

Memorandum 2006-14

**Technical and Minor Substantive Statutory Corrections
(Draft of Tentative Recommendation)**

At two recent meetings, the Commission considered a number of issues it could address pursuant to its statutory authority to correct technical and minor substantive statutory defects (Gov't Code § 8298). This memorandum addresses a few additional technical revisions.

The first, relating to a repealed cross-reference in Corporations Code Section 16914, was discovered by the staff in addressing an unrelated technical revision. The second, relating to use of the term "foreman" in Code of Civil Procedure Section 618, was alluded to in a previous staff note advising that the staff would study the issue. The third, relating to a repealed cross-reference in Education Code Section 17595, was suggested to the Commission by a deputy Tulare County counsel, Harold Wood. (Mr. Wood's communication to the Commission is attached as Exhibit p. 1.) Finally, the Commission's proposed repeal of Fish and Game Code Section 8610.7, approved at a prior meeting, necessitates a proposed revision of three other Fish and Game Code sections.

Also attached is a draft of a tentative recommendation discussing the revisions previously considered by the Commission, as well as these new proposed revisions. After considering the new proposed revisions, the Commission will need to decide whether to approve the draft tentative recommendation to be circulated for comment, as is or with modification.

CORPORATIONS CODE SECTION 16914

Corporations Code Section 16914 provides:

16914. (a) When a merger takes effect, all of the following apply:

....

(b) (1)

(2) Upon receipt of the process and order and the fee set forth in Section 12206 of the Government Code, the Secretary of State shall give notice to the entity of the service of the process by forwarding by certified mail, return receipt requested, a copy of the process and order to the address specified in the order.

Former Government Code Section 12206, which set the fee to be charged by the Secretary of State for acceptance of copies of process against a corporation, firm, partnership, association, business trust, or natural person, was repealed in 1999. 1999 Cal. Stat. ch. 1000, § 53. The text of former Section 12206 was continued without substantive change — other than the addition of a limited liability company to the list of business entities specified — in subdivision (c) of new Government Code Section 12197.

The staff recommends that **Corporations Code Section 16914 be amended to substitute a cross-reference to subdivision (c) of Government Code Section 12197 in place of the cross-reference to former Government Code Section 12206.**

USE OF THE TERM “FOREMAN”

The Commission has already decided to recommend a technical revision of Code of Civil Procedure Section 618, to delete language authorizing a judge to perform duties specified in the statute “if there be no clerk.”

The statute also contains two references to the term “foreman”:

618. When the jury, or three-fourths of them, have agreed upon a verdict, they must be conducted into court and the verdict rendered by their *foreman*. The verdict must be in writing, signed by the *foreman*, and must be read to the jury by the clerk, or by the court, if there be no clerk, and the inquiry made whether it is their verdict. Either party may require the jury to be polled, which is done by the court or clerk, asking each juror if it is his verdict. If upon such inquiry or polling, more than one-fourth of the jurors disagree thereto, the jury must be sent out again, but if no such disagreement be expressed, the verdict is complete and the jury discharged from the case.

(Emphasis added.)

The term “foreman,” at least as a reference to the spokesperson of a jury, is not a gender neutral term. The Commission has previously expressed a preference, when recommending a revision to a statute for other reasons, to further recommend revision making the statute gender neutral, if such further revision can be accomplished without undue confusion or consequence.

The term “foreman” appears in 17 code sections (within the Code of Civil Procedure, Government Code, and Penal Code), as an intended reference to a spokesperson of a jury. Fifteen of these code sections use the term to refer to a spokesperson of a grand jury. At the same time, however, four other code

sections refer to the spokesperson of a grand jury as a “foreperson.” The spokesperson of a petit (standard trial) jury is exclusively referred to as a “foreperson” in California approved civil and criminal jury instructions, and in various local rules of court.

Consistent with Commission practice, the staff recommends that **Section 618 be amended to substitute the term “foreperson” for the term “foreman.”**

EDUCATION CODE SECTION 17595

Education Code Section 17595 provides:

17595. Nothing in this code shall preclude the governing board of any school district from purchasing materials, equipment or supplies through the Department of General Services pursuant to Section 14814 of the Government Code.

Mr. Wood correctly points out that Section 17595 contains an obsolete cross-reference, as Government Code Section 14814 was repealed in 1983.

(Education Code Section 17595 itself was not enacted until 1996, well after Government Code Section 14814’s repeal. However, Section 17595’s enactment was part of a large nonsubstantive reorganization of the Education Code. Former Education Code Section 39643, enacted in 1976 and repealed as part of the same bill enacting Section 17595, contained the same language as Section 17595.)

Former Government Code Section 14814 generally authorized the Department of General Services (DGS) to make purchases on behalf of various public entities, including school districts, if certain specified conditions were met.

The conditions were numerous, including a competitive bidding requirement, a minimum purchase amount, the obtaining of a price lower than the public entity could obtain on its own, and a pass through cost to the public entity. The former section read as follows:

14814. The Department of General Services is authorized to make purchases of materials, equipment, or supplies, other than printed material, on behalf of any city, county, city and county, district, or other local governmental body or corporation empowered to expend public funds for the acquisition of property, upon written request of such local agency; provided that such purchases can be made by the Department of General Services upon the same terms, conditions and specifications at a price lower than the local agency can obtain through its normal purchasing procedures. The state shall incur no financial responsibility in connection with purchases for local agencies under this section. No purchase shall be for less than five hundred dollars (\$500) and the

local agency shall accept sole responsibility for payment to the vendor. All purchases shall be subject to audit and inspection by the local agency for which made.

The competitive bidding requirements of this chapter shall apply to purchases made under this section.

Purchases under this section shall be subject to the provisions of Section 14813.

No purchase shall be made under this section when bids have been received by the local agency for the furnishing of such materials, equipment, or supplies, unless the purchase by the Department of General Services can be made at a lower price upon the same terms, conditions and specifications.

A charge shall be made to each local agency availing itself of this service, such charge to be not less than the estimated cost to the department of rendering the service, including costs incurred by the department in preparation for a purchase requested by a local agency in instances where such request is canceled or withdrawn by the local agency prior to award of the contract or purchase order by the department.

The Department of General Services may adopt such rules and regulations as are necessary for the purposes of this section.

Section 14814 was repealed along with several other sections by a bill that generally transferred the substance of the repealed sections to various sections of the Public Contract Code. 1983 Cal. Stat. ch. 1231, § 1.5. The language of Section 14814 was transferred largely intact to Public Contract Code Section 10324. In 2000, however, Section 10324 was repealed, and this time the language was not continued in another code section. 2000 Cal. Stat. ch. 918, § 8.

At present, the code section most closely continuing the substance of former Government Code Section 14814 as it related to school districts is Public Contract Code Section 10299(b), which provides:

(b) The director [of General Services] may make the services of the department [of General Services] available, upon the terms and conditions agreed upon, to any school district empowered to expend public funds. These school districts may, without further competitive bidding, utilize contracts, master agreements, multiple award schedules, cooperative agreements, or other types of agreements established by the department for use by school districts for the acquisition of information technology, goods, and services. The state shall incur no financial responsibility in connection with the contracting of local agencies under this section.

Section 10299(b) differs in substance from former Government Code Section 14814; it does not contain several of the purchasing prerequisites specified in the repealed section. Therefore, it is not sufficient to mechanically replace the cross-

reference to former Government Code Section 14814 with a reference to Public Contract Code Section 10299(b). Instead, at least some policy analysis of Section 17595 is required.

Analysis

Section 17595 clarifies that no provision of the Education Code *precludes* a school district from making purchases “through the Department of General Services pursuant to [former] Section 14814 of the Government Code.” The section does not affirmatively *grant* either a school district or DGS the authority to do anything. So what was the reason for enacting this clarifying statute? The staff sees four alternative possibilities:

- At the time, the Legislature perceived that one or more provisions of the Education Code might be interpreted to bar a school district from making purchases through DGS. If this was the rationale, the cross-reference to Section 14814 may have been provided to make clear that such an interpretation would be incorrect and would conflict with Section 14814.
- The Legislature simply wanted to alert or remind practitioners who dealt primarily with the Education Code that a school district could make purchases through DGS. In this case, the cross-reference to Section 14814 would have been provided only for the convenience of the reader.
- The Legislature wanted to clarify that if a school district made purchases through DGS, it could *only* do so pursuant to Section 14814.
- The Legislature perceived that one or more existing provisions of the Education Code could be interpreted as conflicting with certain specific purchasing requirements in Section 14814.

As former Section 14814 has since been repealed and the most comparable existing provision includes fewer restrictions on purchasing by DGS, the third and fourth objectives are now less pressing than they may have been in the past. But all four objectives could be served by replacing the reference to former Section 14814 with a reference to the most comparable existing provision, Public Contract Code Section 10299. The staff therefore recommends that **Education Code Section 17595 be amended as follows:**

17595. Nothing in this code shall preclude the governing board of any school district from purchasing materials, equipment or supplies through the Department of General Services pursuant to

Section 14814 of the Government Code 10299 of the Public Contract Code.

Comment. Section 17595 is amended to correct a cross-reference. Former Government Code Section 14814, enacted by 1965 Cal. Stat. ch. 371, § 179, was repealed by 1983 Cal. Stat. ch. 1231, § 1.5. It was replaced by former Public Contract Code Section 10324, which in turn was repealed by 2000 Cal. Stat. ch. 918, § 8. The provision now most similar to former Government Code Section 14814 is Public Contract Code Section 10299.

REVISIONS RELATING TO FISH AND GAME CODE SECTION 8610.7

The Commission has already approved the proposed repeal of Fish and Game Code Section 8610.7 as obsolete. Section 8610.7 implemented a constitutional initiative (Sections 3 and 7 of Article XB of the California Constitution) prohibiting fishing with gill or trammel nets.

Section 8610.7, however, is cross-referenced in Fish and Game Code Section 8610.8, additional implementing legislation. By its express terms, that provision is also obsolete; Subdivision (f) provides that the section shall become inoperative on January 1, 1995. The staff therefore recommends that **Section 8610.8 be repealed as obsolete.**

In turn, Section 8610.8 is cross-referenced in two near identical Fish and Game Code sections, Sections 8610.13 and 12003.5. Section 8610.13 provides:

8610.13. (a) The penalty for a first violation of Sections 8610.3 and 8610.4 is a fine of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) and a mandatory suspension of any license, permit, or stamp to take, receive, transport, purchase, sell, barter, or process fish for commercial purposes for six months. The penalty for a second or subsequent violation of Sections 8610.3 and 8610.4 is a fine of not less than two thousand five hundred dollars (\$2,500) and not more than ten thousand dollars (\$10,000) and a mandatory suspension of any license, permit, or stamp to take, receive, transport, purchase, sell, barter, or process fish for commercial purposes for one year.

(b) Notwithstanding any other provisions of law, a violation of Section 8610.8 shall be deemed a violation of Section 7145, and the penalty for such violation shall be consistent with Section 12002.2.

(c) If a person convicted of a violation of Section 8610.3, 8610.4, or 8610.8 is granted probation, the court shall impose as a term or condition of probation, in addition to any other term or condition of probation, that the person pay at least the minimum fine prescribed in this section.

Section 12003.5 includes almost the same language:

12003.5. (a) The penalty for a first violation of Section 8610.3 or 8610.4 is a fine of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) and a mandatory suspension of any license, permit, or stamp to take, receive, transport, purchase, sell, barter, or process fish for commercial purposes for six months. The penalty for a second or subsequent violation of Section 8610.3 or 8610.4 is a fine of not less than two thousand five hundred dollars (\$2,500) and not more than ten thousand dollars (\$10,000) and a mandatory suspension of any license, permit, or stamp to take, receive, transport, purchase, sell, barter, or process fish for commercial purposes for one year.

(b) Notwithstanding any other provisions of law, a violation of Section 8610.8 shall be deemed a violation of Section 7145, and the penalty for such violation shall be as prescribed by Section 12002.2.

(c) If a person convicted of a violation of Section 8610.3, 8610.4, or 8610.8 is granted probation, the court shall impose as a term or condition of probation, in addition to any other term or condition of probation, a requirement that the person pay at least the minimum fine prescribed in this section.

Why did the Legislature enact two seemingly duplicative code sections? Presumably, because it was considered important to provide information about the penalties for violating Sections 8610.3, 8610.4, and 8610.8 to two types of readers: (1) persons focusing on the Marine Resources Protection Act of 1990, which includes those sections as well as Section 8610.13, and (2) persons focusing on Division 9 of the Fish and Game Code (Fines and Penalties), which includes Section 12003.5.

But that goal could have been achieved with less redundancy, by cross-referencing Section 12003.5 in Section 8610.13. The staff therefore recommends that **the sections be amended along the following lines:**

~~8610.13. (a) The penalty for a first violation of Sections Section 8610.3 and or 8610.4 is a fine of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) and a mandatory suspension of any license, permit, or stamp to take, receive, transport, purchase, sell, barter, or process fish for commercial purposes for six months. The penalty for a second or subsequent violation of Sections 8610.3 and 8610.4 is a fine of not less than two thousand five hundred dollars (\$2,500) and not more than ten thousand dollars (\$10,000) and a mandatory suspension of any license, permit, or stamp to take, receive, transport, purchase, sell, barter, or process fish for commercial purposes for one year.~~

~~(b) Notwithstanding any other provisions of law, a violation of Section 8610.8 shall be deemed a violation of Section 7145, and the penalty for such violation shall be consistent with Section 12002.2.~~

~~(c) (b) If a person convicted of a violation of Section 8610.3, or 8610.4, or 8610.8 is granted probation, the court shall impose as a term or condition of probation, in addition to any other term or condition of probation, that the person pay at least the minimum fine prescribed in this section. is as prescribed in Section 12003.5.~~

Comment. Section 8610.13 is amended to eliminate redundancy with identical language in Section 12003.5.

12003.5. (a) The penalty for a first violation of Section 8610.3 or 8610.4 is a fine of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) and a mandatory suspension of any license, permit, or stamp to take, receive, transport, purchase, sell, barter, or process fish for commercial purposes for six months. The penalty for a second or subsequent violation of Section 8610.3 or 8610.4 is a fine of not less than two thousand five hundred dollars (\$2,500) and not more than ten thousand dollars (\$10,000) and a mandatory suspension of any license, permit, or stamp to take, receive, transport, purchase, sell, barter, or process fish for commercial purposes for one year.

