

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

Civil Discovery: Nonsubstantive Reform (Conforming Revisions)

February 2003

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN June 30, 2003.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739
650-494-1335 FAX: 650-494-1827

Contents

CONFORMING REVISIONS	1
Bus. & Prof. Code § 6202 (amended). Disclosure of attorney-client communication or attorney work product	1
Bus. & Prof. Code § 17083 (amended). Deposition and production of documents	1
Bus. & Prof. Code § 17550.47 (amended). Claim filed with Travel Consumer Restitution Corporation	2
Bus. & Prof. Code § 25009 (amended). Evidence provided by defendant or witness	4
Civ. Code § 47 (amended). Privileged publication or broadcast	5
Code Civ. Proc. § 93 (amended). Case questionnaire	6
Code Civ. Proc. § 94 (amended). Discovery in economic litigation cases	7
Code Civ. Proc. § 116.310 (amended). Pleading and discovery in small claims action	8
Code Civ. Proc. § 116.770 (amended). Hearing on appeal in small claims action	8
Code Civ. Proc. § 437c (amended). Summary judgment motion	8
Code Civ. Proc. § 485.230 (amended). Discovery where court has issued right to attach order	13
Code Civ. Proc. § 708.020 (amended). Written interrogatories propounded by judgment creditor	14
Code Civ. Proc. § 708.030 (amended). Demands for production of documents and other discovery by judgment creditor	14
Code Civ. Proc. § 1005 (amended). Written notice of motion	15
Code Civ. Proc. § 1141.24 (amended). Prohibition of discovery after arbitration award	16
Code Civ. Proc. § 1283 (amended). Deposition on order of arbitrator	16
Code Civ. Proc. § 1283.05 (amended). Depositions and discovery in arbitration proceedings	17
Code Civ. Proc. § 1741 (amended). Discovery by parties participating in mediation	18
Code Civ. Proc. § 1775.11 (amended). Discovery by parties participating in mediation	18
Code Civ. Proc. § 1985.3 (amended). Personal records of consumer	18
Code Civ. Proc. § 1985.6 (amended). Employment records	21
Code Civ. Proc. § 1987.5 (amended). Effect of subpoena	23
Code Civ. Proc. § 1991.1 (amended). Disobedience of deposition subpoena or refusal to be sworn at deposition	24
Code Civ. Proc. § 1991.2 (amended). Application of Section 1991	24
Code Civ. Proc. § 2093 (amended). Authority to administer oaths and affirmations	25
Educ. Code § 44944 (amended). Hearing on employee request in dismissal or suspension proceeding	25
Educ. Code § 45312 (amended). Hearing or investigation conducted by hearing officer or other representative	29
Educ. Code § 87675 (amended). Arbitration procedure	29
Educ. Code § 87679 (amended). Proceedings conducted by administrative law judge	30
Educ. Code § 88131 (amended). Hearing or investigation conducted by hearing officer or other representative	30
Evid. Code § 915 (amended). Disclosure of privileged information or attorney work product in ruling on claim of privilege	31
Evid. Code § 1156 (amended). Records of medical or dental study of in-hospital staff committee	32
Evid. Code § 1156.1 (amended). Records of medical or psychiatric studies of quality assurance committees	32
Evid. Code § 1560 (amended). Compliance with subpoena duces tecum for business records	33
Fam. Code § 3110.5 (amended). Child custody evaluator	34
Fam. Code § 3666 (amended). Enforcement of article	36
Fam. Code § 4331 (amended). Examination by vocational training counselor	36

Fish & Game Code § 309 (amended). Procedure	37
Fish & Game Code § 5934 (amended). Depositions	38
Gov't Code § 6276.04 (amended). "Aeronautics Act" to "Avocado handler transaction records"	38
Gov't Code § 11189 (amended). Depositions and attendance of witnesses	40
Gov't Code § 11511 (amended). Deposition on verified petition	40
Gov't Code § 12963.3 (amended). Depositions	41
Gov't Code § 12972 (amended). Deposition and other procedures	41
Gov't Code § 18671 (amended). Procedure for hearing or investigation	42
Gov't Code § 68092.5 (amended). Expert witness fee	42
Gov't Code § 68097.6 (amended). Subpoena for taking deposition of peace officer	44
Gov't Code § 68616 (operative until Jan. 1, 2004) (amended). Delay reduction deadlines and procedures	44
Gov't Code § 68616 (operative Jan. 1, 2004) (amended). Delay reduction deadlines and procedures	46
Health & Safety Code § 1424.1 (amended). Effect of participation in quality assurance and patient care audit program	47
Ins. Code § 11580.2 (amended). Uninsured and underinsured motorist coverage	48
Labor Code § 5710 (amended). Depositions	58
Labor Code § 6613 (amended). Depositions	59
Penal Code § 186.11 (amended). Aggravated white collar crime enhancement	59
Penal Code § 1054.6 (amended). Work product privilege	67
Penal Code § 1524 (amended). Issuance of search warrant	67
Prob. Code § 451 (amended). Subpoena to compel appearance for purposes of appraisal	69
Prob. Code § 452 (amended). Authority to compel testimony and production of documents	70
Pub. Cont. Code § 20104.4 (amended). Mediation and arbitration	70
Pub. Res. Code § 3357 (amended). Investigative powers	71
Pub. Res. Code § 3769 (amended). Investigative powers	72
Pub. Util. Code § 1794 (amended). Depositions	72
Rev. & Tax. Code § 25110 (amended). Water's edge election	73
Veh. Code § 3050.1 (amended). Discovery	75
Water Code § 1100 (amended). Depositions	76

CONFORMING REVISIONS

1 ☞ **Note.** The California Law Revision Commission has issued a tentative recommendation
2 proposing nonsubstantive reorganization of the civil discovery statute. Enactment of that proposal
3 would necessitate conforming revisions of numerous other provisions in the codes. A draft of the
4 conforming revisions is set forth below.

5 The Commission is soliciting comment on the tentative recommendation and on the proposed
6 conforming revisions set forth below. The comment deadline is **June 30, 2003**.

7 The tentative recommendation proposing nonsubstantive reorganization of the civil discovery
8 statute is available on the Commission's website (www.clrc.ca.gov) by following the "Current
9 Projects" link — click on "Current Projects," scroll down to "Discovery" and then click on
10 "Reorganization of Discovery Statute." The proposal is also available in hard copy form from the
11 California Law Revision Commission, 4000 Middlefield Road, Room D-1, Palo Alto, CA 94303-
12 4739.

13 **Bus. & Prof. Code § 6202 (amended). Disclosure of attorney-client communication or** 14 **attorney work product**

15 SEC. _____. Section 6202 of the Business and Professions Code is amended to
16 read:

17 6202. The provisions of Article 3 (commencing with Section 950) of Chapter 4
18 of Division 8 of the Evidence Code shall not prohibit the disclosure of any
19 relevant communication, nor shall the provisions of ~~Section 2018~~ Chapter 4
20 (commencing with Section 2018.010) of Title 4 of Part 4 of the Code of Civil
21 Procedure be construed to prohibit the disclosure of any relevant work product of
22 the attorney in connection with: (a) an arbitration hearing or mediation pursuant to
23 this article; (b) a trial after arbitration; or (c) judicial confirmation, correction, or
24 vacation of an arbitration award. In no event shall such disclosure be deemed a
25 waiver of the confidential character of such matters for any other purpose.

26 **Comment.** Section 6202 is amended to reflect nonsubstantive reorganization of the rules
27 governing civil discovery.

28 **Bus. & Prof. Code § 17083 (amended). Deposition and production of documents**

29 SEC. _____. Section 17083 of the Business and Professions Code is amended to
30 read:

31 17083. The testimony of any witness in any action brought under this chapter
32 may be taken by deposition ~~even though the case is not one specified in Section~~
33 ~~2021 of the Code of Civil Procedure, but otherwise the provisions of Part 4, Title~~
34 ~~3, Chapter 3 of.~~ The provisions of Chapter 3 (commencing with Section 2002) of
35 Title 3 of Part 4 of, and the provisions of Title 4 (commencing with Section
36 2016.010) of Part 4 of, the Code of Civil Procedure are applicable to the witness,
37 his the testimony and the deposition.

38 In addition, the books and records of any party, or of any such witness, may be
39 subpoenaed into court and introduced into evidence, or introduced, by reference,
40 into evidence, and may be required to be produced at the taking of the deposition
41 of any party or of any such witness and there inquired into.

1 **Comment.** Section 17083 is amended to reflect nonsubstantive reorganization of the rules
2 governing civil discovery. The reference to former Code of Civil Procedure Section 2021 is not
3 continued, because that provision was repealed in 1957 and its substance was not continued. See
4 1939 Cal. Stat. ch. 195, § 1 (former Code Civ. Proc. § 2021, as it existed when Bus. & Prof. Code
5 § 17083 was enacted in 1941); 1957 Cal. Stat. ch. 1904, § 1 (repealing former Code Civ. Proc. §
6 2021).

7 **Bus. & Prof. Code § 17550.47 (amended). Claim filed with Travel Consumer Restitution**
8 **Corporation**

9 SEC. _____. Section 17550.47 of the Business and Professions Code is amended to
10 read:

11 17550.47. (a)(1) Any person aggrieved who suffers a loss of more than fifty
12 dollars (\$50) of amounts paid for air or sea transportation or travel services may
13 file a claim with the Travel Consumer Restitution Corporation by filing a claim
14 form as required by Section 17550.46 and paying, by check or money order, a
15 processing fee to the Travel Consumer Restitution Corporation in the amount of
16 thirty-five dollars (\$35). Any check for the processing fee that is returned unpaid
17 to the corporation by the financial institution upon which it is drawn shall be
18 returned to the claimant and the claim shall be rejected for filing. Any claimant
19 whose claim is rejected may resubmit his or her claim upon payment of a
20 processing fee of fifty dollars (\$50).

21 (2) Any processing fee required by paragraph (1) shall be nonrefundable except
22 where (A) a claim is denied on the basis as set forth in the statement of decision
23 that either the seller of travel, at the time of sale, was not a participant in the
24 Travel Consumer Restitution Fund or the seller of travel was not registered, or (B)
25 the claim is granted in whole or in part. In either case, the processing fee shall be
26 refunded to the person aggrieved upon denial or upon payment of the claim,
27 whichever is applicable.

28 (3) In no event shall a person aggrieved have more than six months after the
29 scheduled date of completion of travel within which to file a claim with the Travel
30 Consumer Restitution Fund.

31 (b) A person aggrieved may recover from the Travel Consumer Restitution Fund
32 an amount not to exceed fifteen thousand dollars (\$15,000) per person aggrieved,
33 not to exceed the amount paid to the participant by or on behalf of the person
34 aggrieved for the transportation or travel services. Payments from the restitution
35 fund shall be limited to restitution for sums paid for transportation or travel
36 services and shall not include any other amounts, including, but not limited to,
37 payment for lost wages, pain and suffering, emotional distress, travel insurance,
38 lost luggage, or any consequential damages. The person aggrieved shall not be
39 entitled to receive attorney's fees in connection with a filed claim or on appeal.

40 (c) All claims are to be decided on the written record before the corporation,
41 with no hearing to be held. The record shall consist of a fully executed and
42 complete claim form, any other documentation submitted by the claimant or the
43 participant, and any documents or reports submitted by staff or the designated

1 representative of the office of the Attorney General. Claims are to be decided
2 within 45 days of receipt unless (1) the designated representative of the office of
3 the Attorney General requests a continuance to obtain and submit information, or
4 (2) the Travel Consumer Restitution Corporation determines that additional
5 information or documentation is required to decide the claim. In either case, the
6 claim shall be decided within 45 days of receipt of all additional information or
7 documentation. A claim not decided timely shall be deemed granted.

8 (d) Whenever the Travel Consumer Restitution Corporation denies a claim in
9 whole or in part, it shall provide to the claimant a written statement of decision
10 setting forth the factual and legal basis for the denial.

11 (e) A claimant may request reconsideration of an adverse decision of the Travel
12 Consumer Restitution Corporation by mailing a written request, accompanied by a
13 processing fee of fifty dollars (\$50) paid by check or money order, within 20 days
14 of the date a notice of denial and statement of decision was mailed to the claimant.
15 Any check for the processing fee that is returned unpaid to the Travel Consumer
16 Restitution Corporation by the financial institution upon which it is drawn shall be
17 returned to the claimant and the request for reconsideration shall not be determined
18 until the claimant has paid the fifty dollars (\$50) processing fee.

19 (f) The Travel Consumer Restitution Corporation shall, within 60 days of receipt
20 of the request, either decide the request or advise the claimant that additional
21 information or documentation is needed, and if the decision is a denial in whole or
22 in part, it shall provide to the claimant and seller of travel a written statement of
23 decision setting forth the factual and legal basis for the decision. No appeal may be
24 taken pursuant to subdivision (g) until reconsideration has been requested and
25 decided. The claimant shall not be entitled to any attorney's fees incurred in
26 connection with presentation of a claim or request for reconsideration.

27 (g) No decision of the Travel Consumer Restitution Corporation granting or
28 denying a claim in whole or part shall be subject to review or appeal except as
29 provided in this section. A claimant may seek review of the denial, in whole or
30 part, of a claim by filing a notice of appeal after having served the notice by mail
31 on the Travel Consumer Restitution Corporation. The notice of appeal shall be
32 filed and served on the Travel Consumer Restitution Corporation not later than 30
33 days after a written statement of decision on a request for reconsideration has been
34 mailed to the claimant. The notice of appeal from a decision of the Travel
35 Consumer Restitution Corporation shall be filed with the clerk of the superior
36 court either in the county in which the principal place of business of the Travel
37 Consumer Restitution Corporation is located, or in the county in which the
38 claimant was a resident at the time the claimant purchased the transportation or
39 travel services in dispute.

40 (h) The claimant shall pay the same filing fee as is required for appeals from
41 small claims court. The Travel Consumer Restitution Corporation shall file its
42 response and the record of the claim before the corporation with the clerk of the

1 superior court within 30 days of the day the notice of appeal was served on the
2 Travel Consumer Restitution Corporation.

3 (i) Upon the filing of the record the clerk of the court shall schedule a hearing for
4 the earliest available time and shall mail written notice of the hearing at least 14
5 days prior to the time set for the hearing.

6 (j) The hearing on appeal shall be limited to the record before the Travel
7 Consumer Restitution Corporation and any relevant evidence that could not have
8 been with reasonable diligence submitted previously to the corporation. The
9 reviewing court shall apply a preponderance of the evidence standard of review.
10 The pretrial discovery procedures described in ~~subdivision (a) of Section 2019~~
11 Section 2019.010 of the Code of Civil Procedure are not permitted, there is no
12 right to trial by jury, and the decision of the superior court shall be appealable by
13 either party. No money may be claimed from or paid by the Travel Consumer
14 Restitution Fund except in accordance with the provisions and procedures set forth
15 in this article. No provision herein shall limit or otherwise affect those remedies as
16 may be available against persons or entities other than the Travel Consumer
17 Restitution Corporation.

18 (k) If the claimant prevails in whole or in part on an appeal, the claimant shall
19 not be entitled to an award in excess of the amount of the original claim.

20 (l) Any claim awarded by the corporation shall be paid promptly by the trustee
21 of the restitution fund when the time for appeal has passed. Any judgment on
22 appeal shall be paid promptly by the trustee of the restitution fund whenever the
23 judgment becomes final. If there should be insufficient funds to pay a claim when
24 otherwise due, claims shall be paid in the order received. If the Travel Consumer
25 Restitution Corporation ceases to operate pursuant to the terms of Section
26 17550.52, any remaining trust funds shall be allocated on a pro rata basis to claims
27 accruing prior to the corporation ceasing to operate, after payment of outstanding
28 debts and liabilities as provided in Section 17550.57.

29 (m) A claim shall require a majority of at least three affirmative votes for denial,
30 otherwise it shall be deemed granted.

31 **Comment.** Subdivision (j) of Section 17550.47 is amended to reflect nonsubstantive
32 reorganization of the rules governing civil discovery.

33 **Bus. & Prof. Code § 25009 (amended). Evidence provided by defendant or witness**

34 SEC. _____. Section 25009 of the Business and Professions Code is amended to
35 read:

36 25009. Any defendant in any action brought under this chapter or any person
37 who may be a witness therein under ~~Sections 2016, 2018, and 2019~~ Chapters 1
38 (commencing with Section 2016.010), 4 (commencing with Section 2018.010) and
39 5 (commencing with Section 2019.010) of Title 4 of Part 4 of the Code of Civil
40 Procedure or Section 776 of the Evidence Code, and the books and records of any
41 such defendant or witness, may be brought into court and the books and records
42 may be introduced by reference into evidence, but no information so obtained may

1 be used against the defendant or any such witness as a basis for a misdemeanor
2 prosecution under this chapter.

3 **Comment.** Section 25009 is amended to reflect nonsubstantive reorganization of the rules
4 governing civil discovery.

5 **Civ. Code § 47 (amended). Privileged publication or broadcast**

6 SEC. _____. Section 47 of the Civil Code is amended to read:

7 47. A privileged publication or broadcast is one made:

8 (a) In the proper discharge of an official duty.

9 (b) In any (1) legislative proceeding, (2) judicial proceeding, (3) in any other
10 official proceeding authorized by law, or (4) in the initiation or course of any other
11 proceeding authorized by law and reviewable pursuant to Chapter 2 (commencing
12 with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure, except as
13 follows:

14 (1) An allegation or averment contained in any pleading or affidavit filed in an
15 action for marital dissolution or legal separation made of or concerning a person
16 by or against whom no affirmative relief is prayed in the action shall not be a
17 privileged publication or broadcast as to the person making the allegation or
18 averment within the meaning of this section unless the pleading is verified or
19 affidavit sworn to, and is made without malice, by one having reasonable and
20 probable cause for believing the truth of the allegation or averment and unless the
21 allegation or averment is material and relevant to the issues in the action.

22 (2) This subdivision does not make privileged any communication made in
23 furtherance of an act of intentional destruction or alteration of physical evidence
24 undertaken for the purpose of depriving a party to litigation of the use of that
25 evidence, whether or not the content of the communication is the subject of a
26 subsequent publication or broadcast which is privileged pursuant to this section.
27 As used in this paragraph, “physical evidence” means evidence specified in
28 Section 250 of the Evidence Code or evidence that is property of any type
29 specified in ~~Section 2031~~ Chapter 14 (commencing with Section 2031.010) of
30 Title 4 of Part 4 of the Code of Civil Procedure.

31 (3) This subdivision does not make privileged any communication made in a
32 judicial proceeding knowingly concealing the existence of an insurance policy or
33 policies.

34 (4) A recorded lis pendens is not a privileged publication unless it identifies an
35 action previously filed with a court of competent jurisdiction which affects the title
36 or right of possession of real property, as authorized or required by law.

37 (c) In a communication, without malice, to a person interested therein, (1) by one
38 who is also interested, or (2) by one who stands in such a relation to the person
39 interested as to afford a reasonable ground for supposing the motive for the
40 communication to be innocent, or (3) who is requested by the person interested to
41 give the information. This subdivision applies to and includes a communication
42 concerning the job performance or qualifications of an applicant for employment,

1 based upon credible evidence, made without malice, by a current or former
2 employer of the applicant to, and upon request of, one whom the employer
3 reasonably believes is a prospective employer of the applicant. This subdivision
4 authorizes a current or former employer, or the employer's agent, to answer
5 whether or not the employer would rehire a current or former employee. This
6 subdivision shall not apply to a communication concerning the speech or activities
7 of an applicant for employment if the speech or activities are constitutionally
8 protected, or otherwise protected by Section 527.3 of the Code of Civil Procedure
9 or any other provision of law.

10 (d)(1) By a fair and true report in, or a communication to, a public journal, of
11 (A) a judicial, (B) legislative, or (C) other public official proceeding, or (D) of
12 anything said in the course thereof, or (E) of a verified charge or complaint made
13 by any person to a public official, upon which complaint a warrant has been
14 issued.

15 (2) Nothing in paragraph (1) shall make privileged any communication to a
16 public journal that does any of the following:

17 (A) Violates Rule 5-120 of the State Bar Rules of Professional Conduct.

18 (B) Breaches a court order.

19 (C) Violates any requirement of confidentiality imposed by law.

20 (e) By a fair and true report of (1) the proceedings of a public meeting, if the
21 meeting was lawfully convened for a lawful purpose and open to the public, or (2)
22 the publication of the matter complained of was for the public benefit.

23 **Comment.** Subdivision (b) of Section 47 is amended to reflect nonsubstantive reorganization
24 of the rules governing civil discovery.

25 **Code Civ. Proc. § 93 (amended). Case questionnaire**

26 SEC. _____. Section 93 of the Code of Civil Procedure is amended to read:

27 93. (a) The plaintiff has the option to serve case questionnaires with the
28 complaint, using forms approved by the Judicial Council. The questionnaires
29 served shall include a completed copy of the plaintiff's completed case
30 questionnaire, and a blank copy of the defendant's case questionnaire.

31 (b) Any defendant upon whom a case questionnaire is served shall serve a
32 completed defendant's case questionnaire upon the requesting plaintiff with the
33 answer.

34 (c) The case questionnaire shall be designed to elicit fundamental information
35 about each party's case, including names and addresses of all witnesses with
36 knowledge of any relevant facts, a list of all documents relevant to the case, a
37 statement of the nature and amount of damages, and information covering
38 insurance coverages, injuries and treating physicians. The Judicial Council shall
39 design and develop forms for case questionnaires.

40 (d) Approved forms shall be made available by the clerk of the court.

41 (e) If a party on whom a case questionnaire has been served under subdivision
42 (a) or (b) fails to serve a timely or a complete response to that questionnaire, the

1 party serving the questionnaire may move for an order compelling a response or a
2 further response and for a monetary sanction under ~~Section 2023~~ Chapter 7
3 (commencing with Section 2023.010) of Title 4 of Part 4. If a party then fails to
4 obey an order compelling a response or a further response, the court may make
5 those orders that are just, including the imposition of an issue sanction, an
6 evidence sanction, or a terminating sanction under ~~Section 2023~~ Chapter 7
7 (commencing with Section 2023.010) of Title 4 of Part 4. In lieu of or in addition
8 to that sanction, the court may impose a monetary sanction under ~~Section 2023~~
9 Chapter 7 (commencing with Section 2023.010) of Title 4 of Part 4.

10 **Comment.** Subdivision (e) of Section 93 is amended to reflect nonsubstantive reorganization of
11 the rules governing civil discovery.

12 **Code Civ. Proc. § 94 (amended). Discovery in economic litigation cases**

13 SEC. ____ . Section 94 of the Code of Civil Procedure is amended to read:

14 94. Discovery is permitted only to the extent provided by this section and
15 Section 95. This discovery shall comply with the notice and format requirements
16 of the particular method of discovery, as provided in ~~Article 3 (commencing with~~
17 ~~Section 2016)~~ Chapter 3 of Title 4 (commencing with Section 2016.010) of Part
18 4. As to each adverse party, a party may use the following forms of discovery:

19 (a) Any combination of 35 of the following:

20 (1) Interrogatories (with no subparts) under ~~Section 2030~~ Chapter 13
21 (commencing with Section 2030.010) of Title 4 of Part 4.

22 (2) Demands to produce documents or things under ~~Section 2031~~ Chapter 14
23 (commencing with Section 2031.010) of Title 4 of Part 4.

24 (3) Requests for admission (with no subparts) under ~~Section 2033~~ Chapter 16
25 (commencing with Section 2033.010) of Title 4 of Part 4.

26 (b) One oral or written deposition under ~~Sections 2025 to 2028, inclusive~~
27 Chapters 9 (commencing with Section 2025.010), 10 (commencing with Section
28 2026.010), and 11 (commencing with Section 2028.010), inclusive, of Title 4 of
29 Part 4.

30 (c) Any party may serve on any person a deposition subpoena duces tecum
31 requiring the person served to mail copies of documents, books or records to the
32 party's counsel at a specified address, along with an affidavit complying with
33 Section 1561 of the Evidence Code.

34 The party who issued the deposition subpoena shall mail a copy of the response
35 to any other party who tenders the reasonable cost of copying it.

36 (d) Physical and mental examinations under ~~Section 2032~~ Chapter 15
37 (commencing with Section 2032.010) of Title 4 of Part 4.

38 (e) The identity of expert witnesses under ~~Section 2034~~ Chapter 18
39 (commencing with Section 2034.010) of Title 4 of Part 4.

40 **Comment.** Section 94 is amended to reflect nonsubstantive reorganization of the rules
41 governing civil discovery.

