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CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL No. 2303

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

February 22, 2006

An act to amend Section 6450 of the Business and Professions Code, to amend Sections 896, 1798.24, 2982, and 2982.2 of the Civil Code, to amend Sections 170.3, 209, 416.10, 904.1, 904.2, 1276, 1277, 1278, 1278.5, and 1279.5 of the Code of Civil Procedure, to amend Section 9321 of the Commercial Code, to amend Section 5220 of the Corporations Code, to amend Sections 12585, 12599, 12599.1, and 12599.2 of, and to add ~~Section 68756~~ *Sections 68756 and 76225* to, the Government Code, to amend Section 959.1 of the Penal Code, to amend Sections 11709.2 and 11713.21 of the Vehicle Code, and to amend Sections 366.3 and 15657.03 of the Welfare and Institutions Code, relating to the judiciary.

LEGISLATIVE COUNSEL'S DIGEST

AB 2303, as amended, Committee on Judiciary. Judiciary: omnibus bill.

(1) Existing law requires all paralegals, as defined, to certify completion every 3 years of 4 hours of mandatory continuing legal education in legal ethics.

This bill would instead require all paralegals to certify completion every 2 years of 4 hours of mandatory continuing legal education in legal ethics and 4 hours of mandatory continuing legal education in general law or an area of specialized law.

(2) Existing law sets forth standards for determining liability in an action seeking the recovery of damages arising out of, or related to, deficiencies in residential construction, design, and related issues, as specified, including standards governing shower and bath enclosures and ceramic tile with respect to water issues.

This bill would instead set forth standards governing showers, baths, and related waterproofing systems, and governing the waterproofing system behind or under ceramic tile, as specified.

(3) ~~Existing law, the~~ *The* Information Practices Act of 1977~~,~~ prohibits specified state agencies from disclosing any personal information in a manner that would link the information disclosed to the individual to whom it pertains, except under specified circumstances, including disclosure to the University of California or a nonprofit educational institution conducting scientific research, provided the request for information is approved by the Committee for the Protection of Human Subjects of the California Health and Human Services Agency.

This bill would make a clarifying change to that exception.

(4) The Car Buyer's Bill of Rights requires a conditional sale contract for a motor vehicle to include, and a dealer to display, a specified notice to inform the buyer of a used vehicle with a purchase price of less than $40,000 of his or her right to obtain a contract cancellation option agreement. Existing law excepts specified vehicles from that contract cancellation option requirement, including motorcycles and recreational vehicles. Existing law also requires a seller to provide to a buyer a written disclosure containing specified information prior to the execution of a conditional sale contract.

This bill would require the notice provisions in a conditional sale contract, or displayed by a dealer, to provide that a recreational vehicle is excepted from that contract cancellation option requirement. The bill would also make a technical, nonsubstantive change to a related provision. The bill would also except motorcycles and off-highway vehicles, as specified, from the written disclosure requirement.

(5) Existing law sets forth the procedures for filing a writ of mandate to review the question of the disqualification of a judge. Existing law requires that petition to be filed within 10 days of notice to the parties of the decision.

This bill would instead require that petition to be filed and served within 10 days after service of written notice of entry of the court's order determining the question of disqualification, or as specified if served by mail.

(6) Under existing law, a prospective trial juror who has been summoned for jury service and fails to attend as directed or respond to the court may be compelled to attend, as specified. In addition, after an order to show cause hearing, the court may find the prospective juror in contempt of court, which is punishable by fine, incarceration, or both. Until January 1, 2007, existing law permits the court, in lieu of imposing penalties for contempt, to impose reasonable monetary sanctions of no more than $250 for a first violation, $750 for a 2nd violation, and $1,500 for the 3rd and any subsequent violation, upon a prospective juror who has failed to respond and who has not been excused, after first providing the prospective juror with notice and an opportunity to be heard, as specified. Existing law also requires the Judicial Council, by December 31, 2005, to report to the Legislature regarding the effects of the implementation of these provisions.

This bill would extend the operative date of those provisions to January 1, 2010, and would also provide that the Judicial Council report to the Legislature by December 31, 2008, regarding that implementation.

(7) Existing law prescribes procedures for serving a summons on a corporation and specifies the persons to whom a copy of the summons and the complaint may be delivered.

This bill would include among those persons who may receive that service and delivery a chief executive officer, a controller, and a chief financial officer.

(8) Existing law provides that an appeal is to the court of appeal, and, in a limited civil case, to the appellate division of the superior court. Existing law provides that an appeal may be taken from an

order granting a motion to quash service of summons or granting a motion to stay or dismiss the action on the ground of inconvenient forum.

This bill would instead provide that an appeal may be taken from a written order of dismissal following the order granting a motion to dismiss the action on the ground of inconvenient forum.

(9) Existing law sets forth the procedures for a change of name, including requiring an application for a name change to be made to the superior court of the county where the person whose name is proposed to be changed resides, by petition signed by the person, or if the person is under 18 years of age, signed by one of the person's parents, if living, or if both parents are dead, then by the guardian of the person.

This bill would revise and recast these provisions to, among other things, modify the procedures for persons objecting to a name change and *the* notice thereto, as specified.

(10) Until January 1, 2007, existing law provides that a licensee in ordinary course of business, as defined, takes its rights under a nonexclusive license free of a security interest in the intangible created by the licensor and takes its leasehold interest free of a security interest in the goods created by the lessor, as specified.

This bill would extend the operation of that provision to January 1, 2010.

(11) The Nonprofit Public Benefit Corporation Law prohibits a director of a nonprofit public benefit corporation from being elected for terms greater than 3 years, as fixed in the articles or bylaws.

This bill would instead allow those directors to be elected for terms no greater than 4 years, as fixed in the articles or bylaws.

(12) Existing law requires a charitable organization, unincorporated association, or a trustee holding property for charitable purposes to register its articles of incorporation with the Attorney General's Registry of Charitable Trusts within 30 days of receiving the property.

This bill would instead require these entities to file an initial registration form with the Attorney General, and would require the Attorney General to adopt rules and regulations as to the contents of that form and related procedures. The bill would make other procedural changes relating to the means of payment of the annual registration or renewal fee by other entities required to register with the Attorney General's Registry of Charitable Trusts.

(13) Existing law authorizes the Commission on Judicial Performance to, among other things, disqualify, suspend, retire, or censure a judge for specified reasons. Existing law authorizes the commission to exercise discretionary jurisdiction with regard to the oversight and discipline of subordinate judicial officers.

This bill would provide the Commission on Judicial Performance access to nonpublic and confidential records relevant to the performance of judges, former judges, and subordinate judicial officers, and would provide a mechanism for the public disclosure thereof, as specified.

(14) Existing law imposes specified conditions upon the construction of court facilities in Merced County.

This bill would require Merced County to reimburse the state for the construction costs of certain court facilities upon a failure to transfer those facilities' responsibilities and titles to the state by April 1, 2007.

~~(14)~~

(15) Existing law allows a criminal prosecution to be commenced by filing an accusatory pleading in electronic form with the magistrate, or in a court having authority to receive it, under specified conditions. Existing law also authorizes a court to receive and file a notice of parking violation or a notice to appear in electronic form under certain conditions.

This bill would revise and recast those conditions for the receipt and filing of an accusatory pleading or a notice to appear in electronic form.

~~(15)~~

(16) Existing law requires the juvenile court to conduct periodic status review hearings every 6 months, and, in certain cases, to terminate the parental rights to, and to order a permanent plan of adoption or legal guardianship for, a dependent child of the juvenile court.

This bill would allow the court to conduct those status review hearings at any time earlier than 6 months, if the court determines that an earlier review is in the best interest of the child.

~~(16)~~

(17) Existing law provides for emergency protective orders with respect to elder abuse, as specified. For those purposes, existing law requires the respondent to be personally served at least two days before the hearing on the protective order.

This bill would instead require at least five days service before that hearing.

~~(17) The~~

(18) This bill would incorporate additional changes to Section 1277 of the Code of Civil Procedure proposed by this bill and SB 1743 to take effect if both bills are chaptered and this bill is chaptered last.

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

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

SECTION 1. Section 6450 of the Business and Professions Code is amended to read:

6450. (a) “Paralegal” means a person who holds himself or herself out to be a paralegal, who is qualified by education, training, or work experience, who either contracts with or is employed by an attorney, law firm, corporation, governmental agency, or other entity, and who performs substantial legal work under the direction and supervision of an active member of the State Bar of California, as defined in Section 6060, or an attorney practicing law in the federal courts of this state, that has been specifically delegated by the attorney to him or her. Tasks performed by a paralegal include, but are not limited to, case planning, development, and management; legal research; interviewing clients; fact gathering and retrieving information; drafting and analyzing legal documents; collecting, compiling, and utilizing technical information to make an independent decision and recommendation to the supervising attorney; and representing clients before a state or federal administrative agency if that representation is permitted by statute, court rule, or administrative rule or regulation.

(b) Notwithstanding subdivision (a), a paralegal shall not do the following:

(1) Provide legal advice.

(2) Represent a client in court.

(3) Select, explain, draft, or recommend the use of any legal document to or for any person other than the attorney who directs and supervises the paralegal.

(4) Act as a runner or capper, as defined in Sections 6151 and 6152.

(5) Engage in conduct that constitutes the unlawful practice of law.

(6) Contract with, or be employed by, a natural person other than an attorney to perform paralegal services.

(7) In connection with providing paralegal services, induce a person to make an investment, purchase a financial product or service, or enter a transaction from which income or profit, or both, purportedly may be derived.

(8) Establish the fees to charge a client for the services the paralegal performs, which shall be established by the attorney who supervises the paralegal's work. This paragraph does not apply to fees charged by a paralegal in a contract to provide paralegal services to an attorney, law firm, corporation, governmental agency, or other entity as provided in subdivision (a).

(c) A paralegal shall possess at least one of the following:

(1) A certificate of completion of a paralegal program approved by the American Bar Association.

(2) A certificate of completion of a paralegal program at, or a degree from, a postsecondary institution that requires the successful completion of a minimum of 24 semester, or equivalent, units in law-related courses and that has been accredited by a national or regional accrediting organization or approved by the Bureau for Private Postsecondary and Vocational Education.

(3) A baccalaureate degree or an advanced degree in any subject, a minimum of one year of law-related experience under the supervision of an attorney who has been an active member of the State Bar of California for at least the preceding three years or who has practiced in the federal courts of this state for at least the preceding three years, and a written declaration from this attorney stating that the person is qualified to perform paralegal tasks.

(4) A high school diploma or general equivalency diploma, a minimum of three years of law-related experience under the supervision of an attorney who has been an active member of the State Bar of California for at least the preceding three years or who has practiced in the federal courts of this state for at least the preceding three years, and a written declaration from this attorney stating that the person is qualified to perform paralegal

tasks. This experience and training shall be completed no later than December 31, 2003.

(d) Every two years, commencing January 1, 2007, any person that is working as a paralegal shall be required to certify completion of four hours of mandatory continuing legal education in legal ethics and four hours of mandatory continuing legal education in either general law or in an area of specialized law. All continuing legal education courses shall meet the requirements of Section 6070. Certification of these continuing education requirements shall be made with the paralegal's supervising attorney. The paralegal shall be responsible for keeping a record of the paralegal's certifications.

(e) A paralegal does not include a nonlawyer who provides legal services directly to members of the public, or a legal document assistant or unlawful detainer assistant as defined in Section 6400, unless the person is a person described in subdivision (a).

(f) This section shall become operative on January 1, 2004.

SEC. 2. Section 896 of the Civil Code is amended to read:

896. In any action seeking recovery of damages arising out of, or related to deficiencies in, the residential construction, design, specifications, surveying, planning, supervision, testing, or observation of construction, a builder, and to the extent set forth in Chapter 4 (commencing with Section 910), a general contractor, subcontractor, material supplier, individual product manufacturer, or design professional, shall, except as specifically set forth in this title, be liable for, and the claimant's claims or causes of action shall be limited to violation of, the following standards, except as specifically set forth in this title. This title applies to original construction intended to be sold as an individual dwelling unit. As to condominium conversions, this title does not apply to or does not supersede any other statutory or common law.

(a) With respect to water issues:

(1) A door shall not allow unintended water to pass beyond, around, or through the door or its designed or actual moisture barriers, if any.

(2) Windows, patio doors, deck doors, and their systems shall not allow water to pass beyond, around, or through the window, patio door, or deck door or its designed or actual moisture

barriers, including, without limitation, internal barriers within the systems themselves. For purposes of this paragraph, “systems” include, without limitation, windows, window assemblies, framing, substrate, flashings, and trim, if any.

(3) Windows, patio doors, deck doors, and their systems shall not allow excessive condensation to enter the structure and cause damage to another component. For purposes of this paragraph, “systems” include, without limitation, windows, window assemblies, framing, substrate, flashings, and trim, if any.

(4) Roofs, roofing systems, chimney caps, and ventilation components shall not allow water to enter the structure or to pass beyond, around, or through the designed or actual moisture barriers, including, without limitation, internal barriers located within the systems themselves. For purposes of this paragraph, “systems” include, without limitation, framing, substrate, and sheathing, if any.

(5) Decks, deck systems, balconies, balcony systems, exterior stairs, and stair systems shall not allow water to pass into the adjacent structure. For purposes of this paragraph, “systems” include, without limitation, framing, substrate, flashing, and sheathing, if any.

(6) Decks, deck systems, balconies, balcony systems, exterior stairs, and stair systems shall not allow unintended water to pass within the systems themselves and cause damage to the systems. For purposes of this paragraph, “systems” include, without limitation, framing, substrate, flashing, and sheathing, if any.

(7) Foundation systems and slabs shall not allow water or vapor to enter into the structure so as to cause damage to another building component.

(8) Foundation systems and slabs shall not allow water or vapor to enter into the structure so as to limit the installation of the type of flooring materials typically used for the particular application.

(9) Hardscape, including paths and patios, irrigation systems, landscaping systems, and drainage systems, that are installed as part of the original construction, shall not be installed in such a way as to cause water or soil erosion to enter into or come in contact with the structure so as to cause damage to another building component.

(10) Stucco, exterior siding, exterior walls, including, without limitation, exterior framing, and other exterior wall finishes and fixtures and the systems of those components and fixtures, including, but not limited to, pot shelves, horizontal surfaces, columns, and plant-ons, shall be installed in such a way so as not to allow unintended water to pass into the structure or to pass beyond, around, or through the designed or actual moisture barriers of the system, including any internal barriers located within the system itself. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashings, trim, wall assemblies, and internal wall cavities, if any.

(11) Stucco, exterior siding, and exterior walls shall not allow excessive condensation to enter the structure and cause damage to another component. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashings, trim, wall assemblies, and internal wall cavities, if any.

(12) Retaining and site walls and their associated drainage systems shall not allow unintended water to pass beyond, around, or through its designed or actual moisture barriers including, without limitation, any internal barriers, so as to cause damage. This standard does not apply to those portions of any wall or drainage system that are designed to have water flow beyond, around, or through them.

(13) Retaining walls and site walls, and their associated drainage systems, shall only allow water to flow beyond, around, or through the areas designated by design.

(14) The lines and components of the plumbing system, sewer system, and utility systems shall not leak.

