

AMENDED IN ASSEMBLY JUNE 12, 1996

AMENDED IN SENATE APRIL 22, 1996

**SENATE BILL**

**No. 1726**

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**Introduced by Senator Wright**

February 22, 1996

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An act to amend Sections 397, 404, 404.2, 404.3, 404.4, and 404.8 of, and to add Sections 403 and 404.9 to, the Code of Civil Procedure, relating to civil procedure, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1726, as amended, Wright. Civil actions: coordination.

Existing law specifies the conditions under which the court may change the place of trial. Existing law provides for the coordination of civil actions sharing a common question of fact or law that are pending in different courts.

~~This bill would include among the conditions under which the court may change the place of trial, an instance where cases involving a common issue of fact or law are pending in different courts. The bill would~~ revise and recast the provisions of existing law governing the coordination of civil actions. The bill would specify new procedures regarding coordination, including ~~a requirement that the party making a motion for change of venue for purposes of coordination~~ *made authorization for a judge, upon motion, to transfer an action involving a common question of fact or law from another court to that judge's court if a declaration by the moving party states facts showing a good faith effort to obtain*

agreement to the transfer from all parties, ~~and a provision that if the case is transferred, the court may require any party who rejected an offer to stipulate to the transfer to pay to the moving party his or her costs reasonably incurred in preparing and presenting the motion and that the actions are not complex, as specified.~~ The bill would require a petition for coordination to be supported by an ~~affidavit~~ *declaration* stating facts showing that the actions are complex, as defined. The bill would require the Judicial Council to provide by rule the practice and procedure for the transfer or coordination of civil actions, as provided.

The bill would declare that it would take effect immediately as an urgency statute.

Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 ~~SECTION 1. Section 397 of the Code of Civil~~  
 2 ~~Procedure is amended to read:~~  
 3 ~~397. The court may, on motion, change the place of~~  
 4 ~~trial in the following cases:~~  
 5 ~~(a) When the court designated in the complaint is not~~  
 6 ~~the proper court.~~  
 7 ~~(b) When there is reason to believe that an impartial~~  
 8 ~~trial cannot be had therein.~~  
 9 ~~(c) When the convenience of witnesses and the ends~~  
 10 ~~of justice would be promoted by the change.~~  
 11 ~~(d) When from any cause there is no judge of the court~~  
 12 ~~qualified to act.~~  
 13 ~~(e) When a proceeding for dissolution of marriage has~~  
 14 ~~been filed in the county in which the petitioner has been~~  
 15 ~~a resident for three months next preceding the~~  
 16 ~~commencement of the proceeding, and the respondent~~  
 17 ~~at the time of the commencement of the proceeding is a~~  
 18 ~~resident of another county in this state, to the county of~~  
 19 ~~the respondent's residence when the ends of justice~~  
 20 ~~would be promoted by the change. If a motion to change~~  
 21 ~~the place of trial is made pursuant to this subdivision, the~~  
 22 ~~court may, prior to the determination of the motion,~~



1 ~~consider and determine motions for allowance of~~  
2 ~~temporary spousal support, support of children,~~  
3 ~~temporary restraining orders, attorneys' fees, and costs,~~  
4 ~~and make all necessary and proper orders in connection~~  
5 ~~therewith.~~

6 ~~(f) When cases involving a common issue of fact or law~~  
7 ~~are pending in different courts, as provided in Section 403~~  
8 ~~or 404.3.~~

9 ~~SEC. 2.~~

10 *SECTION 1.* Section 403 is added to the Code of Civil  
11 Procedure, to read:

12 403. ~~The court~~ *A judge* may, on motion, transfer an  
13 ~~action to another court or actions from another court to~~  
14 ~~that judge's court~~ for coordination with an action  
15 involving a common question of fact or law within the  
16 meaning of Section 404. The motion shall be supported by  
17 ~~an affidavit~~ *a declaration* stating facts showing that the  
18 actions meet the standards specified in Section 404.1, *are*  
19 *not complex as defined by the Judicial Council pursuant*  
20 *to Section 19 of the Standards of Judicial Administration,*  
21 and that the moving party has made a good faith effort to  
22 obtain agreement to the transfer from all parties to each  
23 action. Notice of the motion shall be served on all parties  
24 ~~to each action, and any party to either action may file to~~  
25 ~~each action and on each court in which an action is~~  
26 ~~pending. Any party to that action may file papers~~  
27 opposing the motion within the time permitted by rule  
28 of the Judicial Council. The court to which a case is  
29 transferred may order the cases consolidated for trial  
30 pursuant to Section 1048 without any further motion or  
31 hearing.

32 If the cases are pending in different courts of the same  
33 county, the judge who grants the motion to transfer may  
34 also order the cases consolidated for trial in the receiving  
35 court.

36 The Judicial Council may adopt rules to implement this  
37 section, including rules prescribing procedures for  
38 preventing duplicative or conflicting transfer orders  
39 issued by different courts.