1 **Code Civ. Proc. § 116.310 (amended). Pleading and discovery in small claims action**

2 SEC. _____. Section 116.310 of the Code of Civil Procedure is amended to read:

3 116.310. (a) No formal pleading other than the claim described in Section
4 116.320 or 116.380, is necessary to initiate a small claims action.

5 (b) The pretrial discovery procedures described in ~~subdivision (a) of Section~~
6 Section 2019.010 are not permitted in small claims actions.

7 **Comment.** Subdivision (b) of Section 116.310 is amended to reflect nonsubstantive
8 reorganization of the rules governing civil discovery.

9 **Code Civ. Proc. § 116.770 (amended). Hearing on appeal in small claims action**

10 SEC. _____. Section 116.770 of the Code of Civil Procedure is amended to read:

11 116.770. (a) The appeal to the superior court shall consist of a new hearing
12 before a judicial officer other than the judicial officer who heard the action in the
13 small claims division.

14 (b) The hearing on an appeal to the superior court shall be conducted informally.
15 The pretrial discovery procedures described in ~~subdivision (a) of Section 2019~~
16 Section 2019.010 are not permitted, no party has a right to a trial by jury, and no
17 tentative decision or statement of decision is required.

18 (c) Article 5 (commencing with Section 116.510) on hearings in the small claims
19 court applies in hearings on appeal in the superior court, except that attorneys may
20 participate.

21 (d) The scope of the hearing shall include the claims of all parties who were
22 parties to the small claims action at the time the notice of appeal was filed. The
23 hearing shall include the claim of a defendant that was heard in the small claims
24 court.

25 (e) The clerk of the superior court shall schedule the hearing for the earliest
26 available time and shall mail written notice of the hearing to the parties at least 14
27 days prior to the time set for the hearing.

28 (f) The Judicial Council may prescribe by rule the practice and procedure on
29 appeal and the time and manner in which the record on appeal shall be prepared
30 and filed.

31 **Comment.** Subdivision (b) of Section 116.770 is amended to reflect nonsubstantive
32 reorganization of the rules governing civil discovery.

33 **Code Civ. Proc. § 437c (amended). Summary judgment motion**

34 SEC. _____. Section 437c of the Code of Civil Procedure is amended to read:

35 437c. (a) Any party may move for summary judgment in any action or
36 proceeding if it is contended that the action has no merit or that there is no defense
37 to the action or proceeding. The motion may be made at any time after 60 days
38 have elapsed since the general appearance in the action or proceeding of each
39 party against whom the motion is directed or at any earlier time after the general
40 appearance that the court, with or without notice and upon good cause shown, may
41 direct. Notice of the motion and supporting papers shall be served on all other

1 parties to the action at least 75 days before the time appointed for hearing.
2 However, if the notice is served by mail, the required 75-day period of notice shall
3 be increased by five days if the place of address is within the State of California,
4 10 days if the place of address is outside the State of California but within the
5 United States, and 20 days if the place of address is outside the United States, and
6 if the notice is served by facsimile transmission, Express Mail, or another method
7 of delivery providing for overnight delivery, the required 75-day period of notice
8 shall be increased by two court days. The motion shall be heard no later than 30
9 days before the date of trial, unless the court for good cause orders otherwise. The
10 filing of the motion shall not extend the time within which a party must otherwise
11 file a responsive pleading.

12 (b) The motion shall be supported by affidavits, declarations, admissions,
13 answers to interrogatories, depositions, and matters of which judicial notice shall
14 or may be taken. The supporting papers shall include a separate statement setting
15 forth plainly and concisely all material facts which the moving party contends are
16 undisputed. Each of the material facts stated shall be followed by a reference to the
17 supporting evidence. The failure to comply with this requirement of a separate
18 statement may in the court's discretion constitute a sufficient ground for denial of
19 the motion.

20 Any opposition to the motion shall be served and filed not less than 14 days
21 preceding the noticed or continued date of hearing, unless the court for good cause
22 orders otherwise. The opposition, where appropriate, shall consist of affidavits,
23 declarations, admissions, answers to interrogatories, depositions, and matters of
24 which judicial notice shall or may be taken.

25 The opposition papers shall include a separate statement which responds to each
26 of the material facts contended by the moving party to be undisputed, indicating
27 whether the opposing party agrees or disagrees that those facts are undisputed. The
28 statement also shall set forth plainly and concisely any other material facts which
29 the opposing party contends are disputed. Each material fact contended by the
30 opposing party to be disputed shall be followed by a reference to the supporting
31 evidence. Failure to comply with this requirement of a separate statement may
32 constitute a sufficient ground, in the court's discretion, for granting the motion.

33 Any reply to the opposition shall be served and filed by the moving party not
34 less than five days preceding the noticed or continued date of hearing, unless the
35 court for good cause orders otherwise.

36 Evidentiary objections not made at the hearing shall be deemed waived. Except
37 for subdivision (c) of Section 1005 relating to the method of service of opposition
38 and reply papers, Sections 1005 and 1013, extending the time within which a right
39 may be exercised or an act may be done, do not apply to this section.

40 Any incorporation by reference of matter in the court's file shall set forth with
41 specificity the exact matter to which reference is being made and shall not
42 incorporate the entire file.

1 (c) The motion for summary judgment shall be granted if all the papers
2 submitted show that there is no triable issue as to any material fact and that the
3 moving party is entitled to a judgment as a matter of law. In determining whether
4 the papers show that there is no triable issue as to any material fact the court shall
5 consider all of the evidence set forth in the papers, except that to which objections
6 have been made and sustained by the court, and all inferences reasonably
7 deducible from the evidence, except summary judgment shall not be granted by
8 the court based on inferences reasonably deducible from the evidence, if
9 contradicted by other inferences or evidence, which raise a triable issue as to any
10 material fact.

11 (d) Supporting and opposing affidavits or declarations shall be made by any
12 person on personal knowledge, shall set forth admissible evidence, and shall show
13 affirmatively that the affiant is competent to testify to the matters stated in the
14 affidavits or declarations. Any objections based on the failure to comply with the
15 requirements of this subdivision shall be made at the hearing or shall be deemed
16 waived.

17 (e) If a party is otherwise entitled to a summary judgment pursuant to this
18 section, summary judgment shall not be denied on grounds of credibility or for
19 want of cross-examination of witnesses furnishing affidavits or declarations in
20 support of the summary judgment, except that summary judgment may be denied
21 in the discretion of the court, where the only proof of a material fact offered in
22 support of the summary judgment is an affidavit or declaration made by an
23 individual who was the sole witness to that fact; or where a material fact is an
24 individual's state of mind, or lack thereof, and that fact is sought to be established
25 solely by the individual's affirmation thereof.

26 (f) (1) A party may move for summary adjudication as to one or more causes of
27 action within an action, one or more affirmative defenses, one or more claims for
28 damages, or one or more issues of duty, if that party contends that the cause of
29 action has no merit or that there is no affirmative defense thereto, or that there is
30 no merit to an affirmative defense as to any cause of action, or both, or that there is
31 no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or
32 that one or more defendants either owed or did not owe a duty to the plaintiff or
33 plaintiffs. A motion for summary adjudication shall be granted only if it
34 completely disposes of a cause of action, an affirmative defense, a claim for
35 damages, or an issue of duty.

36 (2) A motion for summary adjudication may be made by itself or as an
37 alternative to a motion for summary judgment and shall proceed in all procedural
38 respects as a motion for summary judgment. However, a party may not move for
39 summary judgment based on issues asserted in a prior motion for summary
40 adjudication and denied by the court, unless that party establishes to the
41 satisfaction of the court, newly discovered facts or circumstances or a change of
42 law supporting the issues reasserted in the summary judgment motion.

1 (g) Upon the denial of a motion for summary judgment, on the ground that there
2 is a triable issue as to one or more material facts, the court shall, by written or oral
3 order, specify one or more material facts raised by the motion as to which the court
4 has determined there exists a triable controversy. This determination shall
5 specifically refer to the evidence proffered in support of and in opposition to the
6 motion which indicates that a triable controversy exists. Upon the grant of a
7 motion for summary judgment, on the ground that there is no triable issue of
8 material fact, the court shall, by written or oral order, specify the reasons for its
9 determination. The order shall specifically refer to the evidence proffered in
10 support of, and if applicable in opposition to, the motion which indicates that no
11 triable issue exists. The court shall also state its reasons for any other
12 determination. The court shall record its determination by court reporter or written
13 order.

14 (h) If it appears from the affidavits submitted in opposition to a motion for
15 summary judgment or summary adjudication or both that facts essential to justify
16 opposition may exist but cannot, for reasons stated, then be presented, the court
17 shall deny the motion, or order a continuance to permit affidavits to be obtained or
18 discovery to be had or may make any other order as may be just. The application
19 to continue the motion to obtain necessary discovery may also be made by ex parte
20 motion at any time on or before the date the opposition response to the motion is
21 due.

22 (i) If, after granting a continuance to allow specified additional discovery, the
23 court determines that the party seeking summary judgment has unreasonably failed
24 to allow the discovery to be conducted, the court shall grant a continuance to
25 permit the discovery to go forward or deny the motion for summary judgment or
26 summary adjudication. This section does not affect or limit the ability of any party
27 to compel discovery under the Civil Discovery Act (~~Article 3 (commencing with~~
28 ~~Section 2016) of Chapter 3 of Title 3 of Part 4~~ Title 4 (commencing with Section
29 2016.010) of Part 4).

30 (j) If the court determines at any time that any of the affidavits are presented in
31 bad faith or solely for purposes of delay, the court shall order the party presenting
32 the affidavits to pay the other party the amount of the reasonable expenses which
33 the filing of the affidavits caused the other party to incur. Sanctions may not be
34 imposed pursuant to this subdivision, except on notice contained in a party's
35 papers, or on the court's own noticed motion, and after an opportunity to be heard.

36 (k) Except if a separate judgment may properly be awarded in the action, no
37 final judgment may be entered on a motion for summary judgment prior to the
38 termination of the action, but the final judgment shall, in addition to any matters
39 determined in the action, award judgment as established by the summary
40 proceeding herein provided for.

41 (l) In actions which arise out of an injury to the person or to property, if a motion
42 for summary judgment was granted on the basis that the defendant was without
43 fault, no other defendant during trial, over plaintiff's objection, may attempt to

1 attribute fault to or comment on the absence or involvement of the defendant who
2 was granted the motion.

3 (m) (1) A summary judgment entered under this section is an appealable
4 judgment as in other cases. Upon entry of any order pursuant to this section,
5 except the entry of summary judgment, a party may, within 20 days after service
6 upon him or her of a written notice of entry of the order, petition an appropriate
7 reviewing court for a peremptory writ. If the notice is served by mail, the initial
8 period within which to file the petition shall be increased by five days if the place
9 of address is within the State of California, 10 days if the place of address is
10 outside the State of California but within the United States, and 20 days if the
11 place of address is outside the United States. If the notice is served by facsimile
12 transmission, Express Mail, or another method of delivery providing for overnight
13 delivery, the initial period within which to file the petition shall be increased by
14 two court days. The superior court may, for good cause, and prior to the expiration
15 of the initial period, extend the time for one additional period not to exceed 10
16 days.

17 (2) Before a reviewing court affirms an order granting summary judgment or
18 summary adjudication on a ground not relied upon by the trial court, the reviewing
19 court shall afford the parties an opportunity to present their views on the issue by
20 submitting supplemental briefs. The supplemental briefing may include an
21 argument that additional evidence relating to that ground exists, but that the party
22 has not had an adequate opportunity to present the evidence or to conduct
23 discovery on the issue. The court may reverse or remand based upon the
24 supplemental briefing to allow the parties to present additional evidence or to
25 conduct discovery on the issue. If the court fails to allow supplemental briefing, a
26 rehearing shall be ordered upon timely petition of any party.

27 (n) (1) If a motion for summary adjudication is granted, at the trial of the action,
28 the cause or causes of action within the action, affirmative defense or defenses,
29 claim for damages, or issue or issues of duty as to the motion which has been
30 granted shall be deemed to be established and the action shall proceed as to the
31 cause or causes of action, affirmative defense or defenses, claim for damages, or
32 issue or issues of duty remaining.

33 (2) In the trial of the action, the fact that a motion for summary adjudication is
34 granted as to one or more causes of action, affirmative defenses, claims for
35 damages, or issues of duty within the action shall not operate to bar any cause of
36 action, affirmative defense, claim for damages, or issue of duty as to which
37 summary adjudication was either not sought or denied.

38 (3) In the trial of an action, neither a party, nor a witness, nor the court shall
39 comment upon the grant or denial of a motion for summary adjudication to a jury.

40 (o) A cause of action has no merit if either of the following
41 exists:

42 (1) One or more of the elements of the cause of action cannot be separately
43 established, even if that element is separately pleaded.

1 (2) A defendant establishes an affirmative defense to that cause of action.

2 (p) For purposes of motions for summary judgment and summary adjudication:

3 (1) A plaintiff or cross-complainant has met his or her burden of showing that
4 there is no defense to a cause of action if that party has proved each element of the
5 cause of action entitling the party to judgment on that cause of action. Once the
6 plaintiff or cross-complainant has met that burden, the burden shifts to the
7 defendant or cross-defendant to show that a triable issue of one or more material
8 facts exists as to that cause of action or a defense thereto. The defendant or cross-
9 defendant may not rely upon the mere allegations or denials of its pleadings to
10 show that a triable issue of material fact exists but, instead, shall set forth the
11 specific facts showing that a triable issue of material fact exists as to that cause of
12 action or a defense thereto.

13 (2) A defendant or cross-defendant has met his or her burden of showing that a
14 cause of action has no merit if that party has shown that one or more elements of
15 the cause of action, even if not separately pleaded, cannot be established, or that
16 there is a complete defense to that cause of action. Once the defendant or cross-
17 defendant has met that burden, the burden shifts to the plaintiff or cross-
18 complainant to show that a triable issue of one or more material facts exists as to
19 that cause of action or a defense thereto. The plaintiff or cross-complainant may
20 not rely upon the mere allegations or denials of its pleadings to show that a triable
21 issue of material fact exists but, instead, shall set forth the specific facts showing
22 that a triable issue of material fact exists as to that cause of action or a defense
23 thereto.

24 (q) This section does not extend the period for trial provided by Section 1170.5.

25 (r) Subdivisions (a) and (b) do not apply to actions brought pursuant to Chapter 4
26 (commencing with Section 1159) of Title 3 of Part 3.

27 (s) For the purposes of this section, a change in law does not include a later
28 enacted statute without retroactive application.

29 **Comment.** Subdivision (i) of Section 437c is amended to reflect nonsubstantive reorganization
30 of the rules governing civil discovery.

31 **Code Civ. Proc. § 485.230 (amended). Discovery where court has issued right to attach**
32 **order**

33 SEC. _____. Section 485.230 of the Code of Civil Procedure is amended to read:

34 485.230. Where a right to attach order has been issued by the court, a plaintiff
35 may discover, through any means provided for by, and subject to the protections
36 included in, ~~Article 3 (commencing with Section 2016) of Title 3~~ Title 4
37 (commencing with Section 2016.010) of Part 4, the identity, location, and value of
38 property in which the defendant has an interest.

39 **Comment.** Section 485.230 is amended to reflect nonsubstantive reorganization of the rules
40 governing civil discovery.

1 **Code Civ. Proc. § 708.020 (amended). Written interrogatories propounded by judgment**
2 **creditor**

3 SEC. _____. Section 708.020 of the Code of Civil Procedure is amended to read:

4 708.020. (a) The judgment creditor may propound written interrogatories to the
5 judgment debtor, in the manner provided in ~~Section 2030~~ Chapter 13
6 (commencing with Section 2030.010) of Title 4 of Part 4, requesting information
7 to aid in enforcement of the money judgment. The judgment debtor shall answer
8 the interrogatories in the manner and within the time provided by ~~Section 2030~~
9 Chapter 13 (commencing with Section 2030.010) of Title 4 of Part 4.

10 (b) The judgment creditor may not serve interrogatories pursuant to this section
11 within 120 days after the judgment debtor has responded to interrogatories
12 previously served pursuant to this section or within 120 days after the judgment
13 debtor has been examined pursuant to Article 2 (commencing with Section
14 708.110), and the judgment debtor is not required to respond to any interrogatories
15 so served.

16 (c) Interrogatories served pursuant to this section may be enforced, to the extent
17 practicable, in the same manner as interrogatories in a civil action.

18 (d) The limitation provided by ~~Section 2030~~ Chapter 13 (commencing with
19 Section 2030.010) of Title 4 of Part 4 on the number of interrogatories that may be
20 propounded applies to each set of interrogatories propounded from time to time
21 pursuant to this section, but does not apply cumulatively to interrogatories
22 propounded by the judgment creditor to the judgment debtor.

23 **Comment.** Subdivisions (a) and (d) of Section 708.020 are amended to reflect nonsubstantive
24 reorganization of the rules governing civil discovery.

25 **Code Civ. Proc. § 708.030 (amended). Demands for production of documents and other**
26 **discovery by judgment creditor**

27 SEC. _____. Section 708.030 of the Code of Civil Procedure is amended to read:

28 708.030. (a) The judgment creditor may demand that any judgment debtor
29 produce and permit the party making the demand, or someone acting on that
30 party's behalf, to inspect and to copy a document that is in the possession, custody,
31 or control of the party on whom the demand is made in the manner provided in
32 ~~Section 2031~~ Chapter 14 (commencing with Section 2031.010) of Title 4 of Part 4,
33 if the demand requests information to aid in enforcement of the money judgment.
34 The judgment debtor shall respond and comply with the demand in the manner and
35 within the time provided by ~~Section 2031~~ Chapter 14 (commencing with Section
36 2031.010) of Title 4 of Part 4.

37 (b) The judgment creditor may not serve interrogatories or inspection demands
38 pursuant to this section or Section 708.020 within 120 days after the judgment
39 debtor has responded to the interrogatories or demands previously served pursuant
40 to this section or Section 708.020, or within 120 days after the judgment debtor
41 has been examined pursuant to Article 2 (commencing with Section 708.110), and
42 the judgment debtor is not required to respond to any discovery so served.

1 (c) Inspection demands served pursuant to this section may be enforced to the
2 extent practicable, in the same manner as inspection demands in a civil action.

3 **Comment.** Subdivision (a) of Section 708.030 is amended to reflect nonsubstantive
4 reorganization of the rules governing civil discovery.

5 **Code Civ. Proc. § 1005 (amended). Written notice of motion**

6 SEC. _____. Section 1005 of the Code of Civil Procedure is amended to read:

7 1005. (a) Written notice shall be given, as prescribed in subdivisions (b) and (c),
8 for the following motions:

9 (1) Notice of Application and Hearing for Writ of Attachment under Section
10 484.040.

11 (2) Notice of Application and Hearing for Claim and Delivery under Section
12 512.030.

13 (3) Notice of Hearing for Claim of Exemption under Section 706.105.

14 (4) Motion to Quash Summons pursuant to subdivision (b) of Section 418.10.

15 (5) Motion for Determination of Good Faith Settlement pursuant to Section
16 877.6.

17 (6) Hearing for Discovery of Peace Officer Personnel Records pursuant to
18 Section 1043 of the Evidence Code.

19 (7) Notice of Hearing of Third-Party Claim pursuant to Section 720.320.

20 (8) Motion for an Order to Attend Deposition more than 150 miles from
21 deponent's residence pursuant to ~~paragraph (3) of subdivision (e) of Section 2025~~
22 Section 2025.260.

23 (9) Notice of Hearing of Application for Relief pursuant to Section 946.6 of the
24 Government Code.

25 (10) Motion to Set Aside Default or Default Judgment and for Leave to Defend
26 Actions pursuant to Section 473.5.

27 (11) Motion to Expunge Notice of Pendency of Action pursuant to Section
28 405.30.

29 (12) Motion to Set Aside Default and for Leave to Amend pursuant to Section
30 585.5.

31 (13) Any other proceeding under this code in which notice is required and no
32 other time or method is prescribed by law or by court or judge.

33 (b) Unless otherwise ordered or specifically provided by law, all moving and
34 supporting papers shall be served and filed at least 21 calendar days before the
35 hearing. The moving and supporting papers served shall be a copy of the papers
36 filed or to be filed with the court. However, if the notice is served by mail, the
37 required 21-day period of notice before the hearing shall be increased by five
38 calendar days if the place of mailing and the place of address are within the State
39 of California, 10 calendar days if either the place of mailing or the place of address
40 is outside the State of California but within the United States, and 20 calendar days
41 if either the place of mailing or the place of address is outside the United States,
42 and if the notice is served by facsimile transmission, express mail, or another

1 method of delivery providing for overnight delivery, the required 21-day period of
2 notice before the hearing shall be increased by two calendar days. Section 1013,
3 which extends the time within which a right may be exercised or an act may be
4 done, does not apply to a notice of motion, papers opposing a motion, or reply
5 papers governed by this section. All papers opposing a motion so noticed shall be
6 filed with the court and a copy served on each party at least 10 calendar days, and
7 all reply papers at least five calendar days before the hearing.

8 The court, or a judge thereof, may prescribe a shorter time.

9 (c) Notwithstanding any other provision of this section, all papers opposing a
10 motion and all reply papers shall be served by personal delivery, facsimile
11 transmission, express mail, or other means consistent with Sections 1010, 1011,
12 1012, and 1013, and reasonably calculated to ensure delivery to the other party or
13 parties not later than the close of the next business day after the time the opposing
14 papers or reply papers, as applicable, are filed. This subdivision applies to the
15 service of opposition and reply papers regarding motions for summary judgment
16 or summary adjudication, in addition to the motions listed in subdivision (a).

17 The court, or a judge thereof, may prescribe a shorter time.

18 **Comment.** Subdivision (a) of Section 1005 is amended to reflect nonsubstantive reorganization
19 of the rules governing civil discovery.

20 **Code Civ. Proc. § 1141.24 (amended). Prohibition of discovery after arbitration award**

21 SEC. _____. Section 1141.24 of the Code of Civil Procedure is amended to read:

22 1141.24. In cases ordered to arbitration pursuant to subdivision (a) of Section
23 1141.16, absent a stipulation to the contrary, no discovery other than that
24 permitted by ~~Section 2034~~ Chapter 18 (commencing with Section 2034.010) of
25 Title 4 of Part 4 is permissible after an arbitration award except by leave of court
26 upon a showing of good cause.

27 **Comment.** Section 1141.24 is amended to reflect nonsubstantive reorganization of the rules
28 governing civil discovery.

29 **Code Civ. Proc. § 1283 (amended). Deposition on order of arbitrator**

30 SEC. _____. Section 1283 of the Code of Civil Procedure is amended to read:

31 1283. On application of a party to the arbitration the neutral arbitrator may order
32 the deposition of a witness to be taken for use as evidence and not for discovery if
33 the witness cannot be compelled to attend the hearing or if such exceptional
34 circumstances exist as to make it desirable, in the interest of justice and with due
35 regard to the importance of presenting the testimony of witnesses orally at the
36 hearing, to allow the deposition to be taken. The deposition shall be taken in the
37 manner prescribed by law for the taking of depositions in civil actions. If the
38 neutral arbitrator orders the taking of the deposition of a witness who resides
39 outside the state, the party who applied for the taking of the deposition shall obtain
40 a commission therefor from the superior court in accordance with ~~Sections 2024 to~~
41 ~~2028, inclusive, of this code~~ Chapters 8 (commencing with Section 2024.010), 9

1 (commencing with Section 2025.010), 10 (commencing with Section 2026.010),
2 and 11 (commencing with Section 2028.010) of Title 4 of Part 4.

3 **Comment.** Section 1283 is amended to reflect nonsubstantive reorganization of the rules
4 governing civil discovery.

5 **Code Civ. Proc. § 1283.05 (amended). Depositions and discovery in arbitration proceedings**

6 SEC. _____. Section 1283.05 of the Code of Civil Procedure is amended to read:

7 1283.05. To the extent provided in Section 1283.1 depositions may be taken and
8 discovery obtained in arbitration proceedings as follows:

9 (a) After the appointment of the arbitrator or arbitrators, the parties to the
10 arbitration shall have the right to take depositions and to obtain discovery
11 regarding the subject matter of the arbitration, and, to that end, to use and exercise
12 all of the same rights, remedies, and procedures, and be subject to all of the same
13 duties, liabilities, and obligations in the arbitration with respect to the subject
14 matter thereof, as provided in Chapter 2 (commencing with Section 1985) of Title
15 3 of Part 4, and Article 3 (commencing with Section 2016) of Chapter 3 of, Title 3
16 of Part 4 of this code in Title 4 (commencing with Section 2016.010) of Part 4, as
17 if the subject matter of the arbitration were pending before a superior court of this
18 state in a civil action other than a limited civil case, subject to the limitations as to
19 depositions set forth in subdivision (e) of this section.

