

AMENDED IN SENATE AUGUST 20, 2009

AMENDED IN SENATE JUNE 30, 2009

AMENDED IN ASSEMBLY APRIL 30, 2009

AMENDED IN ASSEMBLY MARCH 12, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 590

Introduced by Assembly Member Feuer

February 25, 2009

An act to add Article 9.6 (commencing with Section 6159.5) to Chapter 4 of Division 3 of the Business and Professions Code, *and to amend Sections 68085.1 and 70626 of, and to add Chapter 2.1 (commencing with Section 68650) to Title 8 of, the Government Code*, relating to the practice of law.

LEGISLATIVE COUNSEL'S DIGEST

AB 590, as amended, Feuer. Legal aid.

~~Existing law, the~~

(1) *The State Bar Act*; provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation. Existing law provides that it is the duty of an attorney to, among other things, never reject, for any consideration personal to himself or herself, the cause of the defenseless or oppressed. Existing law provides that a lawyer may fulfill his or her ethical commitment to provide pro bono services, in part, by providing financial support to organizations providing free legal services to persons of limited means.

This bill would state the intent of the Legislature to encourage the legal profession to make further efforts to meet its professional

responsibilities and other obligations by providing pro bono legal services and financial support of nonprofit legal organizations that provide free legal services to underserved communities.

This bill would prohibit a person or organization that is not a specified type of legal aid organization, as defined, from using the term “legal aid,” or any confusingly similar name in any firm name, trade name, fictitious business name, or other designation, or on any advertisement, letterhead, business card, or sign. The bill additionally would prohibit any person from charging a fee for any legal form or other document created by a legal aid organization, a court, or other public agency that is available to the public without charge, or from charging a fee to assist in the provision of self-help services that are provided without charge by a court or legal aid organization. The bill would subject a person or organization that violates these prohibitions to specified civil liability.

This bill would, commencing July 1, 2011, and subject to funding specifically provided for this purpose, require the Judicial Council to develop one or more model pilot projects in selected courts for 3-year periods pursuant to a competitive grant process and a request for proposals. The bill would provide that legal counsel shall be appointed to represent low-income parties in civil matters involving critical issues affecting basic human needs in those courts selected by the Judicial Council, as specified. The bill would provide that each project shall be a partnership between the court, a qualified legal services project that shall serve as the lead agency for case assessment and direction, and other legal services providers in the community who are able to provide the services for the project. The bill would require the lead legal services agency, to the extent practical, to identify and make use of pro bono services in order to maximize available services efficiently and economically. The bill would provide that the court partner is responsible for providing procedures, personnel, training, and case management and administration practices that reflect best practices, as specified. The bill would require a local advisory committee to be formed to facilitate the administration of the local project and to ensure that the project is fulfilling its objectives. The bill would require the Judicial Council to conduct a study to demonstrate the effectiveness and continued need for the pilot program, and to report its findings and recommendations to the Governor and the Legislature on or before March 1, 2015, and every 3 years thereafter.

(2) Existing law sets the fees at \$25 or \$30 for various court services, including, but not limited to, issuing a writ for the enforcement of an

order or judgment, issuing an abstract of judgment, recording or registering any license or certificate, issuing an order of sale, and filing and entering an award under the Workers' Compensation Law.

This bill would provide that, of the amounts collected pursuant to those provisions, \$10 of each fee shall be transmitted quarterly for deposit in the Trial Court Trust Fund and, commencing July 1, 2011, used by the Judicial Council for implementing and administering the civil representation pilot program described in (1) above.

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

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

1 SECTION 1. The Legislature hereby finds and declares all of
2 the following:

3 (a) There is an increasingly dire need for legal services for poor
4 Californians. Due to insufficient funding from all sources, existing
5 programs providing free services in civil matters to indigent and
6 disadvantaged persons, especially underserved groups such as
7 elderly, disabled, children, and non-English-speaking persons,
8 are not adequate to meet existing needs.

9 (b) The critical need for legal representation in civil cases has
10 been documented repeatedly, and the statistics are staggering.
11 California courts are facing an ever increasing number of parties
12 who go to court without legal counsel. Over 4.3 million
13 Californians are believed to be currently unrepresented in civil
14 court proceedings, largely because they cannot afford
15 representation. Current funding allows legal services programs
16 to assist less than one-third of California's poor and lower income
17 residents. As a result, many Californians are unable to
18 meaningfully access the courts and obtain justice in a timely and
19 effective manner. The effect is that critical legal decisions are
20 made without the court having the necessary information, or
21 without the parties having an adequate understanding of the orders
22 to which they are subject.

23 (c) The modern movement to offer legal services for the poor
24 was spearheaded by Sargent Shriver in 1966, aided by the
25 American Bar Association, then headed by future Supreme Court
26 Justice Lewis Powell, driven by the large disparity that existed
27 between the number of lawyers available for poor Americans

1 compared with the availability of legal services for others. While
2 much progress has been made since then, significant disparity
3 continues. According to federal poverty data, there was one legal
4 aid attorney in 2006 for every 8,373 poor people in California. By
5 contrast, the number of attorneys providing legal services to the
6 general population is approximately one for every 240 people –
7 nearly 35 times higher.

