

2/28/77

Memorandum 77-8

Study 39.100 - Sister State Judgments (AB 85)

Assembly Bill 85 was introduced to effectuate the Commission's Recommendation Relating to Sister State Money Judgments. This memorandum presents various matters for Commission consideration in connection with this bill.

Amendment Made by Assembly Judiciary Committee

Assembly Bill 85 was reported "do pass as amended" by the Assembly Judiciary Committee. However, because Assemblyman McAlister and I had concern about an amendment made by the Assembly Judiciary Committee, Assemblyman McAlister had the bill put on the inactive file so that further study could be made as to the effect of the amendment and whether it was desirable.

A copy of the bill in the form in which it was approved by the Assembly Judiciary Committee is attached immediately following this memorandum (gold pages). The amendment that causes concern is at the bottom of page 3 of the bill. The amendment limits the amount of accrued interest on the sister state judgment that is to be included in the California to an amount "not to exceed such amount as would have been allowed on a like judgment rendered in this state."

At Assemblyman McAlister's request, I drafted a letter to the Legislative Counsel which is attached as Exhibit 1 (page 1) (pink). Pages 2-4 of Exhibit 1 is a copy of a memorandum prepared by a law student concerning whether the full faith and credit clause of the United States Constitution requires that California compute interest on the sister state judgment at the rate at which it accrued in the sister state.

Exhibit 2 sets out the interest rates allowed in the various states on judgment and the last two pages of the exhibit set forth a letter I wrote to Assemblyman McAlister suggesting that the amendment made by the Assembly Judiciary Committee be deleted from the bill.

Minutes of Northern Section, State Bar Committee on Administration of Justice

Attached as Exhibit 3 are the Minutes of the Northern Section of the State Bar Committee on the Administration of Justice concerning Assembly Bill 85. The action of the Northern Section is based on an analysis by Garrett Elmore. The Northern Section makes the following points:

(1) Interest rate. The California judgment will, of course, carry interest at the rate for any California judgment. The State Bar Section did not have our report at the time the Section considered the bill. The problem of what rate of interest should be applied in determining the accrued interest to be included in the California judgment is discussed under the discussion of the Assembly Judiciary Committee amendment.

(2) Vacating judgment and entering different judgment. Concern is expressed over the portion of revised subdivision (a) of Section 1710.40 on page 4 of the bill (gold pages) that provided that, where a judgment is vacated and the court determines that another and different judgment should be entered for the creditor, the court shall order entry thereof. Specifically, the following questions are raised:

First, there is no procedure specified for entry of an amended judgment. Is a hearing required? The main Act itself does not say what is to happen if the initial judgment is vacated. Presumably, there would be another judgment. However, it would not necessarily be for the judgment creditor. On principle, a new subdivision (c) could be added to Sec. 1710.40, to the effect that if the judgment is vacated, the court shall thereafter enter such judgment as may be appropriate. Should procedures as to hearing be spelled out? Another question is whether findings are required before the new judgment is to be entered.

Since the matter will be heard on noticed motion, a hearing is required on the motion to vacate the judgment. However, the staff believes that the statute should make clear that findings are required (if requested) if the judgment debtor makes a motion to vacate the judgment. The grounds for such a motion are stated in subdivision (a) of Section 1710.40 (page 4 of bill on gold sheets). Accordingly, we suggest that the second sentence of revised Section 1710.40 on page 4 of the gold sheets be deleted and a new subdivision (c) be added (as suggested in the report from the State Bar Section), to read along the following lines:

(c) Upon the hearing of the motion to vacate the judgment under this section, the judgment may be vacated upon any ground provided in subdivision (a), and another and different judgment entered, including but not limited to another and different judgment for the judgment creditor if the court finds that the judgment creditor is entitled to such different judgment. The decision of the court on the motion to vacate the judgment shall be given in writing and filed with the clerk of court in the manner provided in Sections 632, 634, and 635 except that the court is not required to make any written findings and conclusions if the amount of the judgment as entered under Section 1710.25 does not exceed one thousand dollars (\$1,000).

The previously approved Comment to Section 1710.40 should be revised to read:

Comment. Subdivision (a) of Section 1710.40 is amended to make clear that the judgment debtor may seek to have the judgment entered in California vacated on the ground that the amount of interest allowed on the sister state judgment is incorrect.