20 (b) The arbitrator or arbitrators themselves shall have power, in addition to the
21 power of determining the merits of the arbitration, to enforce the rights, remedies,
22 procedures, duties, liabilities, and obligations of discovery by the imposition of the
23 same terms, conditions, consequences, liabilities, sanctions, and penalties as can
24 be or may be imposed in like circumstances in a civil action by a superior court of
25 this state under the provisions of this code, except the power to order the arrest or
26 imprisonment of a person.

27 (c) The arbitrator or arbitrators may consider, determine, and make such orders
28 imposing such terms, conditions, consequences, liabilities, sanctions, and
29 penalties, whenever necessary or appropriate at any time or stage in the course of
30 the arbitration, and such orders shall be as conclusive, final, and enforceable as an
31 arbitration award on the merits, if the making of any such order that is equivalent
32 to an award or correction of an award is subject to the same conditions, if any, as
33 are applicable to the making of an award or correction of an award.

34 (d) For the purpose of enforcing the duty to make discovery, to produce evidence
35 or information, including books and records, and to produce persons to testify at a
36 deposition or at a hearing, and to impose terms, conditions, consequences,
37 liabilities, sanctions, and penalties upon a party for violation of any such duty,
38 such party shall be deemed to include every affiliate of such party as defined in
39 this section. For such purpose:

40 (1) The personnel of every such affiliate shall be deemed to be the officers,
41 directors, managing agents, agents, and employees of such party to the same
42 degree as each of them, respectively, bears such status to such affiliate; and

1 (2) The files, books, and records of every such affiliate shall be deemed to be in
2 the possession and control of, and capable of production by, such party. As used in
3 this section, “affiliate” of the party to the arbitration means and includes any party
4 or person for whose immediate benefit the action or proceeding is prosecuted or
5 defended, or an officer, director, superintendent, member, agent, employee, or
6 managing agent of such party or person.

7 (e) Depositions for discovery shall not be taken unless leave to do so is first
8 granted by the arbitrator or arbitrators.

9 **Comment.** Subdivision (a) of Section 1283.05 is amended to reflect nonsubstantive
10 reorganization of the rules governing civil discovery.

11 **Code Civ. Proc. § 1741 (amended). Discovery by parties participating in mediation**

12 SEC. _____. Section 1741 of the Code of Civil Procedure is amended to read:

13 1741. Any party who participates in mediation pursuant to this title shall retain
14 the right to obtain discovery to the extent available under the Civil Discovery Act
15 of 1986 (~~Article 3 (commencing with Section 2016)~~ of Chapter 3 of Title 3 (Title 4
16 (commencing with Section 2016.010) of Part 4).

17 **Comment.** Section 1741 is amended to reflect nonsubstantive reorganization of the rules
18 governing civil discovery.

19 **Code Civ. Proc. § 1775.11 (amended). Discovery by parties participating in mediation**

20 SEC. _____. Section 1775.11 of the Code of Civil Procedure is amended to read:

21 1775.11. Any party who participates in mediation pursuant to Section 1775.3
22 shall retain the right to obtain discovery to the extent available under the Civil
23 Discovery Act of 1986, ~~Article 3 (commencing with Section 2016)~~ of Chapter 3 of
24 Title 3 Act, Title 4 (commencing with Section 2016.010) of Part 4.

25 **Comment.** Section 1775.11 is amended to reflect nonsubstantive reorganization of the rules
26 governing civil discovery.

27 **Code Civ. Proc. § 1985.3 (amended). Personal records of consumer**

28 SEC. _____. Section 1985.3 of the Code of Civil Procedure is amended to read:

29 1985.3. (a) For purposes of this section, the following definitions apply:

30 (1) “Personal records” means the original, any copy of books, documents, other
31 writings, or electronic data pertaining to a consumer and which are maintained by
32 any “witness” which is a physician, dentist, ophthalmologist, optometrist,
33 chiropractor, physical therapist, acupuncturist, podiatrist, veterinarian, veterinary
34 hospital, veterinary clinic, pharmacist, pharmacy, hospital, medical center, clinic,
35 radiology or MRI center, clinical or diagnostic laboratory, state or national bank,
36 state or federal association (as defined in Section 5102 of the Financial Code),
37 state or federal credit union, trust company, anyone authorized by this state to
38 make or arrange loans that are secured by real property, security brokerage firm,
39 insurance company, title insurance company, underwritten title company, escrow
40 agent licensed pursuant to Division 6 (commencing with Section 17000) of the

1 Financial Code or exempt from licensure pursuant to Section 17006 of the
2 Financial Code, attorney, accountant, institution of the Farm Credit System, as
3 specified in Section 2002 of Title 12 of the United States Code, or telephone
4 corporation which is a public utility, as defined in Section 216 of the Public
5 Utilities Code, or psychotherapist, as defined in Section 1010 of the Evidence
6 Code, or a private or public preschool, elementary school, secondary school, or
7 postsecondary school as described in Section 76244 of the Education Code.

8 (2) “Consumer” means any individual, partnership of five or fewer persons,
9 association, or trust which has transacted business with, or has used the services
10 of, the witness or for whom the witness has acted as agent or fiduciary.

11 (3) “Subpoenaing party” means the person or persons causing a subpoena duces
12 tecum to be issued or served in connection with any civil action or proceeding
13 pursuant to this code, but shall not include the state or local agencies described in
14 Section 7465 of the Government Code, or any entity provided for under Article VI
15 of the California Constitution in any proceeding maintained before an adjudicative
16 body of that entity pursuant to Chapter 4 (commencing with Section 6000) of
17 Division 3 of the Business and Professions Code.

18 (4) “Deposition officer” means a person who meets the qualifications specified
19 in ~~paragraph (3) of subdivision (d) of Section 2020~~ Section 2020.420.

20 (b) Prior to the date called for in the subpoena duces tecum for the production of
21 personal records, the subpoenaing party shall serve or cause to be served on the
22 consumer whose records are being sought a copy of the subpoena duces tecum, of
23 the affidavit supporting the issuance of the subpoena, if any, and of the notice
24 described in subdivision (e), and proof of service as indicated in paragraph (1) of
25 subdivision (c). This service shall be made as follows:

26 (1) To the consumer personally, or at his or her last known address, or in
27 accordance with Chapter 5 (commencing with Section 1010) of Title 14 of Part 3,
28 or, if he or she is a party, to his or her attorney of record. If the consumer is a
29 minor, service shall be made on the minor’s parent, guardian, conservator, or
30 similar fiduciary, or if one of them cannot be located with reasonable diligence,
31 then service shall be made on any person having the care or control of the minor or
32 with whom the minor resides or by whom the minor is employed, and on the
33 minor if the minor is at least 12 years of age.

34 (2) Not less than 10 days prior to the date for production specified in the
35 subpoena duces tecum, plus the additional time provided by Section 1013 if
36 service is by mail.

37 (3) At least five days prior to service upon the custodian of the records, plus the
38 additional time provided by Section 1013 if service is by mail.

39 (c) Prior to the production of the records, the subpoenaing party shall do either
40 of the following:

41 (1) Serve or cause to be served upon the witness a proof of personal service or of
42 service by mail attesting to compliance with subdivision (b).

1 (2) Furnish the witness a written authorization to release the records signed by
2 the consumer or by his or her attorney of record. The witness may presume that
3 any attorney purporting to sign the authorization on behalf of the consumer acted
4 with the consent of the consumer, and that any objection to release of records is
5 waived.

6 (d) A subpoena duces tecum for the production of personal records shall be
7 served in sufficient time to allow the witness a reasonable time, as provided in
8 ~~paragraph (1) of subdivision (d) of Section 2020~~ Section 2020.410, to locate and
9 produce the records or copies thereof.

10 (e) Every copy of the subpoena duces tecum and affidavit, if any, served on a
11 consumer or his or her attorney in accordance with subdivision (b) shall be
12 accompanied by a notice, in a typeface designed to call attention to the notice,
13 indicating that (1) records about the consumer are being sought from the witness
14 named on the subpoena; (2) if the consumer objects to the witness furnishing the
15 records to the party seeking the records, the consumer must file papers with the
16 court or serve a written objection as provided in subdivision (g) prior to the date
17 specified for production on the subpoena; and (3) if the party who is seeking the
18 records will not agree in writing to cancel or limit the subpoena, an attorney
19 should be consulted about the consumer's interest in protecting his or her rights of
20 privacy. If a notice of taking of deposition is also served, that other notice may be
21 set forth in a single document with the notice required by this subdivision.

22 (f) A subpoena duces tecum for personal records maintained by a telephone
23 corporation which is a public utility, as defined in Section 216 of the Public
24 Utilities Code, shall not be valid or effective unless it includes a consent to release,
25 signed by the consumer whose records are requested, as required by Section 2891
26 of the Public Utilities Code.

27 (g) Any consumer whose personal records are sought by a subpoena duces tecum
28 and who is a party to the civil action in which this subpoena duces tecum is served
29 may, prior to the date for production, bring a motion under Section 1987.1 to
30 quash or modify the subpoena duces tecum. Notice of the bringing of that motion
31 shall be given to the witness and deposition officer at least five days prior to
32 production. The failure to provide notice to the deposition officer shall not
33 invalidate the motion to quash or modify the subpoena duces tecum but may be
34 raised by the deposition officer as an affirmative defense in any action for liability
35 for improper release of records.

36 Any other consumer or nonparty whose personal records are sought by a
37 subpoena duces tecum may, prior to the date of production, serve on the
38 subpoenaing party the witness, and the deposition officer, a written objection that
39 cites the specific grounds on which production of the personal records should be
40 prohibited.

41 No witness or deposition officer shall be required to produce personal records
42 after receipt of notice that the motion has been brought by consumer, or after
43 receipt of a written objection from a nonparty consumer, except upon order of the

1 court in which the action is pending or by agreement of the parties, witnesses, and
2 consumers affected.

3 The party requesting a consumer's personal records may bring a motion under
4 Section 1987.1 to enforce the subpoena within 20 days of service of the written
5 objection. The motion shall be accompanied by a declaration showing a reasonable
6 and good faith attempt at informal resolution of the dispute between the party
7 requesting the personal records and the consumer or the consumer's attorney.

8 (h) Upon good cause shown and provided that the rights of witnesses and
9 consumers are preserved, a subpoenaing party shall be entitled to obtain an order
10 shortening the time for service of a subpoena duces tecum or waiving the
11 requirements of subdivision (b) where due diligence by the subpoenaing party has
12 been shown.

13 (i) Nothing contained in this section shall be construed to apply to any subpoena
14 duces tecum which does not request the records of any particular consumer or
15 consumers and which requires a custodian of records to delete all information
16 which would in any way identify any consumer whose records are to be produced.

17 (j) This section shall not apply to proceedings conducted under Division 1
18 (commencing with Section 50), Division 4 (commencing with Section 3200),
19 Division 4.5 (commencing with Section 6100), or Division 4.7 (commencing with
20 Section 6200) of the Labor Code.

21 (k) Failure to comply with this section shall be sufficient basis for the witness to
22 refuse to produce the personal records sought by a subpoena duces tecum.

23 **Comment.** Subdivisions (a) and (d) of Section 1985.3 are amended to reflect nonsubstantive
24 reorganization of the rules governing civil discovery.

25 **Code Civ. Proc. § 1985.6 (amended). Employment records**

26 SEC. _____. Section 1985.6 of the Code of Civil Procedure is amended to read:

27 1985.6. (a) For purposes of this section, the following definitions apply:

28 (1) "Employment records" means the original or any copy of books, documents,
29 other writings, or electronic data pertaining to the employment of any employee
30 maintained by the current or former employer of the employee.

31 (2) "Employee" means any individual who is or has been employed by a witness
32 subject to a subpoena duces tecum.

33 (3) "Subpoenaing party" means the person or persons causing a subpoena duces
34 tecum to be issued or served in connection with any civil action or proceeding, but
35 shall not include the state or local agencies described in Section 7465 of the
36 Government Code, or any entity provided for under Article VI of the California
37 Constitution in any proceeding maintained before an adjudicative body of that
38 entity pursuant to Chapter 4 (commencing with Section 6000) of Division 3 of the
39 Business and Professions Code.

40 (4) "Deposition officer" means a person who meets the qualifications specified
41 in paragraph (3) of subdivision (d) of Section 2020 Section 2020.420.

1 (b) Prior to the date called for in the subpoena duces tecum of the production of
2 employment records, the subpoenaing party shall serve or cause to be served on
3 the employee whose records are being sought a copy of: the subpoena duces
4 tecum; the affidavit supporting the issuance of the subpoena, if any; and the notice
5 described in subdivision (e), and proof of service as provided in paragraph (1) of
6 subdivision (c). This service shall be made as follows:

7 (1) To the employee personally, or at his or her last known address, or in
8 accordance with Chapter 5 (commencing with Section 1010) of Title 14 of Part 3,
9 or, if he or she is a party, to his or her attorney of record. If the employee is a
10 minor, service shall be made on the minor's parent, guardian, conservator, or
11 similar fiduciary, or if one of them cannot be located with reasonable diligence,
12 then service shall be made on any person having the care or control of the minor,
13 or with whom the minor resides, and on the minor if the minor is at least 12 years
14 of age.

15 (2) Not less than 10 days prior to the date for production specified in the
16 subpoena duces tecum, plus the additional time provided by Section 1013 if
17 service is by mail.

18 (3) At least five days prior to service upon the custodian of the employment
19 records, plus the additional time provided by Section 1013 if service is by mail.

20 (c) Prior to the production of the records, the subpoenaing party shall either:

21 (1) Serve or cause to be served upon the witness a proof of personal service or of
22 service by mail attesting to compliance with subdivision (b).

23 (2) Furnish the witness a written authorization to release the records signed by
24 the employee or by his or her attorney of record. The witness may presume that the
25 attorney purporting to sign the authorization on behalf of the employee acted with
26 the consent of the employee, and that any objection to release of records is waived.

27 (d) A subpoena duces tecum for the production of employment records shall be
28 served in sufficient time to allow the witness a reasonable time, as provided in
29 ~~paragraph (1) of subdivision (d) of Section 2020~~ Section 2020.410, to locate and
30 produce the records or copies thereof.

31 (e) Every copy of the subpoena duces tecum and affidavit served on an
32 employee or his or her attorney in accordance with subdivision (b) shall be
33 accompanied by a notice, in a typeface designed to call attention to the notice,
34 indicating that (1) employment records about the employee are being sought from
35 the witness named on the subpoena; (2) the employment records may be protected
36 by a right of privacy; (3) if the employee objects to the witness furnishing the
37 records to the party seeking the records the employee shall file papers with the
38 court prior to the date specified for production on the subpoena; and (4) if the
39 subpoenaing party does not agree in writing to cancel or limit the subpoena, an
40 attorney should be consulted about the employee's interest in protecting his or her
41 rights of privacy. If a notice of taking of deposition is also served, that other notice
42 may be set forth in a single document with the notice required by this subdivision.

1 (f) Any employee whose employment records are sought by a subpoena duces
2 tecum may, prior to the date for production, bring a motion under Section 1987.1
3 to quash or modify the subpoena duces tecum. Notice of the bringing of that
4 motion shall be given to the witness and the deposition officer at least five days
5 prior to production. The failure to provide notice to the deposition officer shall not
6 invalidate the motion to quash or modify the subpoena duces tecum but may be
7 raised by the deposition officer as an affirmative defense in any action for liability
8 for improper release of records.

9 Any nonparty employee whose employment records are sought by a subpoena
10 duces tecum may, prior to the date of production, serve on the subpoenaing party,
11 and the deposition officer, the witness a written objection that cites the specific
12 grounds on which production of the employment records should be prohibited.

13 No witness or deposition officer shall be required to produce employment
14 records after receipt of notice that the motion has been brought by an employee, or
15 after receipt of a written objection from a nonparty employee, except upon order of
16 the court in which the action is pending or by agreement of the parties, witnesses,
17 and employees affected.

18 The party requesting an employee's employment records may bring a motion
19 under subdivision (c) of Section 1987 to enforce the subpoena within 20 days of
20 service of the written objection. The motion shall be accompanied by a declaration
21 showing a reasonable and good faith attempt at informal resolution of the dispute
22 between the party requesting the employment records and the employee or the
23 employee's attorney.

24 (g) Upon good cause shown and provided that the rights of witness and
25 employees are preserved, a subpoenaing party shall be entitled to obtain an order
26 shortening the time for service of a subpoena duces tecum or waiving the
27 requirements of subdivision (b) where due diligence by the subpoenaing party has
28 been shown.

29 (h) Nothing contained in this section shall be construed to apply to any subpoena
30 duces tecum which does not request the records of any particular employee or
31 employees and which requires a custodian of records to delete all information
32 which would in any way identify any employee whose records are to be produced.

33 (i) This section shall not apply to proceedings conducted under Division 1
34 (commencing with Section 50), Division 4 (commencing with Section 3200),
35 Division 4.5 (commencing with Section 6100), or Division 4.7 (commencing with
36 Section 6200) of the Labor Code.

37 (j) Failure to comply with this section shall be sufficient basis for the witness to
38 refuse to produce the employment records sought by subpoena duces tecum.

39 **Comment.** Subdivisions (a) and (d) of Section 1985.6 are amended to reflect nonsubstantive
40 reorganization of the rules governing civil discovery.

41 **Code Civ. Proc. § 1987.5 (amended). Effect of subpoena**

42 SEC. _____. Section 1987.5 of the Code of Civil Procedure is amended to read:

1 1987.5. The service of a subpoena duces tecum is invalid unless at the time of
2 such service a copy of the affidavit upon which the subpoena is based is served on
3 the person served with the subpoena. In the case of a subpoena duces tecum which
4 requires appearance and the production of matters and things at the taking of a
5 deposition, the subpoena shall not be valid unless a copy of the affidavit upon
6 which the subpoena is based and the designation of the materials to be produced,
7 as set forth in the subpoena, is attached to the notice of taking the deposition
8 served upon each party or its attorney as provided in Chapter 3 (commencing with
9 Section 2002) and in Title 4 (commencing with Section 2016.010). If matters and
10 things are produced pursuant to a subpoena duces tecum in violation of this
11 section, any other party to the action may file a motion for, and the court may
12 grant, an order providing appropriate relief, including, but not limited to, exclusion
13 of the evidence affected by the violation, a retaking of the deposition
14 notwithstanding any other limitation on discovery proceedings, or a continuance.
15 The party causing the subpoena to be served shall retain the original affidavit until
16 final judgment in the action, and shall file the affidavit with the court only upon
17 reasonable request by any party or witness affected thereby. This section does not
18 apply to deposition subpoenas commanding only the production of business
19 records for copying under ~~subdivision (d) of Section 2020~~ Article 4 (commencing
20 with Section 2020.410) of Chapter 6 of Title 4.

21 **Comment.** Section 1987.5 is amended to reflect nonsubstantive reorganization of the rules
22 governing civil discovery.

23 **Code Civ. Proc. § 1991.1 (amended). Disobedience of deposition subpoena or refusal to be**
24 **sworn at deposition**

25 SEC. _____. Section 1991.1 of the Code of Civil Procedure is amended to read:

26 1991.1. Disobedience to a subpoena requiring attendance of a witness before an
27 officer out of court in a deposition taken pursuant to ~~Article 3 (commencing with~~
28 ~~Section 2016) of Chapter 3 of Title 3~~ Title 4 (commencing with Section 2016.010)
29 of Part 4, or refusal to be sworn as a witness at that deposition, may be punished as
30 contempt, as provided in ~~paragraph (5) of subdivision (b) of Section 2023~~
31 subdivision (e) of Section 2023.030, without the necessity of a prior order of court
32 directing compliance by the witness.

33 **Comment.** Section 1991.1 is amended to reflect nonsubstantive reorganization of the rules
34 governing civil discovery.

35 **Code Civ. Proc. § 1991.2 (amended). Application of Section 1991**

36 SEC. _____. Section 1991.2 of the Code of Civil Procedure is amended to read:

37 1991.2. On and after the ninety-first day after adjournment of the 1959 Regular
38 Session, the provisions of Section 1991 shall not apply to any act or omission
39 thereafter occurring in a deposition taken pursuant to ~~Article 3, Chapter 3, Title 3,~~
40 ~~Part 4 (commencing at Section 2016)~~ Title 4 (commencing with Section 2016.010)

1 of Part 4 but the provisions of Section 2034 Chapter 18 (commencing with Section
2 2034.010) of Title 4 of Part 4 shall be exclusively applicable.

3 **Comment.** Section 1991.2 is amended to reflect nonsubstantive reorganization of the rules
4 governing civil discovery.

5 **Code Civ. Proc. § 2093 (amended). Authority to administer oaths and affirmations**

6 SEC. _____. Section 2093 of the Code of Civil Procedure is amended to read:

7 2093. (a) Every court, every judge, or clerk of any court, every justice, and every
8 notary public, and every officer or person authorized to take testimony in any
9 action or proceeding, or to decide upon evidence, has the power to administer
10 oaths or affirmations.

11 (b)(1) Every shorthand reporter certified pursuant to Article 3 (commencing
12 with Section 8020) of Chapter 13 of Division 3 of the Business and Professions
13 Code has the power to administer oaths or affirmations and may perform the duties
14 of the deposition officer pursuant to ~~Section 2025 Chapter 9 (commencing with~~
15 Section 2025.010) of Title 4 of Part 4. The certified shorthand reporter shall be
16 entitled to receive fees for services rendered during a deposition, including fees for
17 deposition services, as specified in subdivision (c) of Section 8211 of the
18 Government Code.

19 (2) This subdivision shall also apply to depositions taken by telephone or other
20 remote electronic means as specified in ~~Sections 2017 and 2025 Chapters 2~~
21 (commencing with Section 2017.010), 3 (commencing with Section 2017.510),
22 and 9 (commencing with Section 2025.010) of Title 4 of Part 4.

23 (c) A former judge or justice of a court of record in this state who retired or
24 resigned from office, other than a judge or justice who was retired by the Supreme
25 Court for disability, shall have the power to administer oaths or affirmations, if the
26 former judge or justice requests and receives a certification from the Commission
27 on Judicial Performance that there was no formal disciplinary proceeding pending
28 at the time of retirement or resignation. Where no formal disciplinary proceeding
29 was pending at the time of retirement or resignation, the Commission on Judicial
30 Performance shall issue the certification.

31 No law, rule, or regulation regarding the confidentiality of proceedings of the
32 Commission on Judicial Performance shall be construed to prohibit the
33 Commission on Judicial Performance from issuing a certificate as provided for in
34 this section.

35 **Comment.** Subdivision (b) of Section 2093 is amended to reflect nonsubstantive reorganization
36 of the rules governing civil discovery.

37 **Educ. Code § 44944 (amended). Hearing on employee request in dismissal or suspension**
38 **proceeding**

39 SEC. _____. Section 44944 of the Education Code is amended to read:

40 44944. (a) In a dismissal or suspension proceeding initiated pursuant to Section
41 44934, if a hearing is requested by the employee, the hearing shall be commenced

1 within 60 days from the date of the employee's demand for a hearing. The hearing
2 shall be initiated, conducted, and a decision made in accordance with Chapter 5
3 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the
4 Government Code. However, the hearing date shall be established after
5 consultation with the employee and the governing board, or their representatives,
6 and the Commission on Professional Competence shall have all the power granted
7 to an agency in that chapter, except that the right of discovery of the parties shall
8 not be limited to those matters set forth in Section 11507.6 of the Government
9 Code but shall include the rights and duties of any party in a civil action brought in
10 a superior court under ~~Article 3 (commencing with Section 2016) of Chapter 3 of~~
11 Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil
12 Procedure. Notwithstanding any provision to the contrary, and except for the
13 taking of oral depositions, no discovery shall occur later than 30 calendar days
14 after the employee is served with a copy of the accusation pursuant to Section
15 11505 of the Government Code. In all cases, discovery shall be completed prior to
16 seven calendar days before the date upon which the hearing commences. If any
17 continuance is granted pursuant to Section 11524 of the Government Code, the
18 time limitation for commencement of the hearing as provided in this subdivision
19 shall be extended for a period of time equal to such continuance. However, the
20 extension shall not include that period of time attributable to an unlawful refusal
21 by either party to allow the discovery provided for in this section.

22 If the right of discovery granted under the preceding paragraph is denied by
23 either the employee or the governing board, all the remedies in ~~Section 2034~~
24 Chapter 18 (commencing with Section 2034.010) of Title 4 of Part 4 of the Code
25 of Civil Procedure shall be available to the party seeking discovery and the court
26 of proper jurisdiction, to entertain his or her motion, shall be the superior court of
27 the county in which the hearing will be held.

