

Memorandum 81-24

Subject: Study D-300 - Enforcement of Judgments (AB 707)

BACKGROUND

Assembly Bill 707 was introduced to effectuate the Law Revision Commission's Tentative Recommendation Proposing the Enforcement of Judgments Law. We have sent you a copy of the printed Tentative Recommendation. A copy of Assembly Bill 707 is attached. We need to have the bill amended and reprinted after the July meeting so interested persons and organizations can review the amended bill. We must obtain the approval of the Assembly Committee on Judiciary early in January 1982 or the bill is dead.

We have received a number of letters suggesting primarily technical revisions in AB 707. In addition, members of the staff met for two days with 23 persons representing various state agencies, local public entities, State Bar committees and sections, and other interested organizations. Suggestions for technical and substantive amendments were received from these persons, some of whom have also sent letters containing their suggestions. The Executive Secretary also met with representatives of the California Association of Collectors; we will consider the suggestions of that Association in the supplement to this memorandum. Letters received after this memorandum was prepared will also be considered in the supplement to this memorandum.

We have accepted in the attached staff recommended amendments the substance of the vast majority of the suggestions we received as well as some revisions that the staff concluded were desirable. We do not in this memorandum discuss each of the amendments suggested in the attached letters, nor do we discuss those amendments suggested in the attached letters that are not included in the staff recommended amendments. When the bill is reprinted as amended, we will again consider suggestions for revision of the amended bill and at that time the Commission will consider any renewed suggested revisions that are not included in the staff suggested amendments.

Attached to this memorandum are staff suggested amendments to Assembly Bill 707. (Additional staff recommendations for amendments will be set out in the supplement to this memorandum.) The vast majority of the attached staff suggested amendments are technical and do not involve any significant policy decision and are not discussed in this memorandum. Nevertheless, we suggest that you check the staff proposed amendments against the bill attached and raise any questions you have at the meeting. You should also examine the attached letters. When the bill is reprinted, it can be more easily reviewed by interested persons and we can then again consider any comments we receive on these technical amendments.

SIGNIFICANT POLICY ISSUES

The following discussion seeks to identify the staff recommended amendments that present a significant policy issue.

Effective Date of Bill

In recognition of the fact that the bill will not be enacted until 1982, the effective date of the bill is changed by various staff recommended amendments from January 1, 1983, to July 1, 1983. This will allow time for the law to be published in the pocket parts to the code and time for development of forms and for Continuing Education of the Bar programs.

§ 685.060. Motion to tax costs collected by levying officer

The staff recommended amendments delete Section 685.060 (pages 21-22 of bill). Various persons objected to Section 685.060 as unnecessary and expressed the fear that the section will provide the judgment debtor with an opportunity to put the judgment creditor to the expense of a court hearing. The staff recommends deletion of the section. Existing law contains no comparable provision. The California Association of Collectors strongly objects to this section.

§ 685.080. Motion for costs of enforcing judgment (page 23 of bill)

It was suggested that it should be unnecessary to make a noticed motion for costs every six months. This is expensive to the creditor where the amount of accumulated costs is small. If the amount of accumulated costs is significant, the creditor is motivated to make a

motion for costs because the allowed costs are added to the judgment and interest accrues on the allowed costs. The staff recommended amendment changes proposed Section 685.080 to require that a motion be made not later than two years after the costs are incurred rather than six months as proposed in the bill as introduced. The staff recommended amendment changes the existing law which was continued in the bill as introduced. A similar staff recommended amendment is made to Section 685.070 (pages 22-23 of bill) to increase from six months to two years the time within which a memorandum of costs may be filed.

Judgment Lien on Personal Property (pages 43-50 of bill)

The proposal that a judgment lien on personal property be authorized presents a significant policy issue. The Business Law Section of the State Bar has appointed a special subcommittee to study the new provisions relating to the judgment lien on personal property. The office of the Secretary of State expresses the view that the lien on personal property is too broad and will not result in the collection of money by the judgment creditor. We will consider these provisions again at a future meeting when we receive the views of the special State Bar subcommittee.

The staff recommended amendments contain a number of technical amendments to the provisions relating to the judgment lien of personal property. These deal with matters that have been brought to our attention. We are indebted to Professor Lloyd Tevis (Exhibit 2 attached--pink) who made a careful study of the provisions and made excellent suggestions for revision.

One amendment recommended by the staff would give the judgment creditor the option of listing specific property in the notice of judgment lien rather than filing a notice of a judgment lien on all personal property to which the judgment lien on personal property may attach.

Duration of Execution Lien; Time for Levy Under Writ of Execution

As introduced, AB 707 requires that levy be made under a writ of execution within 90 days after the writ is issued and that the writ be returned not later than one year after it is issued. The staff has been advised that under existing practice a judgment creditor may obtain a writ of execution and hold the writ until property subject to execution is discovered. The time for return of the writ under existing law runs

from the time the writ is received by the levying officer (rather than from the time of issuance of the writ as proposed under AB 707). Existing law requires the writ to be returned not less than 10 nor more than 60 days after its receipt by the levying officer.

The staff recommended amendment would permit levy pursuant to a writ within 180 days after the writ is issued (thus giving the creditor a reasonable time to discover the property before having to obtain another writ) and requires the writ to be returned not later than two years after issuance (thus giving time for sale or collection if a levy is made within the 180-day period). We believe this is a significant improvement in the bill as introduced.

§ 700.015. Levy on real property (page 63 of bill)

It was suggested by the levying officers that notice of a sale of real property be given to the coowners of the real property. This would give coowners notice so that they may bid on the judgment debtor's interest in the property at the sale. There is merit to this suggestion, but the staff believes that the notice should be given at the time of levy so that the coowner has more time to work out an arrangement to acquire the judgment debtor's interest before the sale or the bid on the property at the sale. Accordingly, the staff recommends that the bill be amended to require that a notice of levy be given to any third person who is a coowner of record of the real property at either the address for the person shown on the assessor's records or, if none, than at the address used by the county recorder for the return of the instrument creating the interest of the coowner. Failure to give the notice to the coowner would not affect the validity of the levy, just as failure to give notice of levy to the judgment debtor does not affect the validity of the levy. Under the staff recommended amendments, the coowner can also request notice of sale if the coowner desires notice of sale.

§ 700.070. Levy upon tangible personal property of going business (page 66 of bill)

To avoid providing complex rules governing various types of property, this section is restricted by a proposed staff amendment to farm products and inventory of a going business held for sale by the judgment

debtor in the ordinary course of business and in the possession or control of the judgment debtor. This is the substance of existing law. The section is also proposed to be amended to restrict the time that a keeper can be placed in charge of the business to not more than 10 days. This 10-day limitation was suggested by the levying officers.

§ 701.590. Manner of payment (pages 84-85 of bill)

This section is revised in the staff recommended amendments to require that the balance be paid by a creditor bidder at a sale within 10 days rather than within 20 days as required in the bill as introduced. The view was expressed by interested persons that the creditor bidder should be able to make full payment within 10 days.

§§ 601.820-701.830. Schedule of distribution of proceeds of sale
(pages 89-90 of bill)

Various persons expressed concern about the provisions of the bill that create the new requirements that a schedule of proposed distribution of proceeds be prepared, that notice served on various interested persons, and that the distribution be delayed to allow objections. The staff amendments (Amendments 175-179) eliminate the requirements that a schedule of proposed distribution be prepared and substitute a provision permitting the levying officer to pay all or a portion of the proceeds of a sale or collection into court if there are conflicting claims to the proceeds. The court is authorized to determine the person that is entitled to the proceeds, subject to the limitation that the court not determine the matter if a proper objection to venue is made, another action is pending on the same matter, or the court determine the matter should be determined in a separate civil action.

§ 703.120. Continuing review of exemptions (page 96 of bill)

This section is revised in the staff recommended amendments to require a review of the exemptions each 10 years rather than each five years as proposed in the bill as introduced and to delete the reference to the Consumers Price Index so that the review will take into consideration all relevant matters in connection with exemptions. Nothing in the section will preclude the submission of a recommendation more often than 10 years but a review is mandated only once every 10 years.

§ 704.010. Motor vehicle exemption (pages 100-101 of bill)

The motor vehicle exemption has been revised in the staff recommended amendments (Amendments 202-203) to provide an exemption for a second vehicle only if each spouse has been using a separate motor vehicle to earn a livelihood and the second vehicle is necessary to enable the judgment debtor and the spouse to continue to earn a livelihood. This will avoid a claim by the judgment debtor that the second vehicle is exempt because the second spouse plans to use the vehicle to earn a livelihood even though the vehicle was not used for this purpose at the time of levy.

Exemption for Paid Earnings (New Provision)

A new Section 704.015 is added by the staff recommended amendments (Amendment 206) to make clear the exemption for paid earnings. Only paid earnings that can be traced into deposit accounts or in the form of cash or its equivalent will be exempt and only earnings earned within the 30-day period ending on the date of levy will be exempt. The amount of the exemption will depend on whether the earnings were subject to garnishment before they were paid. When the earnings represent the amount paid after a garnishment, all of the earnings will be exempt. Where there was no garnishment with respect to the earnings before they were paid, only 75 percent of the earnings will be exempt. The exemption will not be allowed automatically; it must be claimed.

§§ 704.110 and 704.115. Retirement fund exemptions (pages 107-109 of bill)

The staff recommended amendments (Amendments 221-222) clarify these sections to provide that the amount payable for support from a retirement fund is subject to the exemption standard set out in the wage garnishment law if the amounts are payable periodically.

Exemption of Proceeds of Voluntary Sale of Dwelling

Existing law precludes the obtaining of a judgment lien on real property that is the dwelling of the judgment debtor if a declared homestead exists on the property at the time the judgment lien is sought to be obtained. In such a case, the judgment creditor must levy execution on the property and the proceeds of the execution sale will be protected to the extent of the homestead exemption. AB 707 permits the obtaining of a judgment lien on a dwelling in every case since it abolishes the

declared homestead.

Section 704.720 (pages 113-114 of AB 707) protects the proceeds of a voluntary sale of a dwelling to the extent of the homestead exemption. However, the protection is of no real value since the judgment lien will remain on the property sold and, as a result, the purchaser of the property will deduct the amount of the lien in fixing the price the purchaser will pay for the property. Moreover, AB 707 as drafted permits a judgment creditor to obtain a judgment lien on real property and then do nothing, thus leaving the judgment debtor in a position where he or she can not sell the property as a practical matter.

The staff recommended amendments make important revisions to provide a better solution of the problems identified above. First, the amendments (Amendments 225-229) restrict the proceeds exemption for a dwelling sale to involuntary sale, damage, or destruction--either execution sale, eminent domain taking, or the like. There is no proceeds exemption for a voluntary sale. We do not consider that this change in AB 707 is harmful to the judgment debtor. Second, the staff recommended amendments (Amendment 61) provide a new procedure whereby the judgment debtor can serve upon the judgment creditor a demand that the judgment creditor either release the judgment lien on described property or levy execution on the property. If the judgment creditor fails to act within 60 days, the judgment debtor is entitled to obtain a court order releasing the lien on the described property. If such a demand is made, the judgment creditor is entitled to levy execution on the property without the risk that he or she will have to pay the penalty imposed (costs plus attorney fee for judgment debtor) if the minimum bid is not obtained at the execution sale. The staff believes that the proposed amendments are a significant improvement in the bill.

Garnishment of Earnings of Nondebtor Spouse on Judgment Based on Obligation for Which Community Property is Liable

Under existing practice, the levying officer will not garnish the earnings of a spouse unless the spouse is a judgment debtor. Thus, if the judgment creditor obtains a judgment against one spouse on an obligation for which the community property is liable, the levying officer will not garnish the earnings of the other spouse to satisfy that judgment unless that spouse also is a judgment debtor on the judgment. We have

been advised, however, that the levying officer will garnish the earnings of the nondebtor spouse on the judgment if a court order is obtained authorizing the garnishment. The staff recommended amendments (Amendment 241) permit garnishment of earnings of a nondebtor spouse if a court order authorizes the garnishment or if the judgment creditor provides an affidavit showing that the earnings are community property and that the community property is liable for the satisfaction of the judgment. The amendments provide a procedure for the nondebtor spouse to object to the garnishment on the ground that the earnings are not community property liable for the satisfaction of the judgment. The new provisions will avoid the expense of a court hearing by permitting use of the affidavit.

708.510. Assignment orders (pages 160-161 of bill)

A provision is added by the staff recommended amendments (Amendment 275) to Section 708.510 (relating to assignment orders) to provide that an assignment order which requires assignment of earnings or periodic payments from pension or retirement plans is subject to the limitations on the amounts that can be withheld from earnings in case of wage garnishment. Also, the staff recommended amendments revise the provision on assignment orders to make clear that amounts that are exempt under some other provision of law cannot be required to be assigned to the judgment creditor.

§ 708.770. Exemption claim where judgment debtor is creditor of public entity (pages 166-167 of bill)

Section 708.770 is revised by the staff recommended amendments (amendment 281) to provide necessary detail on how an exemption claim of the judgment debtor is to be dealt with in a case where the judgment debtor is the creditor of a public entity and the judgment creditor seeks to apply to the satisfaction of the judgment creditor's judgment the obligation of the public entity owed to the judgment debtor.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

City and County of San Francisco

County Clerk
and
Clerk of the Superior Court

May 28, 1981

John H. De Moully
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, California 94306

Re: Enforcement of Judgments
AB707 and AB798 (Mc Alister)
and Govt. Code Sec. 69503.1
(your letter of 4/28/81)

Dear Mr. De Moully:

My comments on the above subject are made in my dual capacity as a member of the County Clerks' Association Legislation Committee (Courts) and as an associate member of the California State Sheriffs' Association Civil Procedures Committee.

With regard to AB 798, page 97, between lines 34 and 35, Sec. 120.5 to amend present Sec. 69503.1 of the Government Code. The County Clerks' Association would like to see current law amended and have adopted several proposals which they would like the commission to review for incorporation into a changed statute or statutes, viz.,

1. Destruction time should be reduced from 30 years to 15 years;
2. Line 8 - xx "is pending on appeal", etc.; regarding microfilming the Register of Actions, etc. The microfilming should be confined to original court documents such as minute orders and judgments, not the Register of Actions (see AB1023 (Thurman) introduced this year in an effort to make record-keeping less burdensome for the court clerk - copy attached).
3. Re subdivision (b): This should be revoked (see New 69503.4 to be incorporated in AB 1023). Old records should be referred to a local museum instead of the Secretary of State.
4. Re subdivision (c): Covers dismissed cases. Why should the clerk of the court retain such files?

Since the court has not acted (except in those cases where a dismissal is ordered by the court on procedural grounds) there is no object to retaining such files. They could be:

- a. Destroyed without microfilming;
- b. Be given to the plaintiff or his attorney.

A record could be made showing the dismissed cases by Case Number, Date Filed, Plaintiff, Defendant and Date Dismissed. Disposal as noted would be cost effective and would allow meaningful records to be stored. Keeping dismissed records for research certainly is not justified in those cases dismissed voluntarily. Note: These comments also apply to Sec. 69503 (a) (1).

5. 69503.1 (d) Refer again to new Sec. 69503.4 which includes Criminal and Probate records to be transferred to the local museum. Microfilming of certain criminal and probate records could be specified since these cases should be handled like civil cases. The following are suggested for microfilming:

Criminal Records:

Information/Indictment
Minute Orders
Judgments
Orders of Court
JUS Form

Probate Records:

Will
Minute Orders
Letters Testamentary/Admin.
Orders of Court
Judgments
Accountings (Annual and Final)

Copies of current Govt. Code Sections 69503, 69503.1 as well as a copy of AB 1023 including the proposed Section 69503.4 are enclosed for your review. We strongly urge support of our proposals regarding record retention/destruction.

John H. De Mouilly
May 28, 1981
Page 3

With regard to AB 707:

1. Sec. 693.060 (a) 3. Page A-13 re: Notification by the court clerk. The procedure should provide that the court clerk should "cause" notice to be given, thus shifting the burden to the attorney for the creditor.
2. Sec. 699.060 (b), page 55, line 31 re: county treasurer: Additional language should be incorporated here specifying a retention period of five years by the treasurer and thereafter the proceeds would become the property of the county. (See Civil Code Sec. 1861.24 (one year period) and Govt. Code Secs. 50050 et seq. (three year period) for other sections on retention and disposition of funds to local entities.)
3. Sec. 700.070 (b), Page 66, line 39: Add, (3) at the end of 10 days. (Rationale is included herewith).

