Utilities Commission and displayed on the
37 motor vehicle in the manner specified by the commission.

38 (4) The identifying number issued by the Interstate Commerce
39 Commission or its successor federal agency, if proof of financial
40 responsibility must be presented to the issuing agency as part of

1 the identification number issuance process, and displayed on the
2 motor vehicle in the manner specified by the issuing agency.

3 (e) Evidence of financial responsibility does not include any of
4 the identification numbers in paragraph (1), (2), (3), or (4) of
5 subdivision (d) if the carrier is currently suspended by the issuing
6 agency for lack or lapse of insurance or other form of financial
7 responsibility.

8 *SEC. 19. Section 16058.1 of the Vehicle Code is amended to*
9 *read:*

10 16058.1. The department shall develop a method by which
11 law enforcement officers *and court personnel*, on and after July
12 1, 2006, may electronically verify that an insurance policy or
13 bond for a motor vehicle has been issued.

14 ~~SEC. 18.—~~

15 *SEC. 20.* The provisions of this act shall apply prospectively
16 only.

17 *SEC. 21. Sections 1 to 15, inclusive, and Sections 17 to 19,*
18 *inclusive, of this act shall become operative on January 1, 2006.*

19 *SEC. 22. This act is an urgency statute necessary for the*
20 *immediate preservation of the public peace, health, or safety*
21 *within the meaning of Article IV of the Constitution and shall go*
22 *into immediate effect. The facts constituting the necessity are:*

23 *In order to avoid a loss of fourteen million dollars*
24 *(\$14,000,000) annually to the Trial Court Trust Fund which*
25 *would otherwise result from the failure to extend the operative*
26 *date of provisions imposing the court security fee, it is necessary*
27 *that this act take effect immediately.*