

AMENDED IN SENATE AUGUST 16, 2005

AMENDED IN SENATE JUNE 28, 2005

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 Sections 467.1, 6322.1, 6324, 6325, and 6326 of, to add Sections 470.5 and 470.6 to, to repeal Sections 470.3 and 6323 of, and to repeal and add Sections 6321 and 6322 of, the Business and Professions Code, to amend Sections 43.55 and 2924j of the Civil Code, to amend Sections 116.330, 116.340, 116.390, 116.745, 116.760, 116.780, 116.820, 116.860, 128.7, 177.5, 209, 396b, 403.060, 411.20, 415.21, 425.10, 425.115, 491.150, 683.150, 704.750, 708.160, 724.100, 998, 1134, 1161.2, 1174.25, 1174.3, and 1218 of, to add Sections 116.232 and 411.21 to, to repeal Section 116.910 of, and to repeal and add Sections 116.230, 116.725, and 573 of, the Code of Civil Procedure, to amend Section 1852 of the Family Code, to amend Section 31622 of the Food and Agricultural Code, to amend Sections 811.9, 905, 910.4, 24353, 26820, 26831, 26837, 26840.3, 26837, 26840.3, 26857, 27293, 54985, 68084, 68085, 68086, 68090.8, 68101, 68511.3, 68926.1, 69953.5, 70375, 70402, 71386, 77009, 77200, 77205, and 77209 of, to amend the headings of Chapter 6 (commencing with Section 71002) and Chapter 8 (commencing with Section 72004) of Title 8 of, to amend and renumber Sections 26820.4, 26823, 26824, 26826, 26826.1, 26826.3, 26826.4, 26827.5,

~~26827.6, 26827.7, 26832.1, 26833.5, 26835.1, 26838, 26857.5, 26862, 76236, and 76238 of, to amend, renumber, and repeal Sections 26827, 72055, and 72056 of, to add Sections 905.7, 68084.1, 68085.1, 68085.2, 68085.3, 68085.4, 68086.1, and 77207.5 to, to add Chapter 5.8 (commencing with Section 70600) to Title 8 of, and to repeal Sections 24350.5, 26820.6, 26820.7, 26822.3, 26826.2, 26827.1, 26827.4, 26828, 26829, 26830, 26832, 26833.1, 26834, 26836.1, 26837.1, 26840.4, 26841, 26850.1, 26851.1, 26852.1, 26853.1, 26855.4, 26856, 26859, 26863, 68087, 68087.1, 68090.7, 69926.5, 70373, 70373.5, 72054, 72056.01, 72056.1, 72059, 72060, 72061, and 72073 of, the Government Code, to amend Sections 100430, 103470, and 103730 of the Health and Safety Code, to amend Sections 98.2 and 123.6 of the Labor Code, to amend Sections 1835, 2343, 7660, and 13201 of the Probate Code, and to amend Sections 14607.6, 16020, 16058.1, and 40230 of the 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, and 910.4 of, and to add Section 905.7 to, the Government Code, to amend Section 123.6 of the Labor Code, and to amend Section 16020 and 16058.1 of the Vehicle Code, relating to courts.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1742, as amended, Committee on Judiciary. Courts.

~~(1) Existing law establishes various court fees to be collected for services provided in conjunction with the operation of the courts, as specified:~~

~~This bill would enact the Uniform Civil Fees and Standard Fee Schedule Act of 2005, which would, as of January 1, 2006, establish a uniform schedule of filing fees and other civil fees for the superior courts. Among other things, the bill would generally increase the filing fees for civil actions and proceedings, including, but not limited to, those fees related to small claims court, motions, appeals, judgments, the filing of the first paper in a civil action or proceeding in the superior court, in a limited civil case, and in complex cases, and in family law and probate matters, and fees for various certifications, recordings, filings, and the authentication of documents. The bill also would authorize the court to charge a reasonable fee for videoconferencing, providing services or products, if approved by the~~

Judicial Council, and handling funds held in trust for noneourt parties or entities. The bill would provide that none of these civil fees may be changed before January 1, 2008, except as specified.

The bill would require the Judicial Council to establish a Task Force on Civil Fees to make recommendations on the effectiveness of the uniform fee structure and other fee related issues on or before February 1, 2007. The bill would revise and increase other duties of the Judicial Council, including duties relating to the adoption of a schedule for the allocation of funds to trial courts for the development and implementation of automated systems.