8 (d) The fair resolution of conflicts through the legal system
9 offers financial and economic benefits by reducing the need for
10 many state services and allowing people to help themselves. There
11 are significant social and governmental fiscal costs of depriving
12 unrepresented parties of vital legal rights affecting basic human
13 needs, particularly with respect to indigent parties, including the
14 elderly and people with disabilities, and these costs may be avoided
15 or reduced by providing the assistance of counsel where parties
16 have a reasonable possibility of achieving a favorable outcome.

17 (e) Expanding representation will not only improve access to
18 the courts and the quality of justice obtained by these individuals,
19 but will allow court calendars that currently include many
20 self-represented litigants to be handled more effectively and
21 efficiently. Increasing the availability of legal representation for
22 litigants who must currently represent themselves or face loss of
23 their legal rights is a key priority of the Judicial Council and Chief
24 Justice Ronald M. George. As the Chief Justice has noted, the
25 large and growing number of self-represented litigants is one of
26 the most challenging issues in the coming decade, imposing
27 significant costs on the judicial system and the public by impairing
28 the ability of the courts to efficiently process heavy caseloads, and
29 eroding the public's confidence in our judicial system. While court
30 self-help services are important, those services are insufficient
31 alone to meet all needs. Experience has shown that those services
32 are much less effective when, among other factors, unrepresented
33 parties lack income, education, and other skills needed to navigate
34 a complex and unfamiliar court process, and particularly when
35 unrepresented parties are required to appear in court or face
36 opposing counsel. Recognizing that not all indigent parties may
37 be allowed representation, even when they have meritorious cases,
38 and that self-help services cannot meet the needs of all
39 unrepresented parties, courts presented with disputes regarding
40 basic human needs that involve low-income litigants facing parties

1 who are represented by counsel have a special responsibility to
2 employ best practices designed to ensure that unrepresented parties
3 obtain meaningful access to justice and to guard against the
4 involuntary waiver or other loss of rights or the disposition of
5 those cases without appropriate information and regard for
6 potential claims and defenses, consistent with principles of judicial
7 neutrality. The experience and data collected through a pilot
8 program will assist the courts and the legal community in
9 developing new strategies to provide legal representation to
10 overcome this challenge.

11 (f) The doctrine of equal justice under the law is based on two
12 principles. One is that the substantive protections and obligations
13 of the law shall be applied equally to everyone, no matter how
14 high or low their station in life. The second principle involves
15 access to the legal system. Even if we have fair laws and an
16 unbiased judiciary to apply them, true equality before the law will
17 be thwarted if people cannot invoke the laws for their protection.
18 For persons without access, our system provides no justice at all,
19 a situation that may be far worse than one in which the laws
20 expressly favor some and disfavor others.

21 (g) Many judicial leaders acknowledge that the disparity in
22 outcomes is so great that indigent parties who lack representation
23 regularly lose cases that they would win if they had counsel. A
24 growing body of empirical research confirms the widespread
25 perception that parties who attempt to represent themselves are
26 likely to lose, regardless of the merits of their case, particularly
27 when the opposing party has a lawyer, while parties represented
28 by counsel are far more likely to prevail. Judicial leaders and
29 scholars also believe that the presence of counsel encourages
30 settlements. Just as importantly, court opinion surveys show that
31 more than two-thirds of Californians believe low-income people
32 usually receive worse outcomes in court than others. Unfairness
33 in court procedures and outcomes, whether real or perceived,
34 threatens to undermine public trust and confidence in the courts.
35 The sense that court decisions are made through a process that is
36 fair and just, both in substance and procedure, strongly affects
37 public approval and confidence in California courts. As many
38 legal and judicial leaders have noted, the combined effect of
39 widespread financial inability to afford representation coupled
40 with the severe disadvantages of appearing in court without an

1 attorney foster a destructive perception that money drives the
2 judicial system. Respect for the law and the legal system is not
3 encouraged if the public perceives, rightly or wrongly, that justice
4 is mainly for the wealthy.

5 (h) Equal access to justice without regard to income is a
6 fundamental right in a democratic society. It is essential to the
7 enforcement of all other rights and responsibilities in any society
8 governed by the rule of law. It also is essential to the public's
9 confidence in the legal system and its ability to reach just decisions.

