

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

## Tolling Statute of Limitations When Defendant Is Out of State

November 1995

California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

#### NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative.

Cite this report as *Tolling Statute of Limitations When Defendant Is Out of State*, 26 Cal. L. Revision Comm'n Reports 83 (1996).

STATE OF CALIFORNIA

PETE WILSON, Governor

## CALIFORNIA LAW REVISION COMMISSION

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November 2, 1995

To: The Honorable Pete Wilson  
*Governor of California*, and  
The Legislature of California

This recommendation proposes the repeal of Code of Civil Procedure Section 351, which tolls statutes of limitations when the defendant is out of the state. Section 351 is based on outdated notions of personal jurisdiction and service of process, and it is unconstitutional as applied to cases involving interstate commerce. Repeal of Section 351 would further the policies underlying statutes of limitations, eliminate inequities that may arise when tolling is applied to brief periods of absence, and remove unnecessary litigation issues from the court system.

The recommendation would also require courts to extend the delay reduction deadline for service of process where the plaintiff shows that even with the exercise of due diligence, service cannot be achieved in the time required.

This recommendation is submitted pursuant to Resolution Chapter 87 of the Statutes of 1995.

Respectfully submitted,

Colin W. Wied  
*Chairperson*



## TOLLING STATUTE OF LIMITATIONS WHEN DEFENDANT IS OUT OF STATE

### INTRODUCTION

Code of Civil Procedure Section 351 tolls the statute of limitations when the defendant is out of state:

351. If, when the cause of action accrues against a person, he is out of the State, the action may be commenced within the term herein limited, after his return to the State, and if, after the cause of action accrues, he departs from the State, the time of his absence is not part of the time limited for the commencement of the action.

The tolling provision now codified as Section 351 dates from as early as 1850,<sup>1</sup> in an era when out-of-state service of process was insufficient to confer personal jurisdiction.<sup>2</sup> Without tolling, a defendant could escape liability by staying outside the state where a cause of action accrued until the statute of limitations ran. A plaintiff who was unable or unwilling to pursue the defendant in the defendant's place of residence was left without a means of redressing the injury. By tolling the limitations period during a defendant's absence from California, Section 351 preserved the plaintiff's right to redress until the defendant could be served within the state.

Out-of-state service of process is now widely available, and recent commentary and judicial decisions criticize Section 351.<sup>3</sup> Additionally, the tolling of Section 351 is riddled with

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1. See 1850 Cal. Stat. ch. 127, § 22.

2. See *Pennoyer v. Neff*, 95 U.S. 714 (1877).

3. See *O'Laskey v. Sortino*, 224 Cal. App. 3d 241, 252 n.8, 273 Cal. Rptr. 674 (1990) (Section 351 no longer makes sense and should be repealed); *Abramson v. Brownstein*, 897 F.2d 389, 391-93 (9th Cir. 1990) (Section 351 is unconstitutional as applied to cases involving interstate commerce); Comment,

exceptions. It does not apply to corporations,<sup>4</sup> limited partnerships,<sup>5</sup> nonresident motorists,<sup>6</sup> or certain resident motorists,<sup>7</sup> nor in certain tax proceedings<sup>8</sup> or actions in rem.<sup>9</sup>

The Law Revision Commission has examined Section 351, its purposes and operation, and other mechanisms in the law available to achieve the same goals. The Commission has concluded that Section 351 causes substantial problems and no longer serves a useful purpose.<sup>10</sup> It should be repealed.

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*California Code of Civil Procedure Section 351: Who's Really Paying the Toll?*, 23 Pac. L.J. 1639 (1992).

4. *Epstein v. Frank*, 125 Cal. App. 3d 111, 119 n.4, 177 Cal. Rptr. 831 (1981) (“[n]either a foreign corporation nor a domestic corporation is deemed absent from the state when its officers are absent and the statute of limitations is not tolled pursuant to section 351 of the Code of Civil Procedure as to either of such entities”); *see also* Corp. Code § 2111; *Cardoso v. American Medical Systems, Inc.*, 183 Cal. App. 3d 994, 998-99, 228 Cal. Rptr. 627 (1986); *Loope v. Greyhound Lines, Inc.*, 114 Cal. App. 2d 611, 250 P.2d 651 (1952).