~~(b) Notwithstanding any other provisions of law, a violation of Section 8610.8 shall be deemed a violation of Section 7145, and the penalty for such violation shall be as prescribed by Section 12002.2.~~

~~(c) (b) If a person convicted of a violation of Section 8610.3, or 8610.4, or 8610.8 is granted probation, the court shall impose as a term or condition of probation, in addition to any other term or condition of probation, a requirement that the person pay at least the minimum fine prescribed in this section.~~

Comment. Section 12003.5 is amended to reflect the repeal of Section 8610.8.

Respectfully submitted,

Steve Cohen
Staff Counsel

Exhibit

COMMENTS OF HAROLD WOOD

Feedback form submitted on <www.clrc.ca.gov>

From: Harold Wood <hwood@co.tulare.ca.us>
Date: February 22, 2006
Subject: Education Code § 17595 and Government Code section 14814

Message: Education Code section 17595 needs to be updated, since it refers to another code section which has been repealed.

Education Code § 17595 states, “Nothing in this code shall preclude the governing board of any school district from purchasing materials, equipment or supplies through the Department of General Services pursuant to Section 14814 of the Government Code.” Section 14814 of the Government Code has been repealed, so section 17595 needs to be revised. The same authority formerly contained in Government Code section 14814 has been transferred to the Public Contract Code as shown by the following:

Government Code § 14814 - Repealed by Stats. 1983, c. 1231, §5.1 (effective 9/30/83).
“This bill would clarify and reorganize these provisions, and would transfer them from the Government Code to the Public Contract Code.” Added Public Contract Code § 10324.

Public Contract Code § 10324 - Repealed by Stats. 2000, c. 918 (A.B. 1684), §8. “This bill would make various corrective and clarifying changes to these provisions, including revising provisions that authorize the department to assist local government entities in procuring various goods and services.” Repealed and added Public Contract Code § 10298.

Public Contract Code § 10298 & 10299 Added by Stats. 2000, c. 918 (A.B. 1684), §4.
“(b) The director may make the services of the department available... to district, or other local governmental body... for the acquisition of goods, information technology, or services...”

Thank you,

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STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

TENTATIVE RECOMMENDATION

Technical and Minor Substantive Statutory Corrections

April 2006

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make 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 to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN xxxx.

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

The Commission proposes technical and minor substantive revisions to address:

- (1) Incorrect cross-references.
- (2) An obsolete reference to a docket in a civil case.
- (3) Obsolete language authorizing a judge to substitute for the clerk.
- (4) Anomalous references to a victim-counselor privilege instead of a counselor-victim privilege.
- (5) A statute that requires “he” to perform duties without specifying who “he” is.
- (6) An apparent significant typographical mistake.
- (7) Anomalous use of the term “disassociation” in the Corporations Code.
- (8) Several provisions that are obsolete due to expiration of deadlines or similar events.

The Commission solicits public comment on these proposed revisions.

This recommendation was prepared pursuant to Government Code Section 8298.

TECHNICAL AND MINOR SUBSTANTIVE STATUTORY CORRECTIONS

1 The Law Revision Commission is authorized by Government Code Section
2 8298 to study and recommend revisions correcting technical and minor substantive
3 defects in California statutes. This tentative recommendation proposes statutory
4 revisions addressing the following:

- 5 • Incorrect cross-references.
- 6 • An obsolete reference to a docket in a civil case.
- 7 • Obsolete language authorizing a judge to substitute for the clerk.
- 8 • Anomalous references to a victim-counselor privilege instead of a
9 counselor-victim privilege.
- 10 • A statute that requires “he” to perform duties without specifying who “he”
11 is.
- 12 • An apparent significant typographical mistake.
- 13 • Anomalous use of the term “disassociation” in the Corporations Code.
- 14 • Several provisions that are obsolete due to expiration of deadlines or similar
15 events.

16 The Commission’s study of technical and minor substantive statutory defects is
17 ongoing. The Commission encourages interested persons to identify other statutes
18 that appear in need of technical or minor substantive revision.

19 **Statutes With An Incorrect Cross-Reference**

20 The Commission has identified a number of provisions that contain an incorrect
21 cross-reference to another statute. Most of these refer to a statute that has been
22 repealed. In some instances, the Commission recommends that the cross-reference
23 to the repealed statute be replaced with a cross-reference to the modern provision
24 most similar in substance to the repealed statute.¹ In one instance, the cross-

1. See the proposed amendment to Corp. Code § 16914 *infra*.

Another example is Education Code Section 17595, which cross-refers to former Government Code Section 14814. The Commission recommends replacing that cross-reference with a cross-reference to Public Contract Code Section 10299. The substance of Public Contract Code Section 10299 differs from the substance of former Government Code Section 14814, in that it does not contain several of the purchasing requirements specified in the repealed section. However, the Commission nevertheless believes that the intent of the Legislature in enacting Education Code Section 17595 would be best effectuated by replacing the cross-reference to the repealed section with a cross-reference to Public Contract Code Section 10299.

Education Code Section 17595 is a clarifying statute that does not directly provide any affirmative right, remedy, or obligation. The provision’s cross-reference to former Government Code Section 14814 apparently was intended to highlight that Section 14814 was then the primary statutory authority governing purchases made by the Department of General Services (“DGS”) for a public entity. This objective would

1 references should simply be deleted, because there is no modern counterpart to the
2 repealed provisions.² In another statute, the cross-references should be deleted
3 because they were merely illustrative and several of the cross-referenced
4 provisions have been repealed.³

5 The Commission has also found a few provisions that contain a cross-reference
6 that is erroneous from the context. The Commission recommends that these cross-
7 references be revised to refer to the proper statutory material.⁴

8 **Obsolete Reference to a Docket in a Civil Case**

9 The historical term “docket” is no longer used to refer to a record kept by a trial
10 court in a civil case.⁵ Instead, a court in a civil case prepares a “register of
11 actions.”⁶ However, Code of Civil Procedure Section 396a continues to refer to a
12 “docket” as a record kept by a court in a civil case. The Commission recommends
13 that the provision be amended to delete the obsolete reference.

14 **Statutes That Authorize a Judge to Substitute for the Clerk**

15 Several statutes delegate a described ministerial task to a court clerk, and then
16 provide in slightly varying language that “where there is no clerk,” the task may
17 be performed by a judge. Statutes containing that language were for the most part
18 drafted more than fifty years ago, when some counties or courts may not have had
19 a court clerk. However, the language is now obsolete, as all trial courts now have
20 the statutory authority to appoint any clerks deemed necessary.⁷ Moreover, Code

be best served by replacing the reference to the repealed provision with a reference to the most comparable existing provision governing purchases made by DGS for a school district, Public Contract Code Section 10299.

2. See the proposed amendment to Code Civ. Proc. § 904 *infra*.

3. See the proposed amendment to Code Civ. Proc. § 12a *infra*.

4. See the proposed amendments to Code Civ. Proc. § 425.11 & Corp. Code §§ 16701, 16701.5.

Corporations Code Sections 16701 and 16701.5 each contain the phrase “damages for wrongful dissociation under subdivision (b) of Section 16602.” Although subdivision (b) of Section 16602 discusses the *elements* of a wrongful dissociation, it is actually subdivision (c) that discusses *damages* for wrongful dissociation. Rather than revising Sections 16701 and 16701.5 to refer to subdivision (c) of Section 16602, the Commission recommends revising them to refer simply to Section 16602. This will avoid the need to update the cross-references in the event that the subdivisions in Section 16602 are relabeled in the future.

5. Formerly, justice courts were required to maintain a “docket” in civil cases. 1953 Cal. Stat. ch. 206, § 1 (former Gov’t Code § 71614); 1959 Cal. Stat. ch. 671, § 2 (former Gov’t Code § 71614.5). In 1977, these provisions were repealed and there ceased to be a statutory requirement for any trial court to maintain a record known as a “docket” in civil cases. 1977 Cal. Stat. ch. 1257, §§ 71, 72.

The term “docket” is still used to refer to a civil court’s pending *caseload*. The term is also sometimes used to refer to a record kept by a trial court, in a *criminal* case. See Penal Code § 1428.

6. See Gov’t Code §§ 69845, 69845.5.

7. See Gov’t Code § 71620(a).

1 of Civil Procedure Section 167 now provides that “Any act required or permitted
2 to be performed by the clerk of a court may be performed by a judge thereof.”

3 The Commission recommends that various statutes be amended to delete
4 obsolete language authorizing a judge to perform various ministerial duties in
5 place of an absent clerk.⁸

6 **Statutes Referring to a Victim-Counselor Privilege Instead of a Counselor-Victim Privilege**

7 Most statutory provisions referencing an evidentiary privilege for a
8 communication between a professional and a client label the privilege by listing
9 the professional first, and the client second (e.g., lawyer-client privilege,
10 physician-patient privilege, psychotherapist-patient privilege). The Legislature
11 took the opposite approach when it enacted two relatively new privileges: (1) a
12 privilege for a communication between a sexual assault victim and the victim’s
13 counselor,⁹ and (2) a privilege for a communication between a domestic violence
14 victim and the victim’s counselor.¹⁰ To achieve consistency, the Legislature
15 recently revised some references to these privileges, such that the professional is
16 listed first and then the client (the “sexual assault counselor-victim privilege” and
17 the “domestic violence counselor-victim privilege”).¹¹ But other references remain
18 in the reverse order. The Commission recommends that these references be
19 amended to standardize the order of the terms.¹²

20 **Statute That Requires “He” to Perform Duties Without Specifying Who “He” Is**

21 Former Government Code Section 26800, relating to duties of a county clerk,
22 used to be the lead section of a chapter in the Government Code. It provided
23 context for the next provision in the chapter (Section 26801), which says: “Except
24 as otherwise provided by law, *he* shall act as clerk of the board of supervisors in
25 his county.”¹³ Former Government Code Section 26800 was repealed in 2002.¹⁴
26 The Commission thus recommends that Section 26801 be amended to refer to the
27 county clerk, instead of “he.”

8. See the proposed amendments to Bus. & Prof. Code § 21710, Civ. Code § 3154, Code Civ. Proc. §§ 222, 585, 618, 644, 990, 1011, 1015, 1169, 1986, Penal Code §§ 1196, 1207, 1213, 1326 & Veh. Code §§ 1803.3, 23229.1 *infra*.

9. 1980 Cal. Stat. ch. 917, § 1.

10. 1986 Cal. Stat. ch. 854, § 1.

11. 2004 Cal. Stat. ch. 405, § 1.

12. See the proposed amendments to Evid. Code § 917, Penal Code § 11163.3 & two article headings in the Evid. Code *infra*.

13. Emphasis added.

14. 2002 Cal. Stat. ch. 784, § 180.

1 **Statute That Appears to Contain a Typographical Mistake**

2 Civil Code Section 1812.515, which relates to bonding requirements for job
3 listing services, contains what appear to be two typographical errors. Specifically,
4 the section includes the following sentence: “The bond shall be for the benefit of
5 any person or persons damaged by any *violation of misrepresentation*, deceit,
6 unlawful *acts of omissions*, or failure to provide the services of the job listing
7 service”¹⁵

8 Section 1812.515 is part of a title in the Civil Code that sets forth requirements
9 for employment agencies, employment counseling services, job listing services,
10 and nursing registries. Three other sections in the title prescribe bonding
11 requirements for the other agencies or services governed by the title.¹⁶ Each of
12 these sections contains the following sentence: “The bond shall be for the benefit
13 of any person or persons damaged by any violation of this title or by fraud,
14 dishonesty, misstatement, misrepresentation, deceit, unlawful acts or omissions
15”

16 Based on the similarity of language used in all four sections in the title that
17 prescribe bonding requirements, the Commission believes the intent of the
18 Legislature was to use the same language in Section 1812.515 as in the other three
19 sections. The Commission therefore recommends that Section 1812.515 be
20 amended to conform to the language used in those sections.

21 **Anomalous Use of the Term “Disassociation” in the Corporations Code**

22 The term “dissociation” or one of its word forms appears in many Corporations
23 Code sections, referring to a partner’s separation from a partnership.¹⁷ However,
24 one provision uses the term “*disassociation*” in two places, while also using
25 “dissociation” in several other places.¹⁸

26 The terms “dissociation” and “disassociation” are synonymous when used in this
27 context, and neither is a misspelling.¹⁹ To achieve consistency throughout the
28 Corporations Code, the Commission recommends that the two references to
29 “disassociation” be replaced with the term “dissociation.”²⁰

15. Emphasis added.

16. Civ. Code §§ 1812.503, 1812.510, 1812.525.

17. There are 68 uses of the term “dissociation” in the Corporations Code, in 21 different sections.

18. Corp. Code § 16914.

19. See Oxford English Dictionary at <<http://dictionary.oed.com>>; Webster’s Dictionary at <<http://www.websters-online-dictionary.org>>.

20. Unlike the Corporations Code, the Business and Professions Code uses the term “disassociation” more often (13 uses, in five different sections) than the term “dissociation” (only one use). The Commission does not recommend changing the usage of these terms in the Business and Professions Code, but solicits comment on whether any such revisions would be appropriate.

1 **Statutes That Are Obsolete Due to Expiration of Deadlines or Similar Events**

2 The Commission has found a number of provisions that are wholly or partially
3 obsolete. For example, two provisions relate to a 1987 election approving special
4 assessments in certain school districts.²¹ The assessments were invalidated in
5 litigation that was final long ago.²² Accordingly, one of the provisions failed to
6 become operative and the other has been rendered obsolete. They should be
7 repealed.

8 Similarly, two other provisions²³ relate to a special one-time compensation
9 program under the Marine Resources Protection Act.²⁴ One of these provisions
10 became inoperative by its own terms in 1995.²⁵ The other is obsolete because the
11 acts required to obtain compensation had to be performed by January 1, 1994.²⁶
12 Both provisions should be repealed.²⁷

13 Along the same lines, the Commission recommends that language in
14 Government Code Section 7910 specifying a special time limit for a fiscal
15 determination for the 1980-81 fiscal year be deleted. The Commission also
16 recommends that language in Vehicle Code Section 23229.1 specifying July 1,
17 1989, as the operative date for the provision be deleted.