10 (i) The adversarial system of justice relied upon in the United
11 States inevitably allocates to the parties the primary responsibility
12 for discovering the relevant evidence, finding the relevant legal
13 principles, and presenting them to a neutral judge or jury.
14 Discharging these responsibilities generally requires the knowledge
15 and skills of a legally trained professional. The absence of
16 representation not only disadvantages parties, it has a negative
17 effect on the functioning of the judicial system. When parties lack
18 legal counsel, courts must cope with the need to provide guidance
19 and assistance to ensure that the matter is properly administered
20 and the parties receive a fair trial or hearing. Those efforts,
21 however, deplete scarce court resources and negatively affect the
22 court's ability to function as intended, including causing erroneous
23 and incomplete pleadings, inaccurate information, unproductive
24 court appearances, improper defaults, unnecessary continuances,
25 delays in proceedings for all court users, and other problems that
26 can ultimately subvert the administration of justice.

27 (j) Because in many civil cases lawyers are as essential as
28 judges and courts to the proper functioning of the justice system,
29 the state has just as great a responsibility to ensure adequate
30 counsel is available to both parties in those cases as it does to
31 supply judges, courthouses, and other forums for the hearing of
32 those cases.

33 (k) Many of those living in this state cannot afford to pay for
34 the services of lawyers when needed for them to enjoy fair and
35 equal access to justice. In some cases, justice is not achievable if
36 one side is unrepresented because the parties cannot afford the
37 cost of representation. The guarantees of due process and equal
38 protection as well as the common law that serves as the rule of
39 decision in California courts underscore the need to provide legal
40 representation in critical civil matters when parties cannot afford

1 the cost of retaining a lawyer. In order for those who are unable
2 to afford representation to exercise this essential right of
3 participants in a democracy, to protect their rights to liberty and
4 property, and to the pursuit of basic human needs, the state has a
5 responsibility to provide legal counsel without cost. In many cases
6 decided in the state's adversarial system of civil justice the parties
7 cannot gain fair and equal access to justice unless they are advised
8 and represented by lawyers. In other cases, there are some forums
9 in which it may be possible for most parties to have fair and equal
10 access if they have the benefit of representation by qualified
11 nonlawyer advocates, and other forums where parties can
12 represent themselves if they receive self-help assistance.

13 (l) The state has an interest in providing publicly funded legal
14 representation and nonlawyer advocates or self-help advice and
15 assistance, when the latter is sufficient, and doing so in a
16 cost-effective manner by ensuring the level and type of service
17 provided is the lowest cost type of service consistent with providing
18 fair and equal access to justice. Several factors can affect the
19 determination of when representation by an attorney is needed for
20 fair and equal access to justice and when other forms of assistance
21 will suffice. These factors include the complexity of the substantive
22 law, the complexity of the forum's procedures and process, the
23 individual's education, sophistication, and English language
24 ability, and the presence of counsel on the opposing side of the
25 dispute.

26 (m) If those advised, assisted, or represented by publicly funded
27 lawyers are to have fair and equal access to justice, those lawyers
28 must be as independent, ethical, and loyal to their clients as those
29 serving clients who can afford to pay for counsel.

30 (n) The services provided for in Section 7 of this act are not
31 intended to, and shall not, supplant legal services resources from
32 any other source. This act does not entitle any person to receive
33 services from a particular legal services provider, nor shall this
34 act override the local or national priorities of existing legal
35 services programs. The services provided for in Section 7 of this
36 act are likewise not intended to undermine any existing pilot
37 programs or other efforts to simplify court procedures or provide
38 assistance to unrepresented litigants. Furthermore, nothing in this
39 act shall be construed to prohibit the provision of full legal

1 *representation or other appropriate services funded by another*
2 *source.*

3 **SECTION 1.**

4 **SEC. 2.** In light of the large and ongoing justice gap between
5 the legal needs of low-income Californians and the legal resources
6 available to meet those needs, it is the intent of the Legislature to
7 encourage the legal profession to make further efforts to meet its
8 professional responsibilities and other obligations by providing
9 pro bono legal services and financial support of nonprofit legal
10 organizations that provide free legal services to underserved
11 communities.

12 ~~**SEC. 2.**~~

13 **SEC. 3.** Article 9.6 (commencing with Section 6159.5) is added
14 to Chapter 4 of Division 3 of the Business and Professions Code,
15 to read:

16

17 **Article 9.6. Legal Aid Organizations**

18

19 6159.5. The Legislature hereby finds and declares all of the
20 following:

21 (a) Legal aid programs provide a valuable service to the public
22 by providing free legal services to the poor.

23 (b) Private, for-profit organizations that have no lawyers have
24 been using the name “legal aid” in order to obtain business from
25 people who believe they are obtaining services from a nonprofit
26 legal aid organization.

27 (c) Public opinion research has shown that the term “legal aid”
28 is commonly understood by the public to mean free legal assistance
29 for the poor.

30 (d) Members of the public seeking free legal assistance are often
31 referred by telephone and other directory assistance information
32 providers to for-profit organizations that charge a fee for their
33 services, and there are a large number of listings in many telephone
34 directories for “legal aid” that are not nonprofit but are actually
35 for-profit organizations.

36 (e) The Los Angeles Superior Court has held that there is a
37 common law trademark on the name “legal aid,” which means
38 legal services for the poor provided by a nonprofit organization.