(15) Plumbing lines, sewer lines, and utility lines shall not corrode so as to impede the useful life of the systems.

(16) Sewer systems shall be installed in such a way as to allow the designated amount of sewage to flow through the system.

(17) Showers, baths, and related waterproofing systems shall not leak water into the interior of walls, flooring systems, or the interior of other components.

(18) The waterproofing system behind or under ceramic tile and tile countertops shall not allow water into the interior of walls, flooring systems, or other components so as to cause damage. Ceramic tile systems shall be designed and installed so as to deflect intended water to the waterproofing system.

(b) With respect to structural issues:

(1) Foundations, load bearing components, and slabs, shall not contain significant cracks or significant vertical displacement.

(2) Foundations, load bearing components, and slabs shall not cause the structure, in whole or in part, to be structurally unsafe.

(3) Foundations, load bearing components, and slabs, and underlying soils shall be constructed so as to materially comply with the design criteria set by applicable government building codes, regulations, and ordinances for chemical deterioration or corrosion resistance in effect at the time of original construction.

(4) A structure shall be constructed so as to materially comply with the design criteria for earthquake and wind load resistance, as set forth in the applicable government building codes, regulations, and ordinances in effect at the time of original construction.

(c) With respect to soil issues:

(1) Soils and engineered retaining walls shall not cause, in whole or in part, damage to the structure built upon the soil or engineered retaining wall.

(2) Soils and engineered retaining walls shall not cause, in whole or in part, the structure to be structurally unsafe.

(3) Soils shall not cause, in whole or in part, the land upon which no structure is built to become unusable for the purpose represented at the time of original sale by the builder or for the purpose for which that land is commonly used.

(d) With respect to fire protection issues:

(1) A structure shall be constructed so as to materially comply with the design criteria of the applicable government building codes, regulations, and ordinances for fire protection of the occupants in effect at the time of the original construction.

(2) Fireplaces, chimneys, chimney structures, and chimney termination caps shall be constructed and installed in such a way so as not to cause an unreasonable risk of fire outside the fireplace enclosure or chimney.

(3) Electrical and mechanical systems shall be constructed and installed in such a way so as not to cause an unreasonable risk of fire.

(e) With respect to plumbing and sewer issues:

Plumbing and sewer systems shall be installed to operate properly and shall not materially impair the use of the structure by its inhabitants. However, no action may be brought for a violation of this subdivision more than four years after close of escrow.

(f) With respect to electrical system issues:

Electrical systems shall operate properly and shall not materially impair the use of the structure by its inhabitants. However, no action shall be brought pursuant to this subdivision more than four years from close of escrow.

(g) With respect to issues regarding other areas of construction:

(1) Exterior pathways, driveways, hardscape, sidewalls, sidewalks, and patios installed by the original builder shall not contain cracks that display significant vertical displacement or that are excessive. However, no action shall be brought upon a violation of this paragraph more than four years from close of escrow.

(2) Stucco, exterior siding, and other exterior wall finishes and fixtures, including, but not limited to, pot shelves, horizontal surfaces, columns, and plant-ons, shall not contain significant cracks or separations.

(3) (A) To the extent not otherwise covered by these standards, manufactured products, including, but not limited to, windows, doors, roofs, plumbing products and fixtures, fireplaces, electrical fixtures, HVAC units, countertops, cabinets, paint, and appliances shall be installed so as not to interfere with the products' useful life, if any.

(B) For purposes of this paragraph, "useful life" means a representation of how long a product is warranted or represented, through its limited warranty or any written representations, to last by its manufacturer, including recommended or required maintenance. If there is no representation by a manufacturer, a builder shall install manufactured products so as not to interfere with the product's utility.

(C) For purposes of this paragraph, "manufactured product" means a product that is completely manufactured offsite.

(D) If no useful life representation is made, or if the representation is less than one year, the period shall be no less than one year. If a manufactured product is damaged as a result of a violation of these standards, damage to the product is a recoverable element of damages. This subparagraph does not limit recovery if there has been damage to another building component caused by a manufactured product during the manufactured product's useful life.

(E) This title does not apply in any action seeking recovery solely for a defect in a manufactured product located within or adjacent to a structure.

(4) Heating, if any, shall be installed so as to be capable of maintaining a room temperature of 70 degrees Fahrenheit at a point three feet above the floor in any living space.

(5) Living space air-conditioning, if any, shall be provided in a manner consistent with the size and efficiency design criteria specified in Title 24 of the California Code of Regulations or its successor.

(6) Attached structures shall be constructed to comply with interunit noise transmission standards set by the applicable government building codes, ordinances, or regulations in effect at the time of the original construction. If there is no applicable code, ordinance, or regulation, this paragraph does not apply. However, no action shall be brought pursuant to this paragraph more than one year from the original occupancy of the adjacent unit.

(7) Irrigation systems and drainage shall operate properly so as not to damage landscaping or other external improvements. However, no action shall be brought pursuant to this paragraph more than one year from close of escrow.

(8) Untreated wood posts shall not be installed in contact with soil so as to cause unreasonable decay to the wood based upon the finish grade at the time of original construction. However, no action shall be brought pursuant to this paragraph more than two years from close of escrow.

(9) Untreated steel fences and adjacent components shall be installed so as to prevent unreasonable corrosion. However, no action shall be brought pursuant to this paragraph more than four years from close of escrow.

(10) Paint and stains shall be applied in such a manner so as not to cause deterioration of the building surfaces for the length of time specified by the paint or stain manufacturers' representations, if any. However, no action shall be brought pursuant to this paragraph more than five years from close of escrow.

(11) Roofing materials shall be installed so as to avoid materials falling from the roof.

(12) The landscaping systems shall be installed in such a manner so as to survive for not less than one year. However, no action shall be brought pursuant to this paragraph more than two years from close of escrow.

(13) Ceramic tile and tile backing shall be installed in such a manner that the tile does not detach.

(14) Dryer ducts shall be installed and terminated pursuant to manufacturer installation requirements. However, no action shall be brought pursuant to this paragraph more than two years from close of escrow.

(15) Structures shall be constructed in such a manner so as not to impair the occupants' safety because they contain public health hazards as determined by a duly authorized public health official, health agency, or governmental entity having jurisdiction. This paragraph does not limit recovery for any damages caused by a violation of any other paragraph of this section on the grounds that the damages do not constitute a health hazard.

SEC. 2.5. Section 1798.24 of the Civil Code is amended to read:

1798.24. No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the information is disclosed, as follows:

(a) To the individual to whom the information pertains.

(b) With the prior written voluntary consent of the individual to whom the record pertains, but only if that consent has been obtained not more than 30 days before the disclosure, or in the time limit agreed to by the individual in the written consent.

(c) To the duly appointed guardian or conservator of the individual or a person representing the individual if it can be proven with reasonable certainty through the possession of agency forms, documents or correspondence that this person is the authorized representative of the individual to whom the information pertains.

(d) To those officers, employees, attorneys, agents, or volunteers of the agency that has custody of the information if the disclosure is relevant and necessary in the ordinary course of the performance of their official duties and is related to the purpose for which the information was acquired.

(e) To a person, or to another agency where the transfer is necessary for the transferee agency to perform its constitutional or statutory duties, and the use is compatible with a purpose for which the information was collected and the use or transfer is accounted for in accordance with Section 1798.25. With respect to information transferred from a law enforcement or regulatory agency, or information transferred to another law enforcement or regulatory agency, a use is compatible if the use of the information requested is needed in an investigation of unlawful activity under the jurisdiction of the requesting agency or for licensing, certification, or regulatory purposes by that agency.

(f) To a governmental entity when required by state or federal law.

(g) Pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(h) To a person who has provided the agency with advance, adequate written assurance that the information will be used solely for statistical research or reporting purposes, but only if the information to be disclosed is in a form that will not identify any individual.

(i) Pursuant to a determination by the agency that maintains information that compelling circumstances exist that affect the health or safety of an individual, if upon the disclosure notification is transmitted to the individual to whom the information pertains at his or her last known address. Disclosure shall not be made if it is in conflict with other state or federal laws.

(j) To the State Archives as a record that has sufficient historical or other value to warrant its continued preservation by the California state government, or for evaluation by the Director of General Services or his or her designee to determine whether the record has further administrative, legal, or fiscal value.

(k) To any person pursuant to a subpoena, court order, or other compulsory legal process if, before the disclosure, the agency reasonably attempts to notify the individual to whom the record pertains, and if the notification is not prohibited by law.

(*l*) To any person pursuant to a search warrant.

(m) Pursuant to Article 3 (commencing with Section 1800) of Chapter 1 of Division 2 of the Vehicle Code.

(n) For the sole purpose of verifying and paying government health care service claims made pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code.

(o) To a law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes, unless the disclosure is otherwise prohibited by law.

(p) To another person or governmental organization to the extent necessary to obtain information from the person or governmental organization as necessary for an investigation by the agency of a failure to comply with a specific state law that the agency is responsible for enforcing.

(q) To an adopted person and is limited to general background information pertaining to the adopted person's natural parents, provided that the information does not include or reveal the identity of the natural parents.

(r) To a child or a grandchild of an adopted person and disclosure is limited to medically necessary information pertaining to the adopted person's natural parents. However, the information, or the process for obtaining the information, shall not include or reveal the identity of the natural parents. The State Department of Social Services shall adopt regulations governing the release of information pursuant to this subdivision by July 1, 1985. The regulations shall require licensed adoption agencies to provide the same services provided by the department as established by this subdivision.

(s) To a committee of the Legislature or to a Member of the Legislature, or his or her staff when authorized in writing by the member, where the member has permission to obtain the information from the individual to whom it pertains or where the member provides reasonable assurance that he or she is acting on behalf of the individual.

(t) (1) To the University of California or a nonprofit educational institution conducting scientific research, provided the request for information is approved by the Committee for the Protection of Human Subjects (CPHS) for the California Health and Human Services Agency (CHHSA). The CPHS approval required under this subdivision shall include a review and determination that all the following criteria have been satisfied:

(A) The researcher has provided a plan sufficient to protect personal information from improper use and disclosures, including sufficient administrative, physical, and technical safeguards to protect personal information from reasonable anticipated threats to the security or confidentiality of the information.

(B) The researcher has provided a sufficient plan to destroy or return all personal information as soon as it is no longer needed for the research project, unless the researcher has demonstrated an ongoing need for the personal information for the research project and has provided a long-term plan sufficient to protect the confidentiality of that information.

(C) The researcher has provided sufficient written assurances that the personal information will not be reused or disclosed to any other person or entity, or used in any manner, not approved in the research protocol, except as required by law or for authorized oversight of the research project.

(2) The CPHS shall, at a minimum, accomplish all of the following as part of its review and approval of the research project for the purpose of protecting personal information held in agency databases:

(A) Determine whether the requested personal information is needed to conduct the research.

(B) Permit access to personal information only if it is needed for the research project.

(C) Permit access only to the minimum necessary personal information needed for the research project.

(D) Require the assignment of unique subject codes that are not derived from personal information in lieu of social security numbers if the research can still be conducted without social security numbers.

(E) If feasible, and if cost, time, and technical expertise permit, require the agency to conduct a portion of the data processing for the researcher to minimize the release of personal information.

(3) Reasonable costs to the agency associated with the agency's process of protecting personal information under the conditions of CPHS approval may be billed to the researcher,

including, but not limited to, the agency's costs for conducting a portion of the data processing for the researcher, removing personal information, encrypting or otherwise securing personal information, or assigning subject codes.

(4) The CPHS may enter into written agreements to enable other institutional review boards to provide the data security approvals required by this subdivision, provided the data security requirements set forth in this subdivision are satisfied.

(u) To an insurer if authorized by Chapter 5 (commencing with Section 10900) of Division 4 of the Vehicle Code.

(v) Pursuant to Section 1909, 8009, or 18396 of the Financial Code.

This article shall not be construed to require the disclosure of personal information to the individual to whom the information pertains when that information may otherwise be withheld as set forth in Section 1798.40.

SEC. 3. Section 2982 of the Civil Code, as amended by Section 3 of Chapter 128 of the Statutes of 2005, is amended to read:

2982. A conditional sale contract subject to this chapter shall contain the disclosures required by Regulation Z, whether or not Regulation Z applies to the transaction. In addition, to the extent applicable, the contract shall contain the other disclosures and notices required by, and shall satisfy the requirements and limitations of, this section. The disclosures required by subdivision (a) may be itemized or subtotaled to a greater extent than as required by that subdivision and shall be made together and in the sequence set forth in that subdivision. All other disclosures and notices may appear in the contract in any location or sequence and may be combined or interspersed with other provisions of the contract.

(a) The contract shall contain the following disclosures, as applicable, which shall be labeled "itemization of the amount financed:"

(1) (A) The cash price, exclusive of document preparation fees, business partnership automation fees, taxes imposed on the sale, pollution control certification fees, prior credit or lease balance on property being traded in, the amount charged for a service contract, the amount charged for a theft deterrent system, the amount charged for a surface protection product, the amount

charged for an optional debt cancellation agreement, and the amount charged for a contract cancellation option agreement.

(B) The fee to be retained by the seller for document preparation.

(C) The fee charged by the seller for certifying that the motor vehicle complies with applicable pollution control requirements.

(D) A charge for a theft deterrent device.

(E) A charge for a surface protection product.

(F) Taxes imposed on the sale.

(G) The amount of any optional business partnership automation fee to register or transfer the vehicle, which shall be labeled "Optional DMV Electronic Filing Fee."

(H) The amount charged for a service contract.

(I) The prior credit or lease balance remaining on property being traded in, as required by paragraph (6). The disclosure required by this subparagraph shall be labeled "prior credit or lease balance (see downpayment and trade-in calculation)."

(J) Any charge for an optional debt cancellation agreement.

(K) Any charge for a used vehicle contract cancellation option agreement.

(L) The total cash price, which is the sum of subparagraphs (A) to (K), inclusive.

(M) The disclosures described in subparagraphs (D), (E), and (K) are not required on contracts involving the sale of a motorcycle, as defined in Section 400 of the Vehicle Code, or on contracts involving the sale of an off-highway motor vehicle that is subject to identification under Section 38010 of the Vehicle Code, and the amounts of those charges, if any, are not required to be reflected in the total price under subparagraph (L).

(2) Amounts paid to public officials for the following:

(A) Vehicle license fees.

(B) Registration, transfer, and titling fees.

(C) California tire fees imposed pursuant to Section 42885 of the Public Resources Code.

(3) The aggregate amount of premiums agreed, upon execution of the contract, to be paid for policies of insurance included in the contract, excluding the amount of any insurance premium included in the finance charge.

(4) The amount of the state fee for issuance of a certificate of compliance, noncompliance, exemption, or waiver pursuant to any applicable pollution control statute.

(5) A subtotal representing the sum of the foregoing items.

(6) The amount of the buyer's downpayment itemized to show the following:

(A) The agreed value of the property being traded in.

(B) The prior credit or lease balance, if any, owing on the property being traded in.

(C) The net agreed value of the property being traded in, which is the difference between the amounts disclosed in subparagraphs (A) and (B). If the prior credit or lease balance of the property being traded in exceeds the agreed value of the property, a negative number shall be stated.

(D) The amount of any portion of the downpayment to be deferred until not later than the due date of the second regularly scheduled installment under the contract and that is not subject to a finance charge.