The bill would further revise and recast provisions relating to the distribution of the above-described fees, affecting, among other things, dispute resolution programs, court reporter services, small claims advisory services, and law library funds, and would make specified findings and declarations with regard to the above-described provisions.

The bill would shift various duties relating to the administration of court fees and would make additional technical and conforming changes.

(2) Existing law authorizes certain surcharges to be added to specified court-related fees, including, among others, a state surcharge of 10%, until July 1, 2007, and an additional surcharge of \$20 to ensure and maintain adequate funding for court security, and provides for these amounts to be transmitted to the Trial Court Trust Fund.

This bill would repeal these provisions.

(3) Existing law requires, for the purposes of funding trial court operations, each board of supervisors to establish in the county treasury a Trial Court Operations Fund, into which all funds appropriated in the Budget Act and allocated and reallocated to each court in the county by the Judicial Council shall be deposited.

This bill would authorize the Judicial Council to establish bank accounts for the superior courts and to require the courts to deposit moneys for trial court operations, and any other moneys under the control of the courts, into those accounts, as specified. The bill would further provide that money, excluding restitution to victims, that has been deposited with a superior court, or that a superior court is holding in trust for the lawful owner, in a court bank account or in a court trust account in a county treasury, that remains unclaimed for 3 years, is the property of the superior court if not claimed after specified notice and if no verified complaint is filed and served.

(4)

(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.

(5)

(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.

(6)

(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.

(7)

(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.

~~(8)~~

(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 *statement of the offer and 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 by the accepting party or his or her counsel, as specified.*

~~(9)~~

(6) 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. *The bill would also provide that for a 2-year period ending on January 1, 2008, a failure to timely present a tort claim against a judicial branch entity shall be presumed to constitute excusable neglect for purposes of relieving the claimant of specified claim presentation requirements.*

~~(10)~~

(7) 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.

~~(11) The bill would impose a state-mandated local program by requiring new duties of local officers.~~

~~(12) 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~~ 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
10 its 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 ~~in accordance with subdivision (c)~~ and shall
20 issue an order directing the parties to appear at the time set for
21 the hearing with witnesses and documents to prove their claim or
22 defense. *The case shall be scheduled for hearing no earlier than*
23 *20 days but not more than 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.

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

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

9 ~~(e) If the defendant resides in the county in which the action is
10 filed, the case shall be scheduled for hearing at least 15 days but
11 not more than 40 days from the date of the order. If the defendant
12 resides outside the county in which the action is filed, the case
13 shall be scheduled for hearing at least 30 days but not more than
14 70 days from the date of the order.~~

15 ~~(d) If there are two or more defendants and one or more of
16 them resides outside the county in which the action is filed, the
17 date for the appearance of all the defendants shall be at least 30
18 days but not more than 70 days from the date of the order.~~

19 ~~(e) A public entity, as defined in Section 811.2 of the
20 Government Code, which files more than 10 claims at one time
21 may request a date for the appearance of the defendant later than
22 that otherwise specified in this section, and the clerk may set the
23 case for hearing at that later date subject to the following limits:~~

24 ~~(1) If all defendants reside in the county in which the action is
25 filed, the date for appearance shall not be more than 70 days from
26 the date of the order.~~

27 ~~(2) In other cases, the date for appearance shall not be more
28 than 90 days from the date of the order.~~

29 *SEC. 3. Section 116.340 of the Code of Civil Procedure is*
30 *amended to read:*

31 116.340. (a) Service of the claim and order on the defendant
32 may be made by any one of the following methods:

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

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

38 (3) The plaintiff may cause service of a copy of the claim and
39 order to be made by substituted service as provided in
40 subdivision (a) or (b) of Section 415.20 without the need to

1 attempt personal service on the defendant. For these purposes,
2 substituted service as provided in subdivision (b) of Section
3 415.20 may be made at the office of the sheriff or marshal who
4 shall deliver a copy of the claim and order to any person
5 authorized by the defendant to receive service, as provided in
6 Section 416.90, who is at least 18 years of age, and thereafter
7 mailing a copy of the claim and order to the defendant's usual
8 mailing address.

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

12 (b) Service of the claim and order on the defendant shall be
13 completed at least 15 days before the hearing date if the
14 defendant resides within the county in which the action is filed,
15 or at least 20 days before the hearing date if the defendant resides
16 outside the county in which the action is filed.

