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CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 771

Introduced by Assembly Member Margett

February 26, 1997

An act to amend Sections 116.220, ~~116.340~~, and 116.570 of the Code of Civil Procedure, relating to small claims court.

LEGISLATIVE COUNSEL'S DIGEST

AB 771, as amended, Margett. Small claims court: jurisdiction.

Existing law specifies the jurisdiction of the small claims court to include various actions in which the demand does not exceed \$5,000, with specified exceptions. This jurisdiction also includes defendant guarantors who are required to respond based upon the default, actions, or omissions of another, if the demand does not exceed \$2,500.

~~This bill would increase the small claims court jurisdiction to \$5,000 in the case of defendant guarantors.~~

~~The bill would also provide that, on or after January 1, 2000, in an action filed against a principal and his or her guaranty or surety pursuant to a guarantor or suretyship agreement, the defendant guarantor has the right to receive a statement~~

~~of the factual basis for the claim and the amount of the claimed loss, upon written request, as specified. The bill would also authorize the guarantor to request a postponement of the hearing date if the plaintiff fails to respond to a timely made written request at least 15 days prior to the scheduled hearing date and the defendant guarantor is unable to secure the information necessary to properly defend the claim, as specified.~~

~~The bill also would make~~

This bill would increase the small claims court's jurisdiction over defendant guarantors to \$4,000, provided the action is filed on or after January 1, 2000, and the defendant guarantor charges a fee for their guarantor or surety services. The bill would require the court, on one occasion, to grant a postponement of the hearing date upon written request of the defendant guarantor, as specified. The bill would also make a statement of legislative intent and related changes.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. *The Legislature finds and declares that*
 2 *it is necessary and appropriate to increase the*
 3 *jurisdictional limit in the small claims court for claims*
 4 *against defendant guarantors who charge a fee for their*
 5 *guarantor or surety services in order to provide the*
 6 *parties with a more economical means of litigating these*
 7 *types of disputes, and to provide the benefits of the*
 8 *contract to the person paying a fee for the guarantor or*
 9 *surety services.*

10 SEC. 2. Section 116.220 of the Code of Civil Procedure
 11 is amended to read:

12 116.220. (a) The small claims court shall have
 13 jurisdiction in the following actions:

14 (1) Except as provided in subdivisions (c), (e), and
 15 (f), for recovery of money, if the amount of the demand
 16 does not exceed five thousand dollars (\$5,000).

17 (2) Except as provided in subdivisions (c), (e), and
 18 (f), to enforce payment of delinquent unsecured



1 personal property taxes in an amount not to exceed five
2 thousand dollars (\$5,000), if the legality of the tax is not
3 contested by the defendant.

4 (3) To issue the writ of possession authorized by
5 Sections 1861.5 and 1861.10 of the Civil Code if the
6 amount of the demand does not exceed five thousand
7 dollars (\$5,000).

8 (4) To confirm, correct, or vacate a fee arbitration
9 award not exceeding five thousand dollars (\$5,000)
10 between an attorney and client that is binding or has
11 become binding, or to conduct a hearing de novo
12 between an attorney and client after nonbinding
13 arbitration of a fee dispute involving no more than five
14 thousand dollars (\$5,000) in controversy, pursuant to
15 Article 13 (commencing with Section 6200) of Chapter 4
16 of Division 3 of the Business and Professions Code.

17 (b) In any action seeking relief authorized by
18 subdivision (a), the court may grant equitable relief in
19 the form of rescission, restitution, reformation, and
20 specific performance, in lieu of, or in addition to, money
21 damages. The court may issue a conditional judgment.
22 The court shall retain jurisdiction until full payment and
23 performance of any judgment or order.

24 (c) Notwithstanding subdivision (a), the small claims
25 court shall have jurisdiction over a defendant guarantor
26 who is required to respond based upon the default,
27 actions, or omissions of another, only if the demand does
28 not exceed (1) two thousand five hundred dollars
29 (\$2,500), or (2) on and after January 1, 2000, ~~five thousand~~
30 ~~dollars~~ ~~(\$5,000)~~ *four thousand dollars (\$4,000)*, if the
31 *defendant guarantor charges a fee for its guarantor or*
32 *surety services.*

33 (d) In any case in which the lack of jurisdiction is due
34 solely to an excess in the amount of the demand, the
35 excess may be waived, but any waiver shall not become
36 operative until judgment.

