

**Memorandum 97-59****Trial Court Unification by County: Other Codes Draft**

---

Attached to this memorandum is an initial staff draft of revisions to miscellaneous codes required by trial court unification, based on materials submitted by Professor Kelso. The following codes are included:

- Business and Professions Code
- Civil Code
- Corporations Code (no changes)
- Education Code
- Elections Code
- Evidence Code
- Family Code
- Financial Code
- Fish and Game Code
- Food and Agricultural Code
- Harbors and Navigation Code
- Health and Safety Code
- Insurance Code
- Labor Code
- Military and Veterans Code
- Probate Code (no changes)
- Public Contracts Code (no changes)
- Public Resources Code
- Public Utilities Code
- Revenue and Taxation Code
- Streets and Highways Code
- Unemployment Insurance Code
- Uniform Commercial Code (no changes)
- Vehicle Code
- Water Code & Appendix
- Welfare and Institutions Code

Generally speaking, the changes are of a conforming nature, and are dependent on Commission decisions on structuring and terminology in the Code of Civil Procedure, Penal Code, and Government Code. The attached draft is divided into three sections: (1) proposed legislation, (2) judicial district conforming revisions, (3) justice court conforming revisions.

A few technical issues are raised in Staff Notes following provisions in the attached draft.

Respectfully submitted,

Brian Hebert  
Staff Counsel

## PROPOSED LEGISLATION

PROPOSED LEGISLATION . . . . .	1
Bus. & Prof. Code § 6301 (amended). Board of law library trustees . . . . .	1
Bus. & Prof. Code § 6301.1 (amended). Board of law library trustees of San Diego County . . . . .	1
Bus. & Prof. Code § 7028.2 (amended). Venue for criminal complaint . . . . .	2
Civ. Code § 798.61 (amended). Abandoned mobilehomes . . . . .	2
Civ. Code § 1719 (amended). Checks passed on insufficient funds . . . . .	5
Civ. Code § 1780 (amended). Action for unlawful method, act, or practice . . . . .	8
Civ. Code § 3342.5 (amended). Dog bites . . . . .	10
Educ. Code § 44944 (amended). Dismissal or suspension proceeding . . . . .	10
Educ. Code § 45312 (amended). Hearing or investigation by hearing officer . . . . .	14
Educ. Code § 48295 (amended). Jurisdiction . . . . .	14
Educ. Code § 87675 (amended). Arbitration proceedings . . . . .	15
Educ. Code § 87679 (amended). Conduct of proceedings . . . . .	15
Educ. Code § 88131 (amended). Hearing or investigation by hearing officer . . . . .	16
Fam. Code § 4845 (amended). Evidence . . . . .	16
Fin. Code § 1785 (amended). Foreign bank . . . . .	17
Fin. Code § 1824 (amended). Appeal . . . . .	18
Fin. Code § 1893 (amended). Possession by commissioner . . . . .	18
Fin. Code § 3102 (amended). Appeal . . . . .	19
Fin. Code § 16154 (amended). Appeal . . . . .	19
Fin. Code § 17335 (amended). Appeal . . . . .	19
Fin. Code § 18415.2 (amended). Appeal . . . . .	20
Fin. Code § 18495 (amended). Appeal . . . . .	20
Fin. Code § 31713 (amended). Possession by commissioner . . . . .	20
Fin. Code § 34113 (amended). Possession by commissioner . . . . .	21
Fish & Game Code § 210 (amended). Regulations . . . . .	22
Fish & Game Code § 309 (amended). Depositions . . . . .	22
Fish & Game Code § 5934 (amended). Depositions . . . . .	23
Fish & Game Code § 12150 (amended). Hunting accidents . . . . .	23
Fish & Game Code § 12151 (amended). Domestic animals . . . . .	24
Food & Agric. Code § 7581 (amended). Court jurisdiction . . . . .	24
Food & Agric. Code § 12647 (amended). Court jurisdiction . . . . .	25
Food & Agric. Code § 25564 (amended). Abatement of nuisance . . . . .	25
Food & Agric. Code § 27601 (amended). Abatement of nuisance . . . . .	26
Food & Agric. Code § 29733 (amended). Abatement of nuisance . . . . .	27
Food & Agric. Code § 30801 (amended). Dog licenses . . . . .	27
Food & Agric. Code § 31503 (amended). Damage by dog . . . . .	28
Food & Agric. Code § 31621 (amended). Dangerous or vicious dog . . . . .	28
Food & Agric. Code § 31622 (amended). Proceedings concerning dog . . . . .	29
Food & Agric. Code § 43039 (amended). Abatement of nuisance . . . . .	30
Food & Agric. Code § 52514 (amended). Court jurisdiction . . . . .	30
Food & Agric. Code § 53564 (amended). Court jurisdiction . . . . .	31
Food & Agric. Code § 55784 (amended). Witness fees and mileage . . . . .	31
Food & Agric. Code § 56473 (amended). Witness fees and mileage . . . . .	32
Food & Agric. Code § 59289 (amended). Diversion or destruction of lot . . . . .	32
Harb. & Nav. Code § 664 (amended). Arrest procedures . . . . .	33
Harb. & Nav. Code § 667 (amended). Place of trial . . . . .	34
Health & Safety Code § 1428 (amended). Contest of citation . . . . .	34
Health & Safety Code § 40844 (amended). Jurisdiction of Superior Court . . . . .	38

Health & Safety Code § 108580 (amended). Condemnation proceedings . . . . .	39
Health & Safety Code § 111880 (amended). Condemnation proceedings . . . . .	39
Health & Safety Code § 111895 (amended). Condemnation or destruction . . . . .	39
Health & Safety Code § 117070 (amended). Jurisdiction for prosecution of violations . . . . .	40
Health & Safety Code § 117120 (amended). Jurisdiction for prosecution of violations . . . . .	40
Ins. Code § 12961 (amended). Annual report of tort actions . . . . .	41
Lab. Code § 5710 (amended). Depositions . . . . .	41
Lab. Code § 6613 (amended). Depositions . . . . .	42
Mil. & Vet. Code § 467 (amended). Collection and disposition of fines and penalties . . . . .	43
Pub. Res. Code § 3357 (amended). Investigative powers . . . . .	43
Pub. Res. Code § 3769 (amended). Investigative powers . . . . .	44
Pub. Res. Code § 5560 (amended). Penalties and jurisdiction . . . . .	45
Pub. Util. Code § 1794 (amended). Depositions . . . . .	45
Pub. Util. Code § 5411.5 (amended). Seizure or impoundment of vehicle . . . . .	45
Pub. Util. Code § 103100 (amended). Membership of board . . . . .	46
Veh. Code § 2802.5 (amended). Commercial vehicle inspection facilities . . . . .	47
Veh. Code § 9872.1 (amended). Vessel with hull identification number removed . . . . .	48
Veh. Code § 10751 (amended). Removal of identifying number . . . . .	50
Veh. Code § 11205 (amended). Traffic violator school list (added 1991 Cal. Stat. ch. 411, § 4) . . . .	52
Veh. Code § 11205 (amended). Traffic violator school list (added 1991 Cal. Stat. ch. 411, § 5) . . . .	55
Veh. Code § 11301.6 (amended). Refund of deposit . . . . .	56
Veh. Code § 11710.2 (amended). Refund of deposit . . . . .	57
Veh. Code § 14607.6 (amended). Vehicle driven by unlicensed driver . . . . .	57
Veh. Code § 40230 (amended). Review . . . . .	63
Veh. Code § 40256 (amended). Appeals . . . . .	64
Veh. Code § 40502 (amended). Place to appear . . . . .	65
Veh. Code § 40506.5 (amended). Request for continuance . . . . .	66
Veh. Code § 42008 (amended). County amnesty program for delinquent fines and bail . . . . .	66
Veh. Code § 42203 (amended). Violations on certain county owned premises . . . . .	67
Water Code § 310 (amended). Jurisdiction . . . . .	68
Water Code § 1100 (amended). Manner of taking deposition . . . . .	68
Welf. & Inst. Code § 245 (amended). Jurisdiction. . . . .	68
Welf. & Inst. Code § 255 (amended). Traffic hearing officers . . . . .	68
Welf. & Inst. Code § 601.4 (amended). Compulsory education violations . . . . .	69
Welf. & Inst. Code § 603.5 (amended). Vehicle Code infractions or violation of local ordinances involving motor vehicles by minor . . . . .	70
Welf. & Inst. Code § 661 (amended). Notice and citation . . . . .	71
Welf. & Inst. Code § 742.16 (amended). Restitution . . . . .	71
Welf. & Inst. Code § 3050 (amended). Possible narcotic addiction of person convicted of misdemeanor or infraction . . . . .	74
Welf. & Inst. Code § 3051 (amended). Possible narcotic addiction of person convicted of felony . . .	75
Welf. & Inst. Code § 3200 (amended). Recommendation of discharge . . . . .	77
<b>JUSTICE COURT CONFORMING REVISIONS . . . . .</b>	<b>79</b>
Bus. & Prof. Code § 6152 (amended). Runners and cappers . . . . .	79
Bus. & Prof. Code § 6302.5 (amended). Board of law library trustees of Los Angeles County . . . .	79
Bus. & Prof. Code § 6321 (amended). Filing fee . . . . .	80
Bus. & Prof. Code § 6322 (amended). First appearance fee . . . . .	80
Bus. & Prof. Code § 25762 (amended). Fines and forfeitures of bail . . . . .	80
Civ. Code § 1181 (amended). Proof or acknowledgment of instrument . . . . .	81
Civ. Code § 1812.10 (amended). Action on contract or installment account . . . . .	81
Civ. Code § 2984.4 (amended). Action on contract or purchase order . . . . .	82
Educ. Code § 48294 (amended). Payment of fines . . . . .	83
Elec. Code § 325 (amended). Judicial district . . . . .	83

Elec. Code § 327 (amended). Judicial officer . . . . .	84
Elec. Code § 8203 (amended). Incumbents . . . . .	84
Elec. Code § 13111 (amended). Names on ballot . . . . .	84
Elec. Code § 13107 (amended). Ballot designations . . . . .	86
Evid. Code § 300 (amended). Application of code . . . . .	88
Fam. Code § 400 (amended). Persons authorized to perform marriages . . . . .	88
Fish & Game Code § 2357 (amended). Trout affidavit . . . . .	88
Fish & Game Code § 4341 (amended). Deer tag . . . . .	89
Lab. Code § 98 (amended). Investigations and hearings regarding employee complaints . . . . .	89
Lab. Code § 98.2 (amended). Review and enforcement of decision . . . . .	91
Lab. Code § 3352 (amended). Persons not “employees” . . . . .	92
Rev. & Tax. Code § 6776 (amended). Issuance of warrant . . . . .	94
Rev. & Tax. Code § 6777 (amended). Fees . . . . .	94
Rev. & Tax. Code § 19232 (amended). Force and effect of warrant . . . . .	94
Rev. & Tax. Code § 19233 (amended). Fees . . . . .	95
Rev. & Tax. Code § 19280 (amended). Referral of fines and penalties to Franchise Tax Board . . . . .	95
Unemp. Ins. Code § 1785 (amended). Issuance of warrant . . . . .	96
Unemp. Ins. Code § 1786 (amended). Fees . . . . .	97
Veh. Code § 40508.6 (amended). Administrative assessments for costs . . . . .	97
Welf. & Inst. Code § 11350.7 (amended). Delinquent support payments . . . . .	97
Section 22 of the Protection District Act of 1895 (amended). Claim for damages . . . . .	98
Section 4 of the Drainage District Act of 1903 (amended). Appeals . . . . .	99
 APPELLATE DIVISION CONFORMING REVISIONS . . . . .	 101
Bus. & Prof. Code § 17209 (amended). Notice to Attorney General and county district attorney . . .	101
Bus. & Prof. Code § 17536.5 (amended). Notice to Attorney General and county district attorney . . . . .	101

## PROPOSED LEGISLATION

### **Bus. & Prof. Code § 6301 (amended). Board of law library trustees**

SEC. \_\_\_\_\_. Section 6301 of the Business and Professions Code is amended to read:

6301. A board of law library trustees is constituted as follows:

(a) In a county where there are no more than three judges of the superior court, each of such judges is ex officio a trustee; in a county where there are more than three judges of the superior court, the judges of the court shall elect three of their number to serve as trustees. However, where there are no more than three judges of the superior court, the judges may at their option select only one of their number to serve as a trustee, and in such event they shall appoint two additional trustees who are members of the bar of the county.

Any judge who is an ex officio or elected member may at his the judge's option designate a member of the bar of the county to act for ~~him~~ the judge as trustee.

(b) In a county with ~~no more than one or~~ two municipal ~~and justice~~ courts the judges of such court or courts shall elect one of their number to serve as trustee. In a county with three or more municipal ~~and justice~~ courts the judges of such courts may elect two of their number to serve as trustees. In a county in which there is no municipal court, the judges of the superior court may elect one of their number, or appoint one member of the bar of the county, to serve as trustee, in addition to the trustees elected pursuant to subdivision (a).

(c) The chairman of the board of supervisors is ex officio a trustee, but the board of supervisors at the request of the chairman may appoint a member of the bar of the county or any other member of the board of supervisors of the county to serve as trustee in place of said chairman. The appointment of the person selected in lieu of the chairman of the board of supervisors shall expire when a new chairman of the board of supervisors is selected, and such appointment shall not be subject to the provisions of Section 6302.

(d) The board of supervisors shall appoint as many additional trustees, who are members of the bar of the county, as may be necessary to constitute a board of six members in any county where ~~the municipal and justice courts have elected one member is elected pursuant to subdivision (b),~~ or of seven members in any county where ~~the municipal and justice courts~~ two members are elected to serve as trustees pursuant to subdivision (b).

**Comment.** Section 6301 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

### **Bus. & Prof. Code § 6301.1 (amended). Board of law library trustees of San Diego County**

SEC. \_\_\_\_\_. Section 6301.1 of the Business and Professions Code is amended to read:

6301.1. Notwithstanding Section 6301, in San Diego County the board of law library trustees shall be constituted, as follows:

(a) Two judges of the superior court, to be elected by and from judges in the San Diego County Judicial District. Each superior court judge so elected shall serve a three-year term.

(b) Two judges from the municipal courts of the county. The courts may, by joint agreement, determine the pattern of representation on the board. Each municipal court judge so elected shall serve a three-year term. If the superior and municipal courts in San Diego County become unified, the two judges authorized by this subdivision shall be selected in the manner provided in subdivision (a).

(c) The board of supervisors shall appoint three attorneys resident in the county to the board of law library trustees, to serve overlapping three-year terms. In order to stagger the three appointments, the board of supervisors shall, in January of 1997, appoint one attorney to a one-year term, one attorney to a two-year term, and one attorney to a three-year term; and as each term expires, the new appointee shall thereafter serve three-year terms. At least one attorney appointed pursuant to this subdivision shall be a member of the San Diego Bar Association.

(d) In the event a trustee cannot serve a full term, the appointing authority for that individual shall appoint another qualified person to complete that term. Interim appointments may be made by the board of law library trustees in accordance with Section 6305.

**Comment.** Section 6301.1 is amended to accommodate unification of the municipal and superior courts in the county. Cal. Const. art. VI, § 5(e).

☞ **Staff Note.** The reference in subdivision (a) to the “San Diego County Judicial District” appears to be erroneous. There is a “San Diego Judicial District”, which is a municipal court district within San Diego County. Is “San Diego County Superior Court” intended here?

#### **Bus. & Prof. Code § 7028.2 (amended). Venue for criminal complaint**

SEC. \_\_\_\_\_. Section 7028.2 of the Business and Professions Code is amended to read:

7028.2. A criminal complaint pursuant to this chapter may be brought by the Attorney General or by the district attorney or prosecuting attorney of any city, ~~in the municipal court of~~ any county in the state with jurisdiction over the contractor or employer, by reason of the contractor’s or employer’s act, or failure to act, within that jurisdiction. Any penalty assessed by the court shall be paid to the office of the prosecutor bringing the complaint.

**Comment.** Section 7028.2 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). A misdemeanor complaint may be brought in the municipal court or in the superior court in a county in which there is no municipal court. Penal Code § 1462.

#### **Civ. Code § 798.61 (amended). Abandoned mobilehomes**

SEC. \_\_\_\_\_. Section 798.61 of the Civil Code is amended to read:

798.61. (a)(1) As used in this section, “abandoned mobilehome” means a mobilehome about which all of the following are true:

(A) It is located in a mobilehome park on a site for which no rent has been paid to the management for the preceding 60 days.

(B) It is unoccupied.

(C) A reasonable person would believe it to be abandoned.

(2) For purposes of this section:

(A) “Mobilehome” shall include a trailer coach, as defined in Section 635 of the Vehicle Code, or a recreational vehicle, as defined in Section 18010 of the Health and Safety Code, if the trailer coach or recreational vehicle also satisfies the requirements of paragraph (1), including being located on any site within a mobilehome park, even if the site is in a separate designated section pursuant to Section 18215 of the Health and Safety Code.

(B) “Abandoned mobilehome” shall include a mobilehome which is uninhabitable because of its total or partial destruction which cannot be rehabilitated, if the mobilehome also satisfies the requirements of paragraph (1).

(b) After determining a mobilehome in a mobilehome park to be an abandoned mobilehome, the management shall post a notice of belief of abandonment on the mobilehome for not less than 30 days, and shall deposit copies of the notice in the United States mail, postage prepaid, addressed to the homeowner at the last known address and to any known registered owner, if different from the homeowner, and to any known holder of a security interest in the abandoned mobilehome. This notice shall be mailed by registered or certified mail with a return receipt requested.

(c) Thirty or more days following posting pursuant to subdivision (b), the management may file a petition in ~~the municipal or justice court for the municipal court for~~ the judicial district in which the mobilehome park is located, or in the superior court in a county in which there is no municipal court, for a judicial declaration of abandonment of the mobilehome. A proceeding under this subdivision is a Chapter 5.1 case. Copies of the petition shall be served upon the homeowner, any known registered owner, and any known person having a lien or security interest of record in the mobilehome by posting a copy on the mobilehome and mailing copies to those persons at their last known addresses by registered or certified mail with a return receipt requested in the United States mail, postage prepaid.

(d)(1) Hearing on the petition shall be given precedence over other matters on the court’s calendar.

(2) If, at the hearing, the petitioner shows by a preponderance of the evidence that the criteria for an abandoned mobilehome has been satisfied and no party establishes an interest therein at the hearing, the court shall enter a judgment of abandonment, determine the amount of charges to which the petitioner is entitled, and award attorney’s fees and costs to the petitioner. For purposes of this subdivision an interest in the mobilehome shall be established by evidence of a



right to possession of the mobilehome or a security or ownership interest in the mobilehome.

(3) A default may be entered by the court clerk upon request of the petitioner, and a default judgment shall be thereupon entered, if no responsive pleading is filed within 15 days after service of the petition by mail.

(e)(1) Within 10 days following a judgment of abandonment, the management shall enter the abandoned mobilehome and complete an inventory of the contents and submit the inventory to the court.

(2) During this period the management shall post and mail notice of intent to sell the abandoned mobilehome and its contents under this section, and announcing the date of sale, in the same manner as provided for the notice of determination of abandonment under subdivision (b).

(3) At any time prior to sale of a mobilehome under this section, any person having a right to possession of the mobilehome may recover and remove it from the premises upon payment to the management of all rent or other charges due, including reasonable costs of storage and other costs awarded by the court. Upon receipt of this payment and removal of the mobilehome from the premises pursuant to this paragraph, the management shall immediately file an acknowledgment of satisfaction of judgment pursuant to Section 724.030 of the Code of Civil Procedure.

(f) Following the judgment of abandonment, but not less than 10 days following the notice of sale specified in subdivision (e), the management may conduct a public sale of the abandoned mobilehome and its contents. The management may bid at the sale and shall have the right to offset its bids to the extent of the total amount due it under this section. The proceeds of the sale shall be retained by the management, but any unclaimed amount thus retained over and above the amount to which the management is entitled under this section shall be deemed abandoned property and shall be paid into the treasury of the county in which the sale took place within 30 days of the date of the sale. The former homeowner or any other owner may claim any or all of that unclaimed amount within one year from the date of payment to the county by making application to the county treasurer or other official designated by the county. If the county pays any or all of that unclaimed amount to a claimant, neither the county nor any officer or employee of the county is liable to any other claimant as to the amount paid.

(g) Within 30 days of the date of the sale, the management shall submit to the court an accounting of the moneys received from the sale and the disposition of the money and the items contained in the inventory submitted to the court pursuant to subdivision (e).

(h) The management shall provide the purchaser at the sale with a copy of the judgment of abandonment and evidence of the sale, as shall be specified by the State Department of Housing and Community Development or the Department of Motor Vehicles, which shall register title in the abandoned mobilehome to the

purchaser upon presentation thereof. The sale shall pass title to the purchaser free of any prior interest, including any security interest or lien, except the lien provided for in Section 18116.1 of the Health and Safety Code, in the abandoned mobilehome.

**Comment.** Section 798.61 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

A Chapter 5.1 case is within the original jurisdiction of the municipal court or of the superior court in a county in which there is no municipal court. Cal. Const. art. VI, § 10 (superior court jurisdiction); Code Civ. Proc. § 85.1 (municipal court jurisdiction). See also Code Civ. Proc. §§ 91, 904.5, 1085 (trial procedures and writ and appellate jurisdiction for Chapter 5.1 cases).

**Civ. Code § 1719 (amended). Checks passed on insufficient funds**

SEC. \_\_\_\_\_. Section 1719 of the Civil Code is amended to read:

1719. (a)(1) Notwithstanding any penal sanctions that may apply, any person who passes a check on insufficient funds shall be liable to the payee for the amount of the check and a service charge payable to the payee for an amount not to exceed twenty-five dollars (\$25) for the first check passed on insufficient funds and an amount not to exceed thirty-five dollars (\$35) for each subsequent check to that payee passed on insufficient funds.

(2) Notwithstanding any penal sanctions that may apply, any person who passes a check on insufficient funds shall be liable to the payee for damages equal to treble the amount of the check if a written demand for payment is mailed by certified mail to the person who had passed a check on insufficient funds and the written demand informs this person of (A) the provisions of this section, (B) the amount of the check, and (C) the amount of the service charge payable to the payee. The person who had passed a check on insufficient funds shall have 30 days from the date the written demand was mailed to pay the amount of the check, the amount of the service charge payable to the payee, and the costs to mail the written demand for payment. If this person fails to pay in full the amount of the check, the service charge payable to the payee, and the costs to mail the written demand within this period, this person shall then be liable instead for the amount of the check, minus any partial payments made toward the amount of the check or the service charge within 30 days of the written demand, and damages equal to treble that amount, which shall not be less than one hundred dollars (\$100) nor more than one thousand five hundred dollars (\$1,500). When a person becomes liable for treble damages for a check that is the subject of a written demand, that person shall no longer be liable for any service charge for that check and any costs to mail the written demand.

(3) Notwithstanding paragraphs (1) and (2), a person shall not be liable for the service charge, costs to mail the written demand, or treble damages if he or she stops payment in order to resolve a good faith dispute with the payee. The payee is entitled to the service charge, costs to mail the written demand, or treble

damages only upon proving by clear and convincing evidence that there was no good faith dispute, as defined in subdivision (b).

(4) Notwithstanding paragraph (1), a person shall not be liable under that paragraph for the service charge if, at any time, he or she presents the payee with written confirmation by his or her financial institution that the check was returned to the payee by the financial institution due to an error on the part of the financial institution.

(5) Notwithstanding paragraph (1), a person shall not be liable under that paragraph for the service charge if the person presents the payee with written confirmation that his or her account had insufficient funds as a result of a delay in the regularly scheduled transfer of, or the posting of, a direct deposit of a social security or government benefit assistance payment.

(6) As used in this subdivision, to “pass a check on insufficient funds” means to make, utter, draw, or deliver any check, draft, or order for the payment of money upon any bank, depository, person, firm, or corporation that refuses to honor the check, draft, or order for any of the following reasons:

(A) Lack of funds or credit in the account to pay the check.

(B) The person who wrote the check does not have an account with the drawee.

(C) The person who wrote the check instructed the drawee to stop payment on the check.

(b) For purposes of this section, in the case of a stop payment, the existence of a “good faith dispute” shall be determined by the trier of fact. A “good faith dispute” is one in which the court finds that the drawer had a reasonable belief of his or her legal entitlement to withhold payment. Grounds for the entitlement include, but are not limited to, the following: services were not rendered, goods were not delivered, goods or services purchased are faulty, not as promised, or otherwise unsatisfactory, or there was an overcharge.

(c) In the case of a stop payment, the notice to the drawer required by this section shall be in substantially the following form:

NOTICE

To \_\_\_\_\_

(name of drawer)

\_\_\_\_\_ is the payee of a check you wrote

(name of payee)

for \$ \_\_\_\_\_. The check was not paid because

(amount)

you stopped payment, and the payee demands payment. You may have a good faith dispute as to whether you owe the full amount. If you do not have a good faith dispute with the payee and fail to pay the payee the full amount of the check in cash, a service charge of an amount not to exceed twenty-five dollars (\$25) for the first check passed on insufficient funds and an amount not to exceed thirty -

five dollars (\$35) for each subsequent check passed on insufficient funds, and the costs to mail this notice within 30 days after this notice was mailed, you could be sued and held responsible to pay at least both of the following:

(1) The amount of the check.

(2) Damages of at least one hundred dollars (\$100) or, if higher, three times the amount of the check up to one thousand five hundred dollars (\$1,500).

If the court determines that you do have a good faith dispute with the payee, you will not have to pay the service charge, treble damages, or mailing cost.

If you stopped payment because you have a good faith dispute with the payee, you should try to work out your dispute with the payee. You can contact the payee at:

---

(name of payee)

---

(street address)

---

(telephone number)

You may wish to contact a lawyer to discuss your legal rights and responsibilities.

---

(name of sender of notice)

(d) In the case of a stop payment, a court may not award damages or costs under this section unless the court receives into evidence a copy of the written demand which, in that case, shall have been sent to the drawer and a signed certified mail receipt showing delivery, or attempted delivery if refused, of the written demand to the drawer's last known address.

(e) A cause of action under this section may be brought in small claims court by the original payee, if it does not exceed the jurisdiction of that court, or in any other appropriate court. The payee shall, in order to recover damages because the drawer instructed the drawee to stop payment, show to the satisfaction of the trier of fact that there was a reasonable effort on the part of the payee to reconcile and resolve the dispute prior to pursuing the dispute through the courts.

(f) A cause of action under this section may be brought ~~in municipal court~~ by a holder of the check or an assignee of the payee. A proceeding under this section is a Chapter 5.1 case. However, if the assignee is acting on behalf of the payee, for a flat fee or a percentage fee, the assignee may not charge the payee a greater flat fee or percentage fee for that portion of the amount collected that represents treble damages than is charged the payee for collecting the face amount of the check, draft, or order. This subdivision shall not apply to an action brought in the small claims court division.

(g) Notwithstanding subdivision (a), if the payee is ~~a municipal~~ the court, the written demand for payment described in subdivision (a) may be mailed to the

drawer by a ~~municipal~~ the court clerk. Notwithstanding subdivision (d), in the case of a stop payment where the demand is mailed by a ~~municipal~~ the court clerk, a court may not award damages or costs pursuant to subdivision (d), unless the court receives into evidence a copy of the written demand, and a certificate of mailing by a ~~municipal~~ the court clerk in the form provided for in subdivision (4) of Section 1013a of the Code of Civil Procedure for service in civil actions. For purposes of this subdivision, in courts where a single court clerk serves more than one court, the clerk shall be deemed the court clerk of each court.

(h) The requirements of this section in regard to remedies are mandatory upon a court.

(i) The assignee of the payee or a holder of the check may demand, recover, or enforce the service charge, damages, and costs specified in this section to the same extent as the original payee.

(j)(1) A drawer is liable for damages and costs only if all of the requirements of this section have been satisfied.

(2) The drawer shall in no event be liable more than once under this section on each check for a service charge, damages, or costs.

(k) Nothing in this section is intended to condition, curtail, or otherwise prejudice the rights, claims, remedies, and defenses under Division 3 (commencing with Section 3101) of the Commercial Code of a drawer, payee, assignee, or holder, including a holder in due course as defined in Section 3302 of the Commercial Code, in connection with the enforcement of this section.

**Comment.** Subdivisions (f) and (g) of Section 1719 are amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

A Chapter 5.1 case is within the original jurisdiction of the municipal court or of the superior court in a county in which there is no municipal court. Cal. Const. art. VI, § 10 (superior court jurisdiction); Code Civ. Proc. § 85.1 (municipal court jurisdiction). See also Code Civ. Proc. §§ 91, 904.5, 1085 (trial procedures and writ and appellate jurisdiction for Chapter 5.1 cases).

Subdivision (f) is also amended to correct the reference to the small claims court, which is a division of the municipal court or, in a county in which there is no municipal court, a division of the superior court. Code Civ. Proc. § 116.210 (small claims division).

**Civ. Code § 1780 (amended). Action for unlawful method, act, or practice**

SEC. \_\_\_\_\_. Section 1780 of the Civil Code is amended to read:

1780. (a) Any consumer who suffers any damage as a result of the use or employment by any person of a method, act, or practice declared to be unlawful by Section 1770 may bring an action against such person to recover or obtain any of the following:

(1) Actual damages, but in no case shall the total award of damages in a class action be less than one thousand dollars (\$1,000).

(2) An order enjoining such methods, acts, or practices.

(3) Restitution of property.

(4) Punitive damages.

(5) Any other relief which the court deems proper.