(E) The amount of any manufacturer's rebate applied or to be applied to the downpayment.

(F) The remaining amount paid or to be paid by the buyer as a downpayment.

(G) The total downpayment. If the sum of subparagraphs (C) to (F), inclusive, is zero or more, that sum shall be stated as the total downpayment and no amount shall be stated as the prior credit or lease balance under subparagraph (I) of paragraph (1). If the sum of subparagraphs (C) to (F), inclusive, is less than zero, then that sum, expressed as a positive number, shall be stated as the prior credit or lease balance under subparagraph (I) of paragraph (1), and zero shall be stated as the total downpayment. The disclosure required by this subparagraph shall be labeled "total downpayment" and shall contain a descriptor indicating that if the total downpayment is a negative number, a zero shall be disclosed as the total downpayment and a reference made that the remainder shall be included in the disclosure required pursuant to subparagraph (I) of paragraph (1).

(7) The amount of any administrative finance charge, labeled "prepaid finance charge."

(8) The difference between item (5) and the sum of items (6) and (7), labeled "amount financed."

(b) No particular terminology is required to disclose the items set forth in subdivision (a) except as expressly provided in that subdivision.

(c) If payment of all or a portion of the downpayment is to be deferred, the deferred payment shall be reflected in the payment schedule disclosed pursuant to Regulation Z.

(d) If the downpayment includes property being traded in, the contract shall contain a brief description of that property.

(e) The contract shall contain the names and addresses of all persons to whom the notice required under Section 2983.2 and permitted under Sections 2983.5 and 2984 is to be sent.

(f) (1) If the contract includes a finance charge determined on the precomputed basis, the contract shall identify the method of computing the unearned portion of the finance charge in the event of prepayment in full of the buyer's obligation and contain a statement of the amount or method of computation of any charge that may be deducted from the amount of any unearned finance charge in computing the amount that will be credited to the obligation or refunded to the buyer. The method of computing the unearned portion of the finance charge shall be sufficiently identified with a reference to the actuarial method if the computation will be under that method. The method of computing the unearned portion of the finance charge shall be sufficiently identified with a reference to the Rule of 78's, the sum of the digits, or the sum of the periodic time balances method in all other cases, and those references shall be deemed to be equivalent for disclosure purposes.

(2) If the contract includes a finance charge that is determined on the simple-interest basis but provides for a minimum finance charge in the event of prepayment in full, the contract shall contain a statement of that fact and the amount of the minimum finance charge or its method of calculation.

(g) (1) If the contract includes a finance charge that is determined on the precomputed basis and provides that the unearned portion of the finance charge to be refunded upon full prepayment of the contract is to be determined by a method other than actuarial, the contract shall contain a notice, in at least 10-point boldface type if the contract is printed, reading as follows: "Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2)

You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time and obtain a partial refund of the finance charge if it is $1 or more. Because of the way the amount of this refund will be figured, the time when you prepay could increase the ultimate cost of credit under this agreement. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement."

(2) If the contract includes a finance charge that is determined on the precomputed basis and provides for the actuarial method for computing the unearned portion of the finance charge upon prepayment in full, the contract shall contain a notice, in at least 10-point boldface type if the contract is printed, reading as follows: "Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time and obtain a partial refund of the finance charge if it is $1 or more. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement."

(3) If the contract includes a finance charge that is determined on the simple-interest basis, the contract shall contain a notice, in at least 10-point boldface type if the contract is printed, reading as follows: "Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement."

(h) The contract shall contain a notice in at least 8-point boldface type, acknowledged by the buyer, that reads as follows:

"If you have a complaint concerning this sale, you should try to resolve it with the seller.

Complaints concerning unfair or deceptive practices or methods by the seller may be referred to the city attorney, the district attorney, or an investigator for the Department of Motor Vehicles, or any combination thereof.

After this contract is signed, the seller may not change the financing or payment terms unless you agree in writing to the change. You do not have to agree to any change, and it is an unfair or deceptive practice for the seller to make a unilateral change.

____

Buyer's Signature"

(i) (1) The contract shall contain an itemization of any insurance included as part of the amount financed disclosed pursuant to paragraph (3) of subdivision (a) and of any insurance included as part of the finance charge. The itemization shall identify the type of insurance coverage and the premium charged therefor, and, if the insurance expires before the date of the last scheduled installment included in the repayment schedule, the term of the insurance shall be stated.

(2) If any charge for insurance, other than for credit life or disability, is included in the contract balance and disbursement of any part thereof is to be made more than one year after the date of the conditional sale contract, any finance charge on the amount to be disbursed after one year shall be computed from the month the disbursement is to be made to the due date of the last installment under the conditional sale contract.

(j) (1) Except for contracts in which the finance charge or portion thereof is determined by the simple-interest basis and the amount financed disclosed pursuant to paragraph (8) of subdivision (a) is more than two thousand five hundred dollars ($2,500), the dollar amount of the disclosed finance charge may not exceed the greater of:

(A) (i) One and one-half percent on so much of the unpaid balance as does not exceed two hundred twenty-five dollars ($225), 1 1⁄6 percent on so much of the unpaid balance in excess of two hundred twenty-five dollars ($225) as does not exceed nine hundred dollars ($900) and five-sixths of 1 percent on so much of the unpaid balance in excess of nine hundred dollars

($900) as does not exceed two thousand five hundred dollars ($2,500).

(ii) One percent of the entire unpaid balance; multiplied in either case by the number of months (computed on the basis of a full month for any fractional month period in excess of 15 days) elapsing between the date of the contract and the due date of the last installment.

(B) If the finance charge is determined by the precomputed basis, twenty-five dollars ($25).

(C) If the finance charge or a portion thereof is determined by the simple-interest basis:

(i) Twenty-five dollars ($25) if the unpaid balance does not exceed one thousand dollars ($1,000).

(ii) Fifty dollars ($50) if the unpaid balance exceeds one thousand dollars ($1,000) but does not exceed two thousand dollars ($2,000).

(iii) Seventy-five dollars ($75) if the unpaid balance exceeds two thousand dollars ($2,000).

(2) The holder of the contract may not charge, collect, or receive a finance charge that exceeds the disclosed finance charge, except to the extent (A) caused by the holder's receipt of one or more payments under a contract that provides for determination of the finance charge or a portion thereof on the 365-day basis at a time or times other than as originally scheduled whether or not the parties enter into an agreement pursuant to Section 2982.3, (B) permitted by paragraph (2), (3), or (4) of subdivision (c) of Section 226.17 of Regulation Z, or (C) permitted by subdivisions (a) and (c) of Section 2982.8.

(3) If the finance charge or a portion thereof is determined by the simple-interest basis and the amount of the unpaid balance exceeds five thousand dollars ($5,000), the holder of the contract may, in lieu of its right to a minimum finance charge under subparagraph (C) of paragraph (1), charge, receive, or collect on the date of the contract an administrative finance charge not to exceed seventy-five dollars ($75), provided that the sum of the administrative finance charge and the portion of the finance charge determined by the simple-interest basis shall not exceed the maximum total finance charge permitted by subparagraph (A) of paragraph (1). Any administrative finance charge that is

charged, received, or collected by a holder shall be deemed a finance charge earned on the date of the contract.

(4) If a contract provides for unequal or irregular payments, or payments on other than a monthly basis, the maximum finance charge shall be at the effective rate provided for in paragraph (1), having due regard for the schedule of installments.

(k) The contract may provide that for each installment in default for a period of not less than 10 days the buyer shall pay a delinquency charge in an amount not to exceed in the aggregate 5 percent of the delinquent installment, which amount may be collected only once on any installment regardless of the period during which it remains in default. Payments timely received by the seller under an extension or deferral agreement may not be subject to a delinquency charge unless the charge is permitted by Section 2982.3. The contract may provide for reasonable collection costs and fees in the event of delinquency.

(*l*) Notwithstanding any provision of a contract to the contrary, the buyer may pay at any time before maturity the entire indebtedness evidenced by the contract without penalty. In the event of prepayment in full:

(1) If the finance charge was determined on the precomputed basis, the amount required to prepay the contract shall be the outstanding contract balance as of that date, provided, however, that the buyer shall be entitled to a refund credit in the amount of the unearned portion of the finance charge, except as provided in paragraphs (3) and (4). The amount of the unearned portion of the finance charge shall be at least as great a proportion of the finance charge, including any additional finance charge imposed pursuant to Section 2982.8 or other additional charge imposed because the contract has been extended, deferred, or refinanced, as the sum of the periodic monthly time balances payable more than 15 days after the date of prepayment bears to the sum of all the periodic monthly time balances under the schedule of installments in the contract or, if the contract has been extended, deferred, or refinanced, as so extended, deferred, or refinanced. If the amount of the refund credit is less than one dollar ($1), no refund credit need be made by the holder. Any refund credit may be made in cash or credited to the outstanding obligations of the buyer under the contract.

(2) If the finance charge or a portion thereof was determined on the simple-interest basis, the amount required to prepay the contract shall be the outstanding contract balance as of that date, including any earned finance charges that are unpaid as of that date and, if applicable, the amount provided in paragraph (3), and provided further that in cases where a finance charge is determined on the 360-day basis, the payments theretofore received will be assumed to have been received on their respective due dates regardless of the actual dates on which the payments were received.

(3) Where the minimum finance charge provided by subparagraph (B) or subparagraph (C) of paragraph (1) of subdivision (j), if either is applicable, is greater than the earned finance charge as of the date of prepayment, the holder shall be additionally entitled to the difference.

(4) The provisions of this subdivision may not impair the right of the seller or the seller's assignee to receive delinquency charges on delinquent installments and reasonable costs and fees as provided in subdivision (k) or extension or deferral agreement charges as provided in Section 2982.3.

(5) Notwithstanding any provision of a contract to the contrary, whenever the indebtedness created by any contract is satisfied prior to its maturity through surrender of the motor vehicle, repossession of the motor vehicle, redemption of the motor vehicle after repossession, or any judgment, the outstanding obligation of the buyer shall be determined as provided in paragraph (1) or (2). Notwithstanding, the buyer's outstanding obligation shall be computed by the holder as of the date the holder recovers the value of the motor vehicle through disposition thereof or judgment is entered or, if the holder elects to keep the motor vehicle in satisfaction of the buyer's indebtedness, as of the date the holder takes possession of the motor vehicle.

(m) Notwithstanding any other provision of this chapter to the contrary, any information required to be disclosed in a conditional sale contract under this chapter may be disclosed in any manner, method, or terminology required or permitted under Regulation Z, as in effect at the time that disclosure is made, except that permitted by paragraph (2) of subdivision (c) of Section 226.18 of Regulation Z, provided that all of the requirements and limitations set forth in subdivision (a) of this section are satisfied. This chapter does not prohibit the disclosure in that contract of additional information required or permitted under Regulation Z, as in effect at the time that disclosure is made.

(n) If the seller imposes a fee for document preparation, the contract shall contain a disclosure that the fee is not a governmental fee.

(o) A seller may not impose an application fee for a transaction governed by this chapter.

(p) The seller or holder may charge and collect a fee not to exceed fifteen dollars ($15) for the return by a depository institution of a dishonored check, negotiated order of withdrawal, or share draft issued in connection with the contract, if the contract so provides or if the contract contains a generalized statement that the buyer may be liable for collection costs incurred in connection with the contract.

(q) The contract shall disclose on its face, by printing the word "new" or "used" within a box outlined in red, that is not smaller than one-half inch high and one-half inch wide, whether the vehicle is sold as a new vehicle, as defined in Section 430 of the Vehicle Code, or as a used vehicle, as defined in Section 665 of the Vehicle Code.

(r) The contract shall contain a notice with a heading in at least 12-point bold type and the text in at least 10-point bold type, circumscribed by a line, immediately above the contract signature line, that reads as follows:

THERE IS NO COOLING-OFF PERIOD UNLESS YOU OBTAIN A CONTRACT CANCELLATION OPTION.

California law does not provide for a "cooling-off" or other cancellation period for vehicle sales. Therefore, you cannot later cancel this contract simply because you change your mind, decide the vehicle costs too much, or wish you had acquired a different vehicle. After you sign below, you may only cancel this contract with the agreement of the seller or for legal cause, such as fraud.

However, California law does require a seller to offer a 2-day contract cancellation option on used vehicles with a purchase price of less than $40,000, subject to certain statutory conditions. This contract cancellation option requirement does not apply to the sale of a recreational vehicle, a motorcycle, or an off-highway motor vehicle subject to identification under California law. See the vehicle contract cancellation option agreement for details.

SEC. 3.5. Section 2982.2 of the Civil Code is amended to read:

2982.2. (a) Prior to the execution of a conditional sale contract, the seller shall provide to a buyer, and obtain the buyer's signature on, a written disclosure that sets forth the following information:

(1) (A) A description and the price of each item sold if the contract includes a charge for the item.

(B) Subparagraph (A) applies to each item in the following categories:

(i) A service contract.

(ii) An insurance product.

(iii) A debt cancellation agreement.

(iv) A theft deterrent device.

(v) A surface protection product.

(vi) A vehicle contract cancellation option agreement.

(2) The sum of all of the charges disclosed under subdivision (a), labeled "total."

(3) The amount that would be calculated under the contract as the regular installment payment if charges for the items disclosed pursuant to subdivision (a) are not included in the contract. The amount disclosed pursuant to this subdivision shall be labeled "Installment Payment EXCLUDING Listed Items."

(4) The amount that would be calculated under the contract as the regular installment payment if charges for the items disclosed under subdivision (a) are included in the contract. The amount disclosed pursuant to this subdivision shall be labeled "Installment Payment INCLUDING Listed Items."

(b) The disclosures required under this section shall be in at least 10-point type and shall be contained in a document that is separate from the conditional sale contract and a purchase order.

(c) This section does not apply to the sale of a motorcycle as defined in Section 400 of the Vehicle Code or an off-highway vehicle subject to identification under Section 38010 of the Vehicle Code.

SEC. 4. Section 170.3 of the Code of Civil Procedure is amended to read:

170.3. (a) (1) If a judge determines himself or herself to be disqualified, the judge shall notify the presiding judge of the court of his or her recusal and shall not further participate in the proceeding, except as provided in Section 170.4, unless his or her disqualification is waived by the parties as provided in subdivision (b).

(2) If the judge disqualifying himself or herself is the only judge or the presiding judge of the court, the notification shall be sent to the person having authority to assign another judge to replace the disqualified judge.

(b) (1) A judge who determines himself or herself to be disqualified after disclosing the basis for his or her disqualification on the record may ask the parties and their attorneys whether they wish to waive the disqualification, except where the basis for disqualification is as provided in paragraph (2). A waiver of disqualification shall recite the basis for the disqualification, and is effective only when signed by all parties and their attorneys and filed in the record.

(2) There shall be no waiver of disqualification if the basis therefor is either of the following:

(A) The judge has a personal bias or prejudice concerning a party.

(B) The judge served as an attorney in the matter in controversy, or the judge has been a material witness concerning that matter.

(3) The judge shall not seek to induce a waiver and shall avoid any effort to discover which lawyers or parties favored or opposed a waiver of disqualification.

