AMENDED IN ASSEMBLY APRIL 15, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 663

Introduced by Assembly Member Jones
(~~Coauthor: Assembly Member Coto~~ *Coauthors: Assembly Members Blumenfield, Coto, Mendoza, John A. Perez, and Portantino*)
(~~Coauthor: Senator Oropeza~~ *Coauthors: Senators DeSaulnier and Oropeza*)

February 25, 2009

An act to add Article 9.6 (commencing with Section 6159.5) to Chapter 4 of Division 3 of the Business and Professions Code, to add Section 367.6 to the Code of Civil Procedure, to add Sections 756 and 756.5 to the Evidence Code, and to amend, repeal, and add Section 68563 of the Government Code, relating to legal services.

LEGISLATIVE COUNSEL'S DIGEST

AB 663, as amended, Jones. Legal aid: court interpreters: appearances by telephone.

(1) Existing law, the State Bar Act, provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation. Existing law provides that it is the duty of an attorney to, among other things, never reject, for any consideration personal to himself or herself, the cause of the defenseless or oppressed. Existing law provides that a lawyer may fulfill his or her ethical commitment to provide pro bono services, in part, by providing financial support to organizations providing free legal services to persons of limited means.

This bill would prohibit a person or organization that is not a specified type of legal aid organization, as defined, from using the term "legal aid," or any confusingly similar name in any firm name, trade name,

fictitious business name, or other designation, or on any advertisement, letterhead, business card, or sign. The bill would subject a person or organization that violates this prohibition to specified civil liability.

(2) Existing law provides that, in all general civil cases, as defined, a party who has provided notice may appear by telephone at certain conferences, hearings, and proceedings, except as specified.

This bill would require the Judicial Council, on or before July 1, 2010, and periodically as appropriate, to enter into one or more master agreements with a vendor or vendors to provide for telephone appearances in civil cases under the provisions described above, or as otherwise permitted by law. The bill would impose requirements regarding those master agreements, including that the vendor charge a party for an appearance by telephone in an amount set by the Judicial Council, and that the vendor pay to the state $15 for each appearance by telephone and a proportionate share of an amount equal to the total revenue received from vendors by all courts for providing telephone appearances for the 2007–08 fiscal year. The bill would require those funds to be deposited in the Trial Court Trust Fund and used for specified purposes.

(3) Existing law requires that, when a witness is incapable of understanding the English language or is incapable of expressing himself or herself in the English language so as to be understood directly by counsel, court, and jury, an interpreter be sworn to interpret for him or her.

This bill would require the Judicial Council, by September 1, 2010, to establish a working group to review, identify, and develop best practices to provide interpreters in civil actions and proceedings, as specified. The bill would require the Judicial Council to select up to 5 courts to participate in a pilot project, to commence on July 1, 2011, to provide interpreters in civil proceedings. The bill would provide that the initial pilot courts shall participate until June 30, 2014, and would require the Judicial Council to consider whether a pilot court shall continue participating in the project and whether to select another court or additional courts. The pilot project would be funded from the revenue derived from the telephonic appearance fee described above.

(4) Existing law requires the Judicial Council to conduct a study of language and interpreter use and need in court proceedings, with commentary, and to report its findings and recommendations to the Governor and to the Legislature every 5 years. Existing law requires that this study serve as the basis for determining the need to establish

interpreter programs and certification and establishing these programs and examinations through the normal budgetary process.

This bill would require, in addition, as of January 1, 2011, that the study described above serve as the basis of determining the need for and use of interpreters in civil and criminal court proceedings. The bill would require trial courts to collect and report the use of interpreters in all criminal and civil proceedings in the manner specified by the Judicial Council.

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

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

1 SECTION 1. The Legislature hereby finds and declares all of
2 the following:
3 (a) California is emblematic of the American dream, a place of
4 stunning natural beauty, a seat of international commerce, and a
5 land of unparalleled opportunity. As a result, California is the most
6 populous and demographically diverse state in the nation, a meeting
7 place of cultures, ethnicities, and ideas unlike any other in the
8 world. Of the state's 34 million people, about 26 percent (roughly
9 8.8 million people) are foreign born. Californians speak more than
10 220 languages, and 40 percent of the state's population speaks a
11 language other than English in the home. This extraordinary
12 diversity is among the state's greatest assets and has helped make
13 California an international leader in business, the arts,
14 entertainment, engineering, medicine, and other fields. The state's
15 diversity also poses unique challenges for the delivery of
16 government services, particularly for the courts.
17 (b) For Californians not proficient in English, the prospect of
18 navigating the legal system is daunting, especially for the growing
19 number of parties who do not have access to legal services and
20 therefore have no choice but to represent themselves in court,
21 which is a virtually impossible task for people who are unable to
22 understand the proceedings. Nearly seven million Californians
23 cannot access the courts without significant language assistance,
24 cannot understand pleadings, forms, or other legal documents,
25 cannot communicate with clerks or court staff, and cannot
26 understand or participate meaningfully in court proceedings, much
27 less effectively present their cases without a qualified interpreter.