(b) Any consumer who is a senior citizen or a disabled person, as defined in subdivisions (f) and (g) of Section 1761, as part of an action under subdivision (a), may seek and be awarded, in addition to the remedies specified therein, up to five thousand dollars (\$5,000) where the trier of fact (1) finds that the consumer has suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct, (2) makes an affirmative finding in regard to one or more of the factors set forth in subdivision (b) of Section 3345, and (3) finds that an additional award is appropriate. Judgment in a class action by senior citizens or disabled persons under Section 1781 may award each class member such an additional award where the trier of fact has made the foregoing findings.

(c) An action under subdivision (a) or (b) may be commenced in the county in which the person against whom it is brought resides, has his or her principal place of business, or is doing business, or in the county where the transaction or any substantial portion thereof occurred.

If within any such county there is a municipal ~~or justice~~ court, having jurisdiction of the subject matter, established in the city and county or judicial district in which the person against whom the action is brought resides, has his or her principal place of business, or is doing business, or in which the transaction or any substantial portion thereof occurred, then such court is the proper court for the trial of such action. Otherwise, any municipal ~~or justice~~ court in such county having jurisdiction of the subject matter is the proper court for the trial thereof.

In any action subject to the provisions of this section, concurrently with the filing of the complaint, the plaintiff shall file an affidavit stating facts showing that the action has been commenced in a county or judicial district described in this section as a proper place for the trial of the action. If a plaintiff fails to file the affidavit required by this section, the court shall, upon its own motion or upon motion of any party, dismiss any such action without prejudice.

A proceeding under subdivision (a) or (b) is a Chapter 5.1 case.

(d) The court shall award court costs and attorney's fees to a prevailing plaintiff in litigation filed pursuant to this section. Reasonable attorney's fees may be awarded to a prevailing defendant upon a finding by the court that the plaintiff's prosecution of the action was not in good faith.

**Comment.** Section 1780 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

A Chapter 5.1 case is within the original jurisdiction of the municipal court or of the superior court in a county in which there is no municipal court. Cal. Const. art. VI, § 10 (superior court jurisdiction); Code Civ. Proc. § 85.1 (municipal court jurisdiction). See also Code Civ. Proc. §§ 91, 904.5, 1085 (trial procedures and writ and appellate jurisdiction for Chapter 5.1 cases).

☞ **Staff Note.** This section is an example of a case that may be in the jurisdiction of the municipal or superior court depending on the amount in controversy. See Code Civ. Proc. § 86(a)(1).

**Civ. Code § 3342.5 (amended). Dog bites**

SEC. \_\_\_\_\_. Section 3342.5 of the Civil Code is amended to read:

3342.5. (a) The owner of any dog which has bitten a human being shall have the duty to take such reasonable steps as are necessary to remove any danger presented to other persons from bites by the animal.

(b) Whenever a dog has bitten a human being on at least two separate occasions, any person, the district attorney, or city attorney may bring an action ~~in the municipal court~~ against the owner of the animal to determine whether conditions of the treatment or confinement of the dog or other circumstances existing at the time of the bites have been changed so as to remove the danger to other persons presented by such animal. This action shall be brought in the county where a bite occurred. The court, after hearing, may make any order it deems appropriate to prevent the recurrence of such an incident, including, but not limited to, the removal of the animal from the area or its destruction if necessary.

(c) Whenever a dog trained to fight, attack, or kill has bitten a human being, causing substantial physical injury, any person, including the district attorney, or city attorney may bring an action ~~in the municipal court~~ against the owner of the animal to determine whether conditions of the treatment or confinement of the dog or other circumstances existing at the time of the bites have been changed so as to remove the danger to other persons presented by the animal. This action shall be brought in the county where a bite occurred. The court, after hearing, may make any order it deems appropriate to prevent the recurrence of such an incident, including, but not limited to, the removal of the animal from the area or its destruction if necessary.

(d) Nothing in this section shall authorize the bringing of an action pursuant to subdivision (b) based on a bite or bites inflicted upon a trespasser, or by a dog used in military or police work if the bite or bites occurred while the dog was actually performing in that capacity.

(e) Nothing in this section shall be construed to prevent legislation in the field of dog control by any city, county, or city and county.

~~(g)~~ (f) Nothing in this section shall be construed to affect the liability of the owner of a dog under Section 3342 or any other provision of the law.

(g) A proceeding under this section is a Chapter 5.1 case.

**Comment.** Section 3342.5 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

A Chapter 5.1 case is within the original jurisdiction of the municipal court or of the superior court in a county in which there is no municipal court. Cal. Const. art. VI, § 10 (superior court jurisdiction); Code Civ. Proc. § 85.1 (municipal court jurisdiction). See also Code Civ. Proc. §§ 91, 904.5, 1085 (trial procedures and writ and appellate jurisdiction for Chapter 5.1 cases).

**Educ. Code § 44944 (amended). Dismissal or suspension proceeding**

SEC. \_\_\_\_\_. Section 44944 of the Education Code is amended to read:

44944. (a) In a dismissal or suspension proceeding initiated pursuant to Section 44934, if a hearing is requested by the employee, the hearing shall be commenced within 60 days from the date of the employee's demand for a hearing. The hearing shall be initiated, conducted, and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. However, the hearing date shall be established after consultation with the employee and the governing board, or their representatives, and the Commission on Professional Competence shall have all the power granted to an agency in that chapter, except that the right of discovery of the parties shall not be limited to those matters set forth in Section 11507.6 of the Government Code but shall include the rights and duties of any party in a civil action general jurisdiction case brought in a superior court. Notwithstanding any provision to the contrary, and except for the taking of oral depositions, no discovery shall occur later than 30 calendar days after the employee is served with a copy of the accusation pursuant to Section 11505 of the Government Code. In all cases, discovery shall be completed prior to seven calendar days before the date upon which the hearing commences. If any continuance is granted pursuant to Section 11524 of the Government Code, the time limitation for commencement of the hearing as provided in this subdivision shall be extended for a period of time equal to such continuance. However, the extension shall not include that period of time attributable to an unlawful refusal by either party to allow the discovery provided for in this section.

If the right of discovery granted under the preceding paragraph is denied by either the employee or the governing board, all the remedies in Section 2034 of the Code of Civil Procedure shall be available to the party seeking discovery and the court of proper jurisdiction, to entertain his or her motion, shall be the superior court of the county in which the hearing will be held.

The time periods in this section and of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and of Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure shall not be applied so as to deny discovery in a hearing conducted pursuant to this section.

The superior court of the county in which the hearing will be held may, upon motion of the party seeking discovery, suspend the hearing so as to comply with the requirement of the preceding paragraph.

No witness shall be permitted to testify at the hearing except upon oath or affirmation. No testimony shall be given or evidence introduced relating to matters which occurred more than four years prior to the date of the filing of the notice. Evidence of records regularly kept by the governing board concerning the employee may be introduced, but no decision relating to the dismissal or suspension of any employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice.



(b) The hearing provided for in this section shall be conducted by a Commission on Professional Competence. One member of the commission shall be selected by the employee, one member shall be selected by the governing board, and one member shall be an administrative law judge of the Office of Administrative Hearings who shall be chairperson and a voting member of the commission and shall be responsible for assuring that the legal rights of the parties are protected at the hearing. If either the governing board or the employee for any reason fails to select a commission member at least seven calendar days prior to the date of the hearing, the failure shall constitute a waiver of the right to selection, and the county board of education or its specific designee shall immediately make the selection. When the county board of education is also the governing board of the school district or has by statute been granted the powers of a governing board, the selection shall be made by the Superintendent of Public Instruction, who shall be reimbursed by the school district for all costs incident to the selection.

The member selected by the governing board and the member selected by the employee shall not be related to the employee and shall not be employees of the district initiating the dismissal or suspension and shall hold a currently valid credential and have at least five years' experience within the past 10 years in the discipline of the employee.

(c) The decision of the Commission on Professional Competence shall be made by a majority vote, and the commission shall prepare a written decision containing findings of fact, determinations of issues, and a disposition which shall be, solely:

- (1) That the employee should be dismissed.
- (2) That the employee should be suspended for a specific period of time without pay.
- (3) That the employee should not be dismissed or suspended.

The decision of the Commission on Professional Competence that the employee should not be dismissed or suspended shall not be based on nonsubstantive procedural errors committed by the school district or governing board unless the errors are prejudicial errors.

The commission shall not have the power to dispose of the charge of dismissal by imposing probation or other alternative sanctions. The imposition of suspension pursuant to paragraph (2) shall be available only in a suspension proceeding authorized pursuant to subdivision (b) of Section 44932 or Section 44933.

The decision of the Commission on Professional Competence shall be deemed to be the final decision of the governing board.

The board may adopt from time to time such rules and procedures not inconsistent with provisions of this section as may be necessary to effectuate this section.

The governing board and the employee shall have the right to be represented by counsel.

(d)(1) If the member selected by the governing board or the member selected by the employee is employed by any school district in this state the member shall, during any service on a Commission on Professional Competence, continue to receive salary, fringe benefits, accumulated sick leave, and other leaves and benefits from the district in which the member is employed, but shall receive no additional compensation or honorariums for service on the commission.

(2) If service on a Commission on Professional Competence occurs during summer recess or vacation periods, the member shall receive compensation proportionate to that received during the current or immediately preceding contract period from the member's employing district, whichever amount is greater.

(e) If the Commission on Professional Competence determines that the employee should be dismissed or suspended, the governing board and the employee shall share equally the expenses of the hearing, including the cost of the administrative law judge. The state shall pay any costs incurred under paragraph (2) of subdivision (d), the reasonable expenses, as determined by the administrative law judge, of the member selected by the governing board and the member selected by the employee, including, but not limited to payments or obligations incurred for travel, meals, and lodging, and the cost of the substitute or substitutes, if any, for the member selected by the governing board and the member selected by the employee. The Controller shall pay all claims submitted pursuant to this paragraph from the General Fund, and may prescribe reasonable rules, regulations, and forms for the submission of the claims. The employee and the governing board shall pay their own attorney fees.

If the Commission on Professional Competence determines that the employee should not be dismissed or suspended, the governing board shall pay the expenses of the hearing, including the cost of the administrative law judge, any costs incurred under paragraph (2) of subdivision (d), the reasonable expenses, as determined by the administrative law judge, of the member selected by the governing board and the member selected by the employee, including, but not limited to payments or obligations incurred for travel, meals, and lodging, the cost of the substitute or substitutes, if any, for the member selected by the governing board and the member selected by the employee, and reasonable attorney fees incurred by the employee.

As used in this section, "reasonable expenses" shall not be deemed "compensation" within the meaning of subdivision (d).

If either the governing board or the employee petitions a court of competent jurisdiction for review of the decision of the commission, the payment of expenses to members of the commission required by this subdivision shall not be stayed.

In the event that the decision of the commission is finally reversed or vacated by a court of competent jurisdiction, then either the state, having paid the commission members' expenses, shall be entitled to reimbursement from the

governing board for those expenses, or the governing board, having paid the expenses, shall be entitled to reimbursement from the state.

Additionally, either the employee, having paid a portion of the expenses of the hearing, including the cost of the administrative law judge, shall be entitled to reimbursement from the governing board for the expenses, or the governing board, having paid its portion and the employee's portion of the expenses of the hearing, including the cost of the administrative law judge, shall be entitled to reimbursement from the employee for that portion of the expenses.

(f) The hearing provided for in this section shall be conducted in a place selected by agreement among the members of the commission. In the absence of agreement, the place shall be selected by the administrative law judge.

**Comment.** Section 44944 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See also Code Civ. Proc. § 85 and Comment (general jurisdiction cases and Chapter 5.1 cases).

**Educ. Code § 45312 (amended). Hearing or investigation by hearing officer**

SEC. \_\_\_\_\_. Section 45312 of the Education Code is amended to read:

45312. The commission may authorize a hearing officer or other representative to conduct any hearing or investigation which the commission itself is authorized by this article to conduct. Any such authorized person conducting such hearing or investigation may administer oaths, subpoena and require the attendance of witnesses and the production of books or papers, and cause the depositions of witnesses to be taken in the manner prescribed by law for like depositions in civil cases general jurisdiction cases in the superior court of this state. The commission may instruct such authorized representative to present findings or recommendations. The commission may accept, reject or amend any of the findings or recommendations of the said authorized representative. Any rejection or amendment of findings or recommendations shall be based either on a review of the transcript of the hearing or investigation or upon the results of such supplementary hearing or investigation as the commission may order.

The commission may employ by contract or as professional experts or otherwise any such hearing officers or other representatives and may adopt and amend such rules and procedures as may be necessary to effectuate this section.

**Comment.** Section 45312 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See also Code Civ. Proc. § 85 and Comment (general jurisdiction cases and Chapter 5.1 cases).

**Educ. Code § 48295 (amended). Jurisdiction**

SEC. \_\_\_\_\_. Section 48295 of the Education Code is amended to read:

48295. Any judge of a municipal or justice court, in the judicial district in which the school district is located, or in which the offense is committed, or judge of the superior court in a county in which there is no municipal court, has jurisdiction of offenses committed under this article. A juvenile court has jurisdiction of a

violation of Section 48293 as provided by Section 601.4 of the Welfare and Institutions Code. A proceeding under this section is a Chapter 5.1 case.

**Comment.** Section 48295 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

A Chapter 5.1 case is within the original jurisdiction of the municipal court or of the superior court in a county in which there is no municipal court. Cal. Const. art. VI, § 10 (superior court jurisdiction); Code Civ. Proc. § 85.1 (municipal court jurisdiction). See also Code Civ. Proc. §§ 91, 904.5, 1085 (trial procedures and writ and appellate jurisdiction for Chapter 5.1 cases).

**Educ. Code § 87675 (amended). Arbitration proceedings**

SEC. \_\_\_\_\_. Section 87675 of the Education Code is amended to read:

87675. The arbitrator shall conduct proceedings in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except that the right of discovery of the parties shall not be limited to those matters set forth in Section 11507.6 of the Government Code but shall include the rights and duties of any party in a ~~civil-action~~ general jurisdiction case brought in a superior court. In all cases, discovery shall be completed prior to one week before the date set for hearing. The arbitrator shall determine whether there is cause to dismiss or penalize the employee. If the arbitrator finds cause, the arbitrator shall determine whether the employee shall be dismissed, the precise penalty to be imposed, and whether the decision should be imposed immediately or postponed pursuant to Section 87672.

No witness shall be permitted to testify at the hearing except upon oath or affirmation. No testimony shall be given or evidence introduced relating to matters that occurred more than four years prior to the date of the filing of the notice. Evidence of records regularly kept by the governing board concerning the employee may be introduced, but no decision relating to the dismissal or suspension of any employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice.

**Comment.** Section 87675 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See also Code Civ. Proc. § 85 and Comment (general jurisdiction cases and Chapter 5.1 cases).

**Educ. Code § 87679 (amended). Conduct of proceedings**

SEC. \_\_\_\_\_. Section 87679 of the Education Code is amended to read:

87679. The administrative law judge shall conduct proceedings in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except that the right of discovery of the parties shall not be limited to those matters set forth in Section 11507.6 of the Government Code but shall include the rights and duties of any party in a ~~civil-action~~ general jurisdiction case brought in a superior court. In all cases, discovery shall be completed prior to one week before the date set for hearing. The written notice

delivered to the employee pursuant to Section 87672 shall be deemed an accusation. The written objection of the employee delivered pursuant to Section 87673 shall be deemed the notice of defense.

**Comment.** Section 87679 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See also Code Civ. Proc. § 85 and Comment (general jurisdiction cases and Chapter 5.1 cases).

**Educ. Code § 88131 (amended). Hearing or investigation by hearing officer**

SEC. \_\_\_\_\_. Section 88131 of the Education Code is amended to read:

88131. The commission may authorize a hearing officer or other representative to conduct any hearing or investigation which the commission itself is authorized by this article to conduct. Any such authorized person conducting such hearing or investigation may administer oaths, subpoena and require the attendance of witnesses and the production of books or papers, and cause the depositions of witnesses to be taken in the manner prescribed by law for like depositions in civil cases a general jurisdiction case in the superior court of this state. The commission may instruct such authorized representative to present findings or recommendations. The commission may accept, reject or amend any of the findings or recommendations of the said authorized representative. Any rejection or amendment of findings or recommendations shall be based either on a review of the transcript of the hearing or investigation or upon the results of such supplementary hearing or investigation as the commission may order.

The commission may employ by contract or as professional experts or otherwise any such hearing officers or other representatives and may adopt and amend such rules and procedures as may be necessary to effectuate this section.

**Comment.** Section 88131 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See also Code Civ. Proc. § 85 and Comment (general jurisdiction cases and Chapter 5.1 cases).

**Fam. Code § 4845 (amended). Evidence**

SEC. \_\_\_\_\_. Section 4845 of the Family Code is amended to read:

4845. (a) In a hearing for the civil enforcement of this chapter, the court is governed by the rules of evidence applicable in a ~~civil court action~~ general jurisdiction case in the superior court. If the action is based on a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses or modification available to a defendant in a proceeding to enforce a foreign support judgment.

(b) The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

**Comment.** Section 4845 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See also Code Civ. Proc. § 85 and Comment (general jurisdiction cases and Chapter 5.1 cases).

☞ **Staff Note.** Probably the distinction need not be made between rules of evidence applicable in general jurisdiction cases and in Chapter 5.1 cases. But just in case...

**Fin. Code § 1785 (amended). Foreign bank**

SEC. \_\_\_\_\_. Section 1785 of the Financial Code is amended to read:

1785. (a) If the commissioner finds that any of the factors set forth in Section 1781 is true with respect to any foreign (other nation) bank which is licensed to transact business in this state and that it is necessary for the protection of the interests of the creditors of such bank's business in this state or for the protection of the public interest that he or she take immediate possession of the property and business of the bank, the commissioner may by order forthwith take possession of the property and business of the bank and retain possession until the bank resumes business in this state or is finally liquidated. The bank may, with the consent of the commissioner, resume business in this state upon such conditions as the commissioner may prescribe.

(b) (1) Whenever the commissioner takes possession of the property and business of a foreign (other nation) bank pursuant to subdivision (a), such bank may, within 10 days, apply to the superior court in the county in which the primary office of the bank is located to enjoin further proceedings. The court may, after citing the commissioner to show cause why further proceedings should not be enjoined and after a hearing, dismiss such application or enjoin the commissioner from further proceedings and order him or her to surrender the property and business of the bank to the bank or make such further order as may be just.

(2) The judgment of the court may be appealed by the commissioner or by the bank in the manner provided by law for appeals from the judgment of a superior court in a general jurisdiction case. In case the commissioner appeals the judgment of the court, such appeal shall operate as a stay of the judgment, and the commissioner shall not be required to post any bond.

(c) Whenever the commissioner takes possession of the property and business of a foreign (other nation) bank pursuant to subdivision (a), the commissioner shall conserve or liquidate the property and business of such bank pursuant to Articles 1 (commencing with Section 3100), 3 (commencing with Section 3160) and 6 (commencing with Section 3220) of Chapter 17, and the provisions of such articles (except Sections 3100, 3101, 3102, and 3126) shall apply as if the bank were a bank organized under the laws of this state.

(d) When the commissioner has completed the liquidation of the property and business of a foreign (other nation) bank, the commissioner shall transfer any remaining assets to such bank in accordance with such orders as the court may issue. However, in case the bank has an office in another state of the United States which is in liquidation and the assets of such office appear to be insufficient to pay in full the creditors of the office, the court shall order the commissioner to transfer to the liquidator of the office such amount of any such

remaining assets as appears to be necessary to cover such insufficiency; if there are two or more such offices and the amount of remaining assets is less than the aggregate amount of insufficiencies with respect to the offices, the court shall order the commissioner to distribute the remaining assets among the liquidators of such offices in such manner as the court finds equitable.

**Comment.** Section 1785 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See also Code Civ. Proc. § 85 and Comment (general jurisdiction cases and Chapter 5.1 cases).

**Fin. Code § 1824 (amended). Appeal**

SEC. \_\_\_\_\_. Section 1824 of the Financial Code is amended to read:

1824. An appeal may be taken from the judgment of the court by the commissioner or by the licensee in the manner provided by law for appeals from the judgment of a superior court in a general jurisdiction case.

**Comment.** Section 1824 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See also Code Civ. Proc. § 85 and Comment (general jurisdiction cases and Chapter 5.1 cases).

**Fin. Code § 1893 (amended). Possession by commissioner**

SEC. \_\_\_\_\_. Section 1893 of the Financial Code is amended to read:

1893. (a) If the commissioner finds that any of the factors set forth in Section 1889 is true with respect to any licensee and that it is necessary for the protection of the interests of purchasers or holders of traveler's checks issued by the licensee or for the protection of the public interest that the commissioner take immediate possession of the property and business of the licensee, the commissioner may by order forthwith take possession of the property and business of the licensee and retain possession until the licensee resumes business or is finally liquidated. The licensee may, with the consent of the commissioner, resume business upon such conditions as the commissioner may prescribe.

(b) Whenever the commissioner takes possession of the property and business of a licensee pursuant to subdivision (a), the licensee may, within 10 days, apply to the superior court in any county of this state in which an office of the licensee is located (or, in case the licensee has no office in this state, in the County of Sacramento, in the City and County of San Francisco, or in the County of Los Angeles) to enjoin further proceedings. The court may, after citing the commissioner to show cause why further proceedings should not be enjoined and after a hearing, dismiss the application or enjoin the commissioner from further proceedings and order the commissioner to surrender the property and business of the licensee to the licensee or make such further order as may be just. The judgment of the superior court may be appealed by the commissioner or by the licensee in the manner provided by law for appeals from the judgment of a superior court in a general jurisdiction case.

(c) Whenever the commissioner takes possession of the property and business of a licensee pursuant to subdivision (a), the commissioner shall conserve or

liquidate the property and business of the licensee pursuant to Article 1 (commencing with Section 3100) of Chapter 17, and the provisions of that article (except Sections 3100, 3101, and 3102) apply as if the licensee were a bank.

**Comment.** Section 1893 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See also Code Civ. Proc. § 85 and Comment (general jurisdiction cases and Chapter 5.1 cases).

**Fin. Code § 3102 (amended). Appeal**

SEC. \_\_\_\_\_. Section 3102 of the Financial Code is amended to read:

3102. An appeal may be taken from the judgment of the court by the commissioner or by the bank in the manner provided by law for appeals from the judgment of a superior court in a general jurisdiction case.

**Comment.** Section 3102 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See also Code Civ. Proc. § 85 and Comment (general jurisdiction cases and Chapter 5.1 cases).

**Fin. Code § 16154 (amended). Appeal**

SEC. \_\_\_\_\_. Section 16154 of the Financial Code is amended to read:

16154. An appeal may be taken from the judgment of the court by the commissioner or by the corporation in the manner provided by law for appeals from the judgment of a superior court in a general jurisdiction case. An appeal from the judgment of the court shall not operate as a stay of the judgment unless the court, on good cause, so orders. No bond need be given if an appeal is taken by the commissioner but if the appeal is taken by the corporation a bond shall be given as required by Sections 917.2 and 917.5 of the Code of Civil Procedure as condition to any stay.

**Comment.** Section 16154 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See also Code Civ. Proc. § 85 and Comment (general jurisdiction cases and Chapter 5.1 cases).

**Fin. Code § 17335 (amended). Appeal**

SEC. \_\_\_\_\_. Section 17335 of the Financial Code is amended to read:

17335. An appeal may be taken from the judgment of the court by the commissioner or by Fidelity Corporation in the manner provided by law for appeals from the judgment of a superior court in a general jurisdiction case. An appeal from the judgment of the court does not operate as a stay of the judgment unless the court, on good cause, so orders. No bond need be given if the appeal is taken by the commissioner, but if the appeal is taken by Fidelity Corporation a bond shall be given as required by Sections 917.2 and 917.5 of the Code of Civil Procedure as a condition to any stay.

**Comment.** Section 17335 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See also Code Civ. Proc. § 85 and Comment (general jurisdiction cases and Chapter 5.1 cases).



**Fin. Code § 18415.2 (amended). Appeal**

SEC. \_\_\_\_\_. Section 18415.2 of the Financial Code is amended to read:

18415.2. An appeal may be taken from the judgment of the court by the commissioner or by the industrial loan company in the manner provided by law for appeals from the judgment of a superior court in a general jurisdiction case.

**Comment.** Section 18415.2 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See also Code Civ. Proc. § 85 and Comment (general jurisdiction cases and Chapter 5.1 cases).

**Fin. Code § 18495 (amended). Appeal**

SEC. \_\_\_\_\_. Section 18495 of the Financial Code is amended to read:

18495. An appeal may be taken from the judgment of the court by the commissioner or by Guaranty Corporation in the manner provided by law for appeals from the judgment of a superior court in a general jurisdiction case. An appeal from the judgment of the court does not operate as a stay of the judgment unless the court, on good cause, so orders.

**Comment.** Section 18495 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See also Code Civ. Proc. § 85 and Comment (general jurisdiction cases and Chapter 5.1 cases).

**Fin. Code § 31713 (amended). Possession by commissioner**

SEC. \_\_\_\_\_. Section 31713 of the Financial Code is amended to read:

31713. (a) If the commissioner finds that any of the factors set forth in Section 31709 is true with respect to any licensee and that it is necessary for the protection of the interests of the licensee or for the protection of the public interest that the commissioner take immediate possession of the property and business of the licensee, the commissioner may forthwith take possession of the property and business of the licensee and retain possession until the licensee resumes business or is finally liquidated. The licensee may, with the consent of the commissioner, resume business upon such conditions as he or she may prescribe.

(b) Whenever the commissioner takes possession of the property and business of a licensee pursuant to subdivision (a), the licensee may apply within 10 days to the superior court in the county in which the head office of the licensee is located to enjoin further proceedings. The court, after citing the commissioner to show cause why further proceedings should not be enjoined and after a hearing, may dismiss the application or enjoin the commissioner from further proceedings and order the commissioner to surrender the property and business of the licensee to the licensee or make such further order as may be just.

(c) An appeal may be taken from the judgment of the superior court by the commissioner or by the licensee in the manner provided by law for appeals from the judgment of a superior court in a general jurisdiction case. An appeal from the judgment of the superior court shall operate as a stay of the judgment. No bond need be given if the appeal is taken by the commissioner, but if the appeal is

taken by the licensee, a bond shall be given as required by the Code of Civil Procedure.

(d) Whenever the commissioner takes possession of the property and business of a licensee pursuant to subdivision (a), the commissioner shall conserve or liquidate the property and business of the licensee pursuant to Article 1 (commencing with Section 3100), Chapter 17, Division 1, and the provisions of that article (except Sections 3100, 3101, and 3102) shall apply as if the licensee were a bank.

**Comment.** Section 31713 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See also Code Civ. Proc. § 85 and Comment (general jurisdiction cases and Chapter 5.1 cases).

**Fin. Code § 34113 (amended). Possession by commissioner**

SEC. \_\_\_\_\_. Section 34113 of the Financial Code is amended to read:

34113. (a) If the commissioner finds that any of the factors set forth in Section 34109 is true with respect to any licensee and that it is necessary for the protection of the interests of purchasers or holders of payment instruments issued by the licensee or for the protection of the public interest that the commissioner take immediate possession of the property and business of the licensee, the commissioner may by order forthwith take possession of the property and business of the licensee and retain possession until the licensee resumes business or is finally liquidated. The licensee may, with the consent of the commissioner, resume business upon such conditions as the commissioner may prescribe.

(b) Whenever the commissioner takes possession of the property and business of a licensee pursuant to subdivision (a), the licensee may, within 10 days, apply to the superior court in any county of this state in which an office of the licensee is located (or, in case the licensee has no office in this state, in the County of Sacramento, in the City and County of San Francisco, or in the County of Los Angeles) to enjoin further proceedings. The court may, after citing the commissioner to show cause why further proceedings should not be enjoined and after a hearing, dismiss the application or enjoin the commissioner from further proceedings and order the commissioner to surrender the property and business of the licensee to the licensee or make such further order as may be just. The judgment of the superior court may be appealed by the commissioner or by the licensee in the manner provided by law for appeals from the judgment of a superior court in a general jurisdiction case.

(c) Whenever the commissioner takes possession of the property and business of a licensee pursuant to subdivision (a), the commissioner shall conserve or liquidate the property and business of the licensee pursuant to Article 1 (commencing with Section 3100), Chapter 17, Division 1, and the provisions of the article (except Sections 3100, 3101, and 3102) apply as if the licensee were a bank.

**Comment.** Section 34113 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See also Code Civ. Proc. § 85 and Comment (general jurisdiction cases and Chapter 5.1 cases).

**Fish & Game Code § 210 (amended). Regulations**

SEC. \_\_\_\_\_. Section 210 of the Fish and Game Code is amended to read:

210. (a) The commission shall provide copies of the regulations added, amended, or repealed pursuant to subdivision (e) of Section 206, subdivision (e) of Section 207, and subdivision (d) of Section 208 to each county clerk, each district attorney, and each judge of a municipal court ~~or justice court or of the superior court in a county in which there is no municipal court~~, in the state.

(b) The commission and the department may do anything that is deemed necessary and proper to publicize and distribute regulations so that persons likely to be affected will be informed of them. The failure of the commission to provide any notice of its regulations, other than by filing them in accordance with Section 215, shall not impair the validity of the regulations.

(c) The department or the license agent may give a copy of the current applicable published regulations to each person issued a license at the time the license is issued.

(d) Notwithstanding any other provision of law, the commission and the department may contract with private entities to print regulations and other regulatory and public information. Printing contracts authorized by this subdivision and for which no state funds are expended are not subject to Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code, except for Article 2 (commencing with Section 10295) of Chapter 2.