Subdivision (c) is new. The second sentence is added to subdivision (a) to make first sentence of subdivision (c) makes clear that the court may enter a different judgment in appropriate cases, e.g., where the principal amount of the judgment or the interest thereon has been incorrectly stated but it is clear that the judgment creditor is entitled to a judgment in California in a different amount. Compare Section 663. The second sentence of subdivision (c) makes clear that the court must make findings if findings are requested unless the original judgment was for \$1,000 or less. The \$1,000 or less exclusion is drawn from the comparable exclusion found in Section 632.

(3) Interest rate on support judgments. It is noted that some family support judgments may themselves provide an interest rate different than the statutory rate. However, this statute does not apply to family support judgments. Such judgments are covered by a different registration statute and are specifically excepted from this statute. See Section 1710.10(c) and the Comment to Section 1710.10.

(4) Fee for service of notice of entry of judgment. Concern is expressed that the requirement of Section 1710.30 may apply to other than the initial judgment entered under this chapter. We believe that the statute is clear and no change is needed. Perhaps the words "under this section" should be added after "judgment" on line 16 on page 4 (gold pages). Concern is also expressed that the statute does not allow recovery of additional service fees for unusually difficult service.

This was an intentional decision of the Commission. As noted below, the only way this matter will come before a court is if the judgment debtor makes a motion to vacate the judgment. There is no easy means of providing for a court review of whether the additional fee for unusual service is justified.

(5) Court modifying judgment on own motion to correct rate of interest. It is suggested that the court be given authority to vacate and correct a judgment on its own motion, in respect of interest at least. The only way this matter will come before a court is if the judgment debtor makes a motion to vacate the judgment. Otherwise, the court will not review the judgment. We see no benefit to the judgment debtor in giving the court this authority. In this connection, it also should be noted, that the Comment to Section 1710.40 (as enacted) includes the following statement: "Equitable relief from the judgment may be available in certain circumstances after the time for making a motion to vacate has expired. [Citing authority.]" The statute does not contemplate that the clerk will pass upon the correctness of the interest rate; the citation to the provision of sister state law establishing the interest rate is for the information of the judgment debtor, not the clerk.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

AMENDED IN ASSEMBLY FEBRUARY 15, 1977

CALIFORNIA LEGISLATURE—1977-78 REGULAR SESSION

ASSEMBLY BILL

No. 85

Introduced by ~~Assemblyman McAlister~~ *Assemblymen
McAlister and McVittie*

December 17, 1976

An act to amend Sections 1710.15, 1710.25, 1710.30, and 1710.40 of the Code of Civil Procedure, relating to enforcement of judgments.

LEGISLATIVE COUNSEL'S DIGEST

AB 85, as amended, McAlister. Enforcement of judgments.

Existing law permits a judgment creditor to apply for the entry of a judgment based on a sister state judgment by filing an application in a superior court of this state, as specified, containing certain statements.

This bill requires that the application include a statement of the interest accrued on the sister state judgment at the rate of interest applicable to the judgment under the law of the sister state, a statement of such rate of interest, and a citation to the law of the sister state establishing such rate of interest.

Existing law requires the clerk of the court to enter a judgment based upon the judgment creditor's application for the amount remaining unpaid under the sister state judgment.

This bill requires the judgment to be entered for the total of the above amount, the amount of the interest accrued on the sister state judgment, *judgment not to exceed the amount that would have been allowed on a like judgment rendered in this state*, and the amount of the fee for filing the application for entry of the sister state judgment.

This bill provides that the fee for service of the notice of entry of judgment upon the judgment debtor is an item of

cost recoverable in the same manner as statutory fees for service of a writ of execution, but not to exceed in amount the fee allowed to a public officer or employee in this state for such service.

Existing law authorizes a judgment entered, as previously specified, to be vacated on any ground which would be a defense to an action in this state on the sister state judgment.

This bill specifies that where the amount of interest accrued on the sister state judgment and included in the judgment entered is incorrect such an error is a ground for vacating the judgment. It also provides that where a judgment is vacated and the court determines that the judgment creditor is entitled to another and different judgment, the court shall order entry thereof.