1 (f) The public will be benefited if for-profit organizations are
2 prohibited from using the term “legal aid,” in order to avoid
3 confusion.

4 6159.51. For purposes of this article, “legal aid organization”
5 means a nonprofit organization that provides civil legal services
6 for the poor without charge.

7 6159.52. (a) It is unlawful for any person or organization to
8 use the term “legal aid,” “legal aide,” or any confusingly similar
9 name in any firm name, trade name, fictitious business name, or
10 any other designation, or on any advertisement, letterhead, business
11 card, or sign, unless the person or organization is a legal aid
12 organization subject to fair use principles for nominative,
13 descriptive, or noncommercial use.

14 (b) It is unlawful for any person to sell or charge a fee for any
15 legal form or other document created by a legal aid organization
16 or by a court or other public agency of the state regarding or for
17 use in a court action or proceeding if the form or other document
18 is available to the public without charge from the legal aid
19 organization, court, or other public agency.

20 (c) It is unlawful for any person for a fee to assist or offer to
21 assist in the provision of self-help services that are provided
22 without charge by a court or legal aid organization.

23 6159.53. (a) Any consumer injured by a violation of Section
24 6159.52 may file a complaint and seek injunctive relief, restitution,
25 and damages in the superior court of any county in which the
26 defendant maintains an office, advertises, or is listed in a telephone
27 directory.

28 (b) A person who violates Section 6159.52 shall be subject to
29 an injunction against further violation of Section 6159.52 by any
30 legal aid organization that maintains an office in any county in
31 which the defendant maintains an office, advertises, or is listed in
32 a telephone directory. In an action under this subdivision, it is not
33 necessary to allege or prove actual damage to the plaintiff, and
34 irreparable harm and interim harm to the plaintiff shall be
35 presumed.

36 (c) Reasonable attorney’s fees shall be awarded to the prevailing
37 plaintiff in any action under this section.

38 *SEC. 4. Section 68085.1 of the Government Code is amended*
39 *to read:*

1 68085.1. (a) This section applies to all fees and fines that are
2 collected on or after January 1, 2006, under all of the following:

3 (1) Sections 177.5, 209, 403.060, 491.150, 631.3, 683.150,
4 704.750, 708.160, 724.100, 1134, 1161.2, 1218, and 1993.2 of,
5 subdivision (g) of Section 411.20 and subdivisions (c) and (g) of
6 Section 411.21 of, and Chapter 5.5 (commencing with Section
7 116.110) of Title 1 of Part 1 of, the Code of Civil Procedure.

8 (2) Section 3112 of the Family Code.

9 (3) Section 31622 of the Food and Agricultural Code.

10 (4) Subdivision (d) of Section 6103.5, Sections 68086 and
11 68086.1, subdivision (d) of Section 68511.3, Sections 68926.1 and
12 69953.5, and Chapter 5.8 (commencing with Section 70600).

13 (5) Section 103470 of the Health and Safety Code.

14 (6) Subdivisions (b) and (c) of Section 166 and Section 1214.1
15 of the Penal Code.

16 (7) Sections 1835, 1851.5, 2343, 7660, and 13201 of the Probate
17 Code.

18 (8) Sections 14607.6 and 16373 of the Vehicle Code.

19 (9) Section 71386 of this code, Sections 304, 7851.5, and 9002
20 of the Family Code, and Section 1513.1 of the Probate Code, if
21 the reimbursement is for expenses incurred by the court.

22 (10) Section 3153 of the Family Code, if the amount is paid to
23 the court for the cost of counsel appointed by the court to represent
24 a child.

25 (b) On and after January 1, 2006, each superior court shall
26 deposit all fees and fines listed in subdivision (a), as soon as
27 practicable after collection and on a regular basis, into a bank
28 account established for this purpose by the Administrative Office
29 of the Courts. Upon direction of the Administrative Office of the
30 Courts, the county shall deposit civil assessments under Section
31 1214.1 of the Penal Code and any other money it collects under
32 the sections listed in subdivision (a) as soon as practicable after
33 collection and on a regular basis into the bank account established
34 for this purpose and specified by the Administrative Office of the
35 Courts. The deposits shall be made as required by rules adopted
36 by, and financial policies and procedures authorized by, the Judicial
37 Council under subdivision (a) of Section 77206. Within 15 days
38 after the end of the month in which the fees and fines are collected,
39 each court, and each county that collects any fines or fees under
40 subdivision (a), shall provide the Administrative Office of the

Courts with a report of the fees by categories as specified by the Administrative Office of the Courts. The Administrative Office of the Courts and any court may agree upon a time period greater than 15 days, but in no case more than 30 days after the end of the month in which the fees and fines are collected. The fees and fines listed in subdivision (a) shall be distributed as provided in this section.