37 (e) Notwithstanding subdivision (a), in any action
38 filed by a plaintiff incarcerated in a Department of
39 Corrections facility or a Youth Authority facility, the small
40 claims court shall have jurisdiction over a defendant only



1 if the plaintiff has alleged in the complaint that he or she
 2 has exhausted his or her administrative remedies against
 3 that department, including compliance with Sections
 4 905.2 and 905.4 of the Government Code. The final
 5 administrative adjudication or determination of the
 6 plaintiff’s administrative claim by the department may be
 7 attached to the complaint at the time of filing in lieu of
 8 that allegation.

9 (f) In any action governed by subdivision (e), if the
 10 plaintiff fails to provide proof of compliance with the
 11 requirements of subdivision (e) at the time of trial, the
 12 judicial officer shall, at his or her discretion, either dismiss
 13 the action or continue the action to give the plaintiff an
 14 opportunity to provide such proof.

15 (g) For purposes of this section, “department”
 16 includes an employee of a department against whom a
 17 claim has been filed under this chapter arising out of his
 18 or her duties as an employee of that department.

19 ~~SEC. 2. Section 116.340 of the Code of Civil Procedure~~
 20 ~~is amended to read:~~

21 ~~116.340. (a) Service of the claim and order on the~~
 22 ~~defendant may be made by any one of the following~~
 23 ~~methods:~~

24 ~~(1) The clerk may cause a copy of the claim and order~~
 25 ~~to be mailed to the defendant by any form of mail~~
 26 ~~providing for a return receipt.~~

27 ~~(2) The plaintiff may cause a copy of the claim and~~
 28 ~~order to be delivered to the defendant in person.~~

29 ~~(3) The plaintiff may cause service of a copy of the~~
 30 ~~claim and order to be made by substituted service as~~
 31 ~~provided in subdivision (a) or (b) of Section 415.20~~
 32 ~~without the need to attempt personal service on the~~
 33 ~~defendant. For these purposes, substituted service as~~
 34 ~~provided in subdivision (b) of Section 415.20 may be~~
 35 ~~made at the office of the sheriff or marshal who shall~~
 36 ~~deliver a copy of the claim and order to any person~~
 37 ~~authorized by the defendant to receive service, as~~
 38 ~~provided in Section 416.90, who is at least 18 years of age,~~
 39 ~~and thereafter mailing a copy of the claim and order to~~
 40 ~~the defendant’s usual mailing address.~~



1 ~~(4) The clerk may cause a copy of the claim to be~~
2 ~~mailed, the order to be issued, and a copy of the order to~~
3 ~~be mailed as provided in subdivision (b) of Section~~
4 ~~116.330.~~

5 ~~(b) Service of the claim and order on the defendant~~
6 ~~shall be completed at least 10 days before the hearing date~~
7 ~~if the defendant resides within the county in which the~~
8 ~~action is filed, or at least 15 days before the hearing date~~
9 ~~if the defendant resides outside the county in which the~~
10 ~~action is filed.~~

11 ~~(e) Service by the methods described in subdivision~~
12 ~~(a) shall be deemed complete on the date that the~~
13 ~~defendant signs the mail return receipt, on the date of the~~
14 ~~personal service, as provided in Section 415.20, or as~~
15 ~~established by other competent evidence, whichever~~
16 ~~applies to the method of service used.~~

17 ~~(d) Service shall be made within this state, except as~~
18 ~~provided in subdivisions (e) and (f).~~

19 ~~(e) The owner of record of real property in California~~
20 ~~who resides in another state and who has no lawfully~~
21 ~~designated agent in California for service of process may~~
22 ~~be served by any of the methods described in this section~~
23 ~~if the claim relates to that property.~~