AB 707, page 66, Section 700.070(b): (subdivision (b)(3) added)

(b) The levying officer shall take the tangible personal property into exclusive custody at the earliest of the following times:

- (1) At any time the judgment debtor objects to placement of a keeper in charge of the business.
- (2) At any time when requested by the judgment creditor.
- (3) At the end of 10 days.

RATIONALE: To permit the business to operate until the writ is satisfied appears to be a worthwhile objective. As a practical matter there are two serious objections to such an extended levy.

(1) To maintain a levy on a going business requires daily supervision by the levying officer. This supervision must be paid for at the expense of the tax payer. The only recoverable fee is the one-time charge provided by Government Code Section 26721 of \$11.00 for executing the writ.

(2) All levying officers throughout the state are currently hampered in efficiently and promptly performing their duties by the lack of sufficient personnel. The manpower required (both sworn personnel and keepers) to maintain a levy on a going business for an unlimited period would increase with each additional levy made until the saturation point is reached. This would result in the levying officer being unable to execute additional writs and other judgment creditors being left without an avenue to enforce satisfaction of their judgments except by action against the levying officer who would be liable to the creditor as provided by Government Code Section 2664 as amended by AB 798 (page 92).

For these reasons it is believed that a definite "cut-off" time should be established, whether of 10 days or of some other period of time. The 10 day period was selected as being that provided under The Attachment Law in CCP Section 488.360. It would appear that this would provide ample time for the debtor to pay off the creditor if he is capable of doing so, for the parties to reach a mutual agreement for the release of the levy, or for the creditor to have a receiver appointed as provided by Section 708.620 as stated in AB 707 (page 163).

John H. De Moully
May 28, 1981
Page 5

4. Sec. 701.520 (6) (c), Page 80, line 17:
Change "levying officer" to "Clerk of the Court,
with a copy to the levying officer".
5. Sec. 701.540 (c), Page 81, lines 35 and 36 re:
Personally serving the notice of sale on the debtor.
If the debtor avoids service, will the sale be held?
Should another method be used, since it is conceivable
he may not reside at the property or reside within
the county.
6. Sec. 701.540 (h), Page 82, line 34 - suggested amend-
ment follows:

AB 707, page 82, Section 701.540(h): (amend)

(h) Not earlier than 120 days after the date notice of levy on the interest in real property was served on the judgment debtor, the creditor shall determine the names and addresses of all third persons in whose names the property stands upon the records of the office of the tax assessor of the county where the real property is located, and the names and addresses of record of all persons having liens of record on the property in the office of the county recorder of the county where the real property is located, and shall instruct the levying officer to mail notice of sale to all such persons at the addresses of record. Not less than 20 days before the date of sale, the levying officer shall mail notice of sale to all such persons and at the addresses provided in the creditor's instructions. ~~persons having liens of record on the property at the time of service. The notice shall be addressed to the person at the address, if any, shown by the records of the office of the tax assessor of the county where the real property is located or, if no address is so shown, to the person at the address used by the county recorder for return of the instrument creating the lien after recording.~~

RATIONALE: This section as written presents several problems to the creditor and levying officers:

(1) A recorded lien is not actually filed and indexed by the recorder on the date of the recorder's receipt. A search of the recorder's records on a particular day, even at the close of the business day, would not reveal liens of record filed on that day. Thus it would be impossible to insure that all lienholders as of the date of mailing would be mailed a sale notice.

(2) It is not possible to give notice to all persons having

liens at the time of the sale. Obviously a cut-off date must be selected. It would appear that the end of the 120 days that sale procedures are prohibited by 701.545 (page 83) would be a convenient and logical choice. The execution levy under which the property is to be sold would have been of record for at least this period of time. Persons filing subsequent liens have only to check the recorder's index to be alerted to the possible sale, and may request of the levying officer that notice of sale be provided to them.

(3) The section does not state who is responsible for ascertaining the required information. Since the creditor is the beneficiary of the sale it should be the creditor's responsibility to obtain the information and provide it to the levying officer.

(4) The assessor's office does not maintain records showing the names and addresses of lienholders, only of the owners of record, this information is available in the recorder's office.

(5) The section does not provide that notice of sale be given to owners of the property who are not named as judgment debtors. Since they have an interest in the property it would appear that they should perhaps be provided with the same notice as the lien holders.

John H. De Moully
May 28, 1981
Page 8

7. Sec. 701.600 (a) Page 85, line 34 - Suggested amendment follows:

AB 707, page 85, Section 701.600(a): (amend)

(a) The levying officer shall, at the request of the judgment creditor, sell the property either immediately to the next highest bidder at the amount of the next highest ~~bid~~ bid, unless such bid is retracted upon notification, or to the highest bidder at a new sale. The levying officer may, in the levying officer's discretion reject any subsequent bid of the defaulting bidder.

RATIONALE: Under the rules of auction (Commercial Code, Section 2328) a bid may be retracted at any time prior to the completion of the sale. Also, the retraction of a bid does not revive any previous bid. Since in excess of 20 days may have passed since the sale, prior to the property being offered to the next highest bidder, the bidder may wish to retract his bid because of second thoughts or because he may have expended his funds for some other purpose.

John H. De Moully
May 28, 1981
Page 10

8. Sec. 701.600 (c) Page 86, line 1 re: defaulting bidder. Should the penalties set out in items (1) through (4) be included on the Notice of Sale?
9. Sec. 701.820 Page 90, line 23 - Suggested addition as item (e) follows:

AB 707, pages 89-90, Section 701.820: (subsection (e) added)

(e) The levying officer shall not be liable to any person for a distribution of proceeds made in compliance with this section.

RATIONALE: Subsections (a) and (b) of Section 701.810 (page 88) state in part that the levying officer shall distribute the proceeds to persons having claims, liens, or other interests that are superior to the judgment creditor's lien and that are required to be satisfied from the proceeds, and to persons having consensual liens and encumbrances or liens for labor or materials that are subordinate to the judgment creditor's lien. Both of these subsection require payment of liens of which the officer may not have any knowledge. The recommended added subsection (e) would clarify that the officer is not liable for non payment of such liens if he fully complies with Section 701.820.

John H. De Mouilly
May 28, 1981
Page 12

10. Sec. 704.110 (d) Page 108, line 33: Should the wording "without making a claim" be added here?
11. Sec. 704.115 (b) Page 109, line 29: Same comment as #10.
12. Sec. 704.750 (a) Page 115, line 11: Suggested amendment follows:

AB 707, page 115, Section 704.750(a): (amend)

704.750. (a) Promptly after a dwelling is levied upon (other than a dwelling described in subdivision (b) of Section 704.740), the levying officer shall serve notice on the judgment creditor that the levy has been made and that the property will be released unless the judgment creditor complies with the requirements of this section. Service shall be made personally or by mail. Within 20 days after service of the notice, the judgment creditor shall apply to the court for an order for sale of the dwelling and shall ~~file~~ deliver a copy of the application ~~with~~ to the levying officer. If the judgment creditor does not ~~file~~ deliver the copy of the application for an order for sale of the dwelling within the allowed time, the levying officer shall release the dwelling.

RATIONALE: To set a time certain that the copy of the application must be received by the levying officer or the property shall be released. Filing may be done by mail, and due to mail delays may not be received by the levying officer until sometime after the period has expired. This leaves the levying officer not knowing when the property should be released.

John H. De Mouilly
May 28, 1981
Page 14

13. Sec. 704.790 (d) Page 118, lines 10 and 11:
This should be changed to provide for the
court clerk to "cause" notice to be given, thus
shifting the burden to the attorney for the debtor.
Also a suggested addition as item (e) follows:

AB 707, pages 117/118, Section 704.790: (subsection (e) added)

(e) If the creditor fails to comply with subdivision (b) when required, the dwelling may not be sold under the order of sale.

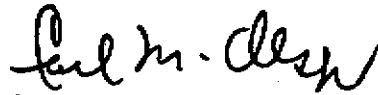
RATIONALE: Service of process on various persons is required under this section. However, there is no statement of the effect of failure to comply with the section. The recommended addition would prohibit sale of the property if the requirements are not met. It also provides an avenue of enforcement for a creditor who is unable to timely serve the required process in that he may apply for a new order of sale under Section 704.750.

John H. De Moully
May 28, 1981
Page 16

14. Sec. 716.030 (c) Page 176, line 24 Personal service on the debtor is required. Again we have the problem of what happens if the debtor avoids service. Is another method of service desirable?

I trust the above may prove helpful in completing the proposed legislation.

Very truly yours,



CARL M. OLSEN
County Clerk

CMO:se

cc: County Clerks' Association
California State Sheriffs' Association

Enclosures

Buss
4
5
Boyle

Introduced by Assemblyman Thurman

March 16, 1981

An act to amend Sections 69503, 69845, and 69845.5 of the Government Code, relating to court records.

LEGISLATIVE COUNSEL'S DIGEST

AB 1023, as introduced, Thurman. Court records.

(1) Existing law provides for the destruction of superior court records after a period of 5 years has elapsed since the papers in a domestic relations action or proceeding were filed, and after a period of 8 years has elapsed since the papers in any other action or proceeding were filed.

This bill would provide for the destruction of superior court records after a period of 5 years has elapsed for papers in any action or proceeding.

(2) Existing law provides, with specified exceptions, that the clerk of the superior court shall keep a register of actions in which shall be entered the title of each cause, with the date of its commencement and a memorandum of every subsequent proceeding in the action, with its date.

This bill would make the keeping of such a register at the discretion of the clerk of the superior court, rather than mandatory.

(3) Existing law provides that, in lieu of maintaining a register of actions, the clerk of the superior court may maintain a register of actions by means of photographing, microphotographing, or mechanically or electronically storing the whole content of all papers and records, or any portion thereof as will constitute a memorandum, necessary to the keeping of a register of actions so long as the completeness and chronological sequence of the register are

OK

not disturbed.

This bill would authorize, as such an alternate register of actions, the storing of the content of all papers and records specified.

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. Section 69503 of the Government Code
2 is amended to read:

3 69503. (a) Notwithstanding any other provision of
4 law relating to the destruction of court records, after
5 complying with the requirements of subdivisions (c) and
6 (d), the county clerk may cause to be destroyed any
7 documents, records, instruments, books, depositions,
8 transcripts, or other papers filed in any action or
9 proceeding in the superior court or otherwise filed in his
10 office pursuant to law, if the action or proceeding in
11 which the papers were filed is not pending or on appeal
12 in any court and any of the following events have
13 occurred:

14 (1) The dismissal of the entire action has been
15 entered.

16 (2) A period of three years has elapsed since a
17 deposition or a transcript of a preliminary hearing or
18 coroner's inquest was filed.

19 (3) A period of five years has elapsed since the papers
20 in a domestic relations action or proceeding were filed.

21 (4) A period of ~~eight~~ five years has elapsed since the
22 papers in any other action or proceeding were filed.

23 (b) Notwithstanding any other provision of law
24 relating to the destruction of court records, after
25 complying with the requirements of subdivision (c), the
26 county clerk may cause to be destroyed any will
27 delivered to him pursuant to Section 320 of the Probate
28 Code, if a period of eight years has elapsed since the
29 delivery of the will.

30 (c) The county clerk shall maintain for the use of the
31 public a microphotographic film print or copy of each

1 will, document, record, instrument, book, deposition,
2 transcript, or other paper so destroyed prepared
3 pursuant to the procedure specified in Sections 1531 and
4 1551 of the Evidence Code. The county clerk shall
5 promptly seal and store at least one original negative of
6 each microphotographic film print or copy in a manner
7 and place that reasonably assures its preservation
8 indefinitely against loss, theft, defacement, or
9 destruction.

10 (d) The county clerk shall not destroy any transcript
11 of a preliminary hearing without the written consent of
12 the district attorney.

13 (e) *The county clerk may microfilm only the*
14 *documents listed below, which microfilm shall be*
15 *permanently retained. Documents not listed may be*
16 *destroyed pursuant to subdivision (a) or (b).*

17 (1) *Domestic relations:*

18 (i) *Petitions for dissolution, legal separation, or nullity.*

19 (ii) *Interlocutory judgments of dissolution.*

20 (iii) *Final judgments of dissolution, legal separation, or*
21 *nullity.*

22 (iv) *Any orders or modifications signed by a judge*
23 *which amend the interlocutory or final judgment.*

24 (v) *Financial declarations.*

25 (vi) *Petitions to establish paternity and orders*
26 *establishing paternity.*

27 (vii) *Confessions of judgment.*

28 (viii) *Reciprocal support documents.*

29 (ix) *Petition for and order of adoption.*

30 (x) *Minute orders.*

31 (2) *Civil:*

32 (i) *All civil complaints, cross complaints, petitions,*
33 *responses, orders signed by a judge, judgments, offer to*
34 *compromise, order to compromise, and bank deposit and*
35 *withdrawal records.*

36 (ii) *Dismissal orders.*

37 (iii) *Satisfactions of judgment.*

38 (iv) *Confessions of judgment.*

39 (v) *Requests for default.*

40 (vi) *Minute orders.*

1 SEC. 2. Section 69845 of the Government Code is
2 amended to read:

3 69845. ~~Except as provided in Sections 69845.5 and~~
4 ~~69845.6, the~~ The clerk of the superior court ~~shall~~ may
5 keep a register of actions in which shall be entered the
6 title of each cause, with the date of its commencement
7 and a memorandum of every subsequent proceeding in
8 the action with its date.

9 SEC. 3. Section 69845.5 of the Government Code is
10 amended to read:

11 69845.5. In lieu of maintaining a register of actions as
12 described in Section 69845, the clerk of the superior court
13 may maintain a register of actions by means of
14 photographing, microphotographing, or mechanically or
15 electronically storing the whole content of all papers and
16 records *listed in subdivision (e) of Section 69503*; ~~or any~~
17 ~~portion thereof as will constitute a memorandum,~~
18 ~~necessary to the keeping of a register of actions so long~~
19 ~~as the completeness and chronological sequence of the~~
20 ~~register are not disturbed.~~

21 All such reproductions shall be placed in convenient,
22 accessible files, and provision shall be made for
23 preserving, examining and using them.

24 Any photograph, microphotograph or photocopy
25 which is made pursuant to this section shall be made in
26 such manner and on such paper as will comply with the
27 minimum standards of quality approved therefor by the
28 National Bureau of Standards.

GOVERNMENT CODE

(NEW) 69503.4 TRANSFER OF COURT RECORDS TO THE CITY/COUNTY MUSEUM OVER 15 YEARS OLD.

a. Notwithstanding sections 69503, 69503.1, 69503.2, or any other law relating to the destruction of court records, the County Clerk may cause to be transferred any civil, criminal or probate superior court case after 15 years have elapsed since the filing of any paper in the action or proceeding and when the records of the County Clerk do not show that the action or proceeding is pending on appeal in any court.

b. Prior to the transfer of such records the County Clerk shall obtain from the Director of the City/County Museum with his/her county in writing that he will maintain such records, make same available to the general public, and will assume the duties as custodian of such records.

Notes of Decisions

In general 2
Validity 1

Const. Art. 6, § 15) for such office.
Wallace v. Superior Court In and For
Placer County (1956) 298 P.2d 69, 141
C.A.2d 771.

1. Validity

Section 69500 (repealed 1967) purporting to impose residence qualification as prerequisite to election to office of judge of superior court was invalid as being in conflict with qualifications set forth in Const. Art. 6, § 23 (repealed; see, now,

2. In general

Superior courts are state courts, not county courts, and a judge of a superior court is not a county officer or employee. 27 Ops.Atty.Gen. 338.

§ 69503. Records; authority to destroy; time; microfilm copies

Text of section effective January 1, 1977.

(a) Notwithstanding any other provision of law relating to the destruction of court records, after complying with the requirements of subdivisions (c) and (d), the county clerk may cause to be destroyed any documents, records, instruments, books, depositions, transcripts, or other papers filed in any action or proceeding in the superior court or otherwise filed in his office pursuant to law, if the action or proceeding in which the papers were filed is not pending or on appeal in any court and any of the following events have occurred:

(1) The dismissal of the entire action has been entered.