(c) (1) Within 45 calendar days after the end of the month in which the fees and fines listed in subdivision (a) are collected, the Administrative Office of the Courts shall make the following distributions:

(A) To the small claims advisory services, as described in subdivision (f) of Section 116.230 of the Code of Civil Procedure.

(B) To dispute resolution programs, as described in subdivision (b) of Section 68085.3 and subdivision (b) of Section 68085.4.

(C) To the county law library funds, as described in Sections 116.230 and 116.760 of the Code of Civil Procedure, subdivision (b) of Section 68085.3, subdivision (b) of Section 68085.4, and Section 70621 of this code, and Section 14607.6 of the Vehicle Code.

(D) To the courthouse construction funds in the Counties of Riverside, San Bernardino, and San Francisco, as described in Sections 70622, 70624, and 70625.

(E) *Commencing July 1, 2011, to the Trial Court Trust Fund, as described in subdivision (d) of Section 70626, to be used by the Judicial Council to implement and administer the civil representation pilot program under Section 68651.*

(2) If any distribution under this subdivision is delinquent, the Administrative Office of the Courts shall add a penalty to the distribution as specified in subdivision (i).

(d) Within 45 calendar days after the end of the month in which the fees and fines listed in subdivision (a) are collected, the amounts remaining after the distributions in subdivision (c) shall be transmitted to the State Treasury for deposit in the Trial Court Trust Fund and other funds as required by law. This remittance shall be accompanied by a remittance advice identifying the collection month and the appropriate account in the Trial Court Trust Fund or other fund to which it is to be deposited. Upon the receipt of any delinquent payment required under this subdivision,

1 the Controller shall calculate a penalty as provided under
2 subdivision (i).

3 (e) From the money transmitted to the State Treasury under
4 subdivision (d), the Controller shall make deposits as follows:

5 (1) Into the State Court Facilities Construction Fund, the Judges'
6 Retirement Fund, and the Equal Access Fund, as described in
7 subdivision (c) of Section 68085.3 and subdivision (c) of Section
8 68085.4.

9 (2) Into the Health Statistics Special Fund, as described in
10 subdivision (b) of Section 70670 of this code and Section 103730
11 of the Health and Safety Code.

12 (3) Into the Family Law Trust Fund, as described in Section
13 70674.

14 (4) Into the Immediate and Critical Needs Account of the State
15 Court Facilities Construction Fund, established in Section 70371.5,
16 as described in Sections 68085.3, 68085.4, and 70657.5, and
17 subdivision (e) of Section 70617.

18 (5) The remainder of the money shall be deposited into the Trial
19 Court Trust Fund.

20 (f) The amounts collected by each superior court under Section
21 116.232, subdivision (g) of Section 411.20, and subdivision (g) of
22 Section 411.21 of the Code of Civil Procedure, Sections 304, 3112,
23 3153, 7851.5, and 9002 of the Family Code, subdivision (d) of
24 Section 6103.5, subdivision (d) of Section 68511.3 and Sections
25 68926.1, 69953.5, 70627, 70631, 70640, 70661, 70678, and 71386
26 of this code, and Sections 1513.1, 1835, 1851.5, and 2343 of the
27 Probate Code shall be added to the monthly apportionment for that
28 court under subdivision (a) of Section 68085.

29 (g) If any of the fees provided in subdivision (a) are partially
30 waived by court order or otherwise reduced, and the fee is to be
31 divided between the Trial Court Trust Fund and any other fund or
32 account, the amount of the reduction shall be deducted from the
33 amount to be distributed to each fund in the same proportion as
34 the amount of each distribution bears to the total amount of the
35 fee. If the fee is paid by installment payments, the amount
36 distributed to each fund or account from each installment shall
37 bear the same proportion to the installment payment as the full
38 distribution to that fund or account does to the full fee. If a court
39 collects a fee that was incurred before January 1, 2006, under a
40 provision that was the predecessor to one of the paragraphs

1 contained in subdivision (a), the fee may be deposited as if it were
2 collected under the paragraph of subdivision (a) that corresponds
3 to the predecessor of that paragraph and distributed in prorated
4 amounts to each fund or account to which the fee in subdivision
5 (a) must be distributed.

6 (h) Except as provided in Sections 470.5 and 6322.1 of the
7 Business and Professions Code, and Sections 70622, 70624, and
8 70625 of this code, no agency may take action to change the
9 amounts allocated to any of the funds described in subdivision (c),
10 (d), or (e).

11 (i) The amount of the penalty on any delinquent payment under
12 subdivision (c) or (d) shall be calculated by multiplying the amount
13 of the delinquent payment at a daily rate equivalent to 1 ½ percent
14 per month for the number of days the payment is delinquent. The
15 penalty shall be paid from the Trial Court Trust Fund. Penalties
16 on delinquent payments under subdivision (d) shall be calculated
17 only on the amounts to be distributed to the Trial Court Trust Fund
18 and the State Court Facilities Construction Fund, and each penalty
19 shall be distributed proportionately to the funds to which the
20 delinquent payment was to be distributed.