**Comment.** Section 210 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

**Fish & Game Code § 309 (amended). Depositions**

SEC. \_\_\_\_\_. Section 309 of the Fish and Game Code is amended to read:

309. The commission or any person appointed by it to conduct a hearing may, in any investigation or hearing, cause the deposition of witnesses, residing within or without the state, to be taken in the manner prescribed by law for deposition in civil actions general jurisdiction cases in the superior courts of this state, and may compel the attendance of witnesses and the production of documents and papers. The commission shall adopt regulations which afford procedural and substantive due process to any person, whose license or permit is subject to revocation or suspension. Except upon conviction of a violation of this code or a regulation adopted pursuant to this code relating to the licensed or permitted activity and notwithstanding any other provision of this code, the commission shall not revoke or suspend any license or permit until the regulations required by this section have been adopted and approved by the Office of Administrative Law

pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

**Comment.** Section 309 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See also Code Civ. Proc. § 85 and Comment (general jurisdiction cases and Chapter 5.1 cases).

**Fish & Game Code § 5934 (amended). Depositions**

SEC. \_\_\_\_\_. Section 5934 of the Fish and Game Code is amended to read:

5934. The commission or any party may, in any hearing, cause the deposition of witnesses to be taken in the manner prescribed by law for depositions in civil actions general jurisdiction cases in the superior courts of this State.

**Comment.** Section 5934 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See also Code Civ. Proc. § 85 and Comment (general jurisdiction cases and Chapter 5.1 cases).

**Fish & Game Code § 12150 (amended). Hunting accidents**

SEC. \_\_\_\_\_. Section 12150 of the Fish and Game Code is amended to read:

12150. Whenever any person, while taking a bird or mammal, kills or wounds any human being and that fact is ascertained by the department, the department shall notify the district attorney of the county in which the act occurred. The district attorney may thereupon bring an action in the municipal or justice court of the judicial district in which the act occurred or in the superior court in a county in which there is no municipal court for the purpose of determining the cause of the killing or the wounding. Such proceedings shall be conducted in the same manner as an action to try a misdemeanor and the defendant may request that all findings of fact shall be made by a jury. The court shall inform the defendant of the nature of the proceedings and of his the defendant's right to have a jury.

If it is found that such person did the killing or wounding but that it was not intentional or negligent, the court shall dismiss the proceeding. Otherwise, if it is found that such person did the killing or wounding intentionally, by an act of gross negligence, or while under the influence of alcohol, the court shall issue an order permanently prohibiting him the defendant from taking any bird or mammal.

If it is found that such person was negligent, but not grossly negligent, the court shall issue an order prohibiting him the defendant from taking any bird or mammal for a period specified at the discretion of the court but not less than five years.

A proceeding under this section is a Chapter 5.1 case.

**Comment.** Section 12150 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

A Chapter 5.1 case is within the original jurisdiction of the municipal court or of the superior court in a county in which there is no municipal court. Cal. Const. art. VI, § 10 (superior court jurisdiction); Code Civ. Proc. § 85.1 (municipal court jurisdiction). See also

Code Civ. Proc. §§ 91, 904.5, 1085 (trial procedures and writ and appellate jurisdiction for Chapter 5.1 cases).

**Fish & Game Code § 12151 (amended). Domestic animals**

SEC. \_\_\_\_\_. Section 12151 of the Fish and Game Code is amended to read:

12151. Whenever any person, while taking a bird or mammal, kills or wounds any domestic animal belonging to another and that fact is ascertained by the department, the department shall notify the district attorney of the county in which the act occurred. The district attorney may thereupon bring an action in the municipal ~~or justice~~ court of the judicial district in which the act occurred or in the superior court in a county in which there is no municipal court for the purpose of determining the cause of the killing or wounding. Such proceedings shall be conducted in the same manner as an action to try a misdemeanor and the defendant may request that all findings of fact shall be made by a jury. The court shall inform the defendant of the nature of the proceedings and of ~~his~~ the defendant's right to have a jury.

If it is found that such person did the killing or wounding but that it was not intentional or negligent, the court shall dismiss the proceeding. Otherwise, if it is found that such person did the killing or wounding intentionally or negligently, the court shall issue an order prohibiting ~~him~~ the defendant from taking any bird or mammal for a period of five years.

A proceeding under this section is a Chapter 5.1 case.

**Comment.** Section 12151 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

A Chapter 5.1 case is within the original jurisdiction of the municipal court or of the superior court in a county in which there is no municipal court. Cal. Const. art. VI, § 10 (superior court jurisdiction); Code Civ. Proc. § 85.1 (municipal court jurisdiction). See also Code Civ. Proc. §§ 91, 904.5, 1085 (trial procedures and writ and appellate jurisdiction for Chapter 5.1 cases).

**Food & Agric. Code § 7581 (amended). Court jurisdiction**

SEC. \_\_\_\_\_. Section 7581 of the Food and Agriculture Code is amended to read:

7581. ~~In actions~~ Proceedings which arise pursuant to this article:

~~(a) Municipal courts shall have original jurisdiction where the value of the property seized amounts to five thousand dollars (\$5,000) or less.~~

~~(b) Justice courts shall have original jurisdiction where the value amounts to five hundred dollars (\$500) or less~~ are Chapter 5.1 cases.

**Comment.** Section 7581 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

A Chapter 5.1 case is within the original jurisdiction of the municipal court or of the superior court in a county in which there is no municipal court. Cal. Const. art. VI, § 10 (superior court jurisdiction); Code Civ. Proc. § 85.1 (municipal court jurisdiction). See also Code Civ. Proc. §§ 91, 904.5, 1085 (trial procedures and writ and appellate jurisdiction for Chapter 5.1 cases).

☞ **Staff Note.** The existing statutory amounts (i.e., \$5,000 and \$500) were enacted in 1967 and never amended to reflect changes in the jurisdictional amount in controversy for municipal and justice court jurisdiction. Professor Kelso recommends increasing the amount to the current \$25,000 municipal court jurisdictional amount.

**Food & Agric. Code § 12647 (amended). Court jurisdiction**

SEC. \_\_\_\_\_. Section 12647 of the Food and Agriculture Code is amended to read:  
12647. ~~In actions~~ Proceedings which arise pursuant to this article:

~~(a) Municipal courts shall have original jurisdiction where the value of the property seized amounts to five thousand dollars (\$5,000) or less.~~

~~(b) Justice courts shall have original jurisdiction where the value amounts to five hundred dollars (\$500) or less are Chapter 5.1 cases.~~

**Comment.** Section 12647 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

A Chapter 5.1 case is within the original jurisdiction of the municipal court or of the superior court in a county in which there is no municipal court. Cal. Const. art. VI, § 10 (superior court jurisdiction); Code Civ. Proc. § 85.1 (municipal court jurisdiction). See also Code Civ. Proc. §§ 91, 904.5, 1085 (trial procedures and writ and appellate jurisdiction for Chapter 5.1 cases).

☞ **Staff Note.** The existing statutory amounts (i.e., \$5,000 and \$500) were enacted in 1967 and never amended to reflect changes in the jurisdictional amount in controversy for municipal and justice court jurisdiction. Professor Kelso recommends increasing the amount to the current \$25,000 municipal court jurisdictional amount.

**Food & Agric. Code § 25564 (amended). Abatement of nuisance**

SEC. \_\_\_\_\_. Section 25564 of the Food and Agriculture Code is amended to read:

25564. If the lot of poultry meat which is held is perishable or subject to rapid deterioration, the enforcing officer may file a verified petition in any ~~superior or inferior~~ court of the state having subject matter jurisdiction, to destroy such lot or otherwise abate the nuisance. The petition shall show the condition of the lot, that the lot is situated within the county, that the lot is held, and that notice of noncompliance has been served pursuant to this chapter. The court may thereupon order that such lot be forthwith destroyed or the nuisance otherwise abated as set forth in such order.

A proceeding under this section may be brought as a general jurisdiction case or as a Chapter 5.1 case.

**Comment.** Section 25564 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). A superior court has jurisdiction over a general jurisdiction case. A municipal court, or a superior court in a county in which there is no municipal court, has jurisdiction over a Chapter 5.1 case. See Code Civ. Proc. §§ 85, 85.1 and Comment. The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

☞ **Staff Note.** This section apparently creates concurrent jurisdiction in the superior and municipal courts, without any reference to the amount in controversy. It therefore appears

inappropriate to list this section in Section 85 of the Code of Civil Procedure, which would impose an amount in controversy limit on the jurisdiction of the municipal court.

**Food & Agric. Code § 27601 (amended). Abatement of nuisance**

SEC. \_\_\_\_\_. Section 27601 of the Food and Agriculture Code is amended to read:

27601. Upon the request of the director or an authorized representative, the district attorney of the county in which the eggs and their containers which are a public nuisance are found, shall maintain, in the name of the people of the State of California, a civil action to abate and prevent the public nuisance.

Upon judgment and by order of the court, the eggs and their containers which are a public nuisance shall be condemned and destroyed in the manner which is directed by the court, or reconditioned, re-marked, denatured, or otherwise processed, or released upon the conditions as the court in its discretion may impose to ensure that the nuisance is abated.

If the owner fails to comply with the order of the court within the time specified in the order, the court may order disposal of the eggs and their containers or their sale, under the terms and conditions as the court may prescribe, by the enforcement officer, or by the sheriff or marshal.

If the court orders the sale of any of the eggs and their containers which can be salvaged, the costs of disposal shall be deducted from the proceeds of sale and the balance paid into court for the owner.

~~In actions Proceedings arising pursuant to this chapter or any regulation adopted pursuant to this chapter the following limits shall apply:~~

~~(a) Municipal courts shall have original jurisdiction where the value of the property seized amounts to five thousand dollars (\$5,000) or less.~~

~~(b) Justice courts shall have original jurisdiction where the value amounts to five hundred dollars (\$500) or less are Chapter 5.1 cases.~~

A public nuisance described in this section may only be abated in any action or proceeding pursuant to the remedies provided by this chapter. This chapter provides the exclusive source of costs and civil penalties which may be assessed by reason of the public nuisance against the owner of eggs and their containers which are found to be a public nuisance.

**Comment.** Section 27601 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

A Chapter 5.1 case is within the original jurisdiction of the municipal court or of the superior court in a county in which there is no municipal court. Cal. Const. art. VI, § 10 (superior court jurisdiction); Code Civ. Proc. § 85.1 (municipal court jurisdiction). See also Code Civ. Proc. §§ 91, 904.5, 1085 (trial procedures and writ and appellate jurisdiction for Chapter 5.1 cases).

☞ **Staff Note.** The existing statutory amounts (i.e., \$5,000 and \$500) were enacted in 1967 and never amended to reflect changes in the jurisdictional amount in controversy for municipal and justice court jurisdiction. Professor Kelso recommends increasing the amount to the current \$25,000 municipal court jurisdictional amount.

**Food & Agric. Code § 29733 (amended). Abatement of nuisance**

SEC. \_\_\_\_\_. Section 29733 of the Food and Agriculture Code is amended to read:

29733. If a packer or owner of honey, or the agent of either, after notification to ~~him~~ the packer, owner, or agent that the honey and its containers are a public nuisance, refuses, or fails within a reasonable time, to recondition or remark the honey so as to comply with all requirements of this chapter, the honey and its containers:

(a) May be seized by the director or any enforcement officer.

(b) By order of ~~the justice, municipal, or superior court of the~~ a court having subject matter jurisdiction, in the county or city within which the honey and its containers may be, shall be condemned and destroyed, or released upon such conditions as the court, in its discretion, may impose to insure that it will not be packed, delivered for shipment, shipped, transported, or sold in violation of this chapter. A proceeding under this subdivision may be brought as a general jurisdiction case or as a Chapter 5.1 case.

**Comment.** Section 25564 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). A superior court has jurisdiction over a general jurisdiction case. A municipal court, or a superior court in a county in which there is no municipal court, has jurisdiction over a Chapter 5.1 case. See Code Civ. Proc. §§ 85, 85.1 and Comment. The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

☞ **Staff Note.** This section apparently creates concurrent jurisdiction in the superior and municipal courts, without any reference to the amount in controversy. It therefore appears inappropriate to list this section in Section 85 of the Code of Civil Procedure, which would impose an amount in controversy limit on the jurisdiction of the municipal court.

**Food & Agric. Code § 30801 (amended). Dog licenses**

SEC. \_\_\_\_\_. Section 30801 of the Food and Agriculture Code is amended to read:

30801. (a) A board of supervisors may provide for the issuance of serially numbered metallic dog licenses pursuant to this section. The dog licenses shall be:

(1) Stamped with the name of the county and the year of issue.

(2) Unless the board of supervisors designates the animal control department to issue the licenses, issued by the county clerk directly or through judges of ~~justice or municipal courts~~ or the superior court in a county in which there is no municipal court, to owners of dogs, that make application.

(b) The licenses shall be issued for a period of not to exceed two years.

(c) In addition to the authority provided in subdivisions (a) and (b), a license may be issued, as provided by this section, by a board of supervisors for a period not to exceed three years for dogs that have attained the age of 12 months, or older, and who have been vaccinated against rabies. The person to whom the license is to be issued pursuant to this subdivision may choose a license period as established by the board of supervisors of up to one, two, or three years. However, when issuing a license pursuant to this subdivision, the license period



shall not extend beyond the remaining period of validity for the current rabies vaccination.

**Comment.** Section 30801 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

**Food & Agric. Code § 31503 (amended). Damage by dog**

SEC. \_\_\_\_\_. Section 31503 of the Food and Agriculture Code is amended to read:

31503. If any person sustains any loss or damage to any livestock or poultry which is caused by a dog, or if any livestock of any person is necessarily destroyed because of having been bitten by a dog, the person may file a complaint with any judge of the ~~justice~~ or municipal court of the county within which the damage occurred or of the superior court in a county in which there is no municipal court. A proceeding under this section is a Chapter 5.1 case.

**Comment.** Section 31503 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

A Chapter 5.1 case is within the original jurisdiction of the municipal court or of the superior court in a county in which there is no municipal court. Cal. Const. art. VI, § 10 (superior court jurisdiction); Code Civ. Proc. § 85.1 (municipal court jurisdiction). See also Code Civ. Proc. §§ 91, 904.5, 1085 (trial procedures and writ and appellate jurisdiction for Chapter 5.1 cases).

**Food & Agric. Code § 31621 (amended). Dangerous or vicious dog**

SEC. \_\_\_\_\_. Section 31621 of the Food and Agriculture Code is amended to read:

31621. If an animal control officer or a law enforcement officer has investigated and determined that there exists probable cause to believe that a dog is potentially dangerous or vicious, the chief officer of the public pound or animal control department or his or her immediate supervisor or the head of the local law enforcement agency, or his or her designee, shall petition the municipal court within the judicial district wherein the dog is owned or kept or the superior court in a county in which there is no municipal court for a hearing for the purpose of determining whether or not the dog in question should be declared potentially dangerous or vicious. A proceeding under this section is a Chapter 5.1 case. A city or county may establish an administrative hearing procedure to hear and dispose of petitions filed pursuant to this chapter. Whenever possible, any complaint received from a member of the public which serves as the evidentiary basis for the animal control officer or law enforcement officer to find probable cause shall be sworn to and verified by the complainant and shall be attached to the petition. The chief officer of the public pound or animal control department or head of the local law enforcement agency shall notify the owner or keeper of the dog that a hearing will be held by the municipal court, the superior court, or the hearing entity, as the case may be, at which time he or she may present evidence as to why the dog should not be declared potentially dangerous or vicious. The owner or keeper of the dog shall be served with notice of the hearing and a copy

of the petition, either personally or by first-class mail with return receipt requested. The hearing shall be held promptly within no less than five working days nor more than 10 working days after service of notice upon the owner or keeper of the dog. The hearing shall be open to the public. The court may admit into evidence all relevant evidence, including incident reports and the affidavits of witnesses, limit the scope of discovery, and may shorten the time to produce records or witnesses. A jury shall not be available. The court may find, upon a preponderance of the evidence, that the dog is potentially dangerous or vicious and make other orders authorized by this chapter.

**Comment.** Section 31621 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

A Chapter 5.1 case is within the original jurisdiction of the municipal court or of the superior court in a county in which there is no municipal court. Cal. Const. art. VI, § 10 (superior court jurisdiction); Code Civ. Proc. § 85.1 (municipal court jurisdiction). See also Code Civ. Proc. §§ 91, 904.5, 1085 (trial procedures and writ and appellate jurisdiction for Chapter 5.1 cases).

**Food & Agric. Code § 31622 (amended). Proceedings concerning dog**

SEC. \_\_\_\_\_. Section 31622 of the Food and Agriculture Code is amended to read:

31622. (a) After the hearing conducted pursuant to Section 31621, the owner or keeper of the dog shall be notified in writing of the determination and orders issued, either personally or by first-class mail postage prepaid by the court or hearing entity. If a determination is made that the dog is potentially dangerous or vicious, the owner or keeper shall comply with Article 3 (commencing with Section 31641) in accordance with a time schedule established by the chief officer of the public pound or animal control department or the head of the local law enforcement agency, but in no case more than 30 days after the date of the determination or 35 days if notice of the determination is mailed to the owner or keeper of the dog. If the petitioner or the owner or keeper of the dog contests the determination, he or she may, within five days of the receipt of the notice of determination, appeal the decision of the court or hearing entity of original jurisdiction to a court authorized to hear the appeal. The fee for filing an appeal shall be twenty dollars (\$20), payable to the county clerk. If the original hearing held pursuant to Section 31621 was before a hearing entity other than ~~the municipal a~~ court of the jurisdiction, appeal shall be to the municipal court or superior court in a county in which there is no municipal court. If the original hearing was held in ~~the municipal a~~ court, appeal shall be to the appellate division of the superior court within the judicial district wherein the dog is owned or kept. The petitioner or the owner or keeper of the dog shall serve personally or by first-class mail, postage prepaid, notice of the appeal upon the other party.

(b) The court hearing the appeal shall conduct a hearing de novo, without a jury, and make its own determination as to potential danger and viciousness and make other orders authorized by this chapter, based upon the evidence presented. The hearing shall be conducted in the same manner and within the

time periods set forth in Section 31621 and subdivision (a). The court may admit all relevant evidence, including incident reports and the affidavits of witnesses, limit the scope of discovery, and may shorten the time to produce records or witnesses. The issue shall be decided upon the preponderance of the evidence. If the court rules the dog to be potentially dangerous or vicious, the court may establish a time schedule to ensure compliance with this chapter, but in no case more than 30 days subsequent to the date of the court's determination or 35 days if the service of the judgment is by first-class mail.

**Comment.** Section 31622 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

☞ **Staff note.** Tom suggested that the existing language “the superior court within the judicial district wherein the dog is owned or kept” might be referring to “superior court districts” for counties that have them (i.e. Los Angeles). However, I agree with Tom’s suggestion that the language was probably carelessly borrowed from Section 31621, where judicial district refers to a municipal court district.

#### **Food & Agric. Code § 43039 (amended). Abatement of nuisance**

SEC. \_\_\_\_\_. Section 43039 of the Food and Agriculture Code is amended to read:

43039. If the lot which is held is perishable or subject to rapid deterioration, the enforcing officer may file a verified petition in any ~~superior or inferior~~ court of the state having subject matter jurisdiction, to destroy the lot or otherwise abate the nuisance. The petition shall show the condition of the lot, that the lot is situated within the county, that the lot is held, and that notice of noncompliance has been served as provided in this article. The court may thereupon order that the lot be forthwith destroyed or the nuisance otherwise abated as set forth in the order. A proceeding under this section may be brought as a general jurisdiction case or as a Chapter 5.1 case.

**Comment.** Section 43039 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). A superior court has jurisdiction over a general jurisdiction case. A municipal court, or a superior court in a county in which there is no municipal court, has jurisdiction over a Chapter 5.1 case. See Code Civ. Proc. §§ 85, 85.1 and Comment. The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

☞ **Staff Note.** This section apparently creates concurrent jurisdiction in the superior and municipal courts, without any reference to the amount in controversy. It therefore appears inappropriate to list this section in Section 85 of the Code of Civil Procedure, which would impose an amount in controversy limit on the jurisdiction of the municipal court.

#### **Food & Agric. Code § 52514 (amended). Court jurisdiction**

SEC. \_\_\_\_\_. Section 52514 of the Food and Agriculture Code is amended to read:

52514. ~~In actions~~ Proceedings arising pursuant to this article, ~~the following courts shall have original jurisdiction:~~

~~(a) Municipal courts shall have original jurisdiction where the value of the property seized amounts to three thousand dollars (\$3,000) or less.~~

~~(b) Justice courts shall have original jurisdiction where the value amounts to five hundred dollars (\$500) or less are Chapter 5.1 cases.~~

**Comment.** Section 52514 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

A Chapter 5.1 case is within the original jurisdiction of the municipal court or of the superior court in a county in which there is no municipal court. Cal. Const. art. VI, § 10 (superior court jurisdiction); Code Civ. Proc. § 85.1 (municipal court jurisdiction). See also Code Civ. Proc. §§ 91, 904.5, 1085 (trial procedures and writ and appellate jurisdiction for Chapter 5.1 cases).

☞ **Staff Note.** The existing statutory amounts (i.e., \$3,000 and \$500) were enacted in 1967 and never amended to reflect changes in the jurisdictional amount in controversy for municipal and justice court jurisdiction. Professor Kelso recommends increasing the amount to the current \$25,000 municipal court jurisdictional amount.

#### **Food & Agric. Code § 53564 (amended). Court jurisdiction**

SEC. \_\_\_\_\_. Section 7581 of the Food and Agriculture Code is amended to read:

53564. ~~In actions Proceedings arising pursuant to this article, the following courts shall have original jurisdiction:~~

~~(a) Municipal courts shall have original jurisdiction where the value of the property seized amounts to five thousand dollars (\$5,000) or less.~~

~~(b) Justice courts shall have original jurisdiction where the value amounts to five hundred dollars (\$500) or less are Chapter 5.1 cases.~~

**Comment.** Section 53564 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

A Chapter 5.1 case is within the original jurisdiction of the municipal court or of the superior court in a county in which there is no municipal court. Cal. Const. art. VI, § 10 (superior court jurisdiction); Code Civ. Proc. § 85.1 (municipal court jurisdiction). See also Code Civ. Proc. §§ 91, 904.5, 1085 (trial procedures and writ and appellate jurisdiction for Chapter 5.1 cases).

☞ **Staff Note.** The existing statutory amounts (i.e., \$5,000 and \$500) were enacted in 1967 and never amended to reflect changes in the jurisdictional amount in controversy for municipal and justice court jurisdiction. Professor Kelso recommends increasing the amount to the current \$25,000 municipal court jurisdictional amount.

#### **Food & Agric. Code § 55784 (amended). Witness fees and mileage**

SEC. \_\_\_\_\_. Section 55784 of the Food and Agriculture Code is amended to read:

55784. Every witness who appears pursuant to a subpoena, except a party or an officer or employee of the state or any political subdivision of the state, shall receive fees. Every witness who appears pursuant to a subpoena, except a party, shall receive mileage in the same amount and under the same circumstances as is prescribed by law for witnesses in civil actions a general jurisdiction case in a superior court.

**Comment.** Section 55784 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See also Code Civ. Proc. § 85 and Comment (general jurisdiction cases and Chapter 5.1 cases).

**Food & Agric. Code § 56473 (amended). Witness fees and mileage**

SEC. \_\_\_\_\_. Section 56473 of the Food and Agriculture Code is amended to read:

56473. Every witness who appears pursuant to a subpoena, except a party or an officer or employee of the state or any political subdivision of the state, shall receive fees. Every witness who appears pursuant to subpoena, except a party, shall receive mileage in the same amount and under the same circumstances as prescribed by law for witnesses in ~~civil actions~~ a general jurisdiction case in a superior court.

**Comment.** Section 56473 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See also Code Civ. Proc. § 85 and Comment (general jurisdiction cases and Chapter 5.1 cases).

**Food & Agric. Code § 59289 (amended). Diversion or destruction of lot**

SEC. \_\_\_\_\_. Section 59289 of the Food and Agriculture Code is amended to read:

59289. (a) The enforcing officer may file a verified petition in ~~any superior or inferior court of this state~~ having subject matter jurisdiction, requesting permission to divert such lot to any other available lawful use or to destroy such lot. Such verified ~~position~~ petition shall show all of the following:

- (a) (1) The condition of the lot.
- (b) (2) That the lot is situated within the territorial jurisdiction of the court in which the petition is being filed.
- (c) (3) That the lot is held, and that the notice of noncompliance has been served as provided in Section 59285.
- (d) (4) That the lot has not been reconditioned as required.
- (e) (5) The name and address of the owner and the person in possession of the lot.
- (f) (6) That the owner has refused permission to divert or to destroy the lot.

(b) A proceeding under this section may be brought as a general jurisdiction case or as a Chapter 5.1 case.

**Comment.** Section 59289 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). A superior court has jurisdiction over a general jurisdiction case. A municipal court, or a superior court in a county in which there is no municipal court, has jurisdiction over a Chapter 5.1 case. See Code Civ. Proc. §§ 85, 85.1 and Comment. The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

☞ **Staff Note.** This section apparently creates concurrent jurisdiction in the superior and municipal courts, without any reference to the amount in controversy. It therefore appears inappropriate to list this section in Section 85 of the Code of Civil Procedure, which would impose an amount in controversy limit on the jurisdiction of the municipal court.

**Harb. & Nav. Code § 664 (amended). Arrest procedures**

SEC. \_\_\_\_\_. Section 664 of the Harbors and Navigation Code is amended to read:

664. (a) When any person is arrested for a violation of this chapter or any regulation adopted by the department pursuant to this chapter or any ordinance or local law relating to the operation and equipment of vessels, and such person is not immediately taken before a magistrate, the arresting officer shall prepare in duplicate a written notice to appear in court, containing the name and address of such person, the offense charged, and the time and place where and when such person shall appear in court.

(b) The time specified in the notice to appear must be at least five (5) days after such arrest.

(c) The place specified in the notice to appear shall be either:

1. ~~Before a judge of a justice court or a municipal court judge~~ within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and who is nearest and most accessible with reference to the place where the arrest is made; or

2. Upon demand of the person arrested, before ~~a judge of a justice court or a municipal court judge~~ having jurisdiction of such offense at the county seat of the county in which such offense is alleged to have been committed; or before a municipal court judge in the judicial district in which the offense is alleged to have been committed.

3. Before an officer authorized by the county, city or city and county, to receive a deposit of bail.

4. Before ~~a judge of a justice court or a municipal court judge~~ within 50 miles by the nearest road to the place of the alleged offense who has jurisdiction of the offense and whose judicial district contains any portion of the body of water upon which the offense charged is alleged to have been committed.

5. In a county in which there is no municipal court, before a superior court judge in a location specified in paragraphs 1, 2, or 4.

(d) The officer shall deliver one copy of the notice to appear to the arrested person and the arrested person in order to secure release must give ~~his~~ the arrested person's written promise so to appear in court by signing the duplicate notice which shall be retained by the officer. Thereupon the arresting officer shall forthwith release the person arrested from custody.

(e) The officer shall, as soon as practicable, file the duplicate notice with the magistrate specified therein. Thereupon the magistrate shall fix the amount of bail which in ~~his~~ the magistrate's judgment, in accordance with the provisions of Section 1275 of the Penal Code, will be reasonable and sufficient for the appearance of the defendant and shall indorse upon the notice a statement signed by ~~him~~ the defendant in the form set forth in Section 815a of the Penal Code. The defendant may, prior to the date upon which ~~he~~ the defendant promised to appear in court, deposit with the magistrate the amount of bail thus set. Thereafter, at the time when the case is called for arraignment before the

magistrate, if the defendant shall not appear, either in person or by counsel, the magistrate may declare the bail forfeited, and may in his the magistrate's discretion order that no further proceedings shall be had in such case.

Upon the making of such order that no further proceedings be had, all sums deposited as bail shall forthwith be paid into the county treasury for distribution pursuant to Section 1463 of the Penal Code.

(f) No warrant shall issue on such charge for the arrest of a person who has given such written promise to appear in court, unless and until he the person has violated such promise or has failed to deposit bail, to appear for arraignment, trial or judgment, or to comply with the terms and provisions of the judgment, as required by law.

**Comment.** Section 664 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

☞ **Staff Note.** Paragraph (c)(2) is amended to make clear that the “judge” in the judicial district where the offense is alleged to have been committed is a municipal court judge. If the judge could be a superior court judge, this might result in confusion over whether the “judicial district” is a “superior court district.”

#### **Harb. & Nav. Code § 667 (amended). Place of trial**

SEC. \_\_\_\_\_. Section 667 of the Harbors and Navigation Code is amended to read:

667. In addition to any other court which may be a proper place of trial, any ~~justice or municipal court~~ within 50 miles by the nearest road to the place of the alleged offense having jurisdiction of the offense, or the superior court in a county in which there is no municipal court, shall be a proper place of trial of any person on a charge of violation of this chapter or any regulation adopted by the department pursuant to this chapter or any ordinance or local law relating to the operation and equipment of vessels if the ~~justice or municipal court district~~ judicial district in which the court lies includes any portion of the body of water upon which the offense charged is alleged to have been committed.

**Comment.** Section 667 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

☞ **Staff Note.** The treatment of judicial districts in this section assumes a general provision elsewhere that defines a judicial district as the county, in a county that has no municipal court.