5. *Epstein v. Frank*, 125 Cal. App. 3d 111, 120, 177 Cal. Rptr. 831 (1981).

6. *Bigelow v. Smik*, 6 Cal. App. 3d 10, 15, 85 Cal. Rptr. 613 (1970) (“since a nonresident motorist is amenable to service of process within the state and to the entry of personal judgment against him, the reason for section 351 is not present, the section does not apply, and the period of limitation for commencing suit against him does not suspend”).

7. Vehicle Code Section 17460 provides that by accepting a California driver's license, a California resident consents to out-of-state service of process in any action arising out of the resident's “operation” of a motor vehicle in California. Vehicle Code Section 17459 is a similar provision pertaining to a resident's acceptance of a certificate of ownership or registration. Under Vehicle Code Section 17463, if service can be made pursuant to Vehicle Code Section 17459 or 17460, then the tolling of Section 351 does not apply, “except when [the resident] is out of this State and cannot be located through the exercise of reasonable diligence.”

8. *See* Rev. & Tax. Code §§ 177, 3725, 3809.

9. *Ridgway v. Salrin*, 41 Cal. App. 2d 50, 54, 105 P.2d 1024 (1940).

10. But *see* Code of Civil Procedure Section 116.340, which requires plaintiffs in most small claims cases to serve process within the state. The Commission's proposed legislation includes a statute preserving out-of-state tolling where that requirement applies. However, even where Section 116.340 requires plaintiffs to serve small claims process within the state, such plaintiffs are not wholly barred from serving process outside California. Instead of suing

## PROBLEMS WITH SECTION 351

### **Unconstitutional as Applied to Interstate Commerce**

Section 351 imposes a significant burden on nonresidents. Essentially, it means that the statute of limitations on a cause of action will never run so long as the defendant remains out of the state. Thus, a nonresident potentially subject to suit in California must either stay in the state for the duration of the applicable limitations period, or must remain subject to suit in California in perpetuity.<sup>11</sup> Because Section 351 imposes that heavy burden without sufficient justification, the Ninth Circuit Court of Appeals ruled it unconstitutional as applied to cases involving interstate commerce.<sup>12</sup>

### **Uncertain and Unfair Results**

Section 351 applies to any absence from California, no matter how long or short.<sup>13</sup> Because out of state travel now occurs routinely for vacation, business, and other purposes, the tolling mandated by Section 351 makes it difficult to properly apply the statute of limitations.

Moreover, a plaintiff who misses the statute of limitations by a few days may point to Section 351 and contend that the defendant was out of California for part of the limitations period so tolling applies and the suit is timely. The fortuity of whether the defendant happened to take a brief vacation out of the state during the limitations period may thus determine the outcome of the suit. That is arbitrary and unfair, particu-

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in small claims court, they may sue in municipal court and thus avoid the requirement of Section 116.340.

11. *Abramson v. Brownstein*, 897 F.2d 389, 392 (9th Cir. 1990).

12. *Id.* at 393; *see also* *Bendix Corp. v. Midwesco Enterprises*, 486 U.S. 888 (1988).

13. *See, e.g.,* *Mounts v. Uyeda*, 227 Cal. App. 3d 111, 114, 277 Cal. Rptr. 730 (1991) (four-day absence); *Garcia v. Flores*, 64 Cal. App. 3d 705, 709, 134 Cal. Rptr. 712 (1976) (eight-day absence).

larly with regard to a plaintiff who lacked contemporaneous knowledge of the defendant's absence and cannot claim that the absence interfered with serving the defendant.<sup>14</sup>

### **Misleading Statement of the Law**

Section 351 appears to be a clear statement of the law, but the apparent clarity is misleading. Although the language of the statute is absolute and unqualified, it is in fact subject to numerous codified and uncoded exceptions and limitations that are not readily apparent.<sup>15</sup> The potential for misplaced reliance on the apparent unqualified tolling of the statute of limitations under Section 351 is substantial.

