

4/22/74

Memorandum 74-24

Subject: Report on 1974 Legislative Program

Attached (yellow page) is a report on the various bills in our 1974 legislative program as of April 18. I am pleased with the progress so far, especially with the progress made on AB 101 (wage garnishment).

The following matters are noted for your attention in connection with the legislative program:

(1) I had ACR 164 amended to make clear that the Commission has authority to study certain matters that the Commission now has under study or plans to study. A copy of the resolution as amended is attached. I assume the resolution will be adopted in this form by the time of the meeting.

(2) Assemblyman McAlister and I agreed to certain amendments to AB 2830 (disposition of abandoned property). A copy of the latest amended version of the bill is attached. The significant amendments are the addition of subdivision (b) to Section 1984 (page 5) to require a statement in the notice to the tenant of the consequences of his failure to reclaim the property within the time allowed, an amendment to increase the number of publications in a newspaper from one to two, and the addition of the second sentence to Section 1986 (page 6) to require the landlord to exercise reasonable care in storing the property. We believe that the last addition is very poorly drafted, but it was taken from another bill and under the circumstances presented it was not feasible to have a better drafted provision included. Professor Friedenthal has reviewed the bill as amended and has no objections to the amendments. I believe that this bill has an excellent chance for enactment without further significant changes. (Assemblyman McAlister and I have agreed to make an additional amendment to make the bill not applicable

to property owned by a public utility which is used to provide utility services.) One additional amendment appears to be desirable. On page 6 of AB 2830 (attached), line 25, after "shall" insert "either be left on the vacated premises or". This amendment is suggested by Justice Robert Kingsley. See Exhibit I (attached).

(3) Assemblyman McAlister and I agreed to significant amendments to AB 2831 (abandonment of leased real property). A copy of the latest amended version of the bill is attached. The amendments require the tenant to provide in his notice that he does not intend to abandon an address at which he may be served by certified mail in any action for unlawful detainer brought within 60 days from the date the notice is received by the lessor. See lines 23-25 on page 3 and the new section beginning at line 29 on page 4. The amendments shown in italic were made at the hearing because it was apparent they were necessary to get the bill approved by the committee. Our consultant--Professor Friedenthal--has reviewed the bill and has no problem with the amendments. One significant amendment was rejected, although there was some support for it on the part of some members of the committee: A proposal to revise subdivision (b) of Section 1951.3 to change "20 consecutive days" to "14 consecutive days" was made by the California Real Estate Association and the Apartment Manager's Association. This same proposal will be made when the bill is heard on May 14 in the Senate. The staff believes that the amendment should be strongly opposed. We believe that the bill should be dropped if the amendment is made by the Senate Judiciary Committee. A lessee can overlook paying the rent for one month and may be away from the leased premises on vacation or ill or gone for some other reason. If he misses a second rental payment, that is much more significant. Accordingly, we believe that Professor Friedenthal's original recommendation--which is reflected in the

20-day period when rent has not been paid before notice is given--is sound.

POLICY Does the Commission believe that AB 2831 should be dropped if the 20-day

QUESTION period is changed to 14 days so that the total period is less than 30 days?

(4) I expect that AB 2828 (erroneously compelled disclosure of privileged information) will pass the Legislature without any amendments.

(5) I expect that AB 2829 (sister state money judgments) will pass the Legislature without any amendments.

(6) AB 101 (wage garnishment) has had only one really significant amendment: At the Senate Judiciary Committee hearing, it was necessary to agree to an amendment to restrict issuance of an earnings withholding order for support to cases where the money was to be paid to a county officer (no change here) or cases where the person obligated to pay the support is two months delinquent in making the support payments. In the latter case, the employee can have the withholding order for support terminated after 18 months. These limitations were taken from another bill which had been approved by the committee after much opposition. The amendments are still being drafted by the Legislative Counsel and a reprinted bill will not be available for a week or so. For this reason, copies of the amended bill are not attached.

(7) AB 1533 (nonresident aliens) has not been amended and I expect that it will pass without any amendments.

(8) SB 1535 (improvement acts) has passed the Senate. A couple of technical amendments were suggested by one of the law firms that specializes in improvement act proceedings and will be made before the bill is heard in the Assembly. Copies of the amended bill are not yet available. However, several experts have checked the amendments and I am confident that they are necessary and in proper form.

(9) AB 2948 (prejudgment attachment) is the subject of a separate memorandum.

(10) SB 1532 (liquidated damages) is the subject of a separate memorandum.

(11) SB 1534 (Evidence Code Section 999) is the subject of a separate memorandum.

(12) AB 102 (discharge from employment because of wage garnishment) is dead. The vote was two for and eight against.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

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EXHIBIT I
STATE OF CALIFORNIA
COURT OF APPEAL
SECOND DISTRICT—DIVISION FOUR
905 STATE BUILDING
217 WEST FIRST STREET
LOS ANGELES 90012

ROBERT KINGSLEY
ASSOCIATE JUSTICE

April 16, 1974

John H. DeMouilly
Executive Secretary
The California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

My dear Mr. Secretary:

I have just had the opportunity to read the Recommendation Relating to Personal Property Left on Premises Vacated by Tenant. I refer particularly to the proposed new section 1986 (page 977 of the pamphlet). As I read it, the landlord would not be permitted merely to leave the property on the premises for the 15 or 18 day period, but (unless he secures those premises) take it somewhere else for storage. The late tenant left the property on the premises; he should not complain if the landlord leaves it where the tenant left it. I suggest an amendment of your section 1986 by inserting, after the word "shall" in line 2 of the draft section, the following words: "either be left on the vacated premises or"

Sincerely,


Robert Kingsley

RK:mr

April 18, 1974

1974 LEGISLATIVE PROGRAM

MEASURES APPROVED BY SECOND HOUSE AND SENT BACK FOR CONCURRENCE IN AMENDMENTS

ACR 164 - Resolution to Continue Authority to Study Topics and to Drop Topics

MEASURES APPROVED BY POLICY COMMITTEE IN SECOND HOUSE

AB 101 - Wage Garnishment -- Approved by Senate Judiciary Committee on April 2 and sent to Finance Committee "do pass as amended"

AB 2828 - Erroneous Disclosure of Privileged Information (Approved by Senate Judiciary Committee on April 16 and sent to Senate Floor)

AB 2829 - Enforcement of Sister State Money Judgments (Approved by Senate Judiciary Committee on April 16 and sent to Senate Floor)

MEASURES PASSED BY FIRST HOUSE

AB 2830 - Disposition of Abandoned Property (Set for hearing by Senate Judiciary Committee on May 14)

AB 2831 - Abandonment of Leased Real Property (Set for hearing by Senate Judiciary Committee on May 14)

SB 1533 -- Nonresident Aliens (Set for hearing by Assembly Judiciary Committee on April 23)

SB 1535 -- Improvement Acts (Set for hearing by Assembly Judiciary Committee on April 23)

AB 2948 -- Prejudgment Attachment (Set for hearing by Senate Judiciary Committee on May 21)

BILLS STILL PENDING IN POLICY COMMITTEE IN FIRST HOUSE

SB 1532 - Liquidated Damages (Bill set for hearing twice, but put over for hearing by Senator Stevens; one final hearing set by Senate Judiciary Committee for May 14)

SB 1534 - Evidence Code Section 999 (Not set for hearing; to be considered at Commission's May 30 Meeting)

DEAD BILLS

AB 102 - Discharge From Employment Because of Wage Garnishment (Died in Senate Judiciary Committee)