#### **Health & Safety Code § 1428 (amended). Contest of citation**

SEC. \_\_\_\_\_. Section 1428 of the Health and Safety Code is amended to read:

1428. (a) If the licensee desires to contest a citation or the proposed assessment of a civil penalty therefor, the licensee shall use the processes described in subdivisions (b) and (c) for classes “AA,” “A,” or “B” citations. As a result of a citation review conference, a citation or the proposed assessment of a civil penalty may be affirmed, modified, or dismissed by the director or the director's designee. If the director's designee affirms, modifies, or dismisses the citation or

proposed assessment of a civil penalty, he or she shall state with particularity in writing his or her reasons for that action, and shall immediately transmit a copy thereof to each party to the original complaint. If the licensee desires to contest a decision made after the citation review conference, the licensee shall inform the director in writing within 15 business days after he or she receives the decision by the director's designee.

(b) If a licensee notifies the director that he or she intends to contest a class "AA" or a class "A" citation, the licensee may first within 15 business days after service of the citation notify the director in writing of his or her request for a citation review conference. The licensee shall inform the director in writing, within 15 business days of the service of the citation or the receipt of the decision of the director's designee after the citation review conference, of the licensee's intent to adjudicate the validity of the citation in the municipal or superior court in the county in which the long-term health care facility is located. In order to perfect a judicial appeal of a contested citation, a licensee shall file a civil action in the municipal or superior court in the county in which the long-term health care facility is located. The action shall be filed no later than 90 calendar days after a licensee notifies the director he or she intends to contest the citation, or no later than 90 days after the receipt of the decision by the director's designee after the citation review conference, and served not later than 90 days after filing. Notwithstanding any other provision of law, for those citations issued after January 1, 1993, a licensee prosecuting a judicial appeal shall file and serve an at-issue memorandum pursuant to Rule 209 of the California Rules of Court by July 1, 1993, or within six months after the state department files its answer in the appeal, whichever is later. Notwithstanding subdivision (d), the court shall dismiss the appeal upon motion of the state department if the at-issue memorandum is not filed by the facility within the period specified. A proceeding under this subdivision is a Chapter 5.1 case.

(c) If a licensee desires to contest a class "B" citation, the licensee may request, within 15 business days after service of the citation, a citation review conference, by writing the director or the director's designee of the licensee's intent to appeal the citation through the citation review conference. If the licensee wishes to appeal the citation which has been upheld in a citation review conference, the licensee shall, within 15 working days from the date the citation review conference decision was rendered, notify the director or the director's designee that he or she wishes to appeal the decision through the procedures set forth in subdivision (c) of Section 14123 of the Welfare and Institutions Code. The administrative law judge may affirm, modify, or dismiss the citation or the proposed assessment of a civil penalty. The licensee may choose to have his or her appeal heard by the administrative law judge without having first appealed the decision to a citation review conference by notifying the director in writing within 15 business days of the service of the citation.



(d) If a licensee is dissatisfied with the decision of the administrative law judge, the licensee may, in lieu of seeking judicial review of the decision as provided in Section 1094.5 of the Code of Civil Procedure, elect to submit the matter to binding arbitration by filing, within 60 days of its receipt of the decision, a request for arbitration with the American Arbitration Association. The parties shall agree upon an arbitrator designated from the American Arbitration Association in accordance with the association's established rules and procedures. The arbitration hearing shall be set within 45 days of the election to arbitrate, but in no event less than 28 days from the date of selection of an arbitrator. The arbitration hearing may be continued up to 15 additional days if necessary at the arbitrator's discretion. Except as otherwise specifically provided in this subdivision, the arbitration hearing shall be conducted in accordance with the American Arbitration Association's established rules and procedures.

(e) If an appeal is prosecuted under this section, including an appeal taken in accordance with subdivision (c) of Section 14123 of the Welfare and Institutions Code, the state department shall have the burden of establishing by a preponderance of the evidence that (1) the alleged violation did occur, (2) the alleged violation met the criteria for the class of citation alleged, and (3) the assessed penalty was appropriate. The state department shall also have the burden of establishing by a preponderance of the evidence that the assessment of a civil penalty should be upheld. If a licensee fails to notify the director in writing that he or she intends to contest the citation, or the proposed assessment of a civil penalty therefor, or the decision made by the director's designee, after a citation review conference, within the time specified in this section, the decision by the director's designee after a citation review conference shall be deemed a final order of the state department and shall not be subject to further administrative review, except that the licensee may seek judicial relief from the time limits specified in this section. If a licensee appeals a contested citation or the assessment of a civil penalty, no civil penalty shall be due and payable unless and until the appeal is terminated in favor of the state department.

(f) The director or the director's designee shall establish an independent unit of trained citation review conference hearing officers within the state department to conduct citation review conferences. Citation review conference hearing officers shall be directly responsible to the deputy director for licensing and certification, and shall not be concurrently employed as supervisors, district administrators, or regional administrators with the licensing and certification division. Specific training shall be provided to members of this unit on conducting an informal conference, with emphasis on the regulatory and legal aspects of long-term health care.

Where the state department issues a citation as a result of a complaint or regular inspection visit, and a resident or residents are specifically identified in a citation by name as being specifically affected by the violation, then the following persons may attend the citation review conference:

- (1) The complainant and his or her designated representative.
- (2) A personal health care provider, designated by the resident.
- (3) A personal attorney, only if the long-term health care facility has an attorney present.
- (4) Any person representing the Office of the State Long-Term Care Ombudsman, as defined in subdivision (c) of Section 9701 of the Welfare and Institutions Code.

Where the state department determines that residents in the facility were threatened by the cited violation but does not name specific residents, any person representing the Office of the State Long-Term Care Ombudsman, as defined in subdivision (c) of Section 9701 of the Welfare and Institutions Code, and a representative of the residents or family council at the facility may participate to represent all residents. In this case, these representatives shall be the sole participants for the residents in the conference. The residents' council shall designate which representative will participate.

The complainant, affected resident, or their designated representatives shall be notified by the state department of the conference and their right to participate. The director's designee shall notify the complainant or his or her designated representative and the affected resident or his or her designated representative, of his or her determination based on the citation review conference.

(g) In assessing the civil penalty for a violation, all relevant facts shall be considered, including, but not limited to, all of the following:

- (1) The probability and severity of the risk which the violation presents to the patient's or resident's mental and physical condition.
- (2) The patient's or resident's medical condition.
- (3) The patient's or resident's mental condition and his or her history of mental disability.
- (4) The good faith efforts exercised by the facility to prevent the violation from occurring.
- (5) The licensee's history of compliance with regulations.

(h) Except as otherwise provided in this subdivision, an assessment of civil penalties for a class "A" or class "B" violation shall be trebled and collected for a second and subsequent violation for which a citation of the same class was issued within any 12-month period. Trebling shall occur only if the first citation issued within the 12-month period was issued in the same class, a civil penalty was assessed, and a plan of correction was submitted for the previous same-class violation occurring within the period, without regard to whether the action to enforce the previous citation has become final. However, the increment to the civil penalty required by this subdivision shall not be due and payable unless and until the previous action has terminated in favor of the state department.

If the class "B" citation is issued for a patient's rights violation, as defined in subdivision (d) of Section 1424, it shall not be trebled unless the state department

determines the violation has a direct or immediate relationship to the health, safety, security, or welfare of long-term health care facility residents.

(i) The director shall prescribe procedures for the issuance of a notice of violation with respect to violations having only a minimal relationship to safety or health.

(j) Actions brought under this chapter shall be set for trial at the earliest possible date and shall take precedence on the court calendar over all other cases except matters to which equal or superior precedence is specifically granted by law. Times for responsive pleading and for hearing the proceeding shall be set by the judge of the court with the object of securing a decision as to subject matters at the earliest possible time.

(k) If the citation is dismissed, the state department shall take action immediately to ensure that the public records reflect in a prominent manner that the citation was dismissed.

(l) Penalties paid on violations under this chapter shall be applied against the state department's accounts to offset any costs incurred by the state pursuant to this chapter. Any costs or penalties assessed pursuant to this chapter shall be paid within 30 days of the date the decision becomes final. If a facility does not comply with this requirement, the state department shall withhold any payment under the Medi-Cal program until the debt is satisfied. No payment shall be withheld if the state department determines that it would cause undue hardship to the facility or to patients or residents of the facility.

(m) The amendments made to subdivisions (a) and (c) of this section by Chapter 84 of the Statutes of 1988, to extend the number of days allowed for the provision of notification to the director, do not affect the right, that is also contained in those amendments, to request judicial relief from these time limits.

**Comment.** Section 1428 makes clear that an action under subdivision (b) is a Chapter 5.1 case. See Code Civ. Proc. §§ 85, 86.1. A Chapter 5.1 case is within the original jurisdiction of the municipal court or of the superior court in a county in which there is no municipal court. Cal. Const. art. VI, § 10 (superior court jurisdiction); Code Civ. Proc. § 85.1 (municipal court jurisdiction). See also Code Civ. Proc. §§ 91, 904.5, 1085 (trial procedures and writ and appellate jurisdiction for Chapter 5.1 cases).

☞ **Staff Note.** The reference, in subdivision (b), to filing an action in the superior court appears to refer to the provision in subdivision (b) of Section 86.1 of the Code of Civil procedure: "These actions may be transferred to the superior court for consolidation with any other citation enforcement action pending in that court, on the motion of either party."

#### **Health & Safety Code § 40844 (amended). Jurisdiction of Superior Court**

SEC. \_\_\_\_\_. Section 40844 of the Health and Safety Code is amended to read:

40844. On the return of the attachment and the production of the body of the defendant, the superior court has jurisdiction of the matter. The person charged may purge himself of the contempt in the same way, and the same proceeding shall be had, and the same penalties may be imposed, and the same punishment

inflicted as in the case of a witness subpoenaed to appear and give evidence on the trial of a ~~civil cause before a superior court~~ general jurisdiction case.

**Comment.** Section 40844 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See also Code Civ. Proc. § 85 and Comment (general jurisdiction cases and Chapter 5.1 cases).

**Health & Safety Code § 108580 (amended). Condemnation proceedings**

SEC. \_\_\_\_\_. Section 108580 of the Health and Safety Code is amended to read:

108580. When a toy is alleged to be in violation of this article, the department or the local health officer shall commence proceedings ~~in the superior court, or lower a court~~ having subject matter jurisdiction, in whose jurisdiction the toy is located, for condemnation of the article. A proceeding under this section may be brought as a general jurisdiction case or as a Chapter 5.1 case.

**Comment.** Section 108580 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). A superior court has jurisdiction over a general jurisdiction case. A municipal court, or a superior court in a county in which there is no municipal court, has jurisdiction over a Chapter 5.1 case. See Code Civ. Proc. §§ 85, 85.1 and Comment. The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

☞ **Staff Note.** This section apparently creates concurrent jurisdiction in the superior and municipal courts, without any reference to the amount in controversy. It therefore appears inappropriate to list this section in Section 85 of the Code of Civil Procedure, which would impose an amount in controversy limit on the jurisdiction of the municipal court.

**Health & Safety Code § 111880 (amended). Condemnation proceedings**

SEC. \_\_\_\_\_. Section 111880 of the Health and Safety Code is amended to read:

111880. When a food, drug, device, or cosmetic is alleged to be adulterated, misbranded, falsely advertised, or the sale of which is otherwise in violation of this part, the department shall commence proceedings ~~in the superior court or lower a court~~ having subject matter jurisdiction, in whose jurisdiction the food, drug, device, or cosmetic is located, for condemnation of the article. A proceeding under this section may be brought as a general jurisdiction case or as a Chapter 5.1 case.

**Comment.** Section 111880 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). A superior court has jurisdiction over a general jurisdiction case. A municipal court, or a superior court in a county in which there is no municipal court, has jurisdiction over a Chapter 5.1 case. See Code Civ. Proc. §§ 85, 85.1 and Comment. The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

☞ **Staff Note.** This section apparently creates concurrent jurisdiction in the superior and municipal courts, without any reference to the amount in controversy. It therefore appears inappropriate to list this section in Section 85 of the Code of Civil Procedure, which would impose an amount in controversy limit on the jurisdiction of the municipal court.

**Health & Safety Code § 111895 (amended). Condemnation or destruction**

SEC. \_\_\_\_\_. Section 111895 of the Health and Safety Code is amended to read:

111895. Any ~~superior or lower~~ court of this state having subject matter jurisdiction, may condemn any food, drug, device, or cosmetic under provisions of this part. In the absence of such an order, the food, drug, device, or cosmetic may be destroyed under the supervision of an authorized agent of the department who has the written consent of the owner, his or her attorney, or authorized representative. A proceeding under this section may be brought as a general jurisdiction case or as a Chapter 5.1 case.

**Comment.** Section 111895 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). A superior court has jurisdiction over a general jurisdiction case. A municipal court, or a superior court in a county in which there is no municipal court, has jurisdiction over a Chapter 5.1 case. See Code Civ. Proc. §§ 85, 85.1 and Comment. The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

☞ **Staff Note.** This section apparently creates concurrent jurisdiction in the superior and municipal courts, without any reference to the amount in controversy. It therefore appears inappropriate to list this section in Section 85 of the Code of Civil Procedure, which would impose an amount in controversy limit on the jurisdiction of the municipal court.

#### **Health & Safety Code § 117070 (amended). Jurisdiction for prosecution of violations**

SEC. \_\_\_\_\_. Section 117070 of the Health and Safety Code is amended to read:

117070. Any violation of any such rule or regulation lawfully made by the public agency is a misdemeanor. Any ~~judge of a justice court within any judicial district within which the reservoir lies in whole or in part, or any municipal court, or superior court in a county in which there is no municipal court, within the a~~ judicial district in which the reservoir lies in whole or in part, shall have jurisdiction of all prosecutions for violations of any rules and regulations adopted by the public agency.

**Comment.** Section 117070 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

☞ **Staff Note.** The treatment of judicial districts in this section assumes a general provision elsewhere that defines a judicial district as the county, in a county that has no municipal court.

#### **Health & Safety Code § 117120 (amended). Jurisdiction for prosecution of violations**

SEC. \_\_\_\_\_. Section 117120 of the Health and Safety Code is amended to read:

117120. Any violation of any rule or regulation lawfully made by the governmental agency is a misdemeanor. Any ~~judge of a justice court within any judicial district within which the reservoir lies in whole or in part, or any municipal court, or superior court in a county in which there is no municipal court, that may be established within the a~~ judicial district in which the reservoir lies in whole or in part, shall have jurisdiction of all prosecutions for violations of any such rules and regulations adopted by the governmental agency.

**Comment.** Section 117120 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

☞ **Staff Note.** The treatment of judicial districts in this section assumes a general provision elsewhere that defines a judicial district as the county, in a county that has no municipal court.

**Ins. Code § 12961 (amended). Annual report of tort actions**

SEC. \_\_\_\_\_. Section 12961 of the Insurance Code is amended to read:

12961. (a) The commissioner shall provide the Legislature with an annual report analyzing the following types of actions:

- (1) Medical malpractice actions.
- (2) Toxic substance tort actions.
- (3) Product and design liability actions.
- (4) Tort actions in which a public entity is a defendant.
- (5) Tort actions involving judgments or settlements of one million dollars (\$1,000,000) or more.
- (6) Class action tort actions.
- (7) Defamation and invasion of privacy actions.
- (8) Other categories of tort actions involving commercial liability claims as the commissioner deems necessary.

(b) The study may exclude actions in which the only defendant is an individual sued in his or her private capacity. The study may exclude ~~actions filed in municipal court~~ Chapter 5.1 cases.

(c) If any of the information required to be provided by the parties is confidential under any other provision of law or pursuant to any court order, the commissioner shall keep that information confidential and shall limit its analysis of that information to aggregate data or other analyses which will not reveal the identity of the parties.

**Comment.** Section 12961 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

A Chapter 5.1 case is within the original jurisdiction of the municipal court or of the superior court in a county in which there is no municipal court. Cal. Const. art. VI, § 10 (superior court jurisdiction); Code Civ. Proc. § 85.1 (municipal court jurisdiction). See also Code Civ. Proc. §§ 91, 904.5, 1085 (trial procedures and writ and appellate jurisdiction for Chapter 5.1 cases).

**Lab. Code § 5710 (amended). Depositions**

SEC. \_\_\_\_\_. Section 5710 of the Labor Code is amended to read:

5710. (a) The appeals board, a workers' compensation judge, or any party to the action or proceeding, may, in any investigation or hearing before the appeals board, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in ~~civil actions~~ general jurisdiction cases in the superior courts of this state. To that end the attendance of witnesses and the production of records may be required. Depositions may be taken outside the state before any officer authorized to administer oaths. The appeals board or a workers' compensation judge in any proceeding before the appeals board may cause evidence to be taken in other jurisdictions before the

agency authorized to hear workers' compensation matters in those other jurisdictions.

(b) Where the employer or insurance carrier requests a deposition to be taken of an injured employee, or any person claiming benefits as a dependent of an injured employee, the deponent is entitled to receive in addition to all other benefits:

(1) All reasonable expenses of transportation, meals and lodging incident to the deposition.

(2) Reimbursement for any loss of wages incurred during attendance at the deposition.

(3) A copy of the transcript of the deposition, without cost.

(4) A reasonable allowance for attorney's fees for the deponent, if represented by an attorney licensed by the state bar of this state. The fee shall be discretionary with, and, if allowed, shall be set by, the appeals board, but shall be paid by the employer or his or her insurer.

(5) A reasonable allowance for interpreter's fees for the deponent, if interpretation services are needed and provided by a language interpreter certified or deemed certified pursuant to Section 11513 or 68566 of the Government Code. The fee shall be in accordance with the fee schedule set by the administrative director and paid by the employer or his or her insurer. Payment for interpreter's services shall be allowed for deposition of a non-English-speaking injured worker, and for such other deposition-related events as permitted by the administrative director.

**Comment.** Section 5710 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

Procedures for depositions under this section are the same as for general jurisdiction cases. A general jurisdiction case is an action other than a Chapter 5.1 case. Code Civ. Proc. § 85(b).

#### **Lab. Code § 6613 (amended). Depositions**

SEC. \_\_\_\_\_. Section 6613 of the Labor Code is amended to read:

6613. The appeals board, a hearing officer, or any party to the action or proceeding, may, in any investigation or hearing before the appeals board, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in ~~civil actions~~ general jurisdiction cases in the superior courts of this state. To that end the attendance of witnesses and the production of records may be required. Depositions may be taken outside the state before any officer authorized to administer oaths. The appeals board or a hearing officer in any proceeding before the appeals board may cause evidence to be taken in other jurisdictions before the agency authorized to hear similar matters in such other jurisdictions.

**Comment.** Section 6613 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

Procedures for depositions under this section are the same as for general jurisdiction cases. A general jurisdiction case is an action other than a Chapter 5.1 case. Code Civ. Proc. § 85(b).

**Mil. & Vet. Code § 467 (amended). Collection and disposition of fines and penalties**

SEC. \_\_\_\_\_. Section 467 of the Military and Veterans Code is amended to read:

467. For the purpose of collecting fines or penalties imposed by a court-martial, the president of any general or special court-martial and the summary court officer of any summary court shall make a list of all fines and penalties and of the persons against whom they have been imposed, and may thereafter issue a warrant under his or her hand directed to any sheriff or marshal of the county, commanding him or her to levy and collect the fines and penalties, together with the costs, upon and out of the property of the person against whom the fine or penalty is imposed. The warrant shall be executed and renewed in the same manner as executions ~~from the justices' courts in Chapter 5.1 cases.~~

All fines collected under this section or imposed and collected under Section 450.1 shall be paid by the officer collecting them to the commanding officer of the organization of which the person fined is or was a member and shall be deposited by the commanding officer into the General Fund.

**Comment.** Section 467 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justices' court. Cal. Const. art. VI, §§ 1, 5.

A Chapter 5.1 case is within the original jurisdiction of the municipal court or of the superior court in a county in which there is no municipal court. Cal. Const. art. VI, § 10 (superior court jurisdiction); Code Civ. Proc. § 85.1 (municipal court jurisdiction). See also Code Civ. Proc. §§ 91, 904.5, 1085 (trial procedures and writ and appellate jurisdiction for Chapter 5.1 cases).

☞ **Staff Note.** The justices' court is an obsolete inferior court, superseded by the justice court by Constitutional Amendment on November 7, 1950.

**Pub. Res. Code § 3357 (amended). Investigative powers**

SEC. \_\_\_\_\_. Section 3357 of the Public Resources Code is amended to read:

3357. In any proceeding before the director, and in any proceeding instituted by the supervisor for the purpose of enforcing or carrying out the provisions of this division, or for the purpose of holding an investigation to ascertain the condition of any well or wells complained of, or which in the opinion of the supervisor may reasonably be presumed to be improperly located, drilled, operated, maintained, or conducted, the supervisor and the director shall have the power to administer oaths and may apply to a judge of the superior court of the county in which the proceeding or investigation is pending for a subpoena for witnesses to attend the proceeding or investigation. Upon the application of the supervisor or the director, the judge of the superior court shall issue a subpoena directing the witness to attend the proceeding or investigation, and such person shall be required to produce, when directed, all records, surveys, documents, books, or accounts in ~~his~~ the witness' custody or under ~~his~~ the witness' control; except that no person shall be required to attend upon such proceeding unless ~~he~~ the person resides within the same county or within 100 miles of the place of attendance. The supervisor or the director may in such case cause the depositions



of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in ~~civil actions~~ general jurisdiction cases in superior courts of this state, and may, upon application to a judge of the superior court of the county within which the proceeding or investigation is pending, obtain a subpoena compelling the attendance of witnesses and the production of records, surveys, documents, books, or accounts at such places as the judge may designate within the limits prescribed in this section.

**Comment.** Section 3357 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

Procedures for depositions under this section are the same as for general jurisdiction cases. A general jurisdiction case is an action other than a Chapter 5.1 case. Code Civ. Proc. § 85(b).

**Pub. Res. Code § 3769 (amended). Investigative powers**

SEC. \_\_\_\_\_. Section 3769 of the Public Resources Code is amended to read:

3769. In any proceeding instituted by the supervisor for the purpose of enforcing or carrying out the provisions of this chapter, or for the purpose of holding an investigation to ascertain the condition of any well or wells complained of, or which in the opinion of the supervisor may reasonably be presumed to be improperly located, drilled, operated, maintained, or conducted, the supervisor shall have the power to administer oaths and may apply to a judge of the superior court of the county in which the proceeding or investigation is pending, for a subpoena for witnesses to attend the proceeding or investigation. Upon the application of the supervisor, the judge of the superior court shall issue a subpoena directing the witness to attend the proceeding or investigation, and such person shall be required to produce, when directed, all records, surveys, documents, books, or accounts in ~~his~~ the witness' custody or under ~~his~~ the witness' control; except that no person shall be required to attend upon such proceeding, unless ~~he~~ the person resides within the same county or within 100 miles of the place of attendance.

The supervisor may in such case cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in ~~civil actions~~ general jurisdiction cases in superior courts of this state, and may, upon application to a judge of the superior court of the county within which the proceeding or investigation is pending, obtain a subpoena compelling the attendance of witnesses and the production of records, surveys, documents, books, or accounts at such places as the judge may designate within the limits prescribed in this section.

**Comment.** Section 3769 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

Procedures for depositions under this section are the same as for general jurisdiction cases. A general jurisdiction case is an action other than a Chapter 5.1 case. Code Civ. Proc. § 85(b).

**Pub. Res. Code § 5560 (amended). Penalties and jurisdiction**

SEC. \_\_\_\_\_. Section 5560 of the Public Resources Code is amended to read:

5560. (a) Violation of any ordinance, rule, or regulation adopted pursuant to this article is a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500) or by imprisonment in the county jail for a period not to exceed six months, or by both such fine and imprisonment, unless the board provides that a violation of any ordinance, rule, or regulation is an infraction, which shall be punishable by a fine not to exceed fifty dollars (\$50).

(b) ~~Any judge of a justice court within any judicial district lying wholly or in part within the district, or any municipal court, which may be established~~ Any municipal court, or superior court in a county in which there is no municipal court, that is within a judicial district lying wholly or in part within the district, shall have jurisdiction of all prosecutions under this article for violations of any ordinance, rule, or regulation adopted by the board.

**Comment.** Section 117070 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

☞ **Staff Note.** “District,” as used in this section, means any “regional park district, regional park and open-space district, or regional open-space district formed pursuant to this article.” See Section 5500.

The treatment of judicial districts in this section assumes a general provision elsewhere that defines a judicial district as the county, in a county that has no municipal court.

**Pub. Util. Code § 1794 (amended). Depositions**

SEC. \_\_\_\_\_. Section 1794 of the Public Utilities Code is amended to read:

1794. The commission or any commissioner or any party may, in any investigation or hearing before the commission, cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in ~~civil actions~~ general jurisdiction cases in the superior courts of this State and to that end may compel the attendance of witnesses and the production of books, waybills, documents, papers, and accounts.

**Comment.** Section 1794 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

Procedures for depositions under this section are the same as for general jurisdiction cases. A general jurisdiction case is an action other than a Chapter 5.1 case. Code Civ. Proc. § 85(b).

**Pub. Util. Code § 5411.5 (amended). Seizure or impoundment of vehicle**

SEC. \_\_\_\_\_. Section 5411.5 of the Public Resources Code is amended to read:

5411.5. Whenever a peace officer arrests a person for a violation of Section 5411 involving the operation of a charter-party carrier of passengers without a valid certificate or permit at a public airport, within 100 feet of a public airport, or within two miles of the international border between the United States and Mexico, the peace officer may impound and retain possession of the vehicle used in violation of Section 5411.

If the vehicle is seized from a person who is not the owner of the vehicle, the impounding authority shall immediately give notice to the owner by first-class mail.

The vehicle shall immediately be returned to the owner without cost to the owner if the infraction or violation is not prosecuted or is dismissed, the owner is found not guilty of the offense, or it is determined that the vehicle was used in violation of Section 5411 without the knowledge and consent of the owner. Otherwise, the vehicle shall be returned to the owner upon payment of any fine ordered by the court. After the expiration of six weeks from the final disposition of the criminal case, the impounding authority may deal with the vehicle as lost or abandoned property under Section 1411 of the Penal Code.

At any time, a person may make a motion in municipal court, or in superior court in a county in which there is no municipal court, for the immediate return of the vehicle on the ground that there was no probable cause to seize it or that there is some other good cause, as determined by the court, for the return of the vehicle. A proceeding under this section is a Chapter 5.1 case.

No peace officer, however, shall impound any vehicle owned or operated by a nonprofit organization exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code which serves youth or senior citizens and provides transportation incidental to its programs or services.

**Comment.** Section 5411.5 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

A Chapter 5.1 case is within the original jurisdiction of the municipal court or of the superior court in a county in which there is no municipal court. Cal. Const. art. VI, § 10 (superior court jurisdiction); Code Civ. Proc. § 85.1 (municipal court jurisdiction). See also Code Civ. Proc. §§ 91, 904.5, 1085 (trial procedures and writ and appellate jurisdiction for Chapter 5.1 cases).

**Pub. Util. Code § 103100 (amended). Membership of board**

SEC. \_\_\_\_\_. Section 103100 of the Public Utilities Code is amended to read:

103100. The government of the district shall be vested in a board of directors, which shall consist of nine members, selected as follows:

(a) Three members, two of whom shall, at the time of their appointments and during their service as directors, be members of the board of supervisors and one of whom shall possess expertise in the field of transportation, appointed by the board of supervisors.

(b) Three members, all of whom shall be ~~city councilmen~~ council members at the time of their appointments and during their service as directors, ~~with one from each of the judicial districts in the county~~, appointed by the city selection committee created pursuant to Article 11 (commencing with Section 50270), Chapter 1, Part 1, Division 1, Title 5 of the Government Code.

(c) Three members, one of whom shall be a resident of the coastal zone as defined in Section 27100 of the Public Resources Code, at the time of their

appointments and during their service as directors, appointed by the six members appointed pursuant to subdivisions (a) and (b).

**Comment.** Section 23146 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

☞ **Staff Note.** As used in subdivision (a), “district” means the San Mateo County Transit District. See Pub. Util. Code § 103011.

Subdivision (b) provides for appointment of three board members, one from each of the three judicial districts in the county. However, in 1978, two of the judicial districts were combined, and in 1982 the remaining two were combined, leaving one judicial district in the county. According to the Board Secretary, the three city council members are still designated as representing the north, central, or south county, but are not appointed by reference to judicial districts.

This technical problem can be corrected in one of two ways:

(1) The simpler approach is to do away with the geographic representation provision altogether. This is the approach taken in the proposed amendment.

(2) A more complex approach is to try to recreate the geographic distinctions by reference to something other than judicial districts. Presently, the San Mateo Courts are organized into three branches, the Northern, Central, and Southern Branches, each covering a different geographical area. These branches are used for allocation of certain types of cases. The statute could be amended to refer to these branches. However, this presents the same problem that presently exists — what to do if the courts reorganize? Alternatively, the statute could refer to the cities and unincorporated areas that presently comprise each of the branches, providing a more static basis for the geographical allocation.

For the sake of simplicity, and in light of the fact that the appointment system has been working without an effective statutory reference to geographical areas for fifteen years, the staff recommends the first approach.

**Veh. Code § 2802.5 (amended). Commercial vehicle inspection facilities**

SEC. \_\_\_\_\_. Section 2802.5 of the Vehicle Code is amended to read:

2802.5. (a) The Department of the California Highway Patrol, in cooperation with the Public Utilities Commission, the State Board of Equalization, the Department of Motor Vehicles, the Judicial Council, and other appropriate agencies, shall develop an interagency agreement under which the agencies shall assign one or more employees or interagency clerks at one or more commercial vehicle inspection facilities of the department which are open on a continuous basis. The employees or interagency clerks shall be assigned duties to perform on behalf of the state agencies which are a party to the agreement as specified in subdivision (b). However, in the case of the Judicial Council, the clerk shall perform duties on behalf of the clerk of the municipal court district in which the inspection facility is located, or of the superior court in a county in which there is no municipal court.