28 The time periods in this section and of Chapter 5 (commencing with Section
29 11500) of Part 1 of Division 3 of Title 2 of the Government Code and of ~~Article 3~~
30 ~~(commencing with Section 2016) of Chapter 3 of Title 3~~ Title 4 (commencing with
31 Section 2016.010) of Part 4 of the Code of Civil Procedure shall not be applied so
32 as to deny discovery in a hearing conducted pursuant to this section.

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

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

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

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

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

23 (1) That the employee should be dismissed.

24 (2) That the employee should be suspended for a specific period of time without
25 pay.

26 (3) That the employee should not be dismissed or suspended.

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

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

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

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

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

42 (d)(1) If the member selected by the governing board or the member selected by
43 the employee is employed by any school district in this state the member shall,

1 during any service on a Commission on Professional Competence, continue to
2 receive salary, fringe benefits, accumulated sick leave, and other leaves and
3 benefits from the district in which the member is employed, but shall receive no
4 additional compensation or honorariums for service on the commission.

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

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

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

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

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

37 In the event that the decision of the commission is finally reversed or vacated by
38 a court of competent jurisdiction, then either the state, having paid the commission
39 members' expenses, shall be entitled to reimbursement from the governing board
40 for those expenses, or the governing board, having paid the expenses, shall be
41 entitled to reimbursement from the state.

42 Additionally, either the employee, having paid a portion of the expenses of the
43 hearing, including the cost of the administrative law judge, shall be entitled to

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

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

8 **Comment.** Subdivision (a) of Section 44944 is amended to reflect nonsubstantive
9 reorganization of the rules governing civil discovery.

10 **Educ. Code § 45312 (amended). Hearing or investigation conducted by hearing officer or**
11 **other representative**

12 SEC. _____. Section 45312 of the Education Code is amended to read:

13 45312. The commission may authorize a hearing officer or other representative
14 to conduct any hearing or investigation which the commission itself is authorized
15 by this article to conduct. Any such authorized person conducting such hearing or
16 investigation may administer oaths, subpoena and require the attendance of
17 witnesses and the production of books or papers, and cause the depositions of
18 witnesses to be taken in the manner prescribed by law for like depositions in civil
19 cases in the superior court of this state under ~~Article 3 (commencing with Section~~
20 ~~2016) of Chapter 3 of Title 4 (commencing with Section 2016.010)~~ of Part 4 of the
21 Code of Civil Procedure. The commission may instruct such authorized
22 representative to present findings or recommendations. The commission may
23 accept, reject or amend any of the findings or recommendations of the said
24 authorized representative. Any rejection or amendment of findings or
25 recommendations shall be based either on a review of the transcript of the hearing
26 or investigation or upon the results of such supplementary hearing or investigation
27 as the commission may order.

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

31 **Comment.** Section 45312 is amended to reflect nonsubstantive reorganization of the rules
32 governing civil discovery.

33 **Educ. Code § 87675 (amended). Arbitration procedure**

34 SEC. _____. Section 87675 of the Education Code is amended to read:

35 87675. The arbitrator shall conduct proceedings in accordance with Chapter 5
36 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the
37 Government Code, except that the right of discovery of the parties shall not be
38 limited to those matters set forth in Section 11507.6 of the Government Code but
39 shall include the rights and duties of any party in a civil action brought in a
40 superior court under ~~Article 3 (commencing with Section 2016) of Chapter 3 of~~
41 ~~Title 4 (commencing with Section 2016.010)~~ of Part 4 of the Code of Civil

1 Procedure. In all cases, discovery shall be completed prior to one week before the
2 date set for hearing. The arbitrator shall determine whether there is cause to
3 dismiss or penalize the employee. If the arbitrator finds cause, the arbitrator shall
4 determine whether the employee shall be dismissed, the precise penalty to be
5 imposed, and whether the decision should be imposed immediately or postponed
6 pursuant to Section 87672.

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

15 **Comment.** Section 87675 is amended to reflect nonsubstantive reorganization of the rules
16 governing civil discovery.

17 **Educ. Code § 87679 (amended). Proceedings conducted by administrative law judge**

18 SEC. _____. Section 87679 of the Education Code is amended to read:

19 87679. The administrative law judge shall conduct proceedings in accordance
20 with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2
21 of the Government Code, except that the right of discovery of the parties shall not
22 be limited to those matters set forth in Section 11507.6 of the Government Code
23 but shall include the rights and duties of any party in a civil action brought in a
24 superior court under ~~Article 3 (commencing with Section 2016) of Chapter 3 of~~
25 Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil
26 Procedure. In all cases, discovery shall be completed prior to one week before the
27 date set for hearing. The written notice delivered to the employee pursuant to
28 Section 87672 shall be deemed an accusation. The written objection of the
29 employee delivered pursuant to Section 87673 shall be deemed the notice of
30 defense.

31 **Comment.** Section 87679 is amended to reflect nonsubstantive reorganization of the rules
32 governing civil discovery.

33 **Educ. Code § 88131 (amended). Hearing or investigation conducted by hearing officer or**
34 **other representative**

35 SEC. _____. Section 88131 of the Education Code is amended to read:

36 88131. The commission may authorize a hearing officer or other representative
37 to conduct any hearing or investigation which the commission itself is authorized
38 by this article to conduct. Any such authorized person conducting such hearing or
39 investigation may administer oaths, subpoena and require the attendance of
40 witnesses and the production of books or papers, and cause the depositions of
41 witnesses to be taken in the manner prescribed by law for like depositions in civil

1 cases in the superior court of this state under ~~Article 3 (commencing with Section~~
2 ~~2016) of Chapter 3 of Title 4 (commencing with Section 2016.010)~~ of Part 4 of the
3 Code of Civil Procedure. The commission may instruct such authorized
4 representative to present findings or recommendations. The commission may
5 accept, reject or amend any of the findings or recommendations of the said
6 authorized representative. Any rejection or amendment of findings or
7 recommendations shall be based either on a review of the transcript of the hearing
8 or investigation or upon the results of such supplementary hearing or investigation
9 as the commission may order.

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

13 **Comment.** Section 88131 is amended to reflect nonsubstantive reorganization of the rules
14 governing civil discovery.

15 **Evid. Code § 915 (amended). Disclosure of privileged information or attorney work product**
16 **in ruling on claim of privilege**

17 SEC. ____ . Section 915 of the Evidence Code is amended to read:

18 915.(a) Subject to subdivision (b), the presiding officer may not require
19 disclosure of information claimed to be privileged under this division or attorney
20 work product under ~~subdivision (e) of Section 2018~~ subdivision (a) of Section
21 2018.030 of the Code of Civil Procedure in order to rule on the claim of privilege;
22 provided, however, that in any hearing conducted pursuant to subdivision (c) of
23 Section 1524 of the Penal Code in which a claim of privilege is made and the court
24 determines that there is no other feasible means to rule on the validity of the claim
25 other than to require disclosure, the court shall proceed in accordance with
26 subdivision (b).

27 (b) When a court is ruling on a claim of privilege under Article 9 (commencing
28 with Section 1040) of Chapter 4 (official information and identity of informer) or
29 under Section 1060 (trade secret) or under subdivision (b) of Section ~~2018~~
30 2018.030 of the Code of Civil Procedure (attorney work product) and is unable to
31 do so without requiring disclosure of the information claimed to be privileged, the
32 court may require the person from whom disclosure is sought or the person
33 authorized to claim the privilege, or both, to disclose the information in chambers
34 out of the presence and hearing of all persons except the person authorized to
35 claim the privilege and any other persons as the person authorized to claim the
36 privilege is willing to have present. If the judge determines that the information is
37 privileged, neither the judge nor any other person may ever disclose, without the
38 consent of a person authorized to permit disclosure, what was disclosed in the
39 course of the proceedings in chambers.

40 **Comment.** Section 915 is amended to reflect nonsubstantive reorganization of the rules
41 governing civil discovery.

1 **Evid. Code § 1156 (amended). Records of medical or dental study of in-hospital staff**
2 **committee**

3 SEC. _____. Section 1156 of the Evidence Code is amended to read:

4 1156. (a) In-hospital medical or medical-dental staff committees of a licensed
5 hospital may engage in research and medical or dental study for the purpose of
6 reducing morbidity or mortality, and may make findings and recommendations
7 relating to such purpose. Except as provided in subdivision (b), the written records
8 of interviews, reports, statements, or memoranda of such in-hospital medical or
9 medical-dental staff committees relating to such medical or dental studies are
10 subject to ~~Sections 2016 to 2036, inclusive,~~ Title 4 (commencing with Section
11 2016.010) of Part 4 of the Code of Civil Procedure (relating to discovery
12 proceedings) but, subject to subdivisions (c) and (d), shall not be admitted as
13 evidence in any action or before any administrative body, agency, or person.

14 (b) The disclosure, with or without the consent of the patient, of information
15 concerning him to such in-hospital medical or medical-dental staff committee does
16 not make unprivileged any information that would otherwise be privileged under
17 Section 994 or 1014; but, notwithstanding Sections 994 and 1014, such
18 information is subject to discovery under subdivision (a) except that the identity of
19 any patient may not be discovered under subdivision (a) unless the patient
20 consents to such disclosure.

21 (c) This section does not affect the admissibility in evidence of the original
22 medical or dental records of any patient.

23 (d) This section does not exclude evidence which is relevant evidence in a
24 criminal action.

25 **Comment.** Subdivision (a) of Section 1156 is amended to reflect nonsubstantive reorganization
26 of the rules governing civil discovery.

27 **Evid. Code § 1156.1 (amended). Records of medical or psychiatric studies of quality**
28 **assurance committees**

29 SEC. _____. Section 1156.1 of the Evidence Code is amended to read:

30 1156.1. (a) A committee established in compliance with Sections 4070 and 5624
31 of the Welfare and Institutions Code may engage in research and medical or
32 psychiatric study for the purpose of reducing morbidity or mortality, and may
33 make findings and recommendations to the county and state relating to such
34 purpose. Except as provided in subdivision (b), the written records of interviews,
35 reports, statements, or memoranda of such committees relating to such medical or
36 psychiatric studies are subject to ~~Sections 2016 to 2036, inclusive,~~ Title 4
37 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure but,
38 subject to subdivisions (c) and (d), shall not be admitted as evidence in any action
39 or before any administrative body, agency, or person.

40 (b) The disclosure, with or without the consent of the patient, of information
41 concerning him or her to such committee does not make unprivileged any
42 information that would otherwise be privileged under Section 994 or 1014.

1 However, notwithstanding Sections 994 and 1014, such information is subject to
2 discovery under subdivision (a) except that the identity of any patient may not be
3 discovered under subdivision (a) unless the patient consents to such disclosure.

4 (c) This section does not affect the admissibility in evidence of the original
5 medical or psychiatric records of any patient.

6 (d) This section does not exclude evidence which is relevant evidence in a
7 criminal action.

8 **Comment.** Subdivision (a) of Section 1156.1 is amended to reflect nonsubstantive
9 reorganization of the rules governing civil discovery.

10 **Evid. Code § 1560 (amended). Compliance with subpoena duces tecum for business records**

11 SEC. ____. Section 1560 of the Evidence Code is amended to read:

12 1560. (a) As used in this article:

13 (1) “Business” includes every kind of business described in Section 1270.

14 (2) “Record” includes every kind of record maintained by a business.

15 (b) Except as provided in Section 1564, when a subpoena duces tecum is served
16 upon the custodian of records or other qualified witness of a business in an action
17 in which the business is neither a party nor the place where any cause of action is
18 alleged to have arisen, and the subpoena requires the production of all or any part
19 of the records of the business, it is sufficient compliance therewith if the custodian
20 or other qualified witness, within five days after the receipt of the subpoena in any
21 criminal action or within the time agreed upon by the party who served the
22 subpoena and the custodian or other qualified witness, or within 15 days after the
23 receipt of the subpoena in any civil action or within the time agreed upon by the
24 party who served the subpoena and the custodian or other qualified witness,
25 delivers by mail or otherwise a true, legible, and durable copy of all the records
26 described in the subpoena to the clerk of the court ~~or to the judge if there be no~~
27 ~~clerk or to another person described in subdivision (e) of Section 2026~~ subdivision
28 (d) of Section 2026.010 of the Code of Civil Procedure, together with the affidavit
29 described in Section 1561.

30 (c) The copy of the records shall be separately enclosed in an inner envelope or
31 wrapper, sealed, with the title and number of the action, name of witness, and date
32 of subpoena clearly inscribed thereon; the sealed envelope or wrapper shall then be
33 enclosed in an outer envelope or wrapper, sealed, and directed as follows:

34 (1) If the subpoena directs attendance in court, to the clerk of the court, ~~or to the~~
35 ~~judge thereof if there be no clerk.~~

36 (2) If the subpoena directs attendance at a deposition, to the officer before whom
37 the deposition is to be taken, at the place designated in the subpoena for the taking
38 of the deposition or at the officer’s place of business.

39 (3) In other cases, to the officer, body, or tribunal conducting the hearing, at a
40 like address.

41 (d) Unless the parties to the proceeding otherwise agree, or unless the sealed
42 envelope or wrapper is returned to a witness who is to appear personally, the copy

1 of the records shall remain sealed and shall be opened only at the time of trial,
2 deposition, or other hearing, upon the direction of the judge, officer, body, or
3 tribunal conducting the proceeding, in the presence of all parties who have
4 appeared in person or by counsel at the trial, deposition, or hearing. Records which
5 are original documents and which are not introduced in evidence or required as
6 part of the record shall be returned to the person or entity from whom received.
7 Records which are copies may be destroyed.

8 (e) As an alternative to the procedures described in subdivisions (b), (c), and (d),
9 the subpoenaing party may direct the witness to make the records available for
10 inspection or copying by the party's attorney, the attorney's representative, or
11 deposition officer as described in ~~paragraph (3) of subdivision (d) of Section 2020~~
12 Section 2020.420 of the Code of Civil Procedure, at the witness' business address
13 under reasonable conditions during normal business hours. Normal business hours,
14 as used in this subdivision, means those hours that the business of the witness is
15 normally open for business to the public. When provided with at least five
16 business days' advance notice by the party's attorney, attorney's representative, or
17 deposition officer, the witness shall designate a time period of not less than six
18 continuous hours on a date certain for copying of records subject to the subpoena
19 by the party's attorney, attorney's representative or deposition officer. It shall be
20 the responsibility of the attorney's representative to deliver any copy of the records
21 as directed in the subpoena. Disobedience to the deposition subpoena issued
22 pursuant to this subdivision is punishable as provided in ~~subdivision (h) of Section~~
23 Section 2020.240 of the Code of Civil Procedure.

24 **Comment.** Section 1560 is amended to reflect nonsubstantive reorganization of the rules
25 governing civil discovery.

26 Section 1560 is also amended to delete language authorizing the judge to substitute for the clerk
27 if there is no clerk. Every superior court has a clerk. See Gov't Code §§ 69840 (court clerk's
28 powers, duties, and responsibilities), 71620 (court executive or administrative officer has
29 authority of a court clerk). See also Code Civ. Proc. § 167 (judge may perform any act court clerk
30 may perform).

31 **Fam. Code § 3110.5 (amended). Child custody evaluator**

32 SEC. ____. Section 3110.5 of the Family Code is amended to read:

33 3110.5. (a) No person shall be a court-connected or private child custody
34 evaluator under this chapter unless the person has completed the domestic violence
35 and child abuse training program described in Section 1816 and has complied with
36 Rules 1257.3 and 1257.7 of the California Rules of Court.

37 (b)(1) On or before January 1, 2002, the Judicial Council shall formulate a
38 statewide rule of court that establishes education, experience, and training
39 requirements for all child custody evaluators appointed pursuant to this chapter,
40 Section 730 of the Evidence Code, or ~~Section 2032~~ Chapter 15 (commencing with
41 Section 2032.010) of Title 4 of Part 4 of the Code of Civil Procedure.

42 (A) The rule shall require a child custody evaluator to declare under penalty of
43 perjury that he or she meets all of the education, experience, and training

1 requirements specified in the rule and, if applicable, possesses a license in good
2 standing. The Judicial Council shall establish forms to implement this section. The
3 rule shall permit court-connected evaluators to conduct evaluations if they meet all
4 of the qualifications established by the Judicial Council. The education,
5 experience, and training requirements to be specified for court-connected
6 evaluators shall include, but shall not be limited to, knowledge of the
7 psychological and developmental needs of children and parent-child relationships.

8 (B) The rule shall require all evaluators to utilize comparable interview,
9 assessment, and testing procedures for all parties that are consistent with generally
10 accepted clinical, forensic, scientific, diagnostic, or medical standards. The rule
11 shall also require evaluators to inform each adult party of the purpose, nature, and
12 method of the evaluation.

13 (C) The rule may allow courts to permit the parties to stipulate to an evaluator of
14 their choosing with the approval of the court under the circumstances set forth in
15 subdivision (d). The rule may require courts to provide general information about
16 how parties can contact qualified child custody evaluators in their county.

17 (2) On or before January 1, 2004, the Judicial Council shall include in the
18 statewide rule of court created pursuant to this section a requirement that all court-
19 connected and private child custody evaluators receive training in the nature of
20 child sexual abuse. The Judicial Council shall develop standards for this training
21 that shall include, but not be limited to, the following:

22 (A) Children's patterns of hiding and disclosing sexual abuse occurring in a
23 family setting.

24 (B) The effects of sexual abuse on children.

25 (C) The nature and extent of child sexual abuse.

26 (D) The social and family dynamics of child sexual abuse.

27 (E) Techniques for identifying and assisting families affected by child sexual
28 abuse.

29 (F) Legal rights, protections, and remedies available to victims of child sexual
30 abuse.

31 (c) In addition to the education, experience, and training requirements
32 established by the Judicial Council pursuant to subdivision (b), on or after January
33 1, 2005, no person shall be a child custody evaluator under this chapter, Section
34 730 of the Evidence Code, or ~~Section 2032~~ Chapter 15 (commencing with Section
35 2032.010) of Title 4 of Part 4 of the Code of Civil Procedure unless the person
36 meets one of the following criteria:

37 (1) He or she is licensed as a physician under Chapter 5 (commencing with
38 Section 2000) of Division 2 of the Business and Professions Code and either is a
39 board certified psychiatrist or has completed a residency in psychiatry.

40 (2) He or she is licensed as a psychologist under Chapter 6.6 (commencing with
41 Section 2900) of Division 2 of the Business and Professions Code.

1 (3) He or she is licensed as a marriage and family therapist under Chapter 13
2 (commencing with Section 4980) of Division 2 of the Business and Professions
3 Code.

4 (4) He or she is licensed as a clinical social worker under Article 4 (commencing
5 with Section 4996) of Chapter 14 of Division 2 of the Business and Professions
6 Code.

7 (5) He or she is a court-connected evaluator who has been certified by the court
8 as meeting all of the qualifications for court-connected evaluators as specified by
9 the Judicial Council pursuant to subdivision (b).

10 (d) Subdivision (c) shall not apply in any case where the court determines that
11 there are no evaluators who meet the criteria of subdivision (c) who are willing
12 and available, within a reasonable period of time, to perform child custody
13 evaluations. In those cases, the parties may stipulate to an individual who does not
14 meet the criteria of subdivision (c), subject to approval by the court.

15 (e) A child custody evaluator who is licensed by the Medical Board of
16 California, the Board of Psychology, or the Board of Behavioral Sciences shall be
17 subject to disciplinary action by that board for unprofessional conduct, as defined
18 in the licensing law applicable to that licensee.

19 (f) On or after January 1, 2005, a court-connected or private child custody
20 evaluator shall not evaluate, investigate, or mediate an issue of child custody in a
21 proceeding pursuant to this division unless that person has completed child sexual
22 abuse training as required by this section.

23 **Comment.** Subdivisions (b) and (c) of Section 3110.5 are amended to reflect nonsubstantive
24 reorganization of the rules governing civil discovery.

25 **Fam. Code § 3666 (amended). Enforcement of article**

26 SEC. _____. Section 3666 of the Family Code is amended to read:

27 3666. This article may be enforced in the manner specified in Sections 1991,
28 1991.1, 1991.2, 1992, and 1993 of the Code of Civil Procedure and in the Civil
29 Discovery Act of 1986 (~~Article 3 (commencing with Section 2016) of Chapter 3 of~~
30 ~~Title 3 of Part 4 of the Code of Civil Procedure~~) (Title 4 (commencing with
31 Section 2016.010) of Part 4 of the Code of Civil Procedure), and any other statutes
32 applicable to the enforcement of procedures for discovery.

33 **Comment.** Section 3666 is amended to reflect nonsubstantive reorganization of the rules
34 governing civil discovery.

35 **Fam. Code § 4331 (amended). Examination by vocational training counselor**

36 SEC. _____. Section 4331 of the Family Code is amended to read:

37 4331. (a) In a proceeding for dissolution of marriage or for legal separation of
38 the parties, the court may order a party to submit to an examination by a vocational
39 training counselor. The examination shall include an assessment of the party's
40 ability to obtain employment based upon the party's age, health, education,
41 marketable skills, employment history, and the current availability of employment

1 opportunities. The focus of the examination shall be on an assessment of the
2 party's ability to obtain employment that would allow the party to maintain herself
3 or himself at the marital standard of living.

4 (b) The order may be made only on motion, for good cause, and on notice to the
5 party to be examined and to all parties. The order shall specify the time, place,
6 manner, conditions, scope of the examination, and the person or persons by whom
7 it is to be made.

8 (c) A party who does not comply with an order under this section is subject to
9 the same consequences provided for failure to comply with an examination
10 ordered pursuant to ~~Section 2032~~ Chapter 15 (commencing with Section
11 2032.010) of Title 4 of Part 4 of the Code of Civil Procedure.

12 (d) "Vocational training counselor" for the purpose of this section means an
13 individual with sufficient knowledge, skill, experience, training, or education in
14 interviewing, administering, and interpreting tests for analysis of marketable skills,
15 formulating career goals, planning courses of training and study, and assessing the
16 job market, to qualify as an expert in vocational training under Section 720 of the
17 Evidence Code.

18 (e) A vocational training counselor shall have at least the following
19 qualifications:

20 (1) A master's degree in the behavioral sciences.

21 (2) Be qualified to administer and interpret inventories for assessing career
22 potential.

23 (3) Demonstrated ability in interviewing clients and assessing marketable skills
24 with understanding of age constraints, physical and mental health, previous
25 education and experience, and time and geographic mobility constraints.

26 (4) Knowledge of current employment conditions, job market, and wages in the
27 indicated geographic area.

28 (5) Knowledge of education and training programs in the area with costs and
29 time plans for these programs.

30 (f) The court may order the supporting spouse to pay, in addition to spousal
31 support, the necessary expenses and costs of the counseling, retraining, or
32 education.

33 **Comment.** Subdivision (c) of Section 4331 is amended to reflect nonsubstantive reorganization
34 of the rules governing civil discovery.

35 **Fish & Game Code § 309 (amended). Procedure**

36 SEC. _____. Section 309 of the Fish and Game Code is amended to read:

37 309. (a) The commission or any person appointed by it to conduct a hearing
38 may, in any investigation or hearing, cause the deposition of witnesses, residing
39 within or without the state, to be taken in the manner prescribed by law for
40 deposition in civil actions in the superior courts of this state under ~~Article 3~~
41 ~~(commencing with Section 2016)~~ of Chapter 3 of Title 3 Title 4 (commencing with
42 Section 2016.010) of Part 4 of the Code of Civil Procedure, and may compel the

1 attendance of witnesses and the production of documents and papers. The
2 commission shall adopt regulations that afford procedural and substantive due
3 process to any person whose license or permit is subject to revocation or
4 suspension. Except upon conviction of a violation of this code or a regulation
5 adopted pursuant to this code relating to the licensed or permitted activity and
6 notwithstanding any other provision of this code, the commission shall not revoke
7 or suspend any license or permit until the regulations required by this section have
8 been adopted and approved by the Office of Administrative Law pursuant to
9 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of
10 the Government Code.

11 (b) Any deliberation conducted by the commission, or conducted by any person
12 appointed by the commission to conduct hearings, is deemed to be a proceeding
13 required to be conducted pursuant to Chapter 5 (commencing with Section 11500)
14 of Part 1 of Division 3 of Title 2 of the Government Code or similar provision,
15 within the meaning of paragraph (3) of subdivision (c) of Section 11126 of the
16 Government Code.

17 **Comment.** Subdivision (a) of Section 309 is amended to reflect nonsubstantive reorganization
18 of the rules governing civil discovery.