(4) If grounds for disqualification are first learned of or arise after the judge has made one or more rulings in a proceeding, but before the judge has completed judicial action in a proceeding, the judge shall, unless the disqualification be waived, disqualify himself or herself, but in the absence of good cause the rulings he or she has made up to that time shall not be set aside by the judge who replaces the disqualified judge.

(c) (1) If a judge who should disqualify himself or herself refuses or fails to do so, any party may file with the clerk a written verified statement objecting to the hearing or trial before the judge and setting forth the facts constituting the grounds for disqualification of the judge. The statement shall be presented at the earliest practicable opportunity after discovery of the facts constituting the ground for disqualification. Copies of the statement shall be served on each party or his or her attorney who has appeared and shall be personally served on the judge alleged to be disqualified, or on his or her clerk, provided that the judge is present in the courthouse or in chambers.

(2) Without conceding his or her disqualification, a judge whose impartiality has been challenged by the filing of a written statement may request any other judge agreed upon by the parties to sit and act in his or her place.

(3) Within 10 days after the filing or service, whichever is later, the judge may file a consent to disqualification in which case the judge shall notify the presiding judge or the person authorized to appoint a replacement of his or her recusal as provided in subdivision (a), or the judge may file a written verified answer admitting or denying any or all of the allegations contained in the party's statement and setting forth any additional facts material or relevant to the question of disqualification. The clerk shall forthwith transmit a copy of the judge's answer to each party or his or her attorney who has appeared in the action.

(4) A judge who fails to file a consent or answer within the time allowed shall be deemed to have consented to his or her disqualification and the clerk shall notify the presiding judge or person authorized to appoint a replacement of the recusal as provided in subdivision (a).

(5) A judge who refuses to recuse himself or herself shall not pass upon his or her own disqualification or upon the sufficiency in law, fact, or otherwise, of the statement of disqualification filed by a party. In that case, the question of disqualification shall be heard and determined by another judge agreed upon by all the parties who have appeared or, in the event they are unable to agree within five days of notification of the judge's answer, by a judge selected by the chairperson of the Judicial Council, or if the chairperson is unable to act, the vice chairperson. The clerk shall notify the executive officer of the Judicial Council of the need for a selection. The selection shall be made as expeditiously as possible. No challenge pursuant to this subdivision or Section

170.6 may be made against the judge selected to decide the question of disqualification.

(6) The judge deciding the question of disqualification may decide the question on the basis of the statement of disqualification and answer and any written arguments as the judge requests, or the judge may set the matter for hearing as promptly as practicable. If a hearing is ordered, the judge shall permit the parties and the judge alleged to be disqualified to argue the question of disqualification and shall for good cause shown hear evidence on any disputed issue of fact. If the judge deciding the question of disqualification determines that the judge is disqualified, the judge hearing the question shall notify the presiding judge or the person having authority to appoint a replacement of the disqualified judge as provided in subdivision (a).

(d) The determination of the question of the disqualification of a judge is not an appealable order and may be reviewed only by a writ of mandate from the appropriate court of appeal sought only by the parties to the proceeding. The petition for the writ shall be filed and served within 10 days after service of written notice of entry of the court's order determining the question of disqualification. If the notice of entry is served by mail, that time shall be extended as provided in subdivision (a) of Section 1013.

SEC. 5. Section 209 of the Code of Civil Procedure, as amended by Section 28 of Chapter 75 of the Statutes of 2005, is amended to read:

209. (a) Any prospective trial juror who has been summoned for service, and who fails to attend as directed or to respond to the court or jury commissioner and to be excused from attendance, may be attached and compelled to attend. Following an order to show cause hearing, the court may find the prospective juror in contempt of court, punishable by fine, incarceration, or both, as otherwise provided by law.

(b) In lieu of imposing sanctions for contempt as set forth in subdivision (a), the court may impose reasonable monetary sanctions, as provided in this subdivision, on a prospective juror who has not been excused pursuant to Section 204 after first providing the prospective juror with notice and an opportunity to be heard. If a juror fails to respond to the initial summons within 12 months, the court may issue a second summons indicating that the person failed to appear in response to a previous summons and ordering the person to appear for jury duty. Upon the failure of the juror to appear in response to the second summons, the court may issue a failure to appear notice informing the person that failure to respond may result in the imposition of money sanctions. If the prospective juror does not attend the court within the time period as directed by the failure to appear notice, the court shall issue an order to show cause. Payment of monetary sanctions imposed pursuant to this subdivision does not relieve the person of his or her obligation to perform jury duty.

(c) (1) The court may give notice of its intent to impose sanctions by either of the following means:

(A) Verbally to a prospective juror appearing in person in open court.

(B) The issuance on its own motion of an order to show cause requiring the prospective juror to demonstrate reasons for not imposing sanctions. The court may serve the order to show cause by certified or first-class mail.

(2) The monetary sanctions imposed pursuant to subdivision (b) may not exceed two hundred fifty dollars ($250) for the first violation, seven hundred fifty dollars ($750) for the second violation, and one thousand five hundred dollars ($1,500) for the third and any subsequent violation. Monetary sanctions may not be imposed on a prospective juror more than once during a single juror pool cycle. The prospective juror may be excused from paying sanctions pursuant to subdivision (b) of Section 204 or in the interests of justice. The full amount of any sanction paid shall be deposited in a bank account established for this purpose by the Administrative Office of the Courts and transmitted from that account monthly to the Controller for deposit in the Trial Court Trust Fund, as provided in Section 68085.1 of the Government Code. It is the intent of the Legislature that the funds derived from the monetary sanctions authorized in this section be allocated, to the extent feasible, to the family courts and the civil courts. The Judicial Council shall, by rule, provide for a procedure by which a prospective juror against whom a sanction has been imposed by default may move to set aside the default.

(d) On or before December 31, 2008, the Judicial Council shall report to the Legislature regarding the effects of the implementation of subdivisions (b) and (c). The report shall include, but not be limited to, information regarding any change in rates of response to juror summons, the amount of moneys collected pursuant to subdivision (c), the efficacy of the default procedures adopted in rules of court, and how, if at all, the Legislature may wish to alter this chapter to further attainment of its objectives.

(e) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

SEC. 6. Section 209 of the Code of Civil Procedure, as added by Section 2 of Chapter 359 of the Statutes of 2003, is amended to read:

209. Any prospective trial juror who has been summoned for service, and who fails to attend the court as directed or to respond to the court or jury commissioner and to be excused from attendance, may be attached and compelled to attend. Following an order to show cause hearing, the court may find the prospective juror in contempt of court, punishable by fine, incarceration, or both, as otherwise provided by law.

This section shall become operative on January 1, 2010.

SEC. 7. Section 416.10 of the Code of Civil Procedure is amended to read:

416.10. A summons may be served on a corporation by delivering a copy of the summons and the complaint by any of the following methods:

(a) To the person designated as agent for service of process as provided by any provision in Section 202, 1502, 2105, or 2107 of the Corporations Code (or Sections 3301 to 3303, inclusive, or Sections 6500 to 6504, inclusive, of the Corporations Code, as in effect on December 31, 1976, with respect to corporations to which they remain applicable).

(b) To the president, chief executive officer, or other head of the corporation, a vice president, a secretary or assistant secretary, a treasurer or assistant treasurer, a controller or chief financial officer, a general manager, or a person authorized by the corporation to receive service of process.

(c) If the corporation is a bank, to a cashier or assistant cashier or to a person specified in subdivision (a) or (b).

(d) If authorized by any provision in Section 1701, 1702, 2110, or 2111 of the Corporations Code (or Sections 3301 to 3303, inclusive, or Sections 6500 to 6504, inclusive, of the Corporations Code, as in effect on December 31, 1976, with respect to corporations to which they remain applicable), as provided by that provision.

SEC. 8. Section 904.1 of the Code of Civil Procedure is amended to read:

904.1. (a) An appeal, other than in a limited civil case, is to the court of appeal. An appeal, other than in a limited civil case, may be taken from any of the following:

(1) From a judgment, except (A) an interlocutory judgment, other than as provided in paragraphs (8), (9), and (11), (B) a judgment of contempt that is made final and conclusive by Section 1222, or (C) a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition directed to a municipal court or the superior court in a county in which there is no municipal court or the judge or judges thereof that relates to a matter pending in the municipal or superior court. However, an appellate court may, in its discretion, review a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition, or a judgment or order for the payment of monetary sanctions, upon petition for an extraordinary writ.

(2) From an order made after a judgment made appealable by paragraph (1).

(3) From an order granting a motion to quash service of summons or granting a motion to stay the action on the ground of inconvenient forum, or from a written order of dismissal under Section 581d following an order granting a motion to dismiss the action on the ground of inconvenient forum.

(4) From an order granting a new trial or denying a motion for judgment notwithstanding the verdict.

(5) From an order discharging or refusing to discharge an attachment or granting a right to attach order.

(6) From an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction.

(7) From an order appointing a receiver.

(8) From an interlocutory judgment, order, or decree, hereafter made or entered in an action to redeem real or personal property

from a mortgage thereof, or a lien thereon, determining the right to redeem and directing an accounting.

(9) From an interlocutory judgment in an action for partition determining the rights and interests of the respective parties and directing partition to be made.

(10) From an order made appealable by the provisions of the Probate Code or the Family Code.

(11) From an interlocutory judgment directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars ($5,000).

(12) From an order directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars ($5,000).

(13) From an order granting or denying a special motion to strike under Section 425.16.

(b) Sanction orders or judgments of five thousand dollars ($5,000) or less against a party or an attorney for a party may be reviewed on an appeal by that party after entry of final judgment in the main action, or, at the discretion of the court of appeal, may be reviewed upon petition for an extraordinary writ.

SEC. 9. Section 904.2 of the Code of Civil Procedure is amended to read:

904.2. An appeal in a limited civil case is to the appellate division of the superior court. An appeal in a limited civil case may be taken from any of the following:

(a) From a judgment, except (1) an interlocutory judgment, or (2) a judgment of contempt that is made final and conclusive by Section 1222.

(b) From an order made after a judgment made appealable by subdivision (a).

(c) From an order changing or refusing to change the place of trial.

(d) From an order granting a motion to quash service of summons or granting a motion to stay the action on the ground of inconvenient forum, or from a written order of dismissal under Section 581d following an order granting a motion to dismiss the action on the ground of inconvenient forum.

(e) From an order granting a new trial or denying a motion for judgment notwithstanding the verdict.

(f) From an order discharging or refusing to discharge an attachment or granting a right to attach order.

(g) From an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction.

(h) From an order appointing a receiver.

SEC. 10. Section 1276 of the Code of Civil Procedure is amended to read:

1276. (a) All applications for change of names shall be made to the superior court of the county where the person whose name is proposed to be changed resides, except as specified in subdivision (e), either (1) by petition signed by the person or, if the person is under 18 years of age, either by one of the person's parents, or by any guardian of the person, or if both parents are dead and there is no guardian of the person, then by some near relative or friend of the person or (2) as provided in Section 7638 of the Family Code.

The petition or pleading shall specify the place of birth and residence of the person, his or her present name, the name proposed, and the reason for the change of name.

(b) In a proceeding for a change of name commenced by the filing of a petition, if the person whose name is to be changed is under 18 years of age, the petition shall, if neither parent of the person has signed the petition, name, as far as known to the person proposing the name change, the parents of the person and their place of residence, if living, or if neither parent is living, near relatives of the person, and their place of residence.

(c) In a proceeding for a change of name commenced by the filing of a petition, if the person whose name is proposed to be changed is under 18 years of age and the petition is signed by only one parent, the petition shall specify the address, if known, of the other parent if living. If the petition is signed by a guardian, the petition shall specify the name and address, if known, of the parent or parents, if living, or the grandparents, if the addresses of both parents are unknown or if both parents are deceased, of the person whose name is proposed to be changed.

(d) In a proceeding for a change of name commenced by the filing of a petition, if the person whose name is proposed to be changed is 12 years of age or older, has been relinquished to an adoption agency by his or her parent or parents, and has not been legally adopted, the petition shall be signed by the person and the adoption agency to which the person was relinquished. The near relatives of the person and their place of residence shall not be included in the petition unless they are known to the person whose name is proposed to be changed.

(e) All petitions for the change of the name of a minor submitted by a guardian appointed by the juvenile court or the probate court shall be made in the appointing court.

(f) If the petition is signed by a guardian, the petition shall specify relevant information regarding the guardianship, the likelihood that the child will remain under the guardian's care until the child reaches the age of majority, and information suggesting that the child will not likely be returned to the custody of his or her parents.

SEC. 11. Section 1277 of the Code of Civil Procedure is amended to read:

1277. (a) If a proceeding for a change of name is commenced by the filing of a petition, except as provided in subdivisions (b) and (e), the court shall thereupon make an order reciting the filing of the petition, the name of the person by whom it is filed, and the name proposed. The order shall direct all persons interested in the matter to appear before the court at a time and place specified, which shall be not less than six or more than 12 weeks from the time of making the order, unless the court orders a different time, to show cause why the application for change of name should not be granted. The order shall direct all persons interested in the matter to make known any objection that they may have to the granting of the petition for change of name by filing a written objection, which includes the reasons for the objection, with the court at least two court days before the matter is scheduled to be heard and by appearing in court at the hearing to show cause why the petition for change of name should not be granted. The order shall state that, if no written objection is timely filed, the court may grant the petition without a hearing.

A copy of the order to show cause shall be published pursuant to Section 6064 of the Government Code in a newspaper of general circulation to be designated in the order published in the county. If no newspaper of general circulation is published in the county, a copy of the order to show cause shall be posted by the clerk of the court in three of the most public places in the county in which the court is located, for a like period. Proof shall be made to the satisfaction of the court of this publication or posting, at the time of the hearing of the application.

Four weekly publications shall be sufficient publication of the order to show cause. If the order is published in a daily newspaper, publication once a week for four successive weeks shall be sufficient.

If a petition has been filed for a minor by a parent and the other parent, if living, does not join in consenting thereto, the petitioner shall cause, not less than 30 days prior to the hearing, to be served notice of the time and place of the hearing or a copy of the order to show cause on the other parent pursuant to Section 413.10, 414.10, 415.10, or 415.40. If notice of the hearing cannot reasonably be accomplished pursuant to Section 415.10 or 415.40, the court may order that notice be given in a manner that the court determines is reasonably calculated to give actual notice to the nonconsenting parent. In that case, if the court determines that notice by publication is reasonably calculated to give actual notice to the nonconsenting parent, the court may determine that publication of the order to show cause pursuant to this subdivision is sufficient notice to the nonconsenting parent.

(b) If the petition for a change of name alleges that the reason for the petition is to avoid domestic violence, as defined in Section 6211 of the Family Code, or stalking, as defined in Section 646.9 of the Penal Code, and the petitioner is a participant in the address confidentiality program created pursuant to Chapter 3.1 (commencing with Section 6205) of Division 7 of Title 1 of the Government Code, the petition, the order of the court, and the copy published pursuant to subdivision (a) shall, in lieu of reciting the proposed name, indicate that the proposed name is confidential and will be on file with the Secretary of State pursuant to the provisions of the address confidentiality program.

(c) A proceeding for a change of name for a witness participating in the state Witness Protection Program established by Title 7.5 (commencing with Section 14020) of Part 4 of the Penal Code who has been approved for the change of name by the program is exempt from the requirement for publication of the order to show cause under subdivision (a).