21. Educ. Code §§ 43040.5, 43060.

22. See California Bldg. Industry Ass'n v. Governing Bd., 206 Cal. App. 3d 212, 253 Cal. Rptr. 497 (1988).

23. Fish & Game Code §§ 8610.7, 8610.8.

24. Cal. Const. art. XB.

25. See Fish & Game Code § 8610.8(f).

26. Fish & Game Code § 8610.7.

27. It is also necessary to correct some cross-references to Fish and Game Code Section 8610.8, which appear in two statutes with virtually identical text: Fish and Game Code Sections 8610.13 and 12003.5. To eliminate redundancy, the Commission recommends correcting the cross-references in one of these duplicative provisions (Section 12003.5) and revising the other provision (Section 8610.13) to refer to Section 12003.5 instead of duplicating its substance.

PROPOSED LEGISLATION

1 **Bus. & Prof. Code § 21710 (amended). Enforcement of owner's lien**

2 SECTION 1. Section 21710 of the Business and Professions Code is amended to
3 read:

4 21710. If a declaration in opposition to the lien sale is received prior to the date
5 set forth in the notice of lien sale, the owner may enforce the lien as follows:

6 (a) An action to enforce the owner's lien shall be commenced by the filing of a
7 verified complaint setting forth the facts upon which the claim of lien is based.
8 The summons and complaint may be served by certified mail, postage prepaid,
9 addressed to the occupant at ~~his or her~~ the occupant's last known address, in which
10 case service shall be deemed completed on the fifth day after the mailing, or in any
11 other manner authorized by Chapter 4 (commencing with Section 413.10) of Title
12 2 of Part 2 of the Code of Civil Procedure.

13 (b) The occupant shall have 10 days in which to respond to the complaint after
14 service of the summons is completed, which time may be extended for good cause
15 shown.

16 (c) If the occupant has not responded to the complaint by answer or demurrer
17 within the time allowed after service is completed, the clerk, ~~or the judge if there~~
18 ~~is no clerk~~, upon application of the owner, shall enter the default of the occupant,
19 and thereafter, the owner may apply to the court for judgment in the amount of the
20 lien, including costs.

21 (d) Any judgment entered on the action on the lien in favor of the owner may be
22 enforced by sale of the property by the owner. The sale shall be conducted in a
23 commercially reasonable manner, and shall take place 10 days or more from the
24 entry of judgment, unless within that time period, or at any time prior to the sale,
25 the occupant pays to the owner the full amount of the judgment.

26 (e) Enforcement of the judgment may be stayed, pending appeal, by the posting
27 of a bond by the occupant in an amount one and one-half times the amount of the
28 judgment, in which case the property may be released to the occupant.

29 **Comment.** Subdivision (c) of Section 21710 is amended to delete unnecessary language
30 authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167
31 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of
32 clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of
33 court).

34 Section 21710 is also amended to make a stylistic revision.

35 **Civ. Code § 1812.515 (amended). Bonding requirement for job listing service**

36 SEC. _____. Section 1812.515 of the Civil Code is amended to read:

37 1812.515. (a) Every job listing service subject to this title shall maintain a bond
38 issued by a surety company admitted to do business in this state. The principal

1 sum of the bond shall be ten thousand dollars (\$10,000) for each location. A copy
2 of the bond shall be filed with the Secretary of State.

3 (b) The bond required by this section shall be in favor of, and payable to, the
4 people of the State of California, and shall be conditioned that the person
5 obtaining the bond will comply with this title and will pay all sums due any
6 individual or group of individuals when the person or his or her representative,
7 agent, or employee has received those sums. The bond shall be for the benefit of
8 any person or persons damaged by any violation of this title or by fraud,
9 dishonesty, misstatement, misrepresentation, deceit, unlawful acts of or omissions,
10 or failure to provide the services of the job listing service in performance of the
11 contract with the jobseeker, by the job listing service or its agent, representatives,
12 or employees while acting within the scope of their employment.

13 (c) (1) No job listing service shall conduct any business without having a current
14 surety bond in the amount prescribed by this chapter and filing a copy of the bond
15 with the Secretary of State, identifying the bond and the date of cancellation or
16 termination.

17 (2) Thirty days prior to the cancellation or termination of any surety bond
18 required by this section, the surety shall send a written notice of that cancellation
19 or termination to both the job listing service and the Secretary of State, identifying
20 the bond and the date of cancellation or termination.

21 (3) If any job listing service fails to obtain a new bond and file a copy of that
22 bond with the Secretary of State by the effective date of the cancellation or
23 termination of the former bond, the job listing service shall cease to conduct any
24 business unless and until a new surety bond is obtained and a copy of that bond is
25 filed with the Secretary of State.

26 (d) When a deposit has been made in lieu of a bond pursuant to Section 995.710
27 of the Code of Civil Procedure, the person asserting a claim against the deposit
28 shall, in lieu of Section 996.430 of the Code of Civil Procedure, establish the
29 claim by furnishing evidence to the Secretary of State of a money judgment
30 entered by a court together with evidence that the claimant is a person described in
31 subdivision (b).

32 (e) When a person has established the claim with the Secretary of State, the
33 Secretary of State shall review and approve the claim and enter the date of
34 approval on the claim. The claim shall be designated an "approved claim."

35 (f) When the first claim against a particular deposit has been approved, it shall
36 not be paid until the expiration of a period of 240 days after the date of its
37 approval by the Secretary of State. Subsequent claims that are approved by the
38 Secretary of State within the same 240-day period shall similarly not be paid until
39 the expiration of the 240-day period. Upon the expiration of the 240-day period,
40 the Secretary of State shall pay all approved claims from that 240-day period in
41 full unless the deposit is insufficient, in which case each approved claim shall be
42 paid in a pro rata share of the deposit.

1 (g) When the Secretary of State approves the first claim against a particular
2 deposit after the expiration of the 240-day period, the date of approval of that
3 claim shall begin a new 240-day period to which subdivision (f) shall apply with
4 respect to the amount remaining in the deposit.

5 (h) After a deposit is exhausted, no further claims shall be paid by the Secretary
6 of State. Claimants who have had their claims paid in full or in part pursuant to
7 subdivisions (f) and (g) shall not be required to return funds received from the
8 deposit for the benefit of other claimants.

9 (i) When a deposit has been made in lieu of a bond, the amount of the deposit
10 shall not be subject to attachment, garnishment, or execution with respect to an
11 action or judgment against the job listing service, other than as to an amount as no
12 longer needed or required for the purpose of this title that would otherwise be
13 returned to the job listing service by the Secretary of State.

14 (j) The Secretary of State shall retain a cash deposit for two years from the date
15 the Secretary of State receives written notification from the assignor of the deposit
16 that the assignor has ceased to engage in the business of a job listing service or has
17 filed a bond pursuant to subdivision (a), provided that there are no outstanding
18 claims against the deposit. Written notification to the Secretary of State shall
19 include all of the following: (1) name, address, and telephone number of the
20 assignor; (2) name, address, and telephone number of the bank at which the
21 deposit is located; (3) account number of the deposit; and (4) a statement whether
22 the assignor is ceasing to engage in the business of a job listing service or has filed
23 a bond with the Secretary of State. The Secretary of State shall forward an
24 acknowledgment of receipt of the written notice to the assignor at the address
25 indicated therein, specifying the date of receipt of the written notice and
26 anticipated date of release of the deposit, provided there are no outstanding claims
27 against the deposit.

28 (k) A judge of a superior court may order the return of the deposit prior to the
29 expiration of two years upon evidence satisfactory to the judge that there are no
30 outstanding claims against the deposit or order the Secretary of State to retain the
31 deposit for a specified period beyond the two years pursuant to subdivision (j) to
32 resolve outstanding claims against the deposit account.

33 (l) The Secretary of State shall charge a filing fee not to exceed the cost of filing
34 the bond or deposit filed in lieu of a bond pursuant to Section 995.710 of the Code
35 of Civil Procedure.

36 (m) The Secretary of State shall enforce the provisions of this chapter that
37 govern the filing and maintenance of bonds and deposits in lieu of bonds.

38 **Comment.** Subdivision (b) of Section 1812.515 is amended to correct typographical mistakes.
39 This is not a substantive change. For provisions with similar language, see Sections 1812.503
40 (bonding requirement for employment agency), Section 1812.510 (bonding requirement for
41 employment counseling service), and Section 1812.525 (bonding requirement for nurses'
42 registry).

1 **Civ. Code § 3154 (amended). Petition to release property from lien**

2 SEC. _____. Section 3154 of the Civil Code is amended to read:

3 3154. (a) At any time after the expiration of the time period specified by Section
4 3144 with regard to the period during which property is bound by a lien after
5 recordation of a claim of lien, where no action has been brought to enforce that
6 lien, the owner of the property or the owner of any interest therein may petition the
7 proper court for a decree to release the property from the lien.

8 (b) The petition shall be verified and shall allege all of the following:

9 (1) The date of recordation of the claim of lien.

10 (2) The legal description of the property affected by the claim of lien.

11 (3) That no action to foreclose the lien is pending, or that no extension of credit
12 has been recorded, and that the time period during which suit can be brought to
13 foreclose the lien has expired.

14 (4) That the lien claimant is unable or unwilling to execute a release of the lien
15 or cannot with reasonable diligence be found.

16 (5) That the owner of the property or interest in the property has not filed for
17 relief under any law governing bankruptcy, and that there exists no other restraint
18 to prevent the lien claimant from filing to foreclose ~~his or her~~ the lien. A certified
19 copy of the claim of lien shall be attached to the petition. The petition shall be
20 deemed controverted by the lien claimant.

21 (c) Upon the filing of the petition, and before any further proceedings are had,
22 ~~the clerk, or if there is no clerk, the judge~~ shall set a date for the hearing not more
23 than 30 days following the filing of the petition. The court may continue the
24 hearing beyond the 30-day period, but good cause shall be shown for any
25 continuance.

26 (d) A copy of the petition and the notice setting the date for the hearing shall be
27 served upon the lien claimant at least 10 days prior to the date set for hearing, in
28 the manner in which a summons is required to be served, or by certified or
29 registered mail, postage prepaid, return receipt requested, addressed to the lien
30 claimant at the claimant's address as shown on any of the following:

31 (1) The preliminary 20-day notice served by the claimant pursuant to Section
32 3097.

33 (2) In the records of the registrar of contractors.

34 (3) The contract on which the lien is based.

35 (4) The claim of lien itself.

36 (e) When service is made by mail as provided in this section, service is complete
37 on the fifth day following the day of the deposit of the mail. No decree shall issue
38 in favor of the petitioner unless the petitioner proves that service of the petition
39 and the order fixing the date for hearing was made in compliance with this
40 subdivision. The issue of compliance with this subdivision shall be deemed
41 controverted by the lien claimant.

42 (f) In the event judgment is rendered in favor of the petitioner, the decree shall
43 indicate all of the following:

- 1 (1) The date the lien was recorded.
2 (2) The county and city, if any, in which the lien was recorded.
3 (3) The book and page of the place in the official records where the lien is
4 recorded.
5 (4) The legal description of the property affected. Upon the recordation of a
6 certified copy of the decree, the property described in the decree shall be released
7 from the lien.
8 (g) The prevailing party shall be entitled to attorneys' fees not to exceed two
9 thousand dollars (\$2,000).
10 (h) Nothing in this section shall be construed to bar any other cause of action or
11 claim for relief by the owner of the property or an interest in the property, nor
12 shall a decree canceling a claimant's lien bar the lien claimant from bringing any
13 other cause of action or claim for relief, other than an action foreclosing the lien.
14 However, no other action or claim shall be joined with the claim for relief
15 established by this section.
16 (i) The provisions of Chapter 2.5 (commencing with Section 1141.10) of Title 3
17 of Part 3 of the Code of Civil Procedure do not apply to causes commenced
18 pursuant to this section.

19 **Comment.** Subdivision (c) of Section 3154 is amended to delete unnecessary language
20 authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167
21 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of
22 clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of
23 court).

24 Section 3154 is also amended to make a stylistic revision.

25 **Code Civ. Proc. § 12a (amended). Calculation of time**

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

27 12a. (a) If the last day for the performance of any act provided or required by
28 law to be performed within a specified period of time is a holiday, then that period
29 is hereby extended to and including the next day ~~which~~ that is not a holiday. For
30 purposes of this section, "holiday" means all day on Saturdays, all holidays
31 specified in Section 135 and, to the extent provided in Section 12b, all days ~~which~~
32 that by terms of Section 12b are required to be considered as holidays.

33 (b) ~~This section applies also to Sections 659, 659a, 946, and 974 to 982,~~
34 ~~inclusive, and the periods of time severally therein prescribed or provided for, and~~
35 ~~to all other provisions of law, however stated or wherever expressed, to all~~
36 provisions of law providing or requiring an act to be performed on a particular day
37 or within a specified period of time. ~~The mention of these sections is not intended~~
38 ~~and shall not be construed to exclude the application of this section to any other~~
39 ~~provisions of law, whether the latter are, whether expressed in this or any other~~
40 code or statute, ordinance, rule, or regulation.

41 **Comment.** Subdivision (b) of Section 12a is amended to delete cross-references that were
42 included in the statute for illustrative purposes. This is not a substantive change. Several of the

1 deleted cross-references are not only surplusage, but are also obsolete. See 1968 Cal. Stat. ch.
2 385, § 1 (repealing Section 946); 1963 Cal. Stat. ch. 871, § 15 (repealing Sections 974 to 982).
3 Section 12a is also amended to make grammatical corrections.

4 **Code Civ. Proc. § 222 (amended). Selection of juror names**

5 SEC. _____. Section 222 of the Code of Civil Procedure is amended to read:

6 222. (a) Except as provided in subdivision (b), when an action is called for trial
7 by jury, the clerk, ~~or the judge where there is no clerk,~~ shall randomly select the
8 names of the jurors for voir dire, until the jury is selected or the panel is exhausted.

9 (b) When the jury commissioner has provided the court with a listing of the trial
10 jury panel in random order, the court shall seat prospective jurors for voir dire in
11 the order provided by the panel list.