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

20 SEC. _____. Section 5934 of the Fish and Game Code is amended to read:

21 5934. The commission or any party may, in any hearing, cause the deposition of
22 witnesses to be taken in the manner prescribed by law for depositions in civil
23 actions in the superior courts of this state under ~~Article 3 (commencing with~~
24 ~~Section 2016) of Chapter 3 of Title 4 (commencing with Section 2016.010)~~ of Part
25 4 of the Code of Civil Procedure.

26 **Comment.** Section 5934 is amended to reflect nonsubstantive reorganization of the rules
27 governing civil discovery.

28 **Gov't Code § 6276.04 (amended). "Aeronautics Act" to "Avocado handler transaction**
29 **records"**

30 SEC. _____. Section 6276.04 of the Government Code is amended to read:

31 6276.04. Aeronautics Act, reports of investigations and hearings, Section 21693,
32 Public Utilities Code.

33 Agricultural producers marketing, access to records, Section 59616, Food and
34 Agricultural Code.

35 Aiding disabled voters, Section 14282, Elections Code.

36 Air pollution data, confidentiality of trade secrets, Section 6254.7, Government
37 Code, and Sections 42303.2 and 43206, Health and Safety Code.

38 Air toxics emissions inventory plans, protection of trade secrets, Section 44346,
39 Health and Safety Code.

40 Alcohol and drug abuse records and records of communicable diseases,
41 confidentiality of, Section 123125, Health and Safety Code.

1 Apiary registration information, confidentiality of, Section 29041, Food and
2 Agricultural Code.

3 Arrest not resulting in conviction, disclosure or use of records, Sections 432.7
4 and 432.8, Labor Code.

5 Arsonists, registered, confidentiality of certain information, Section 457.1, Penal
6 Code.

7 Artificial insemination, donor not natural father, confidentiality of records,
8 Section 7613, Family Code.

9 Assessor's records, confidentiality of information in, Section 408, Revenue and
10 Taxation Code.

11 Assessor's records, confidentiality of information in, Section 451, Revenue and
12 Taxation Code.

13 Assessor's records, display of documents relating to business affairs or property
14 of another, Section 408.2, Revenue and Taxation Code.

15 Assigned risk plans, rejected applicants, confidentiality of information, Section
16 11624, Insurance Code.

17 Attorney applicant, investigation by State Bar, confidentiality of, Section 6060.2,
18 Business and Professions Code.

19 Attorney-client confidential communication, Section 6068, Business and
20 Professions Code and Sections 952, 954, 956, 956.5, 957, 958, 959, 960, 961, and
21 962, Evidence Code.

22 Attorney, disciplinary proceedings, confidentiality prior to formal proceedings,
23 Section 6086.1, Business and Professions Code.

24 Attorney, disciplinary proceeding, State Bar access to nonpublic court records,
25 Section 6090.6, Business and Professions Code.

26 Attorney, investigation by State Bar, confidentiality of, Section 6168, Business
27 and Professions Code.

28 Attorney, law corporation, investigation by State Bar, confidentiality of, Section
29 6168, Business and Professions Code.

30 Attorney, State Bar survey information, confidentiality of, Section 6033,
31 Business and Professions Code.

32 Attorney work product confidentiality in administrative adjudication, Section
33 11507.6, Government Code.

34 Attorney, work product, confidentiality of, Section 6202, Business and
35 Professions Code.

36 Attorney work product, discovery, ~~Section 2018~~ Chapter 4 (commencing with
37 Section 2018.010), Title 4, Part 4, Code of Civil Procedure.

38 Auditor General, access to records for audit purposes, Sections 10527 and
39 10527.1, Government Code.

40 Auditor General, disclosure of audit records, Section 10525, Government Code.

41 Automobile Insurance Claims Depository, confidentiality of information,
42 Section 1876.3, Insurance Code.

1 Automobile insurance, investigation of fraudulent claims, confidential
2 information, Section 1872.8, Insurance Code.

3 Automotive repair facility, fact of certification or decertification, Section
4 9889.47, Business and Professions Code.

5 Automotive repair facility, notice of intent to seek certification, Section 9889.33,
6 Business and Professions Code.

7 Avocado handler transaction records, confidentiality of, Sections 44982 and
8 44984, Food and Agricultural Code.

9 **Comment.** Section 6276.04 is amended to reflect nonsubstantive reorganization of the rules
10 governing civil discovery.

11 **Gov't Code § 11189 (amended). Depositions and attendance of witnesses**

12 SEC. _____. Section 11189 of the Government Code is amended to read:

13 11189. In any matter pending before a department head, the department head
14 may cause the deposition of persons residing within or without the state to be
15 taken by causing a petition to be filed in the Superior Court in the County of
16 Sacramento reciting the nature of the matter pending, the name and residence of
17 the person whose testimony is desired, and asking that an order be made requiring
18 the person to appear and testify before an officer named in the petition for that
19 purpose. Upon the filing of the petition the court may make an order requiring the
20 person to appear and testify in the manner prescribed by law for like depositions in
21 civil actions in the superior courts of this state under ~~Article 3 (commencing with~~
22 ~~Section 2016) of Chapter 3 of Title 4 (commencing with Section 2016.010)~~ of Part
23 4 of the Code of Civil Procedure. In the same manner the superior courts may
24 compel the attendance of persons as witnesses, and the production of papers,
25 books, accounts, and documents, under Chapter 2 (commencing with Section
26 1985) of Title 3 of Part 4 of the Code of Civil Procedure, and may punish for
27 contempt.

28 **Comment.** Section 11189 is amended to reflect nonsubstantive reorganization of the rules
29 governing civil discovery.

30 **Gov't Code § 11511 (amended). Deposition on verified petition**

31 SEC. _____. Section 11511 of the Government Code is amended to read:

32 11511. On verified petition of any party, an administrative law judge or, if an
33 administrative law judge has not been appointed, an agency may order that the
34 testimony of any material witness residing within or without the state be taken by
35 deposition in the manner prescribed by law for depositions in civil actions under
36 ~~Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 (commencing~~
37 ~~with Section 2016.010)~~ of Part 4 of the Code of Civil Procedure. The petition shall
38 set forth the nature of the pending proceeding; the name and address of the witness
39 whose testimony is desired; a showing of the materiality of the testimony; a
40 showing that the witness will be unable or cannot be compelled to attend; and shall
41 request an order requiring the witness to appear and testify before an officer

1 named in the petition for that purpose. The petitioner shall serve notice of hearing
2 and a copy of the petition on the other parties at least 10 days before the hearing.
3 Where the witness resides outside the state and where the administrative law judge
4 or agency has ordered the taking of the testimony by deposition, the agency shall
5 obtain an order of court to that effect by filing a petition therefor in the superior
6 court in Sacramento County. The proceedings thereon shall be in accordance with
7 the provisions of Section 11189.

8 **Comment.** Section 11511 is amended to reflect nonsubstantive reorganization of the rules
9 governing civil discovery.

10 **Gov't Code § 12963.3 (amended). Depositions**

11 SEC. ____. Section 12963.3 of the Government Code is amended to read:

12 12963.3. (a) Depositions taken by the department shall be noticed by issuance
13 and service of a subpoena pursuant to Section 12963.1. If, in the course of the
14 investigation of a complaint, a subpoena is issued and served on an individual or
15 organization not alleged in the complaint to have committed an unlawful practice,
16 written notice of the deposition shall also be mailed by the department to each
17 individual or organization alleged in the complaint to have committed an unlawful
18 practice.

19 (b) A deposition may be taken before any officer of the department who has
20 been authorized by the director to administer oaths and take testimony, or before
21 any other person before whom a deposition may be taken in a civil action pursuant
22 to ~~subdivision (a) of Section 2018~~ Section 2025.320 of the Code of Civil
23 Procedure. The person before whom the deposition is to be taken shall put the
24 witness on oath and shall personally, or by someone acting under the person's
25 direction and in the person's presence, record the testimony of the witness. The
26 testimony shall be taken stenographically and transcribed unless the parties agree
27 otherwise. All objections made at the time of the examination shall be noted on the
28 deposition by the person before whom the deposition is taken, and evidence
29 objected to shall be taken subject to the objections.

30 **Comment.** Subdivision (b) of Section 12963.3 is amended to reflect nonsubstantive
31 reorganization of the rules governing civil discovery.

32 ☞ **Note.** Government Code Section 12963.3(b) refers to "any other person before whom a
33 deposition may be taken in a civil action pursuant to subdivision (a) of Section 2018 of the Code
34 of Civil Procedure." Conforming this provision is not straightforward, because Code of Civil
35 Procedure Section 2018 pertains to attorney work product and has nothing to do with deposition
36 officers.

37 The problem arises because Government Code Section 12963.3 has not been amended since
38 1981 and thus was not conformed to reflect enactment of the Civil Discovery Act of 1986. The
39 current provision governing deposition officers is Section 2025(k), which corresponds to
40 proposed Section 2025.320. Thus, the conforming revision proposed above refers to proposed
41 Section 2025.320, instead of proposed Section 2018.020 (the provision corresponding to Code of
42 Civil Procedure Section 2018(a)). The Commission solicits comment on this approach.

1 **Gov't Code § 12972 (amended). Deposition and other procedures**

2 SEC. _____. Section 12972 of the Government Code is amended to read:

3 12972. (a) The commission shall conduct all actions and procedures in
4 accordance with either of the following:

5 (1) Chapter 5 (commencing with Section 11500) of Part 1, except as otherwise
6 specified by this part.

7 (2) Regulations adopted by the commission.

8 (b) In addition to the discovery available to each party pursuant to subdivision
9 (a), the department and the respondent may each cause a single deposition to be
10 taken in the manner prescribed by law for depositions in civil actions in the
11 superior courts of this state under ~~Article 3 (commencing with Section 2016) of~~
12 ~~Chapter 3 of Title 4 (commencing with Section 2016.010) of~~ Part 4 of the Code of
13 Civil Procedure.

14 **Comment.** Subdivision (b) of Section 12972 is amended to reflect nonsubstantive
15 reorganization of the rules governing civil discovery.

16 **Gov't Code § 18671 (amended). Procedure for hearing or investigation**

17 SEC. _____. Section 18671 of the Government Code is amended to read:

18 18671. Such hearings and investigations may be conducted by the board, any
19 member, or any authorized representative of the board. Any authorized person
20 conducting such hearing or investigation may administer oaths, subpoena and
21 require the attendance of witnesses and the production of books or papers, and
22 cause the depositions of witnesses residing within or without the state to be taken
23 in the manner prescribed by law for like depositions in civil cases in the superior
24 court of this state under ~~Article 3 (commencing with Section 2016) of Chapter 3 of~~
25 ~~Title 4 (commencing with Section 2016.010) of~~ Part 4 of the Code of Civil
26 Procedure.

27 **Comment.** Section 18671 is amended to reflect nonsubstantive reorganization of the rules
28 governing civil discovery.

29 **Gov't Code § 68092.5 (amended). Expert witness fee**

30 SEC. _____. Section 68092.5 of the Government Code is amended to read:

31 68092.5. (a) A party requiring testimony before any court, tribunal, or arbiter in
32 any civil action or proceeding from any expert witness, other than a party or
33 employee of a party, who is either, (1) an expert described in ~~paragraph (2) of~~
34 ~~subdivision (a) of Section 2034~~ subdivision (b) of Section 2034.210 of the Code of
35 Civil Procedure, (2) a treating physician and surgeon or other treating health care
36 practitioner who is to be asked to express an opinion during the action or
37 proceeding, or (3) an architect, professional engineer, or licensed land surveyor
38 who was involved with the original project design or survey for which he or she is
39 asked to express an opinion within his or her expertise and relevant to the action or
40 proceeding, shall pay the reasonable and customary hourly or daily fee for the
41 actual time consumed in the examination of that witness by any party attending the

1 action or proceeding. The hourly or daily fee shall not exceed the fee charged the
2 party who retained the expert except where the expert donated his or her services
3 to a charitable or other nonprofit organization. A daily fee shall only be charged
4 for a full day of attendance at a deposition or where the expert was required by the
5 deposing party to be available for a full day and the expert necessarily had to
6 forego all business he or she would have otherwise conducted that day but for the
7 request that he or she be available all day for the scheduled deposition.

8 The party requiring the attendance shall either accompany the service of the
9 subpoena or notice with a tender of the expert's fee based on the anticipated length
10 of time the expert is required to remain at such place pursuant to the notice or
11 subpoena or tender that fee at the required time of appearance. The expert's fee
12 shall be delivered to the attorney for the party designating the expert. If the
13 appearance of the expert takes longer than anticipated, the party serving the
14 subpoena or notice shall pay the balance of the expert's fee within five days of
15 receipt of an itemized statement from the expert. The party designating the expert
16 is responsible for any fee charged by the expert for preparing for the testimony and
17 for traveling to the place of the civil action or proceeding, as well as for any travel
18 expenses of the expert, unless otherwise determined by the court.

19 (b) The service of a proper subpoena or notice accompanied by the tender of the
20 expert witness fee described in subdivision (a) is effective to require the party
21 employing or retaining the expert to produce the expert for testimony. If the party
22 serving the notice or subpoena fails to tender the expert's fee under subdivision
23 (a), the expert shall not be required to appear at that time unless the parties
24 stipulate otherwise.

25 (c) If a party requiring the appearance by subpoena or notice of another party's
26 expert witness under this subdivision deems that the hourly or daily fee of that
27 expert for providing testimony is unreasonable, that party may move for an order
28 setting the compensation of that expert. This motion shall be accompanied by a
29 declaration stating facts showing a reasonable and good faith attempt at an
30 informal resolution of each issue presented by the motion. Notice of this motion
31 shall also be given to the expert.

32 In any such attempt at an informal resolution, either the party or the expert shall
33 provide the other with (A) proof of the ordinary and customary fee actually
34 charged and received by that expert for similar services provided outside the
35 subject litigation, (B) the total number of times the presently demanded fee has
36 ever been charged and received by that expert, and (C) the frequency and
37 regularity with which the presently demanded fee has been charged and received
38 by that expert within the two-year period preceding the hearing on the motion.
39 Provisions (B) and (C) shall apply to actions filed after January 1, 1994.

40 In addition to any other facts or evidence, the expert or the party designating the
41 expert shall provide, and the court's determination as to the reasonableness of the
42 fee shall be based upon, (1) proof of the ordinary and customary fee actually
43 charged and received by that expert for similar services provided outside the

1 subject litigation, (2) the total number of times the presently demanded fee has
2 ever been charged and received by that expert, and (3) the frequency and regularity
3 with which the presently demanded and any other fee has been charged and
4 received by that expert within the two-year period preceding the hearing on the
5 motion. The court may also consider (4) the ordinary and customary fees charged
6 by similar experts for similar services within the relevant community, and (5) any
7 other factors the court deems necessary or appropriate to make its determination.

8 Upon a determination that the fee demanded by that expert is unreasonable, and
9 based upon the evidence and factors considered, the court shall set the fee of the
10 expert providing testimony.

11 (d) In the event the proceeding at which the expert witness has been notified his
12 or her attendance is required is continued or canceled in advance of the time for
13 which it is scheduled, such witness shall be notified of the continuance or
14 cancellation by the party requiring his or her attendance by the quickest and most
15 reliable means of giving notice under the circumstances. In the event such party
16 fails to give notice as required by this subdivision, then the expert witness shall be
17 entitled to receive the compensation specified in subdivision (a) of this section,
18 notwithstanding his or her failure to give any testimony.

19 (e) An express contract entered into between a person and the party requesting or
20 requiring the person to testify, relating to compensation, shall be enforceable and
21 shall prevail over the provisions of this section.

22 (f) The deposition of an expert witness is governed by ~~Section 2034~~ Chapter 18
23 (commencing with Section 2034.010) of Title 4 of Part 4 of the Code of Civil
24 Procedure.

25 **Comment.** Subdivisions (a) and (f) of Section 68092.5 are amended to reflect nonsubstantive
26 reorganization of the rules governing civil discovery.

27 **Gov't Code § 68097.6 (amended). Subpoena for taking deposition of peace officer**

28 SEC. _____. Section 68097.6 of the Government Code is amended to read:

29 68097.6. Sections 68097.1, 68097.2, 68097.3, 68097.4, and 68097.5 of this code
30 shall be applicable to subpoenas issued for the taking of depositions of employees
31 of the Department of Justice who are peace officers or analysts in technical fields,
32 peace officers of the Department of the California Highway Patrol, peace officer
33 members of the State Fire Marshal's office, sheriffs, deputy sheriffs, marshals,
34 deputy marshals, firefighters, or city police officers pursuant to ~~Section 2019~~
35 Chapter 5 (commencing with Section 2019.010) of Title 4 of Part 4 of the Code of
36 Civil Procedure.

37 **Comment.** Section 68097.6 is amended to reflect nonsubstantive reorganization of the rules
38 governing civil discovery.

39 **Gov't Code § 68616 (operative until Jan. 1, 2004) (amended). Delay reduction deadlines and**
40 **procedures**

41 SEC. _____. Section 68616 of the Government Code is amended to read:

1 68616. Delay reduction rules shall not require shorter time periods than as
2 follows:

3 (a) Service of the complaint within 60 days after filing. Exceptions, for longer
4 periods of time, (1) may be granted as authorized by local rule and (2) shall be
5 granted on a showing that service could not reasonably be achieved within the
6 time required with the exercise of due diligence consistent with the amount in
7 controversy.

8 (b) Service of responsive pleadings within 30 days after service of the complaint.
9 The parties may stipulate to an additional 15 days. Exceptions, for longer periods
10 of time, may be granted as authorized by local rule.

11 (c) Time for service of notice or other paper under Sections 1005 and 1013 of
12 the Code of Civil Procedure and time to plead after service of summons under
13 Section 412.20 of the Code of Civil Procedure shall not be shortened except as
14 provided in those sections.

15 (d) Within 30 days of service of the responsive pleadings, the parties may, by
16 stipulation filed with the court, agree to a single continuance not to exceed 30
17 days.

18 It is the intent of the Legislature that these stipulations not detract from the
19 efforts of the courts to comply with standards of timely disposition. To this extent,
20 the Judicial Council shall develop statistics that distinguish between cases
21 involving, and not involving, these stipulations.

22 (e) Except in complex cases, no status conference, or similar event, other than a
23 challenge to the jurisdiction of the court, may be required to be conducted sooner
24 than 30 days after service of the first responsive pleadings, or no sooner than 30
25 days after expiration of a stipulated continuance, if any, pursuant to subdivision
26 (d). For purposes of this subdivision, a “complex case” shall be as defined in the
27 California Rules of Court.

28 ~~(f) Article 3 (commencing with Section 2016) of Chapter 3 of Title 3~~ Title 4
29 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure
30 shall govern discovery, except in arbitration proceedings.

31 (g) No case may be referred to arbitration prior to 210 days after the filing of the
32 complaint, exclusive of the stipulated period provided for in subdivision (d). No
33 rule adopted pursuant to this article may contravene Sections 638 and 639 of the
34 Code of Civil Procedure.

35 (h) Unnamed (DOE) defendants shall not be dismissed prior to the conclusion of
36 the introduction of evidence at trial, except upon stipulation or motion of the
37 parties.

38 (i) Notwithstanding Section 170.6 of the Code of Civil Procedure, in direct
39 calendar courts, challenges pursuant to that section shall be exercised within 15
40 days of the party’s first appearance. Master calendar courts shall be governed
41 solely by Section 170.6 of the Code of Civil Procedure.

42 (j) This section applies to all cases subject to this article which are filed on or
43 after January 1, 1991.

1 (k) This section shall remain in effect only until January 1, 2004, and as of that
2 date is repealed, unless a later enacted statute deletes or extends that date.

3 **Comment.** Subdivision (f) of Section 68616 is amended to reflect nonsubstantive
4 reorganization of the rules governing civil discovery.

5 **Gov't Code § 68616 (operative Jan. 1, 2004) (amended). Delay reduction deadlines and**
6 **procedures**

7 SEC. _____. Section 68616 of the Government Code is amended to read:
8 68616. Delay reduction rules shall not require shorter time periods than as
9 follows:

10 (a) Service of the complaint within 60 days after filing. Exceptions, for longer
11 periods of time, (1) may be granted as authorized by local rule and (2) shall be
12 granted on a showing that service could not reasonably be achieved within the
13 time required with the exercise of due diligence consistent with the amount in
14 controversy.

15 (b) Service of responsive pleadings within 30 days after service of the complaint.
16 The parties may stipulate to an additional 15 days. Exceptions, for longer periods
17 of time, may be granted as authorized by local rule.

18 (c) Time for service of notice or other paper under Sections 1005 and 1013 of
19 the Code of Civil Procedure and time to plead after service of summons under
20 Section 412.20 of the Code of Civil Procedure shall not be shortened except as
21 provided in those sections.

22 (d) Within 30 days of service of the responsive pleadings, the parties may, by
23 stipulation filed with the court, agree to a single continuance not to exceed 30
24 days.

25 It is the intent of the Legislature that these stipulations not detract from the
26 efforts of the courts to comply with standards of timely disposition. To this extent,
27 the Judicial Council shall develop statistics that distinguish between cases
28 involving, and not involving, these stipulations.

29 (e) No status conference, or similar event, other than a challenge to the
30 jurisdiction of the court, may be required to be conducted sooner than 30 days
31 after service of the first responsive pleadings, or no sooner than 30 days after
32 expiration of a stipulated continuance, if any, pursuant to subdivision (d).

33 (f) ~~Article 3 (commencing with Section 2016) of Chapter 3 of Title 3~~ Title 4
34 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure
35 shall govern discovery, except in arbitration proceedings.

36 (g) No case may be referred to arbitration prior to 210 days after the filing of the
37 complaint, exclusive of the stipulated period provided for in subdivision (d). No
38 rule adopted pursuant to this article may contravene Sections 638 and 639 of the
39 Code of Civil Procedure.

40 (h) Unnamed (DOE) defendants shall not be dismissed prior to the conclusion of
41 the introduction of evidence at trial, except upon stipulation or motion of the
42 parties.

1 (i) Notwithstanding Section 170.6 of the Code of Civil Procedure, in direct
2 calendar courts, challenges pursuant to that section shall be exercised within 15
3 days of the party's first appearance. Master calendar courts shall be governed
4 solely by Section 170.6 of the Code of Civil Procedure.

5 (j) This section applies to all cases subject to this article which are filed on or
6 after January 1, 1991.

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

8 **Comment.** Subdivision (f) of Section 68616 is amended to reflect nonsubstantive
9 reorganization of the rules governing civil discovery.

10 **Health & Safety Code § 1424.1 (amended). Effect of participation in quality assurance and**
11 **patient care audit program**

12 SEC. _____. Section 1424.1 of the Health and Safety Code is amended to read:

13 1424.1. (a) On and after the effective date of this section, no citation shall be
14 issued or sustained under this chapter for a violation of any regulation discovered
15 and recorded by a facility if all of the following conditions have been met:

16 (1) The facility maintains an ongoing quality assurance and patient care audit
17 program, which includes maintenance of a quality assurance log which is made
18 available to the state department at the commencement of each inspection and
19 investigation. The facility shall retain this log for the current year and the
20 preceding three years.

21 (2) The violation was not willful and resulted in no actual harm to any patient or
22 guest.

23 (3) The violation was first discovered by the licensee and was promptly and
24 accurately recorded in the quality assurance log prior to discovery by the state
25 department.

26 (4) Promptly upon discovery, the facility implemented remedial action
27 satisfactory to the state department to correct the violation and prevent a
28 recurrence. If the state department determines that remedial action voluntarily
29 undertaken by the facility is unsatisfactory, the state department shall allow the
30 facility reasonable time to augment the remedial action before the condition shall
31 be deemed to be a violation.

32 (b) Except as otherwise provided in this section, a quality assurance log which
33 meets the criteria of this section shall not be discoverable or admissible in any
34 action against the licensee. The quality assurance log shall be discoverable
35 pursuant to a motion to produce under ~~Section 2031~~ Chapter 14 (commencing with
36 Section 2031.010) of Title 4 of Part 4 of the Code of Civil Procedure and
37 admissible only for purposes of impeachment. However, the court, in a motion
38 pursuant to paragraph (1) of ~~subdivision (b) of Section 2019~~ subdivision (a) of
39 Section 2019.030 of the Code of Civil Procedure, or at trial or other proceeding,
40 may limit access to those entries which would be admissible for impeachment
41 purposes.

1 (c) The quality assurance log shall be made available upon request to any of the
2 following:

3 (1) Full-time state employees of the Office of the State Long-Term Care
4 Ombudsman.

5 (2) Ombudsman coordinators, as defined in subdivision (h) of Section 9701 of
6 the Welfare and Institutions Code.