People with limited English proficiency are also often members of groups whose cultural traits or economic circumstances make them more likely to be subjected to legal problems, in part because perpetrators recognize their victims' limited ability to access judicial protection. It is essential to provide English learners and other non-English-speaking litigants with interpreters in order to provide full and equal access to our justice system without regard to language.

(c) The Legislature has previously recognized that the number of persons with limited English proficiency in California is increasing and recognized the need to provide equal justice under the law to all California residents and *the need* to provide for their special needs in their relations with the judicial and administrative law ~~system~~ *systems*. The Legislature has likewise recognized that the effective maintenance of a democratic society depends on the right and ability of its residents to communicate with their government and the right and ability of the government to communicate with them.

(d) Inadequate resources to assist litigants with limited English proficiency affect the court's ability to function properly, causing delays in proceedings for all court users, inappropriate defaults, and faulty interpretation that can ultimately subvert justice. Court interpreter services are a core court function. Our judicial system relies on the adversarial process in which neutral arbiters decide disputes based upon competing presentations of facts and law. Conducting court proceedings when one party is incapable of fully participating significantly impairs the quality and efficiency of the process and its results, including compliance with court orders. The courts have made significant efforts to assist litigants with limited English proficiency, including steps to increase the number of certified and registered interpreters and to provide interpreters in civil cases, if resources are available. Nevertheless, court proceedings are required to be conducted in English, and most crucial court forms and documents are available only in English, while the number of skilled interpreters has actually declined over the past decade and the number of persons requiring interpreter services has increased. As a result, a qualified interpreter is not provided in most civil proceedings.

(e) The inability to respond to the language needs of parties in court impairs trust and confidence in the judicial system and

undermines efforts to secure justice for all. The authority of the courts depends on public perceptions of fairness and accessibility. Any significant erosion of public trust and confidence in the fairness of judicial outcomes threatens the future legitimacy of the legal system. By excluding a large segment of the population from participation in an institution that shapes and reflects our values, we threaten the integrity of the judicial process. Resentment fostered by the inability to access the benefits of the court system can ultimately impair enforcement of judicial decrees and attenuate the rule of law.

(f) Reliance on untrained interpreters, such as family members or children, can lead to faulty translations and threaten the court's ability to ensure justice. Court interpretation is extremely difficult and takes a rare combination of skills, experience, and training. Apart from the possibility of fraud, unqualified interpreters often fail to accurately and comprehensively convey questions and distort testimony by omitting or adding information, or by stylistically altering the tone and intent of the speaker, thereby preventing courts from hearing the testimony properly. These problems compromise the factfinding process and can result in genuine injustice.

(g) An overwhelming number of Californians believe that interpreters should be made available to assist non-English speakers in all court proceedings, and that interpreters should be provided free of charge to low-income non-English speakers.

(h) California law currently mandates appointment of an interpreter for all witnesses in civil cases, and for parties with hearing impairments. In addition, California statutes mandate the appointment of an interpreter in adjudicative proceedings before state agencies, boards, and commissions at no charge to the parties whenever a party or the party's witness does not proficiently speak or understand English. Other states, by contrast, provide both witnesses and parties with a right to a court-appointed interpreter in all civil matters at no cost to the party.

SEC. 2. The Legislature finds and declares that there continues to be a shortage in the availability of certified and registered interpreters in the state courts that impacts the state's ability to provide meaningful access to justice for all court users. It is the intent of the Legislature that every effort be made to recruit and retain qualified interpreters to work in the state courts, and that

the Judicial Council make further efforts to improve and expand court interpreter services and address the shortage of qualified court interpreters.

SEC. 3. Article 9.6 (commencing with Section 6159.5) is added to Chapter 4 of Division 3 of the Business and Professions Code, to read:

Article 9.6. Legal Aid Organizations

6159.5. The Legislature hereby finds and declares all of the following:

(a) Legal aid programs provide a valuable service to the public by providing free legal services to the poor.

(b) Private, for-profit organizations that have no lawyers have been using the name "legal aid" in order to obtain business from people who believe they are obtaining services from a nonprofit legal aid organization.