(d) If application for change of name is brought as part of an action under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code), whether as part of a petition or cross-complaint or as a separate order to show cause in a pending action thereunder, service of the application shall be made upon all other parties to the action in a like manner as prescribed for the service of a summons, as is set forth in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2. Upon the setting of a hearing on the issue, notice of the hearing shall be given to all parties in the action in a like manner and within the time limits prescribed generally for the type of hearing (whether trial or order to show cause) at which the issue of the change of name is to be decided.

(e) If a guardian files a petition to change the name of his or her minor ward pursuant to Section 1276:

(1) The guardian shall provide notice of the hearing to any living parent of the minor by personal service at least 30 days prior to the hearing.

(2) If either or both parents are deceased or cannot be located, the guardian shall cause, not less than 30 days prior to the hearing, to be served a notice of the time and place of the hearing or a copy of the order to show cause on the child's grandparents, if living, pursuant to Section 413.10, 414.10, 415.10, or 415.40.

SEC. 11.5. Section 1277 of the Code of Civil Procedure is amended to read:

1277. (a) If a proceeding for a change of name is commenced by the filing of a petition, except as provided in subdivisions (b) and (e), the court shall thereupon make an order reciting the filing of the petition, the name of the person by whom it is filed, and the name proposed. The order shall direct all persons interested in the matter to appear before the court at a time and place specified, which shall be not less than six nor more than 12 weeks from the time of making the order, unless the court orders a different time, to show cause why the application for change of name should not be granted. The order shall direct all persons interested in the matter to make known any objection that they may have to the granting of the petition for change of name by filing a written objection, which includes the reasons for the objection, with the court at least two court days before the matter is scheduled to be heard and by appearing in court at the hearing to show cause why the petition for change of name should not be granted. The order shall state that, if no written objection is timely filed, the court may grant the petition without a hearing.

A copy of the order to show cause shall be published pursuant to Section 6064 of the Government Code in a newspaper of general circulation to be designated in the order published in the county. If no newspaper of general circulation is published in the county, a copy of the order to show cause shall be posted by the clerk of the court in three of the most public places in the county in which the court is located, for a like period. Proof shall be made to the satisfaction of the court of this publication or posting, at the time of the hearing of the application.

Four weekly publications shall be sufficient publication of the order to show cause. If the order is published in a daily newspaper, publication once a week for four successive weeks shall be sufficient.

If a petition has been filed for a minor by a parent and the other parent, if living, does not join in consenting thereto, the petitioner shall cause, not less than 30 days prior to the hearing, to be served notice of the time and place of the hearing or a copy of the order to show cause on the other parent pursuant to Section 413.10, 414.10, 415.10, or 415.40. If notice of the hearing cannot reasonably be accomplished pursuant to Section 415.10 or 415.40, the court may order that notice be given in a manner that the court determines is reasonably calculated to give actual notice to the nonconsenting parent. In that case, if the court determines that notice by publication is reasonably calculated to give actual notice to the nonconsenting parent, the court may determine that publication of the order to show cause pursuant to this subdivision is sufficient notice to the nonconsenting parent.

(b) (1) If the petition for a change of name alleges a reason or circumstance described in paragraph (2), and the petitioner is a participant in the address confidentiality program created pursuant to Chapter 3.1 (commencing with Section 6205) of Division 7 of Title 1 of the Government Code, the action for a change of name is exempt from the requirement for publication of the order to show cause under subdivision (a), and the petition and the order of the court, shall, in lieu of reciting the proposed name, indicate that the proposed name is confidential and will be on file with the Secretary of State pursuant to the provisions of the address confidentiality program.

(2) The procedure described in paragraph (1) applies to petitions alleging any of the following reasons or circumstances:

(A) To avoid domestic violence, as defined in Section 6211 of the Family Code.

(B) To avoid stalking, as defined in Section 646.9 of the Penal Code.

(C) The petitioner is, or is filing on behalf of, a victim of sexual assault, as defined in Section 1036.2 of the Evidence Code.

(c) A proceeding for a change of name for a witness participating in the state Witness Protection Program established by Title 7.5 (commencing with Section 14020) of Part 4 of the Penal Code who has been approved for the change of name by the program is exempt from the requirement for publication of the order to show cause under subdivision (a).

(d) If application for change of name is brought as part of an action under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code), whether as part of a petition or cross-complaint or as a separate order to show cause in a pending action thereunder, service of the application shall be made upon all other parties to the action in a like manner as prescribed for the service of a summons, as is set forth in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2. Upon the setting of a hearing on the issue, notice of the hearing shall be given to all parties in the action in a like manner and within the time limits prescribed generally for the type of hearing (whether trial or order to show cause) at which the issue of the change of name is to be decided.

(e) If a guardian files a petition to change the name of his or her minor ward pursuant to Section 1276:

(1) The guardian shall provide notice of the hearing to any living parent of the minor by personal service at least 30 days prior to the hearing.

(2) If either or both parents are deceased or cannot be located, the guardian shall cause, not less than 30 days prior to the hearing, to be served a notice of the time and place of the hearing or a copy of the order to show cause on the child's grandparents, if living, pursuant to Section 413.10, 414.10, 415.10, or 415.40.

SEC. 12. Section 1278 of the Code of Civil Procedure is amended to read:

1278. (a) Except as provided in subdivisions (c) and (d), the petition or application shall be heard at the time designated by the court, only if objections are filed by any person who can, in those objections, show to the court good reason against the change of name. At the hearing, the court may examine on oath any of the petitioners, remonstrants, or other persons, touching the petition or application, and may make an order changing the name, or dismissing the petition or application, as to the court may seem right and proper.

If no objection is filed at least two court days before the date set for hearing, the court may, without hearing, enter the order that the change of name is granted.

(b) If the provisions of subdivision (b) of Section 1277 apply, the court shall not disclose the proposed name unless the court finds by clear and convincing evidence that the allegations of domestic violence or stalking in the petition are false.

(c) If the application for a change of name is brought as part of an action under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code), the hearing on the issue of the change of name shall be conducted pursuant to statutes and rules of court governing those proceedings, whether the hearing is conducted upon an order to show cause or upon trial.

(d) If the petition for a change of name is filed by a guardian on behalf of a minor ward, the court shall first find that the ward is likely to remain in the guardian's care until the age of majority and that the ward is not likely to be returned to the custody of his or her parents. Upon making those findings, the court shall consider the petition and may grant the petition only if it finds that the proposed name change is in the best interest of the child.

SEC. 13. Section 1278.5 of the Code of Civil Procedure is amended to read:

1278.5. In any proceeding pursuant to this title in which a petition has been filed to change the name of a minor, and both parents, if living, do not join in consent, the court may deny the petition in whole or in part if it finds that any portion of the proposed name change is not in the best interest of the child.

SEC. 14. Section 1279.5 of the Code of Civil Procedure is amended to read:

1279.5. (a) Except as provided in subdivision (b), (c), (d), or (e), nothing in this title shall be construed to abrogate the common law right of any person to change his or her name.

(b) Notwithstanding any other law, no person imprisoned in the state prison and under the jurisdiction of the Director of Corrections shall be allowed to file a petition for change of name pursuant to Section 1276, except as permitted at the discretion of the Director of Corrections.

(c) A court shall deny a petition for a name change pursuant to Section 1276 made by a person who is under the jurisdiction of the Department of Corrections, unless that person's parole agent or probation officer grants prior written approval. Before granting that approval, the parole agent or probation officer shall determine that the name change will not pose a security risk to the community.

(d) Notwithstanding any other law, a court shall deny a petition for a name change pursuant to Section 1276 made by a person who is required to register as a sex offender under Section 290 of the Penal Code, unless the court determines that it is in the best interest of justice to grant the petition and that doing so will not adversely affect the public safety. If a petition for a name change is granted for an individual required to register as a sex offender, the individual shall, within five working days, notify the chief of police of the city in which he or she is domiciled, or the sheriff of the county if he or she is domiciled in an unincorporated area, and additionally with the chief of police of a campus of a University of California or California State University if he or she is domiciled upon the campus or in any of its facilities.

(e) For the purpose of this section, the court shall use the California Law Enforcement Telecommunications System (CLETS) and Criminal Justice Information System (CJIS) to determine whether or not an applicant for a name change is under the jurisdiction of the Department of Corrections or is required to register as a sex offender pursuant to Section 290 of the Penal Code. Each person applying for a name change shall declare under penalty of perjury that he or she is not under the jurisdiction of the Department of Corrections or is required to register as a sex offender pursuant to Section 290 of the Penal Code. If a court is not equipped with CLETS or CJIS, the clerk of the court shall contact an appropriate local law enforcement agency, which shall determine whether or not the petitioner is under the jurisdiction of the Department of Corrections or is required to register as a sex offender pursuant to Section 290 of the Penal Code.

SEC. 15. Section 9321 of the Commercial Code, as amended by Section 4 of Chapter 235 of the Statutes of 2003, is amended to read:

9321. (a) In this section, "licensee in ordinary course of business" means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's own usual or customary practices.

(b) A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

(c) A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

(d) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

SEC. 16. Section 9321 of the Commercial Code, as amended by Section 5 of Chapter 235 of the Statutes of 2003, is amended to read:

9321. (a) A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

(b) This section shall become operative on January 1, 2010.

SEC. 17. Section 5220 of the Corporations Code is amended to read:

5220. (a) Except as provided in subdivision (d), directors shall be elected for the terms, not longer than four years, as are fixed in the articles or bylaws. However, the terms of directors of a corporation without members may be up to six years. In the absence of any provision in the articles or bylaws, the term shall be one year. The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups of one or more directors. The terms of office of the several groups and the number of directors in each group need not be uniform. No amendment of the articles or bylaws may extend the term of a director beyond that for which the director was elected, nor may any bylaw provision increasing the terms of directors be adopted without approval of the members (Section 5034).

(b) Unless the articles or bylaws otherwise provide, each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been elected and qualified.

(c) The articles or bylaws may provide for the election of one or more directors by the members of any class voting as a class.

(d) Subdivisions (a) through (c) notwithstanding, all or any portion of the directors authorized in the articles or bylaws of a corporation may hold office by virtue of designation or selection as provided by the articles or bylaws rather than by election by a member or members. Those directors shall continue in office for the term prescribed by the governing article or bylaw provision, or, if there is no term prescribed, until the governing article or bylaw provision is duly amended or repealed, except as provided in subdivision (e) of Section 5222. A bylaw provision authorized by this subdivision may be adopted, amended, or repealed only by approval of the members (Section 5034), subject, if so provided in the bylaws, to the consent of the person or persons entitled to designate or select the director or directors.

(e) If a corporation has not issued memberships and (1) all the directors resign, die, or become incompetent, or (2) a corporation's initial directors have not been named in the articles and all incorporators resign, die, or become incompetent before the election of the initial directors, the superior court of any county may appoint directors of the corporation upon application by any party in interest.

SEC. 18. Section 12585 of the Government Code is amended to read:

12585. (a) Every charitable corporation, unincorporated association, and trustee subject to this article shall file with the Attorney General an initial registration form, under oath, setting forth information and attaching documents prescribed in accordance with rules and regulations of the Attorney General, within 30 days after the corporation, unincorporated association, or trustee initially receives property. A trustee is not required to register as long as the charitable interest in a trust is a future interest, but shall do so within 30 days after any charitable interest in a trust becomes a present interest.

(b) The Attorney General shall adopt rules and regulations as to the contents of the initial registration form and the manner of executing and filing that document or documents.

SEC. 19. Section 12599 of the Government Code is amended to read:

12599. (a) “Commercial fundraiser for charitable purposes” means any individual, corporation, unincorporated association, or other legal entity who for compensation does any of the following:

(1) Solicits funds, assets, or property in this state for charitable purposes.

(2) As a result of a solicitation of funds, assets, or property in this state for charitable purposes, receives or controls the funds, assets, or property solicited for charitable purposes.

(3) Employs, procures, or engages any compensated person to solicit, receive, or control funds, assets, or property for charitable purposes.

A commercial fundraiser for charitable purposes shall include any person, association of persons, corporation, or other entity that obtains a majority of its inventory for sale by the purchase, receipt, or control for resale to the general public, of salvageable personal property solicited by an organization qualified to solicit donations pursuant to Section 148.3 of the Welfare and Institutions Code.

A commercial fundraiser for charitable purposes shall not include a “trustee” as defined in Section 12582 or 12583, a “charitable corporation” as defined in Section 12582.1, or any employee thereof. A commercial fundraiser for charitable purposes shall not include an individual who is employed by or under the control of a commercial fundraiser for charitable purposes registered with the Attorney General. A commercial fundraiser for charitable purposes shall not include any federally insured financial institution that holds as a depository funds received as a result of a solicitation for charitable purposes.

As used in this section, “charitable purposes” includes any solicitation in which the name of any organization of law enforcement personnel, firefighters, or other persons who protect the public safety is used or referred to as an inducement for transferring any funds, assets, or property, unless the only expressed or implied purpose of the solicitation is for the sole benefit of the actual active membership of the organization.

(b) A commercial fundraiser for charitable purposes shall, prior to soliciting any funds, assets, or property, including salvageable personal property, in California for charitable purposes, or prior to receiving and controlling any funds, assets, or property, including salvageable personal property, as a result of a solicitation in this state for charitable purposes, register with the Attorney General’s Registry of Charitable Trusts on a registration form provided by the Attorney General. Renewals of registration shall be filed with the Registry of Charitable Trusts by January 15 of each calendar year in which the commercial fundraiser for charitable purposes does business and shall be effective for one year. A registration or renewal fee of two hundred dollars ($200) shall be required for registration of a commercial fundraiser for charitable purposes, and shall be payable by certified or cashier’s check to the Attorney General’s Registry of Charitable Trusts at the time of registration or renewal. The Attorney General may adjust the annual registration or renewal fee, or means of payment, as needed pursuant to this section. The Attorney General’s Registry of Charitable Trusts may grant extensions of time to file annual registration as required, pursuant to subdivision (b) of Section 12586. No separate fee shall be charged by the Attorney General for electronic registration, electronic renewal, or electronic repayment of fees.

(c) A commercial fundraiser for charitable purposes shall file with the Attorney General’s Registry of Charitable Trusts an annual financial report on a form provided by the Attorney

General, accounting for all funds collected pursuant to any solicitation for charitable purposes during the preceding calendar year. The annual financial report shall be filed with the Attorney General's Registry of Charitable Trusts no later than 30 days after the close of the preceding calendar year.

(d) The contents of the forms for annual registration and annual financial reporting by commercial fundraisers for charitable purposes shall be established by the Attorney General in a manner consistent with the procedures set forth in subdivisions (a) and (b) of Section 12586. The annual financial report shall require a detailed, itemized accounting of funds, assets, or property, solicited for charitable purposes on behalf of each charitable organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code or for each charitable purpose during the accounting period, and shall include, among other data, the following information for funds, assets, or property, solicited by the commercial fundraiser for charitable purposes:

(1) Total revenue.

(2) The fee or commission charged by the commercial fundraiser for charitable purposes.

(3) Salaries paid by the commercial fundraiser for charitable purposes to its officers and employees.

(4) Fundraising expenses.

(5) Distributions to the identified charitable organization or purpose.