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 1710.13 of the Code of Civil
- 2 Procedure is amended to read:
- 3 1710.13. (a) A judgment creditor may apply for the
- 4 entry of a judgment based on a sister state judgment by
- 5 filing an application with the superior court for the
- 6 county designated by Section 1710.20.
- 7 (b) The application shall be executed under oath and
- 8 shall include all of the following:
- 9 (1) A statement that an action in this state on the sister
- 10 state judgment is not barred by the applicable statute of
- 11 limitations.
- 12 (2) A statement, based on the applicant's information
- 13 and belief, that no stay of enforcement of the sister state
- 14 judgment is currently in effect in the sister state.
- 15 (3) A statement of the amount remaining unpaid
- 16 under the sister state ~~judgment~~, *judgment and, if accrued*
- 17 *interest on the sister state judgment is to be included in*
- 18 *the California judgment*, a statement of the amount of
- 19 interest accrued on the sister state judgment computed
- 20 at the rate of interest applicable to the judgment under
- 21 the law of the sister state, a statement of the rate of

1 interest applicable to the judgment under the law of the
2 sister state, and a citation to the law of the sister state
3 establishing such rate of interest.

4 (4) A statement that no action based on the sister state
5 judgment is currently pending in any court in this state
6 and that no judgment based on the sister state judgment
7 has previously been entered in any proceeding in this
8 state.

9 (5) Where the judgment debtor is an individual, a
10 statement setting forth the name and last known
11 residence address of the judgment debtor. Where the
12 judgment debtor is a corporation, a statement of the
13 corporation's name, place of incorporation, and whether
14 the corporation, if foreign, has qualified to do business in
15 this state under the provisions of Chapter 21
16 (commencing with Section 2100) of Division 1 of Title 1
17 of the Corporations Code. Where the judgment debtor is
18 a partnership, a statement of the name of the partnership,
19 whether it is a foreign partnership, and, if it is a foreign
20 partnership, whether it has filed a statement pursuant to
21 Section 15700 of the Corporations Code designating an
22 agent for service of process. Except for facts which are
23 matters of public record in this state, the statements
24 required by this paragraph may be made on the basis of
25 the judgment creditor's information and belief.

26 (6) A statement setting forth the name and address of
27 the judgment creditor.

28 (c) A properly authenticated copy of the sister state
29 judgment shall be attached to the application.

30 SEC. 2. Section 1710.25 of the Code of Civil Procedure
31 is amended to read:

32 1710.25. (a) Upon the filing of the application, the clerk
33 shall enter a judgment based upon the application for the
34 total of the following amounts as shown therein:

35 (1) The amount remaining unpaid under the sister
36 state judgment.

37 (2) The amount of interest accrued on the sister state
38 ~~judgment.~~ *judgment, but not to exceed such amount as*
39 *would have been allowed on a like judgment rendered in*
40 *this state.*

1 (3) The amount of the fee for filing the application for
2 entry of the sister state judgment.

3 (b) Entry shall be made in the same manner as entry
4 of a judgment of the superior court.

5 SEC. 3. Section 1710.30 of the Code of Civil Procedure
6 is amended to read:

7 1710.30. (a) Notice of entry of judgment shall be served
8 promptly by the judgment creditor upon the judgment
9 debtor in the manner provided for service of summons by
10 Article 3 (commencing with Section 415.10) of Chapter
11 4 of Title 5 of Part 2. Notice shall be in a form prescribed
12 by the Judicial Council and shall inform the judgment
13 debtor that he has 30 days within which to make a motion
14 to vacate the judgment.

15 (b) The fee for service of the notice of entry of
16 judgment is an item of costs recoverable in the same
17 manner as statutory fees for service of a writ as provided
18 in Section 1033.7, but such fee may not exceed the
19 amount allowed to a public officer or employee in this
20 state for such service.

21 SEC. 4. Section 1710.40 of the Code of Civil Procedure
22 is amended to read:

23 ~~1710.40~~ 1710.40. (a) A judgment entered pursuant to
24 this chapter may be vacated on any ground which would
25 be a defense to an action in this state on the sister state
26 judgment, including the ground that the amount of
27 interest accrued on the sister state judgment and
28 included in the judgment entered pursuant to this
29 chapter is incorrect. Where a judgment is vacated and
30 the court determines that the judgment creditor is
31 entitled to another and different judgment, the court
32 shall order the entry thereof.