21 (j) If a delinquent payment under subdivision (c) or (d) results
22 from a delinquency by a superior court under subdivision (b), the
23 court shall reimburse the Trial Court Trust Fund for the amount
24 of the penalty. Notwithstanding Section 77009, any penalty on a
25 delinquent payment that a court is required to reimburse pursuant
26 to this section shall be paid from the court operations fund for that
27 court. The penalty shall be paid by the court to the Trial Court
28 Trust Fund no later than 45 days after the end of the month in
29 which the penalty was calculated. If the penalty is not paid within
30 the specified time, the Administrative Office of the Courts may
31 reduce the amount of a subsequent monthly allocation to the court
32 by the amount of the penalty on the delinquent payment.

33 (k) If a delinquent payment under subdivision (c) or (d) results
34 from a delinquency by a county in transmitting fees and fines listed
35 in subdivision (a) to the bank account established for this purpose,
36 as described in subdivision (b), the county shall reimburse the Trial
37 Court Trust Fund for the amount of the penalty. The penalty shall
38 be paid by the county to the Trial Court Trust Fund no later than
39 45 days after the end of the month in which the penalty was
40 calculated.

1 SEC. 5. Chapter 2.1 (commencing with Section 68650) is added
2 to Title 8 of the Government Code, to read:

3
4 *CHAPTER 2.1. CIVIL LEGAL REPRESENTATION*

5
6 68650. This chapter shall be known, and may be cited, as the
7 Sargent Shriver Civil Counsel Act.

8 68651. (a) Legal counsel shall be appointed to represent
9 low-income parties in civil matters involving critical issues
10 affecting basic human needs in those specified courts selected by
11 the Judicial Council as provided in this section.

12 (b) (1) Subject to funding specifically provided for this purpose
13 pursuant to subdivision (d) of Section 70626, the Judicial Council
14 shall develop one or more model pilot projects in selected courts
15 pursuant to a competitive grant process and a request for
16 proposals. Projects authorized under this section shall provide
17 representation of counsel for low-income persons who require
18 legal services in civil matters involving housing-related matters,
19 domestic violence and civil harassment restraining orders, probate
20 conservatorships, guardianships of the person, elder abuse, or
21 actions by a parent to obtain sole legal or physical custody of a
22 child, as well as providing court procedures, personnel, training,
23 and case management and administration methods that reflect
24 best practices to ensure unrepresented parties in those cases have
25 meaningful access to justice, and to gather information on the
26 outcomes associated with providing these services, to guard against
27 the involuntary waiver of those rights or their disposition by
28 default. These pilot projects should be designed to address the
29 substantial inequities in timely and effective access to justice that
30 often give rise to an undue risk of erroneous decision because of
31 the nature and complexity of the law and the proceeding or
32 disparities between the parties in education, sophistication,
33 language proficiency, legal representation, access to self-help,
34 and alternative dispute resolution services. In order to ensure that
35 the scarce funds available for the program are used to serve the
36 most critical cases and the parties least able to access the courts
37 without representation, eligibility for representation shall be
38 limited to clients whose household income falls at or below 200
39 percent of the federal poverty level. Projects shall impose asset
40 limitations consistent with their existing practices in order to

1 *ensure optimal use of funds. No more than 20 percent of available*
2 *funds may be directed to projects regarding civil matters involving*
3 *actions by a parent to obtain sole legal or physical custody of a*
4 *child.*

5 *(2) Each project shall be a partnership between the court, a*
6 *qualified legal services project, as defined by subdivision (a) of*
7 *Section 6213 of the Business and Professions Code, that shall*
8 *serve as the lead agency for case assessment and direction, and*
9 *other legal services providers in the community who are able to*
10 *provide the services for the project. The lead legal services agency*
11 *shall be the central point of contact for receipt of referrals to the*
12 *project and to make determinations of eligibility based on uniform*
13 *criteria. The lead legal services agency shall be responsible for*
14 *providing representation to the clients or referring the matter to*
15 *one of the organization or individual providers with whom the*
16 *legal services agency contracts to provide the service. Funds*
17 *received by a qualified legal services project shall not qualify as*
18 *expenditures for the purposes of the distribution of funds pursuant*
19 *to Section 6216 of the Business and Professions Code. To the extent*
20 *practical, the lead legal services agency shall identify and make*
21 *use of pro bono services in order to maximize available services*
22 *efficiently and economically. Recognizing that not all indigent*
23 *parties can be afforded representation, even when they have*
24 *meritorious cases, the court partner shall, as a corollary to the*
25 *services provided by the legal services agency, be responsible for*
26 *providing procedures, personnel, training, and case management*
27 *and administration practices that reflect best practices to ensure*
28 *unrepresented parties meaningful access to justice and to guard*
29 *against the involuntary waiver of rights, as well as to encourage*
30 *fair and expeditious voluntary dispute resolution, consistent with*
31 *principles of judicial neutrality.*