(c) Public opinion research has shown that the term "legal aid" is commonly understood by the public to mean free legal assistance for the poor.

(d) Members of the public seeking free legal assistance are often referred by telephone and other directory assistance information providers to for-profit organizations that charge a fee for their services, and there are a large number of listings in many telephone directories for "legal aid" that are not nonprofit but are actually for-profit organizations.

(e) The Los Angeles Superior Court has held that there is a common law trademark on the name "legal aid," which means legal services for the poor provided by a nonprofit organization.

(f) The public will be benefited if for-profit organizations are prohibited from using the term "legal aid," in order to avoid confusion.

6159.51. For purposes of this article, "legal aid organization" means a nonprofit organization that provides civil legal services for the poor without charge.

6159.52. It is unlawful for any person or organization to use the term "legal aid," "legal aide," or any confusingly similar name in any firm name, trade name, fictitious business name, or any other designation, or on any advertisement, letterhead, business card, or sign, unless the person or organization is a legal aid

organization subject to fair use principles for nominative, descriptive, or noncommercial use.

6159.53. (a) Any consumer injured by a violation of Section 6159.52 may file a complaint and seek injunctive relief, restitution, and damages in the superior court of any county in which the defendant maintains an office, advertises, or is listed in a telephone directory.

(b) A person who violates Section 6159.52 shall be subject to an injunction against further violation of Section 6159.52 by any legal aid organization that maintains an office in any county in which the defendant maintains an office, advertises, or is listed in a telephone directory. In an action under this subdivision, it is not necessary to allege or prove actual damage to the plaintiff, and irreparable harm and interim harm to the plaintiff shall be presumed.

(c) Reasonable attorney's fees shall be awarded to the prevailing plaintiff in any action under this section.

SEC. 4. Section 367.6 is added to the Code of Civil Procedure, to read:

367.6. (a) On or before July 1, 2010, and periodically as appropriate, the Judicial Council shall enter into one or more master agreements with a vendor or vendors to provide for telephone appearances in civil cases under Section 367.5, or as otherwise permitted by law.

(b) Each master agreement shall include the following terms:

(1) The vendor shall charge a party for an appearance an amount set by the Judicial Council, which shall comply with the provisions of subdivision (c). The vendor shall report to the Judicial Council information regarding the number of liens asserted by the vendor for waived charges pursuant to subdivision (c), and the total amount so collected.

(2) The vendor shall indemnify and hold the court harmless from claims arising from a failure or interruption of service.

(3) Except as provided by paragraph (2) of subdivision (c), for each appearance a party makes by telephone, the vendor shall pay to the state fifteen dollars ($15), which shall be transmitted quarterly to be deposited in the Trial Court Trust Fund and used by the Judicial Council for the expenses of the Judicial Council in implementing and administering the civil interpreter pilot program under Sections 756 and 756.5 of the Evidence Code and for

reimbursement to those courts providing civil interpreters pursuant to those sections.

(4) In addition to the amount provided by paragraph (3), all vendors shall pay to the state, on a quarterly basis, an amount equal to one-quarter of the total amount of revenue received from all vendors by all courts for providing telephone appearances for the 2007–08 fiscal year. Each vendor shall pay a proportionate share of this total amount. The Judicial Council shall notify each vendor, on a quarterly basis, of its share of this amount, which shall be based on that vendor's percentage of the total number of appearances by telephone during the previous quarter. Following receipt of the notice, each vendor shall transmit its share of the amount to the state for deposit in the Trial Court Trust Fund to provide funding for the prevention of significant disruption in services in courts where those services were previously funded by revenue received from providing telephone appearances.

(5) The master agreement shall include other terms as the Judicial Council deems appropriate. These terms may include, but are not limited to, a provision providing the circumstances in which the charge shall be made for a telephone appearance canceled by the party.

(c) The amount the vendor shall charge a party for an appearance shall be uniform statewide.

(1) The Judicial Council shall establish the amount to be charged a party for an appearance.

(2) If the party has received a waiver of fees because he or she is proceeding in forma pauperis under Section 68511.3 of the Government Code, the vendor shall not charge that party for an appearance and shall not pay fifteen dollars ($15) as otherwise required by paragraph (3) of subdivision (b). The vendor shall be granted a lien in the amount of the waived charge on any judgment that the party may receive. Notice of the lien shall be given to the parties under rules and on forms adopted by the Judicial Council. If the vendor later receives the amount previously waived, for each appearance for which the vendor receives payment, the vendor shall transmit fifteen dollars ($15) to the state for deposit as provided in paragraph (3) of subdivision (b). If the charge has been waived in part, or the amount recovered by the vendor is not the full amount, the amount transmitted to the state shall be reduced proportionally.