1 SEC. 3. Section 404 of the Code of Civil Procedure is  
2 amended to read:

3 404. When civil actions sharing a common question of  
4 fact or law are pending in different courts, a petition for  
5 coordination may be submitted to the Chairperson of the  
6 Judicial Council, by the presiding judge of any such court,  
7 or by any party to one of the actions after obtaining  
8 permission from the presiding judge, or by all of the  
9 parties plaintiff or defendant in any such action. A  
10 petition for coordination, or a motion for permission to  
11 submit a petition, shall be supported by ~~an affidavit~~ *a*  
12 *declaration* stating facts showing that the actions are  
13 complex, as defined by the Judicial Council in Section 19  
14 of the Standards of Judicial Administration, and that the  
15 actions meet the standards specified in Section 404.1. On  
16 receipt of a petition for coordination, the Chairperson of  
17 the Judicial Council may assign a judge to determine  
18 whether *the actions are complex, and if so, whether*  
19 *coordination of the actions is appropriate* ~~or appropriate,~~  
20 *or the Chairperson of the Judicial Council* may authorize  
21 the presiding judge of a court to assign the matter to  
22 judicial officers of the court *to make the determination* in  
23 the same manner as assignments are made in other civil  
24 cases.

25 Notwithstanding any other provision of law, when civil  
26 actions sharing a common question of fact or law are  
27 pending in a superior court and in a municipal court of  
28 the same county, the superior court may, on the motion  
29 of any party supported by an affidavit stating facts  
30 showing that the actions meet the standards specified in  
31 Section 404.1, order transfer from the municipal court  
32 and consolidation of the actions in the superior court.

33 SEC. 4. Section 404.2 of the Code of Civil Procedure  
34 is amended to read:

35 404.2. A judge assigned pursuant to Section 404 who  
36 determines that coordination is appropriate shall select  
37 the reviewing court having appellate jurisdiction if the  
38 actions to be coordinated are within the jurisdiction of  
39 more than one reviewing court. The assigned judge shall  
40 select the reviewing court which will promote the ends



1 of justice as determined under the standards specified in  
2 Section 404.1.

3 SEC. 5. Section 404.3 of the Code of Civil Procedure  
4 is amended to read:

5 404.3. (a) A judge assigned pursuant to Section 404  
6 who determines that coordination is appropriate shall  
7 order the actions coordinated, report that fact to the  
8 Chairperson of the Judicial Council, and the Chairperson  
9 of the Judicial Council shall either assign a judge to hear  
10 and determine the actions in the site or sites the assigned  
11 judge finds appropriate or authorize the presiding judge  
12 of a court to assign the matter to judicial officers of the  
13 court in the same manner as assignments are made in  
14 other civil cases.

15 (b) When an action pending in a superior court is  
16 sought to be coordinated with an action pending in a  
17 municipal court located in the same county, the presiding  
18 judge of the superior court may, as an alternative to  
19 coordination, order the municipal court action  
20 transferred to the superior court and consolidated with  
21 the superior court action.

22 SEC. 6. Section 404.4 of the Code of Civil Procedure  
23 is amended to read:

24 404.4. The presiding judge of any court in which there  
25 is pending an action sharing a common question of fact or  
26 law with actions coordinated pursuant to Section 404, on  
27 the court's own motion or the motion of any party  
28 supported by an affidavit stating facts showing that the  
29 action meets the standards specified in Section 404.1, or  
30 all the parties plaintiff or defendant in any such action,  
31 supported by an affidavit stating facts showing that the  
32 action meets the standards specified in Section 404.1, may  
33 request the judge assigned to hear the coordinated  
34 actions for an order coordinating the action. Coordination  
35 of the action shall be determined under the standards  
36 specified in Section 404.1.

37 SEC. 7. Section 404.8 of the Code of Civil Procedure  
38 is amended to read:

39 404.8. Expenses of the assigned judge, other necessary  
40 judicial officers and employees, and facilities for cases



1 coordinated under Section 404 shall be paid or  
2 reimbursed by the state from funds appropriated to the  
3 Judicial Council.

4 SEC. 8. Section 404.9 is added to the Code of Civil  
5 Procedure, to read:

6 404.9. Any duties of the presiding judge specified in  
7 this chapter may be delegated by the presiding judge to  
8 another judge of the court. The term “presiding judge,”  
9 as used in this chapter, includes the sole judge of a court  
10 having only one judge.

11 Notwithstanding any other provision of law, the  
12 Judicial Council shall provide by rule the practice and  
13 procedure for the transfer or coordination of civil actions  
14 in convenient courts under this chapter, including  
15 provision for giving notice and presenting evidence.

16 SEC. 9. This act is an urgency statute necessary for the  
17 immediate preservation of the public peace, health, or  
18 safety within the meaning of Article IV of the  
19 Constitution and shall go into immediate effect. The facts  
20 constituting the necessity are:

21 In order to enact important procedures for the  
22 coordination of civil actions for the purpose of enabling  
23 each court to manage its workload in an efficient manner,  
24 it is essential that this act take effect immediately.