7 (3) Ombudsmen qualified by medical training as defined in subdivision (g) of
8 Section 9701 of the Welfare and Institutions Code, with the approval of either the
9 State Long-Term Care Ombudsman or ombudsman coordinator.

10 The licensee may make the quality assurance log available, in the licensee's
11 discretion, to any representative of the Office of the State Long-Term Care
12 Ombudsman, as defined in subdivision (c) of Section 9701 of the Welfare and
13 Institutions Code, without liability for the disclosure. Each representative of the
14 Office of the State Long-Term Care Ombudsman who has been provided access to
15 a facility's quality assurance log pursuant to this section shall maintain all
16 disclosures in confidence.

17 **Comment.** Subdivision (b) of Section 1424.1 is amended to reflect nonsubstantive
18 reorganization of the rules governing civil discovery.

19 **Ins. Code § 11580.2 (amended). Uninsured and underinsured motorist coverage**

20 SEC. _____. Section 11580.2 of the Insurance Code is amended to read:

21 11580.2. (a)(1) No policy of bodily injury liability insurance covering liability
22 arising out of the ownership, maintenance, or use of any motor vehicle, except for
23 policies which provide insurance in the Republic of Mexico issued or delivered in
24 this state by nonadmitted Mexican insurers, shall be issued or delivered in this
25 state to the owner or operator of a motor vehicle, or shall be issued or delivered by
26 any insurer licensed in this state upon any motor vehicle then principally used or
27 principally garaged in this state, unless the policy contains, or has added to it by
28 endorsement, a provision with coverage limits at least equal to the limits specified
29 in subdivision (m) and in no case less than the financial responsibility
30 requirements specified in Section 16056 of the Vehicle Code insuring the insured,
31 the insured's heirs or legal representative for all sums within the limits which he,
32 she, or they, as the case may be, shall be legally entitled to recover as damages for
33 bodily injury or wrongful death from the owner or operator of an uninsured motor
34 vehicle. The insurer and any named insured, prior to or subsequent to the issuance
35 or renewal of a policy, may, by agreement in writing, in the form specified in
36 paragraph (2) or paragraph (3), (1) delete the provision covering damage caused
37 by an uninsured motor vehicle completely, or (2) delete the coverage when a
38 motor vehicle is operated by a natural person or persons designated by name, or
39 (3) agree to provide the coverage in an amount less than that required by
40 subdivision (m) but not less than the financial responsibility requirements
41 specified in Section 16056 of the Vehicle Code. Any of these agreements by any
42 named insured or agreement for the amount of coverage shall be binding upon

1 every insured to whom the policy or endorsement provisions apply while the
2 policy is in force, and shall continue to be so binding with respect to any
3 continuation or renewal of the policy or with respect to any other policy which
4 extends, changes, supersedes, or replaces the policy issued to the named insured
5 by the same insurer, or with respect to reinstatement of the policy within 30 days
6 of any lapse thereof. A policy shall be excluded from the application of this
7 section if the automobile liability coverage is provided only on an excess or
8 umbrella basis. Nothing in this section shall require that uninsured motorist
9 coverage be offered or provided in any homeowner policy, personal and residents'
10 liability policy, comprehensive personal liability policy, manufacturers' and
11 contractors' policy, premises liability policy, special multiperil policy, or any other
12 policy or endorsement where automobile liability coverage is offered as incidental
13 to some other basic coverage, notwithstanding that the policy may provide
14 automobile or motor vehicle liability coverage on insured premises or the ways
15 immediately adjoining.

16 (2) The agreement specified in paragraph (1) to delete the provision covering
17 damage caused by an uninsured motor vehicle completely or delete the coverage
18 when a motor vehicle is operated by a natural person or persons designated by
19 name shall be in the following form:

20 "The California Insurance Code requires an insurer to provide uninsured
21 motorists coverage in each bodily injury liability insurance policy it issues
22 covering liability arising out of the ownership, maintenance, or use of a motor
23 vehicle. Those provisions also permit the insurer and the applicant to delete the
24 coverage completely or to delete the coverage when a motor vehicle is operated by
25 a natural person or persons designated by name. Uninsured motorists coverage
26 insures the insured, his or her heirs, or legal representatives for all sums within the
27 limits established by law, which the person or persons are legally entitled to
28 recover as damages for bodily injury, including any resulting sickness, disease, or
29 death, to the insured from the owner or operator of an uninsured motor vehicle not
30 owned or operated by the insured or a resident of the same household. An
31 uninsured motor vehicle includes an underinsured motor vehicle as defined in
32 subdivision (p) of Section 11580.2 of the Insurance Code."

33 The agreement may contain additional statements not in derogation of or in
34 conflict with the foregoing. The execution of the agreement shall relieve the
35 insurer of liability under this section while the agreement remains in effect.

36 (3) The agreement specified in paragraph (1) to provide coverage in an amount
37 less than that required by subdivision (m) shall be in the following form:

38 "The California Insurance Code requires an insurer to provide uninsured
39 motorists coverage in each bodily injury liability insurance policy it issues
40 covering liability arising out of the ownership, maintenance, or use of a motor
41 vehicle. Those provisions also permit the insurer and the applicant to agree to
42 provide the coverage in an amount less than that required by subdivision (m) of
43 Section 11580.2 of the Insurance Code but not less than the financial responsibility

1 requirements. Uninsured motorists coverage insures the insured, his or her heirs,
2 or legal representatives for all sums within the limits established by law, which the
3 person or persons are legally entitled to recover as damages for bodily injury,
4 including any resulting sickness, disease, or death, to the insured from the owner
5 or operator of an uninsured motor vehicle not owned or operated by the insured or
6 a resident of the same household. An uninsured motor vehicle includes an
7 underinsured motor vehicle as defined in subdivision (p) of Section 11580.2 of the
8 Insurance Code.”

9 The agreement may contain additional statements not in derogation of or in
10 conflict with this paragraph. However, it shall be presumed that an application for
11 a policy of bodily injury liability insurance containing uninsured motorist
12 coverage in an amount less than that required by subdivision (m), signed by the
13 named insured and approved by the insurer, with a policy effective date after
14 January 1, 1985, shall be a valid agreement as to the amount of uninsured motorist
15 coverage to be provided.

16 (b) As used in subdivision (a), “bodily injury” includes sickness or disease,
17 including death, resulting therefrom; “named insured” means only the individual
18 or organization named in the declarations of the policy of motor vehicle bodily
19 injury liability insurance referred to in subdivision (a); as used in subdivision (a) if
20 the named insured is an individual “insured” means the named insured and the
21 spouse of the named insured and, while residents of the same household, relatives
22 of either while occupants of a motor vehicle or otherwise, heirs and any other
23 person while in or upon or entering into or alighting from an insured motor vehicle
24 and any person with respect to damages he or she is entitled to recover for care or
25 loss of services because of bodily injury to which the policy provisions or
26 endorsement apply; as used in subdivision (a), if the named insured is an entity
27 other than an individual, “insured” means any person while in or upon or entering
28 into or alighting from an insured motor vehicle and any person with respect to
29 damages he or she is entitled to recover for care or loss of services because of
30 bodily injury to which the policy provisions or endorsement apply. As used in this
31 subdivision, “individual” shall not include persons doing business as corporations,
32 partnerships, or associations. As used in this subdivision, “insured motor vehicle”
33 means the motor vehicle described in the underlying insurance policy of which the
34 uninsured motorist endorsement or coverage is a part, a temporary substitute
35 automobile for which liability coverage is provided in the policy or a newly
36 acquired automobile for which liability coverage is provided in the policy if the
37 motor vehicle is used by the named insured or with his or her permission or
38 consent, express or implied, and any other automobile not owned by or furnished
39 for the regular use of the named insured or any resident of the same household, or
40 by a natural person or persons for whom coverage has been deleted in accordance
41 with subdivision (a) while being operated by the named insured or his or her
42 spouse if a resident of the same household, but “insured motor vehicle” shall not
43 include any automobile while used as a public or livery conveyance. As used in

1 this section, “uninsured motor vehicle” means a motor vehicle with respect to the
2 ownership, maintenance or use of which there is no bodily injury liability
3 insurance or bond applicable at the time of the accident, or there is the applicable
4 insurance or bond but the company writing the insurance or bond denies coverage
5 thereunder or refuses to admit coverage thereunder except conditionally or with
6 reservation, or an “underinsured motor vehicle” as defined in subdivision (p), or a
7 motor vehicle used without the permission of the owner thereof if there is no
8 bodily injury liability insurance or bond applicable at the time of the accident with
9 respect to the owner or operator thereof, or the owner or operator thereof be
10 unknown, provided that, with respect to an “uninsured motor vehicle” whose
11 owner or operator is unknown:

12 (1) The bodily injury has arisen out of physical contact of the automobile with
13 the insured or with an automobile which the insured is occupying.

14 (2) The insured or someone on his or her behalf has reported the accident within
15 24 hours to the police department of the city where the accident occurred or, if the
16 accident occurred in unincorporated territory then either to the sheriff of the
17 county where the accident occurred or to the local headquarters of the California
18 Highway Patrol, and has filed with the insurer within 30 days thereafter a
19 statement under oath that the insured or his or her legal representative has or the
20 insured’s heirs have a cause of action arising out of the accident for damages
21 against a person or persons whose identity is unascertainable and set forth facts in
22 support thereof. As used in this section, “uninsured motor vehicle” shall not
23 include a motor vehicle owned or operated by the named insured or any resident of
24 the same household or self-insured within the meaning of the Financial
25 Responsibility Law of the state in which the motor vehicle is registered or which is
26 owned by the United States of America, Canada, a state or political subdivision of
27 any such government or an agency of any of the foregoing, or a land motor vehicle
28 or trailer while located for use as a residence or premises and not as a vehicle, or
29 any equipment or vehicle designed or modified for use primarily off public roads,
30 except while actually upon public roads.

31 As used in this section, “uninsured motor vehicle” also means an insured motor
32 vehicle where the liability insurer thereof is unable to make payment with respect
33 to the legal liability of its insured within the limits specified therein because of
34 insolvency. An insurer’s solvency protection shall be applicable only to accidents
35 occurring during a policy period in which its insured’s motor vehicle coverage is
36 in effect where the liability insurer of the tortfeasor becomes insolvent within one
37 year of the accident. In the event of payment to any person under the coverage
38 required by this section and subject to the terms and conditions of the coverage,
39 the insurer making the payment, shall to the extent thereof, be entitled to any
40 proceeds which may be recoverable from the assets of the insolvent insurer
41 through any settlement or judgment of the person against the insolvent insurer.

42 Nothing in this section is intended to exclude from the definition of an uninsured
43 motor vehicle any motorcycle or private passenger-type four-wheel drive motor

1 vehicle if that vehicle was subject to and failed to comply with the Financial
2 Responsibility Law of this state.

3 (c) The insurance coverage provided for in this section does not apply either as
4 primary or as excess coverage:

5 (1) To property damage sustained by the insured.

6 (2) To bodily injury of the insured while in or upon or while entering into or
7 alighting from a motor vehicle other than the described motor vehicle if the owner
8 thereof has insurance similar to that provided in this section.

9 (3) To bodily injury of the insured with respect to which the insured or his or her
10 representative shall, without the written consent of the insurer, make any
11 settlement with or prosecute to judgment any action against any person who may
12 be legally liable therefor.

13 (4) In any instance where it would inure directly or indirectly to the benefit of
14 any workers' compensation carrier or to any person qualified as a self-insurer
15 under any workers' compensation law, or directly to the benefit of the United
16 States, or any state or any political subdivision thereof.

17 (5) To establish proof of financial responsibility as provided in subdivisions (a),
18 (b), and (c) of Section 16054 of the Vehicle Code.

19 (6) To bodily injury of the insured while occupying a motor vehicle owned by an
20 insured or leased to an insured under a written contract for a period of six months
21 or longer, unless the occupied vehicle is an insured motor vehicle. "Motor vehicle"
22 as used in this paragraph means any self-propelled vehicle.

23 (7) To bodily injury of the insured when struck by a vehicle owned by an
24 insured, except when the injured insured's vehicle is being operated, or caused to
25 be operated, by a person without the injured insured's consent in connection with
26 criminal activity that has been documented in a police report and that the injured
27 insured is not a party to.

28 (8) To bodily injury of the insured while occupying a motor vehicle rented or
29 leased to the insured for public or livery purposes.

30 (d) Subject to paragraph (2) of subdivision (c), the policy or endorsement may
31 provide that if the insured has insurance available to the insured under more than
32 one uninsured motorist coverage provision, any damages shall not be deemed to
33 exceed the higher of the applicable limits of the respective coverages, and the
34 damages shall be prorated between the applicable coverages as the limits of each
35 coverage bear to the total of the limits.

36 (e) The policy or endorsement added thereto may provide that if the insured has
37 valid and collectible automobile medical payment insurance available to him or
38 her, the damages which the insured shall be entitled to recover from the owner or
39 operator of an uninsured motor vehicle shall be reduced for purposes of uninsured
40 motorist coverage by the amounts paid or due to be paid under the automobile
41 medical payment insurance.

42 (f) The policy or an endorsement added thereto shall provide that the
43 determination as to whether the insured shall be legally entitled to recover

1 damages, and if so entitled, the amount thereof, shall be made by agreement
2 between the insured and the insurer or, in the event of disagreement, by arbitration.
3 The arbitration shall be conducted by a single neutral arbitrator. An award or a
4 judgment confirming an award shall not be conclusive on any party in any action
5 or proceeding between (i) the insured, his or her insurer, his or her legal
6 representative, or his or her heirs and (ii) the uninsured motorist to recover
7 damages arising out of the accident upon which the award is based. If the insured
8 has or may have rights to benefits, other than nonoccupational disability benefits,
9 under any workers' compensation law, the arbitrator shall not proceed with the
10 arbitration until the insured's physical condition is stationary and ratable. In those
11 cases in which the insured claims a permanent disability, the claims shall, unless
12 good cause be shown, be adjudicated by award or settled by compromise and
13 release before the arbitration may proceed. Any demand or petition for arbitration
14 shall contain a declaration, under penalty of perjury, stating whether (i) the insured
15 has a workers' compensation claim; (ii) the claim has proceeded to findings and
16 award or settlement on all issues reasonably contemplated to be determined in that
17 claim; and (iii) if not, what reasons amounting to good cause are grounds for the
18 arbitration to proceed immediately. The arbitration shall be deemed to be a
19 proceeding and the hearing before the arbitrator shall be deemed to be the trial of
20 an issue therein for purposes of issuance of a subpoena by an attorney of a party to
21 the arbitration under Section 1985 of the Code of Civil Procedure. ~~Article 3~~
22 ~~(commencing with Section 2016) of Chapter 3 of Title 3~~ Title 4 (commencing with
23 Section 2016.010) of Part 4 of the Code of Civil Procedure shall be applicable to
24 these determinations, and all rights, remedies, obligations, liabilities and
25 procedures set forth in ~~Article 3~~ Title 4 shall be available to both the insured and
26 the insurer at any time after the accident, both before and after the commencement
27 of arbitration, if any, with the following limitations:

28 (1) Whenever in ~~Article 3~~ Title 4, reference is made to the court in which the
29 action is pending, or provision is made for application to the court or obtaining
30 leave of court or approval by the court, the court which shall have jurisdiction for
31 the purposes of this section shall be the superior court of the State of California, in
32 and for any county which is a proper county for the filing of a suit for bodily
33 injury arising out of the accident, against the uninsured motorist, or any county
34 specified in the policy or an endorsement added thereto as a proper county for
35 arbitration or action thereon.

36 (2) Any proper court to which application is first made by either the insured or
37 the insurer under ~~Article 3~~ Title 4 for any discovery or other relief or remedy, shall
38 thereafter be the only court to which either of the parties shall make any
39 applications under ~~Article 3~~ Title 4 with respect to the same accident, subject,
40 however, to the right of the court to grant a change of venue after a hearing upon
41 notice, upon any of the grounds upon which change of venue might be granted in
42 an action filed in the superior court.

1 (3) A deposition pursuant to ~~Section 2016~~ Chapter 9 (commencing with Section
2 2025.010) of Title 4 of Part 4 of the Code of Civil Procedure may be taken without
3 leave of court, except that leave of court, granted with or without notice and for
4 good cause shown, must be obtained if the notice of the taking of the deposition is
5 served by either party within 20 days after the accident.

6 (4) ~~Paragraph (4) of subdivision (a) of Section 2019~~ Subdivision (d) of Section
7 2019.010 of the Code of Civil Procedure is not applicable to discovery under this
8 section.

9 (5) For the purposes of discovery under this section, the insured and the insurer
10 shall each be deemed to be “a party to the record of any civil action or
11 proceedings,” where that phrase is used in paragraph (2) of ~~subdivision (b) of~~
12 ~~Section 2019~~ subdivision (a) of Section 2019.030 of the Code of Civil Procedure.

13 (6) Interrogatories under ~~Section 2030~~ Chapter 13 (commencing with Section
14 2030.010) of Title 4 of Part 4 of the Code of Civil Procedure and requests for
15 admission under ~~Section 2033~~ Chapter 16 (commencing with Section 2033.010) of
16 Title 4 of Part 4 of the Code of Civil Procedure may be served by either the
17 insured or the insurer upon the other at any time more than 20 days after the
18 accident without leave of court.

19 (7) Nothing in this section limits the rights of any party to discovery in any
20 action pending or which may hereafter be pending in any court.

21 (g) The insurer paying a claim under an uninsured motorist endorsement or
22 coverage shall be entitled to be subrogated to the rights of the insured to whom the
23 claim was paid against any person legally liable for the injury or death to the
24 extent that payment was made. The action may be brought within three years from
25 the date that payment was made hereunder.

26 (h) An insured entitled to recovery under the uninsured motorist endorsement or
27 coverage shall be reimbursed within the conditions stated herein without being
28 required to sign any release or waiver of rights to which he or she may be entitled
29 under any other insurance coverage applicable; nor shall payment under this
30 section to the insured be delayed or made contingent upon the decisions as to
31 liability or distribution of loss costs under other bodily injury liability insurance or
32 any bond applicable to the accident. Any loss payable under the terms of the
33 uninsured motorist endorsement or coverage to or for any person may be reduced:

34 (1) By the amount paid and the present value of all amounts payable to him or
35 her, his or her executor, administrator, heirs, or legal representative under any
36 workers’ compensation law, exclusive of nonoccupational disability benefits.

37 (2) By the amount the insured is entitled to recover from any other person
38 insured under the underlying liability insurance policy of which the uninsured
39 motorist endorsement or coverage is a part, including any amounts tendered to the
40 insured as advance payment on behalf of the other person by the insurer providing
41 the underlying liability insurance.

1 (i)(1) No cause of action shall accrue to the insured under any policy or
2 endorsement provision issued pursuant to this section unless one of the following
3 actions have been taken within one year from the date of the accident:

4 (A) Suit for bodily injury has been filed against the uninsured motorist, in a
5 court of competent jurisdiction.

6 (B) Agreement as to the amount due under the policy has been concluded.

7 (C) The insured has formally instituted arbitration proceedings by notifying the
8 insurer in writing sent by certified mail, return receipt requested. Notice shall be
9 sent to the insurer or to the agent for process designated by the insurer filed with
10 the department.

11 (2) Any arbitration instituted pursuant to this section shall be concluded either:

12 (A) Within five years from the institution of the arbitration proceeding.

13 (B) If the insured has a workers' compensation claim arising from the same
14 accident, within three years of the date the claim is concluded, or within the five-
15 year period set forth in subparagraph (A), whichever occurs later.

16 (3) The doctrines of estoppel, waiver, impossibility, impracticality, and futility
17 apply to excuse a party's noncompliance with the statutory timeframe, as
18 determined by the court.

19 (4) Parties to the insurance contract may stipulate in writing to extending the
20 time to conclude arbitration.

21 (j) Notwithstanding subdivisions (b) and (i), in the event the accident occurs in
22 any other state or foreign jurisdiction to which coverage is extended under the
23 policy and the insurer of the tortfeasor becomes insolvent, any action authorized
24 pursuant to this section may be maintained within three months of the insolvency
25 of the tortfeasor's insurer, but in no event later than the pertinent period of
26 limitation of the jurisdiction in which the accident occurred.

27 (k) Notwithstanding subdivision (i), any insurer whose insured has made a claim
28 under his or her uninsured motorist coverage, and the claim is pending, shall, at
29 least 30 days before the expiration of the applicable statute of limitation, notify its
30 insured in writing of the statute of limitation applicable to the injury or death.
31 Failure of the insurer to provide the written notice shall operate to toll any
32 applicable statute of limitation or other time limitation for a period of 30 days from
33 the date the written notice is actually given. The notice shall not be required if the
34 insurer has received notice that the insured is represented by an attorney.

35 (l) As used in subdivision (b), "public or livery conveyance," or terms of similar
36 import, shall not include the operation or use of a motor vehicle by the named
37 insured in the performance of volunteer services for a nonprofit charitable
38 organization or governmental agency by providing social service transportation as
39 defined in subdivision (f) of Section 11580.1. This subdivision shall apply only to
40 policies of insurance issued, amended, or renewed on or after January 1, 1976.

41 (m) Coverage provided under an uninsured motorist endorsement or coverage
42 shall be offered with coverage limits equal to the limits of liability for bodily

1 injury in the underlying policy of insurance, but shall not be required to be offered
2 with limits in excess of the following amounts:

3 (1) A limit of thirty thousand dollars (\$30,000) because of bodily injury to or
4 death of one person in any one accident.

5 (2) Subject to the limit for one person set forth in paragraph (1), a limit of sixty
6 thousand dollars (\$60,000) because of bodily injury to or death of two or more
7 persons in any one accident.

8 (n) Underinsured motorist coverage shall be offered with limits equal to the
9 limits of liability for the insured's uninsured motorist limits in the underlying
10 policy, and may be offered with limits in excess of the uninsured motorist
11 coverage. For the purposes of this section, uninsured and underinsured motorist
12 coverage shall be offered as a single coverage. However, an insurer may offer
13 coverage for damages for bodily injury or wrongful death from the owner or
14 operator of an underinsured motor vehicle at greater limits than an uninsured
15 motor vehicle.

16 (o) If an insured has failed to provide an insurer with wage loss information or
17 medical treatment record releases within 15 days of the insurer's request or has
18 failed to submit to a medical examination arranged by the insurer within 20 days
19 of the insurer's request, the insurer may, at any time prior to 30 days before the
20 actual arbitration proceedings commence, request, and the insured shall furnish,
21 wage loss information or medical treatment record releases, and the insurer may
22 require the insured, except during periods of hospitalization, to make himself or
23 herself available for a medical examination. The wage loss information or medical
24 treatment record releases shall be submitted by the insured within 10 days of
25 request and the medical examination shall be arranged by the insurer no sooner
26 than 10 days after request, unless the insured agrees to an earlier examination date,
27 and not later than 20 days after the request. If the insured fails to comply with the
28 requirements of this subdivision, the actual arbitration proceedings shall be stayed
29 for at least 30 days following compliance by the insured. The proceedings shall be
30 scheduled as soon as practicable following expiration of the 30-day period.

31 (p) This subdivision applies only when bodily injury, as defined in subdivision
32 (b), is caused by an underinsured motor vehicle. If the provisions of this
33 subdivision conflict with subdivisions (a) through (o), the provisions of this
34 subdivision shall prevail.

35 (1) As used in this subdivision, "an insured motor vehicle" is one that is insured
36 under a motor vehicle liability policy, or automobile liability insurance policy,
37 self-insured, or for which a cash deposit or bond has been posted to satisfy a
38 financial responsibility law.

39 (2) "Underinsured motor vehicle" means a motor vehicle that is an insured motor
40 vehicle but insured for an amount that is less than the uninsured motorist limits
41 carried on the motor vehicle of the injured person.

42 (3) This coverage does not apply to any bodily injury until the limits of bodily
43 injury liability policies applicable to all insured motor vehicles causing the injury

1 have been exhausted by payment of judgments or settlements, and proof of the
2 payment is submitted to the insurer providing the underinsured motorist coverage.

3 (4) When bodily injury is caused by one or more motor vehicles, whether
4 insured, underinsured, or uninsured, the maximum liability of the insurer
5 providing the underinsured motorist coverage shall not exceed the insured's
6 underinsured motorist coverage limits, less the amount paid to the insured by or
7 for any person or organization that may be held legally liable for the injury.


8 (5) The insurer paying a claim under this subdivision shall, to the extent of the
9 payment, be entitled to reimbursement or credit in the amount received by the
10 insured from the owner or operator of the underinsured motor vehicle or the
11 insurer of the owner or operator.