(3) The Judicial Council may establish an additional amount to be charged, which shall also be uniform statewide, when a party requests service from a vendor within a short period of time prior to the hearing, as determined by the Judicial Council.

(d) If a court elects to make telephone appearances available through one or more vendors, the court shall enter into one or more participation agreements under one or more of the master agreements entered into by the Judicial Council.

(e) If a court elects to provide telephone appearance services to parties directly, either in addition to or in lieu of a participation agreement, the court shall charge a party no more than the same amount that a vendor may charge under the master agreements provided for in subdivision (a), subject to the same conditions, waivers, and transmission of amounts to the state as apply to a vendor.

(f) Notwithstanding any other provision in this section, a judicial officer is authorized to allow the appearance by telephone of parties in that judicial officer's courtroom without the requirement of using a vendor or paying any amount for the appearance by telephone.

SEC. 5. Section 756 is added to the Evidence Code, to read:

756. (a) (1) On or before September 1, 2010, the Judicial Council shall establish a working group to review, identify, and develop best practices to provide interpreters in civil actions and proceedings. The best practices developed by the working group shall be used in carrying out the pilot project described in Section 756.5.

(2) In developing the best practices, the working group shall consider ways to maximize the use of existing resources, calendaring issues, the effective use of technology, and other practices that will assist courts effectively deploying interpreters in civil proceedings.

(3) Best practices shall include training guidelines to be utilized by courts participating in the pilot project described in Section 756.5 to ensure that court interpreters receive training necessary to comply with the requirements of Section 756.5. Training activities may include, but are not limited to, video broadcasts, Internet-based training, and dissemination of written materials.

(b) The working group shall include court executive officers, presiding judges, interpreter coordinators, interpreters, at least two

of whom shall be nominated by an exclusive representative of interpreter employees, representatives of legal services organizations and organizations representing individuals with limited English proficiency, and others the Judicial Council determines necessary. The working group shall also include a representative from a rural community in order to highlight the particular challenges of providing court interpreter services in rural communities.

SEC. 6. Section 756.5 is added to the Evidence Code, to read:

756.5. (a) (1) The Judicial Council shall select up to five courts to participate in a pilot project, which shall commence on July 1, 2011, to provide interpreters in civil proceedings as specified in this section. The pilot courts shall be selected from among those participating in the working group described in Section 756.

(2) The initial pilot courts shall participate in the pilot project until June 30, 2014. The Judicial Council, in consultation with *the* pilot courts, shall consider whether a pilot court shall continue participating in the project and whether to select another court or additional courts to join the project. Courts selected to join the project shall participate for three years or another duration determined by the Judicial Council, in consultation with the pilot courts. In the selection of the pilot courts, the Judicial Council shall assess the court's capacity for success.

(b) The pilot project shall be conducted for the purpose of creating models for effectively providing interpreters in civil matters, implementing best practices, and ascertaining the need for additional interpreter resources and funding to provide interpreters in civil matters on a statewide basis. The pilot project shall be funded from the revenue derived from the telephonic appearance fee pursuant to Section 367.6 of the Code of Civil Procedure.

(c) Interpreters shall be provided by the pilot courts as follows:

(1) The pilot courts shall provide interpreters to any party proceeding in forma pauperis, pursuant to Section 68511.3 of the Government Code, who is present and who does not proficiently speak or understand the English language for the purpose of interpreting the proceedings in a language that the party understands and assisting communications between the party, his or her attorney, and the court in the following types of actions and proceedings:

(A) Actions and proceedings under Section 527.6 of the Code of Civil Procedure.

(B) Actions and proceedings brought under the Family Code.

(C) Actions and proceedings relating to unlawful detainer.

(D) Actions and proceedings involving the appointment or termination of a probate guardian or conservator.

(E) Actions or proceedings under the Elder Abuse and Dependent Adult Civil Protection Act (Chapter 11 (commencing with Section 15600) of Part 3 of Division 9 of the Welfare and Institutions Code).

(2) The pilot courts shall provide interpreters in other civil actions or proceedings or in matters in which the party is not appearing in forma pauperis if there is sufficient funding and interpreter resources available to meet all the interpretation needs in *the* actions and proceedings described in paragraph (1).

(3) The fees of interpreters utilized under this section shall be paid for any party proceeding in forma pauperis pursuant to Section 68511.3 of the Government Code.

