

First Supplement to Memorandum 92-13

Subject: Legislative Program (Proposed Amendments to SB 1372 --
Creditors' Remedies)

Senate Bill 1372, authored by Senator Wadie Deddeh, would implement the Commission's recommendation on *Miscellaneous Creditors' Remedies Matters*, 12 Cal. L. Revision Commission Reports 135 (1991). The bill is ready to be set for hearing, but we need to make several amendments and revise some language in the comments, as explained in the attached material, so that the bill can proceed without objection. If the Commission approves these revisions, we will make the necessary amendments as soon as possible.

Code Civ. Proc. § 685.050 (amended). Costs and interest under writ

Subdivision (b)(2) of 685.050 would be revised to substitute "pursuant to a policy adopted by the office of the levying officer" for the phrase "in the officer's discretion." This is intended to answer a concern expressed by the Senate Judiciary Committee consultant who is analyzing the bill. The changes are shown below:

SEC. . Section 685.050 of the Code of Civil Procedure is amended to read:

685.050. (a) If a writ is issued pursuant to this title to enforce a judgment, the costs and interest to be satisfied in a levy under the writ are the following:

- (1) The statutory fee for issuance of the writ.
- (2) The amount of interest that has accrued from the date of entry or renewal of the judgment to the date of issuance of the writ, as adjusted for partial satisfactions, if the judgment creditor has filed an affidavit with the court clerk stating such amount.
- (3) The amount of interest that accrues on the principal amount of the judgment remaining unsatisfied from the date of issuance of the writ until the date interest ceases to accrue.
- (4) The levying officer's statutory costs for performing the duties under the writ.

(b) In a levy under the writ, the levying officer shall do all of the following:

- (1) Collect the amount of costs and interest entered on the writ pursuant to paragraphs (1) and (2) of subdivision (a).
- (2) Compute and collect the amount of additional interest required to be collected by paragraph (3) of

subdivision (a) by reference to the daily interest entered on the writ. If amounts collected periodically do not fully satisfy the money judgment, the levying officer may, [in the officer's discretion] pursuant to a policy adopted by the office of the levying officer, adjust the amount of daily interest to reflect the partial satisfactions, and make later collections by reference to the adjusted amount of daily interest.

(3) Determine and collect the amount of additional costs pursuant to paragraph (4) of subdivision (a).

Comment. Subdivision (b) of Section 685.050 is amended to permit recomputation of the amount of daily interest accruing on a money judgment in the case of partial satisfactions, in the discretion of the levying officer. See also Sections 685.010 (rate of interest on judgments), 685.030 (cessation of interest). ~~The levying officer may condition~~ *Recomputation of the amount of daily interest may be conditioned* on receiving adequate instructions ~~from the judgment creditor.~~ See Section 687.010. The benefit of recomputing the amount of daily interest is evident in the case of a continuing levy under an earnings withholding order. See Section 706.024 (amount required to satisfy earnings withholding order). The purpose of recomputation is to permit the full satisfaction of a money judgment during the course of a continuing levy, without the need to seek issuance of a new writ of execution or final earnings withholding order for costs and interest. See Section 685.030(a)(2), (c) (interest ceases to accrue on amount of partial satisfaction when amount received by levying officer); see also Sections 706.024(c) (cessation of interest on earnings withholding order), 706.028(d) (cessation of interest on final earnings withholding order for costs and interest). Recomputation also avoids the potential of collecting an excessive amount, which would occur if the full amount of daily interest noted on the writ of execution were collected without adjustment for partial satisfactions.

Code Civ. Proc. § 706.032 (added). Termination of dormant or suspended order

The California Association of Collectors has a problem with applying the 180-day rule in proposed Section 706.032 to cases where withholding is suspended due to a supervening tax or support order. The staff believes that a two-year period would be acceptable in this case and has discussed this with the Sheriffs' Association representative. It looks like this is the best compromise and we believe the interested groups can agree on the language as revised below:

SEC. . Section 706.032 is added to the Code of Civil Procedure, to read:

706.032. (a) Except as otherwise provided by statute,:

~~an earnings withholding order terminates at the conclusion of any continuous 180-day period in which no amounts are withheld under the order, whether because the judgment debtor's employment has terminated or earnings are being withheld under an order or assignment with higher priority, or for any other reason.~~

(1) If withholding under an earnings withholding order ceases because the judgment debtor's employment has terminated, the earnings withholding order terminates at the conclusion of a continuous 180-day period during which no amounts are withheld under the order.