### **Adverse Effects on Courts**

Section 351 adversely affects court operations in a number of respects. First, disagreements over whether Section 351 applies in a particular case are not uncommon.<sup>16</sup> Litigants and courts must spend resources resolving these side issues, instead of focusing on the underlying dispute. That occurs at the expense of taxpayers who fund the court system and at the cost of delayed justice for all citizens.

Second, statutes of limitation are not empty procedural requirements. They serve the important purpose of ensuring that disputes are litigated when courts can most effectively determine the truth and achieve justice — when memories are fresh, witnesses available, and evidence still at hand. Tolling provisions such as Section 351 delay adjudication, causing

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14. Comment, *California Code of Civil Procedure Section 351: Who's Really Paying the Toll?*, 23 Pac. L.J. 1639, 1674-75 (1992); see also N.Y. Law Revision Comm'n, Report, *Acts, Recommendation and Study relating to Application of Foreign Periods of Limitation and Tolling of the Statute of Limitations by Absence of Defendant* 127, 168 (Legis. Doc. No. 69, 1943).

15. See sources cited in notes 4-9, *supra*.

16. See, e.g., *Pratali v. Gates*, 4 Cal. App. 4th 632, 5 Cal. Rptr. 2d 733 (1992); *Mounts v. Uyeda*, 227 Cal. App. 3d 111, 121-22, 277 Cal. Rptr. 730 (1991); *Abramson v. Brownstein*, 897 F.2d 389 (9th Cir. 1990).



courts to handle stale claims. That should be done only if there is a strong countervailing justification for the tolling.

Finally, Section 351 tolls a limitations period even if, at the time the cause of action accrued, the parties resided outside the state and did not move into the state until much later. This means that a cause of action having no other connection to California may be asserted in the state long after it accrued, simply because the defendant moved to California after the fact.<sup>17</sup> Although this situation may be infrequent, the state should not have to devote judicial resources to such stale claims lacking any significant nexus to the state.

### SECTION 351 IS NO LONGER NECESSARY

In addition to having serious drawbacks, Section 351 no longer serves a useful purpose.<sup>18</sup> It is not necessary for jurisdictional reasons, nor does it coherently address any other goal.

#### Out of State Service

The United States Supreme Court has overturned the jurisdictional doctrine requiring service within the forum state. A state may now exercise personal jurisdiction over any person

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17. Comment, *California Code of Civil Procedure Section 351: Who's Really Paying the Toll?*, 23 Pac. L.J. 1639, 1672-73 (1992); see also *Kohan v. Cohan*, 204 Cal. App. 3d 915, 251 Cal. Rptr. 570 (1988). Code of Civil Procedure Section 361, which applies foreign limitations periods to causes of action arising outside California against nonresidents, may bar some such claims. But the borrowing statute is of no use if the borrowed statute of limitations is very long or is subject to liberal tolling rules. See N.Y. Law Revision Comm'n, Report, *Acts, Recommendation and Study relating to Application of Foreign Periods of Limitation and Tolling of the Statute of Limitations by Absence of Defendant* 127, 170 (Legis. Doc. No. 69, 1943); Note, *Limitations of Actions: Absence of the Defendant: Tolling the Statute of Limitations on a Foreign Cause of Action*, 1 UCLA L. Rev. 619, 621 (1954).

18. But see note 10, *supra*, regarding small claims cases.

having minimum contacts with the state.<sup>19</sup> Service may be achieved by a variety of means: Under California's long arm statute and other statutes regulating service of process,<sup>20</sup> "*any* defendant *anywhere* can be served with summons — one way or another."<sup>21</sup> Section 351 is no longer necessary to preserve a plaintiff's rights to redress.<sup>22</sup>

Difficulties in serving particular defendants may still occur. But Section 351 is no longer needed to protect plaintiffs encountering problems in serving out-of-state defendants. The law provides other rules better-tailored to addressing difficulty of service of process and its aftermath. These include:

*Delay reduction rules.* Under Government Code Section 68616, delay reduction rules may require service of the complaint within 60 days after filing. Many superior courts have adopted a delay reduction deadline for service of process, but the rules generally provide a means of obtaining relief from the deadline if the circumstances warrant it, such as when achieving service is difficult.<sup>23</sup>

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19. Minimum contacts exist when the connection between the person and the state is such that exercising jurisdiction over the person does not offend "traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

20. *See* Code Civ. Proc. §§ 410.10, 413.10, 413.30, 415.10-415.50.