(6) The names and addresses of any director, officer, or employee of the commercial fundraiser for charitable purposes who is a director, officer, or employee of any charitable organization listed in the annual financial report.

(e) A commercial fundraiser for charitable purposes that obtains a majority of its inventory for sale by the purchase, receipt, or control for resale to the general public, of salvageable personal property solicited by an organization qualified to solicit donations pursuant to Section 148.3 of the Welfare and Institutions Code shall file with the Attorney General's Registry of Charitable Trusts, and not with the sheriff of any county, an annual financial report on a form provided by the Attorney General that is separate and distinct from forms filed by other commercial fundraisers for charitable purposes pursuant to subdivisions (c) and (d).

(f) It shall be unlawful for any commercial fundraiser for charitable purposes to solicit funds in this state for charitable purposes unless the commercial fundraiser for charitable purposes has complied with the registration or annual renewal and financial reporting requirements of this article. Failure to comply with these registration or annual renewal and financial reporting requirements shall be grounds for injunction against solicitation in this state for charitable purposes and other civil remedies provided by law.

(g) A commercial fundraiser for charitable purposes is a constructive trustee for charitable purposes as to all funds collected pursuant to solicitation for charitable purposes and shall account to the Attorney General for all funds. A commercial fundraiser for charitable purposes is subject to the Attorney General's supervision and enforcement over charitable funds and assets to the same extent as a trustee for charitable purposes under this article.

(h) Not less than 10 working days prior to the commencement of each solicitation campaign, event, or service, or not later than commencement of solicitation for solicitations to aid victims of emergency hardship or disasters, a commercial fundraiser for charitable purposes shall file with the Attorney General's Registry of Charitable Trusts a notice on a form prescribed by the Attorney General that sets forth all of the following:

(1) The name, address, and telephone number of the commercial fundraiser for charitable purposes.

(2) The name, address, and telephone number of the charitable organization with whom the commercial fundraiser has contracted.

(3) The fundraising methods to be used.

(4) The projected dates when performance under the contract will commence and terminate.

(5) The name, address, and telephone number of the person responsible for directing and supervising the work of the commercial fundraiser under the contract.

(i) There shall be a written contract between a commercial fundraiser for charitable purposes and a charitable organization for each solicitation campaign, event, or service, that shall be signed by the authorized contracting officer for the commercial fundraiser and by an official of the charitable organization who is authorized to sign by the organization's governing body. The contract shall be available for inspection by the Attorney General and shall contain all of the following provisions:

(1) The legal name and address of the charitable organization as registered with the Registry of Charitable Trusts, unless the charitable organization is exempt from registration.

(2) A statement of the charitable purpose for which the solicitation campaign, event, or service is being conducted.

(3) A statement of the respective obligations of the commercial fundraiser and the charitable organization.

(4) If the commercial fundraiser is to be paid a fixed fee, a statement of the fee to be paid to the commercial fundraiser and a good faith estimate of what percentage the fee will constitute of the total contributions received. The contract shall clearly disclose the assumptions upon which the estimate is based, and the stated assumptions shall be based upon all of the relevant facts known to the commercial fundraiser regarding the solicitation to be conducted by the commercial fundraiser.

(5) If a percentage fee is to be paid to the commercial fundraiser, a statement of the percentage of the total contributions received that will be remitted to or retained by the charitable organization, or, if the solicitation involves the sale of goods or services or the sale of admissions to a fundraising event, the percentage of the purchase price that will be remitted to the charitable organization. The stated percentage shall be calculated by subtracting from contributions received and sales receipts not only the commercial fundraiser's fee, but also any additional amounts that the charitable organization is obligated to pay as fundraising costs.

(6) The effective and termination dates of the contract and the date solicitation activity is to commence within the state.

(7) A provision that requires that each contribution in the control or custody of the commercial fundraiser shall in its entirety and within five working days of its receipt comply with either of the following:

(A) Be deposited in an account at a bank or other federally insured financial institution that is solely in the name of the charitable organization and over which the charitable organization has sole control of withdrawals.

(B) Be delivered to the charitable organization in person, by United States express mail, or by another method of delivery providing for overnight delivery.

(8) A statement that the charitable organization exercises control and approval over the content and frequency of any solicitation.

(9) If the commercial fundraiser proposes to make any payment in cash or in kind to any person or legal entity to secure any person's attendance at, or sponsorship, approval, or endorsement of, a charity fundraising event, the maximum dollar amount of those payments shall be set forth in the contract. "Charity fundraising event" means any gathering of persons, including, but not limited to, a party, banquet, concert, or show, that is held for the purpose or claimed purpose of raising funds for any charitable purpose or organization.

(10) A provision that includes all of the following statements:

(A) The charitable organization has the right to cancel the contract without cost, penalty, or liability for a period of 10 days following the date on which the contract is executed.

(B) The charitable organization may cancel the contract by serving a written notice of cancellation on the commercial fundraiser.

(C) If mailed, service shall be by certified mail, return receipt requested, and cancellation shall be deemed effective upon the expiration of five calendar days from the date of mailing.

(D) Any funds collected after effective notice that the contract has been canceled shall be deemed to be held in trust for the benefit of the charitable organization without deduction for costs or expenses of any nature.

(E) The charitable organization shall be entitled to recover all funds collected after the date of cancellation.

(11) A provision that includes all of the following statements:

(A) Following the initial 10-day cancellation period, the charitable organization may terminate the contract by giving 30 days' written notice.

(B) If mailed, service of the notice shall be by certified mail, return receipt requested, and shall be deemed effective upon the expiration of five calendar days from the date of mailing.

(C) In the event of termination under this subdivision, the charitable organization shall be liable for services provided by the commercial fundraiser up to 30 days after the effective service of the notice.

(12) A provision that, following the initial 10-day cancellation period, the charitable organization may terminate the contract at any time upon written notice, without payment or compensation of any kind to the commercial fundraiser, if the commercial fundraiser or its agents, employees, or representatives do any of the following:

(A) Make any material misrepresentations in the course of solicitations or with respect to the charitable organization.

(B) Are found by the charitable organization to have been convicted of a crime arising from the conduct of a solicitation for a charitable organization or purpose punishable as a misdemeanor or a felony.

(C) Otherwise conduct fundraising activities in a manner that causes or could cause public disparagement of the charitable organization's good name or good will.

(13) Any other information required by the regulations of the Attorney General.

(j) It shall be unlawful for a commercial fundraiser for charitable purposes to not disclose the percentage of total fundraising expenses of the fundraiser upon receiving a written or oral request from a person solicited for a contribution for a charitable purpose. "Percentage of total fundraising expenses," as used in this section, means the ratio of the total expenses of the fundraiser to the total revenue received by the fundraiser for the charitable purpose for which funds are being solicited, as reported on the most recent financial report filed with the Attorney General's Registry of Charitable Trusts. A commercial fundraiser shall disclose this information in writing within five working days from receipt of a request by mail or facsimile. A commercial fundraiser shall orally disclose this information immediately upon a request made in person or in a telephone conversation and shall follow this response with a written disclosure within five working days. Failure to comply with the requirements of this subdivision shall be grounds for an injunction against solicitation in this state for charitable purposes and other civil remedies provided by law.

(k) If the Attorney General issues a report to the public containing information obtained from registration forms or financial report forms filed by commercial fundraisers for charitable purposes, there shall be a separate section concerning commercial fundraisers for charitable purposes that obtain a majority of their inventory for sale by the purchase, receipt, or control for resale to the general public, of salvageable personal property solicited by an organization qualified to solicit donations pursuant to Section 148.3 of the Welfare and Institutions Code. The report shall include an explanation of the distinctions between these thrift store operations and other types of commercial fundraising.

(*l*) No person may act as a commercial fundraiser for charitable purposes if that person, any officer or director of that person's business, any person with a controlling interest in the business, or any person the commercial fundraiser employs, engages, or procures to solicit for compensation, has been convicted by a court of any state or the United States of a crime arising from the conduct of a solicitation for a charitable organization or purpose punishable as a misdemeanor or felony.

(m) A commercial fundraiser for charitable purposes shall not solicit in the state on behalf of a charitable organization unless that charitable organization is registered or is exempt from registration with the Attorney General's Registry of Charitable Trusts.

(n) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect any other provision or application of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

SEC. 20. Section 12599.1 of the Government Code is amended to read:

12599.1. (a) "Fundraising counsel for charitable purposes" is defined as any individual, corporation, unincorporated association, or other legal entity who is described by all of the following:

(1) For compensation plans, manages, advises, counsels, consults, or prepares material for, or with respect to, the solicitation in this state of funds, assets, or property for charitable purposes.

(2) Does not solicit funds, assets, or property for charitable purposes.

(3) Does not receive or control funds, assets, or property solicited for charitable purposes in this state.

(4) Does not employ, procure, or engage any compensated person to solicit, receive, or control funds, assets, or property for charitable purposes.

(b) "Fundraising counsel for charitable purposes" does not include any of the following:

(1) An attorney, investment counselor, or banker who in the conduct of that person's profession advises a client when actually engaged in the giving of legal, investment, or financial advice.

(2) A trustee as defined in Section 12582 or 12583.

(3) A charitable corporation as defined in Section 12582.1, or any employee thereof.

(4) A person employed by or under the control of a fundraising counsel for charitable purposes, as defined in subdivision (a).

(5) A person, corporation, or other legal entity, engaged as an independent contractor directly by a trustee or a charitable corporation, that prints, reproduces, or distributes written materials prepared by a trustee, a charitable corporation, or any employee thereof, or that performs artistic or graphic services with respect to written materials prepared by a trustee, a charitable corporation, or any employee thereof, provided that the independent contractor does not perform any of the activities described in paragraph (1) of subdivision (a).

(6) A person whose total annual gross compensation for performing any activity described in paragraph (1) of subdivision (a) does not exceed twenty-five thousand dollars ($25,000).

(c) A fundraising counsel for charitable purposes shall, prior to managing, advising, counseling, consulting, or preparing material for, or with respect to, the solicitation in this state of funds, assets, or property for charitable purposes, register with the Attorney General's Registry of Charitable Trusts on a registration form provided by the Attorney General. Renewals of registration shall be filed with the Registry of Charitable Trusts by January 15 of each calendar year in which the fundraising counsel for charitable purposes does business and shall be effective for one year.

A registration or renewal fee of two hundred dollars ($200) shall be required for registration of a fundraising counsel for charitable purposes, and shall be payable by certified or cashier's check to the Attorney General's Registry of Charitable Trusts at the time of registration and renewal. The Attorney General may adjust the annual registration or renewal fee, or means of payment, as needed pursuant to this section. The Attorney General's Registry of Charitable Trusts may grant extensions of time to file annual registration as required, pursuant to subdivision (b) of Section 12586.

(d) A fundraising counsel for charitable purposes shall file annually with the Attorney General's Registry of Charitable Trusts on a form provided by the Attorney General, a report listing each person, corporation, unincorporated association, or other legal entity for whom the fundraising counsel has performed any services described in paragraph (1) of subdivision (a), and a statement certifying that the fundraising counsel had a written contract with each listed person, corporation, unincorporated association, or other legal entity that complied with the requirements of subdivision (f).

(e) Not less than 10 working days prior to the commencement of the performance of any service for a charitable organization by a fundraising counsel for charitable purposes, or not later than commencement of solicitation for solicitations to aid victims of emergency hardship or disasters, the fundraising counsel shall file with the Attorney General's Registry of Charitable Trusts a notice on a form prescribed by the Attorney General that sets forth all of the following:

(1) The name, address, and telephone number of the fundraising counsel for charitable purposes.

(2) The name, address, and telephone number of the charitable organization with whom the fundraising counsel has contracted.

(3) The projected dates when performance under the contract will commence and terminate.

(4) The name, address, and telephone number of the person responsible for directing and supervising the work of the fundraising counsel under the contract.

(f) There shall be a written contract between a fundraising counsel for charitable purposes and a charitable organization for each service to be performed by the fundraising counsel for the charitable organization, that shall be signed by the authorized contracting officer for the fundraising counsel and by an official of the charitable organization who is authorized to sign by the organization's governing body. The contract shall be available for inspection by the Attorney General and shall contain all of the following provisions:

(1) The legal name and address of the charitable organization as registered with the Registry of Charitable Trusts unless the charitable organization is exempt from registration.

(2) A statement of the charitable purpose for which the solicitation campaign is being conducted.

(3) A statement of the respective obligations of the fundraising counsel and the charitable organization.

(4) A clear statement of the fees and any other form of compensation, including commissions and property, that will be paid to the fundraising counsel.

(5) The effective and termination dates of the contract and the date services will commence with respect to solicitation in this state of contributions for a charitable organization.

(6) A statement that the fundraising counsel will not at any time solicit funds, assets, or property for charitable purposes, receive or control funds, assets, or property solicited for charitable purposes, or employ, procure, or engage any compensated person to solicit, receive, or control funds, assets, or property for charitable purposes.

(7) A statement that the charitable organization exercises control and approval over the content and frequency of any solicitation.

(8) A provision that includes all of the following statements:

(A) The charitable organization has the right to cancel the contract without cost, penalty, or liability for a period of 10 days following the date on which the contract is executed.

(B) The charitable organization may cancel the contract by serving a written notice of cancellation on the fundraising counsel.

(C) If mailed, service shall be by certified mail, return receipt requested, and cancellation shall be deemed effective upon the expiration of five calendar days from the date of mailing.

(9) A provision that includes all of the following statements:

(A) Following the initial 10-day cancellation period, the charitable organization may terminate the contract by giving 30 days' written notice.

(B) If mailed, service of the notice shall be by certified mail, return receipt requested, and shall be deemed effective upon the expiration of five calendar days from the date of mailing.

(C) In the event of termination under this subdivision, the charitable organization shall be liable for services provided by the fundraising counsel to the effective date of the termination.

(10) Any other information required by the regulations of the Attorney General.

(g) It shall be unlawful for any fundraising counsel for charitable purposes to manage, advise, counsel, consult, or prepare material for, or with respect to, the solicitation in this state of funds, assets, or property for charitable purposes unless the fundraising counsel for charitable purposes has complied with the registration or annual renewal and financial reporting requirements of this article.

(h) A fundraising counsel for charitable purposes is subject to the Attorney General's supervision and enforcement to the same extent as a trustee for charitable purposes under this article.

(i) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or application of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

SEC. 21. Section 12599.2 of the Government Code is amended to read:

12599.2. (a) "Commercial coventurer" is defined as any person who, for profit, is regularly and primarily engaged in trade or commerce other than in connection with the raising of funds, assets, or property for charitable organizations or charitable purposes, and who represents to the public that the purchase or use of any goods, services, entertainment, or any other thing of value will benefit a charitable organization or will be used for a charitable purpose.

(b) A commercial coventurer is a trustee as defined in Section 12582. Notwithstanding the requirements of Sections 12585 and 12586, a commercial coventurer is not required to register or file periodic reports with the Attorney General provided that the commercial coventurer:

(1) Has a written contract with a trustee or charitable corporation subject to this article, signed by two officers of the trustee or charitable corporation, prior to representing to the public that the purchase or use of any goods, services, entertainment, or any other thing of value will benefit the trustee or charitable corporation or will be used for a charitable purpose.

(2) Within 90 days after commencement of those representations, and at the end of each successive 90-day period during which the representations are made, transfers to that trustee or charitable corporation subject to this article all funds, assets, or property received as a result of the representations.