(2) A period of three years has elapsed since a deposition or a transcript of a preliminary hearing or coroner's inquest was filed.

(3) A period of five years has elapsed since the papers in a domestic relations action or proceeding were filed.

(4) A period of eight years has elapsed since the papers in any other action or proceeding were filed.

(b) Notwithstanding any other provision of law relating to the destruction of court records, after complying with the requirements of subdivision (c), the county clerk may cause to be destroyed any will delivered to him pursuant to Section 320 of the Probate Code, if a period of eight years has elapsed since the delivery of the will.

(c) The county clerk shall maintain for the use of the public a microphotographic film print or copy of each will, document, record, instrument, book, deposition, transcript, or other paper so destroyed prepared pursuant to the procedure specified in Sections 1531 and 1551 of the Evidence Code. The county clerk shall promptly seal and store at least one original negative of each microphotographic film print or copy in a manner and place that reasonably assures its preservation indefinitely against loss, theft, defacement, or destruction.

(d) The county clerk shall not destroy any transcript of a preliminary hearing without the written consent of the district attorney.

(Added by Stats.1953, c. 206, p. 1251, § 1. Amended by Stats.1965, c. 960, p. 2580, § 1; Stats.1967, c. 715, p. 2085, § 1; Stats.1976, c. 137, p. —, § 1.)

For text of section until January 1, 1977, see Historical Note, post.

Historical Note

Section 69503, as amended in 1967 provided:

"Notwithstanding any other law relating to the destruction of court records, the county clerk may cause to be destroyed all documents, records, instruments, books, papers, depositions, and transcripts, in any action or proceeding in the superior court, or otherwise filed in his office pursuant to law, or any will delivered to him pursuant to Section 320 of the Probate Code, if all of the following conditions exist:

"(a) Eight years have elapsed since the delivery to him of any will, or the filing of any paper in the action or proceeding and the records of the county clerk do not show that the action or proceeding is pending on appeal in any court; except that records of domestic relations actions may be destroyed when five years have elapsed since their filing in the office of the county clerk and the action or proceeding in which they were filed is not pending or on appeal in any court; transcripts of coroner's inquests, depositions, and, when the written consent of the district attorney is first obtained, transcripts of preliminary hearings may be destroyed when three years have elapsed since their filing in the office of the county clerk and the action or proceeding in which they

were filed is not pending or on appeal in any court.

"(b) The county clerk maintains for the use of the public a microphotographic film print or copy of each document, record, instrument, book, paper, deposition, or transcript so destroyed pursuant to the procedure specified in sections 1920b and 1923 of the Code of Civil Procedure.

"(c) The county clerk promptly seals and stores at least one original negative of each such microphotographic film in such manner and place as reasonably to assure its preservation indefinitely against loss, theft, defacement, or destruction."

The 1965 amendment included wills within the application of this section in the introductory clause and subd. (a); and reduced the length of time within which records can be destroyed from ten to eight years and from five to three years in subd. (a).

The 1967 amendment added, in subd. (a), the exception relating to records of domestic relations actions.

The 1976 amendment rewrote the section.

Derivation: C.C.P. former § 189.7, added by Stats.1951, c. 1138, p. 2905, § 1.

Cross References

Admissibility in evidence of reproduced records, see Evidence Code §§ 1550, 1551.
Calamity, records destroyed by, see Code of Civil Procedure §§ 1953.03 to 1953.06.
Destruction of records,

- County records, see § 26205.
- County recorder, see § 26205.5.
- Depositions or exhibits in civil actions, see Code of Civil Procedure § 1952.
- Justice court, see §§ 6805 to 6807.
- Land Title Law, see § 27207.
- Municipal or justice court, criminal proceedings, see Penal Code § 1425b.
- Probation officers, see Code of Civil Procedure § 131.3.
- Public administrator, register, see Probate Code § 1151.
- Reporter's notes, see § 6955.
- Vouchers, see § 6808D.
- Evidence, destruction, penalty, see Penal Code § 135.
- Inspection of public records, see § 6250 et seq.
- Judicial record defined, see Code of Civil Procedure § 1004.
- Private records destroyed in disaster or calamity, see Code of Civil Procedure § 1953.10 et seq.
- Punishment for theft, falsification, or destruction of public records, see §§ 6200, 6201.

Library References

Clerks of Courts \Rightarrow 69.

C.J.S., Clerks of Courts § 39.

Notes of Decisions

1. In general

Authority of county clerks to microfilm and destroy certain records in their custody is not founded upon C.C.P. § 1853 (repealed; see, now, Evid.C. § 1550), which is part of Uniform Photographic Copies of Business and Public Records as Evidence Act, but such authority is based upon this section, therefore, authority of

clerk was not changed by amendment to C.C.P. former § 1853. 22 Ops.Atty.Gen. 224.

Under C.C.P. former § 189.7 now incorporated in this section, county clerk, under certain conditions and after microfilming, could destroy original court records. 18 Ops.Atty.Gen. 141.

§ 69503.1 Destruction of records over 30 years old

(a) Notwithstanding Section 69503 of the Government Code or any other law relating to the destruction of court records except the provisions of this section and Section 69503.2, the county clerk may cause to be destroyed any records, papers, case files, and exhibits in any superior court action or proceeding after 30 years have elapsed since the filing of any paper in the action or proceeding and when the records of the county clerk do not show that the action or proceeding is pending on appeal in any court, provided that minute book entries, minute books, judgment books, and registers of actions shall not be destroyed, unless microfilmed in accordance with the provisions of Section 69503 of the Government Code, and shall constitute for all purposes the record in lieu of the records, papers and exhibits destroyed. For the purposes of this section, "destroy" means destroy or dispose of for the purposes of destruction.

(b) Prior to the disposition of such records the county clerk shall give notice of the proposed disposition to the Secretary of State, who shall have 60 days to request the transfer of the records. If the Secretary of State does not request the transfer of the records the county clerk may destroy them pursuant to this section.

(c) Case files of civil actions which have been dismissed may be destroyed pursuant to this section seven years after dismissal. Case files of civil actions for tortious injury to the person or for wrongful death, which have not been dismissed, may be destroyed 15 years after final judgment, except case files of actions involving the filing of a petition pursuant to Section 372 of the Code of Civil Procedure; provided that no such case file shall be destroyed if the action is pending or under appeal, judgment in the action has been enjoined, the time in which to enforce the judgment has been extended by court order or by operation of law, or there is pending in the action a motion filed pursuant to Section 685 of the Code of Civil Procedure.

§ 69503.1

COURTS

Title 8

(d) This section shall not apply to the records of probate, real property, juvenile, criminal, or adoption actions or proceedings.

(Added by Stats.1967, c. 156, p. 1242, § 1. Amended by Stats.1968, c. 623, p. 1261, § 1; Stats.1972, c. 866, p. 1538, § 1.)

Historical Note

The 1968 amendment deleted the limitation of application of this section to counties over 650,000.

sentence of subd. (a), the exception and the words "case files", and inserted subd. (c).

The 1972 amendment added the subdivision designations; inserted, in the first

Cross References

Destruction of exhibits or depositions, see Code of Civil Procedure § 1952.
Judicial record defined, see Code of Civil Procedure § 1904.

Law Review Commentaries

Court records: legislative review.
(1973) 4 Pacific L.J. 327.

Library References

Courts ⊕113.
C.J.S. Courts §§ 226, 229.

Words and Phrases (Perma.Ed.)

§ 69503.2 Disposal of case files of civil actions; deferred upon request of party or attorney; time; copies

Upon receipt of a written request from a party or his attorney, the county clerk shall defer the disposal of the case file of a civil action or proceeding five years beyond the retention period specified in subdivision (c) of Section 69503.1, and during such time shall, upon request and payment of the fee prescribed by Section 6257, provide copies of such case file.

(Added by Stats.1972, c. 866, p. 1538, § 2.)

Cross References

Theft, destruction, falsification or removal of public records, documents or certificates, see §§ 6200, 6201.
Vouchers, return or destruction, see § 6208D.

Library References

Courts ⊕113.

C.J.S. Courts §§ 226, 229.

§ 69503.3 Proof of records, papers and case files; authentication

Records, papers, and case files which have been destroyed pursuant to Section 69503.1 may be proved by a copy thereof authenticated

Memorandum 81-24

Exhibit 2



LOYOLA LAW SCHOOL

May 20, 1981

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, California 94306

Gentlemen: Re: Assembly Bills 707 and 798

You are to be congratulated in coming this far in your efforts to rationalize and modernize our laws relating to enforcement of judgments. I was pleased to see that you have accepted an earlier suggestion of mine concerning the means of obtaining a lien upon a pending cause of action. It is always a welcome event to find acceptance of one's suggestions.

Unfortunately this will be a lengthy letter as I have a number of comments on AB 707 some of which, if accepted, would require some additions to AB 798. These comments are largely concerned with the impact of AB 707 on persons having security interests under Division 9 of the Commercial Code.

1. Judgment Liens on Personal Property--§697.510 et seq. I expect that there will be considerable disagreement about these sections. However, assuming that the policy is accepted there are uncertainties that will need to be resolved.

A. Is there a reason why a judgment creditor should not obtain a judgment lien on accounts receivable arising from the sale of minerals at the wellhead or minehead or upon growing crops? These are presently excluded by §697.530 which limits judgment liens to cases where a security interest could be perfected by filing a financing statement with the Secretary of State. Without the benefit of your comments, I can only assume that your intention is to limit the search for judgment liens to one central office.

B. §697.590(a) states that a judgment lienor has the priority of a lien creditor to the extent provided in §9301 of the Comm. Code. However, the definition of a "lien creditor" in §9301(3) would be more accurate if amended to include a creditor who has acquired a judgment lien on the property.

C. §697.590(b), as drafted, does not mesh with the Commercial Code rule of priorities concerning afteracquired property and could result in a windfall to the judgment lienor at the expense of a secured party who has an afteracquired property clause in the security agreement. This subsection would date a judgment lien, for priority purposes as to afteracquired property, from the date of its "creation" which, according to §697.510, is the date of filing with the Secretary of State. On the other hand, a security interest would date, for priority purposes, from the date of its "perfection." Under §9303 of the Comm. Code the date of perfection would occur when the debtor has acquired rights in the collateral. This rule of priority would always give priority to the judgment lienor who had filed before the debtor acquired rights in the afteracquired property. Surely, the proper rule is that found in §9312(5) of the Comm. Code, namely, that the security interest dates from date of filing or perfection whichever is earlier.

D. §697.620 does not state any rule of priority as to "proceeds" in a conflict between a judgment lienor and a secured party. It would be appropriate to state a rule consistent with §9312(5) and (6) of the Comm. Code. In §697.620(c) a rule similar to §9306(4) of the Comm. Code is stated for cases where "insolvency proceedings" are instituted. There is no definition of this term. I suggest that the definition of that term found in §1201(22) of the Comm. Code be added. Finally, is it intended that a judgment lienor can trace cash proceeds into a commingled account? I infer that tracing would be available to the same extent that it is available to a secured party. Others may draw a different inference. It would help to make it explicit.

2. §687.020. This section continues the authority of the levying officer to endorse and present for payment certain demand instruments. Such instruments could well be identifiable cash proceeds in which a secured party has a perfected security interest. Once they have been paid to the levying officer do they continue to be "cash proceeds?" The definition of "cash proceeds" in §9306(1) of the Comm. Code does not quite fit. This could be important to a secured party who depends on §9306(3)(b) for continued perfection as to such funds. Therefore, it would seem appropriate to amend §9306(1) to include such funds within the definition of "cash proceeds."

3. §688.030(a)(2). This subsection permits a third person to "claim ownership or the right to possession of" property levied upon pursuant to a warrant or notice of levy issued by a tax collecting agency. Is this intended to include a third party claim of security interest or lien? I raise the question because in Division 4 (relating to third party claims) claims of "ownership and possession" are dealt with in Chapter 2 (beginning with §720.110) whereas claims of "security interest or liens" are dealt with in Chapter 3 (beginning with §720.210). There seems

no good reason not to afford a secured party or other lienholder this method of asserting a third party claim where there has been a tax levy. Therefore, this subsection ought to be changed to make certain that such claims are included.

4. §701.040. This section permits, under certain circumstances, the secured party to enforce the security interest without regard to the levy if the security interest was "created" prior to the levy. The word "created" is not a term of art under Division 9 of the Comm. Code. I suggest that this provision would mesh better with Division 9 if you were to use the term "attached" rather than "created."

This section refers to two situations where a secured party may become obligated to a judgment creditor. How may the judgment creditor enforce these rights? By examination proceedings? By creditor's suit? If these are the remedies, should that be stated?

In subsection (b), a secured party having priority over the judgment creditor is required to pay any excess payments or proceeds of property to the levying officer. This appears to conflict with the secured party's duty under §9504(1)(c) of the Comm. Code which may require that such proceeds be applied to the satisfaction of indebtedness secured by a subordinate security interest in the collateral. It is only after this has been done, if required, that the secured party must account to the debtor for any surplus. See §9504(2). Thus §701.040(b) should be rewritten to be consistent with §9504. In addition, §9504(2) should be amended to provide for accounting to the levying officer instead of to the debtor when so required by §701.040.

5. §701.060. This section requires the obligor under an instrument to make payments to the levying officer in cases where the officer has custody of the instrument. This presumably refers to instruments, other than demand instruments which the officer will endorse and present for payment under §687.020. I am not sure if you intended to include securities in this section but they are not excluded. An instrument such as a promissory note could be proceeds of a secured party's collateral. Under §9306(3) of the Comm. Code the security interest would become unperfected ten days after receipt by the debtor unless the secured party perfects by taking possession. With the levying officer in possession there is no way to perfect. This may not be a common occurrence, but it seems that some mechanism should be available during the 10 day period whereby the secured party could perfect. Perhaps under these circumstances perfection could be accomplished by filing a notice with the levying officer.

6. §697.740. This section provides protection for certain transferees or encumbrancers of property which has been levied upon but which is not in the custody of the levying officer. My

question concerns subsection (a). Is the term "fair consideration" to be given the meaning it has under fraudulent conveyance law? This term is sometimes used in other senses. It has been used as the equivalent of "new value," for example. I think the term should be defined by reference to Civil Code §3439.03. Perhaps the word "knowledge" used in subsection (a) does not require definition. However those who drafted the Comm. Code apparently thought it worthwhile to do so, so as to distinguish it from "notice." It takes but a few words and could prevent problems.

7. §700.110. This section deals with the method of levying upon an instrument. In §680.220 "instrument" is defined by reference to §9105 of the Comm. Code. That definition includes a "security." There is a separate section, §700.130, which provides for a method of levying upon a security. Therefore, it would seem appropriate to limit §700.110 to instruments other than securities.

8. §§708.140(3) and 708.180. These sections relate to examination proceedings where a third person is examined. They refer to a third person who "claims an interest in the property adverse to the judgment debtor." This seems broad enough to include a secured party who is in possession of the collateral. However, the section goes on to provide that "the court may determine the ownership of the property." This seems to exclude claims of security interest or lien upon the property. It seems to me that the intention to include or exclude claims of security interests is not sufficiently clear. To avoid later misapplication of these section, that intent should be spelled out. The same observation is applicable to §708.190.

Thank you for reading this lengthy letter. I hope that you find at least some of these comments useful.

Very truly yours,



Lloyd Tevis
Professor of Law

Memo 81-24 Exhibit 3
County of Santa Clara
California

Office of the Sheriff
180 West Hedding Street
San Jose, California 95110
294-1334 Area Code 408

Robert E. Winter, Sheriff

May 20, 1981

California Law Revision Commission
4000 Middlefield Road Room D-2
Palo Alto, California 94306

RE: SUGGESTED CHANGES - AB 707 & 798

Dear Commissioners;

Speaking on behalf of the Civil Procedural Committee of the California State Sheriffs' Association, I wish to compliment you and your staff on the very fine job you have all done in developing the proposed new laws governing the enforcement of judgments. Our Committee's review of AB 707 and 798 revealed only a few areas where we felt some revision is in order, which accompany this letter.