12 **Comment.** Section 222 is amended to delete unnecessary language authorizing the judge to
13 substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act
14 court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court),
15 71620(b) (executive or administrative officer has authority of clerk of court).

16 **Code Civ. Proc. § 396a (amended). Transfer of actions**

17 SEC. _____. Section 396a of the Code of Civil Procedure is amended to read:

18 396a. In a case that is subject to Sections 1812.10 and 2984.4 of the Civil Code,
19 or subdivision (b) of Section 395 of the Code of Civil Procedure, or in an action or
20 proceeding for an unlawful detainer as defined in Section 1161 of the Code of
21 Civil Procedure:

22 (a) The plaintiff shall state facts in the complaint, verified by the plaintiff's oath,
23 or the oath of the plaintiff's attorney, or in an affidavit of the plaintiff or of the
24 plaintiff's attorney filed with the complaint, showing that the action has been
25 commenced in the proper superior court and the proper court location for the trial
26 of the action or proceeding, and showing that the action is subject to the provisions
27 of Sections 1812.10 and 2984.4 of the Civil Code or subdivision (b) of Section
28 395 of the Code of Civil Procedure, or is an action for an unlawful detainer. When
29 the affidavit is filed with the complaint, a copy thereof shall be served with the
30 summons. Except as provided in this section, if the complaint or affidavit is not
31 filed pursuant to this subdivision, no further proceedings may occur in the action
32 or proceeding, except to dismiss the action or proceeding without prejudice.
33 However, the court may, on terms that are just, permit the affidavit to be filed after
34 the filing of the complaint, and a copy of the affidavit shall be served on the
35 defendant and the time to answer or otherwise plead shall date from that service.

36 (b) If it appears from the complaint or affidavit, or otherwise, that the superior
37 court or court location where the action or proceeding is commenced is not the
38 proper court or court location for the trial, the court where the action or proceeding
39 is commenced, or a judge thereof, shall, whenever that fact appears, transfer it to
40 the proper court or court location, on its own motion, or on motion of the
41 defendant, unless the defendant consents in writing, or in open court (consent in
42 open court being entered in the minutes ~~or docket~~ of the court), to the keeping of

1 the action or proceeding in the court or court location where commenced. If that
2 consent is given, the action or proceeding may continue in the court or court
3 location where commenced. Notwithstanding the provisions of Section 1801.1 and
4 subdivision (f) of Section 2983.7 of the Civil Code, that consent may be given by
5 a defendant who is represented by counsel at the time the consent is given, and if
6 an action or proceeding is subject to subdivision (b) of Section 395 or is for an
7 unlawful detainer, that consent may only be given by a defendant who is
8 represented by counsel at the time the consent is given.

9 (c) In any case where the transfer of the action or proceeding is ordered under
10 the provisions of subdivision (a) or (b), if summons is served prior to the filing of
11 the action or proceeding in the superior court or court location to which it is
12 transferred, as to any defendant, so served, who has not appeared in the action or
13 proceeding, the time to answer or otherwise plead shall date from service upon
14 that defendant of written notice of the filing.

15 (d) If it appears from the complaint or affidavit of the plaintiff that the superior
16 court and court location where the action or proceeding is commenced are a proper
17 court and court location for the trial thereof, all proper proceedings may be had,
18 and the action or proceeding may be tried in that court at that location.

19 (e) A motion for a transfer of the action or proceeding to a different superior
20 court may be made as in other cases, within the time, upon the grounds, and in the
21 manner provided in this title, and if upon that motion it appears that the action or
22 proceeding is not pending in the proper court, or should for other cause be
23 transferred, the action or proceeding shall be ordered transferred as provided in
24 this title.

25 If any action or proceeding is ordered transferred to another court as provided in
26 this section, proceedings shall be had, and the costs and fees shall be paid, as
27 provided in Sections 398 and 399.

28 (f) If a motion is made for transfer of an action or proceeding to a different court
29 location within the same superior court as provided in this section, proceedings
30 shall be had as provided by local rules of the superior court.

31 **Comment.** Subdivision (b) of Section 396a is amended to delete the reference to a “docket,”
32 because courts no longer maintain a record denominated a “docket” in civil cases. Actions taken
33 in open court are now recorded in the minutes of a superior court. See Gov’t Code § 69844
34 (minutes of superior court); see also *Copley Press v. Superior Court*, 6 Cal. App. 4th 106, 110, 7
35 Cal. Rptr. 2d 841 (1992).

36 **Code Civ. Proc. § 425.11 (amended). Statement of damages**

37 SEC. _____. Section 425.11 of the Code of Civil Procedure is amended to read:

38 425.11. (a) As used in this section:

39 (1) “Complaint” includes a cross-complaint.

40 (2) “Plaintiff” includes a cross-complainant.

41 (3) “Defendant” includes a cross-defendant.

42 (b) When a complaint is filed in an action to recover damages for personal injury
43 or wrongful death, the defendant may at any time request a statement setting forth

1 the nature and amount of damages being sought. The request shall be served upon
2 the plaintiff, who shall serve a responsive statement as to the damages within 15
3 days. In the event that a response is not served, the defendant, on notice to the
4 plaintiff, may petition the court in which the action is pending to order the plaintiff
5 to serve a responsive statement.

6 (c) If no request is made for the statement referred to in subdivision ~~(a)~~ (b), the
7 plaintiff shall serve the statement on the defendant before a default may be taken.

8 (d) The statement referred to in subdivision (b) shall be served in the following
9 manner:

10 (1) If a party has not appeared in the action, the statement shall be served in the
11 same manner as a summons.

12 (2) If a party has appeared in the action, the statement shall be served upon the
13 party's attorney, or upon the party if the party has appeared without an attorney, in
14 the manner provided for service of a summons or in the manner provided by
15 Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

16 (e) The statement referred to in subdivision (b) may be combined with the
17 statement described in Section 425.115.

18 **Comment.** Subdivision (c) of Section 425.11 is amended to correct an erroneous cross-
19 reference.

20 **Code Civ. Proc. § 585 (amended). Judgment by default**

21 SEC. _____. Section 585 of the Code of Civil Procedure is amended to read:

22 585. Judgment may be had, if the defendant fails to answer the complaint, as
23 follows:

24 (a) In an action arising upon contract or judgment for the recovery of money or
25 damages only, if the defendant has, or if more than one defendant, if any of the
26 defendants have, been served, other than by publication, and no answer, demurrer,
27 notice of motion to strike (of the character hereinafter specified), notice of motion
28 to transfer pursuant to Section 396b, notice of motion to dismiss pursuant to
29 Article 2 (commencing with Section 583.210) of Chapter 1.5 of Title 8, notice of
30 motion to quash service of summons or to stay or dismiss the action pursuant to
31 Section 418.10, or notice of the filing of a petition for writ of mandate as provided
32 in Section 418.10 has been filed with the clerk ~~or judge~~ of the court within the
33 time specified in the summons, or ~~such~~ within further time as may be allowed, the
34 clerk, ~~or the judge if there is no clerk,~~ upon written application of the plaintiff, and
35 proof of the service of summons, shall enter the default of the defendant or
36 defendants, so served, and immediately thereafter enter judgment for the principal
37 amount demanded in the complaint, in the statement required by Section 425.11,
38 or in the statement provided for in Section 425.115, or a lesser amount if credit has
39 been acknowledged, together with interest allowed by law or in accordance with
40 the terms of the contract, and the costs against the defendant, or defendants, or
41 against one or more of the defendants. If, by rule of court, a schedule of attorneys'
42 fees to be allowed has been adopted, the clerk may include in the judgment

1 attorneys' fees in accordance with ~~such~~ the schedule (1) if the contract provides
2 that attorneys' fees shall be allowed in the event of an action thereon, or (2) if the
3 action is one in which the plaintiff is entitled by statute to recover attorneys' fees
4 in addition to money or damages. The plaintiff shall file a written request at the
5 time of application for entry of the default of the defendant or defendants, to have
6 attorneys' fees fixed by the court, whereupon, after the entry of the default, the
7 court shall hear the application for determination of the attorneys' fees and shall
8 render judgment for ~~such~~ the attorneys' fees and for the other relief demanded in
9 the complaint, in the statement required by Section 425.11, or in the statement
10 provided for in Section 425.115, or a lesser amount if credit has been
11 acknowledged, and the costs against the defendant, or defendants, or against one
12 or more of the defendants.

13 (b) In other actions, if the defendant has been served, other than by publication,
14 and no answer, demurrer, notice of motion to strike (of the character hereinafter
15 specified), notice of motion to transfer pursuant to Section 396b, notice of motion
16 to dismiss pursuant to Article 2 (commencing with Section 583.210) of Chapter
17 1.5 of Title 8, notice of motion to quash service of summons or to stay or dismiss
18 the action pursuant to Section 418.10 or notice of the filing of a petition for writ of
19 mandate as provided in Section 418.10 has been filed with the clerk ~~or judge~~ of the
20 court within the time specified in the summons, or ~~such~~ within further time as may
21 be allowed, the clerk, ~~or the judge if there is no clerk,~~ upon written application of
22 the plaintiff, shall enter the default of the defendant. The plaintiff thereafter may
23 apply to the court for the relief demanded in the complaint; the court shall hear the
24 evidence offered by the plaintiff, and shall render judgment in ~~his or her favor for~~
25 ~~such sum~~ the plaintiff's favor for that relief (not exceeding the amount stated in
26 the complaint, in the statement required by Section 425.11, or in the statement
27 provided for by Section 425.115), as appears by ~~such~~ the evidence to be just. If the
28 taking of an account, or the proof of any fact, is necessary to enable the court to
29 give judgment or to carry the judgment into effect, the court may take the account
30 or hear the proof, or may, in its discretion, order a reference for that purpose. If the
31 action is for the recovery of damages, in whole or in part, the court may order the
32 damages to be assessed by a jury; or if, to determine the amount of damages, the
33 examination of a long account is involved by a reference as above provided.

34 (c) In all actions where the service of the summons was by publication, upon the
35 expiration of the time for answering, and upon proof of the publication and that no
36 answer, demurrer, notice of motion to strike (of the character hereinafter
37 specified), notice of motion to transfer pursuant to Section 396b, notice of motion
38 to dismiss pursuant to Article 2 (commencing with Section 583.210) of Chapter
39 1.5 of Title 8, notice of motion to quash service of summons or to stay or dismiss
40 the action pursuant to Section 418.10, or notice of the filing of a petition for writ
41 of mandate as provided in Section 418.10 has been filed, the clerk, ~~or the judge if~~
42 ~~there is no clerk,~~ upon written application of the plaintiff, shall enter the default of
43 the defendant. The plaintiff thereafter may apply to the court for the relief

1 demanded in the complaint; and the court shall hear the evidence offered by the
2 plaintiff, and shall render judgment in ~~his or her favor for such sum~~ the plaintiff's
3 favor for that relief (not exceeding the amount stated in the complaint, in the
4 statement required by Section 425.11, or in the statement provided for in Section
5 425.115), as appears by ~~such~~ the evidence to be just. If the defendant is not a
6 resident of the state, the court shall require the plaintiff, or ~~his or her~~ the plaintiff's
7 agent, to be examined, on oath, respecting any payments that have been made to
8 the plaintiff, or to anyone for ~~his or her~~ the plaintiff's use, on account of any
9 demand mentioned in the complaint, in the statement required by Section 425.11,
10 or in the statement provided for in Section 425.115, and may render judgment for
11 the amount ~~which he or she~~ that the plaintiff is entitled to recover. In all cases
12 affecting the title to or possession of real property, where the service of the
13 summons was by publication and the defendant has failed to answer, no judgment
14 shall be rendered upon proof of mere occupancy, unless ~~such~~ the occupancy ~~shall~~
15 have has continued for the time and ~~shall have~~ has been of the character necessary
16 to confer title by prescription. In all cases where the plaintiff bases ~~his or her~~ a
17 claim upon a paper title, the court shall require evidence establishing plaintiff's
18 equitable right to judgment before rendering judgment. In actions involving only
19 the possession of real property where the complaint is verified and shows by
20 proper allegations that no party to the action claims title to the real property
21 involved, either by prescription, accession, transfer, will, or succession, but only
22 the possession thereof, the court may render judgment upon proof of occupancy by
23 plaintiff and ouster by defendant.

24 (d) In the cases referred to in subdivisions (b) and (c), or upon an application to
25 have attorneys' fees fixed by the court pursuant to subdivision (a), the court in its
26 discretion may permit the use of affidavits, in lieu of personal testimony, as to all
27 or any part of the evidence or proof required or permitted to be offered, received,
28 or heard in ~~such~~ those cases. The facts stated in ~~such~~ the affidavit or affidavits
29 shall be within the personal knowledge of the affiant and shall be set forth with
30 particularity, and each affidavit shall show affirmatively that the affiant, if sworn
31 as a witness, can testify competently thereto.

32 (e) If a defendant files a cross-complaint against another defendant or the
33 plaintiff, a default may be entered against that party on that cross-complaint if the
34 plaintiff or that cross-defendant has been served with that cross-complaint and ~~he~~
35 ~~or she~~ has failed to file an answer, demurrer, notice of motion to strike of the
36 character specified in subdivision (f), notice of motion to transfer pursuant to
37 Section 396b, notice of motion to dismiss pursuant to Article 2 (commencing with
38 Section 583.210) of Chapter 1.5 of Title 8, notice of motion to quash service of
39 summons or to stay or dismiss the action pursuant to Section 418.10, or notice of
40 the filing of a petition for a writ of mandate as provided in Section 418.10 within
41 the time specified in the summons, or ~~such~~ within other time as may be allowed.
42 However, no judgment may separately be entered on that cross-complaint unless a
43 separate judgment may, in fact, be properly awarded on that cross-complaint and

1 the court finds that a separate judgment on that cross-complaint would not
2 substantially delay the final disposition of the action between the parties.

3 (f) A notice of motion to strike within the meaning of this section is a notice of
4 motion to strike the whole or any part of a pleading filed within the time which the
5 moving party is required otherwise to plead to ~~such~~ that pleading. The notice of
6 motion to strike shall specify a hearing date set in accordance with Section 1005.
7 The filing of a notice of motion does not extend the time within which to demur.