21. R. Weil & I. Brown, Jr., *California Practice Guide: Civil Procedure Before Trial* § 4.3 (Rutter Group, rev. #1, 1994) (emph. in original); *but see* note 10, *supra*, regarding small claims cases.

22. *O'Laskey v. Sortino*, 224 Cal. App. 3d 241, 252 n.8, 273 Cal. Rptr. 674 (1990); Comment, *California Code of Civil Procedure Section 351: Who's Really Paying the Toll?*, 23 Pac. L.J. 1639, 1648-49, 1676 (1992).

23. *See, e.g.*, Superior Court Rule 7.7, County of Los Angeles (complaint to be served in 60 days but court may extend time upon showing of good cause); Superior Court Rule 1.4, County of San Diego (complaint to be served in 60 days unless a Certificate of Progress has been filed "indicating why service has not been effected on all parties and what is being done to effect service"); Superior Court Rule 2.4, City and County of San Francisco (complaint to be served in 60 days unless an order extending time has been obtained "upon a written application therefor showing why service has not been effected, the steps

*Discretionary dismissal.* Sections 583.410 and 583.420 of the Code of Civil Procedure authorize courts to dismiss actions for delay in prosecution if “[s]ervice is not made within two years after the action is commenced against the defendant.” Such dismissals are not mandatory, however, and courts considering whether to dismiss must consider the availability of parties for service of process and the diligence in seeking to effect service of process.<sup>24</sup>

*Service within three years.* Section 583.210 of the Code of Civil Procedure provides that “[t]he summons and complaint shall be served upon a defendant within three years after the action is commenced against the defendant.” To account for difficulties in achieving service, the statute directs courts applying the three-year deadline to exclude any time during which “[t]he defendant was not amenable to the process of the court” or “[s]ervice, for any other reason, was impossible, impracticable, or futile due to causes beyond the plaintiff’s control.”<sup>25</sup>

*Trial within five years.* Every civil action “shall be brought to trial within five years after the action is commenced against the defendant.”<sup>26</sup> Like the preceding rules, this deadline accommodates difficulties in serving process. Courts applying the five-year deadline must exclude any time during which it

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that have been taken to effect service, and the proposed date by which service is expected to be effected”). To prevent injustice to diligent plaintiffs encountering difficulties serving process, Government Code Section 68616 should be amended to require extension of any delay reduction deadline for service of process where the plaintiff shows that even with the exercise of due diligence, service cannot be achieved in the time required.

24. Rules 372 and 373 of the California Rules of Court outline the procedure for requesting such a dismissal and list factors the court should consider in ruling on the request.

25. Code Civ. Proc. § 583.240.

26. Code Civ. Proc. § 583.310.

was “impossible, impracticable, or futile” to bring the action to trial.<sup>27</sup>

*Default judgments based on process other than personal service.* A plaintiff resorting to a method of service other than personal service may on occasion obtain a default judgment against a defendant who never got actual notice of the action. Within a reasonable time (up to two years) after entry of the judgment, the defendant may move to set it aside, and the court may grant the motion “on whatever terms as may be just.”<sup>28</sup> Courts also have inherent, equitable power to set aside judgments due to extrinsic fraud or mistake.<sup>29</sup> These doctrines may be invoked to relieve defendants from the consequences of judgments entered without their participation. Any such relief is to be on equitable terms, however, protecting the interests of diligent plaintiffs who could not achieve personal service.