17 (c) *Proof of service of the claim and order shall be filed with*
18 *the small claims court at least five days before the hearing.*

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

24 ~~(d)~~

25 (e) Service shall be made within this state, except as provided
26 in subdivisions (e) and (f).

27 ~~(e)~~

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

33 ~~(f)~~

34 (g) A nonresident owner or operator of a motor vehicle
35 involved in an accident within this state may be served pursuant
36 to the provisions on constructive service in Sections 17450 to
37 17461, inclusive, of the Vehicle Code without regard to whether
38 the defendant was a nonresident at the time of the accident or
39 when the claim was filed. Service shall be made by serving both
40 the Director of the California Department of Motor Vehicles and

1 the defendant, and may be made by any of the methods
2 authorized by this chapter or by registered mail as authorized by
3 Section 17454 or 17455 of the Vehicle Code.

4 ~~(g)~~

5 (h) If an action is filed against a principal and his or her
6 guaranty or surety pursuant to a guarantor or suretyship
7 agreement, a reasonable attempt shall be made to complete
8 service on the principal. If service is not completed on the
9 principal, the action shall be transferred to the court of
10 appropriate jurisdiction.

11 *SEC. 4. Section 116.725 of the Code of Civil Procedure is*
12 *repealed.*

13 ~~116.725. Nothing in this chapter shall be construed to prevent~~
14 ~~a court from correcting a clerical error in a judgment or from~~
15 ~~setting aside and vacating a judgment on the ground of an~~
16 ~~incorrect or erroneous legal basis for the decision.~~

17 *SEC. 5. Section 116.725 is added to the Code of Civil*
18 *Procedure, to read:*

19 *116.725. (a) A motion to correct a clerical error in a*
20 *judgment or to set aside and vacate a judgment on the ground of*
21 *an incorrect or erroneous legal basis for the decision may be*
22 *made as follows:*

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

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

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

29 *SEC. 6. Section 116.780 of the Code of Civil Procedure is*
30 *amended to read:*

31 *116.780. (a) The judgment of the superior court after a*
32 *hearing on appeal is final and not appealable.*

33 *(b) Article 6 (commencing with Section 116.610) on*
34 *judgments of the small claims court applies to judgments of the*
35 *superior court after a hearing on appeal, except as provided in*
36 *subdivisions (c) and (d).*

37 *(c) For good cause and where necessary to achieve substantial*
38 *justice between the parties, the superior court may award a party*
39 *to an appeal reimbursement of (1) attorney's fees actually and*
40 *reasonably incurred in connection with the appeal, not exceeding*

1 one hundred fifty dollars (\$150), and (2) actual loss of earnings
2 and expenses of transportation and lodging actually and
3 reasonably incurred in connection with the appeal, not exceeding
4 one hundred fifty dollars (\$150).

5 ~~(d) Upon the expiration of 10 days following the completion~~
6 ~~of the appeal process, the superior court shall order the appeal~~
7 ~~and any judgment transferred to the small claims court in which~~
8 ~~the action was originally filed for purposes of enforcement and~~
9 ~~other proceedings under Article 8 (commencing with Section~~
10 ~~116.810) of this chapter.~~

11 *SEC. 7. Section 128.7 of the Code of Civil Procedure is*
12 *amended to read:*

13 128.7. (a) Every pleading, petition, written notice of motion,
14 or other similar paper shall be signed by at least one attorney of
15 record in the attorney's individual name, or, if the party is not
16 represented by an attorney, shall be signed by the party. Each
17 paper shall state the signer's address and telephone number, if
18 any. Except when otherwise provided by law, pleadings need not
19 be verified or accompanied by affidavit. An unsigned paper shall
20 be stricken unless omission of the signature is corrected promptly
21 after being called to the attention of the attorney or party.

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

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

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

36 (3) The allegations and other factual contentions have
37 evidentiary support or, if specifically so identified, are likely to
38 have evidentiary support after a reasonable opportunity for
39 further investigation or discovery.

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

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

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

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

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

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

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

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

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

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

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

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

32 ~~(j) This section shall remain in effect only until January 1,
33 2006, and as of that date is repealed, unless a later enacted
34 statute, that is enacted before January 1, 2006, deletes or extends
35 that date.~~

36 *SEC. 8. Section 396b of the Code of Civil Procedure is*
37 *amended to read:*

38 396b. (a) Except as otherwise provided in Section 396a, if an
39 action or proceeding is commenced in a court having jurisdiction
40 of the subject matter thereof, other than the court designated as

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

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

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

38 (d) In any case, if an answer is filed, the court may consider
39 opposition to the motion to transfer, if any, and may retain the
40 action in the county where commenced if it appears that the

1 convenience of the witnesses or the ends of justice will thereby
2 be promoted.