8 **Comment.** Section 585 is amended to delete unnecessary language authorizing the judge to
9 substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act
10 court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court),
11 71620(b) (executive or administrative officer has authority of clerk of court).

12 Section 585 is also amended to make stylistic revisions.

13 **Code Civ. Proc. § 618 (amended). Receipt of verdict**

14 SEC. _____. Section 618 of the Code of Civil Procedure is amended to read:

15 618. When the jury, or three-fourths of them, have agreed upon a verdict, they
16 must be conducted into court and the verdict rendered by their ~~foreman~~
17 foreperson. The verdict must be in writing, signed by the ~~foreman~~ foreperson, and
18 must be read to the jury by the clerk, ~~or by the court, if there be no clerk,~~ and the
19 inquiry made whether it is their verdict. Either party may require the jury to be
20 polled, which is done by the court or clerk, asking each juror if it is ~~his~~ the juror's
21 verdict. If upon ~~such~~ inquiry or polling, more than one-fourth of the jurors
22 disagree thereto, the jury must be sent out again, but if no ~~such~~ disagreement ~~be~~ is
23 expressed, the verdict is complete and the jury discharged from the case.

24 **Comment.** Section 618 is amended to delete unnecessary language authorizing the judge to
25 substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act
26 court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court),
27 71620(b) (executive or administrative officer has authority of clerk of court).

28 Section 618 is also amended to make stylistic revisions and make the statute gender neutral.

29 **Code Civ. Proc. § 644 (amended). Decision of referee or commissioner**

30 SEC. _____. Section 644 of the Code of Civil Procedure is amended to read:

31 644. (a) In the case of a consensual general reference pursuant to Section 638,
32 the decision of the referee or commissioner upon the whole issue must stand as the
33 decision of the court, and upon filing of the statement of decision with the clerk of
34 the court, ~~or with the judge where there is no clerk,~~ judgment may be entered
35 thereon in the same manner as if the action had been tried by the court.

36 (b) In the case of all other references, the decision of the referee or
37 commissioner is only advisory. The court may adopt the referee's
38 recommendations in whole or in part after independently considering the referee's
39 findings and any objections and responses thereto filed with the court.

40 **Comment.** Section 644 is amended to delete unnecessary language authorizing the judge to
41 substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act
42 court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court),
43 71620(b) (executive or administrative officer has authority of clerk of court).

1 **Code Civ. Proc. § 904 (amended). Appeal in a civil action or proceeding**

2 SEC. _____. Section 904 of the Code of Civil Procedure is amended to read:

3 904. An appeal may be taken in a civil action or proceeding as provided in
4 Sections 904.1, 904.2, ~~904.3, 904.4~~ and 904.5.

5 **Comment.** Section 904 is amended to delete obsolete cross-references. Former Sections 904.3
6 and 904.4, relating to appeals from justice and small claims courts, were repealed by 1976 Cal.
7 Stat. ch. 1288, §§ 13, 14.

8 **Code Civ. Proc. § 990 (amended). Summons**

9 SEC. _____. Section 990 of the Code of Civil Procedure is amended to read:

10 990. The summons specified in Section 989 shall be issued by the clerk, ~~or by~~
11 ~~the judge if there be no clerk,~~ upon presentation of the affidavit specified in
12 Section 991, ~~and~~ . The summons must describe the judgment, and require the
13 person summoned to show cause why ~~he~~ the person should not be bound by it, and
14 must be served in the same manner, and returnable no later than ninety (90) days
15 after the time specified for the return of the original summons. It is not necessary
16 to file a new complaint.

17 **Comment.** Section 990 is amended to delete unnecessary language authorizing the judge to
18 substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act
19 court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court),
20 71620(b) (executive or administrative officer has authority of clerk of court).

21 Section 990 is also amended to make stylistic revisions and make the statute gender neutral.

22 **Code Civ. Proc. § 1011 (amended). Service of papers**

23 SEC. _____. Section 1011 of the Code of Civil Procedure is amended to read:

24 The service may be personal, by delivery to the party or attorney on whom the
25 service is required to be made, or it may be as follows:

26 (a) If upon an attorney, service may be made at the attorney's office, by leaving
27 the notice or other papers in an envelope or package clearly labeled to identify the
28 attorney being served, with a receptionist or with a person having charge thereof.
29 When there is no person in the office with whom the notice or papers may be left
30 for purposes of this subdivision at the time service is to be effected, service may
31 be made by leaving them between the hours of nine in the morning and five in the
32 afternoon, in a conspicuous place in the office, or, if the attorney's office is not
33 open so as to admit of that service, then service may be made by leaving the notice
34 or papers at the attorney's residence, with some person of not less than 18 years of
35 age, if the attorney's residence is in the same county with his or her office, and, if
36 the attorney's residence is not known or is not in the same county with his or her
37 office, or being in the same county it is not open, or there is not found thereat any
38 person of not less than 18 years of age, then service may be made by putting the
39 notice or papers, enclosed in a sealed envelope, into the post office or a mail box,
40 subpost office, substation, or mail chute or other like facility regularly maintained
41 by the Government of the United States directed to the attorney at his or her office,
42 if known and otherwise to the attorney's residence, if known. If neither the

1 attorney's office nor residence is known, service may be made by delivering the
2 notice or papers to the address of the attorney or party of record as designated on
3 the court papers, or by delivering the notice or papers to the clerk of the court, ~~or~~
4 ~~to the judge where there is no clerk,~~ for the attorney.

5 (b) If upon a party, service shall be made in the manner specifically provided in
6 particular cases, or, if no specific provision is made, service may be made by
7 leaving the notice or other paper at the party's residence, between the hours of
8 eight in the morning and six in the evening, with some person of not less than 18
9 years of age. If at the time of attempted service between those hours a person 18
10 years of age or older cannot be found at the party's residence, the notice or papers
11 may be served by mail. If the party's residence is not known, then service may be
12 made by delivering the notice or papers to the clerk of the court ~~or the judge, if~~
13 ~~there is no clerk,~~ for that party.

14 **Comment.** Section 1011 is amended to delete unnecessary language authorizing the judge to
15 substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act
16 court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court),
17 71620(b) (executive or administrative officer has authority of clerk of court).

18 **Code Civ. Proc. § 1015 (amended). Service on nonresident party**

19 SEC. _____. Section 1015 of the Code of Civil Procedure is amended to read:

20 1015. When a plaintiff or a defendant, who has appeared, resides out of the
21 State, and has no attorney in the action or proceeding, the service may be made on
22 the clerk of the court ~~or on the judge where there is no clerk,~~ for him that party.
23 But in all cases where a party has an attorney in the action or proceeding, the
24 service of papers, when required, must be upon the attorney instead of the party,
25 except service of subpoenas, of writs, and other process issued in the suit, and of
26 papers to bring him the party into contempt. If the sole attorney for a party is
27 removed or suspended from practice, then the party has no attorney within the
28 meaning of this section. If his the party's sole attorney has no known office in this
29 State, notices and papers may be served by leaving a copy thereof with the clerk of
30 the court ~~or with the judge where there is no clerk,~~ unless such the attorney ~~shall~~
31 ~~have~~ has filed in the cause an address of a place at which notices and papers may
32 be served on him the attorney, in which event they may be served at ~~such~~ that
33 place.

34 **Comment.** Section 1015 is amended to delete unnecessary language authorizing the judge to
35 substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act
36 court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court),
37 71620(b) (executive or administrative officer has authority of clerk of court).

38 Section 1015 is also amended to make stylistic revisions and make the statute gender neutral.

39 **Code Civ. Proc. § 1169 (amended). Default and default judgment**

40 SEC. _____. Section 1169 of the Code of Civil Procedure is amended to read:

41 1169. If at the time appointed any defendant served with a summons does not
42 appear and defend, the clerk, ~~or the judge if there is no clerk,~~ upon written

1 application of the plaintiff and proof of the service of summons and complaint,
2 shall enter the default of any defendant so served, and, if requested by the plaintiff,
3 immediately shall enter judgment for restitution of the premises and shall issue a
4 writ of execution thereon. The application for default judgment and the default
5 judgment shall include a place to indicate that the judgment includes tenants,
6 subtenants, if any, named claimants, if any, and any other occupants of the
7 premises. Thereafter, the plaintiff may apply to the court for any other relief
8 demanded in the complaint, including the costs, against the defendant, or
9 defendants, or against one or more of the defendants.

10 **Comment.** Section 1169 is amended to delete unnecessary language authorizing the judge to
11 substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act
12 court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court),
13 71620(b) (executive or administrative officer has authority of clerk of court).

14 **Code Civ. Proc. § 1986 (amended). Obtaining of subpoena**

15 SEC. _____. Section 1986 of the Code of Civil Procedure is amended to read:

16 1986. A subpoena is obtainable as follows:

17 (a) To require attendance before a court, or at the trial of an issue therein, or
18 upon the taking of a deposition in an action or proceeding pending therein, it is
19 obtainable from the clerk of the court in which the action or proceeding is
20 pending, ~~or if there is no clerk then from a judge or justice of such court.~~

21 (b) To require attendance before a commissioner appointed to take testimony by
22 a court of a foreign country, or of the United States, or of any other state in the
23 United States, or before any officer or officers empowered by the laws of the
24 United States to take testimony, it may be obtained from the clerk of the superior
25 court of the county in which the witness is to be examined.

26 (c) To require attendance out of court, in cases not provided for in subdivision
27 (a), before a judge, justice, or other officer authorized to administer oaths or take
28 testimony in any matter under the laws of this state, it is obtainable from the judge,
29 justice, or other officer before whom the attendance is required.

30 If the subpoena is to require attendance before a court, or at the trial of an issue
31 therein, it is obtainable from the clerk, as of course, upon the application of the
32 party desiring it. If it is obtained to require attendance before a commissioner or
33 other officer upon the taking of a deposition, it must be obtained, as of course,
34 from the clerk of the superior court of the county wherein the attendance is
35 required upon the application of the party requiring it.

36 **Comment.** Section 1986 is amended to delete unnecessary language authorizing the judge to
37 substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act
38 court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court),
39 71620(b) (executive or administrative officer has authority of clerk of court).

40 **Corp. Code § 16701 (amended). Buyout of dissociated partner's interest**

41 SEC. _____. Section 16701 of the Corporations Code is amended to read:

42 16701. Except as provided in Section 16701.5, all of the following shall apply:

1 (a) If a partner is dissociated from a partnership, the partnership shall cause the
2 dissociated partner's interest in the partnership to be purchased for a buyout price
3 determined pursuant to subdivision (b).

4 (b) The buyout price of a dissociated partner's interest is the amount that would
5 have been distributable to the dissociating partner under subdivision (b) of Section
6 16807 if, on the date of dissociation, the assets of the partnership were sold at a
7 price equal to the greater of the liquidation value or the value based on a sale of
8 the entire business as a going concern without the dissociated partner and the
9 partnership was wound up as of that date. Interest shall be paid from the date of
10 dissociation to the date of payment.

11 (c) Damages for wrongful dissociation under ~~subdivision (b)~~ of Section 16602,
12 and all other amounts owing, whether or not presently due, from the dissociated
13 partner to the partnership, shall be offset against the buyout price. Interest shall be
14 paid from the date the amount owed becomes due to the date of payment.

15 (d) A partnership shall indemnify a dissociated partner whose interest is being
16 purchased against all partnership liabilities, whether incurred before or after the
17 dissociation, except liabilities incurred by an act of the dissociated partner under
18 Section 16702.

19 (e) If no agreement for the purchase of a dissociated partner's interest is reached
20 within 120 days after a written demand for payment, the partnership shall pay, or
21 cause to be paid, in cash to the dissociated partner the amount the partnership
22 estimates to be the buyout price and accrued interest, reduced by any offsets and
23 accrued interest under subdivision (c).

24 (f) If a deferred payment is authorized under subdivision (h), the partnership
25 may tender a written offer to pay the amount it estimates to be the buyout price
26 and accrued interest, reduced by any offsets under subdivision (c), stating the time
27 of payment, the amount and type of security for payment, and the other terms and
28 conditions of the obligation.

29 (g) The payment or tender required by subdivision (e) or (f) shall be
30 accompanied by all of the following:

31 (1) A statement of partnership assets and liabilities as of the date of dissociation.

32 (2) The latest available partnership balance sheet and income statement, if any.

33 (3) An explanation of how the estimated amount of the payment was calculated.

34 (4) Written notice that the payment is in full satisfaction of the obligation to
35 purchase unless, within 120 days after the written notice, the dissociated partner
36 commences an action to determine the buyout price, any offsets under subdivision
37 (c), or other terms of the obligation to purchase.

38 (h) A partner who wrongfully dissociates before the expiration of a definite term
39 or the completion of a particular undertaking is not entitled to payment of any
40 portion of the buyout price until the expiration of the term or completion of the
41 undertaking, unless the partner establishes to the satisfaction of the court that
42 earlier payment will not cause undue hardship to the business of the partnership. A
43 deferred payment shall be adequately secured and bear interest.

1 (i) A dissociated partner may maintain an action against the partnership,
2 pursuant to subparagraph (B) of paragraph (2) of subdivision (b) of Section 16405,
3 to determine the buyout price of that partner's interest, any offsets under
4 subdivision (c), or other terms of the obligation to purchase. The action shall be
5 commenced within 120 days after the partnership has tendered payment or an offer
6 to pay or within one year after written demand for payment if no payment or offer
7 to pay is tendered. The court shall determine the buyout price of the dissociated
8 partner's interest, any offset due under subdivision (c), and accrued interest, and
9 enter judgment for any additional payment or refund. If deferred payment is
10 authorized under subdivision (h), the court shall also determine the security for
11 payment and other terms of the obligation to purchase. The court may assess
12 reasonable attorney's fees and the fees and expenses of appraisers or other experts
13 for a party to the action, in amounts the court finds equitable, against a party that
14 the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may
15 be based on the partnership's failure to tender payment or an offer to pay or to
16 comply with subdivision (g).

17 **Comment.** Subdivision (c) of Section 16701 is amended to correct a cross-reference.

18 **Corp. Code § 16701.5 (amended). Dissociation within 90 days prior to dissolution**

19 SEC. _____. Section 16701.5 of the Corporations Code is amended to read:

20 16701.5. (a) Section 16701 shall not apply to any dissociation that occurs within
21 90 days prior to a dissolution under Section 16801.