33 (b) Not later than 30 days after service of notice of
34 entry of judgment pursuant to Section 1710.30, proof of
35 which has been made in the manner provided by Article
36 3 (commencing with Section 417.10) of Chapter 4 of Title
37 5 of Part 2, the judgment debtor, on written notice to the
38 judgment creditor, may make a motion to vacate the
39 judgment under this section.

[DRAFT OF LETTER]

Bion M. Gregory, Esq.
Legislative Counsel
State Capitol
Sacramento, California 95814

Dear Mr. Gregory:

Assembly Bill 85 was reported "do pass as amended" by the Assembly Judiciary Committee, but I have had the bill placed on the inactive file in the Assembly pending the resolution of questions raised by an amendment made by the Assembly Judiciary Committee.

I request your opinion on the following questions concerning Assembly Bill 85 as amended in the Assembly on February 15, 1977:

(1) What is the effect of the language added by the amendment of February 15 to paragraph (2) of subdivision (a) of Section 1710.25? Specifically, does this restrict the amount of the accrued interest on a sister state judgment that may be included in a California judgment entered on the basis of the sister state judgment to accrued interest computed at a rate not exceeding the legal rate on California judgments (seven percent) even though the sister state may provide for a higher rate of interest on its judgments?

(2) Does the full faith and credit clause of the United States Constitution require that California recognize not only a sister state judgment but also the amount of accrued interest on that judgment computed at the rate allowed under the law of the sister state?

In connection with question (2), I am enclosing for your information a copy of a memorandum prepared by a Stanford Law School student that reaches the conclusion that California is not constitutionally required to allow accrued interest computed at the rate of interest allowed in the sister state but may allow accrued interest computed at a lower rate if computing the interest at the higher rate would violate some policy of California.

If you have any questions concerning this request, please contact Mr. John H. DeMouilly, Executive Secretary, California Law Revision Commission. His telephone number is (415)497-1731.

Sincerely yours,

ALISTER McALISTER

Feb. 18, 1977

To: Mr. DeMouilly
From: Carrie Carter
Re: Interest Charges on Sister State Judgments
Trying to Find a Rationale

Parnham v. Parnham, 32 Cal. App.2d 93, 89 P.2d 189 (1939), is a suit for alimony instalments accruing under a New York divorce judgment. The attorneys for the defense argued within a full faith and credit framework, but when the opinion cites the rule for giving judgment for interest at the rate established in the state of the rendition of the judgment, no reference to any larger rationale is made. Instead, three older California cases are cited: Steward v. Spaulding, 22 Cal. 264, 13 P. 661 (1887); Thompson v. Monrow, 2 Cal. 99 (1852); Cavender v. Guild, 4 Cal. 230 (1854). These cases do not address any underlying rationale. Knight v. Barnes, 182 F.Supp. 383 (S.D. Cal. 1960), interprets 28 U.S.C. § 1961 -- which allows interest on judgments at the rate allowed by State law -- to refer to the rate specified in the state where the judgment was rendered. However, Knight v. Barnes relies on Parnham v. Parnham and does not outline an underlying rationale.

A. Ehrenzweig, in Conflict of Laws § 195, at 511 (1962), is in accord with the rule in California, and cites to In re Kern's Estate, 174 Or. 87, 147 P.2d 498 (1944). But in Kern's Estate, the opinion begins by noting that the states are in conflict on this point. See also 45 Am. Jur.2d 58 Interest § 61 (1968); 47 C.J.S. 42 Interest § 31 (1958). These sources also find that states differ on this point.

Restatement (Second) of Conflict of Laws § 101 (1971)

states that

A valid judgment for the payment of money will be enforced in other states only in the amount for which it is enforceable in the state where it was rendered.

Two California cases citing the equivalent section in the first Restatement are Rall v. Lovell, 105 Cal. App.2d 507, 233 P.2d 681 (1951) and Harding v. Harding, 140 Cal. 690, 74 P. 284 (1903).

The language in those cases suggests that foreign judgments are to have exactly the same effect in California as in the state of judgment. Where states differ is on whether the accruing interest is part of the judgment per se or is a function of state law applied to the judgment.

The new Restatement seems to recognize that the states differ, because § 420 of the Restatement of Conflict of Laws (1934) -- which directed that interest be allowed according to the law of the state where judgment was rendered -- was omitted in the 1971 Restatement (Second). However Restatement (Second) would enforce judgment for amount enforced in state where rendered -- which would appear to include accrued costs and interest.