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

6 *SEC. 9. Section 415.21 of the Code of Civil Procedure is*
7 *amended to read:*

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

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

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

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

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

27 425.115. (a) As used in this section:

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

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

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

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

35
36 NOTICE TO _____:
37 (Insert name of defendant or cross-defendant)
38 _____ reserves the right to seek
39 (Insert name of plaintiff or cross-complainant)
40 \$ _____ in punitive damages

1 (Insert dollar amount)
 2 when _____ seeks a judgment in the
 3 (Insert name of plaintiff or
 4 cross-complainant)
 5 suit filed against you.
 6 _____
 7 (Insert name of attorney or (date) (Date)
 8 party appearing in propria persona)
 9

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

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

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

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

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

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

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

1 *SEC. 11. Section 998 of the Code of Civil Procedure is*
2 *amended to read:*

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

5 (b) Not less than 10 days prior to commencement of trial or
6 arbitration (as provided in Section 1281 or 1295) of a dispute to
7 be resolved by arbitration, any party may serve an offer in
8 writing upon any other party to the action to allow judgment to
9 be taken or an award to be entered in accordance with the terms
10 and conditions stated at that time. *The written offer shall include*
11 *a statement of the offer, containing the terms and conditions of*
12 *the judgment or award, and a provision that allows the accepting*
13 *party to indicate acceptance of the offer by signing a statement*
14 *that the offer is accepted. Any acceptance of the offer, whether*
15 *made on the document containing the offer or on a separate*
16 *document of acceptance, shall be in writing and shall be signed*
17 *by counsel for the accepting party or, if not represented by*
18 *counsel, by the accepting party.*

19 (1) If the offer is accepted, the offer with proof of acceptance
20 shall be filed and the clerk or the judge shall enter judgment
21 accordingly. In the case of an arbitration, the offer with proof of
22 acceptance shall be filed with the arbitrator or arbitrators who
23 shall promptly render an award accordingly.

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

28 (3) For purposes of this subdivision, a trial or arbitration shall
29 be deemed to be actually commenced at the beginning of the
30 opening statement of the plaintiff or counsel, and if there is no
31 opening statement, then at the time of the administering of the
32 oath or affirmation to the first witness, or the introduction of any
33 evidence.

34 (c) (1) If an offer made by a defendant is not accepted and the
35 plaintiff fails to obtain a more favorable judgment or award, the
36 plaintiff shall not recover his or her postoffer costs and shall pay
37 the defendant's costs from the time of the offer. In addition, in
38 any action or proceeding other than an eminent domain action,
39 the court or arbitrator, in its discretion, may require the plaintiff
40 to pay a reasonable sum to cover costs of the services of expert

1 witnesses, who are not regular employees of any party, actually
2 incurred and reasonably necessary in either, or both, preparation
3 for trial or arbitration, or during trial or arbitration, of the case by
4 the defendant.

5 (2) (A) In determining whether the plaintiff obtains a more
6 favorable judgment, the court or arbitrator shall exclude the
7 postoffer costs.

8 (B) It is the intent of the Legislature in enacting subparagraph
9 (A) to supersede the holding in Encinitas Plaza Real v. Knight,
10 209 Cal.App.3d 996, that attorney’s fees awarded to the
11 prevailing party were not costs for purposes of this section but
12 were part of the judgment.

13 (d) If an offer made by a plaintiff is not accepted and the
14 defendant fails to obtain a more favorable judgment or award in
15 any action or proceeding other than an eminent domain action,
16 the court or arbitrator, in its discretion, may require the defendant
17 to pay a reasonable sum to cover *postoffer* costs of the services of
18 expert witnesses, who are not regular employees of any party,
19 actually incurred and reasonably necessary in either, or both,
20 preparation for trial or arbitration, or during trial or arbitration, of
21 the case by the plaintiff, in addition to plaintiff’s costs.