32 *(3) The participating courts shall be selected by a committee*
33 *appointed by the Judicial Council with representation from key*
34 *stakeholder groups, including judicial officers, legal services*
35 *providers, and others, as appropriate. The committee shall assess*
36 *the applicants' capacity for success, innovation, and efficiency,*
37 *including, but not limited to, the likelihood that the project would*
38 *deliver quality representation in an effective manner that would*
39 *meet critical needs in the community and address the needs of the*
40 *court with regard to access to justice and calendar management,*

1 and the unique local unmet needs for representation in the
2 community. Projects approved pursuant to this section shall
3 initially be authorized for a three-year period, commencing July
4 1, 2011, subject to renewal for a period to be determined by the
5 Judicial Council, in consultation with the participating court in
6 light of the court's capacity and success. Projects shall be selected
7 primarily on the basis of whether in the cases proposed for service
8 the persons to be assisted are likely to be opposed by a party who
9 is represented by counsel. The Judicial Council shall also consider
10 the following factors:

11 (A) The likelihood that representation in the proposed case type
12 tends to affect whether a party prevails or otherwise obtains a
13 significantly more favorable outcome in a matter in which they
14 would otherwise frequently have judgment entered against them
15 or suffer the deprivation of the basic human need at issue.

16 (B) The likelihood of reducing the risk of erroneous decision.

17 (C) The nature and severity of potential consequences for the
18 unrepresented party regarding the basic human need at stake if
19 representation is not provided.

20 (D) Whether the provision of legal services may eliminate or
21 reduce the potential need for and cost of public social services
22 regarding the basic human need at stake for the client and others
23 in the client's household.

24 (E) The unmet need for legal services in the geographic area
25 to be served.

26 (F) The availability and effectiveness of other types of court
27 services, such as self-help.

28 (4) Each applicant shall do all of the following:

29 (A) Identify the nature of the partnership between the court, the
30 lead legal services agency, and the other agencies or other
31 providers that would work within the project.

32 (B) Describe the referral protocols to be used, the criteria that
33 would be employed in case assessment, why those cases were
34 selected, the manner to address conflicts without violating any
35 attorney-client privilege when adverse parties are seeking
36 representation through the project, and the means for serving
37 potential clients who need assistance with English.

38 (C) Describe how the project would be administered, including
39 how the data collection requirements would be met without causing
40 an undue burden on the courts, clients, or the providers, the

1 particular objectives of the project, strategies to evaluate their
2 success in meeting those objectives, and the means by which the
3 project would serve the particular needs of the community, such
4 as by providing representation to limited-English-speaking clients.

5 (5) To ensure the most effective use of the funding available,
6 the lead legal services agency shall serve as a hub for all referrals,
7 and the point at which decisions are made about which referrals
8 will be served and by whom. Referrals shall emanate from the
9 court, as well as from the other agencies providing services
10 through the program, and shall be directed to the lead agency for
11 review. That agency, or another agency or attorney in the event
12 of conflict, shall collect the information necessary to assess whether
13 the case should be served. In performing that case assessment, the
14 agency shall determine the relative need for representation of the
15 litigant, including all of the following:

16 (A) Case complexity.

17 (B) Whether the other party is represented.

18 (C) The adversarial nature of the proceeding.

19 (D) The availability and effectiveness of other types of services,
20 such as self-help, in light of the potential client and the nature of
21 the case.

22 (E) Language issues.

23 (F) Disability access issues.

24 (G) Literacy issues.

25 (H) The merits of the case.

26 (I) The nature and severity of potential consequences for the
27 potential client if representation is not provided.

28 (J) Whether the provision of legal services may eliminate or
29 reduce the need for and cost of public social services for the
30 potential client and others in the potential client's household.

31 (6) If both parties to a dispute are financially eligible for
32 representation, each proposal shall ensure that representation for
33 both sides is evaluated. In these and other cases in which conflict
34 issues arise, the lead agency shall have referral protocols with
35 other agencies and providers, such as a private attorney panel, to
36 address those conflicts.

37 (7) Each pilot project shall be responsible for keeping records
38 on the referrals accepted and those not accepted for representation,
39 and the reasons for each, in a manner that does not violate any
40 privileged communications between the agency and the prospective

1 client. Each pilot project shall be provided with standardized data
2 collection tools, and required to track case information for each
3 referral to allow the evaluation to measure the number of cases
4 served, the level of service required, and the outcomes for the
5 clients in each case. In addition to this information on the effect
6 of the representation on the clients, data shall be collected
7 regarding the outcomes for the trial courts.