(b) The employees or interagency clerks may issue registration permits for any of the state agencies which are parties to the interagency agreement, accept the payment of any fees due any of the state agencies, accept payment of bail or fines, set court dates, and perform other ministerial administrative functions for the state agencies or ~~the municipal court district~~. The Department of the California Highway Patrol, in cooperation with the other state agencies, shall provide

computerized equipment appropriate to identify the status of any vehicles or drivers passing through the inspection facility. The employees or interagency clerks shall accept payment by credit card. Assigned personnel may remain the employees of their respective agencies, or as may otherwise be provided by the interagency agreement. The interagency agreement shall provide for sharing of associated costs between participating agencies, based on the anticipated enhanced revenue collections.

(c) At the request of any peace officer, the employees or interagency clerks shall determine the status of any outstanding warrants and whether all fees due have been paid with respect to a driver or vehicle present at the inspection facility.

(d) A peace officer at the inspection facility may store or impound any vehicle upon determination that the vehicle or the driver of the vehicle has failed to pay registration, regulatory, fuel permit, or other fees, or has any outstanding warrants in any county in the state. The stored or impounded vehicle shall be released upon payment of those fees, fines, or the posting of bail. Upon request, the driver or owner of the vehicle may request a hearing to determine the validity of the seizure.

(e) The Department of the California Highway Patrol may implement this program as a demonstration pilot program at one or more locations. The department, on or before February 1, 1992, shall report its recommendations for continuation, expansion, or termination of the program to the Legislature. The report shall also include comments from the trucking industry concerning the benefits and problems in the program and any recommendations as a result of the pilot project. The report shall also consider the potential for ports of entry at major highway entry points to California, similar to programs already implemented in other states.

**Comment.** Section 2802.5 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

**Veh. Code § 9872.1 (amended). Vessel with hull identification number removed**

SEC. \_\_\_\_\_. Section 9872.1 of the Vehicle Code is amended to read:

9872.1. (a) No person shall knowingly buy, sell, offer for sale, receive, or have in his or her possession any vessel, or component part thereof, from which the hull identification number has been removed, defaced, altered, or destroyed, unless the vessel or component part has attached thereto a hull identification number assigned or approved by the department in lieu of the manufacturer's number.

(b) Whenever a vessel, or component part thereof, from which the hull identification number has been removed, defaced, altered, or destroyed, and which does not have attached thereto an assigned or approved number as described in subdivision (a), comes into the custody of a peace officer, the seized vessel or component part is subject, in accordance with the procedures specified in this section, to impoundment and to such disposition as may be provided by order of a court having jurisdiction. This subdivision does not apply with respect

to a seized vessel or component part used as evidence in any criminal action or proceeding.

(c) Whenever a vessel or component part described in subdivision (a) comes into the custody of a peace officer, any person from whom the property was seized, and all claimants to the property whose interest or title is on registration records in the department, shall be notified within five days, excluding Saturdays, Sundays, and holidays, after the seizure, of the date, time, and place of the hearing required in subdivision (e). The notice shall contain the information specified in subdivision (d).

(d) Whenever a peace officer seizes a vessel or component part as provided in subdivision (b), any person from whom the property was seized shall be provided a notice of impoundment of the vessel or component part which shall serve as a receipt and contain the following information:

(1) Name and address of person from whom the property was seized.

(2) A statement that the vessel or component part seized has been impounded for investigation of a violation of this section and that the property will be released upon a determination that the hull identification number has not been removed, defaced, altered, or destroyed, or upon the presentation of satisfactory evidence of ownership of the vessel or component part, provided that no other person claims an interest in the property; otherwise, a hearing regarding the disposition of the vessel or component part shall take place in the proper court.

(3) A statement that any person from whom the property was seized, and all claimants to the property whose interest or title is on registration records in the department, will receive written notification of the date, time, and place of the hearing within five days, excluding Saturdays, Sundays, and holidays, after the seizure.

(4) Name and address of the law enforcement agency where evidence of ownership of the vessel or component part may be presented.

(5) A statement of the contents of this section.

(e) A hearing on the disposition of the property shall be held by the municipal ~~or justice court, or by the superior court in a county in which there is no~~ municipal court, within 60 days after the seizure. The hearing shall be before the court without a jury. A proceeding under this section is a Chapter 5.1 case.

(1) If the evidence reveals either that the hull identification number has not been removed, altered, or destroyed or that the hull identification number has been removed, altered, or destroyed but satisfactory evidence of ownership has been presented to the seizing agency or court, the property shall be released to the person entitled thereto.

(2) If the evidence reveals that the hull identification number has been removed, altered, or destroyed, and satisfactory evidence of ownership has not been presented, the property shall be destroyed, sold, or otherwise disposed of as provided by court order.

(3) At the hearing, the seizing agency shall have the burden of establishing that the hull identification number has been removed, defaced, altered, or destroyed and that no satisfactory evidence of ownership has been presented.

(f) Nothing in this section precludes the return of a seized vessel or component part to the owner by the seizing agency following presentation of satisfactory evidence of ownership and, if determined necessary, upon the assignment of an identification number to the vessel or component part by the department.

**Comment.** Section 9872.1 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

A Chapter 5.1 case is within the original jurisdiction of the municipal court or of the superior court in a county in which there is no municipal court. Cal. Const. art. VI, § 10 (superior court jurisdiction); Code Civ. Proc. § 85.1 (municipal court jurisdiction). See also Code Civ. Proc. §§ 91, 904.5, 1085 (trial procedures and writ and appellate jurisdiction for Chapter 5.1 cases).

**Veh. Code § 10751 (amended). Removal of identifying number**

SEC. \_\_\_\_\_. Section 10751 of the Vehicle Code is amended to read:

10751. (a) No person shall knowingly buy, sell, offer for sale, receive, or have in his or her possession, any vehicle, or component part thereof, from which any serial or identification number, including, but not limited to, any number used for registration purposes, that is affixed by the manufacturer to the vehicle or component part, in whatever manner deemed proper by the manufacturer, has been removed, defaced, altered, or destroyed, unless the vehicle or component part has attached thereto an identification number assigned or approved by the department in lieu of the manufacturer's number.

(b) Whenever a vehicle described in subdivision (a), including a vehicle assembled with any component part which is in violation of subdivision (a), comes into the custody of a peace officer, it shall be destroyed, sold, or otherwise disposed of under the conditions as provided in an order by the court having jurisdiction. No court order providing for disposition shall be issued unless the person from whom the property was seized, and all claimants to the property whose interest or title is on registration records in the Department of Motor Vehicles, are provided a postseizure hearing by the court having jurisdiction within 90 days after the seizure. This subdivision shall not apply with respect to a seized vehicle or component part used as evidence in any criminal action or proceeding. Nothing in this section shall, however, preclude the return of a seized vehicle or a component part to the owner by the seizing agency following presentation of satisfactory evidence of ownership and, if determined necessary, upon the assignment of an identification number to the vehicle or component part by the department.

(c) Whenever a vehicle described in subdivision (a) comes into the custody of a peace officer, the person from whom the property was seized, and all claimants to the property whose interest or title is on registration records in the Department of

Motor Vehicles, shall be notified within five days, excluding Saturdays, Sundays, and holidays, after the seizure, of the date, time, and place of the hearing required in subdivision (b). The notice shall contain the information specified in subdivision (d).

(d) Whenever a peace officer seizes a vehicle described in subdivision (a), the person from whom the property was seized shall be provided a notice of impoundment of the vehicle which shall serve as a receipt and contain the following information:

(1) Name and address of person from whom the property was seized.

(2) A statement that the vehicle seized has been impounded for investigation of a violation of Section 10751 of the California Vehicle Code and that the property will be released upon a determination that the serial or identification number has not been removed, defaced, altered, or destroyed, or upon the presentation of satisfactory evidence of ownership of the vehicle or a component part, if no other person claims an interest in the property; otherwise, a hearing regarding the disposition of the vehicle shall take place in the proper court.

(3) A statement that the person from whom the property was seized, and all claimants to the property whose interest or title is on registration records in the Department of Motor Vehicles, will receive written notification of the date, time, and place of the hearing within five days, excluding Saturdays, Sundays, and holidays, after the seizure.

(4) Name and address of the law enforcement agency where evidence of ownership of the vehicle or component part may be presented.

(5) A statement of the contents of Section 10751 of the Vehicle Code.

(e) A hearing on the disposition of the property shall be held by the municipal ~~or justice court, or by the superior court in a county in which there is no~~ municipal court, within 90 days after the seizure. The hearing shall be before the court without a jury. A proceeding under this section is a Chapter 5.1 case.

(1) If the evidence reveals either that the serial or identification number has not been removed, defaced, altered, or destroyed or that the number has been removed, defaced, altered, or destroyed but satisfactory evidence of ownership has been presented to the seizing agency or court, the property shall be released to the person entitled thereto. Nothing in this section precludes the return of the vehicle or a component part to a good faith purchaser following presentation of satisfactory evidence of ownership thereof upon the assignment of an identification number to the vehicle or component part by the department.

(2) If the evidence reveals that the identification number has been removed, defaced, altered, or destroyed, and satisfactory evidence of ownership has not been presented, the vehicle shall be destroyed, sold, or otherwise disposed of as provided by court order.

(3) At the hearing, the seizing agency has the burden of establishing that the serial or identification number has been removed, defaced, altered, or destroyed and that no satisfactory evidence of ownership has been presented.



(f) This section does not apply to a scrap metal processor engaged primarily in the acquisition, processing, and shipment of ferrous and nonferrous scrap, and who receives dismantled vehicles from licensed dismantlers, licensed junk collectors, or licensed junk dealers as scrap metal for the purpose of recycling the dismantled vehicles for their metallic content, the end product of which is the production of material for recycling and remelting purposes for steel mills, foundries, smelters, and refiners.

**Comment.** Section 10751 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

A Chapter 5.1 case is within the original jurisdiction of the municipal court or of the superior court in a county in which there is no municipal court. Cal. Const. art. VI, § 10 (superior court jurisdiction); Code Civ. Proc. § 85.1 (municipal court jurisdiction). See also Code Civ. Proc. §§ 91, 904.5, 1085 (trial procedures and writ and appellate jurisdiction for Chapter 5.1 cases).

**Veh. Code § 11205 (amended). Traffic violator school list (added 1991 Cal. Stat. ch. 411, § 4)**

SEC. \_\_\_\_\_. Section 11205 of the Vehicle Code is amended to read:

11205. (a) The department shall publish a traffic violator school referral list of all the approved locations of traffic violator school classes, by school name, to be transmitted to each municipal ~~and justice~~ court in the state, and to each superior court in a county in which there is no municipal court, in sufficient quantity to allow the courts to provide a copy to each person referred to traffic violator school. The list shall be revised at least twice annually and transmitted to the courts by the first day of January and the first day of July. It shall include all of the following:

(1) The name of each traffic violator school or, pursuant to subdivision (d), the general term “traffic violator school” followed by its traffic violator school license number.

(2) A phone number used for student information.

(3) The county and the judicial district.

(4) The cities where classes are available.

(b) Each traffic violator school owner shall be permitted one school name in a judicial district.

(c) The list shall be organized alphabetically in sections for each county and subsections for each judicial district within the county. The order of the names within each judicial district shall be random pursuant to a drawing or lottery conducted by the department.

(d) On the list prepared by the department under subdivision (c), each traffic violator school shall appear by name unless a court determines, pursuant to subdivision (e), that a name is inappropriate and directs the department to delete the name and instead list the school by the term “traffic violator school” followed by its license number. The deletion of the name of a school from the list for a judicial district shall not affect whether that school appears by name on the

list for any other judicial district within the state. In making a determination under this subdivision regarding the deletion of a name from the list, the court shall use as its criteria whether the name is misleading to the public, undignified, or implies that the school offers inducements or premiums which derogate or distort the instructional intent of the traffic safety program.

(e) When the department transmits any referral list to each ~~municipal and justice court~~ pursuant to subdivision (a), each ~~municipal and justice~~ court shall do all of the following:

(1) Within 30 days of receipt of the list, notify the school owner of any school name that the court intends to remove from the referral list.

(2) Within 60 days of receipt of the list, make every effort to schedule, conduct, and complete a hearing for the school owner, or a representative, if requested, at which the sole issue shall be whether the name violates the standards set forth in subdivision (d). A substitute name may be submitted to the court at the conclusion of the hearing, pursuant to subdivision (h).

(3) Within 10 days of the completion of that hearing, notify the department and school owner of any school names it intends to remove from the referral list.

(f) In order for a court action to delete a school name from the next referral list published by the department, the department shall receive court notification no later than 90 days prior to publication of the next referral list and, absent a direct order by the appellate division of the superior court or a ~~superior court~~ or court of higher jurisdiction, the department shall not fail to publish a referral list on the grounds that there exists pending litigation or appeals concerning the lists.

(g) Any court notifying the department of a school name it intends to remove from the list, pursuant to this section, shall provide the school owner with the name of the judge making those findings.

(h) When a court informs a school owner, pursuant to subdivision (e), of its decision to delete the name of a traffic violator school from that judicial district's subsection of the department's traffic violator school referral list, the owner may, on a form approved by the department, submit a substitute name to the court and request approval of that name. The court shall, within 30 days of receipt of the request for approval of the substitute name, inform the department and the school owner, on a form approved by the department, of its approval or rejection of the substitute name. The school owner may continue this appeal process for approval of a substitute name until the court determines that the name does not violate the standard set forth in subdivision (d). A name approval in a judicial district shall not affect the school's name or listing in any other district in the state. The department shall not impose any fee or license requirement under this subdivision.

(i) If a court fails to act within 30 days on a request of a traffic violator school owner, pursuant to subdivision (h), the proposed substitute name shall be deemed approved by the court for the purposes of the traffic violator school referral list.

(j)(1) Every application filed with the department on and after June 1, 1991, for an original license by a traffic school owner or for approval to conduct classes in

a judicial district not previously approved, shall be accompanied by the approval of the court in each judicial district proposed for those operations of the name of the school, on a form approved by the department for that purpose. For the approved name to be included in the traffic violator school referral list, the form shall be received by the department no later than 90 days prior to publication.

(2) When a court disapproves a school name pursuant to this subdivision, the court shall notify the school owner within 30 days of its disapproval and schedule a hearing for that school owner, or a representative, if requested, at which the sole issue shall be whether the name violates the standards set forth in subdivision (d). A substitute name may be submitted to the court at the conclusion of the hearing, pursuant to subdivision (h).

(3) The court shall make every effort to schedule, conduct, and complete a hearing within 60 days of receipt of the school owner's request for a school name approval. A name approval in a judicial district shall not affect the school's name or listing in any other district in the state. A change in physical location by a school within a judicial district shall not require approval pursuant to this subdivision.

(k) The department shall publish a list of the owners of traffic violator schools. One copy shall be provided to each municipal ~~and justice~~ court in the state, and to each superior court in a county in which there is no municipal court. This list shall be revised at least twice annually and transmitted to the courts by the first day of January and the first day of July. This list shall include all of the following:

- (1) The name of each school, grouped by owner.
- (2) The business office address.
- (3) The business office telephone number.
- (4) The license number.
- (5) The owner's name.
- (6) The operator's name.

(l) Except as otherwise provided in subdivision (d) of Section 42005, the court shall use either the current list of traffic violator schools published by the department when it orders a person to complete a traffic violator school pursuant to subdivision (a) or (b) of Section 42005 or, when a court utilizing a nonprofit agency for traffic violator school administration and monitoring services in which all traffic violator schools licensed by the department are allowed the opportunity to participate, a statewide referral list may be published by the nonprofit agency and distributed by the court. The agency shall monitor each classroom location represented on its referral list at least once every 90 days with reports forwarded to the department and the respective courts on a monthly basis.

(m) The court may charge a traffic violator a fee to defray the costs incurred by the agency for the monitoring reports and services provided to the court. The court may delegate collection of the fee to the agency. Fees shall be approved and regulated by the court. Until December 31, 1996, the fee shall not exceed the actual cost incurred by the agency or five dollars (\$5), whichever is less.

(n) If any provision of subdivision (d) or (e), as added by Section 4 of Assembly Bill 185 of the 1991-92 Regular Session, or the application thereof to any person, is held to be unconstitutional, this section is repealed on the date the decision of the court so holding becomes final.

(o) A proceeding under this section is a Chapter 5.1 case.

**Comment.** Section 11205 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

A Chapter 5.1 case is within the original jurisdiction of the municipal court or of the superior court in a county in which there is no municipal court. Cal. Const. art. VI, § 10 (superior court jurisdiction); Code Civ. Proc. § 85.1 (municipal court jurisdiction). See also Code Civ. Proc. §§ 91, 904.5, 1085 (trial procedures and writ and appellate jurisdiction for Chapter 5.1 cases).

☞ **Staff Note.** This operation of this section is contingent on its not being held unconstitutional. See Subdivision (n). If it is held unconstitutional, it is automatically repealed and the following section becomes operative. We are amending both sections.

Note that a rule that a judicial district in a unified county is the county itself will affect how this section is administered. For example, a traffic school will only be allowed one listing per county, rather than one per former judicial district. See subdivision (b). Also, decisions regarding the deletion of inappropriate names will have county-wide effect, rather than affecting only the judicial district that objects to the name. See subdivision (d). Of course, the same result could occur under existing law, if a county chose to consolidate all of its judicial districts into a single county-wide district (as, e.g., San Mateo county has done).

The hearings available under subdivisions (e) and (j) have been identified as Chapter 5.1 cases. This appears to be correct because, under the current statute, the hearing is before a municipal court judge. However, these proceedings seem relatively informal, and it may not be appropriate to subject them to the full panoply of procedures that apply to Chapter 5.1 cases.

**Veh. Code § 11205 (amended). Traffic violator school list (added 1991 Cal. Stat. ch. 411, § 5)**

SEC. \_\_\_\_\_. Section 11205 of the Vehicle Code is amended to read:

11205. (a) The department shall publish semiannually, or more often as necessary to serve the purposes of this act, a list of all traffic violator schools which are licensed pursuant to this section. The list shall identify classroom facilities within a judicial district that are at a different location from a licensed school's principal facility. The department shall transmit the list to each municipal and justice court, and to each superior court in a county in which there is no municipal court, with a sufficient number of copies to allow the courts to provide one copy to each person referred to a licensed traffic violator school. The department shall, at least semiannually, revise the list to ensure that each court has a current list of all licensed traffic violator schools.

(b) Each licensed traffic violator school owner shall be permitted one school name per judicial district.

(c) The referral list shall be organized alphabetically, in sections for each county, and contain subsections for each judicial district within the county. The order of

the names within each judicial district shall be random pursuant to a drawing or lottery conducted by the department.

(d) Except as otherwise provided in subdivision (d) of Section 42005, the court shall use either the current referral list of traffic violator schools published by the department when it orders a person to complete a traffic violator school pursuant to subdivision (a) or (b) of Section 42005 or, when a court utilizing a nonprofit agency for traffic violator school administration and monitoring services in which all traffic violator schools licensed by the department are allowed the opportunity to participate, a statewide referral list may be published by the nonprofit agency and distributed by the court. The agency shall monitor each classroom location represented on its referral list at least once every 90 days with reports forwarded to the department and the respective courts on a monthly basis.

(e) The court may charge a traffic violator a fee to defray the costs incurred by the agency for the monitoring reports and services provided to the court. The court may delegate collection of the fee to the agency. Fees shall be approved and regulated by the court. Until December 31, 1996, the fee shall not exceed the actual cost incurred by the agency or five dollars (\$5), whichever is less.

(f) If any provision of subdivision (d) or (e) of Section 11205, as added by Section 4 of Assembly Bill 185 of the 1991-92 Regular Session, or the application thereof to any person, is held to be unconstitutional, that Section 11205 is repealed on the date the decision of the court so holding becomes final, and on that date, this section shall become operative.

**Comment.** Section 11205 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

☞ **Staff Note.** See staff note to first version of this section, above.

**Veh. Code § 11301.6 (amended). Refund of deposit**

SEC. \_\_\_\_\_. Section 11301.5 of the Vehicle Code is amended to read:

11301.5. If a deposit is given instead of the bond required by Section 11301:

(a) The Director of Motor Vehicles may order the refund of the deposit three years from the date a vehicle verifier has ceased to be licensed, if the director is satisfied that there are no outstanding claims against the deposit. A judge of a ~~municipal or superior court~~ having subject matter jurisdiction may order the return of the deposit prior to the expiration of three years from the date a vehicle verifier has ceased to be licensed if there is evidence satisfactory to the court that there are no outstanding claims against the deposit. A proceeding under this subdivision may be brought as a general jurisdiction case or as a Chapter 5.1 case.

(b) If the director, department, or state is a defendant in any action instituted to recover all or any part of the deposit, or any action is instituted by the director, department, or state to determine those entitled to any part of the deposit, the director, department, or state shall be paid reasonable attorney fees and costs from

the deposit. Costs shall include those administrative costs incurred in processing claims against the deposit.

**Comment.** Section 11301.5 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). A superior court has jurisdiction over a general jurisdiction case. A municipal court, or a superior court in a county in which there is no municipal court, has jurisdiction over a Chapter 5.1 case. See Code Civ. Proc. §§ 85, 85.1 and Comment. The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

☞ **Staff Note.** This section apparently creates concurrent jurisdiction in the superior and municipal courts, without any reference to the amount in controversy. It therefore appears inappropriate to list this section in Section 85 of the Code of Civil Procedure, which would impose an amount in controversy limit on the jurisdiction of the municipal court.

**Veh. Code § 11710.2 (amended). Refund of deposit**

SEC. \_\_\_\_\_. Section 11710.2 of the Vehicle Code is amended to read:

11710.2. If a deposit is given instead of the bond required by Section 11710 both of the following apply:

(a) The director may order the deposit returned at the expiration of three years from the date an applicant for a dealer's license who has operated a business of selling vehicles under a temporary permit has ceased to do business, or three years from the date a licensee has ceased to be licensed, if the director is satisfied that there are no outstanding claims against the deposit. A judge of a ~~municipal or superior court~~ having subject matter jurisdiction may order the return of the deposit prior to the expiration of three years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit. A proceeding under this subdivision may be brought as a general jurisdiction case or as a Chapter 5.1 case.

(b) If either the director, department, or state is a defendant in any action instituted to recover all or any part of the deposit, or any action is instituted by the director, department, or state to determine those entitled to any part of the deposit, the director, department, or state shall be paid reasonable attorney fees and costs from the deposit. Costs shall include those administrative costs incurred in processing claims against the deposit.

**Comment.** Section 11710.2 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). A superior court has jurisdiction over a general jurisdiction case. A municipal court, or a superior court in a county in which there is no municipal court, has jurisdiction over a Chapter 5.1 case. See Code Civ. Proc. §§ 85, 85.1 and Comment. The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

☞ **Staff Note.** This section apparently creates concurrent jurisdiction in the superior and municipal courts, without any reference to the amount in controversy. It therefore appears inappropriate to list this section in Section 85 of the Code of Civil Procedure, which would impose an amount in controversy limit on the jurisdiction of the municipal court.

**Veh. Code § 14607.6 (amended). Vehicle driven by unlicensed driver**

SEC. \_\_\_\_\_. Section 14607.6 of the Vehicle Code is amended to read:

14607.6. (a) Notwithstanding any other provision of law, and except as provided in this section, a motor vehicle is subject to forfeiture as a nuisance if it is driven on a highway in this state by a driver with a suspended or revoked license, or by an unlicensed driver, who is a registered owner of the vehicle at the time of impoundment and has a previous misdemeanor conviction for a violation of subdivision (a) of Section 12500 or Section 14601, 14601.1, 14601.2, 14601.3, 14601.4, or 14601.5.

(b) A peace officer shall not stop a vehicle for the sole reason of determining whether the driver is properly licensed.

(c)(1) If a driver is unable to produce a valid driver's license on the demand of a peace officer enforcing the provisions of this code, as required by subdivision (b) of Section 12951, the vehicle shall be impounded regardless of ownership, unless the peace officer is reasonably able, by other means, to verify that the driver is properly licensed. Prior to impounding a vehicle, a peace officer shall attempt to verify the license status of a driver who claims to be properly licensed but is unable to produce the license on demand of the peace officer.

(2) A peace officer shall not impound a vehicle pursuant to this subdivision if the license of the driver expired within the preceding 30 days and the driver would otherwise have been properly licensed.

(3) A peace officer may exercise discretion in a situation where the driver without a valid license is an employee driving a vehicle registered to the employer in the course of employment. A peace officer may also exercise discretion in a situation where the driver without a valid license is the employee of a bona fide business establishment or is a person otherwise controlled by such an establishment and it reasonably appears that an owner of the vehicle, or an agent of the owner, relinquished possession of the vehicle to the business establishment solely for servicing or parking of the vehicle or other reasonably similar situations, and where the vehicle was not to be driven except as directly necessary to accomplish that business purpose. In this event, if the vehicle can be returned to or be retrieved by the business establishment or registered owner, the peace officer may release and not impound the vehicle.

(4) A registered or legal owner of record at the time of impoundment may request a hearing to determine the validity of the impoundment pursuant to subdivision (n).

(5) If the driver of a vehicle impounded pursuant to this subdivision was not a registered owner of the vehicle at the time of impoundment, or if the driver of the vehicle was a registered owner of the vehicle at the time of impoundment but the driver does not have a previous conviction for a violation of subdivision (a) of Section 12500 or Section 14601, 14601.1, 14601.2, 14601.3, 14601.4, or 14601.5, the vehicle shall be released pursuant to this code and is not subject to forfeiture.

(d)(1) This subdivision applies only if the driver of the vehicle is a registered owner of the vehicle at the time of impoundment. Except as provided in paragraph (5) of subdivision (c), if the driver of a vehicle impounded pursuant to

subdivision (c) was a registered owner of the vehicle at the time of impoundment, the impounding agency shall authorize release of the vehicle if, within three days of impoundment, the driver of the vehicle at the time of impoundment presents his or her valid driver's license, including a valid temporary California driver's license or permit, to the impounding agency. The vehicle shall then be released to a registered owner of record at the time of impoundment, or an agent of that owner authorized in writing, upon payment of towing and storage charges related to the impoundment, and any administrative charges authorized by Section 22850.5, providing that the person claiming the vehicle is properly licensed and the vehicle is properly registered. A vehicle impounded pursuant to the circumstances described in paragraph (3) of subdivision (c) shall be released to a registered owner whether or not the driver of the vehicle at the time of impoundment presents a valid driver's license.

(2) If there is a community property interest in the vehicle impounded pursuant to subdivision (c), owned at the time of impoundment by a person other than the driver, and the vehicle is the only vehicle available to the driver's immediate family that may be operated with a class C driver's license, the vehicle shall be released to a registered owner or to the community property interest owner upon compliance with all of the following requirements:

(A) The registered owner or the community property interest owner requests release of the vehicle and the owner of the community property interest submits proof of that interest.

(B) The registered owner or the community property interest owner submits proof that he or she, or an authorized driver, is properly licensed and that the impounded vehicle is properly registered pursuant to this code.

(C) All towing and storage charges related to the impoundment and any administrative charges authorized pursuant to Section 22850.5 are paid.

(D) The registered owner or the community property interest owner signs a stipulated vehicle release agreement, as described in paragraph (3), in consideration for the nonforfeiture of the vehicle. This requirement applies only if the driver requests release of the vehicle.

(3) A stipulated vehicle release agreement shall provide for the consent of the signator to the automatic future forfeiture and transfer of title to the state of any vehicle registered to that person, if the vehicle is driven by a driver with a suspended or revoked license, or by an unlicensed driver. The agreement shall be in effect for only as long as it is noted on a driving record maintained by the department pursuant to Section 1806.1.

(4) The stipulated vehicle release agreement described in paragraph (3) shall be reported by the impounding agency to the department not later than 10 days after the day the agreement is signed.

(5) No vehicle shall be released pursuant to paragraph (2) if the driving record of a registered owner indicates that a prior stipulated vehicle release agreement was signed by that person.



(e)(1) The impounding agency, in the case of a vehicle that has not been redeemed pursuant to subdivision (d), or that has not been otherwise released, shall promptly ascertain from the department the names and addresses of all legal and registered owners of the vehicle.

(2) The impounding agency, within two days of impoundment, shall send a notice by certified mail, return receipt requested, to all legal and registered owners of the vehicle, at the addresses obtained from the department, informing them that the vehicle is subject to forfeiture and will be sold or otherwise disposed of pursuant to this section. The notice shall also include instructions for filing a claim with the district attorney, and the time limits for filing a claim. The notice shall also inform any legal owner of its right to conduct the sale pursuant to subdivision (g). If a registered owner was personally served at the time of impoundment with a notice containing all the information required to be provided by this paragraph, no further notice is required to be sent to a registered owner. However, a notice shall still be sent to the legal owners of the vehicle, if any. If notice was not sent to the legal owner within two working days, the impounding agency shall not charge the legal owner for more than 15-days' impoundment when the legal owner redeems the impounded vehicle.

(3) No processing charges shall be imposed on a legal owner who redeems an impounded vehicle within 15 days of the impoundment of that vehicle. If no claims are filed and served within 15 days after the mailing of the notice in paragraph (2), or if no claims are filed and served within five days of personal service of the notice specified in paragraph (2), when no other mailed notice is required pursuant to paragraph (2), the district attorney shall prepare a written declaration of forfeiture of the vehicle to the state. A written declaration of forfeiture signed by the district attorney under this subdivision shall be deemed to provide good and sufficient title to the forfeited vehicle. A copy of the declaration shall be provided on request to any person informed of the pending forfeiture pursuant to paragraph (2). A claim that is filed and is later withdrawn by the claimant shall be deemed not to have been filed.