(3) Provides in conjunction with each transfer required by paragraph (2) a written accounting to the trustee or charitable corporation subject to this article of all funds, assets, or property received sufficient to enable the trustee or charitable corporation (A) to determine that representations made to the public on its behalf have been adhered to accurately and completely, and (B) to prepare its periodic report filed with the Attorney General pursuant to Section 12586.

(c) A commercial coventurer that does not meet the requirements of paragraphs (1), (2), and (3) of subdivision (b) shall register and report to the Attorney General on forms required by the Attorney General. An annual registration or renewal fee of two hundred dollars ($200) shall be required for registration or renewal of registration of a commercial coventurer, and shall be payable by certified or cashier's check to the Attorney General's Registry of Charitable Trusts at the time of registration or renewal. The Attorney General may adjust the annual registration or renewal fee, or means of payment, as needed pursuant to this section.

SEC. 22. Section 68756 is added to the Government Code, to read:

68756. (a) Notwithstanding any other provision of law, the commission shall be given access, on an ex parte basis, to all nonpublic records of court proceedings, including confidential sealed records and transcripts, relevant to the performance of any judge, former judge, or subordinate judicial officer (hereafter, collectively, judicial officer) within the commission's jurisdiction under Sections 18 and 18.1 of Article VI of the Constitution. The commission shall make a written request to the court in which the proceedings occurred. The court shall file the request under seal. Access to the requested records shall be provided within 15 days of the written request.

(b) (1) If the commission or the judicial officer who is the subject of the commission's investigation or proceeding intends to publicly disclose any nonpublic records or information obtained pursuant to subdivision (a), the commission or judicial officer shall petition the court that granted access to the records or another court that has jurisdiction, for authorization to disclose. The petition, filed under seal, shall identify the records or information to be disclosed and the reason for disclosure. To the extent that it does not unduly lessen the evidentiary value of the records or otherwise defeat the purpose of disclosure, the petitioner shall redact from the records names and other identifying information.

(2) The court shall grant the petition if it determines that there is good cause for disclosure. The court may issue protective orders, including further redaction of names or other identifying information, to the extent that they do not unduly lessen the evidentiary value of the records or otherwise defeat the purpose of disclosure. Within 15 days after the filing of a petition, the court may order the petitioner to give notice of the intended disclosure to any person who may be adversely affected by the disclosure. Any person who has been provided notice pursuant to this section may, within 20 days of service of the notice, file an objection to the intended disclosure with the court and serve the objection on the petitioner.

(3) The court shall grant or deny the petition in whole or in part, stating its reasons therefore, within 15 days of a timely objection, or the expiration of time for filing an objection if no objection is filed, or within 15 days of the filing of the petition for which no notice is required.

(c) Access to, and disclosure of, records under this section shall not be limited by any court order sealing those records.

(d) Persons entitled to file an objection to the intended disclosure shall not include the judge, former judge, or subordinate judicial officer who is the subject of the commission's investigation or disciplinary proceedings, unless he or she was a party or parent, guardian, or conservator of a party in the underlying action. A request or petition filed under this section shall not be considered or ruled on by a judicial officer who is the subject of the commission's investigation or disciplinary proceedings related to the requested information.

SEC. 22.5. Section 76225 is added to the Government Code, to read:

76225. If Merced County has not executed the transfer of its responsibilities and titles for the New Downtown Merced Courthouse, New Courts Building (Departments 1 to 3, inclusive), Jail Court (Department 4), Department 5 Modular, Departments 7 and 8 Trailer, Adobe Building, Criminal Trailer, and Jury Assembly, to the state as required under Chapter 1082 of the Statutes of 2002, on or before April 1, 2007, then Merced County shall pay back to the state the construction funds used for these projects.

SEC. 23. Section 959.1 of the Penal Code is amended to read:

959.1. (a) Notwithstanding Sections 740, 806, 949, and 959 or any other law to the contrary, a criminal prosecution may be commenced by filing an accusatory pleading in electronic form with the magistrate or in a court having authority to receive it.

(b) As used in this section, accusatory pleadings include, but are not limited to, the complaint, the information, and the indictment.

(c) A magistrate or court is authorized to receive and file an accusatory pleading in electronic form if all of the following conditions are met:

(1) The accusatory pleading is issued in the name of, and transmitted by, a public prosecutor or law enforcement agency filing pursuant to Chapter 5c (commencing with Section 853.5) or Chapter 5d (commencing with Section 853.9), or by a clerk of the court with respect to complaints issued for the offenses of failure to appear, pay a fine, or comply with an order of the court.

(2) The magistrate or court has the facility to electronically store the accusatory pleading for the statutory period of record retention.

(3) The magistrate or court has the ability to reproduce the accusatory pleading in physical form upon demand and payment of any costs involved.

An accusatory pleading shall be deemed to have been filed when it has been received by the magistrate or court.

When transmitted in electronic form, the accusatory pleading shall be exempt from any requirement that it be subscribed by a natural person. It is sufficient to satisfy any requirement that an accusatory pleading, or any part of it, be sworn to before an officer entitled to administer oaths, if the pleading, or any part of it, was in fact sworn to and the electronic form indicates which parts of the pleading were sworn to and the name of the officer who administered the oath.

(d) Notwithstanding any other law, a notice to appear issued on a form approved by the Judicial Council may be received and filed by a court in electronic form, if the following conditions are met:

(1) The notice to appear is issued and transmitted by a law enforcement agency prosecuting pursuant to Chapter 5c (commencing with Section 853.5) or Chapter 5d (commencing with Section 853.9) of Title 3 of Part 2 of this code, or Chapter 2 (commencing with Section 40300) of Division 17 of the Vehicle Code.

(2) The court has all of the following:

(A) The ability to receive the notice to appear in electronic format.

(B) The facility to electronically store an electronic copy and the data elements of the notice to appear for the statutory period of record retention.

(C) The ability to reproduce the electronic copy of the notice to appear and those data elements in printed form upon demand and payment of any costs involved.

(3) The issuing agency has the ability to reproduce the notice to appear in physical form upon demand and payment of any costs involved.

(e) A notice to appear that is received under subdivision (d) is deemed to have been filed when it has been accepted by the court and is in the form approved by the Judicial Council.

(f) If transmitted in electronic form, the notice to appear is deemed to have been signed by the defendant if it includes a digitized facsimile of the defendant's signature on the notice to appear. A notice to appear filed electronically under subdivision (d) need not be subscribed by the citing officer. An electronically submitted notice to appear need not be verified by the citing officer with a declaration under penalty of perjury if the electronic form indicates which parts of the notice are verified by that declaration and the name of the officer making the declaration.

SEC. 24. Section 11709.2 of the Vehicle Code, as amended by Section 7 of Chapter 128 of the Statutes of 2005, is amended to read:

11709.2. Every dealer shall conspicuously display a notice, not less than eight inches high and 10 inches wide, in each sales office and sales cubicle of a dealer's established place of business where written terms of specific sale or lease transactions are discussed with prospective purchasers or lessees, and in each room of a dealer's established place of business where sale and lease contracts are regularly executed, which states the following:

"THERE IS NO COOLING-OFF PERIOD UNLESS YOU OBTAIN A CONTRACT CANCELLATION OPTION

California law does not provide for a "cooling-off" or other cancellation period for vehicle lease or purchase contracts. Therefore, you cannot later cancel such a contract simply because you change your mind, decide the vehicle costs too much, or wish you had acquired a different vehicle. After you sign a motor vehicle purchase or lease contract, it may only be canceled with the agreement of the seller or lessor or for legal cause, such as fraud.

However, California law does require a seller to offer a 2-day contract cancellation option on used vehicles with a purchase price of less than $40,000, subject to certain statutory conditions. This contract cancellation option requirement does not apply to the sale of a recreational vehicle, a motorcycle, or an off-highway motor vehicle subject to identification under California law. See the vehicle contract cancellation option agreement for details."

SEC. 25. Section 11713.21 of the Vehicle Code is amended to read:

11713.21. (a) (1) A dealer shall not sell a used vehicle, as defined in Section 665 and subject to registration under this code, at retail to an individual for personal, family, or household use without offering the buyer a contract cancellation option agreement that allows the buyer to return the vehicle without cause. This section does not apply to a used vehicle having a purchase price of forty thousand dollars ($40,000) or more, a motorcycle, as defined in Section 400, or a recreational vehicle, as defined in Section 18010 of the Health and Safety Code.

(2) The purchase price for the contract cancellation option shall not exceed the following:

(A) Seventy-five dollars ($75) for a vehicle with a cash price of five thousand dollars ($5,000) or less.

(B) One hundred fifty dollars ($150) for a vehicle with a cash price of more than five thousand dollars ($5,000), but not more than ten thousand dollars ($10,000).

(C) Two hundred fifty dollars ($250) for a vehicle with a cash price of more than ten thousand dollars ($10,000), but not more than thirty thousand dollars ($30,000).

(D) One percent of the purchase price for a vehicle with a cash price of more than thirty thousand dollars ($30,000), but less than forty thousand dollars ($40,000).

The term “cash price” as used in this paragraph has the same meaning as described in subparagraph (A) of paragraph (1) of subdivision (a) of Section 2982 of the Civil Code. “Cash price” also excludes registration, transfer, titling, license, and California tire and optional business partnership automation fees.

(b) To comply with subdivision (a), and notwithstanding Section 2981.9 of the Civil Code, a contract cancellation option agreement shall be contained in a document separate from the conditional sale contract or other vehicle purchase agreement and shall contain, at a minimum, the following:

(1) The name of the seller and the buyer.

(2) A description and the Vehicle Identification Number of the vehicle purchased.

(3) A statement specifying the time within which the buyer must exercise the right to cancel the purchase under the contract cancellation option and return the vehicle to the dealer. The dealer shall not specify a time that is earlier than the dealer’s close of business on the second day following the day on which the vehicle was originally delivered to the buyer by the dealer.

(4) A statement that clearly and conspicuously specifies the dollar amount of any restocking fee the buyer must pay to the

dealer to exercise the right to cancel the purchase under the contract cancellation option. The restocking fee shall not exceed one hundred seventy-five dollars ($175) if the vehicle's cash price is five thousand dollars ($5,000) or less, three hundred fifty dollars ($350) if the vehicle's cash price is less than ten thousand dollars ($10,000), and five hundred dollars ($500) if the vehicle cash price is ten thousand dollars ($10,000) or more. The dealer shall apply toward the restocking fee the price paid by the buyer for the contract cancellation option. The price for purchase of the contract cancellation option is not otherwise subject to setoff or refund.

(5) A statement specifying the maximum number of miles that the vehicle may be driven after its original delivery by the dealer to the buyer to remain eligible for cancellation under the contract cancellation option. A dealer shall not specify fewer than 250 miles in the contract cancellation option agreement.

(6) A statement that the contract cancellation option gives the buyer the right to cancel the purchase and obtain a full refund, minus the purchase price for the contract cancellation option agreement; and that the right to cancel will apply only if, within the time specified in the contract cancellation option agreement, the following are personally delivered to the selling dealer by the buyer: a written notice exercising the right to cancel the purchase signed by the buyer; any restocking fee specified in the contract cancellation option agreement minus the purchase price for the contract cancellation option agreement; the original contract cancellation option agreement and vehicle purchase contract and related documents, if the seller gave those original documents to the buyer; all original vehicle titling and registration documents, if the seller gave those original documents to the buyer; and the vehicle, free of all liens and encumbrances, other than any lien or encumbrance created by or incident to the conditional sales contract, any loan arranged by the dealer, or any purchase money loan obtained by the buyer from a third party, and in the same condition as when it was delivered by the dealer to the buyer, reasonable wear and tear and any defect or mechanical problem that manifests or becomes evident after delivery that was not caused by the buyer excepted, and which must not have been driven beyond the mileage limit specified in the contract cancellation option agreement. The agreement may also provide

that the buyer will execute documents reasonably necessary to effectuate the cancellation and refund and as reasonably required to comply with applicable law.

(7) At the bottom of the contract cancellation option agreement, a statement that may be signed by the buyer to indicate the buyer's election to exercise the right to cancel the purchase under the terms of the contract cancellation option agreement, and the last date and time by which the option to cancel may be exercised, followed by a line for the buyer's signature. A particular form of statement is not required, but the following statement is sufficient: "By signing below, I elect to exercise my right to cancel the purchase of the vehicle described in this agreement." The buyer's delivery of the purchase cancellation agreement to the dealer with the buyer's signature following this statement shall constitute sufficient written notice exercising the right to cancel the purchase under paragraph (6). The dealer shall provide the buyer with the statement required by this paragraph in duplicate to enable the buyer to return the signed cancellation notice and retain a copy of the cancellation agreement.

(c) (1) No later than the second day following the day on which the buyer exercises the right to cancel the purchase in compliance with the contract cancellation option agreement, the dealer shall cancel the contract and provide the buyer with a full refund, including that portion of the sales tax attributable to amounts excluded pursuant to Section 6012.3 of the Revenue and Taxation Code.

(2) If the buyer was not charged for the contract cancellation option agreement, the dealer shall return to the buyer, no later than the day following the day on which the buyer exercises the right to cancel the purchase, any motor vehicle the buyer left with the seller as a downpayment or trade-in. If the dealer has sold or otherwise transferred title to the motor vehicle that was left as a downpayment or trade-in, the full refund described in paragraph (1) shall include the fair market value of the motor vehicle left as a downpayment or trade-in, or its value as stated in the contract or purchase order, whichever is greater.

(3) If the buyer was charged for the contract cancellation option agreement, the dealer shall retain any motor vehicle the buyer left with the dealer as a downpayment or trade-in until the

buyer exercises the right to cancel or the right to cancel expires. If the buyer exercises the right to cancel the purchase, the dealer shall return to the buyer, no later than the day following the day on which the buyer exercises the right to cancel the purchase, any motor vehicle the buyer left with the seller as a downpayment or trade-in. If the dealer has inadvertently sold or otherwise transferred title to the motor vehicle as the result of a bona fide error, notwithstanding reasonable procedures designed to avoid that error, the inadvertent sale or transfer of title shall not be deemed a violation of this paragraph, and the full refund described in paragraph (1) shall include the retail market value of the motor vehicle left as a downpayment or trade-in, or its value as stated in the contract or purchase order, whichever is greater.

(d) If the dealer received a portion of the purchase price by credit card, or other third-party payer on the buyer's account, the dealer may refund that portion of the purchase price to the credit card issuer or third-party payer for credit to the buyer's account.

(e) Notwithstanding subdivision (a), a dealer is not required to offer a contract cancellation option agreement to an individual who exercised his or her right to cancel the purchase of a vehicle from the dealer pursuant to a contract cancellation option agreement during the immediately preceding 30 days. A dealer is not required to give notice to a subsequent buyer of the return of a vehicle pursuant to this section. This subdivision does not abrogate or limit any disclosure obligation imposed by any other law.

(f) This section does not affect or alter the legal rights, duties, obligations, or liabilities of the buyer, the dealer, or the dealer's agents or assigns, that would exist in the absence of a contract cancellation option agreement. The buyer is the owner of a vehicle when he or she takes delivery of a vehicle until the vehicle is returned to the dealer pursuant to a contract cancellation option agreement, and the existence of a contract cancellation option agreement shall not impose permissive user liability on the dealer, or the dealer's agents or assigns, under Section 460 or 17150 or otherwise.