Once a state has determined that the interest is a function of state law and not part of the judgment requiring full faith and credit, there is room to look at policy considerations. Wells Fargo v. Davis, 105 N.Y. 670, 12 N.E. 42 (1887), held that the New York interest rate of 7%, changing in 1879 to 6%, was the proper rate to apply to a Utah judgment accruing 10% interest under Utah law. The court said that this interest was not contract-based interest, but was given as damages under state law, and that therefore the rate would have to conform to the law of the forum state.

Carpenter v. Ritchie, 2 Wash. 512, 28 P. 380 (1891) also applied the legal rate of the forum if that rate was not higher than the rate specified in the foreign judgment.

These two cases do not suggest a rigid rule contra the rule in California. Instead they suggest that there may be considerations of fairness to the person against whom the judgment is entered and aspects of state policy interest in prohibiting rates the state has determined are too high. These considerations are present even when a state wishes in principle to give full faith and credit to foreign judgments.

Feb. 25, 1977

Carrie Carter

Memo 77-8

EXHIBIT 2

State Provisions for Interest on Judgments

Alabama

Ala. Code tit. 9, § 60 (1958)

6% legal rate *

Alaska

Alaska Stat. § 09.30.070 (1962)

8% judgment rate

Arizona

ARIZ. Rev. Stat. § 44-1201 (1967)

6% legal rate

Arkansas

Ark. Stat. Ann. § 29-124 (supp. 1975)

10% judgment rate

Colorado

Colo. Rev. Stat. § 5-12-101 (supp. 1976)

8% legal rate

Connecticut

Conn. Gen. Stat. Ann. § 37-3(a) (West supp. 1977)

6% judgment rate

Delaware

Del. Code tit. 6, § 2301 (supp. 1976)

6% legal rate

District of Columbia

D.C. Code § 28-3302 (1973)

6% judgment rate

Florida

Fla. Stat. Ann. § 55.03 (1969)

6% judgment rate

Georgia

Ga. Code Ann. § 57-101 (supp. 1976)

7% legal rate

Hawaii

Haw. Rev. Stat. § 478-2 (1968)

6% judgment rate

Idaho

Idaho Code § 28-22-104 (supp. 1976)

8% judgment rate

Illinois

Ill. Ann. Stat. ch. 74, § 3 (Smith-Hurd supp. 1977)

6% judgment rate

Indiana

Ind. Code Ann. § 24-4.6-1-101 (Burns supp. 1976)

8% max. judgment rate

<u>Iowa</u> Iowa Code Ann. § 535.3 (West supp. 1976)	7% judgment rate
<u>Kansas</u> Kan.Stat. Ann. § 15-204 (1974)	8% judgment rate
<u>Kentucky</u> Ky.Rev.Stat. Ann. § 360.040 (Baldwin supp. 1976)	8% judgment rate
<u>Louisiana</u> La.Civ. Code Ann. art. 1938 (West supp. 1976)	7% legal rate
<u>Maine</u> Me.Rev.Stat. tit. 14, § 1602 (supp. 1976-1977)	10% judgment rate
<u>Maryland</u> Md.Const. art. III, § 57 (1972)	6% legal rate
<u>Massachusetts</u> Mass. Ann. Laws ch. 107, § 3 (Michie/Law. Co-op 1975)	6% legal rate
<u>Michigan</u> Mich.Stat. Ann. § 27A.6013 (supp. 1976)	6% judgment rate
<u>Minnesota</u> Minn.Stat. Ann. § 334.01 (supp. 1977)	6% legal rate
<u>Mississippi</u> Miss. Code Ann. § 75-17-7 (supp. 1976)	8% judgment rate
<u>Missouri</u> Mo. Ann. Stat. § 408.040 (Vernon 1979)	6% judgment rate
<u>Montana</u> Mont. Rev. Codes Ann. § 47-128 (1947)	6% judgment rate
<u>Nebraska</u> Neb. Rev. Stat. § 45-103 (1974)	8% judgment rate