22 (b) For dissociations occurring within 90 days prior to the dissolution, both of
23 the following shall apply:

24 (1) All partners who dissociated within 90 days prior to the dissolution shall be
25 treated as partners under Section 16807.

26 (2) Any damages for wrongful dissociation under ~~subdivision (b) of Section~~
27 16602 and all other amounts owed by the dissociated partner to the partnership,
28 whether or not presently due, shall be taken into account in determining the
29 amount distributable to the dissociated partner under Section 16807.

30 **Comment.** Section 16701.5 is amended to correct a cross-reference.

31 **Corp. Code § 16914 (amended). Rights and obligations following merger**

32 SEC. _____. Section 16914 of the Corporations Code of Civil Procedure is
33 amended to read:

34 16914. (a) When a merger takes effect, all of the following apply:

35 (1) The separate existence of the disappearing partnerships and disappearing
36 other business entities ceases and the surviving partnership or surviving other
37 business entity shall succeed, without other transfer, act or deed, to all the rights
38 and property whether real, personal, or mixed, of each of the disappearing
39 partnerships and disappearing other business entities and shall be subject to all the
40 debts and liabilities of each in the same manner as if the surviving partnership or
41 surviving other business entity had itself incurred them.

1 (2) All rights of creditors and all liens upon the property of each of the
2 constituent partnerships and constituent other business entities shall be preserved
3 unimpaired and may be enforced against the surviving partnership or the surviving
4 other business entity to the same extent as if the debt, liability or duty that gave
5 rise to that lien had been incurred or contracted by it, provided that those liens
6 upon the property of a disappearing partnership or disappearing other business
7 entity shall be limited to the property affected thereby immediately prior to the
8 time the merger is effective.

9 (3) Any action or proceeding pending by or against any disappearing partnership
10 or disappearing other business entity may be prosecuted to judgment, which shall
11 bind the surviving partnership or surviving other business entity, or the surviving
12 partnership or surviving other business entity may be proceeded against or be
13 substituted in the disappearing partnership's or the disappearing other business
14 entity's place.

15 (b) (1) Unless a certificate of merger has been filed to effect the merger, the
16 surviving foreign entity shall promptly notify the Secretary of State of the mailing
17 address of its agent for service of process, its chief executive office, and of any
18 change of address. To enforce an obligation of a partnership that has merged with
19 a foreign partnership or foreign other business entity, the Secretary of State shall
20 only be the agent for service of process in an action or proceeding against the
21 surviving foreign partnership or foreign other business entity, if the agent
22 designated for the service of process for that entity is a natural person and cannot
23 be located with due diligence or if the agent is a corporation and no person to
24 whom delivery may be made can be located with due diligence, or if no agent has
25 been designated and if no one of the officers, partners, managers, members, or
26 agents of the entity can be located after diligent search, and it is so shown by
27 affidavit to the satisfaction of the court. The court then may make an order that
28 service be made by personal delivery to the Secretary of State or to an assistant or
29 deputy Secretary of State of two copies of the process together with two copies of
30 the order, and the order shall set forth an address to which the process shall be sent
31 by the Secretary of State. Service in this manner is deemed complete on the 10th
32 day after delivery of the process to the Secretary of State.

33 (2) Upon receipt of the process and order and the fee set forth in ~~Section 12206~~
34 subdivision (c) of Section 12197 of the Government Code, the Secretary of State
35 shall give notice to the entity of the service of the process by forwarding by
36 certified mail, return receipt requested, a copy of the process and order to the
37 address specified in the order.

38 (3) The Secretary of State shall keep a record of all process served upon the
39 Secretary of State and shall record therein the time of service and the Secretary of
40 State's action with respect thereto. The certificate of the Secretary of State, under
41 the Secretary of State's official seal, certifying to the receipt of process, the giving
42 of notice thereof to the entity, and the forwarding of the process, shall be
43 competent and prima facie evidence of the matters stated therein.

1 (c) A partner of the surviving partnership or surviving limited partnership, a
2 member of the surviving limited liability company, a shareholder of the surviving
3 corporation, or a holder of equity securities of the surviving other business entity,
4 is liable for all of the following:

5 (1) All obligations of a party to the merger for which that person was personally
6 liable before the merger.

7 (2) All other obligations of the surviving entity incurred before the merger by a
8 party to the merger, but those obligations may be satisfied only out of property of
9 the entity.

10 (3) All obligations of the surviving entity incurred after the merger takes effect,
11 but those obligations may be satisfied only out of property of the entity if that
12 person is a limited partner, a shareholder in a corporation, or, unless expressly
13 provided otherwise in the articles of organization or other constituent documents, a
14 member of a limited liability company or a holder of equity securities in a
15 surviving other business entity.

16 (d) If the obligations incurred before the merger by a party to the merger are not
17 satisfied out of the property of the surviving partnership or surviving other
18 business entity, the general partners of that party immediately before the effective
19 date of the merger, to the extent that party was a partnership or a limited
20 partnership, shall contribute the amount necessary to satisfy that party's
21 obligations to the surviving entity in the manner provided in Section 16807 or in
22 the limited partnership act of the jurisdiction in which the party was formed, as the
23 case may be, as if the merged party were dissolved. (e) A partner of a domestic
24 disappearing partnership who does not vote in favor of the merger and does not
25 agree to become a partner, member, shareholder, or holder of interest or equity
26 securities of the surviving partnership or surviving other business entity shall have
27 the right to dissociate from the partnership as of the date the merger takes effect.
28 Within 10 days after the approval of the merger by the partners as required under
29 this article, each domestic disappearing partnership shall send notice of the
30 approval of the merger to each partner that has not approved the merger,
31 accompanied by a copy of Section 16701 and a brief description of the procedure
32 to be followed under that section if the partner wishes to dissociate from the
33 partnership. A partner that desires to dissociate from a disappearing partnership
34 shall send written notice of that dissociation within 30 days after the date of the
35 notice of the approval of the merger. The disappearing partnership shall cause the
36 partner's interest in the entity to be purchased under Section 16701. The surviving
37 entity is bound under Section 16702 by an act of a general partner dissociated
38 under this subdivision, and the partner is liable under Section 16703 for
39 transactions entered into by the surviving entity after the merger takes effect. The
40 ~~disassociation~~ dissociation of a partner in connection with a merger pursuant to the
41 terms of this subdivision shall not be deemed a wrongful ~~disassociation~~
42 dissociation under Section 16602.

1 **Comment.** Paragraph (2) of subdivision (b) of Section 16914 is amended to correct a cross-
2 reference. Former Government Code Section 12206 was repealed by 1999 Cal. Stat. ch. 1000,
3 § 53, and replaced by subdivision (c) of Government Code Section 12197.

4 Subdivision (e) of Section 16914 is amended to conform with existing usage of the term
5 “dissociation” throughout the Corporations Code.

6 **Note.** Unlike the Corporations Code, the Business and Professions Code uses the term
7 “disassociation” more often (13 uses, in five different sections) than the term “dissociation” (only
8 one use). The Commission does not recommend changing the usage of these terms in the
9 Business and Professions Code, but solicits comment on whether those revisions would be
10 appropriate.

11 **Educ. Code § 17595 (amended). School district purchase through Department of General**
12 **Services**

13 SEC. _____. Section 17595 of the Education Code is amended to read:

14 17595. Nothing in this code shall preclude the governing board of any school
15 district from purchasing materials, equipment or supplies through the Department
16 of General Services pursuant to Section 14814 of the Government Code 10299 of
17 the Public Contract Code.

18 **Comment.** Section 17595 is amended to correct a cross-reference. Former Government Code
19 Section 14814, enacted by 1965 Cal. Stat. ch. 371, § 179, was repealed by 1983 Cal. Stat. ch.
20 1231, § 1.5. It was replaced by former Public Contract Code Section 10324, which in turn was
21 repealed by 2000 Cal. Stat. ch. 918, § 8. The provision now most similar to former Government
22 Code Section 14814 is Public Contract Code Section 10299.

23 **Educ. Code § 43040.5 (repealed). Application of chapter**

24 SEC. _____. Section 43040.5 of the Education Code is repealed.

25 ~~43040.5. Notwithstanding Section 43040, this chapter shall apply to any one or~~
26 ~~more of the following school districts that, no later than 90 days after this section~~
27 ~~becomes operative as to that school district or school districts, adopts a schedule~~
28 ~~that specifies the use of the proceeds of the measure approved by the voters of the~~
29 ~~district, as described in Section 43041: the William S. Hart Union High School~~
30 ~~District, the Castaic Union School District, the Newhall School District, the~~
31 ~~Saugus Union School District, and the Sulphur Springs Elementary School~~
32 ~~District.~~

33 **Comment.** Section 43040.5 is repealed as obsolete. As a result of litigation in *California Bldg.*
34 *Industry Ass’n v. Governing Bd.*, 206 Cal. App. 3d 212, 253 Cal. Rptr. 497 (1988), Section
35 43040.5 never became operative. See former Section 43060(c).

36 **Educ. Code § 43060 (repealed). Litigation to determine validity of special election of June 2,**
37 **1987**

38 SEC. _____. Section 43060 of the Education Code is repealed.

39 ~~43060. (a) In the action of California Building Industry Association v.~~
40 ~~Governing Board of the Newhall School District, et al., (Los Angeles County~~
41 ~~Superior Court (c658159)) brought to determine the validity of the special election~~
42 ~~of June 2, 1987, held in the William S. Hart Union High School District, the~~
43 ~~Castaic Union School District, the Newhall School District, the Saugus Union~~

1 ~~School District, or the Sulphur Springs Elementary School District, including the~~
2 ~~hearing of the action on appeal from the decision of a lower court, all courts where~~
3 ~~the action is or may hereafter be pending shall give the action preference over all~~
4 ~~other civil actions, with respect to setting the action for hearing or trial and hearing~~
5 ~~the action, to the end that the action shall be quickly heard and determined.~~

6 ~~(b) If the action described in subdivision (a) is appealed, at the completion of the~~
7 ~~filing of briefs, the appellant shall notify the reviewing court that the briefs have~~
8 ~~been filed. Upon receipt of notice that the briefs have been filed, the clerk of the~~
9 ~~reviewing court shall set the appeal for hearing on the first available date on the~~
10 ~~court calendar.~~

11 ~~(c) Section 43040.5, as added by Section 1 of the act adding this section, shall~~
12 ~~become operative only if the school districts named in Section 43040.5 prevail in~~
13 ~~the litigation described in subdivision (a).~~

14 ~~(d) No city or county shall condition the issuance of a building permit on the~~
15 ~~payment of any tax required by special election as described in subdivision (a)~~
16 ~~unless Section 43040.5 becomes operative, as provided in subdivision (c), or~~
17 ~~unless a court of competent jurisdiction so orders.~~

18 ~~(e) No school district enumerated in Section 43040.5 shall condition the~~
19 ~~collection of, or certification of compliance with, any developer fee or other~~
20 ~~requirement levied by the governing board of that school district under Section~~
21 ~~53080 of the Government Code on the payment of any tax required by special~~
22 ~~election as described in subdivision (a) unless Section 43040.5 becomes operative,~~
23 ~~as provided in subdivisions (c), or unless a court of competent jurisdiction so~~
24 ~~orders, so long as the applicant for the building permit agrees in writing to pay the~~
25 ~~special tax, together with interest from the date of issuance of the building permit~~
26 ~~at a reasonable rate as determined by the court, in the event that the school district~~
27 ~~prevails in the litigation described in subdivision (a).~~

28 **Comment.** Section 43060 is repealed as obsolete. The litigation described in subdivision (a),
29 *California Bldg. Industry Ass'n v. Governing Bd.*, 206 Cal. App. 3d 212, 253 Cal. Rptr. 497
30 (1988), overturned the assessment upon which the section is based, and was final on December
31 29, 1988.

32 **Evid. Code § 917 (amended). Presumption of privilege**

33 SEC. _____. Section 917 of the Evidence Code is amended to read:

34 917. (a) Whenever a privilege is claimed on the ground that the matter sought to
35 be disclosed is a communication made in confidence in the course of the lawyer-
36 client, physician-patient, psychotherapist-patient, clergy-penitent, husband-wife,
37 sexual assault ~~victim counselor~~ counselor-victim, or domestic violence ~~victim-~~
38 ~~counselor~~ counselor-victim relationship, the communication is presumed to have
39 been made in confidence and the opponent of the claim of privilege has the burden
40 of proof to establish that the communication was not confidential.

41 (b) A communication between persons in a relationship listed in subdivision (a)
42 does not lose its privileged character for the sole reason that it is communicated by

1 electronic means or because persons involved in the delivery, facilitation, or
2 storage of electronic communication may have access to the content of the
3 communication.

4 (c) For purposes of this section, “electronic” has the same meaning provided in
5 Section 1633.2 of the Civil Code.

6 **Comment.** Subdivision (a) of Section 917 is amended to make the references to the sexual
7 assault counselor-victim privilege and the domestic violence counselor-victim privilege conform
8 with usage in the remainder of the code.

9 **Heading of Article 8.5 (commencing with Section 1035) (amended)**

10 SEC. _____. The heading of Article 8.5 (commencing with Section 1035) of
11 Chapter 4 of Division 8 of the Evidence Code is amended to read:

12 Article 8.5. Sexual Assault ~~Victim-Counselor~~ Counselor-Victim Privilege

13 **Comment.** The heading “Article 8.5. Sexual Assault Victim-Counselor Privilege” is amended
14 to conform with usage in the remainder of the code.

15 **Heading of Article 8.7 (commencing with Section 1037) (amended)**

16 SEC. _____. The heading of Article 8.7 (commencing with Section 1037) of
17 Chapter 4 of Division 8 of the Evidence Code is amended to read:

18 Article 8.7. Domestic Violence ~~Victim-Counselor~~ Counselor-Victim Privilege

19 **Comment.** The heading “Article 8.7. Domestic Violence Victim-Counselor Privilege” is
20 amended to conform with usage in the remainder of the code.