(4) If a claim is timely filed and served, then the district attorney shall file a petition of forfeiture with the appropriate justice, juvenile, or municipal, or superior court within 10 days of the receipt of the claim. The district attorney shall establish an expedited hearing date in accordance with instructions from the court, and the court shall hear the matter without delay. The court filing fee, not to exceed fifty dollars (\$50), shall be paid by the claimant, but shall be reimbursed by the impounding agency if the claimant prevails. To the extent practicable, the civil and criminal cases shall be heard at the same time in an expedited, consolidated proceeding. A proceeding in the civil case is a Chapter 5.1 case.

(5) The burden of proof in the civil case shall be on the prosecuting agency, by a preponderance of the evidence. All questions that may arise shall be decided and all other proceedings shall be conducted as in an ordinary civil action. A judgment of forfeiture does not require as a condition precedent the conviction of

a defendant of an offense which made the vehicle subject to forfeiture. The filing of a claim within the time limits specified in paragraph (3) is considered a jurisdictional prerequisite for the availing of the action authorized by that paragraph.

(6) All right, title, and interest in the vehicle shall vest in the state upon commission of the act giving rise to the forfeiture.

(f) Any vehicle impounded that is not redeemed pursuant to subdivision (d) and is subsequently forfeited pursuant to this section shall be sold once an order of forfeiture is issued by the district attorney of the county of the impounding agency or a court, as the case may be, pursuant to subdivision (e).

(g) Any legal owner who in the regular course of business conducts sales of repossessed or surrendered motor vehicles may take possession and conduct the sale of the forfeited vehicle if it notifies the agency impounding the vehicle of its intent to conduct the sale within 15 days of the mailing of the notice pursuant to subdivision (e). Sale of the vehicle after forfeiture pursuant to this subdivision may be conducted at the time, in the manner, and on the notice usually given by the legal owner for the sale of repossessed or surrendered vehicles. The proceeds of any sale conducted by the legal owner shall be disposed of as provided in subdivision (i).

(h) If the legal owner does not notify the agency impounding the vehicle of its intent to conduct the sale as provided in subdivision (g), the agency shall offer the forfeited vehicle for sale at public auction within 60 days of receiving title to the vehicle. Low value vehicles shall be disposed of pursuant to subdivision (k).

(i) The proceeds of a sale of a forfeited vehicle shall be disposed of in the following priority:

(1) To satisfy the towing and storage costs following impoundment, the costs of providing notice pursuant to subdivision (e), the costs of sale, and the unfunded costs of judicial proceedings, if any.

(2) To the legal owner in an amount to satisfy the indebtedness owed to the legal owner remaining as of the date of sale, including accrued interest or finance charges and delinquency charges, providing that the principal indebtedness was incurred prior to the date of impoundment.

(3) To the holder of any subordinate lien or encumbrance on the vehicle, other than a registered or legal owner, to satisfy any indebtedness so secured if written notification of demand is received before distribution of the proceeds is completed. The holder of a subordinate lien or encumbrance, if requested, shall furnish reasonable proof of its interest and, unless it does so upon request, is not entitled to distribution pursuant to this paragraph.

(4) To any other person, other than a registered or legal owner, who can reasonably establish an interest in the vehicle, including a community property interest, to the extent of his or her provable interest, if written notification is received before distribution of the proceeds is completed.

(5) Of the remaining proceeds, funds shall be made available to pay any local agency and court costs, that are reasonably related to the implementation of this section, that remain unsatisfied.

(6) Of the remaining proceeds, half shall be transferred to the Controller for deposit in the Vehicle Inspection and Repair Fund for the high-polluter repair assistance and removal program created by Article 9 (commencing with Section 44090) of Chapter 5 of Part 5 of Division 26 of the Health and Safety Code, and half shall be transferred to the general fund of the city or county of the impounding agency, or the city or county where the impoundment occurred. A portion of the local funds may be used to establish a reward fund for persons coming forward with information leading to the arrest and conviction of hit and run drivers and to publicize the availability of the reward fund.

(j) The person conducting the sale shall disburse the proceeds of the sale as provided in subdivision (i) and shall provide a written accounting regarding the disposition to the impounding agency and, on request, to any person entitled to or claiming a share of the proceeds, within 15 days after the sale is conducted.

(k) If the vehicle to be sold pursuant to this section is not of the type that can readily be sold to the public generally, the vehicle shall be conveyed to a licensed dismantler or donated to an eleemosynary institution. License plates shall be removed from any vehicle conveyed to a dismantler pursuant to this subdivision.

(l) No vehicle shall be sold pursuant to this section if the impounding agency determines the vehicle to have been stolen. In this event, the vehicle may be claimed by the registered owner at any time after impoundment, providing the vehicle registration is current and the registered owner has no outstanding traffic violations or parking penalties on his or her driving record or on the registration record of any vehicle registered to the person. If the identity of the legal and registered owners of the vehicle cannot be reasonably ascertained, the vehicle may be sold.

(m) Any owner of a vehicle who suffers any loss due to the impoundment or forfeiture of any vehicle pursuant to this section may recover the amount of the loss from the unlicensed, suspended, or revoked driver. If possession of a vehicle has been tendered to a business establishment in good faith, and an unlicensed driver employed or otherwise directed by the business establishment is the cause of the impoundment of the vehicle, a registered owner of the impounded vehicle may recover damages for the loss of use of the vehicle from the business establishment.

(n)(1) The impounding agency, if requested to do so not later than 10 days after the date the vehicle was impounded, shall provide the opportunity for a poststorage hearing to determine the validity of the storage to the persons who were the registered and legal owners of the vehicle at the time of impoundment, except that the hearing shall be requested within three days after the date the vehicle was impounded if personal service was provided to a registered owner pursuant to paragraph (2) of subdivision (e) and no mailed notice is required.

(2) The poststorage hearing shall be conducted not later than two days after the date it was requested. The impounding agency may authorize its own officer or employee to conduct the hearing if the hearing officer is not the same person who directed the storage of the vehicle. Failure of either the registered or legal owner to request a hearing as provided in paragraph (1) or to attend a scheduled hearing shall satisfy the poststorage hearing requirement.

(3) The agency employing the person who directed the storage is responsible for the costs incurred for towing and storage if it is determined that the driver at the time of impoundment had a valid driver's license.

(o) As used in this section, "days" means workdays not including weekends and holidays.

(p) Charges for towing and storage for any vehicle impounded pursuant to this section shall not exceed the normal towing and storage rates for other vehicle towing and storage conducted by the impounding agency in the normal course of business.

(q) The Judicial Council and the Department of Justice may prescribe standard forms and procedures for implementation of this section to be used by all jurisdictions throughout the state.

(r) The impounding agency may act as the agent of the state in carrying out this section.

(s) No vehicle shall be impounded pursuant to this section if the driver has a valid license but the license is for a class of vehicle other than the vehicle operated by the driver.

(t) This section does not apply to vehicles subject to Sections 14608 and 14609, if there has been compliance with the procedures in those sections.

**Comment.** Section 14607.6 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

A Chapter 5.1 case is within the original jurisdiction of the municipal court or of the superior court in a county in which there is no municipal court. Cal. Const. art. VI, § 10 (superior court jurisdiction); Code Civ. Proc. § 85.1 (municipal court jurisdiction). See also Code Civ. Proc. §§ 91, 904.5, 1085 (trial procedures and writ and appellate jurisdiction for Chapter 5.1 cases).

**Veh. Code § 40230 (amended). Review; filing of appeal; notice; evidence; fee**

SEC. \_\_\_\_\_. Section 40230 of the Vehicle Code is amended to read:

40230. (a) Within 30 calendar days after the mailing or personal delivery of the final decision described in subdivision (b) of Section 40215, the contestant may seek review by filing an appeal to be heard by the ~~justice or municipal court, or~~ by the superior court in a county in which there is no municipal court, where the same shall be heard de novo, except that the contents of the processing agency's file in the case shall be received in evidence. A copy of the notice of parking violation or, if the citation was issued electronically, a true and correct abstract containing the information set forth in the notice of parking violation shall be

admitted into evidence as prima facie evidence of the facts stated therein. A copy of the notice of appeal shall be served in person or by first-class mail upon the processing agency by the contestant. For purposes of computing the 30 calendar-day period, Section 1013 of the Code of Civil Procedure shall be applicable. A proceeding under this subdivision is a Chapter 5.1 case.

(b) The fee for filing the notice of appeal is twenty-five dollars (\$25). The court shall request that the processing agency's file on the case be forwarded to the court, to be received within 15 calendar days of the request. The court shall notify the contestant of the appearance date by mail or personal delivery. The court shall retain the twenty-five dollar (\$25) fee regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fee shall be reimbursed to the contestant by the processing agency. Any deposit of parking penalty shall be refunded by the processing agency in accordance with the judgment of the court.

(c) The conduct of the appeal under this section is a subordinate judicial duty that may be performed by traffic trial commissioners and other subordinate judicial officials at the direction of the presiding judge of the court.

(d) If no notice of appeal of the processing agency's decision is filed within the period set forth in subdivision (a), the decision shall be deemed final.

(e) If the parking penalty has not been deposited and the decision is against the contestant, the processing agency shall, after the decision becomes final, proceed to collect the penalty pursuant to Section 40220.

**Comment.** Section 40230 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

A Chapter 5.1 case is within the original jurisdiction of the municipal court or of the superior court in a county in which there is no municipal court. Cal. Const. art. VI, § 10 (superior court jurisdiction); Code Civ. Proc. § 85.1 (municipal court jurisdiction). See also Code Civ. Proc. §§ 91, 904.5, 1085 (trial procedures and writ and appellate jurisdiction for Chapter 5.1 cases).

#### **Veh. Code § 40256 (amended). Appeals**

SEC. \_\_\_\_\_. Section 40256 of the Vehicle Code is amended to read:

40256. (a) Within 20 days after the mailing of the final decision described in subdivision (b) of Section 40255, the contestant may seek review by filing an appeal to the ~~justice or municipal court, or to the superior court in a county in which there is no municipal court,~~ where the same shall be heard de novo, except that the contents of the processing agency's file in the case on appeal shall be received in evidence. A copy of the notice of toll evasion violation shall be admitted into evidence as prima facie evidence of the facts stated therein. A copy of the notice of appeal shall be served in person or by first-class mail upon the processing agency by the contestant. For purposes of computing the 20-day period, Section 1013 of the Code of Civil Procedure shall be applicable. A proceeding under this subdivision is a Chapter 5.1 case.

(b) The fee for filing the notice of appeal shall be twenty-five dollars (\$25). If the appellant prevails, this fee, together with any deposit of toll evasion penalty, shall be promptly refunded by the processing agency in accordance with the judgment of the court.

(c) The conduct of the hearing on appeal under this section is a subordinate judicial duty which may be performed by commissioners and other subordinate judicial officials at the direction of the presiding judge of the court.

(d) If no notice of appeal of the processing agency's decision is filed within the period set forth in subdivision (a), the decision shall be deemed final.

(e) If the toll evasion penalty has not been deposited and the decision is adverse to the contestant, the processing agency may, promptly after the decision becomes final, proceed to collect the penalty under Section 40267.

**Comment.** Section 40256 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

A Chapter 5.1 case is within the original jurisdiction of the municipal court or of the superior court in a county in which there is no municipal court. Cal. Const. art. VI, § 10 (superior court jurisdiction); Code Civ. Proc. § 85.1 (municipal court jurisdiction). See also Code Civ. Proc. §§ 91, 904.5, 1085 (trial procedures and writ and appellate jurisdiction for Chapter 5.1 cases).

**Veh. Code § 40502 (amended). Place to appear**

SEC. \_\_\_\_\_. Section 40502 of the Vehicle Code is amended to read:

40502. The place specified in the notice to appear shall be any of the following:

(a) Before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest is made.

(b) Upon demand of the person arrested, before a municipal court judge, superior court judge, or other magistrate, having jurisdiction of the offense at the county seat of the county in which the offense is alleged to have been committed. This subdivision applies only if the person arrested resides, or the person's principal place of employment is located, closer to the county seat than to the court or other magistrate, nearest or most accessible to the place where the arrest is made.

(c) Before a person authorized to receive a deposit of bail.

The clerk and deputy clerks of the ~~municipal and justice courts~~ municipal court, or of the superior court in a county in which there is no municipal court, are persons authorized to receive bail in accordance with a schedule of bail approved by the judges of those courts.

(d) Before the juvenile court, a juvenile court referee, or a juvenile traffic hearing officer within the county in which the offense charged is alleged to have been committed, if the person arrested appears to be under the age of 18 years. The juvenile court shall by order designate the proper person before whom the appearance is to be made.

In a county which has implemented the provisions of Section 603.5 of the Welfare and Institutions Code, if the offense alleged to have been committed by a minor is classified as an infraction under this code, or is a violation of a local ordinance involving the driving, parking, or operation of a motor vehicle, the citation shall be issued as provided in subdivision (a), (b), or (c); provided, however, that if the citation combines an infraction and a misdemeanor, the place specified shall be as provided in subdivision (d).

If the place specified in the notice to appear is within a judicial district or city and county where a department of the municipal court, or of the superior court in a county in which there is no municipal court, is to hold a night session within a period of not more than 10 days after the arrest, the notice to appear shall contain, in addition to the above, a statement notifying the person arrested that the person may appear before such a night session of the court.

**Comment.** Section 40502 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

☞ **Staff Note.** The last paragraph refers to both “district” and “department.”

*District.* The reference to “district” is unclear, but probably means “judicial district.” The amendment makes this clear.

*Department.* While we are amending references to the appellate and small claims “departments” to refer to the appellate or small claims “division,” the general reference to “department” in this section probably refers to “department” in a different sense — to denote a numbered or named branch, division, office, or session in a multiple judge court, or a session in which a judge exercises special subject matter jurisdiction, such as criminal, probate, or juvenile court. See 2 B. Witkin, *California Procedure Courts* §§ 219-220, at 287-88 (4th ed. 1996). Therefore, the reference need not be amended.

#### **Veh. Code § 40506.5 (amended). Request for continuance**

SEC. \_\_\_\_\_. Section 40506.5 of the Vehicle Code is amended to read:

40506.5. Prior to the date upon which ~~he~~ the defendant promised to appear and without depositing bail, the defendant may request a continuance of ~~his~~ the defendant’s written promise to appear. The judge of a ~~municipal or justice court~~ municipal court, or of a superior court in a county in which there is no municipal court, may authorize the clerk to grant the continuance.

**Comment.** Section 40506.5 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

#### **Veh. Code § 42008 (amended). County amnesty program for delinquent fines and bail**

SEC. \_\_\_\_\_. Section 42008 of the Vehicle Code is amended to read:

42008. (a) Any county may operate an amnesty program for delinquent fines and bail imposed for an infraction or misdemeanor violation of the Vehicle Code, except parking violations of the Vehicle Code and violations of Section 23103, 23104, 23152, or 23153. The program shall be implemented by the courts in accordance with Judicial Council guidelines, and shall apply to infraction or

misdemeanor violations of the Vehicle Code, except parking violations, upon which a fine or bail was delinquent on or before April 1, 1991.

(b) Under the amnesty program, any person owing a fine or bail due on or before April 1, 1991, that was imposed for an infraction or misdemeanor violation of the Vehicle Code, except violations of Section 23103, 23104, 23152, or 23153 or parking violations, may pay to the ~~municipal or justice court~~ municipal court, or to the superior court in a county in which there is no municipal court, the amount scheduled by the court, which shall be either (1) 70 percent of the total fine or bail or (2) the amount of one hundred dollars (\$100) for an infraction or five hundred dollars (\$500) for a misdemeanor. This amount shall be accepted by the court in full satisfaction of the delinquent fine or bail.

(c) No criminal action shall be brought against any person for a delinquent fine or bail paid under this amnesty program and no other additional penalties shall be assessed for the late payment of the fine or bail made under the amnesty program.

(d) Notwithstanding Section 1463 ~~of the Penal Code~~, the total amount of funds collected by the courts pursuant to the amnesty program created by this section shall be deposited in the county treasury.

**Comment.** Section 42008 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

The phrase "of the Penal Code" was inadvertently omitted from subdivision (d) when originally enacted.

**Veh. Code § 42203 (amended). Violations on certain county owned premises**

SEC. \_\_\_\_\_. Section 42203 of the Vehicle Code is amended to read:

42203. Notwithstanding Section 42201 or 42201.5, 50 percent of all fines and forfeitures collected in any county ~~municipal court or justice court in any county~~ municipal court, or in any superior court in a county in which there is no municipal court, upon conviction or upon the forfeiture of bail for violations of any provisions of the Vehicle Code, or of any local ordinance or resolution, relating to stopping, standing, or parking a vehicle, that have occurred upon the premises of facilities physically located in such county, but which are owned by another county, which other county furnishes law enforcement personnel for the premises, shall be transmitted pursuant to this section to the county which owns the facilities upon which the violations occurred. The court receiving such moneys shall, once each month, transmit such moneys received in the preceding month to the county treasurer of the county in which the court is located. Once each month in which ~~he~~ the county treasurer receives such moneys, the county treasurer shall transmit to the county which owns such facilities an amount equal to 50 percent thereof. The county owning such facilities shall, upon receipt of such moneys from the municipal court or ~~justice court~~ superior court of the county in which the facilities are physically located, deposit such moneys in its county treasury for use solely in meeting traffic control and law enforcement expenses on the premises upon which the violations occurred.



This section shall not apply when the county in which such facilities are located performs all law enforcement functions with respect to such facilities.

**Comment.** Section 44203 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

**Water Code § 310 (amended). Jurisdiction**

SEC. \_\_\_\_\_. Section 310 of the Water Code is amended to read:

310. All prosecutions for the violation of any of the provisions of this article shall be instituted in the justice court or municipal court, or the superior court in a county in which there is no municipal court, of the county in which the well is situated.

**Comment.** Section 310 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

**Water Code § 1100 (amended). Manner of taking deposition**

SEC. \_\_\_\_\_. Section 1100 of the Water Code is amended to read:

1100. The board or any party to a proceeding before it may, in any investigation or hearing, cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed by law for depositions in civil actions general jurisdiction case in the superior courts of this State.

**Comment.** Procedures for depositions under Section 1100 are the same as for general jurisdiction cases. A general jurisdiction case is an action other than a Chapter 5.1 case. Code Civ. Proc. § 85(b).

**Welf. & Inst. Code § 245 (amended). Jurisdiction.**

SEC. \_\_\_\_\_. Section 245 of the Welfare and Institutions Code is amended to read:

245. Each superior court shall exercise the jurisdiction conferred by this chapter, and while sitting in the exercise of such jurisdiction, shall be known and referred to as the juvenile court. Orders and judgments of the juvenile court are subject to the appellate jurisdiction of the court of appeal.

**Comment.** Section 245 makes clear that the court of appeal is the proper appellate court to review orders and judgments of the juvenile court. The Judicial Council already has enacted rules of practice and procedure governing juvenile court appeals. See Rules of Court, Rules 1435, 1436 and 1436.5.


☞ **Staff note.** This amendment, suggested by Professor Kelso, avoids any uncertainty over whether a juvenile court judgment is appealable to the appellate court pursuant to Section 904.1 of the Code of Civil Procedure. A juvenile court judgment would be subject to the existing Section 904.1 because it is a judgment of a superior court. However, as amended, Section 904.1 governs appeals taken in general jurisdiction “civil” matters. It isn’t entirely clear whether a juvenile court matter is “civil matter” for the purpose of this section.

**Welf. & Inst. Code § 255 (amended). Traffic hearing officers**

SEC. \_\_\_\_\_. Section 255 of the Welfare and Institutions Code is amended to read:

255. The judge of the juvenile court, or in counties having more than one judge of the juvenile court the presiding judge of the juvenile court or the senior judge if there is no presiding judge, may appoint one or more persons of suitable experience, who may be judges of the ~~municipal court or justices of the justice court~~ municipal court, or of the superior court in a county in which there is no municipal court, or a probation officer or assistant or deputy probation officers, to serve as traffic hearing officers on a full-time or part-time basis. A hearing officer shall serve at the pleasure of the appointing judge, and unless the appointing judge makes his an order terminating the appointment of a hearing officer, such hearing officer shall continue to serve as such until the appointment of his a successor. The board of supervisors shall determine whether any compensation shall be paid to hearing officers, not otherwise employed by a public agency or holding another public office, and shall establish the amounts and rates thereof. An appointment of a probation officer, assistant probation officer, or deputy probation officer as a traffic hearing officer may be made only with the consent of the probation officer.

**Comment.** Section 255 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justices' court. Cal. Const. art. VI, §§ 1, 5(b).

 **Staff Note.** It seems unlikely that a superior court judge sitting as a juvenile court judge in a unified county would appoint another superior court judge as a traffic hearing officer. However, in the sake of preserving the existing law, this section has been amended to permit such an appointment.

**Welf. & Inst. Code § 601.4 (amended). Compulsory education violations**

SEC. \_\_\_\_\_. Section 601.4 of the Welfare and Institutions Code is amended to read:

601.4. (a) The juvenile court judge may be assigned to sit as a municipal court judge, or as a superior court judge in a county in which there is no municipal court, to hear any complaint alleging that a parent, guardian, or other person having control or charge of a minor has violated Section 48293 of the Education Code. The jurisdiction of the juvenile court granted by this section shall not be exclusive and the charge may be prosecuted instead in a municipal ~~or justice~~ court, or in a superior court in a county in which there is no municipal court. However, upon motion, that action shall be transferred to the juvenile court.

(b) Notwithstanding Section 737 of the Penal Code, a violation of Section 48293 of the Education Code may be prosecuted pursuant to subdivision (a), by written complaint filed in the same manner as an infraction may be prosecuted ~~in a municipal or justice court~~. The juvenile court judge, sitting as a municipal court judge, or as a superior court judge in a county in which there is no municipal court, may coordinate the action involving the minor with any action involving the parent, guardian, or other person having control or charge of the minor. Both matters may be heard and decided at the same time unless the parent, guardian, other person having control or charge of the minor, or any member of the press or

public objects to closed hearing of the proceedings charging violation of Section 48293 of the Education Code.

**Comment.** Section 601.4 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

☞ **Staff Note.** Prior to the enactment of this section, child truancy cases were in the jurisdiction of the juvenile court, while cases involving parents or guardians charged with violation of school attendance laws were under the jurisdiction of a municipal or justice court. This section, and a companion amendment to Education Code Section 48295 allow a juvenile court judge to sit as a municipal court judge for the purpose of hearing a complaint against a parent or guardian for violation of Education Code Section 48293, concerning child truancy.

Note that in a unified court, operation of this statute may seem a bit absurd — a superior court judge, sitting as a juvenile court judge may sit as a superior court judge, etc. However, the jurisdictional and procedural distinctions between sitting as a juvenile court judge and sitting as a superior court judge are significant and must be preserved.

**Welf. & Inst. Code § 603.5 (amended). Vehicle Code infractions or violation of local ordinances involving motor vehicles by minor**

SEC. \_\_\_\_\_. Section 603.5 of the Welfare and Institutions Code is amended to read:

603.5. (a) Notwithstanding any other provision of law, in counties which adopt the provisions of this section, jurisdiction over the case of a minor alleged to have committed only a violation of the Vehicle Code classified as an infraction or a violation of a local ordinance involving the driving, parking, or operation of a motor vehicle, is with the municipal court, or with the superior court in a county in which there is no municipal court, except that the ~~municipal~~ court may refer to the juvenile court for adjudication, cases involving a minor who has been adjudicated a ward of the juvenile court, or who has other matters pending in the juvenile court.

(b) The cases specified in subdivision (a) shall not be governed by the procedures set forth in the juvenile court law.

(c) Any provisions of juvenile court law requiring that confidentiality be observed as to cases and proceedings, prohibiting or restricting the disclosure of juvenile court records, or restricting attendance by the public at juvenile court proceedings shall not apply. The procedures for bail specified in Chapter 1 (commencing with Section 1268) of Title 10 of Part 2 of the Penal Code shall apply.

(d) The provisions of this section shall apply in a county in which the board of supervisors, with the concurrence of the presiding judges of the superior, juvenile, and any municipal courts, adopts a resolution making the section applicable in the county as to any matters to be heard by the municipal or superior court pursuant to this section, or in which a trial court coordination plan has been approved by the Judicial Council pursuant to Section 68112 of the Government Code that provides for the coordination of matters pursuant to this section.

**Comment.** Section 603.5 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

**Welf. & Inst. Code § 661 (amended). Notice and citation**

SEC. \_\_\_\_\_. Section 661 of the Welfare and Institutions Code is amended to read:

661. In addition to the notice provided in Sections 658 and 659, the juvenile court may issue its citation directing any parent, guardian, or foster parent of the person concerning whom a petition has been filed to appear at the time and place set for any hearing or financial evaluation under the provisions of this chapter, including a hearing under the provisions of Section 257, and directing any person having custody or control of the minor concerning whom the petition has been filed to bring the minor with him or her. The notice shall in addition state that a parent, guardian, or foster parent may be required to participate in a counseling or education program with the minor concerning whom the petition has been filed. If the proceeding is one alleging that the minor comes within the provisions of Section 601, the notice shall in addition contain notice to the parent, guardian, or other person having control or charge of the minor that failure to comply with the compulsory school attendance laws is an infraction, which may be charged and prosecuted before the juvenile court judge sitting as a municipal court judge, or as a superior court judge in a county in which there is no municipal court. In those cases, the notice shall also include notice that the parent, guardian, or other person having control or charge of the minor has the right to a hearing on the infraction before a judge different than the judge who has heard or is to hear the proceeding pursuant to Section 601. The notice shall explain the provisions of Section 170.6 of the Code of Civil Procedure. Personal service of the citation shall be made at least 24 hours before the time stated therein for the appearance.

**Comment.** Section 661 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

**Welf. & Inst. Code § 742.16 (amended). Restitution**

SEC. \_\_\_\_\_. Section 742.16 of the Welfare and Institutions Code is amended to read:

742.16. (a) If a minor is found to be a person described in Section 602 by reason of the commission of an act prohibited by Section 594, 594.3, 594.4, 640.5, 640.6 or 640.7 of the Penal Code, and the court does not remove the minor from the physical custody of the parent or guardian, the court as a condition of probation, except in any case in which the court makes a finding and states on the record its reasons why that condition would be inappropriate, shall require the minor to wash, paint, repair, or replace the property defaced, damaged, or destroyed by the minor or otherwise pay restitution to the probation officer of the county for disbursement to the owner or possessor of the property or both. In any case in which the minor is not granted probation or in which the minor's cleanup, repair, or replacement of the property will not return the property to its condition before it was defaced, damaged, or destroyed, the court shall make a

finding of the amount of restitution that would be required to fully compensate the owner and possessor of the property for their damages. The court shall order the minor or the minor's estate to pay that restitution to the probation officer of the county for disbursement to the owner or possessor of the property or both, to the extent the court determines that the minor or ~~his~~ the minor's estate have the ability to do so, except in any case in which the court makes a finding and states on the record its reasons why full restitution would be inappropriate. If full restitution is found to be inappropriate, the court, shall require the minor to perform specified community service, except in any case in which the court makes a finding and states on the record its reasons why that condition would be inappropriate.

(b) If a minor is found to be a person described in Section 602 by reason of the commission of an act prohibited by Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7 of the Penal Code, and the graffiti or other material inscribed by the minor has been removed, or the property defaced by the minor has been repaired or replaced by a public entity that has elected, pursuant to Section 742.14, to have the probation officer of the county recoup its costs through proceedings in accordance with this section and has made cost findings in accordance with subdivisions (c) or (d) of Section 742.14, the court shall determine the total cost incurred by the public entity for said removal, repair, or replacement, using, if applicable, the cost findings most recently adopted by the public entity pursuant to subdivision (c) or (d) of Section 742.14. The court shall order the minor or the minor's estate to pay those costs to the probation officer of the county to the extent the court determines that the minor or the minor's estate have the ability to do so.

(c) If the minor is found to be a person described in Section 602 by reason of the commission of an act prohibited by Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7 of the Penal Code and the minor was identified or apprehended by the law enforcement agency of a city or county that has elected, pursuant to Section 742.14, to have the probation officer of the county recoup its costs through proceedings in accordance with this section, the court shall determine the cost of identifying or apprehending the minor, or both, using, if applicable, the cost findings adopted by the city or county pursuant to subdivision (b) of Section 742.14. The court shall order the minor or the minor's estate to pay those costs to the probation officer of the county to the extent the court determines that the minor or the minor's estate have the ability to do so.

(d) If the court determines that the minor or the minor's estate is unable to pay in full the costs and damages determined pursuant to subdivisions (a), (b), and (c), and if the minor's parent or parents have been cited into court pursuant to Section 742.18, the court shall hold a hearing to determine the liability of the minor's parent or parents pursuant to Section 1714.1 of the Civil Code for those costs and damages. Except when the court makes a finding setting forth unusual circumstances in which parental liability would not serve the interests of justice,

the court shall order the minor's parent or parents to pay those costs and damages to the probation officer of the county to the extent the court determines that the parent or parents have the ability to pay, if the minor was in the custody or control of the parent or parents at the time he or she committed the act that forms the basis for the finding that the minor is a person described in Section 602. In evaluating the parent's or parents' ability to pay, the court shall take into consideration the family income, the necessary obligations of the family, and the number of persons dependent upon this income. A proceeding under this subdivision is a Chapter 5.1 case.

(e) The hearing described in subdivision (d) may be held immediately following the disposition hearing or at a later date, at the option of the court.