<u>Nevada</u> Nev.Rev.Stat. § 17.130 (1973)	7% judgment rate
<u>New Hampshire</u> N.H.Rev.Stat. Ann. § 336.1 (1966)	6% judgment rate
<u>New Jersey</u> N.J.Stat. Ann. § 31:1 (West supp. 1976-1977)	6% legal rate
<u>New Mexico</u> N.M.Stat. Ann. § 50-6-3 (1953)	6% judgment rate
<u>New York</u> N.Y.Civ. Prac. law § 5004 (McKinney supp. 1976-1977)	6% judgment rate
<u>North Carolina</u> N.C.Gen.Stat. § 24-1 (1965)	6% legal rate
<u>North Dakota</u> N.D.Cent. Code § 47-14-05 (supp. 1975)	6% legal rate
<u>Ohio</u> Ohio Rev. Code Ann. § 1343.03 (Page 1962)	6% judgment rate
<u>Oklahoma</u> Okla.Stat. Ann. tit. 12, § 727 (supp. 1976-1977)	10% judgment rate
<u>Oregon</u> Or.Rev.Stat. § 82.010 (1975)	6% judgment rate
<u>Pennsylvania</u> Pa.Stat. Ann. tit. 41, § 202 (Purdon supp. 1976-1977)	6% legal rate
<u>Rhode Island</u> R.I. Gen. Laws § 6-26-1 (1969)	6% judgment rate

<u>South Carolina</u> S.C. Code § 8-2 (1962)	6% judgment rate
<u>South Dakota</u> S.D. Compiled Laws Ann. § 54-3-5 (supp. 1976)	10% judgment rate
<u>Tennessee</u> Tenn. Code Ann. § 47-14-10 ¹ / ₂ (supp. 1976)	6% legal rate
<u>Texas</u> Tex. Rev. Civ. Stat. Ann. art. 5069-1.05 (Vernon supp. 1976-1977)	9% judgment rate
<u>Utah</u> Utah Code Ann. § 15-1-4 (1972)	8% judgment rate
<u>Vermont</u> Vt. Stat. Ann. tit. 9, § 41 (supp. 1976)	8.5% legal rate
<u>Virginia</u> Va. Code § 6.1-330.10 (supp. 1976)	8% judgment rate
<u>Washington</u> Wash. Rev. Code Ann. § 4.56.110 (supp. 1975)	8% judgment rate
<u>West Virginia</u> W. Va. Code § 47.6.5 (1976)	6% legal rate
<u>Wisconsin</u> Wis. Stat. Ann. § 138.04 (1974)	5% legal rate
<u>Wyoming</u> Wyo. Stat. § 13-477 (supp. 1975)	7% legal rate

* The state statutes follow two basic patterns: (1) the statutes provide for interest on judgments at the legal rate, and another section specifies the legal rate; and (2) the statute specifically specifies the rate for judgments within one section. A few states are silent on the interest rate on judgments, specifically. Provisions in type (1) arrangements or where no specific provision refers to judgments are identified by "LEGAL RATE." Type (2) provisions are identified by "JUDGMENT RATE."

CALIFORNIA LAW REVISION COMMISSION

STANFORD LAW SCHOOL

STANFORD, CALIFORNIA 94305

(415) 497-1731



February 25, 1977

Hon. Alister McAlister
State Capitol
Assembly Post Office
Sacramento, California 95814

Dear Alister:

Re: Assembly Bill 85 (Interest on Sister State Judgments)

You will recall that you had Assembly Bill 85 placed on the inactive file pending the receipt of an opinion from the Legislative Counsel concerning the effect of the amendment made by the Assembly Judiciary Committee. This letter forwards additional information concerning this problem.

I had a Stanford law student check the interest rate on judgments in all the other states so it could be determined whether any other state in fact allows a greater rate than the 10-percent California usury rate (Article 20, Section 22, California Constitution). I enclose the tabulation of the state provisions for interest on judgments prepared by the law student. You will note that no state allows a higher rate than 10 percent, and many allow only six percent, which is less than the seven percent allowed in California on a judgment.

It is my view that the amendment added by the Assembly Judiciary Committee serves no useful purpose in light of the enclosed tabulation of rates. The language of the amendment is such that it probably will be construed to mean that the judgment creditor can recover accrued interest computed at a rate no greater than the seven percent allowed on a California judgment. If the difference between seven percent and the higher amount allowed in the sister state were significant, the judgment creditor could avoid the limitation by bringing an action on the sister state judgment in California and in recovering a California judgment which, under existing law, would include accrued interest at the rate allowed in the sister state.