8 (8) A local advisory committee shall be formed for each pilot
9 project, to include representatives of the bench and court
10 administration, the lead legal services agency, and the other
11 agencies or providers that are part of the local project team. The
12 role of the advisory committee is to facilitate the administration
13 of the local pilot project, and to ensure that the project is fulfilling
14 its objectives. In addition, the committee shall resolve any issues
15 that arise during the course of the pilot project, including issues
16 concerning case eligibility, and recommend changes in project
17 administration in response to implementation challenges. The
18 committee shall meet at least monthly for the first six months of
19 the project, and no less than quarterly for the duration of the pilot
20 period. Each authorized pilot project shall catalog changes to the
21 program made during the three-year period based on its
22 experiences with best practices in serving the eligible population.

23 (c) The Judicial Council shall conduct a study to demonstrate
24 the effectiveness and continued need for the pilot program
25 established pursuant to this section and shall report its findings
26 and recommendations to the Governor and the Legislature on or
27 before March 1, 2015, and every three years thereafter. The study
28 shall report on the percentage of funding by case type and shall
29 include data on the impact of counsel on equal access to justice
30 and the effect on court administration and efficiency, and enhanced
31 coordination between courts and other government service
32 providers and community resources. This report shall describe
33 the benefits of providing representation to those who were
34 previously not represented, both for the clients and the courts, as
35 well as strategies and recommendations for maximizing the benefit
36 of that representation in the future.

37 (d) This section shall not be construed to negate, alter, or limit
38 any right to counsel in a criminal or civil action or proceeding
39 otherwise provided by state or federal law.

40 (e) The section shall become operative on July 1, 2011.

1 SEC. 6. *Section 70626 of the Government Code is amended to*
2 *read:*

3 70626. (a) The fee for each of the following services is
4 twenty-five dollars (\$25). ~~Amounts~~ *Subject to subdivision (d),*
5 *amounts* collected shall be distributed to the Trial Court Trust Fund
6 under Section 68085.1.

7 (1) Issuing a writ of attachment, a writ of mandate, a writ of
8 execution, a writ of sale, a writ of possession, a writ of prohibition,
9 or any other writ for the enforcement of any order or judgment.

10 (2) Issuing an abstract of judgment.

11 (3) Issuing a certificate of satisfaction of judgment under Section
12 724.100 of the Code of Civil Procedure.

13 (4) Certifying a copy of any paper, record, or proceeding on file
14 in the office of the clerk of any court.

15 (5) Taking an affidavit, except in criminal cases or adoption
16 proceedings.

17 (6) Acknowledgment of any deed or other instrument, including
18 the certificate.

19 (7) Recording or registering any license or certificate, or issuing
20 any certificate in connection with a license, required by law, for
21 which a charge is not otherwise prescribed.

22 (8) Issuing any certificate for which the fee is not otherwise
23 fixed.

24 (b) The fee for each of the following services is thirty dollars
25 (\$30). ~~Amounts~~ *Subject to subdivision (d), amounts* collected shall
26 be distributed to the Trial Court Trust Fund under Section 68085.1.

27 (1) Issuing an order of sale.

28 (2) Receiving and filing an abstract of judgment rendered by a
29 judge of another court and subsequent services based on it, unless
30 the abstract of judgment is filed under Section 704.750 or 708.160
31 of the Code of Civil Procedure.

32 (3) Filing a confession of judgment under Section 1134 of the
33 Code of Civil Procedure.

34 (4) Filing an application for renewal of judgment under Section
35 683.150 of the Code of Civil Procedure.

36 (5) Issuing a commission to take a deposition in another state
37 or place under Section 2026.010 of the Code of Civil Procedure,
38 or issuing a subpoena under Section 2029.300 to take a deposition
39 in this state for purposes of a proceeding pending in another
40 jurisdiction.

1 (6) Filing and entering an award under the Workers'
2 Compensation Law (Division 4 (commencing with Section 3200)
3 of the Labor Code).

4 (7) Filing an affidavit of publication of notice of dissolution of
5 partnership.

6 (8) Filing an appeal of a determination whether a dog is
7 potentially dangerous or vicious under Section 31622 of the Food
8 and Agricultural Code.

9 (9) Filing an affidavit under Section 13200 of the Probate Code,
10 together with the issuance of one certified copy of the affidavit
11 under Section 13202 of the Probate Code.

12 (10) Filing and indexing all papers for which a charge is not
13 elsewhere provided, other than papers filed in actions or special
14 proceedings, official bonds, or certificates of appointment.

15 (c) The fee for filing a first petition under Section 2029.600 or
16 2029.620 of the Code of Civil Procedure, if the petitioner is not a
17 party to the out-of-state case, is eighty dollars (\$80). Amounts
18 collected shall be distributed to the Trial Court Trust Fund pursuant
19 to Section 68085.1.

20 *(d) Of the amounts collected pursuant to subdivisions (a) and*
21 *(b), ten dollars (\$10) of each fee shall be transmitted quarterly to*
22 *be deposited in the Trial Court Trust Fund. Commencing July 1,*
23 *2011, these amounts shall be used by the Judicial Council for the*
24 *expenses of the Judicial Council in implementing and administering*
25 *the civil representation pilot program under Section 68651.*