12 (6) If the insured brings an action against the owner or operator of an
13 underinsured motor vehicle, he or she shall forthwith give to the insurer providing
14 the underinsured motorist coverage a copy of the complaint by personal service or
15 certified mail. All pleadings and depositions shall be made available for copying
16 or copies furnished the insurer, at the insurer's expense, within a reasonable time.

17 (7) Underinsured motorist coverage shall be included in all policies of bodily
18 injury liability insurance providing uninsured motorist coverage issued or renewed
19 on or after July 1, 1985. Notwithstanding this section, an agreement to delete
20 uninsured motorist coverage completely, or with respect to a person or persons
21 designated by name, executed prior to July 1, 1985, shall remain in full force and
22 effect.

23 (q) Regardless of the number of vehicles involved whether insured or not,
24 persons covered, claims made, premiums paid or the number of premiums shown
25 on the policy, in no event shall the limit of liability for two or more motor vehicles
26 or two or more policies be added together, combined, or stacked to determine the
27 limit of insurance coverage available to injured persons.

28 **Comment.** Subdivision (f) of Section 11580.2 is amended to reflect nonsubstantive
29 reorganization of the rules governing civil discovery.

30  **Note.** Section 11580.2(f)(5) provides "For the purposes of discovery under this section, the
31 insured and the insurer shall each be deemed to be 'a party to the record of any civil action or
32 proceedings,' where that phrase is used in paragraph (2) of subdivision (b) of Section 2019 of the
33 Code of Civil Procedure." It is unclear how to conform this section, because Section 2019(b)(2)
34 does not include the phrase "a party to the record of any civil action or proceedings."

35 The phrase was included in former Section 2019(b)(2), which provided:

36 (2) Notwithstanding Section 1989, the court may, upon motion on 10 days' written notice
37 and for good cause shown, make an order requiring a deponent who is *a party to the record of*
38 *any civil action or proceeding* or is a person for whose immediate benefit said action is
39 prosecuted or defended or is at the time of the taking of the deposition an officer, director or
40 managing agent of any such party or person to attend a deposition at a place more than 150
41 miles from the residence of such deponent. In granting or refusing such order, the court shall
42 consider whether the moving party selected the forum, whether the deponent will be present
43 at the trial, the convenience of the deponent, the suitability of discovery through a deposition
44 by written interrogatories or other discovery methods, the number of depositions sought
45 under this section, the expense to the parties of requiring the deposition to be taken within
46 150 miles of the residence of the deponent, the whereabouts of the deponent at the time the

1 deposition is scheduled to be taken, and all other factors tending to show whether or not the
2 interests of justice and the convenience of the parties and witnesses will be served by
3 requiring the deponent to appear for the deposition at a place more than 150 miles from the
4 deponent's residence. Such order may provide that the party desiring to take such deposition
5 shall pay the reasonable expenses incurred by the deponent in attending such deposition and
6 that the party furnish an undertaking approved by the court to secure such payment and may
7 contain such other terms and conditions as are equitable and just.

8 1982 Cal. Stat. ch. 192, § 1 (emphasis added). The phrase is not included, however, in Section
9 2025(e), which is the current provision governing the location of a deposition. Similarly, the
10 phrase is not included in proposed Sections 2025.250 and 2025.260, which would continue
11 Section 2025(e) without substantive change.

12 Apparently, subdivision (f)(5) was overlooked when Section 11580.2 was conformed to reflect
13 enactment of the Civil Discovery Act of 1986. The amendment of Section 11580.2 proposed
14 above would continue the present state of confusion by replacing the reference to "paragraph (2)
15 of subdivision (b) of Section 2019" with a reference to Section 2019.030(a)(2), the corresponding
16 provision in the proposed new chapter on civil discovery.

17 Ideally, however, the confusing reference should be corrected or eliminated. The Commission
18 solicits comment on the proper treatment of this provision.

19 **Labor Code § 5710 (amended). Depositions**

20 SEC. ____ . Section 5710 of the Labor Code is amended to read:

21 5710. (a) The appeals board, a workers' compensation judge, or any party to the
22 action or proceeding, may, in any investigation or hearing before the appeals
23 board, cause the deposition of witnesses residing within or without the state to be
24 taken in the manner prescribed by law for like depositions in civil actions in the
25 superior courts of this state under ~~Article 3 (commencing with Section 2016)~~ of
26 Chapter 3 of Title 4 (commencing with Section 2016.010) of Part 4 of the Code of
27 Civil Procedure. To that end the attendance of witnesses and the production of
28 records may be required. Depositions may be taken outside the state before any
29 officer authorized to administer oaths. The appeals board or a workers'
30 compensation judge in any proceeding before the appeals board may cause
31 evidence to be taken in other jurisdictions before the agency authorized to hear
32 workers' compensation matters in those other jurisdictions.

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

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

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

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

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

1 (5) A reasonable allowance for interpreter's fees for the deponent, if
2 interpretation services are needed and provided by a language interpreter certified
3 or deemed certified pursuant to Article 8 (commencing with Section 11435.05) of
4 Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566 of, the
5 Government Code. The fee shall be in accordance with the fee schedule set by the
6 administrative director and paid by the employer or his or her insurer. Payment for
7 interpreter's services shall be allowed for deposition of a non-English-speaking
8 injured worker, and for any other deposition-related events as permitted by the
9 administrative director.

10 **Comment.** Subdivision (a) of Section 5710 is amended to reflect nonsubstantive reorganization
11 of the rules governing civil discovery.

12 **Labor Code § 6613 (amended). Depositions**

13 SEC. _____. Section 6613 of the Labor Code is amended to read:

14 6613. The appeals board, a hearing officer, or any party to the action or
15 proceeding, may, in any investigation or hearing before the appeals board, cause
16 the deposition of witnesses residing within or without the state to be taken in the
17 manner prescribed by law for like depositions in civil actions in the superior courts
18 of this state under ~~Article 3 (commencing with Section 2016) of Chapter 3 of Title~~
19 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure.
20 To that end the attendance of witnesses and the production of records may be
21 required. Depositions may be taken outside the state before any officer authorized
22 to administer oaths. The appeals board or a hearing officer in any proceeding
23 before the appeals board may cause evidence to be taken in other jurisdictions
24 before the agency authorized to hear similar matters in such other jurisdictions.

25 **Comment.** Section 6613 is amended to reflect nonsubstantive reorganization of the rules
26 governing civil discovery.

27 **Penal Code § 186.11 (amended). Aggravated white collar crime enhancement**

28 SEC. _____. Section 186.11 of the Penal Code is amended to read:

29 186.11. (a)(1) Any person who commits two or more related felonies, a material
30 element of which is fraud or embezzlement, which involve a pattern of related
31 felony conduct, and the pattern of related felony conduct involves the taking of
32 more than one hundred thousand dollars (\$100,000), shall be punished, upon
33 conviction of two or more felonies in a single criminal proceeding, in addition and
34 consecutive to the punishment prescribed for the felony offenses of which he or
35 she has been convicted, by an additional term of imprisonment in the state prison
36 as specified in paragraph (2) or (3). This enhancement shall be known as the
37 aggravated white collar crime enhancement. The aggravated white collar crime
38 enhancement shall only be imposed once in a single criminal proceeding. For
39 purposes of this section, "pattern of related felony conduct" means engaging in at
40 least two felonies that have the same or similar purpose, result, principals, victims,
41 or methods of commission, or are otherwise interrelated by distinguishing

1 characteristics, and that are not isolated events. For purposes of this section, “two
2 or more related felonies” means felonies committed against two or more separate
3 victims, or against the same victim on two or more separate occasions.

4 (2) If the pattern of related felony conduct involves the taking of more than five
5 hundred thousand dollars (\$500,000), the additional term of punishment shall be
6 two, three, or five years in the state prison.

7 (3) If the pattern of related felony conduct involves the taking of more than one
8 hundred thousand dollars (\$100,000), but not more than five hundred thousand
9 dollars (\$500,000), the additional term of punishment shall be the term specified in
10 paragraph (1) or (2) of subdivision (a) of Section 12022.6.

11 (b)(1) The additional prison term and penalties provided for in subdivisions (a),
12 (c), and (d) shall not be imposed unless the facts set forth in subdivision (a) are
13 charged in the accusatory pleading and admitted or found to be true by the trier of
14 fact.

15 (2) The additional prison term provided in paragraph (2) of subdivision (a) shall
16 be in addition to any other punishment provided by law, including Section
17 12022.6, and shall not be limited by any other provision of law.

18 (c) Any person convicted of two or more felonies, as specified in subdivision (a),
19 shall also be liable for a fine not to exceed five hundred thousand dollars
20 (\$500,000) or double the value of the taking, whichever is greater, if the existence
21 of facts that would make the person subject to the aggravated white collar crime
22 enhancement have been admitted or found to be true by the trier of fact. However,
23 if the pattern of related felony conduct involves the taking of more than one
24 hundred thousand dollars (\$100,000), but not more than five hundred thousand
25 dollars (\$500,000), the fine shall not exceed one hundred thousand dollars
26 (\$100,000) or double the value of the taking, whichever is greater.

27 (d) Any person convicted of two or more felonies, as specified in subdivision
28 (a), shall be liable for the costs of restitution to victims of the pattern of fraudulent
29 or unlawful conduct, if the existence of facts that would make the person subject to
30 the aggravated white collar crime enhancement have been admitted or found to be
31 true by the trier of fact.

32 (e)(1) If a person is alleged to have committed two or more felonies, as specified
33 in subdivision (a), and the aggravated white collar crime enhancement is also
34 charged, any asset or property that is in the control of that person, and any asset or
35 property that has been transferred by that person to a third party, subsequent to the
36 commission of any criminal act alleged pursuant to subdivision (a), other than in a
37 bona fide purchase, whether found within or outside the state, may be preserved by
38 the superior court in order to pay restitution and fines imposed pursuant to this
39 section. Upon conviction of two or more felonies, as specified in subdivision (a),
40 this property may be levied upon by the superior court to pay restitution and fines
41 imposed pursuant to this section if the existence of facts that would make the
42 person subject to the aggravated white collar crime enhancement have been
43 admitted or found to be true by the trier of fact.

1 (2) To prevent dissipation or secreting of assets or property, the prosecuting
2 agency may, at the same time as or subsequent to the filing of a complaint or
3 indictment charging two or more felonies, as specified in subdivision (a), and the
4 enhancement specified in subdivision (a), file a petition with the criminal division
5 of the superior court of the county in which the accusatory pleading was filed,
6 seeking a temporary restraining order, preliminary injunction, the appointment of a
7 receiver, or any other protective relief necessary to preserve the property or assets.
8 This petition shall commence a proceeding that shall be pendent to the criminal
9 proceeding and maintained solely to effect the criminal remedies provided for in
10 this section. The proceeding shall not be subject to or governed by the provisions
11 of the Civil Discovery Act of 1986 as set forth in Article 3 (commencing with
12 Section 2016) of Chapter 3 of Title 3 as set forth in Title 4 (commencing with
13 Section 2016.010) of Part 4 of the Code of Civil Procedure. The petition shall
14 allege that the defendant has been charged with two or more felonies, as specified
15 in subdivision (a), and is subject to the aggravated white collar crime enhancement
16 specified in subdivision (a). The petition shall identify that criminal proceeding
17 and the assets and property to be affected by an order issued pursuant to this
18 section.

19 (3) A notice regarding the petition shall be provided, by personal service or
20 registered mail, to every person who may have an interest in the property specified
21 in the petition. Additionally, the notice shall be published for at least three
22 successive weeks in a newspaper of general circulation in the county where the
23 property affected by an order issued pursuant to this section is located. The notice
24 shall state that any interested person may file a verified claim with the superior
25 court stating the nature and amount of their claimed interest. The notice shall set
26 forth the time within which a claim of interest in the protected property is required
27 to be filed.

28 (4) If the property to be preserved is real property, the prosecuting agency shall
29 record, at the time of filing the petition, a lis pendens in each county in which the
30 real property is situated which specifically identifies the property by legal
31 description, the name of the owner of record as shown on the latest equalized
32 assessment roll, and the assessor's parcel number.

33 (5) If the property to be preserved are assets under the control of a banking or
34 financial institution, the prosecuting agency, at the time of the filing of the
35 petition, may obtain an order from the court directing the banking or financial
36 institution to immediately disclose the account numbers and value of the assets of
37 the accused held by the banking or financial institution. The prosecuting agency
38 shall file a supplemental petition, specifically identifying which banking or
39 financial institution accounts shall be subject to a temporary restraining order,
40 preliminary injunction, or other protective remedy.

41 (6) Any person claiming an interest in the protected property may, at any time
42 within 30 days from the date of the first publication of the notice of the petition, or
43 within 30 days after receipt of actual notice, file with the superior court of the

1 county in which the action is pending a verified claim stating the nature and
2 amount of his or her interest in the property or assets. A verified copy of the claim
3 shall be served by the claimant on the Attorney General or district attorney, as
4 appropriate.

5 (7) The imposition of fines and restitution pursuant to this section shall be
6 determined by the superior court in which the underlying criminal offense is
7 sentenced. Any judge who is assigned to the criminal division of the superior court
8 in the county where the petition is filed may issue a temporary restraining order in
9 conjunction with, or subsequent to, the filing of an allegation pursuant to this
10 section. Any subsequent hearing on the petition shall also be heard by a judge
11 assigned to the criminal division of the superior court in the county in which the
12 petition is filed. At the time of the filing of an information or indictment in the
13 underlying criminal case, any subsequent hearing on the petition shall be heard by
14 the superior court judge assigned to the underlying criminal case.

15 (f) Concurrent with or subsequent to the filing of the petition, the prosecuting
16 agency may move the superior court for, and the superior court may issue, the
17 following pendente lite orders to preserve the status quo of the property alleged in
18 the petition:

19 (1) An injunction to restrain any person from transferring, encumbering,
20 hypothecating, or otherwise disposing of that property.

21 (2) Appointment of a receiver to take possession of, care for, manage, and
22 operate the assets and properties so that the property may be maintained and
23 preserved. The court may order that a receiver appointed pursuant to this section
24 shall be compensated for all reasonable expenditures made or incurred by him or
25 her in connection with the possession, care, management, and operation of any
26 property or assets that are subject to the provisions of this section.

27 (3) A bond or other undertaking, in lieu of other orders, of a value sufficient to
28 ensure the satisfaction of restitution and fines imposed pursuant to this section.

29 (g)(1) No preliminary injunction may be granted or receiver appointed by the
30 court without notice that meets the requirements of paragraph (3) of subdivision
31 (e) to all known and reasonably ascertainable interested parties and upon a hearing
32 to determine that an order is necessary to preserve the property pending the
33 outcome of the criminal proceedings. A temporary restraining order may be issued
34 by the court, ex parte, pending that hearing in conjunction with or subsequent to
35 the filing of the petition upon the application of the prosecuting attorney. The
36 temporary restraining order may be based upon the sworn declaration of a peace
37 officer with personal knowledge of the criminal investigation that establishes
38 probable cause to believe that aggravated white collar crime has taken place and
39 that the amount of restitution and fines established by this section exceeds or
40 equals the worth of the assets subject to the temporary restraining order. The
41 declaration may include the hearsay statements of witnesses to establish the
42 necessary facts. The temporary restraining order may be issued without notice
43 upon a showing of good cause to the court.

1 (2) The defendant, or a person who has filed a verified claim as provided in
2 paragraph (6) of subdivision (e), shall have the right to have the court conduct an
3 order to show cause hearing within 10 days of the service of the request for
4 hearing upon the prosecuting agency, in order to determine whether the temporary
5 restraining order should remain in effect, whether relief should be granted from
6 any lis pendens recorded pursuant to paragraph (4) of subdivision (e), or whether
7 any existing order should be modified in the interests of justice. Upon a showing
8 of good cause, the hearing shall be held within two days of the service of the
9 request for hearing upon the prosecuting agency.

10 (3) In determining whether to issue a preliminary injunction or temporary
11 restraining order in a proceeding brought by a prosecuting agency in conjunction
12 with or subsequent to the filing of an allegation pursuant to this section, the court
13 has the discretion to consider any matter that it deems reliable and appropriate,
14 including hearsay statements, in order to reach a just and equitable decision. The
15 court shall weigh the relative degree of certainty of the outcome on the merits and
16 the consequences to each of the parties of granting the interim relief. If the
17 prosecution is likely to prevail on the merits and the risk of the dissipation of
18 assets outweighs the potential harm to the defendants and the interested parties, the
19 court shall grant injunctive relief. The court shall give significant weight to the
20 following factors:

21 (A) The public interest in preserving the property or assets pendente lite.

22 (B) The difficulty of preserving the property or assets pendente lite where the
23 underlying alleged crimes involve issues of fraud and moral turpitude.

24 (C) The fact that the requested relief is being sought by a public prosecutor on
25 behalf of alleged victims of white collar crimes.

26 (D) The likelihood that substantial public harm has occurred where aggravated
27 white collar crime is alleged to have been committed.

28 (E) The significant public interest involved in compensating the victims of white
29 collar crime and paying court imposed restitution and fines.

30 (4) The court, in making its orders, may consider a defendant's request for the
31 release of a portion of the property affected by this section in order to pay
32 reasonable legal fees in connection with the criminal proceeding, any necessary
33 and appropriate living expenses pending trial and sentencing, and for the purpose
34 of posting bail. The court shall weigh the needs of the public to retain the property
35 against the needs of the defendant to a portion of the property. The court shall
36 consider the factors listed in paragraph (3) prior to making any order releasing
37 property for these purposes.

38 (5) The court, in making its orders, shall seek to protect the interests of any
39 innocent third persons, including an innocent spouse, who were not involved in the
40 commission of any criminal activity.

41 (6) Any petition filed pursuant to this section is part of the criminal proceedings
42 for purposes of appointment of counsel and shall be assigned to the criminal

1 division of the superior court of the county in which the accusatory pleading was
2 filed.

3 (7) Based upon a noticed motion brought by the receiver appointed pursuant to
4 paragraph (2) of subdivision (f), the court may order an interlocutory sale of
5 property named in the petition when the property is liable to perish, to waste, or to
6 be significantly reduced in value, or when the expenses of maintaining the
7 property are disproportionate to the value thereof. The proceeds of the
8 interlocutory sale shall be deposited with the court or as directed by the court
9 pending determination of the proceeding pursuant to this section.

10 (8) The court may make any orders that are necessary to preserve the continuing
11 viability of any lawful business enterprise that is affected by the issuance of a
12 temporary restraining order or preliminary injunction issued pursuant to this
13 action.

14 (9) In making its orders, the court shall seek to prevent any asset subject to a
15 temporary restraining order or preliminary injunction from perishing, spoiling,
16 going to waste, or otherwise being significantly reduced in value. Where the
17 potential for diminution in value exists, the court shall appoint a receiver to
18 dispose of or otherwise protect the value of the property or asset.

19 (10) A preservation order shall not be issued against any assets of a business that
20 are not likely to be dissipated and that may be subject to levy or attachment to
21 meet the purposes of this section.

22 (h) If the allegation that the defendant is subject to the aggravated white collar
23 crime enhancement is dismissed or found by the trier of fact to be untrue, any
24 preliminary injunction or temporary restraining order issued pursuant to this
25 section shall be dissolved. If a jury is the trier of fact, and the jury is unable to
26 reach a unanimous verdict, the court shall have the discretion to continue or
27 dissolve all or a portion of the preliminary injunction or temporary restraining
28 order based upon the interests of justice. However, if the prosecuting agency elects
29 not to retry the case, any preliminary injunction or temporary restraining order
30 issued pursuant to this section shall be dissolved.

31 (i)(1)(A) If the defendant is convicted of two or more felonies, as specified in
32 subdivision (a), and the existence of facts that would make the person subject to
33 the aggravated white collar crime enhancement have been admitted or found to be
34 true by the trier of fact, the trial judge shall continue the preliminary injunction or
35 temporary restraining order until the date of the criminal sentencing and shall
36 make a finding at that time as to what portion, if any, of the property or assets
37 subject to the preliminary injunction or temporary restraining order shall be levied
38 upon to pay fines and restitution to victims of the crime. The order imposing fines
39 and restitution may exceed the total worth of the property or assets subjected to the
40 preliminary injunction or temporary restraining order. The court may order the
41 immediate transfer of the property or assets to satisfy any judgment and sentence
42 made pursuant to this section. Additionally, upon motion of the prosecution, the
43 court may enter an order as part of the judgment and sentence making the order

1 imposing fines and restitution pursuant to this section enforceable pursuant to Title
2 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure.

3 (B) Additionally, the court shall order the defendant to make full restitution to
4 the victim or to make restitution to the victim based on his or her ability to pay, as
5 defined in subdivision (b) of Section 1203.1b. The payment of the restitution
6 ordered by the court pursuant to this section shall be made a condition of any
7 probation granted by the court if the existence of facts that would make the
8 defendant subject to the aggravated white collar crime enhancement have been
9 admitted or found to be true by the trier of fact. Notwithstanding any other
10 provision of law, the court may order that the period of probation continue for up
11 to 10 years or until full restitution is made to the victim, whichever is earlier.

12 (C) The sentencing court shall retain jurisdiction to enforce the order to pay
13 additional fines and restitution and, in appropriate cases, may initiate probation
14 violation proceedings or contempt of court proceedings against a defendant who is
15 found to have willfully failed to comply with any lawful order of the court.

16 (D) If the execution of judgment is stayed pending an appeal of an order of the
17 superior court pursuant to this section, the preliminary injunction or temporary
18 restraining order shall be maintained in full force and effect during the pendency
19 of the appellate period.

20 (2) The order imposing fines and restitution shall not affect the interest in real
21 property of any third party that was acquired prior to the recording of the lis
22 pendens, unless the property was obtained from the defendant other than as a bona
23 fide purchaser for value. If any assets or property affected by this section are
24 subject to a valid lien, mortgage, security interest, or interest under a conditional
25 sales contract and the amount due to the holder of the lien, mortgage, interest, or
26 contract is less than the appraised value of the property, that person may pay to the
27 state or the local government that initiated the proceeding the amount of the
28 difference between the appraised value of the property and the amount of the lien,
29 mortgage, security interest, or interest under a conditional sales contract. Upon that
30 payment, the state or local entity shall relinquish all claims to the property. If the
31 holder of the interest elects not to make that payment to the state or local
32 governmental entity, the interest in the property shall be deemed transferred to the
33 state or local governmental entity and any indicia of ownership of the property
34 shall be confirmed in the state or local governmental entity. The appraised value
35 shall be determined as of the date judgment is entered either by agreement
36 between the holder of the lien, mortgage, security interest, or interest under a
37 conditional sales contract and the governmental entity involved, or if they cannot
38 agree, then by a court-appointed appraiser for the county in which the action is
39 brought. A person holding a valid lien, mortgage, security interest, or interest
40 under a conditional sales contract shall be paid the appraised value of his or her
41 interest.

1 (3) In making its final order, the court shall seek to protect the legitimately
2 acquired interests of any innocent third persons, including an innocent spouse,
3 who were not involved in the commission of any criminal activity.

4 (j) In all cases where property is to be levied upon pursuant to this section, a
5 receiver appointed by the court shall be empowered to liquidate all property or
6 assets which shall be distributed in the following order of priority:

7 (1) To the receiver, or court-appointed appraiser, for all reasonable expenditures
8 made or incurred by him or her in connection with the sale of the property or
9 liquidation of assets, including all reasonable expenditures for any necessary
10 repairs, storage, or transportation of any property levied upon under this section.

11 (2) To any holder of a valid lien, mortgage, or security interest up to the amount
12 of his or her interest in the property or proceeds.

13 (3) To any victim as restitution for any fraudulent or unlawful acts alleged in the
14 accusatory pleading that were proven by the prosecuting agency as part of the
15 pattern of fraudulent or unlawful acts.

16 (4) For payment of any fine imposed pursuant to this section. The proceeds
17 obtained in payment of a fine shall be paid to the treasurer of the county in which
18 the judgment was entered, or if the action was undertaken by the Attorney
19 General, to the Treasurer. If the payment of any fine imposed pursuant to this
20 section involved losses resulting from violation of Section 550 of this code or
21 Section 1871.4 of the Insurance Code, one-half of the fine collected shall be paid
22 to the treasurer of the county in which the judgment was entered, and one-half of
23 the fine collected shall be paid to the Department of Insurance for deposit in the
24 appropriate account in the Insurance Fund. The proceeds from the fine first shall
25 be used by a county to reimburse local prosecutors and enforcement agencies for
26 the reasonable costs of investigation and prosecution of cases brought pursuant to
27 this section.

28 (5) To the Restitution Fund, or in cases involving convictions relating to
29 insurance fraud, to the Insurance Fund as restitution for crimes not specifically
30 pleaded and proven in the accusatory pleading.

