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AB-2791 Sheriffs: service of process and notices. (2021-2022)

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Assembly Bill No. 2791

CHAPTER 417

An act to add Sections 7927.430, 26666, 26666.2, and 26666.10 to, and to add, repeal, and add Section 26666.5 of, the Government Code, relating to local government.

[Approved by Governor September 18, 2022. Filed with Secretary of State September 18, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2791, Bloom. Sheriffs: service of process and notices.

(1) Existing law, the California Public Records Act, requires public records, as defined, to be open to the public for inspection and made promptly available to any person, except as specified.

The bill would add an exemption from disclosure under the California Public Records Act for a Judicial Council form provided to request service, and the information contained therein, as specified.

(2) Existing law allows writs, notices, or other process issued by superior courts in civil actions or proceedings to be served by any duly qualified and acting marshal or sheriff of any county in the state, subject to the Code of Civil Procedure.

This bill would require a marshal or sheriff, including their department or office, to accept an electronic signature and would prohibit a marshal or sheriff, including their department or office, from requiring an original or wet signature on a document requesting the marshal or sheriff, or their department or office, to serve court documents, or on a summons, order, or other notice to be served. The bill would prohibit a marshal or sheriff, including their department or office, from reviewing the substance of a summons, order, or other notice except for specified criteria.

The bill would require the Judicial Council to create, on or before January 1, 2024, a form or forms required to be used by litigants in civil actions or proceedings to request service of process or notice by a marshal or sheriff, including their department or office. The bill would require a marshal or sheriff, including their department or office, to accept an electronic signature and would prohibit a marshal or sheriff, including their department or office, from requiring an original or wet signature on the form or forms. The bill would prescribe certain requirements for the form or forms. The bill would require all requests to a marshal or sheriff, including their department or office, for service of a notice or other process under these provisions to be made on the Judicial Council form or forms and would prohibit a sheriff or marshal, including their department or office, from requiring completion of a form or request other than the Judicial Council form or forms.

The bill would, beginning on January 1, 2024, and until January 1, 2026, require a marshal or sheriff, including their department or office, to accept transmission by email, fax, or in-person delivery of the Judicial Council form or forms described above and of a summons, order, or other notice to be served in any case in which a litigant who has been granted a fee waiver by an order on court fee waiver or is otherwise exempt by law from paying fees. The bill would authorize any person to deliver the forms for

service to the marshal or sheriff, including their department or office, on behalf of a litigant. The bill would prohibit a marshal or sheriff, including their department or office, from charging and collecting a fee for the electronic transmission of these documents.

The bill would, beginning on January 1, 2026, require a marshal or sheriff, including their department or office, to accept, in all cases, transmission by email, fax, or in-person delivery of the Judicial Council form or forms described above and of a summons, order, or other notice to be served. The bill would, beginning on January 1, 2026, authorize a marshal or sheriff, including their department or office, to charge a fee for the electronic transmission of documents up to the actual cost incurred in processing the transmission, except as specified.

By requiring marshals and sheriffs, including their department or office to allow notices and other process to be transmitted to the department or office by email or fax, thereby imposing a higher level of service on local government, this bill would impose a state-mandated local program

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 7927.430 is added to the Government Code, to read:

7927.430. A Judicial Council form provided to request service pursuant to Section 26666.10, and the information contained therein, is confidential and shall not be disclosed pursuant to this division.

SEC. 2. Section 26666 is added to the Government Code, to read:

26666. (a) Notwithstanding any other law, a marshal or sheriff, including their department or office, shall comply with this section for service of process and notice. As used in this section, "notice" has the same meaning as defined in Section 26660.

(b) A marshal or sheriff, including their department or office, shall accept an electronic signature and shall not require an original or wet signature on a document requesting the marshal or sheriff, or their department or office, to serve court documents, or on a summons, order, or other notice to be served.

SEC. 3. Section 26666.2 is added to the Government Code, to read:

26666.2. Except for the following criteria, a marshal or sheriff, including their department or office, shall not review the substance of a summons, order, or other notice:

(a) The applicable form or forms described in Section 26666.10 are present and required sections, if any, are complete.

(b) A case number appears on the summons, order, or other notice. Blank forms, such as responsive forms, are not required to include a case number.

(c) An order to be served, including a restraining order, bears the signature of the judge, including, but not limited to, a stamp or other endorsement or representation of the signature of a judge, certification of a clerk, or court endorsement or seal, and the information on the order materially matches the information regarding the person to be served on the form or forms described in Section 26666.10.