### **Compensating for Difficulty of Service**

Recognizing that the traditional jurisdictional rationale for Section 351 no longer withstands scrutiny, the courts have postulated that the Legislature retains the statute to compensate for hardship and expense in pursuing an out of state defendant.<sup>30</sup>

Section 351 is poorly tailored for this purpose. It applies whether the defendant is in state or out of state at the time

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27. Code Civ. Proc. § 583.340.

28. Code Civ. Proc. § 473.5.

29. R. Weil & I. Brown, Jr., *California Practice Guide: Civil Procedure Before Trial* § 5:435 (Rutter Group, rev. #1, 1994). The terms extrinsic fraud and mistake “are given a broad interpretation and cover almost any circumstance by which a party has been *deprived of a fair hearing*.” *Id.* at § 5:438; *see also In re Marriage of Park*, 27 Cal. 3d 337, 342, 612 P.2d 882, 165 Cal. Rptr. 792 (1980).

30. *Dew v. Appleberry*, 23 Cal. 3d 630, 637, 510 P.2d 509, 153 Cal. Rptr. 219 (1979).

service is attempted. Moreover, difficulty of service is not a problem unique to out of state defendants. It may be equally or more difficult to pursue an in state defendant who seeks to evade service of process. The Code of Civil Procedure provides readily available means of substituted service, whether the defendant is inside or outside the state. Section 351 is unnecessary for this purpose.

### RECOMMENDATION

Statutes of limitations protect defendants from being unfairly surprised by stale claims — claims that may no longer be fairly tried because evidence has been misplaced, witnesses have disappeared, and facts have been forgotten.<sup>31</sup> The tolling required by Section 351 is inconsistent with these objectives, unclear and unfair in its application, unreasonably burdensome on limited judicial resources, and unconstitutional as applied to cases involving interstate commerce. Under modern concepts of personal jurisdiction and service of process, there is no countervailing justification for these detriments. Section 351 is an anachronism that should be repealed.

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31. *Order of R.R. Telegraphers v. Railway Express Agency, Inc.*, 321 U.S. 342, 349 (1944).



## PROPOSED LEGISLATION

### **Code Civ. Proc. § 116.350 (added). Tolling of limitation periods**

SECTION 1. Section 116.350 is added to the Code of Civil Procedure, to read:

116.350. (a) In computing the statute of limitations on a claim, any time during which Section 116.340 precluded service on the defendant shall be excluded.

(b) Subdivision (a) applies regardless of whether the claim is transferred from small claims court to another court, but if the amount of the claim is increased following the transfer, subdivision (a) does not apply to any excess over the jurisdictional limit of the small claims court applicable at the time the case was filed.

(c) The time excluded pursuant to subdivision (a), whether continuous or interrupted, is limited to five years for any claim.

**Comment.** Section 116.350 is a new provision that preserves limited tolling in specified small claims cases. This section is added in light of the repeal of Section 351, which tolled the statute of limitations when the defendant was out of the state. In most contexts, such tolling is no longer necessary, because plaintiffs may serve defendants outside the state. See former Section 351 Comment. In small claims cases, however, Section 116.340 generally precludes out-of-state service. Under subdivision (a), tolling continues in that context.

Under subdivision (b), asserting an inflated cross-claim in another court and successfully seeking transfer of the small claims case to the other court pursuant to Section 116.390 does not affect the availability of tolling and so is not a means of defeating a claim that is timely only if out-of-state tolling applies.

Subdivision (c) furthers the goal of finality and prevents stale claims by setting an absolute five-year time limit on tolling pursuant to subdivision (a). Where the combined effect of subdivision (c) and Section 116.340 would preclude a plaintiff from suing in small claims court, the plaintiff has the alternative of suing in municipal court. *Compare* Section 116.220 (jurisdiction of small claims courts) *with* Section 86 (jurisdiction of municipal courts).

**Code Civ. Proc. § 351 (repealed). Tolling limitations period when defendant is absent**

SEC. 2. Section 351 of the Code of Civil Procedure is repealed.