I would suggest you discuss this matter with Assemblyman Chel and determine if he would have any objections to the deletion of his amendment in light of the enclosed tabulation of interest rates in other states. The needed amendment to accomplish this would be as follows:

Hon. McAllister

-2-

February 25, 1977

AMENDMENT TO ASSEMBLY BILL 85 AS AMENDED IN
ASSEMBLY FEBRUARY 15, 1977

AMENDMENT 1

On page 3 of the printed bill as amended in Assembly February 15, 1977, strike out lines 38, 39, and 40, and insert:
judgment.

If you wish, I could come up to Sacramento and discuss this matter with Assemblyman Chel.

Sincerely,

John H. DeMouilly
Executive Secretary

JHD:kp
enc.

Note: Form is adapted to Legislative Representative Reporting Form.

Bill Number: A.B. 85

Date: CAJ No. Sec. 1/26/77

A. Yes, within field of committee interest.

B. A.B. 85, sponsored by the Law Revision Commission, would amend CCP §1710.10 et seq. adopted in 1974 upon the Commission's recommendation. CCP 1710.10 et seq. provide a simplified procedure for obtaining a judgment in California on a sister state money judgment. Generally, the procedure is that the judgment creditor applies for a California judgment in the superior court. The application is to contain among other matters a statement "of the amount remaining unpaid under the sister state judgment." (Sec. 1710.15.)

C. The principal change relates to requiring the application for judgment to itemize the amount of interest accrued on the sister state judgment computed at the rate of interest applicable to a judgment in the sister state, to state such rate of interest under the law of the sister state, and to cite the sister state law establishing such rate of interest. Another change is to provide for inclusion in the California judgment of the fee for serving notice of entry of judgment upon the judgment debtor, not to exceed that allowed to a public officer or employee of such service, the fee to be that for serving a writ (after judgment). The final change of detail provides for vacating the judgment when the sister state interest is incorrect, and to the court's duty to enter another judgment for the creditor if one is warranted, after the first judgment has been vacated.

D. Oppose unless clarified, but note the section is not opposed to the principle.

Points to be called to the attention of the Law Revision Commission:

1. The section is concerned over the differing rates of interest, i.e., will the California judgment carry interest at the

ister state rate? Staff Note: The Law Revision Commission Report was received after Section action. The official comments clearly indicate that once the California judgment is entered it carries interest at the California rate. The Report cites authorities, including Parnham v. Parnham, 32 CA2d 93, that a foreign judgment takes the interest rate, if any, of the jurisdiction where it was rendered, rather than of the state in which it is to be enforced, so time of entry of judgment in the state of enforcement.

2. The section is concerned over the wording in the Bill, p. 1, l. 24-27, that where a judgment is vacated and the court determines that another and different judgment should be entered for the creditor, the court shall order entry thereof. First, there is no procedure specified for entry of an amended judgment. Is a hearing required? The main Act itself does not say what is to happen if the initial judgment is vacated. Presumably, there would be another judgment. However, it would not necessarily be for the judgment creditor. On principle, a new subd. (c) could be added to Sec. 710.40, to the effect that if the judgment is vacated, the court shall thereafter enter such judgment as may be appropriate. Should procedures as to hearing be spelled out? Another question is whether findings are required before the new judgment is to be entered. Lines 24-27 should be considered in light of these comments. Staff Note: An advisor (after the meeting) has raised the following additional questions of form: Bill, p. 2, l. 15-32. It is believed some judgments will themselves provide an interest rate, e.g., in family law matters; this interest may be less than the "legal interest" or it may be on part of the money judgment only. Wording now used could compel a computation disregarding specified interest provisions in the judgment. 2. Bill, p. 4, l. 10-14. In line 11, should the words "if service is made after judgment" be inserted after "judgment". If the original judgment has been vacated, there is no reason notice of it should not be included in the new judgment. Lines 10-14 also raise the question about the limit expressed: such fee may not exceed the amount allowed to a public officer or

employee in this state for service. The Commission report was made in 1976. However, effective January 1, 1977, CCP §1032a has been amended to permit the court to make an allowance of unusually difficult service. It is not clear whether the Commission intends this exception to be in or out of the procedure herein involved. Finally, should not consideration be given to adding to the Act at some point a recognition that the Court may vacate and correct a judgment on its own motion, in respect of interest at least. The clerk is hardly in a position to pass upon the citations of sister state law, and erroneous judgments may be anticipated, as to the interest feature.