22 (e) If an offer made by a defendant is not accepted and the
23 plaintiff fails to obtain a more favorable judgment or award, the
24 costs under this section, from the time of the offer, shall be
25 deducted from any damages awarded in favor of the plaintiff. If
26 the costs awarded under this section exceed the amount of the
27 damages awarded to the plaintiff the net amount shall be awarded
28 to the defendant and judgment or award shall be entered
29 accordingly.

30 (f) Police officers shall be deemed to be expert witnesses for
31 the purposes of this section; ~~plaintiff~~. *For purposes of this*
32 *section, “plaintiff” includes a cross-complainant and defendant*
33 *“defendant” includes a cross-defendant. Any judgment or award*
34 *entered pursuant to this section shall be deemed to be a*
35 *compromise settlement.*

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

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

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

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

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

11 *SEC. 12. Section 811.9 of the Government Code is amended*
12 *to read:*

13 811.9. (a) Notwithstanding any other provision of law,
14 judges, subordinate judicial officers, and court executive officers
15 of the superior ~~and municipal~~ courts are state officers for
16 purposes of Part 1 (commencing with Section 810) to Part 7
17 (commencing with Section 995), inclusive, and trial court
18 employees are employees of the trial court for purposes of Part 1
19 (commencing with Section 810) to Part 7 (commencing with
20 Section 995), inclusive. The Judicial Council shall provide for
21 representation, defense, and indemnification of ~~such those~~
22 individuals and the court pursuant to Part 1 (commencing with
23 Section 810) to Part 7 (commencing with Section 995), inclusive.
24 The Judicial Council shall provide for ~~such that~~ representation or
25 defense through the county counsel, the Attorney General, or
26 other counsel. The county counsel and the Attorney General may,
27 but are not required to, provide ~~such~~ representation or defense for
28 the Judicial Council. The fact that a *justice*, judge, subordinate
29 judicial officer, court executive officer, ~~trial court employee, or~~
30 the court, *the Judicial Council, or the Administrative Office of*
31 *the Courts* is or was represented or defended by the county
32 counsel, the Attorney General, or other counsel shall not be the
33 sole basis for a judicial determination of disqualification of a
34 *justice*, judge, subordinate judicial officer, the county counsel,
35 the Attorney General, or other counsel in unrelated actions.

36 (b) To promote the cost-effective, prompt, and fair resolution
37 of actions, proceedings, and claims affecting the trial courts, the
38 Judicial Council shall adopt rules of court requiring the
39 Administrative Office of the Courts to manage actions,
40 proceedings, and claims that affect the trial courts and involve

1 superior or municipal courts, superior or municipal court judges,
2 subordinate judicial officers, court executive officers, or trial
3 court employees in consultation with the affected courts and
4 individuals. The Administrative Office of the Courts'
5 management of these actions, proceedings, and claims shall
6 include, but not be limited to, case management and
7 administrative responsibilities such as selection of counsel and
8 making strategic and settlement decisions.

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

13 *SEC. 13. Section 905 of the Government Code is amended to*
14 *read:*

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

19 (a) Claims under the Revenue and Taxation Code or other
20 statute prescribing procedures for the refund, rebate, exemption,
21 cancellation, amendment, modification or adjustment of any tax,
22 assessment, fee or charge or any portion thereof, or of any
23 penalties, costs or charges related thereto.

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

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

30 (d) Claims for which the ~~workmen's~~ workers' compensation
31 authorized by Division 4 (commencing with Section ~~3201~~ 3200)
32 of the Labor Code is the exclusive remedy.

33 (e) Applications or claims for any form of public assistance
34 under the Welfare and Institutions Code or other provisions of
35 law relating to public assistance programs, and claims for goods,
36 services, provisions or other assistance rendered for or on behalf
37 of any recipient of any form of public assistance.

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

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

3 (h) Claims—~~which~~ *that* relate to a special assessment
4 constituting a specific lien against the property assessed and
5 ~~which~~ *that* are payable from the proceeds of—~~such~~—~~an~~ *the*
6 assessment, by offset of a claim for damages against it or by
7 delivery of any warrant or bonds representing it.

8 (i) Claims by the ~~State~~ *state* or by a state department or agency
9 or by another local public *entity* or by a *judicial branch* entity.

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

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

18 (l) Claims governed by the Pedestrian Mall Law of 1960, Part
19 1 (commencing with Section 11000) of Division 13 of the Streets
20 and Highways Code.