31 (k) If, after distribution pursuant to paragraphs (1) and (2) of subdivision (j), the
32 value of the property to be levied upon pursuant to this section is insufficient to
33 pay for restitution and fines, the court shall order an equitable sharing of the
34 proceeds of the liquidation of the property, and any other recoveries, which shall
35 specify the percentage of recoveries to be devoted to each purpose. At least 70
36 percent of the proceeds remaining after distribution pursuant to paragraphs (1) and
37 (2) of subdivision (j) shall be devoted to restitution.

38 (l) Unless otherwise expressly provided, the remedies or penalties provided by
39 this section are cumulative to each other and to the remedies or penalties available
40 under all other laws of this state, except that two separate actions against the same
41 defendant and pertaining to the same fraudulent or unlawful acts may not be
42 brought by a district attorney or the Attorney General pursuant to this section and
43 Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the

1 Business and Professions Code. If a fine is imposed under this section, it shall be
2 in lieu of all other fines that may be imposed pursuant to any other provision of
3 law for the crimes for which the defendant has been convicted in the action.

4 **Comment.** Subdivision (e)(2) of Section 186.11 is amended to reflect nonsubstantive
5 reorganization of the rules governing civil discovery.

6 **Penal Code § 1054.6 (amended). Work product privilege**

7 SEC. _____. Section 1054.6 of the Penal Code is amended to read:

8 1054.6. Neither the defendant nor the prosecuting attorney is required to disclose
9 any materials or information which are work product as defined in ~~subdivision (e)~~
10 ~~of Section 2018~~ subdivision (a) of Section 2018.030 of the Code of Civil
11 Procedure, or which are privileged pursuant to an express statutory provision, or
12 are privileged as provided by the Constitution of the United States.

13 **Comment.** Section 1054.6 is amended to reflect nonsubstantive reorganization of the rules
14 governing civil discovery.

15 **Penal Code § 1524 (amended). Issuance of search warrant**

16 SEC. _____. Section 1524 of the Penal Code is amended to read:

17 1524. (a) A search warrant may be issued upon any of the following grounds:

18 (1) When the property was stolen or embezzled.

19 (2) When the property or things were used as the means of committing a felony.

20 (3) When the property or things are in the possession of any person with the
21 intent to use them as a means of committing a public offense, or in the possession
22 of another to whom he or she may have delivered them for the purpose of
23 concealing them or preventing their being discovered.

24 (4) When the property or things to be seized consist of any item or constitute any
25 evidence that tends to show a felony has been committed, or tends to show that a
26 particular person has committed a felony.

27 (5) When the property or things to be seized consist of evidence that tends to
28 show that sexual exploitation of a child, in violation of Section 311.3, or
29 possession of matter depicting sexual conduct of a person under the age of 18
30 years, in violation of Section 311.11, has occurred or is occurring.

31 (6) When there is a warrant to arrest a person.

32 (7) When a provider of electronic communication service or remote computing
33 service has records or evidence, as specified in Section 1524.3, showing that
34 property was stolen or embezzled constituting a misdemeanor, or that property or
35 things are in the possession of any person with the intent to use them as a means of
36 committing a misdemeanor public offense, or in the possession of another to
37 whom he or she may have delivered them for the purpose of concealing them or
38 preventing their discovery.

39 (b) The property or things or person or persons described in subdivision (a) may
40 be taken on the warrant from any place, or from any person in whose possession
41 the property or things may be.

1 (c) Notwithstanding subdivision (a) or (b), no search warrant shall issue for any
2 documentary evidence in the possession or under the control of any person, who is
3 a lawyer as defined in Section 950 of the Evidence Code, a physician as defined in
4 Section 990 of the Evidence Code, a psychotherapist as defined in Section 1010 of
5 the Evidence Code, or a clergyman as defined in Section 1030 of the Evidence
6 Code, and who is not reasonably suspected of engaging or having engaged in
7 criminal activity related to the documentary evidence for which a warrant is
8 requested unless the following procedure has been complied with:

9 (1) At the time of the issuance of the warrant the court shall appoint a special
10 master in accordance with subdivision (d) to accompany the person who will serve
11 the warrant. Upon service of the warrant, the special master shall inform the party
12 served of the specific items being sought and that the party shall have the
13 opportunity to provide the items requested. If the party, in the judgment of the
14 special master, fails to provide the items requested, the special master shall
15 conduct a search for the items in the areas indicated in the search warrant.

16 (2) If the party who has been served states that an item or items should not be
17 disclosed, they shall be sealed by the special master and taken to court for a
18 hearing.

19 At the hearing, the party searched shall be entitled to raise any issues that may be
20 raised pursuant to Section 1538.5 as well as a claim that the item or items are
21 privileged, as provided by law. The hearing shall be held in the superior court. The
22 court shall provide sufficient time for the parties to obtain counsel and make any
23 motions or present any evidence. The hearing shall be held within three days of the
24 service of the warrant unless the court makes a finding that the expedited hearing
25 is impracticable. In that case the matter shall be heard at the earliest possible time.

26 If an item or items are taken to court for a hearing, any limitations of time
27 prescribed in Chapter 2 (commencing with Section 797) of Title 3 of Part 2 shall
28 be tolled from the time of the seizure until the final conclusion of the hearing,
29 including any associated writ or appellate proceedings.

30 (3) The warrant shall, whenever practicable, be served during normal business
31 hours. In addition, the warrant shall be served upon a party who appears to have
32 possession or control of the items sought. If, after reasonable efforts, the party
33 serving the warrant is unable to locate the person, the special master shall seal and
34 return to the court, for determination by the court, any item that appears to be
35 privileged as provided by law.

36 (d) As used in this section, a “special master” is an attorney who is a member in
37 good standing of the California State Bar and who has been selected from a list of
38 qualified attorneys that is maintained by the State Bar particularly for the purposes
39 of conducting the searches described in this section. These attorneys shall serve
40 without compensation. A special master shall be considered a public employee,
41 and the governmental entity that caused the search warrant to be issued shall be
42 considered the employer of the special master and the applicable public entity, for
43 purposes of Division 3.6 (commencing with Section 810) of Title 1 of the

1 Government Code, relating to claims and actions against public entities and public
2 employees. In selecting the special master, the court shall make every reasonable
3 effort to ensure that the person selected has no relationship with any of the parties
4 involved in the pending matter. Any information obtained by the special master
5 shall be confidential and shall not be divulged except in direct response to inquiry
6 by the court.

7 In any case in which the magistrate determines that, after reasonable efforts have
8 been made to obtain a special master, a special master is not available and would
9 not be available within a reasonable period of time, the magistrate may direct the
10 party seeking the order to conduct the search in the manner described in this
11 section in lieu of the special master.

12 (e) Any search conducted pursuant to this section by a special master may be
13 conducted in a manner that permits the party serving the warrant or his or her
14 designee to accompany the special master as he or she conducts his or her search.
15 However, that party or his or her designee shall not participate in the search nor
16 shall he or she examine any of the items being searched by the special master
17 except upon agreement of the party upon whom the warrant has been served.

18 (f) As used in this section, “documentary evidence” includes, but is not limited
19 to, writings, documents, blueprints, drawings, photographs, computer printouts,
20 microfilms, X-rays, files, diagrams, ledgers, books, tapes, audio and video
21 recordings, films or papers of any type or description.

22 (g) No warrant shall issue for any item or items described in Section 1070 of the
23 Evidence Code.

24 (h) Notwithstanding any other law, no claim of attorney work product as
25 described in ~~Section 2018~~ Chapter 4 (commencing with Section 2018.010) of Title
26 4 of Part 4 of the Code of Civil Procedure shall be sustained where there is
27 probable cause to believe that the lawyer is engaging or has engaged in criminal
28 activity related to the documentary evidence for which a warrant is requested
29 unless it is established at the hearing with respect to the documentary evidence
30 seized under the warrant that the services of the lawyer were not sought or
31 obtained to enable or aid anyone to commit or plan to commit a crime or a fraud.

32 (i) Nothing in this section is intended to limit an attorney’s ability to request an
33 in camera hearing pursuant to the holding of the Supreme Court of California in
34 *People v. Superior Court (Laff)*(2001) 25 Cal.4th 703.

35 **Comment.** Subdivision (h) of Section 1524 is amended to reflect nonsubstantive reorganization
36 of the rules governing civil discovery.

37 **Prob. Code § 451 (amended). Subpoena to compel appearance for purposes of appraisal**

38 SEC. ____ . Section 451 of the Probate Code is amended to read:

39 451. (a) For the purpose of appraisal of property in the estate, the probate referee
40 may require, and may issue a subpoena to compel, the appearance before the
41 referee of the personal representative, guardian, conservator, or other fiduciary, an

1 interested person, or any other person the referee has reason to believe has
2 knowledge of the property.

3 (b) A subpoena issued under subdivision (a) is subject to the provisions of
4 ~~Section 2020~~ Chapter 6 (commencing with Section 2020.010) of Title 4 of Part 4
5 of the Code of Civil Procedure governing deposition subpoenas.

6 **Comment.** Subdivision (b) of Section 451 is amended to reflect nonsubstantive reorganization
7 of the rules governing civil discovery.

8 **Prob. Code § 452 (amended). Authority to compel testimony and production of documents**

9 SEC. _____. Section 452 of the Probate Code is amended to read:

10 452. (a) The probate referee may:

11 (1) Examine and take the testimony under oath of a person appearing before the
12 referee.

13 (2) Require, and issue a subpoena to compel, the person to produce any
14 document in the person's possession or control, concerning the value of any
15 property in the estate.

16 (b) A subpoena issued under subdivision (a) is subject to the provisions of
17 ~~Section 2020~~ Chapter 6 (commencing with Section 2020.010) of Title 4 of Part 4
18 of the Code of Civil Procedure governing deposition subpoenas.

19 **Comment.** Subdivision (b) of Section 452 is amended to reflect nonsubstantive reorganization
20 of the rules governing civil discovery.

21 **Pub. Cont. Code § 20104.4 (amended). Mediation and arbitration**

22 SEC. _____. Section 20104.4 of the Public Contract Code is amended to read:

23 20104.4. The following procedures are established for all civil actions filed to
24 resolve claims subject to this article:

25 (a) Within 60 days, but no earlier than 30 days, following the filing or responsive
26 pleadings, the court shall submit the matter to nonbinding mediation unless waived
27 by mutual stipulation of both parties. The mediation process shall provide for the
28 selection within 15 days by both parties of a disinterested third person as mediator,
29 shall be commenced within 30 days of the submittal, and shall be concluded
30 within 15 days from the commencement of the mediation unless a time
31 requirement is extended upon a good cause showing to the court or by stipulation
32 of both parties. If the parties fail to select a mediator within the 15-day period, any
33 party may petition the court to appoint the mediator.

34 (b)(1) If the matter remains in dispute, the case shall be submitted to judicial
35 arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3
36 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that
37 code. The Civil Discovery Act of 1986 (~~Article 3 (commencing with Section~~
38 ~~2016) of Chapter 3 of Title 3~~ (Title 4 (commencing with Section 2016.010) of Part
39 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this
40 subdivision consistent with the rules pertaining to judicial arbitration.

1 (2) Notwithstanding any other provision of law, upon stipulation of the parties,
2 arbitrators appointed for purposes of this article shall be experienced in
3 construction law, and, upon stipulation of the parties, mediators and arbitrators
4 shall be paid necessary and reasonable hourly rates of pay not to exceed their
5 customary rate, and such fees and expenses shall be paid equally by the parties,
6 except in the case of arbitration where the arbitrator, for good cause, determines a
7 different division. In no event shall these fees or expenses be paid by state or
8 county funds.

9 (3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of
10 Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration
11 award requests a trial de novo but does not obtain a more favorable judgment
12 shall, in addition to payment of costs and fees under that chapter, pay the
13 attorney's fees of the other party arising out of the trial de novo.

14 (c) The court may, upon request by any party, order any witnesses to participate
15 in the mediation or arbitration process.

16 **Comment.** Subdivision (b) of Section 20104.4 is amended to reflect nonsubstantive
17 reorganization of the rules governing civil discovery.

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

19 SEC. ____ . Section 3357 of the Public Resources Code is amended to read:

20 3357. In any proceeding before the director, and in any proceeding instituted by
21 the supervisor for the purpose of enforcing or carrying out the provisions of this
22 division, or for the purpose of holding an investigation to ascertain the condition
23 of any well or wells complained of, or which in the opinion of the supervisor may
24 reasonably be presumed to be improperly located, drilled, operated, maintained, or
25 conducted, the supervisor and the director shall have the power to administer oaths
26 and may apply to a judge of the superior court of the county in which the
27 proceeding or investigation is pending for a subpoena for witnesses to attend the
28 proceeding or investigation. Upon the application of the supervisor or the director,
29 the judge of the superior court shall issue a subpoena directing the witness to
30 attend the proceeding or investigation, and such person shall be required to
31 produce, when directed, all records, surveys, documents, books, or accounts in the
32 witness' custody or under the witness' control; except that no person shall be
33 required to attend upon such proceeding unless the person resides within the same
34 county or within 100 miles of the place of attendance. The supervisor or the
35 director may in such case cause the depositions of witnesses residing within or
36 without the state to be taken in the manner prescribed by law for like depositions
37 in civil actions in superior courts of this state under ~~Article 3 (commencing with~~
38 ~~Section 2016) of Chapter 3 of Title 4 (commencing with Section 2016.010)~~ of Part
39 4 of the Code of Civil Procedure, and may, upon application to a judge of the
40 superior court of the county within which the proceeding or investigation is
41 pending, obtain a subpoena compelling the attendance of witnesses and the

1 production of records, surveys, documents, books, or accounts at such places as
2 the judge may designate within the limits prescribed in this section.

3 **Comment.** Section 3357 is amended to reflect nonsubstantive reorganization of the rules
4 governing civil discovery.

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

6 SEC. _____. Section 3769 of the Public Resources Code is amended to read:

7 3769. In any proceeding instituted by the supervisor for the purpose of enforcing
8 or carrying out the provisions of this chapter, or for the purpose of holding an
9 investigation to ascertain the condition of any well or wells complained of, or
10 which in the opinion of the supervisor may reasonably be presumed to be
11 improperly located, drilled, operated, maintained, or conducted, the supervisor
12 shall have the power to administer oaths and may apply to a judge of the superior
13 court of the county in which the proceeding or investigation is pending, for a
14 subpoena for witnesses to attend the proceeding or investigation. Upon the
15 application of the supervisor, the judge of the superior court shall issue a subpoena
16 directing the witness to attend the proceeding or investigation, and such person
17 shall be required to produce, when directed, all records, surveys, documents,
18 books, or accounts in the witness' custody or under the witness' control; except
19 that no person shall be required to attend upon such proceeding, unless the person
20 resides within the same county or within 100 miles of the place of attendance.

21 The supervisor may in such case cause the depositions of witnesses residing
22 within or without the state to be taken in the manner prescribed by law for like
23 depositions in civil actions in superior courts of this state under ~~Article 3~~
24 ~~(commencing with Section 2016) of Chapter 3 of Title 4 (commencing with~~
25 Section 2016.010) of Part 4 of the Code of Civil Procedure, and may, upon
26 application to a judge of the superior court of the county within which the
27 proceeding or investigation is pending, obtain a subpoena compelling the
28 attendance of witnesses and the production of records, surveys, documents, books,
29 or accounts at such places as the judge may designate within the limits prescribed
30 in this section.

31 **Comment.** Section 3769 is amended to reflect nonsubstantive reorganization of the rules
32 governing civil discovery.

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

34 SEC. _____. Section 1794 of the Public Utilities Code is amended to read:

35 1794. The commission or any commissioner or any party may, in any
36 investigation or hearing before the commission, cause the deposition of witnesses
37 residing within or without the state to be taken in the manner prescribed by law for
38 like depositions in civil actions in the superior courts of this state under ~~Article 3~~
39 ~~(commencing with Section 2016) of Chapter 3 of Title 4 (commencing with~~
40 Section 2016.010) of Part 4 of the Code of Civil Procedure and to that end may

1 compel the attendance of witnesses and the production of books, waybills,
2 documents, papers, and accounts.

3 **Comment.** Section 1794 is amended to reflect nonsubstantive reorganization of the rules
4 governing civil discovery.

5 **Rev. & Tax. Code § 25110 (amended). Water’s edge election**

6 SEC. _____. Section 25110 of the Revenue and Taxation Code is amended to read:

7 25110. (a) Notwithstanding Section 25101, a qualified taxpayer, as defined in
8 paragraph (2) of subdivision (b), that is subject to the tax imposed under this part,
9 may elect to determine its income derived from or attributable to sources within
10 this state pursuant to a water’s-edge election in accordance with the provisions of
11 this part, as modified by this article. A taxpayer that makes a water’s-edge election
12 shall take into account the income and apportionment factors of the following
13 affiliated entities only:

14 (1) Domestic international sales corporations, as described in Sections 991 to
15 994, inclusive, of the Internal Revenue Code and foreign sales corporations as
16 described in Sections 921 to 927, inclusive, of the Internal Revenue Code.

17 (2) Any corporation (other than a bank), regardless of the place where it is
18 incorporated if the average of its property, payroll, and sales factors within the
19 United States is 20 percent or more.

20 (3) Corporations that are incorporated in the United States, excluding
21 corporations making an election pursuant to Sections 931 to 936, inclusive, of the
22 Internal Revenue Code, of which more than 50 percent of their voting stock is
23 owned or controlled directly or indirectly by the same interests.

24 (4) A corporation that is not described in paragraphs (1) to (3), inclusive, or
25 paragraph (5), but only to the extent of its income derived from or attributable to
26 sources within the United States and its factors assignable to a location within the
27 United States in accordance with paragraph (3) of subdivision (b). Income of that
28 corporation derived from or attributable to sources within the United States as
29 determined by federal income tax laws shall be limited to and determined from the
30 books of account maintained by the corporation with respect to its activities
31 conducted within the United States.

32 (5) Export trade corporations, as described in Sections 970 to 972, inclusive, of
33 the Internal Revenue Code.

34 (6) Any affiliated corporation which is a “controlled foreign corporation,” as
35 defined in Section 957 of the Internal Revenue Code, if all or part of the income of
36 that affiliate is defined in Section 952 of Subpart F of the Internal Revenue Code
37 (“Subpart F income”). The income and apportionment factors of any affiliate to be
38 included under this paragraph shall be determined by multiplying the income and
39 apportionment factors of that affiliate without application of this paragraph by a
40 fraction (not to exceed one), the numerator of which is the “Subpart F income” of
41 that corporation for that taxable year and the denominator of which is the

1 “earnings and profits” of that corporation for that taxable year, as defined in
2 Section 964 of the Internal Revenue Code.

3 (7)(A) The income and factors of the above-enumerated corporations shall be
4 taken into account only if the income and factors would have been taken into
5 account under Section 25101 if this section had not been enacted.

6 (B) The income and factors of a corporation that is not described in paragraphs
7 (1) to (3), inclusive, and paragraph (5) and that is an electing taxpayer under this
8 subdivision shall be taken into account in determining its income only to the extent
9 set forth in paragraph (4).

10 (b) For purposes of this article and Section 24411:

11 (1) An “affiliated corporation” means a corporation that is a member of a
12 commonly controlled group as defined in Section 25105.

13 (2) A “qualified taxpayer” means a corporation which does both of the
14 following:

15 (A) Files with the state tax return on which the water’s-edge election is made a
16 consent to the taking of depositions at the time and place most reasonably
17 convenient to all parties from key domestic corporate individuals and to the
18 acceptance of subpoenas duces tecum requiring reasonable production of
19 documents to the Franchise Tax Board as provided in Section 19504 or by the
20 State Board of Equalization as provided in Title 18, California Code of
21 Regulations, Section 5005, or by the courts of this state as provided in Chapter 2
22 (commencing with Section 1985) of Title 3 of Part 4 of, and ~~Section 2025 of,~~
23 Chapter 9 (commencing with Section 2025.010) of Title 4 of Part 4 of, the Code of
24 Civil Procedure. The consent relates to issues of jurisdiction and service and does
25 not waive any defenses a taxpayer may otherwise have. The consent shall remain
26 in effect so long as the water’s-edge election is in effect and shall be limited to
27 providing that information necessary to review or to adjust income or deductions
28 in a manner authorized under Sections 482, 861, Subpart F of Part III of
29 Subchapter N, or similar provisions of the Internal Revenue Code, together with
30 the regulations adopted pursuant to those provisions, and for the conduct of an
31 investigation with respect to any unitary business in which the taxpayer may be
32 involved.

33 (B) Agrees that for purposes of this article, dividends received by any
34 corporation whose income and apportionment factors are taken into account
35 pursuant to subdivision (a) from either of the following are functionally related
36 dividends and shall be presumed to be business income:

37 (i) A corporation of which more than 50 percent of the voting stock is owned,
38 directly or indirectly, by members of the unitary group and which is engaged in the
39 same general line of business.

40 (ii) Any corporation that is either a significant source of supply for the unitary
41 business or a significant purchaser of the output of the unitary business, or that
42 sells a significant part of its output or obtains a significant part of its raw materials

1 or input from the unitary business. “Significant,” as used in this subparagraph,
2 means an amount of 15 percent or more of either input or output.

3 All other dividends shall be classified as business or nonbusiness income
4 without regard to this subparagraph.

5 (3) The definitions and locations of property, payroll, and sales shall be
6 determined under the laws and regulations that set forth the apportionment
7 formulas used by the individual states to assign net income subject to taxes on or
8 measured by net income in that state. If a state does not impose a tax on or
9 measured by net income or does not have laws or regulations with respect to the
10 assignment of property, payroll, and sales, the laws and regulations provided in
11 Article 2 (commencing with Section 25120) shall apply.

12 Sales shall be considered to be made to a state only if the corporation making the
13 sale may otherwise be subject to a tax on or measured by net income under the
14 Constitution or laws of the United States, and shall not include sales made to a
15 corporation whose income and apportionment factors are taken into account
16 pursuant to subdivision (a) in determining the amount of income of the taxpayer
17 derived from or attributable to sources within this state.

18 (4) “The United States” means the 50 states of the United States and the District
19 of Columbia.

20 (c) All references in this part to income determined pursuant to Section 25101
21 shall also mean income determined pursuant to this section.

22 **Comment.** Subdivision (b) of Section 25110 is amended to reflect nonsubstantive
23 reorganization of the rules governing civil discovery.

24 **Veh. Code § 3050.1 (amended). Discovery**

25 SEC. ____ . Section 3050.1 of the Vehicle Code is amended to read:

26 3050.1. (a) In any proceeding, hearing, or in the discharge of any duties imposed
27 under this chapter, the board, its secretary, or a hearing officer designated by the
28 board may administer oaths, take depositions, certify to official acts, and issue
29 subpoenas to compel attendance of witnesses and the production of books, records,
30 papers, and other documents in any part of the state.

31 (b) For purposes of discovery, the board or its secretary may, if deemed
32 appropriate and proper under the circumstances, authorize the parties to engage in
33 those discovery procedures as are provided for in civil actions in ~~Article 3~~
34 ~~(commencing with Section 2016) of Chapter 3 of Title 3~~ Title 4 (commencing with
35 Section 2016.010) of Part 4 of the Code of Civil Procedure, excepting the
36 provisions of ~~Section 2030 of that code~~ Chapter 13 (commencing with Section
37 2030.010) of that title. Discovery shall be completed no later than 15 days prior to
38 the commencement of the proceeding or hearing before the board. This
39 subdivision shall apply only to those proceedings or hearings involving a petition
40 or protest filed pursuant to subdivision (c) or (d) of Section 3050 . The board, its
41 secretary, or a hearing officer designated by the board may issue subpoenas to
42 compel attendance at depositions of persons having knowledge of the acts,

1 omissions or events which are the basis for the proceedings, as well as the
2 production of books, records, papers and other documents.

3 **Comment.** Subdivision (b) of Section 3050.1 is amended to reflect nonsubstantive
4 reorganization of the rules governing civil discovery.

5 **Water Code § 1100 (amended). Depositions**

6 SEC. _____. Section 1100 of the Water Code is amended to read:

7 1100. The board or any party to a proceeding before it may, in any investigation
8 or hearing, cause the deposition of witnesses residing within or without the state to
9 be taken in the manner prescribed by law for depositions in civil actions in the
10 superior courts of this state under ~~Article 3 (commencing with Section 2016)~~ of
11 Chapter 3 of Title 4 (commencing with Section 2016.010) of Part 4 of the Code of
12 Civil Procedure.

13 **Comment.** Section 1100 is amended to reflect nonsubstantive reorganization of the rules
14 governing civil discovery.