SEC. 4. Section 26666.5 is added to the Government Code, to read:

26666.5. (a) A marshal or sheriff, including their department or office, shall accept transmission by email, fax, or in-person delivery of the form or forms described in Section 26666.10, and of a summons, order, or other notice to be served in any case in which the court has granted a fee waiver by an order on court fee waiver or the litigant is otherwise exempt from paying fees for

service of a summons, order, or other notice under any law, including, but not limited to, subdivision (y) of Section 527.6, subdivision (x) of Section 527.8, or subdivision (x) of Section 527.85 of the Code of Civil Procedure, Division 10 (commencing with Section 6200) of the Family Code, paragraph (4) of subdivision (b) of Section 6103.2, Section 26721 or 70617 of the Government Code, Section 18121 of the Penal Code, 34 U.S.C. Sec. 10450(a)(1), or 34 U.S.C. Sec. 10461(c)(1)(D). Any person may deliver the forms for service to the marshal or sheriff, including their department or office, on behalf of a litigant.

(b) A marshal or sheriff, including their department or office, shall not charge or collect a fee for the electronic transmission of documents described in subdivision (a).

(c) This section shall not be construed to impede a private process server's rights or obligations, including, but not limited, the ability to serve a summons, order, or other notice as requested by a client.

(d) This section shall become operative on January 1, 2024.

(e) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

SEC. 5. Section 26666.5 is added to the Government Code, to read:

26666.5. (a) A marshal or sheriff, including their department or office, shall accept transmission by email, fax, or in-person delivery of the form or forms described in Section 26666.10, and of a summons, order, or other notice to be served. Any person may deliver the forms for service to the marshal or sheriff, including their department or office, on behalf of a litigant.

(b) (1) Subject to paragraph (2), a marshal or sheriff, including their department or office, shall not charge or collect a fee for the electronic transmission of documents described in subdivision (a) that exceeds the actual cost incurred in processing the transmission.

(2) No fee for the electronic transmission of documents shall be imposed on a litigant who has been granted a fee waiver by an order on court fee waiver or is otherwise exempt from paying fees for service of a summons, order, or other notice under any law, including, but not limited to, subdivision (y) of Section 527.6, subdivision (x) of Section 527.8, or subdivision (x) of Section 527.85 of the Code of Civil Procedure, Division 10 (commencing with Section 6200) of the Family Code, paragraph (4) of subdivision (b) of Section 6103.2, Section 26721 or 70617 of the Government Code, Section 18121 of the Penal Code, 34 U.S.C. Sec. 10450(a)(1), or 34 U.S.C. Sec. 10461(c)(1)(D).

(c) This section shall not be construed to require a marshal or sheriff, including their department or office, to attempt service of documents prior to receipt of any fees owed pursuant to this chapter.

(d) This section shall not be construed to impede a private process server's rights or obligations, including, but not limited, the ability to serve a summons, order, or other notice as requested by a client.

(e) This section shall become operative on January 1, 2026.

SEC. 6. Section 26666.10 is added to the Government Code, to read:

26666.10. (a) On or before January 1, 2024, the Judicial Council shall create a statewide form or forms to be used by litigants in civil actions or proceedings to request service of process or notice by a marshal or sheriff, including their department or office.

(b) A marshal or sheriff, including their department or office, shall accept an electronic signature and shall not require an original or wet signature on the form or forms created pursuant to this section.

(c) The Judicial Council form or forms shall do all of the following:

(1) Require the name, address, and description of the person to be served and the signature of the litigant requesting service, or their attorney of record, and may require any other pertinent information for service.

(2) Indicate on the form which fields on the form, if any, are required.

(3) Allow the litigant's or their attorney of record's signature to be made electronically.

(d) Upon completion of the forms described in subdivision (a), requests to a marshal or sheriff, including their department or office, to serve a notice or other process pursuant to Section 26666 shall be made on the Judicial Council form or forms. No sheriff or marshal, including their department or office, shall require completion of a form or request other than the Judicial Council form or forms described in this section.

(e) Pursuant to Section 7927.430, the Judicial Council form or forms and the information contained therein shall not be subject to disclosure and shall be kept confidential.

SEC. 7. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 8. The Legislature finds and declares that Section 1 of this act, which adds Section 7927.430 of the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect the privacy and safety of litigants who, directly or through another person, seek the assistance of a sheriff's department in serving notice and process, it is necessary to limit the disclosure of the litigant's personal information to the public.