Our main concerns relate, with minor exception, to procedural aspects as they will impact levying officers and cost considerations. We have attempted to avoid suggesting changes of substantive matters, although have noted a few where we believe there is a need to do so.

Suggested changes are in order as they appear in the bills, with deletions being lined out (---) and additions underlined (___), followed by our rationale for them.

Again, our Committee commends you and your staff for a job well done, and hope the suggested changes will be helpful.

Very truly yours,

ROBERT E. WINTER, SHERIFF


MARTIN H. LEFEVRE, CAPTAIN
(For the Civil Procedural Committee, CSSA)

Atch.

AB 707, pg. 25, Sec. 687.010(a):

687.010. (a) The judgment creditor shall give the levying officer instructions in writing, signed by the ~~judgment-creditor-or-the~~ judgment creditor's ~~attorney,~~ attorney or by the judgment creditor, if the judgment creditor has no attorney, containing the information needed or requested by the levying officer to comply with the provisions of this title, including but not limited to:

RATIONALE: To conform the section with CCP 262 and thereby provide sheriffs, constables, and marshals with liability protection it affords.

AB 707, pg. 26, Sec. 687.040(b):

(b) Unless the levying officer is negligent in the care or handling of the property, the levying officer is not liable to either the judgment debtor or the judgment creditor for loss by fire, theft, injury, or damage of any kind to personal property while (1) in the possession of the levying officer either in a warehouse or other storage facility or place or in the custody of a keeper or (2) in transit to or from a warehouse, warehouse or other storage facility or place.

RATIONALE: Certain types of property are not normally stored in a warehouse, ie: motor vehicles are normally stored in a tow company yard, vessels in a boat yard, aircraft in a hanger, etc. The added language provides for the use of the "other" type storage commonly used.

AB 707, pg. 26, Sec. 687.040:

(c) The levying officer has a special lien dependent on possession on personal property levied upon in the amount of the levying officer's unpaid fees and expenses.

RATIONALE: The addition of subd. (c) to this section essentially adds back the repealed CCP 3057 (AB 798, pg. 10), thereby insuring the levying officer with the ability to recover unpaid fees and expenses by enforcing the lien should that remedy become necessary.

AB 707, pg. A-3, Sec. 693.020 (form Items 2 and 8):

2. You are served as a person other than the judgment debtor. See items 4, 5, 6, ~~and-7,~~ 7, and 8.
8. The amount necessary to satisfy the creditor's judgment as of the date of issuance of this notice is \$ _____, plus additional interest in the amount of \$ _____ per day from (date) _____ until paid.

RATIONALE: Amends Item 2. to conform to the added Item 8., which will provide the person served with the notice with the ability to make the computations so payment could be made to the levying officer.

AB 707, pg. A-7, Sec. 693.030:

"Add a 'heading' to the Memorandum of Garnishee which has space for the name of the court, the title of the action, and the court and levying officer's case numbers. Something similiar to the format of Earnings Withholding Order forms would meet this requirement."

RATIONALE: To allow levying officers to readily identify their case files when they receive memorandums sent by garnishees.

AB 707, pg. A-12, Sec. 693.060:

"SEE: Recommended change, AB 707, pg. A-7, Sec. 693.030, above; Same type of 'heading' needed for same identification reasons".

AB 707, pg. 32, Sec. 694.050(a):

694.050. (a) Except as provided in subdivision (b), property levied upon upon, or property to be sold upon which sale proceedings have been commenced, prior to the operative date that would have been sold subject to the right of redemption under prior law shall be sold subject to the right of redemption and may be redeemed as provided by prior law.

RATIONALE: To provide the same protection to judgment debtors under an order of sale (foreclosure action) as under a sale on a money judgment. Since orders of sale do not require a levy prior to sale, the present proposed language would not provide this protection, since its language only covers " .., property levied upon ... ".

AB 707, pg. 55, Sec. 699.060(a):

699.060. (a) The levying officer shall release property levied upon as provided in this section when the levying officer receives a written direction from the judgment ~~creditor~~ creditor's attorney or the judgment creditor, if the judgment creditor has no attorney, or a certified copy of a court order for release or when otherwise required to release the property. The release extinguishes any execution lien or attachment lien in favor of the judgment creditor on the property released.

RATIONALE: To conform the section with CCP 262 and thereby provide sheriffs, constables, and marshals with liability protection it affords.

AB 707, pg. 57, Sec. 699.080(c):

(c) ...

(4) Instructions in writing, as required by the provisions of Section 687.010.

RATIONALE: To conform the section with CCP 262 and thereby provide sheriffs, constables, and marshals with liability protection it affords, by adding this added subdivision.

AB 707, pg. 62, Sec. 699.720(a):

(a) ...

(1) A license to engage in any business, profession, or activity issued by a public entity.

RATIONALE: The intent of Sec. 704.190 appears to be to continue the present exemption found in CCP 688(f). Sec. 704.190 only applies natural persons (Sec. 703.020(a)). Presuming it is also the intent of the Commission to exempt such licenses from execution where issued to other persons (corporations, partnerships, etc.), the addition of this language would prohibit such licenses from execution. In adding this language, it would then be unnecessary to continue Sec. 704.190, which is covered hereafter.

AB 707, pg. 66, Sec. 700.070(b):

(b) ...

(3) At the end of 10 days.

RATIONALE: To permit an operating business to operate under levy until the writ is satisfied seems worthwhile, however there are two serious practical problems:

- (1) On going business levies require supervision by the levying officer at the expense of the tax payer, since the only recoverable amount is the one-time fee for the levy. (GovtC 26721 - \$11.00), and;
- (2) Statewide, levying officers suffer shortages of both regular officers and keepers which would be seriously compounded by such "limitless" levies, obviously soon reaching the point where further levies would be impossible to make.

As in the Attachment Law (CCP 488.360), a 10 day period seems adequate time within which the judgment creditor and debtor should be able to reach a mutually acceptable resolution, or for a receiver to be appointed under the proposed Sec. 708.620.

AB 707, pg. 82, Sec. 701.540(h):

(h) Not earlier than 120 days after the date notice of levy on the interest in real property was served on the judgment debtor, the creditor shall determine the names and addresses of all third persons in whose names the real property stands upon the records of the tax assessor of the county where the real property is located, and the names and addresses of record of all persons having liens of record on the real property in the office of the county recorder of the county where the real property is located, and shall instruct the levying officer to mail notice of sale to all such persons at the addresses of record. Not less than 20 days before the date of sale, the levying officer shall mail notice of sale to all such persons at the addresses provided by the creditor's instructions. persons having liens of record on the property at the time of service. The notice shall be addressed to the person at the address, if any, shown by the

~~records-of-the-office-of-the-tax-assessor-of-the-county-where-the-real property-is-located-or,-if-no-address-is-so-shown,-to-the-person-at-the address-used-by-the-county-recorder-for-return-of-the-instrument-creating the-lien-after-recording.~~

RATIONALE: Several problems are present to creditors and levying officers:

- (1) Recorded liens are not actually filed and indexed on the date of receipt and a search on a particular day would not reveal liens recorded that day. Thus, it would be impossible to insure that all lienholders as of the date of mailing would receive a sale notice;
- (2) It is not possible to give sale notices to all persons having liens at the time of the sale, hence a "cut off" date seems in order. The 120 limit provided by Sec. 701.545 is both convenient and logical. The execution levy would have been recorded for the 120 days, or more, and persons filing liens after the recording would only have to check the recorder's index to be alerted to the levy and possible sale and they may then request the levying officer provide them a sale notice.
- (3) The section does not state who is responsible to obtain the required names and address. Since the creditor is the beneficiary of the sale, it should be the creditor who obtains the information and provides it to the levying officer.
- (4) The assessors' offices maintain no records of lienholders, only owners of record. Lienholder information is maintained by recorders' offices.
- (5) Owners of record who are not debtors are not required to be notified. Since they do have an interest, it seems they should be provided the same notice as a lienholder.

701.600. (a) The levying officer shall, at the request of the judgment creditor, sell the property either immediately to the next highest bidder at the amount the next highest bid, unless such next highest bid is retracted upon notification, or to the highest bidder at a new sale. The levying officer may, in the levying officer's discretion reject any subsequent bid of the defaulting bidder.

RATIONALE: Since a bid may be retracted at any time prior to the completion of the sale under the rules of auction (CommC 2328) and also the retraction of a bid does not revive any previous bid, the added language seems appropriate. Since 20 or more days may have passed since the sale, the next highest bidder may have had second thoughts or may have spent the bid money for other purposes.

AB 707, pg. 89, Sec. 701.810(e):

(e) To any other judgment creditors who have delivered writs to the ~~levying officer before the sale or collection~~, levying officer, accompanied by instructions to levy upon the ~~same property~~, proceeds of the sale or collection, or any other persons having actually known by the levying to have a claim, lien, or other interest subordinate to the judgment creditor's lien that is extinguished by the sale and that is not otherwise satisfied pursuant to this section, in the amounts to which they are entitled in order of their respective priorities.

RATIONALE: (In order of change) "Before the sale or collection" is deleted so other judgment creditors may be able to levy upon excess proceeds as long as they are in the levying officer's possession.

"Same property" is deleted to overcome the fiscal impracticality facing levying officers who would have to maintain a detailed record of all property and collections levied on. Major records keeping and checking would result - at great cost. In those few instances where excess collection arise, the major cost increases can not be justified.

"... actually known by the levying to have ..." is added, obviously so the levying officer is only required to pay claims of which he actually has knowledge.

AB 707, pg. 89, Sec. 701.820(a):

701.820. (a) Promptly after a sale ~~or collection~~ under this title, the levying officer shall prepare a schedule of proposed distribution of proceeds which shall be available for inspection in the office of the levying officer. Notice thereof shall be served on the judgment debtor, the judgment creditor, and any other person actually known to the levying officer to have or claim a lien on or interest in the property. Service shall be made personally or by mail. The levying officer may accumulate proceeds received during a 30-day period before preparing a schedule of proposed distribution.

RATIONALE: If the levying officer must give such notices on every collection, as currently worded, significant added costs will be incurred. Even if the required notices services allow a fee to be charged, this will be true, since the officer will have to require sufficient advanced fee deposits incurring the refund processing costs (without fee) where no notices are required or the duning costs where unanticipated services are required. Historically, the likelihood of the levying officer's distribution plan having been challenged negligable, if non-existant, either before or after distribution, on collections, clearly urging there is no or little need justifying this change. The obvious likelihood is greater in sale cases, however, and although there may be added costs, the number of actual sale cases is sufficiently small, relatively, that the notices may be justified. The addition of the word "actually" conforms this section's language to the suggested change in Sec. 701.810(e) and for the same reason. Our rationale does recognize that notices are not required on collections on wage garnishments. It is also noted that under present practice by levying officers, which will continue under proposed changes, distribution of proceeds does not occur within the 10 days for to claim exemptions, but usually a much longer time.

AB 707, pg. 90, Sec. 701.820:

(e) The levying officer shall not be liable to any person for a distribution of proceeds made in compliance with this section.

RATIONALE: Because of the complexity of many sale cases, particularly sales of real property, this addition will insure the levying officer's protection from liability where the required procedures are followed.

AB 707, pg. 92, Sec. 703.050:

(c) Notwithstanding subdivision (a), the procedures to be followed in levying upon, selling or releasing property, claiming, processing, opposing and determining of exemptions, and payment of exemption proceeds, shall be in accordance with the law in effect at the time the property was subjected to execution.

RATIONALE: This addition makes it clear and specific that the procedures to be followed are those in effect at the time of the execution, even though the exemption rights themselves may date back to a prior time in the procedural law.

AB 707, pg. 111, Sec. 704.190:

~~704.190, -Except as provided in Section 708.630, a license to engage in any business, profession, or activity issued by a public entity is exempt without making a claim.~~

RATIONALE: This section is a proposed deletion as a companion to the addition of item (11) to subdivision (a) of Sec. 699.720.

AB 707, pg. 117, Sec. 704.780(c):

(c) The court clerk shall transmit a certified copy of the court order (1) to the levying officer and (2) if the court making the order is not the court in which the judgment was entered, to the clerk of the court in which the judgment was entered.

RATIONALE: The addition of "certified" brings this section into conformit with others which are similar (699.060(a), 706.104(g), and 716.010(c). It will continue the long standing practise of levying officers who require "certified" copies before acting.

AB 707, pgs. 117 & 118, Sec. 704.790:

(c) Proof of service and of any posting shall be filed with the court levying officer within 10 days after the service and any posting.

(d)

(e) If the creditor fails to comply with subdivisions (b) and (c) when required, the dwelling may not be sold under the order of sale.

RATIONALE: Since the levying officer needs to know when the notices were served and posted to compute the time within which the subdivision (d) declarations must be filed with him, proofs should be filed with him, not with the court which will take no action on them, having already issued the order of sale. To insure that no sale takes place until

after the services and any postings have been made, proofs filed with the levying officer and the required time lapse without the declarations being filed (when required), this addition will make it clear that the judgment creditor must complete the subdivision (b) and (c) requirements before the sale may proceed, presuming no declarations are filed.

AB 707, pg. 175, Sec. 715.020:

(d) The provisions of subdivision (c) of Section 684.120, extending time, do not apply to subdivision (c) of this section.

RATIONALE: This addition clarifies that if the service of the writ is by posting and mailing, then the 5 days within which the occupant must vacate is not extended by the 5, 10 or 20 days because of the mailing portion of the service. This recommended addition presupposes there is no intention to allow such extensions, recognizing the occupants can easily avoid service by personal delivery and thereby extend their occupancy.

AB 707, pg. 177, Sec. 720.110(a):

720.110. (a) Where real ~~peeparty~~ property has been levied upon under a writ of attachment or a writ of execution.

RATIONALE: To correct a printing error.

AB 707, pg. 186, Sec. 720.340:

720.340. If the creditor has not filed a statement with the levying officer ~~prusuant~~ pursuant to Section 720.280 in opposition to a third-party claim by a secured party:

.....

RATIONALE: To correct a printing error.

AB 707, pg. 191, Sec. 720.660:

720.660. The levying officer shall release the property described in the third person's undertaking in the manner provided by Section 720.170 promptly after the expiration of the time allowed under subdivision (b) of Section 720.760 for objecting to the undertaking, unless the creditor has objected to the undertaking and filed with the levying officer the notice required by subdivision (b) of Section 720.760 prior to the expiration of that time.

RATIONALE: Sec. 720.760 permits service of the notice of motion by personal service or mail. If mailed, it may not be received until after the period expires, leaving the levying officer not knowing when the property may be released. This suggested amendment permits the levying officer to release the property if the notice of motion is not filed within the period.

AB 798, pg. 6, CC Sec. 986:

(b)

(6) To the sale or resale of a work of fine art under the provisions of Title 9 (commencing with Section 680.010) of Part 2 of the Code of

Civil Procedure.

RATIONALE: To exempt execution sales from this procedure.

AB 798, pg. 65, SEC. 75.1:

NOTE: This is a complete addition, reflecting how it amends the presently worded CCP 1166a.

SEC. 75.1. Section 1166a of the Code of Civil Procedure is amended to read:

1166a. (a) Upon filing the complaint, the plaintiff may, upon motion, have immediate possession of the premises by a writ of possession of real property issued by the court and directed to the sheriff of the county, or constable or marshal, for execution, where it appears to the satisfaction of the court, after a hearing on the motion, from the verified complaint and from any affidavits filed or oral testimony given by or on behalf of the parties, that the defendant resides out of state, has departed from the state, cannot, after due diligence, be found within the state, or has concealed himself or herself to avoid the service of summons.

(b) Written notice of the hearing on the motion shall be served on the defendant by the plaintiff in accordance with the provisions of Section 1011, and shall inform the defendant ~~that he~~ as follows: "You may file affidavits on his your own behalf with the court and may appear and present testimony on his your own behalf, ~~and that,~~ however, if he ~~fails you fail~~ to appear, the plaintiff will apply to the court for ~~the~~ a writ of possession, possession of real property".