(f) If the amount of costs and damages sought to be recovered in the hearing pursuant to subdivision (d) is five thousand dollars (\$5,000) or less, the parent or parents may not be represented by counsel and the probation officer of the county shall be represented by his or her nonattorney designee. The court shall conduct such a hearing in accordance with Sections 116.510 and 116.520 of the Code of Civil Procedure. Notwithstanding the foregoing, if the court determines that a parent cannot properly present his or her defense, the court may, in its discretion, allow another individual to assist that parent. In addition, a husband or wife may appear and participate in the hearing on behalf of his or her spouse if the representative's spouse has given his or her consent and the court determines that the interest of justice would be served thereby.

(g) If the amount of costs and damages sought to be recovered in the hearing pursuant to subdivision (d) exceeds five thousand dollars (\$5,000), the parent or parents may be represented by counsel of his or her or their own choosing, and the probation officer of the county shall be represented by the district attorney or an attorney or nonattorney designee of the probation officer. The parent or parents shall not be entitled to court-appointed counsel or to counsel compensated at public expense.

(h) At the hearing conducted pursuant to subdivision (d), there shall be a presumption affecting the burden of proof that the findings of the court made pursuant to subdivisions (a), (b), and (c) represent the actual damages and costs attributable to the act of the minor that forms the basis of the finding that the minor is a person described in Section 602.

(i) If the parent or parents after having been cited to appear pursuant to Section 742.18, fail to appear as ordered, the court shall order the parent or parents to pay the full amount of the costs and damages determined by the court pursuant to subdivisions (a), (b), and (c).

(j) Execution may be issued on an order issued by the court pursuant to this section in the same manner as on a judgment in a civil action, including any balance unpaid at the termination of the court's jurisdiction over the minor.

(k) At any time prior to the satisfaction of a judgment entered pursuant to this section, a person against whom the judgment was entered may petition the

rendering court to modify or vacate the judgment on the showing of a change in circumstances relating to his or her ability to pay the judgment.

(l) For purposes of a hearing conducted pursuant to subdivision (d), the judge of the juvenile court shall have the jurisdiction of a judge of the municipal court, or of the superior court in a county in which there is no municipal court, and where the amount of the demand is five thousand dollars (\$5,000) or less, the judge of the juvenile court shall have the powers of a judge presiding over the small claims ~~court~~ division.

(m) Nothing in this section shall be construed to limit the authority of a juvenile court to provide conditions of probation.

(n) The options available to the court pursuant to subdivisions (a), (b), (c), (d), and (k), to order payment by the minor and his or her parent or parents of less than the full costs described in subdivisions (a), (b), and (c), on grounds of financial inability or for reasons of justice, shall not be available to a municipal court in an ordinary civil proceeding pursuant to subdivision (b) of Section 1714.1 of the Civil Code, except that in any proceeding pursuant to either subdivision (b) of Section 1714.1 of the Civil Code or this section, the maximum amount that a parent or a minor may be ordered to pay shall not exceed twenty thousand dollars (\$20,000) for each tort of the minor.

**Comment.** Section 742.16 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). Subdivision (l) is also amended to correct the reference to the small claims court, which is a division of the municipal court or, in a county in which there is no municipal court, a division of the superior court. Code Civ. Proc. § 116.210 (small claims division).

☞ **Staff Note.** A proceeding under subdivision (d) appears to be a Chapter 5.1 case. When the juvenile court judge sits to determine the liability of parents or guardians the judge has the jurisdiction of a municipal court judge. See subdivision (l). The amount in controversy cannot exceed \$25,000. See subdivision (d), referring to Civ. Code § 1714.1.

**Welf. & Inst. Code § 3050 (amended). Possible narcotic addiction of person convicted of misdemeanor or infraction**

SEC. \_\_\_\_\_. Section 3050 of the Welfare and Institutions Code is amended to read:

3050. Upon conviction of a defendant of a misdemeanor or infraction ~~any crime in a municipal or justice court~~, or following revocation of probation previously granted for a misdemeanor or infraction, whether or not sentence has been imposed, if it appears to the judge that the defendant may be addicted or by reason of repeated use of narcotics may be in imminent danger of becoming addicted to narcotics, such judge shall adjourn the proceedings or suspend the imposition or execution of the sentence, certify the defendant to the superior court and order the district attorney to file a petition for a commitment of the defendant to the Director of Corrections for confinement in the narcotic detention, treatment and rehabilitation facility.

Upon the filing of such a petition, the superior court shall order the defendant to be examined by one physician. At the request of the defendant, the court shall

order the defendant to be examined by a second physician. At least one day before the time of the examination as fixed by the court order, a copy of the petition and order for examination shall be personally delivered to the defendant. A written report of the examination by the physician or physicians shall be delivered to the court, and if the report is to the effect that the person is not addicted nor in imminent danger of addiction, it shall so certify and return the defendant to the ~~municipal or justice~~ court which certified such defendant to the superior court for such further proceedings as the judge of such ~~municipal or justice~~ court deems warranted. If the report is to the effect that the defendant is addicted or is by reason of the repeated use of narcotics in imminent danger of addiction, further proceedings shall be conducted in compliance with Sections 3104, 3105, 3106, and 3107.

If, after a hearing, the judge finds that the defendant is a narcotic addict, or is by reason of the repeated use of narcotics in imminent danger of becoming addicted thereto, and is not ineligible for the program under the application of Section 3052, he or she shall make an order committing such defendant to the custody of the Director of Corrections for confinement in the facility until such time as he or she is discharged pursuant to Article 5 (commencing with Section 3200), except as this chapter permits earlier discharge. If, upon the hearing, the judge shall find that the defendant is not a narcotic addict and is not in imminent danger of becoming addicted to narcotics, the judge shall so certify and return the defendant to the ~~municipal or justice~~ court which certified the defendant to the superior court for such further proceedings as the judge of the ~~municipal or justice~~ court which certified the defendant to the superior court deems warranted.

If a person committed pursuant to this section is dissatisfied with the order of commitment, he or she may within 10 days after the making of such order, file a written demand for a jury trial in compliance with Section 3108.

**Comment.** Section 3050 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

**Welf. & Inst. Code § 3051 (amended). Possible narcotic addiction of person convicted of felony**

SEC. \_\_\_\_\_. Section 3051 of the Welfare and Institutions Code is amended to read:

3051. Upon conviction of a defendant for ~~any crime in any superior court, a felony~~, or following revocation of probation previously granted ~~for a felony~~, and upon imposition of sentence, if it appears to the judge that the defendant may be addicted or by reason of repeated use of narcotics may be in imminent danger of becoming addicted to narcotics the judge shall suspend the execution of the sentence and order the district attorney to file a petition for commitment of the defendant to the Director of Corrections for confinement in the narcotic detention, treatment, and rehabilitation facility unless, in the opinion of the judge,



the defendant's record and probation report indicate such a pattern of criminality that he or she does not constitute a fit subject for commitment under this section.

Upon the filing of the petition, the court shall order the defendant to be examined by one physician. However, the examination may be waived by a defendant if the defendant has been examined in accordance with Section 1203.03 of the Penal Code and that examination encompassed whether defendant is addicted or is in imminent danger of addiction, and if the defendant is represented by counsel and competent to understand the effect of the waiver. In cases where a physician's report is waived by the defendant, the Department of Corrections may perform an evaluation and provide a report as to the defendant's addiction or imminent danger of addiction. If the Department of Corrections determines that the defendant is not addicted or in imminent danger of addiction, the defendant shall be returned to the sentencing court for resentencing. The examination may also be waived upon stipulation by the defendant, his or her attorney, the prosecutor, and the court that the defendant is addicted or is in imminent danger of addiction. If a physician's report is prepared, at the request of the defendant, the court shall order the defendant to be examined by a second physician. At least one day before the time of the examination as fixed by the court order, a copy of the petition and order for examination shall be personally delivered to the defendant. A written report of the examination by the physician or physicians shall be delivered to the court, and if the report is to the effect that the person is not addicted nor in imminent danger of addiction, it shall so certify and return the defendant to the department of the superior court that directed the filing of the petition for the ordering of the execution of the sentence. The court may, unless otherwise prohibited by law, modify the sentence or suspend the imposition of the sentence. If the report is to the effect that the defendant is addicted or is by reason of the repeated use of narcotics in imminent danger of addiction, further proceedings shall be conducted in compliance with Sections 3104, 3105, 3106, and 3107.

If, after a hearing, the judge finds that the defendant is a narcotic addict, or is by reason of the repeated use of narcotics in imminent danger of becoming addicted to narcotics, the judge shall make an order committing the person to the custody of the Director of Corrections for confinement in the facility until a time that he or she is discharged pursuant to Article 5 (commencing with Section 3200), except as this chapter permits earlier discharge. If, upon the hearing, the judge finds that the defendant is not a narcotic addict and is not in imminent danger of becoming addicted to narcotics, the judge shall so certify and return the defendant to the department of the superior court that directed the filing of the petition for the ordering of execution of sentence. The court may, unless otherwise prohibited by law, modify the sentence or suspend the imposition of the sentence.

If a person committed pursuant to this section is dissatisfied with the order of commitment, he or she may, within 10 days after the making of the order, file a written demand for a jury trial in compliance with Section 3108.

A psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code may perform the examination specified in this section and Section 3050. This section does not expand the scope of practice of psychologists as set forth in Section 2903 of the Business and Professions Code nor does this section allow a psychologist to perform any activity that would otherwise require a physician's and surgeon's license.

**Comment.** Section 3051 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

**Welf. & Inst. Code § 3200 (amended). Recommendation of discharge**

SEC. \_\_\_\_\_. Section 3200 of the Welfare and Institutions Code is amended to read:

3200. (a) If at any time the Director of Corrections is of the opinion that a person committed pursuant to Article 3 (commencing with Section 3100) while in outpatient status has abstained from the use of narcotics, other than as medically prescribed in a narcotic treatment program pursuant to Section 3154, for at least six consecutive months and has otherwise complied with the conditions of his or her release, the director shall recommend to the Narcotic Addict Evaluation Authority that the person be discharged from the program. If the authority concurs in the opinion of the director, it shall discharge the person from the program.

(b) If at any time the director is of the opinion that a person committed for a period of 24 months, or less, pursuant to Article 2 (commencing with Section 3050) while in outpatient status has abstained from the use of narcotics, other than as medically prescribed in a narcotic treatment program pursuant to Section 3154, for at least 12 consecutive months and has otherwise complied with the conditions of his or her release, or if at any time the director is of the opinion that a person committed for a period of more than 24 months pursuant to Article 2 (commencing with Section 3050) while in outpatient status has abstained from the use of narcotics, other than as medically prescribed in a narcotic treatment program pursuant to Section 3154, for at least 16 consecutive months and has otherwise complied with the conditions of his or her release, the director shall so advise the Narcotic Addict Evaluation Authority. If the authority concurs in the opinion of the director, it shall file with the superior court of the county in which the person was committed a certificate alleging those facts and recommending to the court the discharge of the person from the program. The authority shall serve a copy of the certificate upon the district attorney of the county. Upon the filing of the certificate, the court shall discharge the person from the program. The court may, unless otherwise prohibited by law, modify the sentence, dismiss the criminal charges of which the person was convicted, or suspend further proceedings, as it deems warranted in the interests of justice. Where the person was certified to the

superior court ~~from a municipal or justice court~~, pursuant to Section 3050 the person shall be returned to ~~that court~~ the court that certified the person, which may dismiss the original charges. In any case where the criminal charges are not dismissed and the person is sentenced thereon, time served in custody while under commitment pursuant to Article 2 (commencing with Section 3050) shall be credited on the sentence. The dismissal shall have the same force and effect as a dismissal under Section 1203.4 of the Penal Code, except the conviction is a prior conviction for purposes of Division 10 (commencing with Section 11000) of the Health and Safety Code.

**Comment.** Section 3200 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

## JUSTICE COURT CONFORMING REVISIONS

### **Bus. & Prof. Code § 6152 (amended). Runners and cappers**

SEC. \_\_\_\_\_. Section 6152 of the Business and Professions Code is amended to read:

6152. (a) It is unlawful for:

(1) Any person, in ~~his~~ an individual capacity or in ~~his~~ a capacity as a public or private employee, or for any firm, corporation, partnership or association to act as a runner or capper for any such attorneys or to solicit any business for any such attorneys in and about the state prisons, county jails, city jails, city prisons, or other places of detention of persons, city receiving hospitals, city and county receiving hospitals, county hospitals, ~~justice courts~~, municipal courts, superior courts, or in any public institution or in any public place or upon any public street or highway or in and about private hospitals, sanitariums or in and about any private institution or upon private property of any character whatsoever.

(2) Any person to solicit another person to commit or join in the commission of a violation of subdivision (a).

(b) A general release from a liability claim obtained from any person during the period of the first physical confinement, whether as an inpatient or outpatient, in a clinic or health facility, as defined in Sections 1203 and 1250 of the Health and Safety Code, as a result of the injury alleged to have given rise to such claim and primarily for treatment of such injury, is presumed fraudulent if such release is executed within 15 days after the commencement of such confinement or prior to release from such confinement, whichever occurs first.

(c) Nothing in this section shall be construed to prevent the recommendation of professional employment where such recommendation is not prohibited by the Rules of Professional Conduct of the State Bar of California.

(d) Nothing in this section shall be construed to mean that a public defender or assigned counsel may not make known his or her services as a criminal defense attorney to persons unable to afford legal counsel whether such persons are in custody or otherwise.

**Comment.** Section 6152 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

### **Bus. & Prof. Code § 6302.5 (amended). Board of law library trustees of Los Angeles County**

SEC. \_\_\_\_\_. Section 6302.5 of the Business and Professions Code is amended to read:

6302.5. Notwithstanding any other provision of law, in Los Angeles County appointments made by judges of the superior court, or municipal court, ~~and justice court~~ shall be for a term of four years, and appointments made by the board of supervisors of the county shall be for a term of two years.

Trustees who are incumbents on the effective date of this section shall be considered to have started their terms on the effective date of this section.

At the first regular meeting following the effective date of this section, the members appointed by the judiciary shall classify themselves by lot so that three members shall serve for four years, and two members for two years. Thereafter the term of office of each member so appointed shall be four years.

At the first regular meeting following the effective date of this section, the members appointed by the board of supervisors shall classify themselves by lot so that one member shall serve for two years, and one member for one year. Thereafter the term of office of each member so appointed shall be two years.

**Comment.** Section 6302.5 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

**Bus. & Prof. Code § 6321 (amended). Filing fee**

SEC. \_\_\_\_\_. Section 6321 of the Business and Professions Code is amended to read:

6321. On the commencement in, or the removal to, the superior court of any county in this State, of any civil action, proceeding, or appeal, and on the commencement in, or removal to, the municipal court ~~or justice court~~ in any county, of any civil action or proceeding, the party instituting such proceeding, or filing the first papers, shall pay to the clerk of the court, for the law library, on filing the first papers, the sum of the dollar (\$1) as costs, in addition to the fees fixed by law.

**Comment.** Section 6321 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

**Bus. & Prof. Code § 6322 (amended). First appearance fee**

SEC. \_\_\_\_\_. Section 6322 of the Business and Professions Code is amended to read:

6322. Thereafter, any defendant, respondent, adverse party, or intervening party, on his first appearance in a superior, ~~or municipal, or justice~~ or municipal court, or any number of such defendants, respondents, or parties, appearing jointly, shall pay to the clerk of the court, for the law library, the sum of one dollar (\$1) as costs, in addition to the fees fixed by law.

**Comment.** Section 6322 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

**Bus. & Prof. Code § 25762 (amended). Fines and forfeitures of bail**

SEC. \_\_\_\_\_. Section 25762 of the Business and Professions Code is amended to read:

25762. All fines and forfeitures of bail imposed for a violation of this division and collected in any court other than a municipal court ~~or a justice court~~ shall be paid to the county treasurer of the county in which the court is held.

All fines and forfeitures of bail imposed for violation of this division and collected upon conviction or upon forfeiture of bail, together with money deposited as bail, in any municipal court ~~or justice court~~ shall be deposited with the county treasurer of the county in which such court is situated and the money deposited shall be distributed and disposed of pursuant to Penal Code Section 1463.

**Comment.** Section 25762 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

**Civ. Code § 1181 (amended). Proof or acknowledgment of instrument**

SEC. \_\_\_\_\_. Section 1181 of the Civil Code is amended to read:

1181. The proof or acknowledgment of an instrument may be made before a notary public at any place within this state, or within the county or city and county in this state in which the officer specified below was elected or appointed, before either:

- (a) A clerk of a ~~superior, municipal, or justice~~ superior or municipal court.
- (b) A county clerk.
- (c) A court commissioner.
- (d) A judge or retired judge of a municipal or justice court.
- (e) A district attorney.
- (f) A clerk of a board of supervisors.
- (g) A city clerk.
- (h) A county counsel.
- (i) A city attorney.

**Comment.** Subdivision (a) of Section 1181 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b). The reference to a retired judge of a justice court is maintained in subdivision (d) to enable retired judges of justice courts to continue to take proofs or acknowledgments of instruments.

**Civ. Code § 1812.10 (amended). Action on contract or installment account**

SEC. \_\_\_\_\_. Section 1812.10 of the Civil Code is amended to read:

1812.10. An action on a contract or installment account under the provisions of this chapter shall be tried in the county in which the contract was in fact signed by the buyer, in the county in which the buyer resided at the time the contract was entered into, in the county in which the buyer resides at the commencement of the action, or in the county in which the goods purchased pursuant to such contract have been so affixed to real property as to become a part of such real property.

If within any such county there is a municipal ~~or justice~~ court, having jurisdiction of the subject matter, established in the city and county or judicial district in which the contract was in fact signed by the buyer, or in which the buyer resided at the time the contract was entered into, or in which the buyer resides at the commencement of the action or in which the goods purchased pursuant to such contract have been so affixed to real property as to become a

part of such real property, then such court is the proper court for the trial of such action. Otherwise, any municipal ~~or justice~~ court in such county, having jurisdiction of the subject matter, is the proper court for the trial thereof.

In any action subject to the provisions of this section, concurrently with the filing of the complaint, the plaintiff shall file an affidavit stating facts showing that the action has been commenced in a county or judicial district described in this section as a proper place for the trial of the action. Such facts may be stated in a verified complaint and shall not be stated on information or belief. When such affidavit is filed with the complaint, a copy thereof shall be served with the summons. If a plaintiff fails to file the affidavit or state facts in a verified complaint required by this section, no further proceedings shall be had, but the court shall, upon its own motion or upon motion of any party, dismiss any such action without prejudice; however, the court may, on such terms as may be just, permit the affidavit to be filed subsequent to the filing of the complaint and a copy of such affidavit shall be served on the defendant. The time to answer or otherwise plead shall date from such service.

**Comment.** Section 1812.10 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b). In a county in which there is no municipal court, the superior court has jurisdiction of matters that would be within the subject matter jurisdiction of the municipal court. Cal. Const. art. VI, § 10 (superior court jurisdiction); Code Civ. Proc. § 85.1 (municipal court jurisdiction).

**Civ. Code § 2984.4 (amended). Action on contract or purchase order**

SEC. \_\_\_\_\_. Section 2984.4 of the Civil Code is amended to read:

2984.4. An action on a contract or purchase order under the provisions of this chapter shall be tried in the county in which the contract or purchase order was in fact signed by the buyer, in the county in which the buyer resided at the time the contract or purchase order was entered into, in the county in which the buyer resides at the commencement of the action or in the county in which the motor vehicle purchased pursuant to such contract or purchase order is permanently garaged.

In any action involving multiple claims, or causes of action, venue shall lie in such counties so long as there is at least one claim or cause of action arising from a contract subject to the provisions of this chapter.

If within any such county there is a municipal ~~or justice~~ court, having jurisdiction of the subject matter, established in the judicial district in which the contract, conditional sale contract, or purchase order was in fact signed by the buyer, or in which the buyer resided at the time the contract, conditional sale contract, or purchase order was entered into, or in which the buyer resides at the commencement of the action, or in which the motor vehicle purchased pursuant to such contract is permanently garaged, such court is the proper court for the trial of the action. Otherwise, any municipal ~~or justice~~ court in such county, having jurisdiction of the subject matter, is the proper court for the trial of the action.

In any action subject to the provisions of this section, concurrently with the filing of the complaint, the plaintiff shall file an affidavit stating facts showing that the action has been commenced in a county or judicial district described in this section as a proper place for the trial of the action. Such facts may be stated in a verified complaint and shall not be stated on information or belief. When such affidavit is filed with the complaint, a copy thereof shall be served with the summons. If a plaintiff fails to file the affidavit or state facts in a verified complaint required by this section, no further proceedings shall be had, but the court shall, upon its own motion or upon motion of any party, dismiss any such action without prejudice; however, the court may, on such terms as may be just, permit the affidavit to be filed subsequent to the filing of the complaint and a copy of such affidavit shall be served on the defendant. The time to answer or otherwise plead shall date from such service.

**Comment.** Section 2984.4 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b). In a county in which there is no municipal court, the superior court has jurisdiction of matters that would be within the subject matter jurisdiction of the municipal court. Cal. Const. art. VI, § 10 (superior court jurisdiction); Code Civ. Proc. § 85.1 (municipal court jurisdiction).

**Educ. Code § 48294 (amended). Payment of fines**

SEC. \_\_\_\_\_. Section 48294 of the Education Code is amended to read:

48294. All fines paid as penalties for the violation of any of the provisions of this chapter shall, when collected or received, be paid over by the justice court or officer receiving them to the treasurer of the city, county, or city and county, in which the offense was committed, to be placed to the credit of the school fund of the school district in which the offense was committed. Such moneys shall be used to support the activities of the school attendance review board prescribed by Section 48291 and the parent education and counseling program prescribed by Section 48293.

**Comment.** Section 48294 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

**Elec. Code § 325 (amended). Judicial district**

SEC. \_\_\_\_\_. Section 325 of the Elections Code is amended to read:

325. “Judicial district” includes municipal court district ~~and justice court district~~.

**Comment.** Section 325 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

☞ **Staff Note.** Prof. Kelso comments that it is not entirely clear why this definition is needed. On the one hand, it is underinclusive because “judicial district” also includes superior court and court of appeal districts. On the other hand, the California Constitution already refers to municipal court districts, so it is not immediately obvious why an underinclusive statutory definition was required.

However, in researching the codes covered in this draft, the staff could find only two instances where “judicial district” might have been intended to mean “superior court district,” (see Food & Agric. Code § 31622; Insurance Code § 11542.2 (not amended in this



draft)); and one where “judicial district” means “court of appeal district.” See Pub. Util. Code § 1756. Furthermore, while the California Constitution does refer to “municipal court districts,” it does not equate them with “judicial districts.”

**Elec. Code § 327 (amended). Judicial officer**

SEC. \_\_\_\_\_. Section 327 of the Elections Code is amended to read:

327. “Judicial officer” means any Justice of the Supreme Court, justice of a court of appeal, judge of the superior court, or judge of a municipal court ~~, or judge of a justice court.~~

**Comment.** Section 327 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

**Elec. Code § 8203 (amended). Incumbents**

SEC. \_\_\_\_\_. Section 8203 of the Elections Code is amended to read:

8203. In any county or any judicial district in which only the incumbent has filed nomination papers for the office of superior court judge, judge or municipal court judge, ~~or justice court judge,~~ his or her name shall not appear on the ballot unless there is filed with the elections official, within 10 days after the final date for filing nomination papers for the office, a petition indicating that a write-in campaign will be conducted for the office and signed by 100 registered voters qualified to vote with respect to the office.

If a petition indicating that a write-in campaign will be conducted for the office at the general election, signed by 100 registered voters qualified to vote with respect to the office, is filed with the elections official not less than 83 days before the general election, the name of the incumbent shall be placed on the general election ballot if it has not appeared on the direct primary election ballot.

If, in conformity with this section, the name of the incumbent does not appear either on the primary ballot or general election ballot, the elections official, on the day of the general election, shall declare the incumbent reelected. Certificates of election specified in Section 15401 or 15504 shall not be issued to a person reelected pursuant to this section before the day of the general election.

**Comment.** Section 8203 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

**Elec. Code § 13111 (amended). Names on ballot**

SEC. \_\_\_\_\_. Section 13111 of the Elections Code is amended to read:

13111. Candidates for each office shall be printed on the ballot in accordance with the following rules:

(a) The names of presidential candidates to whom candidates for delegate to the national convention are pledged, and the names of chairpersons of groups of candidates for delegate expressing no preference, shall be arranged on the primary election ballot by the Secretary of State by the names of the candidates in accordance with the randomized alphabet as provided for in Section 13112 in the case of the ballots for the First Assembly District. Thereafter, for each succeeding

Assembly district, the name appearing first in the last preceding Assembly district shall be placed last, the order of the other names remaining unchanged.

(b) The names of the pairs of candidates for President and Vice President shall be arranged on the general election ballot by the Secretary of State by the names of the candidates for President in accordance with the randomized alphabet as provided for in Section 13112 in the case of the ballots for the First Assembly District. Thereafter, for each succeeding Assembly district, the pair appearing first in the last preceding Assembly district shall be placed last, the order of the other pairs remaining unchanged.

(c) In the case of all other offices, the candidates for which are to be voted on throughout the state, the Secretary of State shall arrange the names of the candidates for the office in accordance with the randomized alphabet as provided for in Section 13112 for the First Assembly District. Thereafter, for each succeeding Assembly district, the name appearing first in the last preceding Assembly district shall be placed last, the order of the other names remaining unchanged.

(d) If the office is that of Representative in Congress or member of the State Board of Equalization, the Secretary of State shall arrange the names of candidates for the office in accordance with the randomized alphabet as provided for in Section 13112 for that Assembly district that has the lowest number of all the Assembly districts in which candidates are to be voted on. Thereafter, for each succeeding Assembly district in which the candidates are to be voted on, the names appearing first in the last preceding Assembly district shall be placed last, the order of the other names remaining unchanged.

(e) If the office is that of State Senator or Member of the Assembly, the county elections official shall arrange the names of the candidates for the office in accordance with the randomized alphabet as provided for in Section 13112, unless the district encompasses more than one county, in which case the arrangement shall be made pursuant to subdivision (i).

(f) If the office is to be voted upon wholly within, but not throughout, one county, as in the case of municipal, district, county supervisor, municipal court, ~~justice court~~, and county central committee offices, the official responsible for conducting the election shall determine the order of names in accordance with the randomized alphabet as provided for in Section 13112.

(g) If the office is to be voted on throughout a single county, and there are not more than four Assembly districts wholly or partly in the county, the county elections official shall determine the order of names in accordance with the randomized alphabet as provided for in Section 13112 for the first supervisorial district. Thereafter, for each succeeding supervisorial district, the name appearing first for each office in the last preceding supervisorial district shall be placed last, the order of the other names remaining unchanged.

(h) If there are five or more Assembly districts wholly or partly in the county, an identical procedure shall be followed, except that rotation shall be by Assembly district, commencing with the Assembly district which has the lowest number.

(i) Except as provided in subdivision (d) of Section 13112, if the office is that of State Senator or Member of the Assembly, and the district includes more than one county, the county elections official in each county shall conduct a drawing of the letters of the alphabet, pursuant to the same procedures specified in Section 13112. The results of the drawing shall be known as a county randomized ballot and shall be used only to arrange the names of the candidates when the district includes more than one county.

(j) If the office is that of Justice of the California Supreme Court or a Court of Appeal, the appropriate elections officials shall arrange the names of the candidates for the office in accordance with the randomized alphabet as provided for in Section 13112. However, the names of the judicial candidates shall not be rotated among the applicable districts.

**Comment.** Section 13111 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

**Elec. Code § 13107 (amended). Ballot designations**

SEC. \_\_\_\_\_. Section 13107 of the Elections Code is amended to read:

13107. (a) With the exception of candidates for Justice of the State Supreme Court or court of appeal, immediately under the name of each candidate, and not separated from the name by any line, may appear at the option of the candidate only one of the following designations:

(1) Words designating the elective city, county, district, state, or federal office which the candidate holds at the time of filing the nomination documents to which he or she was elected by vote of the people, or to which he or she was appointed, in the case of a ~~superior, municipal, or justice~~ superior or municipal court judge.

(2) The word “incumbent” if the candidate is a candidate for the same office which he or she holds at the time of filing the nomination papers, and was elected to that office by a vote of the people, or, in the case of a ~~superior, municipal, or justice~~ superior or municipal court judge, was appointed to that office.

(3) No more than three words designating either the current principal professions, vocations, or occupations of the candidate, or the principal professions, vocations, or occupations of the candidate during the calendar year immediately preceding the filing of nomination documents. For purposes of this section, all California geographical names shall be considered to be one word.

(4) The phrase “appointed incumbent” if the candidate holds an office other than a judicial office by virtue of appointment, and the candidate is a candidate for election to the same office, or, if the candidate is a candidate for election to the same office or to some other office, the word “appointed” and the title of the office. In either instance, the candidate may not use the unmodified word

“incumbent” or any words designating the office unmodified by the word “appointed.” However, the phrase “appointed incumbent” shall not be required of a candidate who seeks reelection to an office which he or she holds and to which he or she was appointed, as a nominated candidate, in lieu of an election, pursuant to Sections 5326 and 5328 of the Education Code or Section 7228, 7423, 7673, 10229, or 10515 of this code.

(b) Neither the Secretary of State nor any other election official shall accept a designation of which any of the following would be true:

(1) It would mislead the voter.

(2) It would suggest an evaluation of a candidate, such as outstanding, leading, expert, virtuous, or eminent.

(3) It abbreviates the word “retired” or places it following any word or words which it modifies.

(4) It uses a word or prefix, such as “former” or “ex-,” which means a prior status. The only exception is the use of the word “retired.”