21 **Fish & Game Code § 8610.7 (repealed). Compensation for discontinued fishing**

22 SEC. _____. Section 8610.7 of the Fish and Game Code is repealed.

23 ~~8610.7. (a) Commencing on July 1, 1993, there shall be paid to any person who~~
24 ~~submitted the form required by Section 7 of Article XB of the California~~
25 ~~Constitution within the 90 day period specified in subdivision (a) of that section,~~
26 ~~holds a permit issued pursuant to Section 5 of Article XB, who operates in the~~
27 ~~zone established pursuant to that article, who surrenders that permit to the~~
28 ~~department between July 1, 1993, and January 1, 1994, inclusive, and who agrees~~
29 ~~to permanently discontinue fishing with gill and trammel nets within the zone, a~~
30 ~~one time compensation consisting of the average annual ex vessel value of the fish~~
31 ~~other than any species of rockfish landed by a fisherman, which were taken~~
32 ~~pursuant to a valid general gill net or trammel net permit issued pursuant to~~
33 ~~Sections 8681 and 8682 within the zone during the years 1983 to 1987, inclusive.~~
34 ~~The department shall determine the amount of compensation to be paid by~~
35 ~~reviewing logs and landing receipts submitted to the department.~~

36 ~~(b) Any person who did not submit the form required by Section 7 of Article XB~~
37 ~~of the California Constitution within the 90 day period specified in subdivision (a)~~
38 ~~of that section, or whose claim to compensation cannot be verified, shall not be~~
39 ~~compensated.~~

1 ~~(c) Any person who is denied compensation by the department, as a result of the~~
2 ~~department's failure to verify landings, may appeal that decision to the~~
3 ~~commission.~~

4 ~~(d) The State Board of Control shall, prior to the disbursement of any funds,~~
5 ~~verify the eligibility of each person seeking compensation and the amount of the~~
6 ~~compensation to be provided in order to ensure compliance with this section.~~

7 ~~(e) Notwithstanding any other provision of law, any legal action or proceeding~~
8 ~~to challenge the validity of subdivision (b) of Section 3, or of Section 7, of Article~~
9 ~~XB of the California Constitution shall be commenced on or before April 1, 1993.~~
10 ~~In all actions brought to challenge the validity of subdivision (b) of Section 3, or~~
11 ~~of Section 7, of Article XB of the California Constitution, including the hearing of~~
12 ~~any such action on appeal from the decision of a lower court, all courts where~~
13 ~~those actions are filed or pending shall give preference to those actions over all~~
14 ~~other civil actions filed or pending in that court, with respect to setting the action~~
15 ~~for trial or hearing, and in trying or hearing the matter, to the end that all such~~
16 ~~actions shall be heard and determined as expeditiously as possible.~~

17 ~~(f) If subdivision (b) of Section 3, or Section 7, of Article XB of the California~~
18 ~~Constitution is held invalid, any compensation paid to a person pursuant to this~~
19 ~~section shall be repaid to the state. No person shall be issued any permit or license~~
20 ~~pursuant to this article until repayment has been made.~~

21 **Comment.** Section 8610.7 is repealed as obsolete. In order to obtain compensation under this
22 section, all required acts had to be performed by January 1, 1994.

23 **Fish & Game Code § 8610.8 (repealed). Marine resources protection account**

24 SEC. _____. Section 8610.8 of the Fish and Game Code is repealed.

25 ~~8610.8. (a) There is hereby created the Marine Resources Protection Account in~~
26 ~~the Fish and Game Preservation Fund. On and after January 1, 1991, the~~
27 ~~department shall collect any and all fees required by this article. All fees received~~
28 ~~by the department pursuant to this article shall be deposited in the account and~~
29 ~~shall be expended or encumbered to compensate persons who surrender permits~~
30 ~~pursuant to Section 8610.7 or to provide for administration of this article. All~~
31 ~~funds received by the department during any fiscal year pursuant to this article~~
32 ~~which are not expended during that fiscal year to compensate persons as set forth~~
33 ~~in Section 8610.7 or to provide for administration of this article shall be carried~~
34 ~~over into the following fiscal year and shall be used only for those purposes. All~~
35 ~~interest accrued from the department's retention of fees received pursuant to this~~
36 ~~article shall be credited to the account. The accrued interest may only be expended~~
37 ~~for the purposes authorized by this article. The account shall continue in existence,~~
38 ~~and the requirement to pay fees under this article shall remain in effect, until the~~
39 ~~compensation provided in Section 8610.7 has been fully funded or until January 1,~~
40 ~~1995, whichever occurs first.~~

41 ~~(b) An amount, not to exceed 15 percent of the total annual revenues deposited~~
42 ~~in the account excluding any interest accrued or any funds carried over from a~~

1 prior fiscal year may be expended for the administration of this article and Article
2 XB of the California Constitution.

3 ~~(c) In addition to a valid California sportfishing license issued pursuant to~~
4 ~~Section 7149, 7149.1, or 7149.2 and any applicable sport license stamp issued~~
5 ~~pursuant to this code, a person taking fish from ocean waters south of a line~~
6 ~~extending due west from Point Arguello for sport purposes shall have permanently~~
7 ~~affixed to that person's sportfishing license a marine resources protection stamp~~
8 ~~which may be obtained from the department upon payment of a fee of three dollars~~
9 ~~(\$3). This subdivision does not apply to any one day fishing license.~~

10 ~~(d) In addition to a valid California commercial passenger fishing boat license~~
11 ~~required by Section 7920, the owner of any boat or vessel who, for profit, permits~~
12 ~~any person to fish from the boat or vessel in ocean waters south of a line extending~~
13 ~~due west from Point Arguello, shall obtain and permanently affix to the license a~~
14 ~~commercial marine resources protection stamp which may be obtained from the~~
15 ~~department upon payment of a fee of three dollars (\$3).~~

16 ~~(e) The department may accept contributions or donations from any person who~~
17 ~~wishes to donate money to be used for the compensation of commercial gill net~~
18 ~~and trammel net fishermen who surrender permits under this article.~~

19 ~~(f) This section shall become inoperative on January 1, 1995.~~

20 **Comment.** Section 8610.8 is repealed as obsolete. Subdivision (f) of Section 8610.8 provides
21 that the section shall become inoperative on January 1, 1995.

22 **Fish & Game Code § 8610.13 (amended). Penalty for use of gill or trammel nets**

23 SEC. _____. Section 8610.13 of the Fish & Game Code is amended to read.

24 8610.13 ~~(a) The penalty for a first violation of Sections Section 8610.3 and or~~
25 ~~8610.4 is a fine of not less than one thousand dollars (\$1,000) and not more than~~
26 ~~five thousand dollars (\$5,000) and a mandatory suspension of any license, permit,~~
27 ~~or stamp to take, receive, transport, purchase, sell, barter, or process fish for~~
28 ~~commercial purposes for six months. The penalty for a second or subsequent~~
29 ~~violation of Sections 8610.3 and 8610.4 is a fine of not less than two thousand five~~
30 ~~hundred dollars (\$2,500) and not more than ten thousand dollars (\$10,000) and a~~
31 ~~mandatory suspension of any license, permit, or stamp to take, receive, transport,~~
32 ~~purchase, sell, barter, or process fish for commercial purposes for one year.~~

33 ~~(b) Notwithstanding any other provisions of law, a violation of Section 8610.8~~
34 ~~shall be deemed a violation of Section 7145, and the penalty for such violation~~
35 ~~shall be consistent with Section 12002.2.~~

36 ~~(c) If a person convicted of a violation of Section 8610.3, 8610.4, or 8610.8 is~~
37 ~~granted probation, the court shall impose as a term or condition of probation, in~~
38 ~~addition to any other term or condition of probation, that the person pay at least~~
39 ~~the minimum fine prescribed in this section as specified in Section 12003.5.~~

40 **Comment.** Section 8610.13 is amended to eliminate redundancy with identical language in
41 Section 12003.5.

1 **Fish & Game Code § 12003.5 (amended). Penalty for use of gill or trammel nets**

2 SEC. _____. Section 12003.5 of the Fish & Game Code is amended to read.

3 12003.5 (a) The penalty for a first violation of Section 8610.3 or 8610.4 is a fine
4 of not less than one thousand dollars (\$1,000) and not more than five thousand
5 dollars (\$5,000) and a mandatory suspension of any license, permit, or stamp to
6 take, receive, transport, purchase, sell, barter, or process fish for commercial
7 purposes for six months. The penalty for a second or subsequent violation of
8 Section 8610.3 or 8610.4 is a fine of not less than two thousand five hundred
9 dollars (\$2,500) and not more than ten thousand dollars (\$10,000) and a
10 mandatory suspension of any license, permit, or stamp to take, receive, transport,
11 purchase, sell, barter, or process fish for commercial purposes for one year.

12 ~~(b) Notwithstanding any other provisions of law, a violation of Section 8610.8~~
13 ~~shall be deemed a violation of Section 7145, and the penalty for such violation~~
14 ~~shall be as prescribed by Section 12002.2.~~

15 ~~(c)~~ (b) If a person convicted of a violation of Section 8610.3, or 8610.4, ~~or~~
16 ~~8610.8~~ is granted probation, the court shall impose as a term or condition of
17 probation, in addition to any other term or condition of probation, a requirement
18 that the person pay at least the minimum fine prescribed in this section.

19 **Comment.** Section 12003.5 is amended to reflect the repeal of former Section 8610.8.

20 **Gov't Code § 7910 (amended). Determinations by local jurisdictions**

21 SEC. _____. Section 7910 of the Government Code is amended to read:

22 7910. (a) Each year the governing body of each local jurisdiction shall, by
23 resolution, establish its appropriations limit and make other necessary
24 determinations for the following fiscal year pursuant to Article XIII B of the
25 California Constitution at a regularly scheduled meeting or noticed special
26 meeting. Fifteen days prior to the meeting, documentation used in the
27 determination of the appropriations limit and other necessary determinations shall
28 be available to the public. The determinations made pursuant to this section are
29 legislative acts.

30 ~~Any judicial action or proceeding to attack, review, set aside, void, or annul the~~
31 ~~action of the governing body taken pursuant to this section for the 1980-81 fiscal~~
32 ~~year shall be commenced within 60 days of the effective date of the resolution or~~
33 ~~the effective date of the act which added this section to the Government Code,~~
34 ~~whichever date is later.~~

35 ~~(b) For the 1981-82 fiscal year and each fiscal year thereafter, any A~~ judicial
36 action or proceeding to attack, review, set aside, void, or annul the action of the
37 governing body taken pursuant to this section shall be commenced within 45 days
38 of the effective date of the resolution.

39 ~~(c) All courts wherein such actions are or may be hereafter A~~ court in which an
40 action described in subdivision (b) is pending, including any court reviewing ~~such~~
41 the action on appeal from the decision of a lower court, shall give ~~such actions the~~
42 action preference over all other civil actions ~~therein~~, in the manner of setting the

1 ~~same action~~ for hearing or trial and in hearing the same action, to the end that ~~all~~
2 ~~such actions~~ the action shall be quickly heard and determined.

3 **Comment.** The former second paragraph of Section 7910 is deleted as obsolete. The former
4 third paragraph (now subdivision (b)) is amended to make a conforming change.

5 Section 7910 is also amended to make stylistic revisions.

6 **Gov't Code § 26801 (amended). County clerk as clerk of board of supervisors**

7 SEC. _____. Section 26801 of the Government Code is amended to read:

8 26801. Except as otherwise provided by law, ~~he~~ the county clerk shall act as
9 clerk of the board of supervisors in ~~his~~ the county.

10 **Comment.** Section 26801 is amended to reflect the repeal of Section 26800 and to make the
11 provision gender neutral.

12 **Penal Code § 1196 (amended). Issuance of bench warrant outside county**

13 SEC. _____. Section 1196 of the Penal Code is amended to read:

14 1196. (a) The clerk, ~~or the judge or justice, if there is no clerk,~~ must at any time
15 after the order issue a bench warrant into one or more counties.

16 (b) The clerk, ~~or the judge or justice,~~ shall require the appropriate agency to
17 enter each bench warrant issued on a private surety-bonded felony case into the
18 national warrant system (National Crime Information Center (NCIC)). If the
19 appropriate agency fails to enter the bench warrant into the national warrant
20 system (NCIC), and the court finds that this failure prevented the surety or bond
21 agent from surrendering the fugitive into custody, prevented the fugitive from
22 being arrested or taken into custody, or resulted in the fugitive's subsequent
23 release from custody, the court having jurisdiction over the bail shall, upon
24 petition, set aside the forfeiture of the bond and declare all liability on the bail
25 bond to be exonerated.

26 **Comment.** Section 1196 is amended to delete unnecessary language authorizing the judge to
27 substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act
28 court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court),
29 71620(b) (executive or administrative officer has authority of clerk of court).

30 **Penal Code § 1207 (amended). Entry of judgment**

31 SEC. _____. Section 1207 of the Penal Code is amended to read:

32 1207. When judgment upon a conviction is rendered, the clerk, ~~or if there is no~~
33 ~~clerk, the judge,~~ must enter the same judgment in the minutes, stating briefly the
34 offense for which the conviction was had, and the fact of a prior conviction, if any.
35 A copy of the judgment of conviction shall be filed with the papers in the case.

36 **Comment.** Section 1207 is amended to delete unnecessary language authorizing the judge to
37 substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act
38 court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court),
39 71620(b) (executive or administrative officer has authority of clerk of court).

40 Section 1207 is also amended to make a stylistic revision.

1 **Penal Code § 1213 (amended). Furnishing of probationary order or judgment**

2 SEC. _____. Section 1213 of the Penal Code is amended to read:

3 1213. When a probationary order or a judgment, other than of death, has been
4 pronounced, a copy of the entry of that portion of the probationary order ordering
5 the defendant confined in a city or county jail as a condition of probation, or a
6 copy of the entry of the judgment, or, if the judgment is for imprisonment in the
7 state prison, either a copy of the minute order or an abstract of the judgment as
8 provided in Section 1213.5, certified by the clerk of the court, ~~or by the judge, if~~
9 ~~there is no clerk,~~ and a Criminal Investigation and Identification (CII) number
10 shall be forthwith furnished to the officer whose duty it is to execute the
11 probationary order or judgment, and no other warrant or authority is necessary to
12 justify or require its execution.

13 If a copy of the minute order is used as the commitment document, the first
14 page or pages shall be identical in form and content to that prescribed by the
15 Judicial Council for an abstract of judgment, and ~~such~~ other matters as appropriate
16 may be added thereafter.