(c) The plaintiff shall file an undertaking with good and sufficient sureties, to be approved by the judge, in such sum as shall be fixed and determined by the judge, to the effect that, if the plaintiff fails to recover judgment against the defendant for the possession of the premises or if the suit is dismissed, the plaintiff will pay to the defendant such damages, not to exceed the amount fixed in the undertaking, as may be sustained by the defendant by reason of such dispossession under the writ of ~~possession,~~ possession of real property. An action to recover such damages shall be commenced by the defendant in a court of competent jurisdiction within one year from the date of entry of dismissal or of final judgment in favor of the defendant.

(d) If at the hearing on the motion, the findings of the court be in favor of the plaintiff and against the defendant, an order shall be entered for the immediate restitution of the premises.

(e) The order for the immediate restitution of the premises may be enforced as provided in Division 3 (commencing with Section 712.010) of Title 9 of Part 2.

(f) For the purposes of this section, references in Division 3 (commencing with Section 712.010) of Title 9 of Part 2 and in subdivisions (e) to (m), inclusive, of Section 1174, to the "judgment debtor" shall be deemed references to the defendant, to the "judgment creditor" shall be deemed references to the plaintiff, and to the "judgment of possession or sale of property" shall be deemed references to an order for the immediate restitution of the premises.

RATIONALE: To provide levying officer with statutory direction on executing such writs, which does not now exist, leaving levying officers to their own interpretations, which vary throughout the state.

AB 798, pg. 92, GovtC Sec. 26664:

SEC. 104. Section 26664 of the Government Code is amended to read:

26664. Any sheriff who neglects or refuses to perform the duties under a writ of attachment, execution, possession, or sale, after being required by the ~~creditor or the creditor's attorney~~ creditor, if the creditor has no attorney, and after the sheriff's fees have been paid or tendered, is liable to the creditor for all actual damages sustained by the creditor.

RATIONALE: To conform the section with CCP 262 and thereby provide sheriffs, constables, and marshals with liability protection if affords.

AB 798, pg. 93, GovtC Sec. 26726:

SEC. 106. Section 26726 of the Government Code is amended to read:

26726. When a keeper is used

In addition to the fee provided by Section 26721, the fee for maintaining custody of property under levy by the use of a keeper is eleven dollars (\$11) for each day custody is so maintained after the first day.

Notwithstanding any other fee charged, a keeper shall receive ~~eight-dollars and fifty cents-(\$8.50)~~ eleven dollars (\$11) when pursuant to Section 26738 a levying officer prepares a Not Found Return.

RATIONALE: This proposal adds a new second paragraph and amends the current second paragraph which become the new third paragraph. When a going business is levied upon and continues to operate under a keeper, the levying officer incurs expenses for every day of the keeper levy supervision, without fee except for the first day's levy fee (\$11). This taxpayer cost should be shifted to the judgment creditor, which this new second paragraph will do. Statutes of 1980, Chapter 1372, increased the various levying officers' fees, excluding the keeper's non-installation fee which remained at \$8.50. Inflation, particularly the cost of gasoline, has impacted keepers and this increase (new third paragraph) would bring this fee up to the general \$11.00 fee scheme and more equitably compensate keepers under such non-installation circumstances.

AB 798, pg. 94, SEC. 112, GovtC Sec. 26750(a):

SEC. 112. Section 26750 of the Government Code is amended to read:

26750. (a) The fee for serving an earnings withholding order under the Wage Garnishment Law, Chapter 5 (commencing with Section 706.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, including but not limited to the costs of postage or traveling, and for performing all other duties of the levying officer under the law with respect to such levy is ~~eight-dollars-and-fifty-cents-(\$8.50)~~ eleven dollars (\$11).

RATIONALE: This suggested amendment would bring the fee for the service of an earnings withholding order and other required duties into line with the general \$11 fee scheme. Large amounts of time, effort and money are spent on processing such levies after they are made, particularly noting the 90 day withholding period with numerous checks coming in and payments being sent out by levying officers. The service is only a small part of most such earnings levies.

Memo 81-24 Exhibit 4



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 1799, SACRAMENTO, CALIFORNIA 95808)
Telephone (916) 445-3956

GEORGE R. REILLY
First District, San Francisco
ERNEST J. DRONENBURG, JR.
Second District, San Diego
WILLIAM M. BENNETT
Third District, San Rafael
RICHARD NEVINS
Fourth District, Pasadena
KENNETH CORY
Controller, Sacramento
DOUGLAS D. BELL
Executive Secretary

May 12, 1981

California Law Revision Commission
4000 Middlefield Road, Room D-2
Stanford, California 94306

Gentlemen:

The Honorable Alister McAlister has requested that comments on any technical or substantive amendments to Assembly Bill 707, pertaining to enforcement of State taxes and wage garnishment provisions, be directed to the Commission for consideration at its meeting on June 5 - 6.

A review of the proposed Enforcement of State Tax Liability provisions (Sections 688.010 through 688.110) as well as the proposed amendments to the wage garnishment provisions did not disclose any apparent area to which the Board might take exception. Accordingly, we do not perceive any suggestions for change to the bill in those areas at this time.

We are concerned, however, over the proposed homestead exemption that would permit the lien debtor to sell his or her home without loss of the exemption.

Under present law, it is generally the policy of the State not to foreclose its lien(s) on real property when that property consists of the person's dwelling, but to rely on the lien to clear the liability when the property is sold or otherwise transferred. If the proposed law is made to extend to tax liens, that would deprive the State of a means of collecting its revenue.

We respectfully request that the proposed law be amended to incorporate statements that, since the State tax lien is not a judgment lien, the State's lien is not subject to the exemptions.

It is our understanding that the Commission is preparing a comprehensive bill analysis soon to be released. We would appreciate being placed on the Commission's mailing list to receive this most valuable publication.

May 12, 1981

We appreciate the opportunity afforded us to review and comment on the proposed enforcement of judgments statute.

Very truly yours,



Douglas D. Bell
Executive Secretary

DDB:bh

cc: Honorable Ernest J. Dronenburg, Jr.
Honorable Richard Nevins
Honorable Alister McAlister
Mr. J. D. Dotson
Mr. J. J. Delaney
Mr. Larry Augusta
Ms. Margaret Howard
Ms. Carole R. Kornblum
Department of Justice
Mr. Arthur de Goede
Department of Justice
Mr. Bruce Walker
Franchise Tax Board
Mr. Joel Contreras
Employment Development Department
Office of State Controller



Memo 81-24
 Office of the Secretary of State
 March Fong Eu

Exhibit 5
 1230 J Street
 Sacramento, California 95814

Executive Office	(916) 445-8371
Certification	(916) 445-1430
Corporation Index	(916) 445-2900
Corporation Records	(916) 445-1768
Election Division	(916) 445-0820
Legal Division (Corp.)	(916) 445-0620
Notary Public Division	(916) 445-6507
State Archives	(916) 445-4293
Uniform Commercial Code	(916) 445-8061

May 14, 1981

Assemblyman Alister McAlister
 State Capitol, Room 3112
 Sacramento, CA 95814

Dear Assemblyman McAlister:

Thank you for having requested our comments concerning AB 707 and AB 798 which you have introduced at the request of the California Law Revision Commission.

We have no major concerns with regard to AB 798, however, there are several areas in AB 707 which we believe need reconsideration.

The filing of a lien against accounts receivable, chattel paper and negotiable documents of title, for example, appears to be more of an harrassment filing than one which would ordinarily result in monetary recovery.

Attached in more specific detail by appropriate bill section number are the concerns we believe should be re-evaluated before AB 707 is heard by committee.

A copy of this response and our specific concerns is being sent to the California Law Revision Commission as you requested,

Sincerely,

March Fong Eu
by Ann
 MARCH FONG EU
 Secretary of State

MFE:jp
 Attachment
 cc: California Law Revision Commission ✓

AB 707 (MCALISTER)

SECRETARY OF STATE COMMENTS AND SUGGESTIONS

It is suggested that the following sections of AB 707 be reviewed in light of the comments noted with regard to each section.

680.200. By established usage, banks organized pursuant to Act of Congress are called "national banks" and not "federal banks". On Page 6, strike out line 17 and insert "national bank, state or federal savings and loan association or credit union,".

697.530(a). You should delete "accounts receivable", "chattel paper" and "negotiable documents of title" on the ground that a lien filing procedure as to these would rarely result in any money to the judgment creditor and it opens up the possibility of mischievous claims against innocent persons. After a little persuasion the Law Revision Commission staff agreed to a similar restriction in the attachment lien law enacted in 1974.

697.530(d). To conform to Section 9840 of the Vehicle Code, change "boat" to "vessel".

697.550. This section needs elaboration as to the person required to execute the notice. In order to insure accuracy and legality, we suggest that it be executed by either (i) the clerk of the court or (ii) the sheriff, marshal or constable. If either of these selections would be made, you could then omit "under oath".

In (f), change "at the time of filing" to "at the date of the notice". Then add somewhere a provision that the notice cannot be accepted for filing if it is more than a certain number of days old.

697.610(a). To conform to Section 1201(9) of the Commercial Code, delete "the" after "buyer in".

697.660. It is an existing problem in many areas of life that there are people with identical names. It is not a problem which can be dealt with by statute. It can only be dealt with by experience and patience and neither of those can be legislated. This section should be entirely eliminated. You will notice that there is nothing similar for financing statements, tax liens or attachment liens.

697.670. In conformity to C.C.P. Section 488.360(c), the form of notice should be prescribed by the Secretary of State. Change "may prepare" to "shall prescribe" and delete the second sentence.

Other recommendations:

1 - If you nevertheless leave "accounts receivable", "chattel paper" and "negotiable documents of title" in Section 697.530(a), you must add protections for the account debtor, the chattle paper debtor, the warehouseman and the carrier.

2 - The 1980 amendment of Division 9 of the Commercial Code relating to fixtures does not seem to have found a place in the bill. Unless you address this problem specifically, some unfortunate lessor, lessee or seller-installer of fixtures might lose valuable property to a judgment creditor of one of the other two of such three parties.

3 - In our view the entire concept of a judgment lien notice procedure as to personal property needs serious review. What results can reasonably be expected in most such cases? Will the procedure convert to money for the judgment creditor? Will most attorneys feel compelled to file the notice else they be guilty of legal malpractice even if the procedure is seldom practical?



FRANCHISE TAX BOARD

SACRAMENTO, CALIFORNIA 95867

May 12, 1981

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94306

Gentlemen:

Assemblyman McAlister has requested that we respond directly to you with respect to our review of Assembly Bill 707. We have the following comments:

1. Section 697.600 which provides that with respect to after-acquired property, the judgment lien filed first has priority, could cause additional filings with the Secretary of State. At the present time when an Order to Withhold is served to collect such things as lease payments or payments on a promissory note, collection is made as the payments are made and no filing is necessary. Under the proposed law in order to establish our priority, filing will be required.

It is suggested that an exemption from the section be provided for the Order to Withhold.

2. The provisions of Section 703.550 which provide a five-day period within which to file, in court, a notice of opposition to a claim of exemption present a rather tight time frame. Under current law a creditor need merely to file the notice of opposition with the levying officer. Five more days are allowed to file a motion for a hearing with the court. The proposed law would require the immediate involvement of the Attorney General and the five-day period would not allow for much preparation.

It is suggested that the current law be retained.

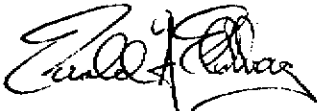
3. Our most pressing concern with the bill is Section 704.720 which provides for either a \$30,000 or a \$60,000 exemption for a homestead which is voluntarily or involuntarily sold or destroyed. While the department has a policy of not foreclosing upon a personal residence, when the home is voluntarily sold, the state tax lien attaches to the proceeds. A substantial amount of delinquent tax is collected in this fashion.

May 12, 1981

It is suggested that the exemption be limited to involuntary dispositions.

We would be pleased to discuss any of these items with you. Please call Jack Gordon of our legal staff at 355-0728. We also may have additional comments after receiving the Commission's detailed comments on the bill.

Sincerely,



Gerald H. Goldberg
Executive Officer

cc: Assemblyman McAlister

Memo 81-24

Exhibit 7



KENNETH CORY

Controller of the State of California

SACRAMENTO, CALIFORNIA 95805

(916)445-7941

May 19, 1981

California Law Revision Commission
4000 Middlefield Road, Rm. D-2
Palo Alto, CA 94306

Gentlemen:

Assemblyman Alister McAlister has asked that we provide you with our views concerning Assembly Bill No. 707.

Proposed § 688.030(a) (page 28, line 3) would permit claims of exemption and third party claims "[w]henever pursuant to any provision of the . . . Revenue and Taxation Code . . . property is levied upon pursuant to a warrant . . . issued by the state . . . for the collection of a liability. . . ." This would, of course extend the right to assert such claims to proceedings for the enforcement of liens for postponed property taxes which involve warrants issued pursuant to Revenue and Taxation Code §§ 3201 through 3204. (See comments to proposed Sections 688.020 and 688.030.)

However, unlike the tax liens established under other provisions of the Revenue and Taxation Code, those for postponed property taxes are voluntary liens which attach to real property with the consent and at the request of the debtor. The liens are, of course, designed to insure repayment of amounts advanced to eligible senior citizen claimants for payment of their real property taxes. Such liens are akin to the lien of any lender who secures payment of a property owner's willing obligation through a voluntary lien. Not only would it seem inappropriate to make the provisions of § 688.030 applicable to such a circumstance, but doing so may diminish the effectiveness of tens of thousands of existing state liens for deferred property taxes. Accordingly, it is recommended that proposed § 688.030(a) be amended to read:

"Whenever pursuant to any provision of the
Public Resources Code, Revenue and Taxation Code
(excluding Sections 3201 through 3204), or
Unemployment Insurance Code, . . ."

May 19, 1981

We also recommend that subdivision (a) (1) of proposed § 706.101 (p. 132, line 15) be clarified. Presently, that section contains the phrase ". . . or the office from which the employee is paid." As applied to the State, this could be construed as referring to the State Controller's Office or the personnel office, accounting office or other unit of the employing agency. We believe the intent of this provision is to allow service on the appropriate unit of the employing agency which directly distributes payroll warrants or checks to its employees. Therefore, we suggest that the above-quoted phrase be replaced by the following language:

" . . . or office of the employer or employing agency which distributes wage or salary payments directly to the employee."

Our Tax Administration Division will be corresponding with you in the next few days regarding any comments it may have concerning the impact of A.B. 707 on the Inheritance and Gift Tax laws.

Very truly yours,

KENNETH CORY, STATE CONTROLLER

By



D. Robert Shuman
Staff Counsel

DRS:df

cc: Hon. Alister McAlister

Memo 81-24 Exhibit 8



KENNETH CORY

Controller of the State of California

Division of Tax Administration
P. O. Box 247
Sacramento, California 95802

May 26, 1981

California Law Revision Commission
4000 Middlefield Road, Rm. D-2
Palo Alto, California 94306

Gentlemen:

In his letter of May 19, Mr. D. Robert Shuman indicated that our division would correspond with you concerning Assembly Bill 707. Consequently, we are writing to inform you that we do not perceive any problems with AB 707 as it affects the Gift Tax Law.

Very truly yours,

KENNETH CORY, State Controller

BY

A handwritten signature in cursive script that reads "Roy Gill".

Roy Gill

Asst. Chief Inheritance Tax Attorney
(916) 445-7341

RG/ejp

Memo 81-24

Exhibit 9

LAW OFFICES OF
BRADLEY AND SMITH

JOHN J. BRADLEY
LEONARD SMITH, INC.
CHARLES A. CLAESGENS
DAVID K. HICKS
JAMES A. HIGHSMITH
GREGORY C. PLASKETT
DEBRA A. HODSON
THOMAS K. TENG

OF COUNSEL
KENNETH W. CARLSON
EDWARD B. SIMPSON

521 GEORGIA STREET
POST OFFICE BOX 4484
VALLEJO, CALIFORNIA 94590
TELEPHONE (707) 552-0983

CUTTER BUILDING
2200 POWELL STREET, SUITE 530
EMERYVILLE, CALIFORNIA 94608
TELEPHONE (415) 652-1333

REPLY TO Vallejo

April 15, 1981

Mr. John H. DeMouilly
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94306

RE: Assembly Bills Nos. 707 and 798

Gentlemen:

GENERAL

Enforcement of judgments is the most important element of the civil court system. The courts exist in the civil context primarily to resolve disputes and arbitrate differences. (From the civil litigants point of view, they serve no other purpose). The end result of the process is a judgment. If that judgment cannot be enforced, disputes are not resolved and differences settled.