(g) Nothing in this section is intended to affect the ability of a buyer to rescind the contract or revoke acceptance under any other law.

SEC. 26. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established, except as provided for in Section 366.29. The status of the child shall be reviewed every six months to ensure that the adoption or legal guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. Following establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the legal guardianship, as authorized by Section 366.4. If, however, a relative of the child is appointed the legal guardian of the child and the child has been placed with the relative for at least 12 months, the court shall, except if the relative guardian objects, or upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. Following a termination of parental rights, the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a legal guardianship that has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. Prior to the hearing on a petition to terminate legal guardianship pursuant to this paragraph, the court shall order the county department of social services or welfare department to prepare a report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in the legal guardian's home, without terminating the legal guardianship, if services were provided to the child or legal guardian. If applicable, the report shall also identify recommended services to maintain the legal guardianship and set forth a plan for providing those services. If the petition to terminate legal guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the legal guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the best interests of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued legal guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. If the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services if it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the child shall be reviewed at least every six months. The review of the status of a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption shall be conducted by the court. The review of the status of a child for whom the court has not ordered parental rights terminated and who has not been ordered placed for adoption may be conducted by the court or an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or legal guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the child remain in long-term foster care pursuant to Section 366.21, 366.22, 366.26, or subdivision (g).

(4) It has been 12 months since a review was conducted by the court.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

(e) Except as provided in subdivision (f), at the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child, shall consider the safety of the child, and shall determine all of the following:

(1) The continuing necessity for and appropriateness of the placement.

(2) Identification of individuals other than the child's siblings who are important to a child who is 10 years of age or older and has been in out-of-home placement for six months or longer, and actions necessary to maintain the child's relationship with those individuals, provided that those relationships are in the best interest of the child. The social worker shall ask every child who is 10 years of age or older and who has been in out-of-home placement for six months or longer to identify individuals other

than the child's siblings who are important to the child, and may ask any other child to provide that information, as appropriate. The social worker shall make efforts to identify other individuals who are important to the child, consistent with the child's best interests.

(3) The continuing appropriateness and extent of compliance with the permanent plan for the child, including efforts to maintain relationships between a child who is 10 years of age or older and who has been in out-of-home placement for six months or longer and individuals who are important to the child and efforts to identify a prospective adoptive parent or legal guardian, including, but not limited to, child-specific recruitment efforts and listing on an adoption exchange.

(4) The extent of the agency's compliance with the child welfare services case plan in making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent placement of the child.

(5) Whether there should be any limitation on the right of the parent or guardian to make educational decisions for the child. That limitation shall be specifically addressed in the court order and may not exceed what is necessary to protect the child. If the court specifically limits the right of the parent or guardian to make educational decisions for the child, the court shall at the same time appoint a responsible adult to make educational decisions for the child pursuant to Section 361.

(6) The adequacy of services provided to the child. The court shall consider the progress in providing the information and documents to the child, as described in Section 391. The court shall also consider the need for, and progress in providing, the assistance and services described in paragraphs (3) and (4) of subdivision (b) of Section 391.

(7) The extent of progress the parents or legal guardians have made toward alleviating or mitigating the causes necessitating placement in foster care.

(8) The likely date by which the child may be returned to and safely maintained in the home, placed for adoption, legal guardianship, or in another planned permanent living arrangement.

(9) Whether the child has any siblings under the court's jurisdiction, and, if any siblings exist, all of the following:

(A) The nature of the relationship between the child and his or her siblings.

(B) The appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002.

(C) If the siblings are not placed together in the same home, why the siblings are not placed together and what efforts are being made to place the siblings together, or why those efforts are not appropriate.

(D) If the siblings are not placed together, the frequency and nature of the visits between siblings.

(E) The impact of the sibling relationships on the child's placement and planning for legal permanence.

The factors the court may consider as indicators of the nature of the child's sibling relationships include, but are not limited to, whether the siblings were raised together in the same home, whether the siblings have shared significant common experiences or have existing close and strong bonds, whether either sibling expresses a desire to visit or live with his or her sibling, as applicable, and whether ongoing contact is in the child's best emotional interests.

(10) For a child who is 16 years of age or older, the services needed to assist the child to make the transition from foster care to independent living.

The reviewing body shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the best interests of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents for a period not to exceed six months.

(f) At the review conducted by the court and held at least every six months, regarding a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption, the county welfare department shall prepare and present to the court a report describing the following:

(1) The child's present placement.

(2) The child's current physical, mental, emotional, and educational status.

(3) If the child has not been placed with a prospective adoptive parent or guardian, identification of individuals, other than the child's siblings, who are important to the child and actions necessary to maintain the child's relationship with those individuals, provided that those relationships are in the best interest of the child. The agency shall ask every child who is 10 years of age or older to identify any individuals who are important to him or her, consistent with the child's best interest, and may ask any child who is younger than 10 years of age to provide that information as appropriate. The agency shall make efforts to identify other individuals who are important to the child.

(4) Whether the child has been placed with a prospective adoptive parent or parents.

(5) Whether an adoptive placement agreement has been signed and filed.

(6) If the child has not been placed with a prospective adoptive parent or parents, the efforts made to identify an appropriate prospective adoptive parent or legal guardian, including, but not limited to, child-specific recruitment efforts and listing on an adoption exchange.

(7) Whether the final adoption order should include provisions for postadoptive sibling contact pursuant to Section 366.29.

(8) The progress of the search for an adoptive placement if one has not been identified.

(9) Any impediments to the adoption or the adoptive placement.

(10) The anticipated date by which the child will be adopted, or placed in an adoptive home.

(11) The anticipated date by which an adoptive placement agreement will be signed.

(12) Recommendations for court orders that will assist in the placement of the child for adoption or in the finalization of the adoption.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

The court shall make appropriate orders to protect the stability of the child and to facilitate and expedite the permanent placement and adoption of the child.

(g) At the review held pursuant to subdivision (d) for a child in long-term foster care, the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or, if compelling reasons exist for finding that none of the foregoing options are in the best interest of the child, whether the child should be placed in another planned permanent living arrangement. The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is being returned to the home of the parent, the child is not a proper subject for adoption, or no one is willing to accept legal guardianship. If the licensed county adoption agency, or the department when it is acting as an adoption agency in counties that are not served by a county adoption agency, has determined it is unlikely that the child will be adopted or one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall constitute a compelling reason for purposes of this subdivision. Only upon that determination may the court order that the child remain in foster care, without holding a hearing pursuant to Section 366.26.

(h) If, as authorized by subdivision (g), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, legal guardianship, or long-term foster care is the most appropriate plan for the child.

(i) The implementation and operation of the amendments to subdivision (e) enacted at the 2005−06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

(j) The reviews conducted pursuant to subdivision (a) or (d) may be conducted earlier than every six months if the court determines that an earlier review is in the best interests of the child or as courts rules prescribe.

SEC. 27. Section 15657.03 of the Welfare and Institutions Code is amended to read:

15657.03. (a) An elder or dependent adult who has suffered abuse as defined in Section 15610.07 may seek protective orders as provided in this section.

(b) For the purposes of this section, "protective order" means an order that includes any of the following restraining orders, whether issued ex parte, after notice and hearing, or in a judgment:

(1) An order enjoining a party from abusing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, or coming within a specified distance of, or disturbing the peace of the petitioner.

(2) An order excluding a party from the petitioner's residence or dwelling, except that this order shall not be issued if legal or equitable title to, or lease of, the residence or dwelling is in the sole name of the party to be excluded, or is in the name of the party to be excluded and any other party besides the petitioner.

(3) An order enjoining a party from specified behavior that the court determines is necessary to effectuate orders described in paragraph (1) or (2).

(c) An order may be issued under this section, with or without notice, to restrain any person for the purpose of preventing a recurrence of abuse, if an affidavit shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse of the petitioning elder or dependent adult.

(d) (1) Upon filing a petition for protective orders under this section, the petitioner may obtain a temporary restraining order in accordance with Section 527 of the Code of Civil Procedure, except to the extent this section provides a rule that is inconsistent. The temporary restraining order may include any of the protective orders described in subdivision (b). However, the court may issue an ex parte order excluding a party from the petitioner's residence or dwelling only on a showing of all of the following:

(A) Facts sufficient for the court to ascertain that the party who will stay in the dwelling has a right under color of law to possession of the premises.

(B) That the party to be excluded has assaulted or threatens to assault the petitioner.

(C) That physical or emotional harm would otherwise result to the petitioner.

(2) If a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why a permanent order should not be granted, on the earliest day that the business of the court will permit, but not later than 20 days or, if good cause appears to the court, 25 days from the date the temporary restraining order is granted, unless the order is otherwise modified or terminated by the court.

(e) The court may issue, upon notice and a hearing, any of the orders set forth in subdivision (b). The court may issue, after notice and hearing, an order excluding a person from a residence or dwelling if the court finds that physical or emotional harm would otherwise result to the other party.

(f) In the discretion of the court, an order issued after notice and a hearing under this section may have a duration of not more than three years, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. These orders may be renewed upon the request of a party, either for three years or permanently, without a showing of any further abuse since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. The failure to state the expiration date on the face of the form creates an order with a duration of three years from the date of issuance.

(g) Upon the filing of a petition for protective orders under this section, the respondent shall be personally served with a copy of the petition, notice of the hearing or order to show cause, temporary restraining order, if any, and any affidavits in support of the petition. Service shall be made at least five days before the hearing. The court may, on motion of the petitioner or on its own motion, shorten the time for service on the respondent.

(h) The court may, upon the filing of an affidavit by the applicant that the respondent could not be served within the time required by statute, reissue an order previously issued and dissolved by the court for failure to serve the respondent. The reissued order shall be made returnable on the earliest day that the business of the court will permit, but not later than 20 days or, if good cause appears to the court, 25 days from the date of reissuance. The reissued order shall state on its face the date of expiration of the order.

(i) (1) If the person named in a temporary restraining order is personally served with the order and notice of hearing with respect to a restraining order or protective order based thereon, but the person does not appear at the hearing, either personally or by counsel, and the terms and conditions of the restraining order or protective order are identical to the temporary restraining order, except for the duration of the order, then the restraining order or protective order may be served on the person by first-class mail sent to that person at the most current address for the person available to the court.

(2) The judicial form for orders issued pursuant to this subdivision shall contain a statement in substantially the following form:

“NO ADDITIONAL PROOF OF SERVICE IS REQUIRED IF THE FACE OF THIS FORM INDICATES THAT BOTH PARTIES WERE PERSONALLY PRESENT AT THE HEARING WHERE THE ORDER WAS ISSUED. IF YOU HAVE BEEN PERSONALLY SERVED WITH A

TEMPORARY RESTRAINING ORDER OR EMERGENCY PROTECTIVE ORDER AND NOTICE OF HEARING, BUT YOU DO NOT APPEAR AT THE HEARING EITHER IN PERSON OR BY COUNSEL, AND A RESTRAINING ORDER OR PROTECTIVE ORDER IS ISSUED AT THE HEARING THAT DOES NOT DIFFER FROM THE PRIOR TEMPORARY RESTRAINING ORDER OR EMERGENCY PROTECTIVE ORDER, A COPY OF THE ORDER WILL BE SERVED UPON YOU BY MAIL AT THE FOLLOWING ADDRESS ____. IF THAT ADDRESS IS NOT CORRECT OR YOU WISH TO VERIFY THAT THE TEMPORARY OR EMERGENCY ORDER WAS MADE PERMANENT WITHOUT SUBSTANTIVE CHANGE, CALL THE CLERK OF THE COURT AT ____."

(j) (1) The court shall order the petitioner or the attorney for the petitioner to deliver, or the clerk of the court to mail, a copy of an order issued under this section, or a reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by the close of the business day on which the order, reissuance, extension, modification, or termination was made, to each local law enforcement agency designated by the petitioner or the attorney for the petitioner having jurisdiction over the residence of the petitioner, and to any additional law enforcement agencies within the court's discretion as are requested by the petitioner. Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported abuse.

(2) An order issued under this section shall, on request of the petitioner, be served on the respondent, whether or not the respondent has been taken into custody, by any law enforcement officer who is present at the scene of reported abuse involving the parties to the proceeding. The petitioner shall provide the officer with an endorsed copy of the order and a proof of service, which the officer shall complete and send to the issuing court.

(3) Upon receiving information at the scene of an incident of abuse that a protective order has been issued under this section, or that a person who has been taken into custody is the respondent to that order, if the protected person cannot produce

an endorsed copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

(4) If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the respondent of the terms of the order and where a written copy of the order can be obtained, and the officer shall at that time also enforce the order. The law enforcement officer's verbal notice of the terms of the order shall constitute service of the order and is sufficient notice for the purposes of this section and for the purposes of Section 273.6 of the Penal Code.

(k) Nothing in this section shall preclude either party from representation by private counsel or from appearing on the party's own behalf.

(*l*) There is no filing fee for a petition, response, or paper seeking the reissuance, modification, or enforcement of a protective order filed in a proceeding brought pursuant to this section.

(m) (1) Fees otherwise payable by a petitioner to a law enforcement agency for serving an order issued under this section may be waived in any case in which the petitioner has requested a fee waiver on the initiating petition and has filed a declaration that demonstrates, to the satisfaction of the court, the financial need of the petitioner for the fee waiver. The declaration required by this subdivision shall be on one of the following forms:

(A) The form formulated and adopted by the Judicial Council for litigants proceeding in forma pauperis pursuant to Section 68511.3 of the Government Code, but the petitioner is not subject to any other requirements of litigants proceeding in forma pauperis.

(B) Any other form that the Judicial Council may adopt for this purpose pursuant to subdivision (r).

(2) In conjunction with a hearing pursuant to this section, the court may make an order for the waiver of fees otherwise payable by the petitioner to a law enforcement agency for serving an order issued under this section.

(n) The prevailing party in any action brought under this section may be awarded court costs and attorney's fees, if any.

(o) (1) An order issued pursuant to this section shall prohibit the person subject to it from owning, possessing, purchasing, receiving, or attempting to purchase or receive, a firearm.

(2) Paragraph (1) shall not apply to a case consisting solely of financial abuse unaccompanied by force, threat, harassment, intimidation, or any other form of abuse.

(3) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(4) Every person who owns, possesses, purchases, or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(p) Any willful disobedience of any temporary restraining order or restraining order after hearing granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(q) This section does not apply to any action or proceeding covered by Title 1.6C (commencing with Section 1788) of Part 4 of Division 3 of the Civil Code, by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, or by Division 10 (commencing with Section 6200) of the Family Code. Nothing in this section shall preclude a petitioner's right to use other existing civil remedies.

(r) The Judicial Council shall promulgate forms and instructions therefor, rules for service of process, scheduling of hearings, and any other matters required by this section. The petition and response forms shall be simple and concise.

SEC. 28. Section 11.5 of this bill incorporates amendments to Section 1277 of the Code of Civil Procedure proposed by both this bill and SB 1743. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, (2) each bill amends Section 1277 of the Code of Civil Procedure, and (3) this bill is enacted after SB 1743, in which case Section 11 of this bill shall not become operative.

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