24 ~~(f) A nonresident owner or operator of a motor vehicle~~
25 ~~involved in an accident within this state may be served~~
26 ~~pursuant to the provisions on constructive service in~~
27 ~~Sections 17450 to 17461, inclusive, of the Vehicle Code~~
28 ~~without regard to whether the defendant was a~~
29 ~~nonresident at the time of the accident or when the claim~~
30 ~~was filed. Service shall be made by serving both the~~
31 ~~Director of the California Department of Motor Vehicles~~
32 ~~and the defendant, and may be made by any of the~~
33 ~~methods authorized by this chapter or by registered mail~~
34 ~~as authorized by Section 17454 or 17455 of the Vehicle~~
35 ~~Code.~~

36 ~~(g) If an action is filed against a principal and his or her~~
37 ~~guaranty or surety pursuant to a guarantor or suretyship~~
38 ~~agreement, a reasonable attempt shall be made to~~
39 ~~complete service on the principal. If service is not~~



1 completed on the principal, the action shall be
 2 transferred to the court of appropriate jurisdiction.

3 (h) (1) On or after January 1, 2000, in an action filed
 4 against a principal and his or her guaranty or surety
 5 pursuant to a guarantor or suretyship agreement, the
 6 defendant guarantor shall have the right to receive, upon
 7 written request, a short statement of the factual basis for
 8 the claim, and the amount of the claimed loss. This
 9 information shall be provided by the plaintiff, pursuant to
 10 a timely made written request, at least 15 days prior to the
 11 scheduled hearing date.

12 (2) If the plaintiff fails to respond to a timely made
 13 written request at least 15 days before the scheduled
 14 hearing date, and the defendant guarantor, after a good
 15 faith effort, is unable to secure the information necessary
 16 to properly defend the claim, the defendant guarantor
 17 may request a postponement pursuant to Section 116.570.
 18

19 SEC. 3. Section 116.570 of the Code of Civil Procedure
 20 is amended to read:

21 116.570. (a) Any party may submit a written request
 22 for postponement of a hearing date.

23 (1) The written request may be made either by letter
 24 or on a form adopted or approved by the Judicial Council.

25 (2) On the date of making the written request, the
 26 requesting party shall mail or personally deliver a copy to
 27 each of the other parties to the action.

28 (3) (A) If the court finds that the interests of justice
 29 would be served by postponing the hearing, the court
 30 shall postpone the hearing, and shall notify all parties by
 31 mail of the new hearing date, time, and place.

32 (B) ~~If the court finds that a plaintiff has failed to~~
 33 ~~respond in a timely manner to a written request of a~~
 34 ~~defendant guarantor, made pursuant to Section 116.340,~~
 35 ~~and after a good faith effort, the defendant guarantor is~~
 36 ~~unable to secure the information necessary to properly~~
 37 ~~defend the claim, the court may postpone the hearing~~
 38 ~~date.~~

39 (B) *On one occasion, upon the written request of a*
 40 *defendant guarantor, the court shall postpone the*



1 *hearing for at least 30 days, and the court shall take this*
2 *action without a hearing. Nothing in this subparagraph,*
3 *however, shall limit the discretion of the court to grant*
4 *additional postponements under subparagraph (A).*

5 (4) The court shall provide a prompt response by mail
6 to any person making a written request for postponement
7 of a hearing date under this subdivision.

8 (b) If service of the claim and order upon the
9 defendant is not completed within the number of days
10 before the hearing date required by subdivision (b) of
11 Section 116.340, and the defendant has not personally
12 appeared and has not requested a postponement, the
13 court shall postpone the hearing for at least 15 days. If a
14 postponement is ordered under this subdivision, the clerk
15 shall promptly notify all parties by mail of the new
16 hearing date, time, and place.

17 (c) Nothing in this section limits the inherent power
18 of the court to order postponements of hearings in
19 appropriate circumstances.

20 (d) A fee of ten dollars (\$10) shall be charged and
21 collected for the filing of a request for postponement and
22 rescheduling of a hearing date after timely service
23 pursuant to subdivision (b) of Section 116.340 has been
24 made upon the defendant.