Judgments create a class of persons called creditors and a class called debtors. At that point in time the goal of the creditor is to cease to be a creditor, while the goal of the debtor is to remain a debtor.

There are at least two types of creditor/debtor relationships, those being voluntary and involuntary. The failure to articulate the difference between a voluntary and involuntary creditor is unfortunate.

The purpose of the law should be to make it inexpensive and probable that a judgment once obtained can be collected. In those situations where the position of the debtor is intolerable, bankruptcy is appropriate. Bankruptcy quickly and cheaply ends the matter for both the creditor and debtor.

Exemptions exist for the purpose of preventing the debtor from being financially destroyed while paying off the judgment or while in the process of filing bankruptcy. They also serve the purpose of preventing a creditor from taking items from the debtor which cause great hardship to the debtor without a corresponding benefit to the creditor, i.e., furniture, household furnishings, automobiles, etc.

Mr. John H. DeMouilly
April 15, 1981
Page 2

RESPECT FOR THE JUDICIAL PROCESS

It is important that a judgment, once obtained, have some reasonable possibility of being collected. This appears to be an especially grave problem in the small claims court; perhaps for economic rather than legal reasons.

SPECIFIC COMMENTS

1. Time for Enforcement of Judgments. What are the grounds for the debtor's objections to renewal?
2. Garnishment. Creditor should be required to pay to garnishee a fee to cover paperwork costs, i.e., \$10.00 to \$15.00. This can be added to writ.
3. Wage Garnishment - Hardship Exemption. Debtor should only be able to declare the hardship exemption once for a period of ninety (90) days on any judgment. The debtor would then have sufficient time to enter into a voluntary payment arrangement, file a Chapter 13 Proceeding, or straight bankruptcy.

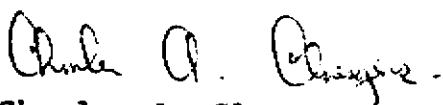
Another solution might be to tie the hardship exemption in with a wage assignment. This would protect creditors from overreaching creditors and protect creditors from debtors who abuse the system.

Should there be any hardship exemption for an involuntary creditor, i.e., auto accident?

4. Dwelling Exemption. This is the only exemption that is unfair. The purpose of the other exemptions is to prevent debtors from being driven into poverty. This exemption allows debtors to maintain a life style in excess of the average person in California. While constitutionally mandated, I cannot see why the amount should be increased. While protecting the worthy debtor, it is also the refuge of dead beats who can manage to effectively hide other executable assets. A disproportionate number of these people work for the federal government. They are, from a practical point of view, almost impossible to levy on through the appointment of a receiver. Creditors do not attempt a levy on a dwelling house unless it is the only possibility existing for collection.

Very truly yours,

BRADLEY & SMITH


Charles A. Claesgens

CAC:jb

AMENDMENTS TO ASSEMBLY BILL 707

Amendment 1

On page 5, line 25, strike the comma after "to"

Amendment 2

On page 6, strike out line 17, and insert:
national bank, state or federal savings and loan association or credit
union,

Amendment 3

On page 6, line 24, after "Code" insert:
, but does not include a security

Amendment 4

On page 7, line 14, strike out the comma after "to"

Amendment 5

On page 7, between lines 21 and 22, insert:
680.345. "Security" means a "security" as defined in Section
8102 of the Commercial Code.

Amendment 6

On page 7, line 28, after "instruments," insert:
securities,

Amendment 7

On page 8, line 16, after "673" insert:
or the assignee has otherwise become an assignee of record

Amendment 8

On page 8, between lines 26 and 27, insert:
681.040. If a paper is required or permitted to be filed with
a levying officer under this title, the paper is considered filed when
it is actually received by the levying officer.

Amendment 9

On page 11, line 4, strike out "last-known" and insert:
last known

Amendment 10

On page 13, line 22, strike out the comma and insert:
(

Amendment 11

On page 13, line 23, strike out the comma and insert:
or an execution lien)

Amendment 12

On page 13, line 31, strike out "or recorded"

Amendment 13

On page 13, line 32, strike out "writ, notice," and insert:
notice

Amendment 14

On page 15, line 10, after the period, insert:
Service on the judgment creditor of the request shall be made personally
or by mail.

Amendment 15

On page 18, line 23, strike out "shall" and insert:
may

Amendment 16

On page 21, strike out lines 32 to 40, inclusive

Amendment 17

On page 22, strike out lines 1 to 9, inclusive

Amendment 18

On page 22, line 32, strike out "six months" and insert:
two years

Amendment 19

On page 23, line 15, strike out "six months" and insert:
two years

Amendment 20

On page 25, strike out lines 4 and 5

Amendment 21

On page 25, line 6, strike out "containing" and insert:
levying officer instructions in writing. The instructions shall be
signed by the judgment creditor's attorney of record or, if the judgment
creditor does not have an attorney of record, by the judgment creditor.
The instructions shall contain

Amendment 22

On page 27, line 5, after "warehouse" insert:
or other storage facility or storage place

Amendment 23

On page 27, line 6, after "warehouse" insert:
or other storage facility or storage place

Amendment 24

On page 27, between lines 6 and 7, insert:
687.050. The levying officer has a special lien, dependent
upon possession, on personal property levied upon in the amount of the
levying officer's unpaid fees and expenses.

Amendment 25

On page 28, line 4, after "Taxation Code" insert:
(excluding Sections 3201 to 3204, inclusive)

Amendment 26

On page 28, line 17, after "property" insert:
or a security interest in or lien on the property

Amendment 27

On page A-1, in the second line of item 2, strike out "699080"
and insert:
699.080

Amendment 28

On page A-1, following item 15, delete the box before "Clerk"

Amendment 29

On page A-2, strike out the second line of item 10a and insert:
then for the value (itemize in 10e) specified in the judgment or supplemental order.

Amendment 30

On page A-2, strike out the last line of the second item in
the box entitled "NOTICE TO PERSON SERVED" and insert:
judgment or in a supplemental order.

Amendment 31

On page A-3, in the second line of item "2." , strike out "and
7" and insert:
7, and 8

Amendment 32

On page A6, in the line following "720.800" which constitutes
the last line of item "7.", insert:

8. The amount necessary to satisfy the judgment creditor's judgment as of the date of issuance of this notice is \$ _____, plus additional interest in the amount of \$ _____ per day from _____ (date) _____ until paid.

Amendment 33

On page A-7, line 4, strike out "MEMORANDUM OF GARNISHEE" and insert:

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):		TELEPHONE NO.:	LEVYING OFFICER (Name and Address):	
ATTORNEY FOR (Name):				
Name of court, judicial district or branch court, if any:				
PLAINTIFF:				
DEFENDANT:				
MEMORANDUM OF GARNISHEE		LEVYING OFFICER FILE NUMBER:	COURT CASE NUMBER	

Amendment 34

On page A-7, in the second line in the first box, strike out "returned" and insert:
mailed or delivered

Amendment 35

On page A-7, in the third line in the first box, after "service" insert:
on you

Amendment 36

On page A-7, strike out the material between the two boxes

Amendment 37

On page A-9, in the line following the box, after "TO JUDGMENT DEBTOR (name and" strike out "last-known" and insert:
last known

Amendment 38

On page A-11, line 5, strike out quotation marks before
"IMPORTANT"

Amendment 39

On page A-11, line 22, strike out the quotation marks after
"LANDLORD"

Amendment 40

On page A-11, line 23, strike out the quotation marks before
"IMPORTANTE"

Amendment 41

On page A-12, line 4, strike out the quotation marks after
"ARRENDADOR"

Amendment 42

On page A-12, line 9, strike out the quotation marks before
"IMPORTANT"

Amendment 43

On page A-12, between lines 8 and 9, following the line
reading "substantially in the following form:" insert:

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):		TELEPHONE NO.:	LEVYING OFFICER (Name and Address):	
ATTORNEY FOR (Name):				
Name of court, judicial district or branch court, if any:				
PLAINTIFF:				
DEFENDANT:				
DECLARATION FOR REHEARING ON HOMESTEAD EXEMPTION		LEVYING OFFICER FILE NUMBER:	COURT CASE NUMBER	

Amendment 44

On page A-12, strike out line 28 reading "..... (Cut Out and Return This Form to)" and insert:

Return This Form to:

Amendment 45

On page A-13, lines 1 and 2, strike out "the clerk of the court will notify me" and insert:

I will be notified

Amendment 46

On page A-13, line 8, strike out the quotation marks before "IMPORANTE"

Amendment 47

On page A-13, strike out line 27 reading "..... (Corte y Devuelva Este Formato a)....." and insert:

Devuelva Este Formato a:

Amendment 48

On page A-14, lines 5 and 6, strike out "el oficial de la corte me notificará " and insert:
seré notificado

Amendment 49

On page A-14, line 11, strike out the quotation marks

Amendment 50

On page 31, line 5, strike out "January" and insert:
July

Amendment 51

On page 31, strike out line 7 and insert:
June 30, 1983.

Amendment 52

On page 32, line 2, strike out "and delivery." and insert:
or delivery of possession. Property sold prior to the operative date subject to the right of redemption under prior law may be redeemed as provided by prior law.

Amendment 53

On page 32, line 12, after "upon" insert:
, or property to be sold upon which sale proceedings have been commenced,

Amendment 54

On page 33, line 25, strike out "the community" and insert:
either spouse that are community property

Amendment 55

On page 34, line 6, after "a" insert:
money

Amendment 56

On page 34, between lines 15 and 16, insert:

695.060. Except as provided in Section 708.630, a license issued by a public entity to engage in any business, profession, or activity is not subject to enforcement of a money judgment.

695.070. Notwithstanding the transfer or encumbrance of property subject to a lien created under this division, if the property remains subject to the lien after the transfer or encumbrance, the judgment may be enforced against the property in the same manner and to the same extent as if it had not been transferred or encumbered.

Amendment 57

On page 35, line 25, after "to" insert:

Sections 683.180 to 683.200, inclusive, and to

Amendment 58

On page 35, lines 38 and 39, strike out "this division" and insert:

Article 2 (commencing with Section 697.310) or Article 3 (commencing with Section 697.510); but, unless the court otherwise expressly orders, no other liens may be created or continued under this division during the period of the stay of enforcement

Amendment 59

On page 36, between lines 12 and 13, insert:

697.060. (a) An abstract or certified copy of a money judgment of a court of the United States that is enforceable in this state may be recorded to create a judgment lien on real property pursuant to Article 2 (commencing with Section 697.310).

(b) A notice of judgment lien based on a money judgment of a court of the United States that is enforceable in this state may be filed to create a judgment lien on personal property pursuant to Article 3 (commencing with Section 697.510).

Amendment 60

On page 38, line 1, after "years" insert:
or the interest of a beneficiary under a trust

Amendment 61

On page 43, between lines 12 and 13, insert:

697.420. (a) The judgment debtor or the owner of real property subject to a judgment lien on real property created under this article may deliver to the judgment creditor a demand that the judgment creditor do one of the following within 60 days after receipt of the demand:

(1) Mail or deliver to the person making the demand a release of the judgment lien, executed as provided in Section 697.370, on the interest of the person making the demand in the property described in the demand.

(2) Levy execution on the interest of the person making the demand in the property described in the demand.

(b) The demand shall include a legal description of the property subject to the judgment lien to which the demand relates and the address to which the release of the judgment lien may be mailed.

(c) The judgment creditor shall comply with the demand within 60 days after receipt of the demand. If the judgment creditor does not comply with the demand within the time allowed, the person making the demand may apply to the court on noticed motion for an order releasing the judgment lien on the interest of the person making the demand in the property described in the demand. A copy of the notice of motion shall be served on the judgment creditor. Service shall be made personally or by mail. Upon proof of receipt of the demand by the judgment creditor and of the failure of the judgment creditor to comply with the demand within the time allowed, the court shall order the judgment creditor to prepare and deliver a recordable document releasing the lien on the interest of the person making the demand in the property described in the demand or shall itself order the release of the judgment lien on that interest in that property. The court order may be recorded in the office of the county recorder with the same effect as the release executed

as provided in Section 697.370 that was demanded pursuant to this section. The court shall award reasonable attorney's fees to the prevailing party in any proceeding maintained pursuant to this subdivision. In addition, if the court determines that the judgment creditor failed without good cause to comply with the demand within the time allowed, the judgment creditor is liable to the person making the demand for all damages sustained by reason of such failure and shall also forfeit one hundred dollars (\$100) to the person making the demand.

(d) Notwithstanding subdivision (b) of Section 704.840, if a demand is made pursuant to this section and the judgment creditor elects to levy execution on the interest of the person making the demand in the property described in the demand, the judgment creditor is entitled to recover reasonable costs incurred in connection with the levy and proceedings thereunder, whether or not a minimum bid required for the sale of property under Section 701.620 is received.

Amendment 62

On page 43, line 39, strike out "A" and insert:
Subject to subdivision (d), a

Amendment 63

On page 44, line 14, strike out "If" and insert:
Subject to subdivision (d), if

Amendment 64

On page 44, between lines 22 and 23, insert:
(d) A judgment lien on personal property is limited to less than all of the property described in subdivisions (a) and (b) if the notice of judgment lien on personal property contains the statement provided for in paragraph (2) of subdivision (c) of Section 697.550 that the judgment lien applies to identified property specified in the notice, and in such case the lien extends only to such property described in subdivisions (a) and (b) as is reasonably identified in the notice and, to the extent provided by Section

697.620, continues on the proceeds received upon the sale, collection, or other disposition of such reasonably identified property.

Amendment 65

On page 44, line 23, strike out "(d)" and insert:
(e)

Amendment 66

On page 44, line 24, strike out "a" and insert:
(1) A

Amendment 67

On page 44, line 25, strike out "boat" and insert:
vessel

Amendment 68

On page 44, between lines 28 and 29, insert:

(2) The inventory of a retail merchant held for sale except to the extent that the inventory of the retail merchant consists of durable goods having a unit retail value of at least five hundred dollars (\$500). For the purposes of this paragraph, "retail merchant" does not include (A) a person whose sales for resale exceeded 75 percent in dollar volume of the person's total sales of all goods during the 12 months preceding the filing of the notice of judgment lien on personal property or (B) a cooperative association organized pursuant to Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code (agricultural cooperative associations) or Part 3 (commencing with Section 13200) of Division 3 of Title 1 of the Corporations Code (Fish Marketing Act).

(f) If property subject to lien under this article becomes a fixture (as defined in Section 9313 of the Commercial Code), the judgment lien of such property is extinguished.

Amendment 69

On page 44, line 40, after "oath" insert:
by the judgment creditor's attorney if the judgment creditor has an attorney of record or, if the judgment creditor does not have an attorney of record, by the judgment creditor

Amendment 70

On page 45, line 4, strike out "last-known" and insert:
last known

Amendment 71

On page 45, line 6, strike out lines 6 and 7 and in line 8 strike out "debtor" and insert:

- (c) One of the following statements:
 - (1) A statement that: "All property

Amendment 72

On page 45, between lines 10 and 11, insert:

(2) A statement that: "The following described property is subject to this judgment lien: (here insert a description that reasonably identifies the property subject to the judgment lien)."

Amendment 73

On page 45, strike out line 17, and insert:
date of the notice.

- (g) The date of the notice.

Amendment 74

On page 45, line 32, after the period, insert:
A notice shall not be filed if it is presented for filing more than 10 days after the date of the notice.

Amendment 75

On page 46, lines 10 and 11, strike out "upon the creation of"

Amendment 76

On page 46, lines 11 and 12, strike out ", the judgment creditor has the priority of a lien creditor" and insert:
has priority

Amendment 77

On page 46, line 17, strike out "the security interest" and strike out lines 18 and 19, and insert:
the date the financing statement was filed with respect to the security interest is after the date the notice of judgment lien was filed under this article

Amendment 78

On page 46, strike out line 32 and insert:
697.610. Except as otherwise provided in this article, a judgment lien on personal property is effective between the judgment creditor and judgment debtor and against other creditors of the judgment debtor and

Amendment 79

On page 46, line 36, strike out "the"

Amendment 80

On page 47, line 15, after "proceeds" insert:
with the same priority

Amendment 81

On page 47, line 16, after "proceedings" insert:
(as defined in Section 1201 of the Commercial Code)

Amendment 82

On page 50, line 40, after "article" insert:
and the Secretary of State may require use of such form.