~~351. If, when the cause of action accrues against a person, he is out of the State, the action may be commenced within the term herein limited, after his return to the State, and if, after the cause of action accrues, he departs from the State, the time of his absence is not part of the time limited for the commencement of the action.~~

**Comment.** Section 351 is repealed consistent with modern concepts of personal jurisdiction and service of process. *See* Sections 410.10, 413.10, 413.30, 415.20-415.50; *see also* *International Shoe Co. v. Washington*, 326 U.S. 310 (1945); *cf.* *Pennoyer v. Neff*, 95 U.S. 714 (1877) (endorsing now outmoded doctrine that defendant must be served in state to confer in personam jurisdiction). Section 351 is unconstitutional as applied to cases involving interstate commerce. *See* *Abramson v. Brownstein*, 897 F.2d 389 (9th Cir. 1990). For further background and explanation, see Comment, *California Code of Civil Procedure Section 351: Who's Really Paying the Toll*, 23 Pac. L.J. 1639 (1992); Note, *Limitations of Actions: Absence of the Defendant: Tolling the Statute of Limitations on a Foreign Cause of Action*, 1 UCLA L. Rev. 619 (1954).

For causes of action accruing before the effective date of the repeal, the act that repealed this section provides a one-year grace period, so that a plaintiff relying on the tolling of the repealed statute as a basis for delaying suit has adequate opportunity to commence an action.

**Gov't Code § 68616 (operative until Jan. 1, 1999) (amended). Delay reduction deadlines and procedures**

SEC. 3. Section 68616 of the Government Code (operative until Jan. 1, 1999) is amended to read:

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

(a) Service of the complaint within 60 days after filing. Exceptions, for longer periods of time, may be granted as authorized by local rule *and shall be granted on a showing that service cannot be achieved within the time required with the exercise of due diligence.*



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

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

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

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

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

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

(g) An order referring an action to arbitration or mediation may be made at any status conference held in accordance with subdivision (e), provided that any arbitration ordered may not commence prior to 210 days after the filing of the complaint, exclusive of the stipulated period provided in subdivision (d). Any mediation ordered pursuant to Section 1775.3 of the Code of Civil Procedure may be commenced prior to 210 days after the filing of the complaint, exclusive of the

stipulated period provided in subdivision (d). No rule adopted pursuant to this article may contravene Sections 638 and 639 of the Code of Civil Procedure.

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

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

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

(k) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

**Comment.** Subdivision (a) of Section 68616 is amended to ensure that delay reduction deadlines for service of process are extended when plaintiffs are unable to achieve service within the prescribed period despite diligent efforts to do so. This amendment is necessary to adjust the delay reduction rules to take account of the repeal of Code of Civil Procedure Section 351, which tolled the statute of limitations when the defendant was out of the state. However, the new rule applies regardless of whether the hard-to-serve defendant is in the state or not.

**Gov't Code § 68616 (operative Jan. 1, 1999) (amended). Delay reduction deadlines and procedures**

SEC. 4. Section 68616 of the Government Code (operative Jan. 1, 1999) is amended to read:

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

(a) Service of the complaint within 60 days after filing. Exceptions, for longer periods of time, may be granted as authorized by local rule *and shall be granted on a showing*

*that service cannot be achieved within the time required with the exercise of due diligence.*

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

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

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

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

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

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

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

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

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

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

(k) This section shall become operative on January 1, 1999.

**Comment.** Subdivision (a) of Section 68616 is amended to ensure that delay reduction deadlines for service of process are extended when plaintiffs are unable to achieve service within the prescribed period despite diligent efforts to do so. This amendment is necessary to adjust the delay reduction rules to take account of the repeal of Code of Civil Procedure Section 351, which tolled the statute of limitations when the defendant was out of the state. However, the new rule applies regardless of whether the hard-to-serve defendant is in the state or not.