(2) If withholding under an earnings withholding order ceases because the judgment debtor's earnings are subject to an order or assignment with higher priority, the earnings withholding order terminates at the conclusion of a continuous 2-year period during which no amounts are withheld under the order.

(b) If an earnings withholding order has terminated pursuant to subdivision (a), the employer shall return the order to the levying officer along with a statement of the reasons for returning the order.

Comment. Section 706.032 is new. This section provides for the automatic termination of dormant or suspended earnings withholding orders in favor of general creditors. If the debtor leaves employment after an earnings withholding order has become effective, the duty to withhold continues for 180 days under subdivision (a)(1). If the debtor returns to work during this period, the employer is required to resume withholding pursuant to the order. ~~Similarly, if~~ If withholding under a general creditor's earnings withholding order is suspended because of withholding under an earnings withholding order or assignment for support or an earnings withholding order for taxes, the suspended order remains in effect until ~~180--days~~ two years have elapsed with no withholding. See Sections 706.030 (support orders), 706.031 (wage assignment for support), 706.078 (tax orders).

The employer has a duty under subdivision (b) to determine whether an earnings withholding order has terminated under subdivision (a) and to return the order to the levying officer.

For a special rule concerning termination of earnings withholding orders for support, see Section 706.030(b)(1). For a special rule concerning termination of earnings withholding orders for taxes, see Section 706.078(c).

If the debtor is not employed and no earnings are due when the withholding period would begin under Section 706.022, the service of the order is ineffective and is not subject to the 180-day rule ~~of~~ or two-year rule in this section. See Section 706.104(a).

We will also search the other comments to see if cross-references to Section 706.032 need to be revised. See, e.g., Section 706.022 Comment.

Code Civ. Proc. § 708.020 (amended). Written interrogatories to judgment debtor

The Senate Judiciary Committee consultant also suggested including language in the Comment to this section to the effect that this exception to the cumulative application of the 35-interrogatory limit should not be used to harass a debtor. This suggestion could be implemented as follows:

SEC. . Section 708.020 of the Code of Civil Procedure is amended to read:

708.020. (a) The judgment creditor may propound written interrogatories to the judgment debtor in the manner provided in Section 2030 requesting information to aid in enforcement of the money judgment. The judgment debtor shall answer the interrogatories in the manner and within the time provided by Section 2030.

(b) The judgment creditor may not serve interrogatories pursuant to this section within 120 days after the judgment debtor has responded to interrogatories previously served pursuant to this section or within 120 days after the judgment debtor has been examined pursuant to Article 2 (commencing with Section 708.110), and the judgment debtor is not required to respond to any interrogatories so served.

(c) Interrogatories served pursuant to this section may be enforced, to the extent practicable, in the same manner as interrogatories in a civil action.

(d) The limitation provided by Section 2030 on the number of interrogatories that may be propounded applies to each set of interrogatories propounded from time to time pursuant to this section, but does not apply cumulatively to interrogatories propounded by the judgment creditor to the judgment debtor.

Comment. Subdivision (d) is added to Section 708.020 to make clear that the 35 interrogatory limit in Section 2030(c) is not a cumulative limitation on interrogatories to judgment debtors. Thus, for example, a judgment creditor may propound 25 interrogatories to the judgment debtor and then 120 days later propound 30 more interrogatories without running afoul of the limitations in Section 2030. See also Section 2016(c) (discovery article applies in enforcement of judgment as provided in this article). *This exception to the application of the 35-interrogatory limit is not intended to weaken the policy against harassment that is inherent in the civil discovery act.*

Respectfully submitted,

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