Amendment 83

On page 51, line 5, strike out "one year" and insert:
two years

Amendment 84

On page 51, line 26, after "consideration" insert:
(as defined in Section 3439.03 of the Civil Code)

Amendment 85

On page 51, line 40, strike out "(Section 8102 of" and insert
a period

Amendment 86

On page 52, strike out line 1

Amendment 87

On page 54, strike out lines 23 and 24 and insert:
upon if the property is sought to be levied upon by taking it into
custody.

Amendment 88

On page 55, line 11, after "the" insert:
judgment creditor's attorney of record or, if the judgment creditor
does not have an attorney of record, from the

Amendment 89

On page 55, line 32, after the period, insert:
If the amount deposited is not claimed by the person, or the legal
representative of the person, within five years after the deposit is
made, by making application to the treasurer or other official desig-
nated by the county, it shall be paid into the general fund of the
county.

Amendment 90

On page 56, line 9, strike out the comma after "to"

Amendment 91

On page 58, between lines 5 and 6, insert:

(4) Instructions in writing, as required by the provisions of Section 687.010.

Amendment 92

On page 58, line 39, strike out "90" and insert:

180

Amendment 93

On page 59, line 6, strike out "Section 4383" and insert:
any applicable provisions of Sections 4380 to 4384, inclusive,

Amendment 94

On page 60, line 10, strike out "90" and insert:

180

Amendment 95

On page 61, line 7, strike out "One year" and insert:

Two years

Amendment 96

On page 61, line 12, strike out "90" and insert:

180

Amendment 97

On page 61, line 14, strike out "90-day" and insert:

180-day

Amendment 98

On page 63, line 7, after "the" insert:
judgment debtor's interest in the

Amendment 99

On page 63, line 8, after "If the" insert:
judgment debtor's interest in the

Amendment 100

On page 63, line 16, after "on" insert:
(1)

Amendment 101

On page 63, line 16, after "the" insert:
judgment debtor's interest in the

Amendment 102

On page 63, line 17, after "county" insert:
and (2) on any third person who is a coowner of record of the real
property

Amendment 103

On page 63, line 19, strike out "address" and insert:
person at the address for such person, if any,

Amendment 104

On page 63, line 21, after "located" insert:
or, if no address is so shown, to the person at the address used by the
county recorder for the return of the instrument creating the interest
of the third person

Amendment 105

On page 64, line 9, after "the" insert:
judgment debtor's interest in the

Amendment 106

On page 64, line 10, after "upon" insert:
and describes the real property where the crops, timber, or minerals or
the like are located

Amendment 107

On page 64, line 10, after "If" insert:
the judgment debtor's interest in

Amendment 108

On page 64, line 11, after "like, or" insert:
if

Amendment 109

On page 64, line 21, after "the" insert:
judgment debtor's interest in the

Amendment 110

On page 64, line 22, strike out ", or real property,"

Amendment 111

On page 64, line 23, after "county" insert:
and any third person in whose name the real property stands upon the
records of the county

Amendment 112

On page 64, line 24, strike out "address" and insert:
person at the address for such person, if any,

Amendment 113

On page 64, line 26, after "located" insert:
or, if no address is so shown, to the person at the address used by the

county recorder for the return of the instrument creating the interest of the third person in the property

Amendment 114

On page 66, lines 18 and 19, strike out "tangible personal property of a going business" and insert:
farm products and inventory of a going business held for sale by the judgment debtor in the ordinary course of business and in the possession or control of the judgment debtor

Amendment 115

On page 66, lines 33 and 34, strike out "tangible personal property" and insert:
farm products and inventory

Amendment 116

On page 66, between lines 39 and 40, insert:
(3) At the end of 10 days from the time the keeper is placed in charge of the business.

Amendment 117

On page 67, line 1, strike out "such as a housetrailer, mobilehome, or boat,"

Amendment 118

On page 67, line 28, strike out "boat for which" and insert:
vessel is levied upon and

Amendment 119

On page 67, line 30, strike out ", or" and insert:
for such vehicle or vessel and the certificate of ownership is still in effect, or if

Amendment 120

On page 67, lines 30 and 31, strike out "for which" and insert:
is levied upon and

Amendment 121

On page 67, lines 32 and 33, strike out ", is levied upon" and
insert:
for such mobilehome or commercial coach and the certificate of title
is still in effect

Amendment 122

On page 67, line 35, after "property" insert:
levied upon

Amendment 123

On page 67, line 37, strike out "boat" and insert:
vessel

Amendment 124

On page 69, lines 1 and 2, strike out "(as defined in Section
8102 of the Commercial Code)"

Amendment 125

On page 69, line 18, after the period, insert:
For the purposes of this subdivision, in determining the amount of the
deposit account, the financial institution shall not include the amount
of items deposited to the credit of the deposit account that are in the
process of being collected.

Amendment 126

On page 71, line 22, after "(c)" delete the comma

Amendment 127

On page 71, line 29, after the period, insert:

For the purposes of this paragraph, in determining the amount of the deposit account, the financial institution shall not include the amount of items deposited to the credit of the deposit account that are in the process of being collected.

Amendment 128

On page 72, strike out lines 30 to 40, inclusive, and insert:

700.180. (a) The following property may be levied upon pursuant to this article notwithstanding that the property levied upon is the subject of a pending action or special proceeding:

(1) Real property.

(2) Growing crops, timber to be cut, or minerals or the like (including oil and gas) to be extracted or accounts receivable resulting from the sale thereof at the wellhead or minehead.

(3) Tangible personal property in the possession or under the control of the judgment debtor or in the custody of a levying officer.

(4) The interest of an heir, devisee, or legatee in personal property in the estate of a decedent.

(b) Except as provided in subdivision (a), a levy upon property that is the subject of an action or special proceeding pending at the time of the levy is not effective.

Amendment 129

On page 74, strike out lines 35 and 36 and insert:

section shall be returned not later than one year after the

Amendment 130

On page 77, line 14, strike out "clerk"

Amendment 131

On page 77, line 29, after "levy" insert:

and, if a garnishee's memorandum is required, the garnishee's memorandum

need provide information with respect only to property which is carried on the records available at the office or branch where the levy is made

Amendment 132

On page 78, line 1, after "court" insert:
upon a determination that the judgment creditor's lien has priority over the security interest

Amendment 133

On page 78, line 2, strike out "created" and insert:
that attached

Amendment 134

On page 78, line 27, after "debtor" insert:
to make payments as required by this subdivision

Amendment 135

On page 79, line 13, after "obligor" insert:
to make payments as required by this section

Amendment 136

On page 80, strike out lines 16 to 18, inclusive, and insert:
collected rather than sold. A judgment debtor who so applies shall, within the time allowed for the application, serve a copy of the notice of motion on the judgment creditor and file a copy of the notice of motion with the levying officer. Service of the copy of the notice of motion on the judgment creditor shall be made personally or by mail. If the copy of the

Amendment 137

On page 80, line 21, after "If" insert:
a copy of the

Amendment 138

On page 81, line 32, after "served" insert:
, mailed,

Amendment 139

On page 81, line 34, strike out "(g)" and insert:
(h)

Amendment 140

On page 81, line 35, strike out "personally"

Amendment 141

On page 81, line 36, after the period, insert:
Service shall be made personally or by mail.

Amendment 142

On page 82, line 18, strike out "a continuous tract" and
insert:
one or more continuous, unbroken tracts

Amendment 143

On page 82, line 21, strike out "such continuous" and insert:
continuous, unbroken

Amendment 144

On page 82, strike out lines 34 to 40, inclusive

Amendment 145

On page 83, strike out lines 1 and 2, and insert:
(h) Not earlier than 30 days after the date of levy, the
judgment creditor shall determine the names and addresses of record of
all persons having liens on the real property on the date of levy that
are of record in the office of the county recorder and shall instruct
the levying officer to mail notice of sale to such persons. The levying

officer shall mail notice to each such person at the address given in the instructions as required by subdivision (b).

Amendment 146

On page 83, between lines 8 and 9, insert:

701.547. A notice of sale shall contain the substance of the following statement: "Prospective bidders should refer to Sections 701.510 to 701.680, inclusive, of the Code of Civil Procedure for provisions governing the terms, conditions, and effect of the sale and the liability of defaulting bidders."

Amendment 147

On page 83, strike out line 13, and insert:

of the sale pursuant to this section.

Amendment 148

On page 83, line 14, after "section" insert:

made prior to the issuance of the writ

Amendment 149

On page 83, line 20, after the period, insert:

The name and address of the person requesting notice of sale under this subdivision shall be noted on the writ.

Amendment 150

On page 83, between lines 20 and 21, insert:

(c) A person who desires notice of sale of particular property that has been levied upon may file a request for notice of sale with the levying officer who will conduct the sale. The request shall contain the information specified by the levying officer as needed in order to comply with the request.

Amendment 151

On page 85, line 14, strike out "20" and insert:

Amendment 152

On page 85, line 17, after "on" insert:
the balance of

Amendment 153

On page 85, strike out lines 24 to 29, inclusive, and insert:

(a) The levying officer shall sell the property:

(1) If the default occurs at the sale, either to the next highest bidder at the amount of the next highest bid if such bidder agrees, or to the highest bidder at a new sale held immediately, as requested by the judgment creditor.

(2) If the default occurs after the sale to a credit bidder pursuant to subdivision (c) of Section 701.590, to the highest bidder at a new sale.

Amendment 154

On page 86, between lines 17 and 18, insert:

(d) The levying officer may, in the levying officer's discretion, reject any subsequent bid of the defaulting bidder.

Amendment 155

On page 86, strike out lines 22 to 24, inclusive, and insert:

(1) The amount of all preferred labor claims that are required by Section 1206 to be satisfied from the proceeds.

Amendment 156

On page 87, line 3, after "sold" insert:

(1)

Amendment 157

On page 87, line 4, after "or" insert:

(2)

Amendment 158

On page 87, line 35, strike out "last-known" and insert:
last known

Amendment 159

On page 88, line 2, strike out "is discharged" and insert:
ceases to exist

Amendment 160

On page 88, line 3, after "or" insert:
vacated or set aside

Amendment 161

On page 88, line 5, strike out "discharged"

Amendment 162

On page 88, line 7, strike out "improperly"

Amendment 163

On page 88, line 14, after the period, insert:
Subject to paragraph (2), if the sale is set aside, the judgment of the judgment creditor is revived to reflect the amount that was satisfied from the proceeds of the sale and the judgment creditor is entitled to interest on the amount of the judgment as so revived as if the sale had not been made.

Amendment 164

On page 88, strike out lines 29 to 32, and insert:
(a) To persons having preferred labor claims that are required by Section 1206 to be satisfied from the proceeds, in the amounts required by Section 1206 to be satisfied.
(b) If a deposit

Amendment 165

On page 88, lines 37 and 38, strike out ", in the order of their respective priorities"

Amendment 166

On page 88, line 39, strike out "(b)" and insert:
(c)

Amendment 167

On page 89, line 7, strike out "(c)" and insert:
(d)

Amendment 168

On page 89, line 10, strike out "(d)" and insert:
(e)

Amendment 169

On page 89, line 16, strike out "(e)" and insert:
(f)

Amendment 170

On page 89, lines 17 and 18, strike out "before the sale or collection"

Amendment 171

On page 89, line 19, strike out "same property" and insert:
judgment debtor's property or the proceeds of its sale or collection

Amendment 172

On page 89, line 19, strike out "having" and insert:
actually known by the levying officer to have

Amendment 173

On page 89, line 25, strike out "(f)" and insert:
(g)

Amendment 174

On page 89, strike out lines 26 to 40, inclusive

Amendment 175

On page 90, strike out lines 1 to 26, inclusive, and insert:
701.820. (a) If there are conflicting claims to all or a portion of the proceeds of sale or collection known to the levying officer before the proceeds are distributed, the levying officer may deposit with the court the proceeds that are the subject of the conflicting claims instead of distributing such proceeds under Section 701.810. Any interested person may apply on noticed motion for an order for the distribution of the proceeds deposited with the court. A copy of the notice of motion shall be served on such persons as the court shall by order determine in such manner as the court prescribes. Any interested person may request time for filing a response to the motion for an order for the distribution of the

Amendment 176

On page 90, line 33, strike out "exceptions" and insert:
issues presented by the motion

Amendment 177

On page 90, line 35, strike out "exceptions" and insert:
issues presented by the motion

Amendment 178

On page 90, line 36, strike out "conclusion of" and insert:
issues presented by the motion can be determined in a

Amendment 179

On page 91, line 2, strike out "exception" and insert:
issues presented by the motion

Amendment 180

On page 91, line 13, strike "(a)" and strike out the comma and insert a colon

Amendment 181

On page 91, line 14, strike out "the" and insert:

(a) The

Amendment 182

On page 91, line 21, after "division" insert:

or pursuant to Title 6.5 (commencing with Section 481.010) (attachment)

Amendment 183

On page 91, line 38, strike out "Property" and insert:

Except as otherwise specifically provided by statute, property

Amendment 184

On page 92, strike out line 22 and in line 23 strike out "be applied" and insert:

(b) This section applies

Amendment 185

On page 92, between lines 27 and 28, insert:

(c) Notwithstanding subdivision (a), in the case of a levy of execution, the procedures to be followed in levying upon, selling or releasing property, claiming, processing, opposing, and determining of exemptions, and paying exemption proceeds, shall be governed by the law in effect at the time the levy of execution is made on the property.

Amendment 186

On page 94, line 34, strike out "481.101" and insert:

481.010

Amendment 187

On page 96, line 5, strike out "Five" and insert:

Ten

Amendment 188

On page 96, line 6, strike out "five" and insert:

10

Amendment 189

On page 96, line 7, strike out "examine" and insert:

review

Amendment 190

On page 96, line 8, strike out "in" at the end of the line

Amendment 191

On page 96, strike out lines 9 to 13, inclusive, and insert:
and recommend to the

Amendment 192

On page 96, line 36, strike out "Subject to"

Amendment 193

On page 96, strike out line 37

Amendment 194

On page 96, line 38, strike out "is served by mail, the" and
insert:
The

Amendment 195

On page 97, line 11, after "type" insert:
(including exempt proceeds of property of the same type)

Amendment 196

On page 97, line 13, strike out "items are claimed as exempt"
and insert:
of the described property to which the exemption is to be applied

Amendment 197

On page 97, line 16, strike out "funds" and insert:
property

Amendment 198

On page 98, line 22, strike out "five" and insert:
10

Amendment 199

On page 98, line 27, after "and" insert:
shall

Amendment 200

On page 99, line 20, after "the" insert:
exemption

Amendment 201

On page 100, line 6, after "served" insert:
promptly

Amendment 202

On page 100, line 35, after "(2)" insert:
each spouse has been using a separate motor vehicle to earn a livelihood
and

Amendment 203

On page 100, line 37, after "to" insert:
continue to

Amendment 204

On page 101, line 16, after "\$1,000" insert:
and if the person claiming the exemption under this subdivision does not
have a motor vehicle other than the one sold

Amendment 205

On page 101, line 23, strike out "judgment debtor" and insert:
person claiming the exemption

Amendment 206

On page 101, between lines 32 and 33, insert:

704.015. (a) As used in this section:

(1) "Earnings withholding order" means an earnings withholding order under the Wage Garnishment Law, Chapter 5 (commencing with Section 706.010).

(2) "Paid earnings" means earnings as defined in Section 706.011 that were paid to the employee during the 30-day period ending on the date of the levy. For the purposes of this paragraph, where earnings that have been paid to the employee are sought to be subjected to the enforcement of a money judgment other than by a levy, the date of levy is deemed to be the date the earnings were otherwise subjected to the enforcement of the judgment.

(3) "Wage assignment for support" means a wage assignment for support as defined in Section 706.011.