17 **Comment.** Section 1213 is amended to delete unnecessary language authorizing the judge to
18 substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act
19 court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court),
20 71620(b) (executive or administrative officer has authority of clerk of court).

21 Section 1213 is also amended to make a stylistic revision.

22 **Penal Code § 1326 (amended). Subpoenaing of witnesses**

23 SEC. _____. Section 1326 of the Penal Code is amended to read:

24 1326. (a) The process by which the attendance of a witness before a court or
25 magistrate is required is a subpoena. It may be signed and issued by any of the
26 following:

27 (1) A magistrate before whom a complaint is laid or his or her clerk, the district
28 attorney or his or her investigator, or the public defender or his or her investigator,
29 for witnesses in the state.

30 (2) The district attorney, his or her investigator, or, upon request of the grand
31 jury, any judge of the superior court, for witnesses in the state, in support of an
32 indictment or information, to appear before the court in which it is to be tried.

33 (3) The district attorney or his or her investigator, the public defender or his or
34 her investigator, or the clerk of the court in which a criminal action is to be tried,
35 ~~or, if there is no clerk, the judge of the court.~~ The clerk ~~or judge~~ shall, at any time,
36 upon application of the defendant, and without charge, issue as many blank
37 subpoenas, subscribed by him or her, for witnesses in the state, as the defendant
38 may require.

39 (4) The attorney of record for the defendant.

40 (b) A subpoena issued in a criminal action that commands the custodian of
41 records or other qualified witness of a business to produce books, papers,
42 documents, or records shall direct that those items be delivered by the custodian or
43 qualified witness in the manner specified in subdivision (b) of Section 1560 of the

1 Evidence Code. Subdivision (e) of Section 1560 of the Evidence Code shall not
2 apply to criminal cases.

3 (c) In a criminal action, no party, or attorney or representative of a party, may
4 issue a subpoena commanding the custodian of records or other qualified witness
5 of a business to provide books, papers, documents, or records, or copies thereof,
6 relating to a person or entity other than the subpoenaed person or entity in any
7 manner other than that specified in subdivision (b) of Section 1560 of the
8 Evidence Code. When a defendant has issued a subpoena to a person or entity that
9 is not a party for the production of books, papers, documents, or records, or copies
10 thereof, the court may order an in camera hearing to determine whether or not the
11 defense is entitled to receive the documents. The court may not order the
12 documents disclosed to the prosecution except as required by Section 1054.3.

13 (d) This section shall not be construed to prohibit obtaining books, papers,
14 documents, or records with the consent of the person to whom the books, papers,
15 documents, or records relate.

16 **Comment.** Section 1326 is amended to delete unnecessary language authorizing the judge to
17 substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act
18 court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court),
19 71620(b) (executive or administrative officer has authority of clerk of court).

20 **Penal Code § 11163.3 (amended). Reporting of domestic violence**

21 SEC. _____. Section 11163.3 of the Penal Code is amended to read:

22 11163.3. (a) A county may establish an interagency domestic violence death
23 review team to assist local agencies in identifying and reviewing domestic
24 violence deaths, including homicides and suicides, and facilitating communication
25 among the various agencies involved in domestic violence cases. Interagency
26 domestic violence death review teams have been used successfully to ensure that
27 incidents of domestic violence and abuse are recognized and that agency
28 involvement is reviewed to develop recommendations for policies and protocols
29 for community prevention and intervention initiatives to reduce and eradicate the
30 incidence of domestic violence.

31 (b) For purposes of this section, “abuse” has the meaning set forth in Section
32 6203 of the Family Code and “domestic violence” has the meaning set forth in
33 Section 6211 of the Family Code.

34 (c) A county may develop a protocol that may be used as a guideline to assist
35 coroners and other persons who perform autopsies on domestic violence victims in
36 the identification of domestic violence, in the determination of whether domestic
37 violence contributed to death or whether domestic violence had occurred prior to
38 death, but was not the actual cause of death, and in the proper written reporting
39 procedures for domestic violence, including the designation of the cause and mode
40 of death.

41 (d) County domestic violence death review teams shall be comprised of, but not
42 limited to, the following:

- 1 (1) Experts in the field of forensic pathology.
- 2 (2) Medical personnel with expertise in domestic violence abuse.
- 3 (3) Coroners and medical examiners.
- 4 (4) Criminologists.
- 5 (5) District attorneys and city attorneys.
- 6 (6) Domestic violence shelter service staff and battered women's advocates.
- 7 (7) Law enforcement personnel.
- 8 (8) Representatives of local agencies that are involved with domestic violence
- 9 abuse reporting.
- 10 (9) County health department staff who deal with domestic violence victims'
- 11 health issues.
- 12 (10) Representatives of local child abuse agencies.
- 13 (11) Local professional associations of persons described in paragraphs (1) to
- 14 (10), inclusive.
- 15 (e) An oral or written communication or a document shared within or produced
- 16 by a domestic violence death review team related to a domestic violence death
- 17 review is confidential and not subject to disclosure or discoverable by a third
- 18 party. An oral or written communication or a document provided by a third party
- 19 to a domestic violence death review team, or between a third party and a domestic
- 20 violence death review team, is confidential and not subject to disclosure or
- 21 discoverable by a third party. Notwithstanding the foregoing, recommendations of
- 22 a domestic violence death review team upon the completion of a review may be
- 23 disclosed at the discretion of a majority of the members of the domestic violence
- 24 death review team.
- 25 (f) Each organization represented on a domestic violence death review team may
- 26 share with other members of the team information in its possession concerning the
- 27 victim who is the subject of the review or any person who was in contact with the
- 28 victim and any other information deemed by the organization to be pertinent to the
- 29 review.
- 30 Any information shared by an organization with other members of a team is
- 31 confidential. This provision shall permit the disclosure to members of the team of
- 32 any information deemed confidential, privileged, or prohibited from disclosure by
- 33 any other statute.
- 34 (g) Written and oral information may be disclosed to a domestic violence death
- 35 review team established pursuant to this section. The team may make a request in
- 36 writing for the information sought and any person with information of the kind
- 37 described in paragraph (2) of this subdivision may rely on the request in
- 38 determining whether information may be disclosed to the team.
- 39 (1) No individual or agency that has information governed by this subdivision
- 40 shall be required to disclose information. The intent of this subdivision is to allow
- 41 the voluntary disclosure of information by the individual or agency that has the
- 42 information.
- 43 (2) The following information may be disclosed pursuant to this subdivision:

- 1 (A) Notwithstanding Section 56.10 of the Civil Code, medical information.
2 (B) Notwithstanding Section 5328 of the Welfare and Institutions Code, mental
3 health information.
4 (C) Notwithstanding Section 15633.5 of the Welfare and Institutions Code,
5 information from elder abuse reports and investigations, except the identity of
6 persons who have made reports, which shall not be disclosed.
7 (D) Notwithstanding Section 11167.5 of the Penal Code, information from child
8 abuse reports and investigations, except the identity of persons who have made
9 reports, which shall not be disclosed.
10 (E) State summary criminal history information, criminal offender record
11 information, and local summary criminal history information, as defined in
12 Sections 11075, 11105, and 13300 of the Penal Code.
13 (F) Notwithstanding Section 11163.2 of the Penal Code, information pertaining
14 to reports by health practitioners of persons suffering from physical injuries
15 inflicted by means of a firearm or of persons suffering physical injury where the
16 injury is a result of assaultive or abusive conduct, and information relating to
17 whether a physician referred the person to local domestic violence services as
18 recommended by Section 11161 of the Penal Code.
19 (G) Notwithstanding Section 827 of the Welfare and Institutions Code,
20 information in any juvenile court proceeding.
21 (H) Information maintained by the Family Court, including information relating
22 to the Family Conciliation Court Law pursuant to Section 1818 of the Family
23 Code, and Mediation of Custody and Visitation Issues pursuant to Section 3177 of
24 the Family Code.
25 (I) Information provided to probation officers in the course of the performance
26 of their duties, including, but not limited to, the duty to prepare reports pursuant to
27 Section 1203.10 of the Penal Code, as well as the information on which these
28 reports are based.
29 (J) Notwithstanding Section 10825 of the Welfare and Institutions Code, records
30 of in-home supportive services, unless disclosure is prohibited by federal law.
31 (3) The disclosure of written and oral information authorized under this
32 subdivision shall apply notwithstanding Sections 2263, 2918, 4982, and 6068 of
33 the Business and Professions Code, or the lawyer-client privilege protected by
34 Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the
35 Evidence Code, the physician-patient privilege protected by Article 6
36 (commencing with Section 990) of Chapter 4 of Division 8 of the Evidence Code,
37 the psychotherapist-patient privilege protected by Article 7 (commencing with
38 Section 1010) of Chapter 4 of Division 8 of the Evidence Code, the sexual assault
39 ~~victim counselor~~ counselor-victim privilege protected by Article 8.5 (commencing
40 with Section 1035) of Chapter 4 of Division 8 of the Evidence Code, and the
41 domestic violence ~~victim counselor~~ counselor-victim privilege protected by
42 Article 8.7 (commencing with Section 1037) of Chapter 4 of Division 8 of the
43 Evidence Code.

1 **Comment.** Paragraph (3) of subdivision (g) of Section 11163.3 is amended to make the
2 references to the sexual assault counselor-victim privilege and the domestic violence counselor-
3 victim privilege conform with existing statutory references to these privileges.

4 **Veh. Code § 1803.3 (amended). Notification of reversal of conviction or dismissal**

5 SEC. _____. Section 1803.3 of the Vehicle Code is amended to read:

6 1803.3. (a) The clerk, ~~or judge if there is no clerk,~~ of any court which reverses a
7 conviction for an offense described in subdivision (a) of Section 1803, which is
8 not exempted under subdivision (b) of that section, shall prepare and forward to
9 the department at its office in Sacramento an abstract of the record of the court
10 covering the case in which the conviction was reversed. In addition, if a court
11 dismisses a charge of a violation of Section 40508 for which a notice was given to
12 the department pursuant to Section 40509 or 40509.5, the court shall notify the
13 department of the dismissal.

14 (b) The abstract shall be forwarded within 30 days of the date the judgment of
15 reversal becomes final. The notice of dismissal shall be given to the department
16 not later than 30 days after the dismissal. Within 30 days of receiving the abstract
17 or notice, the department shall remove any record of that conviction, or notice
18 received pursuant to Section 40509 or 40509.5, from the driver's record.

19 (c) As used in this section, "reverse" includes any action by which a conviction
20 is nullified or set aside.

21 **Comment.** Section 1803.3 is amended to delete unnecessary language authorizing the judge to
22 substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167 (judge may perform any act
23 court clerk may perform); Gov't Code §§ 69840-69848 (duties of clerk of superior court),
24 71620(b) (executive or administrative officer has authority of clerk of court).

25 **Veh. Code § 23140 (amended). Driving under the influence by person under 21**

26 SEC. _____. Section 23140 of the Vehicle Code is amended to read:

27 23140. (a) It is unlawful for a person under the age of 21 years who has 0.05
28 percent or more, by weight, of alcohol in his or her blood to drive a vehicle.

29 (b) A person may be found to be in violation of subdivision (a) if the person
30 was, at the time of driving, under the age of 21 years and under the influence of, or
31 affected by, an alcoholic beverage regardless of whether a chemical test was made
32 to determine that person's blood-alcohol concentration and if the trier of fact finds
33 that the person had consumed an alcoholic beverage and was driving a vehicle
34 while having a concentration of 0.05 percent or more, by weight, of alcohol in his
35 or her blood.

36 (c) Notwithstanding any provision of law to the contrary, upon a finding that a
37 person has violated this section, the clerk of the court, ~~or judge if there is no clerk,~~
38 shall prepare within 10 days after the finding and immediately forward to the
39 department an abstract of the record of the court in which the finding is made.
40 That abstract shall be a public record and available for public inspection in the
41 same manner as other records reported under Section 1803.

1 **Comment.** Subdivision (c) of Section 23140 is amended to delete unnecessary language
2 authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167
3 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of
4 clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of
5 court).

6 **Veh. Code § 23229.1. (amended). Operating limousine for hire containing alcoholic**
7 **beverage**

8 SEC. _____. Section 23229.1 of the Vehicle Code is amended to read:

9 23229.1. (a) Subject to subdivision (b), Sections 23223 and 23225 do apply to
10 any charter-party carrier of passengers, as defined in Section 5360 of the Public
11 Utilities Code, operating a limousine for hire when the driver of the vehicle
12 transports any passenger under the age of 21.

13 (b) For purposes of subdivision (a), it is not a violation of Section 23225 for any
14 charter-party carrier of passengers operating a limousine for hire which is licensed
15 pursuant to the Public Utilities Code to keep any bottle, can, or other receptacle
16 containing any alcoholic beverage in a locked utility compartment within the area
17 occupied by the driver and passengers.

18 (c) In addition to the requirements of Section 1803, every clerk of a court, ~~or~~
19 ~~judge if there is no clerk,~~ in which any driver in subdivision (a) was convicted of a
20 violation of Section 23225 shall prepare within 10 days after conviction, and
21 immediately forward to the Public Utilities Commission at its office in San
22 Francisco, an abstract of the record of the court covering the case in which the
23 person was convicted. If sentencing is not pronounced in conjunction with the
24 conviction, the abstract shall be forwarded to the commission within 10 days after
25 sentencing, and the abstract shall be certified, by the person required to prepare it,
26 to be true and ~~correct.~~

27 ~~For correct.~~ For the purposes of this subdivision, a forfeiture of bail is equivalent
28 to a conviction.

29 ~~(d) This section shall become operative on July 1, 1989.~~

30 **Comment.** Subdivision (c) of Section 23229.1 is amended to delete unnecessary language
31 authorizing the judge to substitute for the clerk if there is no clerk. See Code Civ. Proc. § 167
32 (judge may perform any act court clerk may perform); Gov't Code §§ 69840-69848 (duties of
33 clerk of superior court), 71620(b) (executive or administrative officer has authority of clerk of
34 court).

35 Subdivision (c) is also amended to make a stylistic revision.

36 Subdivision (d) is deleted as obsolete.