21 *SEC. 14. Section 905.7 is added to the Government Code, to*
22 *read:*

23 *905.7. (a) All claims against a judicial branch entity for*
24 *money or damages based upon an express contract or for an*
25 *injury for which the judicial branch entity is liable shall be*
26 *presented in accordance with Chapter 1 (commencing with*
27 *Section 900) and Chapter 2 (commencing with Section 910) of*
28 *this part. The provisions of this section are declaratory of*
29 *existing law.*

30 *(b) For a two-year period ending on January 1, 2008, a*
31 *failure to timely present a claim against a judicial branch entity*
32 *pursuant to Section 911.2 shall be presumed to constitute*
33 *excusable neglect. The judicial branch entity may rebut this*
34 *presumption by showing that the party responsible for presenting*
35 *the claim knew or should have known that the claim against the*
36 *judicial branch entity was required to be presented pursuant to*
37 *Section 911.2. This paragraph shall remain operative only until*
38 *January 1, 2008, and as of that date is no longer operative.*

39 *SEC. 15. Section 910.4 of the Government Code is amended*
40 *to read:*

1 910.4. The board shall provide forms specifying the
2 information to be contained in claims against the state *or a*
3 *judicial branch entity*. The person presenting a claim shall use
4 the form in order that his or her claim is deemed in conformity
5 with Sections 910 and 910.2. A claim may be returned to the
6 person if it was not presented using the form. Any claim returned
7 to a person may be resubmitted using the appropriate form.

8 *SEC. 16. Section 123.6 of the Labor Code is amended to*
9 *read:*

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

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

34 (b) Honoraria or travel allowed by the court administrator, and
35 not otherwise prohibited by this section in connection with any
36 public or private conference, convention, meeting, social event,
37 or like gathering, the cost of which is significantly paid for by
38 attorneys who practice before the board, may not be accepted
39 unless the court administrator has provided prior approval in

1 writing to the workers' compensation administrative law judge
2 allowing him or her to accept those payments.

3 *SEC. 17. Section 16020 of the Vehicle Code is amended to*
4 *read:*

5 16020. (a) Every driver and every owner of a motor vehicle
6 shall at all times be able to establish financial responsibility
7 pursuant to Section 16021, and shall at all times carry in the
8 vehicle evidence of the form of financial responsibility in effect
9 for the vehicle.

10 (b) "Evidence of financial responsibility" means any of the
11 following:

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

14 (2) If the owner is a self-insurer, as provided in Section 16052
15 or a depositor, as provided in Section 16054.2, the certificate of
16 self-insurance or the assignment of deposit letter issued by the
17 department.

18 (3) An insurance covering note or binder pursuant to Section
19 382 or 382.5 of the Insurance Code.

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

23 (c) For purposes of this section, "evidence of financial
24 responsibility" also may be obtained by a law enforcement
25 officer *and court personnel* from an electronic reporting system
26 when that system becomes available for use by law enforcement
27 officers.

28 (d) For purposes of this section, "evidence of financial
29 responsibility" also includes any of the following:

30 (1) The name of the insurance company and the number of an
31 insurance policy or surety bond that was in effect at the time of
32 the accident or at the time that evidence of financial
33 responsibility is required to be provided pursuant to Section
34 16028, if that information is contained in the vehicle registration
35 records of the department.

36 (2) The identifying motor carrier of property permit number
37 issued by the Department of the California Highway Patrol to the
38 motor carrier of property as defined in Section 34601, and
39 displayed on the motor vehicle in the manner specified by the
40 Department of the California Highway Patrol.

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

5 (4) The identifying number issued by the Interstate Commerce
6 Commission or its successor federal agency, if proof of financial
7 responsibility must be presented to the issuing agency as part of
8 the identification number issuance process, and displayed on the
9 motor vehicle in the manner specified by the issuing agency.

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

15 *SEC. 18. Section 16058.1 of the Vehicle Code is amended to*
16 *read:*

17 16058.1. The department shall develop a method by which
18 law enforcement officers *and court personnel*, on and after July
19 1, 2006, may electronically verify that an insurance policy or
20 bond for a motor vehicle has been issued.

21 *SEC. 19. The provisions of this act shall apply prospectively*
22 *only.*

23
24
25 **All matter omitted in this version of the bill**
26 **appears in the bill as amended in the**
27 **Senate, June 28, 2005 (JR11)**
28
29

30 _____
31 **CORRECTIONS:**
32 **Text - Pages 6, 7, 9, 10, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23.**
33 _____