(b) Paid earnings that can be traced into deposit accounts or in the form of cash or its equivalent as provided in Section 703.080 are exempt in the following amounts:

(1) All of the paid earnings are exempt if prior to payment to the employee they were subject to an earnings withholding order or a wage assignment for support.

(2) Seventy-five percent of the paid earnings that are levied upon or otherwise sought to be subjected to the enforcement of a money judgment are exempt if prior to payment to the employee they were not subject to an earnings withholding order or a wage assignment for support.

Amendment 207

On page 102, line 1, strike out "jugment" and insert:
judgment

Amendment 208

On page 102, line 7, after "repair" insert:
or improvement

Amendment 209

On page 102, line 18, strike out "effect" and insert:
property

Amendment 210

On page 102, line 29, after "implements," insert:
instruments,

Amendment 211

On page 103, between lines 9 and 10, insert:

(b) If an item sold on an execution sale would be exempt under subdivision (a) but for the fact that the equity in the item exceeds the amount specified in subdivision (a), the proceeds of the execution sale of the item are exempt in an amount equal to the amount specified in subdivision (a) less the aggregate equity of any other items to which the exemption provided by subdivision (a) has been applied. The proceeds which are exempt under this subdivision are exempt for a period of 90 days after the time the proceeds are actually received.

Amendment 212

On page 103, line 10, strike out "(b)" and insert:
(c)

Amendment 213

On page 103, line 19, after "in" insert:
state and federal

Amendment 214

On page 103, line 27, after "in" insert:
state and federal

Amendment 215

On page 105, line 23, strike out "Government" and insert:
government

Amendment 216

On page 106, strike out lines 23 to 28, inclusive, and insert:
(6) Upon determining the exemption claim for the deposit account under subdivision (c), the court shall immediately transmit a certified copy of the order of the court to the financial institution and to the levying officer. If the order determines that all or part of the excess is exempt under subdivision (c), with respect to the amount of the excess which is exempt, the financial institution shall transfer the exempt excess from the suspense account or otherwise release any restrictions on its withdrawal by the judgment debtor. The transfer or release shall be effected within three business days of the receipt of the certified copy of the court order by the financial institution.

Amendment 217

On page 107, line 29, strike out ", paid or"

Amendment 218

On page 107, strike out line 30

Amendment 219

On page 107, line 31, strike out "dependents of the judgment debtor,"

Amendment 220

On page 108, line 1, strike out "benfit" and insert:
benefit

Amendment 221

On page 108, strike out lines 15 to 28, inclusive, and insert:
(c) Notwithstanding subdivision (b), where an amount described in subdivision (b) becomes payable to a person and is sought to be

applied to the satisfaction of a judgment for child or spousal support against that person:

(1) Except as provided in paragraph (2), the amount is exempt only to the extent that the court determines under subdivision (c) of Section 703.070.

(2) If the amount sought to be applied to the satisfaction of the judgment is payable periodically, the amount payable is subject to a wage assignment for support as defined in Section 706.011 or any other applicable enforcement procedure, but the amount to be withheld pursuant to the assignment or other procedure shall not exceed the amount permitted to be withheld on an earnings withholding order for support under Section 706.052. The paying entity may deduct from each payment made pursuant to a wage assignment under this paragraph an amount reflecting the actual cost of administration caused by the wage assignment up to two dollars (\$2) for each payment.

Amendment 222

On page 109, strike out lines 27 to 29, inclusive, and insert: private retirement plan are exempt.

(c) Notwithstanding subdivision (b), where an amount described in subdivision (b) becomes payable to a person and is sought to be applied to the satisfaction of a judgment for child or spousal support against that person:

(1) Except as provided in paragraph (2), the amount is exempt only to the extent that the court determines under subdivision (c) of Section 703.070.

(2) If the amount sought to be applied to the satisfaction of the judgment is payable periodically, the amount payable is subject to a wage assignment for support as defined in Section 706.011 or any other applicable enforcement procedure, but the amount to be withheld pursuant to the assignment or other procedure shall not exceed the amount permitted to be withheld on an earnings withholding order for support under Section 706.052.

(d) After payment, the amounts described in subdivision (b) and all contributions and interest thereon returned to any member of a private retirement plan are exempt.

Amendment 223

On page 111, strike out lines 32 to 35, inclusive

Amendment 224

On page 112, line 28, strike out "11003.1" and insert:
11003.2

Amendment 225

On page 113, strike out line 35 and insert:
taken by eminent domain or sold under the threat of eminent domain or
otherwise is involuntarily sold or transferred or is damaged or

Amendment 226

On page 113, line 37, after "for" insert:
the damage or

Amendment 227

On page 113, strike out line 40

Amendment 228

On page 114, line 1, strike out "voluntary sale, or 18" insert:
a period of six

Amendment 229

On page 114, line 2, strike out "in all other cases"

Amendment 230

On page 117, line 10, after the period, insert:
Subject to the provisions of this article, the sale is governed by
Article 6 (commencing with Section 701.510) of Chapter 3.

Amendment 231

On page 117, line 11, after "a" insert:
certified

Amendment 232

On page 117, line 34, after the period, insert:
If the judgment creditor fails to comply with this subdivision and with subdivision (b) in any case where this section applies, the dwelling may not be sold under the order for sale.

Amendment 233

On page 118, line 10, strike out "promptly give" and insert:
cause

Amendment 234

On page 118, line 10, after "hearing" insert:
promptly to be given

Amendment 235

On page 118, line 13, strike out "equals or"

Amendment 236

On page 118, line 40, strike out "All" and insert:
For the purposes of this section, all

Amendment 237

On page 119, line 9, strike out "equals or"

Amendment 238

On page 120, line 1, after "liability" insert:
, and includes the spouse of the judgment debtor where the earnings of the spouse of the judgment debtor are liable for the satisfaction of the judgment against the judgment debtor

Amendment 239

On page 120, line 5, after "order" insert a comma

Amendment 240

On page 120, line 6, after "Code" insert:
or Section 3088 of the Probate Code,

Amendment 241

On page 138, between lines 11 and 12, insert:

706.108. (a) An earnings withholding order may be issued against the earnings of the spouse of the judgment debtor only if one of the following requirements is satisfied:

(1) The spouse of the judgment debtor is named as a judgment debtor in the writ of execution.

(2) The court has determined, on ex parte motion or on noticed motion if the court or a court rule so requires, that the earnings of the spouse of the judgment debtor are liable for the satisfaction of the money judgment against the judgment debtor.

(3) The judgment creditor's application for the earnings withholding order is accompanied by an affidavit, together with two copies of the affidavit, showing that the earnings of the spouse of the judgment debtor are liable for the satisfaction of the money judgment against the judgment debtor.

(b) In cases covered by paragraph (3) of subdivision (a):

(1) Two copies of the affidavit shall be served on the employer along with the papers served pursuant to Section 706.103.

(2) The employer shall deliver a copy of the affidavit along with the copy of the earnings withholding order delivered pursuant to Section 706.104.

(3) A claim that the earnings are not liable for the satisfaction of the money judgment against the judgment debtor may be made by filing a claim pursuant to Section 706.105.

Amendment 242

On page 139, strike out lines 37 to 40, inclusive

Amendment 243

On page 144, strike out lines 38 to 40, inclusive, and insert:

(b) If enforcement of the judgment is stayed on appeal by the giving of a sufficient undertaking under Chapter 2 (commencing with Section 916) of Title 13, all proceedings under this article are stayed. In any other case where the enforcement of the judgment is stayed, all proceedings under this article are stayed unless the court otherwise expressly orders.

Amendment 244

On page 146, line 4, strike out "boldface type" and insert: 14-point boldface type if printed or in capital letters if typed

Amendment 245

On page 146, line 6, strike out "punished" and insert: subject to arrest and punishment

Amendment 246

On page 146, line 8, strike out "fee" and insert:
fees

Amendment 247

On page 147, line 20, strike out "boldface type" and insert: 14-point boldface type if printed or in capital letters if typed

Amendment 248

On page 147, line 22, after "appear" insert:
at the time and place specified in this order,

Amendment 249

On page 147, line 24, strike out "fee" and insert:
fees

Amendment 250

On page 148, line 29, strike out "attorneys'" and insert:
attorney's

Amendment 251

On page 149, lines 12 and 13, strike out "examination is to be conducted pursuant to Section 708.120 and the"

Amendment 252

On page 149, line 23, after "person" insert:
sought to be examined

Amendment 253

On page 150, line 33, strike out "ownership of" and insert:
interests in

Amendment 254

On page 151, line 8, strike out "ownership of" and insert:
interests in

Amendment 255

On page 151, line 15, strike out "ownership of" and insert:
interests in

Amendment 256

On page 151, line 16, strike out "ownership of" and insert:
interests in

Amendment 257

On page 151, line 23, strike out "ownership of" and insert:
interests in

Amendment 258

On page 151, line 32, strike out "creditor's claim is probably valid" and insert:
debtor probably owns an interest in the property or that the debt probably is owed to the judgment debtor

Amendment 259

On page 151, line 35, strike out "ownership of" and insert:
interests in

Amendment 260

On page 155, line 30, strike out "cost" and insert:
costs

Amendment 261

On page 156, lines 37 and 38, strike out "a copy of the notice
of lien"

Amendment 262

On page 156, line 40, after "proceeding" insert:
a copy of the notice of lien and a statement of the date when the notice
of lien was filed in the action or special proceeding

Amendment 263

On page 157, line 14, strike out "has been" and insert:
is

Amendment 264

On page 157, line 15, strike out "last-known" and insert:
last known

Amendment 265

On page 157, strike out lines 23 and 24

Amendment 266

On page 157, line 25, strike out "(f)" and insert:
(e)

Amendment 267

On page 157, line 27, strike out "was" and insert:
is

Amendment 268

On page 157, line 28, strike out "(g)" and insert:
(f)

Amendment 269

On page 157, line 33, strike out "(h)" and insert:
(g)

Amendment 270

On page 158, line 10, strike out "(i)" and insert:
(h)

Amendment 271

On page 158, line 13, strike out ". If" and insert:
and a statement that, if

Amendment 272

On page 158, line 38, after "judgment" insert:
procured therein

Amendment 273

On page 161, between lines 13 and 14, insert:
(6) Insurance policy loan value.

Amendment 274

On page 161, line 17, strike out "In" and insert:
Subject to subdivisions (d), (e), and (f), in

Amendment 275

On page 161, between lines 33 and 34, insert:
(e) When earnings or periodic payments pursuant to a pension or retirement plan are assigned pursuant to subdivision (a), the amount of the earnings or the periodic payments assigned shall not exceed the

amount that may be withheld from earnings under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).

(f) Where a specific amount of the payment or payments to be assigned is exempt by another statutory provision, the amount of the payment or payments to be assigned pursuant to subdivision (a) shall not exceed the amount by which the payment or payments exceed the exempt amount.

Amendment 276

On page 164, line 24, after the period, insert:

(a)

Amendment 277

On page 164, between lines 31 and 32, insert:

(b) The earnings of a public officer or employee shall not be withheld pursuant to this article. Except as expressly provided by law, the earnings of a public officer or employee may be withheld for the payment of a money judgment only pursuant to Chapter 5 (commencing with Section 706.010).

(c) If the obligation of a public entity to pay money to the judgment debtor is the subject of a pending action or special proceeding, the procedure in this article does not apply. The payment of the obligation that is the subject of the pending action or special proceeding may be applied to the satisfaction of the money judgment against the judgment debtor only in the manner provided in Article 5 (commencing with Section 708.410).

Amendment 278

On page 164, strike out lines 32 to 34, inclusive and insert:

708.730. (a) If money is owing

Amendment 279

On page 166, line 39, strike out "serve" and insert:

cause

Amendment 280

On page 166, line 40, after "deposit" insert:
to be served

Amendment 281

On page 167, strike out lines 2 to 6, inclusive, and insert:

(b) Within 10 days after service of the notice of deposit pursuant to subdivision (a), the judgment debtor who claims an exemption shall do both of the following:

(1) File with the court a claim of exemption and a notice of motion for an order determining the claim of exemption. The claim of exemption shall include all of the matters set forth in subdivision (b) of Section 703.520.

(2) Serve on the judgment creditor a copy of the notice of motion and a copy of the claim of exemption and a notice of hearing on the motion. Service shall be made personally or by mail.

(c) The hearing on the motion shall be held not later than 30 days from the date the notice of motion was filed with the court unless continued by the court for good cause.

(c) Within 10 days after the judgment creditor is served under subdivision (b), the judgment creditor who opposes the motion shall do both of the following:

(1) File with the court a notice of opposition to the claim of exemption. The notice of opposition to the claim of exemption shall be executed under oath and shall include all of the matters set forth in Section 703.560.

(2) Serve on the judgment debtor a copy of the notice of opposition to the claim of exemption. Service shall be made personally or by mail.

(d) Subdivisions (a) to (d), inclusive, of Section 703.580 and Sections 703.590 and 703.600 apply to a claim of exemption made pursuant to this section.

(e) The failure of the judgment debtor to make a claim of exemption under this section constitutes a waiver of the exemption.

Amendment 282

On page 167, line 8, strike out the comma

Amendment 283

On page 167, line 9, after the comma, insert:
or after the determination of the claim of exemption if an exemption is
claimed within the period allowed for claiming the exemption under
Section 708.770,

Amendment 284

On page 167, line 10, after "deposited" insert:
to which the judgment creditor is entitled

Amendment 285

On page 168, line 4, after "Code", insert:
or under Division 6 (commencing with Section 13000) of the Unemployment
Insurance Code

Amendment 286

On page 169, line 37, after "applying" insert:
to the satisfaction of a money judgment

Amendment 287

On page 169, line 40, strike out "to the satisfaction of the"

Amendment 288

On page 170, line 1, strike out "money judgment"

Amendment 289

On page 170, strike out line 22

Amendment 290

On page 170, line 23, strike out "after" and insert:
712.010. After

Amendment 291

180 On page 170, line 31, strike out "90" and insert:

Amendment 292

On page 170, strike out lines 34 to 37, inclusive

Amendment 293

On page 171, line 7, strike out "last-known" and insert:
last known

Amendment 294

180 On page 171, line 28, strike out "90" and insert:

Amendment 295

180 On page 171, line 36, strike out "90" and insert:

Amendment 296

On page 172, strike out lines 36 and 37 and insert:
(2) The value of the property if specified in the judgment or
a supplemental order.

Amendment 297

On page 173, line 8, after the period insert:
If the levying officer obtains possession of the property specified in
the writ of possession, the levying officer shall deliver the property
to the judgment creditor in satisfaction of the judgment.

Amendment 298

On page 173, line 17, after "judgment" insert:
or a supplemental order

Amendment 299

On page 173, line 26, after "property" insert:
or documentary evidence of title to the property or both

Amendment 300

On page 174, line 7, strike out "premises" and insert:
property

Amendment 301

On page 174, line 10, strike out "premises" and insert:
property

Amendment 302

On page 174, line 15, strike out "premises" and insert:
property

Amendment 303

On page 174, line 18, strike out "premises" and insert:
real property

Amendment 304

On page 174, line 25, strike out "premises" and insert:
real property

Amendment 305

On page 175, line 12, after the period, insert:
The provisions of subdivision (c) of Section 684.120, extending time, do
not apply to the five day period specified in this subdivision.

Amendment 306

On page 175, line 14, strike out "premises" and insert:
real property

Amendment 307

On page 177, line 23, strike out "peoperty" and insert:
property

Amendment 308

On page 185, line 17, strike out "A" and insert:
The

Amendment 309

On page 186, line 8, strike out "prusuant" and insert:
pursuant

Amendment 310

On page 186, line 31, strike out "(a)"

Amendment 311

On page 186, lines 31 and 32, strike out "of ownership, right
to possession, or a lien"

Amendment 312

On page 186, strike out lines 34 and 35

Amendment 313

On page 191, line 32, after "undertaking" insert:
, and filed with the levying officer a copy of the notice of motion as
required by subdivision (b) of Section 720.760,

Amendment 314

On page 192, strike out lines 19 and 20 and insert:
(b) The objection to an

Amendment 315

On page 192, line 26, after the first "and" insert:
a copy of the notice of motion

Amendment 316

On page 192, line 26, after the second "and" insert:
a copy shall be filed with

Amendment 317

On page 203, line 5, strike out "January" and insert:
July