(4) The pilot courts shall develop a methodology for deploying available interpreter resources if funds provided pursuant to subdivision (b) are insufficient to meet the needs for court interpreters in all of the actions and proceedings set forth in paragraph (1), or if, after diligent search, a sufficient number of interpreters is not available. The pilot courts shall not consider the order in which the case types are listed in paragraph (1) in developing this methodology. For purposes of developing this methodology, the pilot courts shall consider the most effective way to deploy limited resources. A pilot court shall not be obligated to provide services in the areas set forth in paragraph (1) beyond the services that can be provided with the funding provided by the telephonic appearance fee pursuant to Section 367.6 of the Code of Civil Procedure.

(5) The interpreter shall be certified or registered pursuant to Article 4 (commencing with Section 68560) of Chapter 2 of Title 8 of the Government Code. Subdivisions (c) and (d) of Section 755 of the Evidence Code shall apply to proceedings described in this section.

(d) This section shall not be construed to negate or limit any right to an interpreter in a civil action or proceeding otherwise provided by state or federal law.

(e) This section shall not be construed to alter the right of an individual to an interpreter in criminal, traffic or other infraction, juvenile, or mental competency actions or proceedings.

(f) This section shall not result in a reduction in staffing or compromise the quality of interpreting services in criminal, juvenile, or other types of matters in which interpreters are provided.

(g) (1) On or before September 1, 2013, the Judicial Council shall report to the Legislature its findings and recommendations based on the experiences of the model pilot program. The report shall include findings and recommendations regarding the need for additional interpreters and funding, or other resources, to provide interpreters in both of the following:

(A) Case types that were the subject of the pilot.

(B) All civil actions and proceedings.

(2) The report shall also describe, to the extent possible, the impact of the availability of interpreters on access to justice and on court administration and efficiency.

(3) The report shall also describe the factors affecting selection of pilot courts, such as the court's capacity for success, innovation, and efficiency, including, but not limited to, strategies for collaborating with organizations representing stakeholders, utilizing local resources, and methods for addressing the availability of qualified interpreters.

(h) Nothing in this chapter shall limit or restrict courts from providing interpreters in civil proceedings when those services are already being provided or in matters in which the judicial officer deems it necessary to appoint an interpreter.

(i) Nothing in this chapter shall alter or negate the application of the Trial Court Interpreter Employment and Labor Relations Act (Chapter 7.5 (commencing with Section 71800) of Title 8 of the Government Code) to the provision of interpreters pursuant to this section.

SEC. 7. Section 68563 of the Government Code is amended to read:

68563. (a) The Judicial Council shall conduct a study of language and interpreter use and need in court proceedings, with commentary, and shall report its findings and recommendations to the Governor and to the Legislature not later than July 1, 1995, and every five years thereafter. The study shall serve as a basis for

(1) determining the need to establish interpreter programs and certification examinations, and (2) establishing these programs and examinations through the normal budgetary process. The study shall also serve as a basis for (1) determining ways in which the Judicial Council can make available to the public, through public service announcements and otherwise, information relating to opportunities, requirements, testing, application procedures, and employment opportunities for interpreters, and (2) establishing and evaluating these programs through the normal budgetary process.

(b) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 8. Section 68563 is added to the Government Code, to read:

68563. (a) The Judicial Council shall conduct a study of language and interpreter use and need in court proceedings, with commentary, and shall report its findings and recommendations to the Governor and to the Legislature not later than July 1, 2016, and every five years thereafter.

(b) (1) The study shall serve as a basis for all of the following:

(A) Determining the need to establish interpreter programs and certification examinations.

(B) Establishing these programs and examinations through the normal budgetary process.

(C) Demonstrating the need for and use of interpreters in civil and criminal court proceedings, and the extent to which that need is being met.

(2) To assist with the completion of the study, trial courts shall collect and report the use of interpreters in all criminal and civil proceedings in the manner specified by the Judicial Council, including, but not limited to, the following data:

(A) The extent of the need for, and the languages for which parties need, an interpreter, by type of action or proceeding, and whether the party is appearing in propria persona or in forma pauperis.

(B) The languages for which an interpreter is provided, by type of action or proceeding, and whether the party is appearing in propria persona or in forma pauperis.

(C) The extent to which the interpreters provided are court employees or independent contractors.

(D) The extent to which interpreters are appointed pursuant to subdivision (c) of Section 68561.

(E) The extent to which interpreters are provided pursuant to subdivision (d) of Section 68561.

(c) The study shall also serve as a basis for both of the following:

(1) Determining ways in which the Judicial Council can make available to the public, through public service announcements and otherwise, information relating to opportunities, requirements, testing, application procedures, and employment opportunities for interpreters.

(2) Establishing and evaluating these programs through the normal budgetary process.

(d) This section shall become operative on January 1, 2011.

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