(5) It uses the name of any political party, whether or not it has qualified for the ballot.

(6) It uses a word or words referring to a racial, religious, or ethnic group.

(7) It refers to any activity prohibited by law.

(c) If, upon checking the nomination documents, the election official finds the designation to be in violation of any of the restrictions set forth in this section, the election official shall notify the candidate by registered or certified mail return receipt requested, addressed to the mailing address appearing on the candidate’s nomination documents.

(1) The candidate shall, within three days from the date of receipt of the notice, appear before the election officer or, in the case of the Secretary of State, notify the Secretary of State by telephone, and provide an alternate designation.

(2) In the event the candidate fails to provide an alternate designation, no designation shall appear after the candidate’s name.

(d) No designation given by a candidate shall be changed by the candidate after the final date for filing nomination documents, except as specifically requested by the elections official as specified in subdivision (c) or as provided in subdivision (e).

(e) The designation shall remain the same for all purposes of both primary and general elections, unless the candidate, at least 98 days prior to the general election, requests in writing a different designation which the candidate is entitled to use at the time of the request.

(f) In all cases, words so used shall be printed in 8-point roman uppercase and lowercase type except that, if the designation selected is so long that it would conflict with the space requirements of Sections 13207 and 13211, the elections official shall use a type size for the designation for each candidate for that office sufficiently smaller to meet these requirements.

(g) Whenever a foreign language translation of a candidate's designation is required under the Voting Rights Act of 1965 (42 U.S.C.A. Sec. 1971), as amended, to appear on the ballot in addition to the English language version, it shall be as short as possible, as consistent as is practicable with this section, and shall employ abbreviations and initials wherever possible in order to avoid undue length.

**Comment.** Section 13107 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

**Evid. Code § 300 (amended). Application of code**

SEC. \_\_\_\_\_. Section 300 of the Evidence Code is amended to read:

300. Except as otherwise provided by statute, this code applies in every action before the Supreme Court or a court of appeal, superior court, or municipal court, ~~or justice court~~, including proceedings in such actions conducted by a referee, court commissioner, or similar officer, but does not apply in grand jury proceedings.

**Comment.** Section 300 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

**Fam. Code § 400 (amended). Persons authorized to perform marriages**

SEC. \_\_\_\_\_. Section 400 of the Family Code is amended to read:

400. Marriage may be solemnized by any of the following who is of the age of 18 years or older:

- (a) A priest, minister, or rabbi of any religious denomination.
- (b) A judge or retired judge, commissioner of civil marriages or retired commissioner of civil marriages, commissioner or retired commissioner, or assistant commissioner of a court of record ~~or justice court~~ in this state.
- (c) A judge or magistrate who has resigned from office.
- (d) Any of the following judges or magistrates of the United States:
  - (1) A justice or retired justice of the United States Supreme Court.
  - (2) A judge or retired judge of a court of appeals, a district court, or a court created by an act of Congress the judges of which are entitled to hold office during good behavior.
  - (3) A judge or retired judge of a bankruptcy court or a tax court.
  - (4) A United States magistrate or retired magistrate.

**Comment.** Section 400 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

**Fish & Game Code § 2357 (amended). Trout affidavit**

SEC. \_\_\_\_\_. Section 2357 of the Fish and Game Code is amended to read:

2357. It is unlawful to carry trout into an area where the season is closed unless an affidavit is made in duplicate before ~~the nearest judge of the justice court or a~~ notary public in the area in which the trout are or might be lawfully taken. Such affidavit shall state the date and place of taking such trout, and the name, address,

and number of the angling license of the person legally taking such trout. The duplicate of the affidavit shall be left on file with the ~~judge of the justice court or~~ notary public before whom the affidavit is made.

**Comment.** Section 2357 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

☞ **Staff Note.** The justice court judge is not replaced with a municipal court judge in this amendment.

**Fish & Game Code § 4341 (amended). Deer tag**

SEC. \_\_\_\_\_. Section 4341 of the Fish and Game Code is amended to read:

4341. Any person legally killing a deer in this State shall have the license tag countersigned by a person employed in the department, a person designated for this purpose by the commission, or by a ~~judge of a justice court~~, notary public, postmaster, peace officer, or an officer authorized to administer oaths, before transporting such deer, except for the purpose of taking it to the nearest person authorized to countersign the license tag, on the route being followed from the point where the deer is taken.

**Comment.** Section 4341 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

☞ **Staff Note.** The justice court judge is not replaced with a municipal court judge in this amendment.

**Lab. Code § 98 (amended). Investigations and hearings regarding employee complaints**

SEC. \_\_\_\_\_. Section 98 of the Labor Code is amended to read:

98. (a) The Labor Commissioner shall have the authority to investigate employee complaints. The Labor Commissioner may provide for a hearing in any action to recover wages, penalties, and other demands for compensation properly before the division or the Labor Commissioner including orders of the Industrial Welfare Commission, and shall determine all matters arising under his or her jurisdiction. It shall be within the jurisdiction of the Labor Commissioner to accept and determine claims from holders of payroll checks or payroll drafts returned unpaid because of insufficient funds, if, after a diligent search, the holder is unable to return the dishonored check or draft to the payee and recover the sums paid out. Within 30 days of filing of the complaint, the Labor Commissioner shall notify the parties as to whether a hearing will be held, or whether action will be taken in accordance with Section 98.3, or whether no further action will be taken on the complaint. If the determination is made by the Labor Commissioner to hold a hearing, the hearing shall be held within 90 days of the date of that determination. However, the Labor Commissioner may postpone or grant additional time before setting a hearing if the Labor Commissioner finds that it would lead to an equitable and just resolution of the dispute.

It is the intent of the Legislature that hearings held pursuant to this section be conducted in an informal setting preserving the right of the parties.

(b) When a hearing is set, a copy of the complaint, which shall include the amount of compensation requested, together with a notice of time and place of the hearing, shall be served on all parties, personally or by certified mail.

(c) Within 10 days after service of the notice and the complaint, a defendant may file an answer with the Labor Commissioner in any form as the Labor Commissioner may prescribe, setting forth the particulars in which the complaint is inaccurate or incomplete and the facts upon which the defendant intends to rely.

(d) No pleading other than the complaint and answer of the defendant or defendants shall be required. Both shall be in writing and shall conform to the form and the rules of practice and procedure adopted by the Labor Commissioner.

(e) Evidence on matters not pleaded in the answer shall be allowed only on terms and conditions the Labor Commissioner shall impose. In all these cases, the claimant shall be entitled to a continuance for purposes of review of the new evidence.

(f) If the defendant fails to appear or answer within the time allowed under this chapter, no default shall be taken against him or her, but the Labor Commissioner shall hear the evidence offered and shall issue an order, decision, or award in accordance with the evidence. A defendant failing to appear or answer, or subsequently contending to be aggrieved in any manner by want of notice of the pendency of the proceedings, may apply to the Labor Commissioner for relief in accordance with Section 473 of the Code of Civil Procedure. The Labor Commissioner may afford this relief. No right to relief, including the claim that the findings or award of the Labor Commissioner or judgment entered thereon are void upon their face, shall accrue to the defendant in any court unless prior application is made to the Labor Commissioner in accordance with this chapter.

(g) All hearings conducted pursuant to this chapter are governed by the division and by the rules of practice and procedure adopted by the Labor Commissioner.

(h) Whenever a claim is filed under this chapter against a person operating or doing business under a fictitious business name, as defined in Section 17900 of the Business and Professions Code, which relates to the person's business, the division shall inquire at the time of the hearing whether the name of the person is the legal name under which the business or person has been licensed, registered, incorporated, or otherwise authorized to do business.

The division may amend an order, decision, or award to conform to the legal name of the business or the person who is the defendant to a wage claim, provided it can be shown that proper service was made on the defendant or his or her agent, unless a judgment had been entered on the order, decision, or award pursuant to subdivision (d) of Section 98.2. The Labor Commissioner may apply to the clerk of the justice, ~~municipal~~, municipal or superior court to amend a judgment that has been issued pursuant to a final order, decision, or award to

conform to the legal name of the defendant, provided it can be shown that proper service was made on the defendant or his or her agent.

**Comment.** Section 98 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

**Lab. Code § 98.2 (amended). Review and enforcement of decision**

SEC. \_\_\_\_\_. Section 98.2 of the Labor Code is amended to read:

98.2. (a) Within 10 days after service of notice of an order, decision, or award the parties may seek review by filing an appeal to the ~~justice, municipal,~~ municipal or superior court, in accordance with the appropriate rules of jurisdiction, where the appeal shall be heard de novo. A copy of the appeal request shall be served upon the Labor Commissioner by the appellant. For purposes of computing the 10-day period after service, Section 1013 of the Code of Civil Procedure shall be applicable.

(b) If the party seeking review by filing an appeal to the ~~justice, municipal,~~ municipal or superior court is unsuccessful in the appeal, the court shall determine the costs and reasonable attorneys' fees incurred by the other parties to the appeal, and assess that amount as a cost upon the party filing the appeal.

(c) If no notice of appeal of the order, decision, or award is filed within the period set forth in subdivision (a), the order, decision, or award shall, in the absence of fraud, be deemed the final order.

(d) The Labor Commissioner shall file, within 10 days of the order becoming final pursuant to subdivision (c), a certified copy of the final order with the clerk of the ~~justice, municipal,~~ municipal or superior court, in accordance with the appropriate rules of jurisdiction, of the appropriate county unless a settlement has been reached by the parties and approved by the Labor Commissioner. Judgment shall be entered immediately by the court clerk in conformity therewith. The judgment so entered shall have the same force and effect as, and shall be subject to all of the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered. Enforcement of the judgment shall receive court priority.

(e) In order to ensure judgments are satisfied, the Labor Commissioner may serve upon the judgment debtor personally or by first-class mail at the last known address of the judgment debtor listed with the division, a form similar to, and requiring the reporting of the same information as, the form approved or adopted by the Judicial Council for purposes of subdivision (b) of Section 117.19 of the Code of Civil Procedure to assist in identifying the nature and location of any assets of the judgment debtor.

The judgment debtor shall complete the form and cause it to be delivered to the division at the address listed on the form within 35 days after the form has been served on the judgment debtor, unless the judgment has been satisfied. In case of willful failure by the judgment debtor to comply with this subdivision, the



division or the judgment creditor may request the court to apply the sanctions provided in Section 708.170 of the Code of Civil Procedure.

(f) Notwithstanding subdivision (d), the Labor Commissioner may stay execution of any judgment entered upon an order, decision, or award which has become final upon good cause appearing therefore and may impose the terms and conditions of the stay of execution. A certified copy of the stay of execution shall be filed with the clerk entering the judgment.

(g) When a judgment is satisfied in fact, otherwise than by execution, the Labor Commissioner may, upon the motion of either party or on its own motion, order entry of satisfaction of judgment. The clerk of the court shall enter a satisfaction of judgment upon the filing of a certified copy of the order.

(h) The Labor Commissioner shall make every reasonable effort to ensure that judgments are satisfied, including taking all appropriate legal action and requiring the employer to deposit a bond as provided in Section 240.

(i) The judgment creditor, or the Labor Commissioner as assignee of the judgment creditor, shall be entitled to court costs and reasonable attorney fees for enforcing the judgment which is rendered pursuant to this section.

**Comment.** Section 98.2 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

**Lab. Code § 3352 (amended). Persons not “employees”**

SEC. \_\_\_\_\_. Section 3352 of the Labor Code is amended to read:

3352. “Employee” excludes the following:

(a) Any person defined in subdivision (d) of Section 3351 who is employed by his or her parent, spouse, or child.

(b) Any person performing services in return for aid or sustenance only, received from any religious, charitable, or relief organization.

(c) Any person holding an appointment as deputy clerk, or deputy sheriff, ~~or deputy constable~~ appointed for his or her own convenience, and who receives no compensation from the county or municipal corporation or from the citizens thereof for his or her services as the deputy. This exclusion is operative only as to employment by the county or municipal corporation and does not deprive any person so deputized from recourse against a private person employing him or her for injury occurring in the course of and arising out of the employment.

(d) Any person performing voluntary services at or for a recreational camp, hut, or lodge operated by a nonprofit organization, exempt from federal income tax under Section 101(6) of the Internal Revenue Code, of which he or she or a member of his or her family is a member and who receives no compensation for those services other than meals, lodging, or transportation.

(e) Any person performing voluntary service as a ski patrolman who receives no compensation for those services other than meals or lodging or the use of ski tow or ski lift facilities.

(f) Any person employed by a ski lift operator to work at a snow ski area who is relieved of and not performing any prescribed duties, while participating in recreational activities on his or her own initiative.

(g) Any person, other than a regular employee, participating in sports or athletics who receives no compensation for the participation other than the use of athletic equipment, uniforms, transportation, travel, meals, lodgings, or other expenses incidental thereto.

(h) Any person defined in subdivision (d) of Section 3351 who was employed by the employer to be held liable for less than 52 hours during the 90 calendar days immediately preceding the date of the injury for injuries, as defined in Section 5411, or during the 90 calendar days immediately preceding the date of the last employment in an occupation exposing the employee to the hazards of the disease or injury for injuries, as defined in Section 5412, or who earned less than one hundred dollars (\$100) in wages from the employer during the 90 calendar days immediately preceding the date of the injury for injuries, as defined in Section 5411, or during the 90 calendar days immediately preceding the date of the last employment in an occupation exposing the employee to the hazards of the disease or injury for injuries, as defined in Section 5412.

(i) Any person performing voluntary service for a public agency or a private, nonprofit organization who receives no remuneration for the services other than meals, transportation, lodging, or reimbursement for incidental expenses.

(j) Any person, other than a regular employee, performing officiating services relating to amateur sporting events sponsored by any public agency or private, nonprofit organization, who receives no remuneration for these services other than a stipend for each day of service no greater than the amount established by the Department of Personnel Administration as a per diem expense for employees or officers of the state. The stipend shall be presumed to cover incidental expenses involved in officiating, including, but not limited to, meals, transportation, lodging, rule books and courses, uniforms, and appropriate equipment.

(k) Any student participating as an athlete in amateur sporting events sponsored by any public agency, public or private nonprofit college, university or school, who receives no remuneration for the participation other than the use of athletic equipment, uniforms, transportation, travel, meals, lodgings, scholarships, grants-in-aid, or other expenses incidental thereto.

(l) Any law enforcement officer who is regularly employed by a local or state law enforcement agency in an adjoining state and who is deputized to work under the supervision of a California peace officer pursuant to paragraph (4) of subdivision (a) of Section 832.6 of the Penal Code.

(m) Any law enforcement officer who is regularly employed by the Oregon State Police, the Nevada Department of Motor Vehicles and Public Safety, or the Arizona Department of Public Safety and who is acting as a peace officer in this state pursuant to subdivision (a) of Section 830.32 of the Penal Code.

(n) Any person, other than a regular employee, performing services as a sports official for an entity sponsoring an intercollegiate or interscholastic sports event, or any person performing services as a sports official for a public agency, public entity, or a private nonprofit organization, which public agency, public entity, or private nonprofit organization sponsors an amateur sports event. For purposes of this subdivision, “sports official” includes an umpire, referee, judge, scorekeeper, timekeeper, or other person who is a neutral participant in a sports event.

**Comment.** Section 3352 is amended to reflect elimination of the justice court and of the office of constable. Cal. Const. art. VI, §§ 1, 5(b).

**Rev. & Tax. Code § 6776 (amended). Issuance of warrant**

SEC. \_\_\_\_\_. Section 6776 of the Revenue and Taxation Code is amended to read:

6776. At any time within three years after any person is delinquent in the payment of any amount herein required to be paid, or within 10 years after the last recording of an abstract under Section 6738 or the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, the board or its authorized representative may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the state under this part. The warrant shall be directed to any sheriff, marshal, ~~constable~~, or the Department of the California Highway Patrol and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution and shall be levied within five working days following receipt of the warrant.

**Comment.** Section 6776 is amended to reflect elimination of the justice court and of the office of constable. Cal. Const. art. VI, §§ 1, 5(b).

**Rev. & Tax. Code § 6777 (amended). Fees**

SEC. \_\_\_\_\_. Section 6777 of the Revenue and Taxation Code is amended to read:

6777. The board may pay or advance to the sheriff, marshal, ~~constable~~, or the Department of the California Highway Patrol, the same fees, commissions, and expenses for services as are provided by law for similar services rendered pursuant to a writ of execution. The board, and not the court, shall approve the fees for publication in a newspaper.

**Comment.** Section 6777 is amended to reflect elimination of the justice court and of the office of constable. Cal. Const. art. VI, §§ 1, 5(b).

**Rev. & Tax. Code § 19232 (amended). Force and effect of warrant**

SEC. \_\_\_\_\_. Section 19232 of the Revenue and Taxation Code is amended to read:

19232. The warrant shall be directed to any sheriff, ~~constable~~, marshal, or the Department of the California Highway Patrol and shall have the same force and

effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same force and effect as a levy of and sale pursuant to a writ of execution.

**Comment.** Section 19232 is amended to reflect elimination of the justice court and of the office of constable. Cal. Const. art. VI, §§ 1, 5(b).

**Rev. & Tax. Code § 19233 (amended). Fees**

SEC. \_\_\_\_\_. Section 19233 of the Revenue and Taxation Code is amended to read:

19233. The Franchise Tax Board shall pay or advance to the sheriff, ~~constable~~, marshal, or the Department of the California Highway Patrol the same fees, commissions, and expenses as are provided by law for similar services pursuant to a writ of execution. The Franchise Tax Board, and not the court, shall approve the fees for publication in a newspaper.

**Comment.** Section 19233 is amended to reflect elimination of the justice court and of the office of constable. Cal. Const. art. VI, §§ 1, 5(b).

**Rev. & Tax. Code § 19280 (amended). Referral of fines and penalties to Franchise Tax Board**

SEC. \_\_\_\_\_. Section 19280 of the Revenue and Taxation Code is amended to read:

19280. (a) Fines, state or local penalties, forfeitures, restitution fines, or restitution orders imposed by a ~~superior, municipal, or justice~~ superior or municipal court of the State of California upon a person or any other entity that is in an amount totaling no less than two hundred fifty dollars (\$250), in the aggregate, and due a county or the state for criminal offenses, including all offenses involving a violation of the Vehicle Code except offenses relating to parking or registration or offenses by pedestrians or bicyclists, may, no sooner than 90 days after payment of that amount becomes delinquent, be referred by the county or the state to the Franchise Tax Board for collection under guidelines prescribed by the Franchise Tax Board. The Franchise Tax Board shall establish criteria for referral, which shall include setting forth a minimum dollar amount subject to referral and collection.

(b) For the period January 1, 1995, to December 31, 1997, inclusive, for purposes of a manageable implementation and evaluation of the program authorized by this article, the Franchise Tax Board may limit referrals to nine counties.

(c) Upon written notice to the obligor from the Franchise Tax Board, any amount referred to the Franchise Tax Board under subdivision (a) and any interest thereon, including any interest on the amount referred under subdivision (a) that accrued prior to the date of referral, shall be treated as final and due and payable to the State of California, and shall be collected from the obligor by the Franchise Tax Board in any manner authorized under the law for collection of a delinquent personal income tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter

5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes.

(d)(1) Part 10 (commencing with Section 18401), this part, Part 10.7 (commencing with Section 21001), and Part 11 (commencing with Section 23001) shall apply to amounts referred under this article in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this article, except to the extent that any provision is either inconsistent with this article or is not relevant to this article.

(2) Any information, information sources, or enforcement remedies and capabilities available to the court referring the amount due described in subdivision (a), shall be available to the Franchise Tax Board to be used in conjunction with, or independent of, the information, information sources, or remedies and capabilities available to the Franchise Tax Board for purposes of administering Part 10 (commencing with Section 18401), this part, Part 10.7 (commencing with Section 21001), or Part 11 (commencing with Section 23001).

(e) The activities required to implement and administer this part shall not interfere with the primary mission of the Franchise Tax Board to administer Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001).

(f) For amounts referred for collection under subdivision (a), interest shall accrue at the greater of the rate applicable to the amount due being collected or the rate provided under Section 19521. When notice of the amount due includes interest and is mailed to the obligor and the amount is paid within 10 days after the date of notice, interest shall not be imposed for the period after the date of notice.

(g) In no event shall a collection under this article be construed as a payment of income taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

**Comment.** Section 19280 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

**Unemp. Ins. Code § 1785 (amended). Issuance of warrant**

SEC. \_\_\_\_\_. Section 1785 of the Unemployment Insurance Code is amended to read:

1785. If any amount required to be paid under this division is not paid when due, the director or the director's authorized representative may, not later than three years after the payment became delinquent, or within 10 years after the last entry of a judgment under Article 5 (commencing with Section 1815) or within 10 years after the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the state under this division. The warrant shall be directed to any sheriff, marshal, or peace officer of the Department of the California Highway Patrol, ~~or constable~~ and shall have the same effect as a writ of execution. The warrant shall be levied and sale made

pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution.

**Comment.** Section 1785 is amended to reflect elimination of the justice court and of the office of constable. Cal. Const. art. VI, §§ 1, 5(b).

**Unemp. Ins. Code § 1786 (amended). Fees**

SEC. \_\_\_\_\_. Section 1786 of the Unemployment Insurance Code is amended to read:

1786. The department may pay or advance to the sheriff, marshal, or peace officer of the Department of the California Highway Patrol, ~~or constable~~, the same fees, commissions, and expenses for his or her services under this article as are provided by law for similar services pursuant to a writ of execution. The director, and not the court, shall approve the fees for publication in a newspaper.

**Comment.** Section 1786 is amended to reflect elimination of the justice court and of the office of constable. Cal. Const. art. VI, §§ 1, 5(b).

**Veh. Code § 40508.6 (amended). Administrative assessments for costs**

SEC. \_\_\_\_\_. Section 40508.6 of the Vehicle Code is amended to read:

40508.6. The Legislature hereby authorizes the establishment of the following program, to be implemented in any county, upon the adoption of a resolution by the board of supervisors authorizing it. For the superior court and each municipal court ~~or justice court~~ district in the county, a board of supervisors may establish administrative assessments, not to exceed ten dollars (\$10), for clerical and administrative costs incurred for the following activities:

(a) An assessment for the cost of recording and maintaining a record of the defendant's prior convictions for violations of ~~the~~ this code. The assessment shall be payable at the time of payment of a fine or when bail is forfeited for any subsequent violations of this code other than parking, pedestrian, or bicycle violations.

(b) An assessment for all defendants whose driver's license or automobile registration is attached or restricted pursuant to Section 40509 or 40509.5, to cover the cost of notifying the Department of Motor Vehicles of the attachment or restriction.

**Comment.** Section 40508.6 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

**Welf. & Inst. Code § 11350.7 (amended). Delinquent support payments**

SEC. \_\_\_\_\_. Section 11350.7 of the Welfare and Institutions Code is amended to read:

11350.7. (a) Notwithstanding any other provision of law, if any support obligor is delinquent in the payment of support for at least 30 days and the district attorney is enforcing the support obligation pursuant to Section 11475.1, the district attorney may issue a warrant for the collection of that support and may levy on and sell vehicles and vessels as defined in the Vehicle Code, or aircraft.

(b) A warrant may be issued by a district attorney for a support obligation which accrued under a court order or judgment if the obligor had notice of the accrued support arrearage as provided in this section, and did not make a timely request for review.

(c) The notice requirement shall be satisfied by the district attorney sending a statement of support arrearages to the obligor at the obligor's last known address by first-class mail, postage prepaid. The notice shall advise the obligor of the amount of the support arrearage. The notice shall advise the obligor that the obligor may have the arrearage determination reviewed by administrative procedures and state how such a review may be obtained. The notice shall also advise the obligor of his or her right to seek a judicial determination of arrearages pursuant to Section 11350.8 and shall include a form to be filed with the court to request a judicial determination of arrearages. If the obligor requests an administrative review of the arrearage determination within 20 days from the date the notice was mailed to the obligor, the district attorney shall review the assessment or determination and shall not issue the warrant for a disputed amount of support until the administrative review procedure is completed.

(d) If the obligor requests a judicial determination of the arrearages within 20 days from the date the notice was mailed to the obligor, the district attorney shall not issue the warrant for a disputed amount of support until the judicial determination is complete.

(e) The warrant shall be directed to any sheriff, ~~constable~~, marshal, or the Department of the California Highway Patrol and shall have the same force and effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the manner and with the same force and effect as a levy and sale pursuant to a writ of execution. The district attorney may pay or advance to the levying officer the same fees, commissions, and expenses for his or her services under this section as are provided by law for similar services pursuant to a writ of execution, except for those fees and expenses for which the district attorney is exempt by law from paying. The district attorney, and not the court, shall approve the fees for publication in a newspaper.

(f) The fees, commissions, expenses, and the reasonable costs associated with the sale of property levied upon by warrant pursuant to this section, including, but not limited to, appraisers' fees, auctioneers' fees, and advertising fees are an obligation of the support obligor and may be collected from the obligor by virtue of the warrant or in any other manner as though these items were support payments delinquent for at least 30 days.

**Comment.** Section 11350.7 is amended to reflect elimination of the justice court and of the office of constable. Cal. Const. art. VI, §§ 1, 5(b).

**Section 22 of the Protection District Act of 1895 (amended). Claim for damages**

SEC. \_\_\_\_\_. Section 22 of the Protection District Act of 1903 (Chapter 201 of the Statutes of 1895) is amended to read.

Sec. 22. When sufficient money is in such Protection District Fund to pay for the property taken and damaged, according to the award of damages made in the report adopted by the Board of Supervisors, as provided in section seventeen hereof, the Clerk of the Board of Supervisors shall notify the owner, possessor, or occupant of any land or improvement thereon to whom damages shall have been awarded, that such award has been made, and the amount thereof, and that upon such person filing a claim and tendering a conveyance of any property to be taken, such claim will be allowed and such damages paid. Such notice shall be given by depositing such notice in the Post Office at the county seat of such county, postage prepaid, addressed to such owner, possessor, or occupant, if his name be known. In case the property is unoccupied, and the name of the owners is unknown, or in case such unoccupied property is set down as belonging to unknown owners for the reasons given in section fourteen hereof, such notice shall be delivered to the Sheriff ~~or to a Constable~~, who shall serve the same by posting a copy in a conspicuous place upon the property named in said notice, and indorse a certificate of service upon the original notice, and file the same with the Clerk of the Board of Supervisors.

**Comment.** Section 22 is amended to reflect elimination of the justice court and of the office of constable. Cal. Const. art. VI, §§ 1, 5(b).

#### **Section 4 of the Drainage District Act of 1903 (amended). Appeals**

SEC. \_\_\_\_\_. Section 4 of the Drainage District Act of 1903 (Chapter 238 of the Statutes of 1903) is amended to read.

Sec. 4. The right of appeal from said order to the superior court of the county where said petition is heard, is hereby given to any person interested, who is a party to the record; provided, that if more than one appeal be taken they shall be consolidated and tried together. Such appeal shall be taken within ten days after the entry of such order upon the minutes of the board of supervisors. The appeal shall be taken and heard in the same manner as other appeals ~~from justices' courts~~ to the appellate division of the superior court, except as herein otherwise provided. Upon the appeal, the superior court may make and enter its judgment affirming, modifying, or reversing the order appealed from. Within ten days thereafter, the superior court must cause its remittitur to issue to said board of supervisors, and if said order of the board of supervisors is modified or reversed, the judgment of the superior court and its remittitur shall direct the board of supervisors what order it shall enter. Such remittitur shall be filed by the clerk of the board of supervisors, and at the first regular meeting of the board thereafter, it shall cause to be entered in its minutes the order as directed by said superior court. The appeal herein provided for shall be heard and determined within thirty days from the time of filing the notice of appeal.

**Comment.** Section 4, is amended to reflect elimination of the justices' court. Cal. Const. art. VI, §§ 1, 5.



☞ **Staff note.** The justices' court is an obsolete inferior court, superseded by the justice court by Constitutional Amendment on November 7, 1950.

## APPELLATE DIVISION CONFORMING REVISIONS

### **Bus. & Prof. Code § 17209 (amended). Notice to Attorney General and county district attorney**

17209. If a violation of this chapter is alleged or the application or construction of this chapter is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate ~~department~~ division of a superior court, the person who commenced that proceeding shall serve notice thereof, including a copy of the person's brief or petition and brief, on the Attorney General, directed to the attention of the Consumer Law Section, and on the district attorney of the county in which the lower court action or proceeding was originally filed. The notice, including the brief or petition and brief, shall be served within three days after the commencement of the appellate proceeding, provided that the time may be extended by the Chief Justice or presiding justice or judge for good cause shown. No judgment or relief, temporary or permanent, shall be granted until proof of service of this notice is filed with the court.

**Comment.** Section 17209 is amended to reflect the creation of an appellate division in the superior court. Cal. Const. art. VI, § 4.

### **Bus. & Prof. Code § 17536.5 (amended). Notice to Attorney General and county district attorney**

17536.5. If a violation of this chapter is alleged or the application or construction of this chapter is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate ~~department~~ division of a superior court, the person who commenced that proceeding shall serve notice thereof, including a copy of the person's brief or petition and brief, on the Attorney General, directed to the attention of the Consumer Law Section, and on the district attorney of the county in which the lower court action or proceeding was originally filed. The notice, including the brief or petition and brief, shall be served within three days after the commencement of the appellate proceeding, provided that the time may be extended by the Chief Justice or presiding justice or judge for good cause shown. No judgment or relief, temporary or permanent, shall be granted until proof of service of this notice is filed with the court.

**Comment.** Section 17536.5 is amended to reflect the creation of an appellate division in the superior court. Cal. Const. art. VI, § 4.