

Memorandum 90-52

Subject: Study L-1025 - Senate Bill 1855 (Beverly)--Notice to Creditors
(Status of Bill)

The notice to creditors bill was approved by the Senate Judiciary Committee on April 3. The bill as approved includes an amendment authorized by the Commission to preclude a late claim filed more than one year after letters are issued and to make clear that this does not extend the one-year statute of limitations running from the date of the decedent's death. The Commission asked that the actual language of the amendment be brought to it's attention at the next meeting. The actual language is set out below.

9103. ...

(b) The court shall not allow a claim to be filed under this section after the earlier of the following times:

(1) The time the court makes an order for final distribution of the estate.

(2) One year after the date of the decedent's death time letters are first issued to a general personal representative. Nothing in this paragraph authorizes allowance or approval of a claim barred by, or extends the time provided in, Section 353 of the Code of Civil Procedure.

The bill as approved also includes an amendment not authorized by the Commission but adopted by the Judiciary Committee that changes joint and several liability of distributees to pro rata liability. This amendment is set out below.

9392. ...

(b) Personal liability under this section is applicable only to the extent the claim of the creditor cannot be satisfied out of the estate of the decedent and is limited to the extent of a pro rata portion of the claim of the creditor, based on the proportion that the value of the property distributed to the person out of the estate bears to the total value of all property distributed to all persons out of the estate. Personal liability under this section for all claims of all creditors shall not exceed the value of the property distributed to the person out of the estate. As used in this section, the value of property is the fair market value of the property on the date of the order for distribution, less the amount of any liens and encumbrances

on the property at that time. ~~Personal liability under this section is joint and several, based on the principles stated in Part 4 (commencing with Section 21400) of Division 11 (abatement).~~

Respectfully submitted,

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