**Rev. & Tax. Code § 177 (amended). Deeds issued by taxing agencies**

SEC. 5. Section 177 of the Revenue and Taxation Code is amended to read:

177. (a) A proceeding based on an alleged invalidity or irregularity of any deed heretofore or hereafter issued upon the sale of property by any taxing agency, including taxing agencies which have their own system for the levying and collection of taxes, in the enforcement of delinquent property taxes or assessments, or a proceeding based on an alleged invalidity or irregularity of any proceedings leading up to such *the* deed, can only be commenced within one year after the date of recording of such *the* deed in the county recorder's office ~~or within one year after June 1, 1954, whichever is later.~~

(b) A defense based on an alleged invalidity or irregularity of any deed heretofore or hereafter issued upon the sale of

property by any taxing agency, including taxing agencies which have their own system for the levying and collection of taxes, in the enforcement of delinquent property taxes or assessments, or a defense based on an alleged invalidity or irregularity of any proceedings leading up to ~~such~~ *the* deed, can only be maintained in a proceeding commenced within one year after the date of recording of ~~such~~ *the* deed in the county recorder's office ~~or within one year after June 1, 1954, whichever is later.~~

(c) Sections ~~351~~ 352 to 358, inclusive, of the Code of Civil Procedure do not apply to the time within which a proceeding may be brought under the provisions of this section.

(d) Nothing in this section shall operate to extend the time within which any proceeding based on the alleged invalidity or irregularity of any tax deed may be brought under any other section of this code.

(e) This section shall not apply to any deed issued by a taxing agency within five years from the time the property was sold to said taxing agency.

**Comment.** Section 177 is amended to reflect the repeal of Code of Civil Procedure Section 351. The amendment also deletes obsolete language and makes other technical revisions.

**Rev. & Tax. Code § 3725 (amended). Proceeding based on invalidity or irregularity**

SEC. 6. Section 3725 of the Revenue and Taxation Code is amended to read:

3725. A proceeding based on alleged invalidity or irregularity of any proceedings instituted under this chapter can only be commenced within one year after the date of execution of the tax collector's deed.

Sections ~~351~~ 352 to 358, inclusive, of the Code of Civil Procedure do not apply to the time within which a proceeding may be brought under this section.

**Comment.** Section 3725 is amended to reflect the repeal of Code of Civil Procedure Section 351.

**Rev. & Tax. Code § 3809 (amended). Proceeding based on invalidity or irregularity**

SEC. 7. Section 3809 of the Revenue and Taxation Code is amended to read:

3809. A proceeding based on alleged invalidity or irregularity of any agreement or deed executed under this article can only be commenced within one year after the execution of the instrument.

Sections 351 352 to 358, inclusive, of the Code of Civil Procedure do not apply to the time within which a proceeding may be brought under this section.

**Comment.** Section 3809 is amended to reflect the repeal of Code of Civil Procedure Section 351.

**Veh. Code § 17463 (repealed). Computation of limitations period**

SEC. 8. Section 17463 of the Vehicle Code is repealed.

~~17463. Notwithstanding any provisions of Section 351 of the Code of Civil Procedure to the contrary, when summons may be personally served upon a person as provided in Sections 17459 and 17460, the time of his absence from this State is part of the time limited for the commencement of the action described in those sections, except when he is out of this State and cannot be located through the exercise of reasonable diligence, except this section in no event shall be applicable in any action or proceeding commenced on or before September 7, 1956.~~

**Comment.** Section 17463 is repealed to reflect the repeal of Code of Civil Procedure Section 351. For causes of action accruing before the effective date of the repeals, the act that repealed this section provides a one-year grace period, so that a plaintiff relying on the tolling of a repealed statute as a basis for delaying suit has adequate opportunity to commence an action.

**Transitional provision**

SEC. 9. Notwithstanding the repeal by this act of Section 351 of the Code of Civil Procedure and Section 17463 of the

Vehicle Code, if a cause of action accrued before the effective date of this act:

(a) Those sections shall continue to apply to the cause of action for a period of one year after the effective date.

(b) Any tolling under those sections before the effective date or, pursuant to subdivision (a), after the effective date, shall be taken into account in computing the time limited for commencement of the action.

**Comment.** For causes of action accruing before the effective date of this act, the transitional provision affords a one-year grace period, so that a plaintiff relying on the tolling of a repealed statute as a basis for delaying suit has adequate opportunity to commence an action.

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