

Third Supplement to Memorandum 81-24

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

Attached to this supplement as Exhibit 1 are the comments of the California State Legislative Committee, Creditor Managers Associations (referred to hereinafter as "Association"), on Assembly Bill 707. In this supplement, the staff presents those comments that suggest changes in AB 707. We do not note in the supplement those provisions that were approved without suggested changes. You should read the exhibit containing the comments of the Creditor Managers Associations for their comments on provisions that they consider satisfactory without any change. The references to sections in this memorandum are to the sections contained in AB 707.

§ 683.160. Service of notice of renewal of judgment on judgment debtor (page 12 of bill)

Section 683.160 requires service to be made "personally" on the judgment debtor of the notice of renewal of the judgment. This requires that the judgment debtor be served in the same manner as a summons is served to commence a civil action (see Section 684.110) unless service is permitted to be made on the judgment debtor's attorney (see Section 684.020) in which case service may be made by mail (see Section 684.040). The Association suggests that service should be permitted at the last known address of the judgment debtor as reflected in the court file at the time the judgment was originally entered and/or at the last known address of the attorney representing the judgment debtor by means of mailing by first class mail.

The summary procedure for renewal is an optional method of extending the period of enforcement of a judgment. (The procedure under existing law--which remains an optional method under AB 707--is to bring a civil action on the judgment and thus to obtain a new judgment.) The renewed judgment is entered by the court clerk in the amount shown in the judgment creditor's application (unsatisfied principal, allowed costs, and accrued interest). A notice of renewal is served personally on the judgment debtor (or attorney where permitted). Not later than 30 days after service of the notice of renewal, the judgment debtor may apply by

noticed motion for an order of the court vacating the renewal. The renewal may be vacated on any ground that would be a defense to an action on the judgment, including the ground that the amount of the renewed judgment as entered is incorrect. The judgment debtor does not have the right to make a motion to vacate the renewed judgment after the 30-day period after service has expired. For this reason, the bill requires "personal" service. Mail service to the address shown on the court records--an address that may be almost 10 years old--is not likely to be received by the judgment debtor who probably will no longer be at that address. If other than personal service were authorized, serious objection could be made that the procedure would be unconstitutional in denying the judgment debtor due process of law in failing to provide adequate notice and opportunity to be heard. See generally Magalnick v. Magalnick, 98 Cal. App.3d 753, 159 Cal. Rptr. 889 (1979) (sister state judgment registration procedure). Considering the consequences of the service and the constitutional issues that would be raised if the Association's suggestions were accepted, the staff recommends that no change be made in AB 707.

Interest Rate on Judgments

The suggestion that the interest rate should be more than 10 percent is discussed in the Second Supplement to Memorandum 81-24.

§ 697.310. Period of judgment lien on real property (page 36 of bill)

The Association suggests that the period of existence of a judgment lien on real property should be extended if the judgment is renewed. This is the effect of Section 683.180 which is referred to in subdivision (b) of Section 697.310. The extension of the judgment lien on real property is accomplished by recording a certified copy of the application for renewal of the judgment before the expiration of the judgment lien. See Section 683.180.

§ 701.010. Duty of third person holding property of judgment debtor or obligated to judgment debtor (page 75 of bill)

The Association approves the substance of Section 701.010. The section deals with the obligation of a person who is indebted to the judgment debtor. It covers, for example, a person who is making installment payments on an obligation owed to the judgment debtor. However, contrary to the view expressed by the Association, the section does not extend the period of a wage garnishment nor apply to a wage garnishment,

since wage garnishment is governed by separate statutory provisions. The introductory clause of Section 701.010 states that the section applies except as otherwise provided by statute. The wage garnishment provisions continue the present 90-day levy on earnings.

§ 701.030. Garnishee's memorandum (pages 76-77 of bill)

The Association suggests that where a garnishee fails to provide a garnishee's memorandum, the judgment creditor should be permitted to recover attorney's fees in the proceeding to obtain the information required to be included in the garnishee's memorandum. Recovery of such attorney's fees is permitted under AB 707; the bill gives the court discretion to award reasonable attorney's fees incurred in any proceeding by the judgment creditor to obtain the information required in the garnishee's memorandum. See Section 701.030(d) (page 77 of AB 707).

Property Exempt From Enforcement of Money Judgments

The Association takes the position that all exemptions should be opposed, but in recognition of reality the Association then goes on to identify the most objectionable of the exemptions and to object specifically to those exemptions or aspects of them. In connection with the general objection to exemptions, it should be noted that only an individual is entitled to exemptions; corporations (profit and nonprofit) and partnerships are not entitled to exemptions.

§ 704.720. Proceeds exemption for homestead (page 113 of bill)

The Association objects to the extension of the homestead proceeds exemption from the existing six months to 18 months. The staff recommended amendments attached to Memorandum 81-24 would restore the six-month period.

§ 704.040. Exemption for jewelry, heirlooms, works of art (page 102 of bill)

The Association takes the view that the standard provided by Section 704.040--which requires the court to weigh the reasonable sentimental or psychological value of an item of personal property against the right of the judgment creditor to enforce the judgment--is not sufficiently objective. The Association suggests that a dollar limit be placed on the exemption provided by Section 704.040. In the First Supplement to Memorandum 81-24, the staff suggested that the following sentence be added at the end of Section 704.040: "The fair

market value of the property exempt under this section shall not exceed \$2,500." This staff suggestion, with or without a change in the amount, would provide the type of dollar standard suggested by the Association.

§ 704.010. Exemption for motor vehicles (pages 100-101 of bill)

The Association objects to the exemption of the second motor vehicle where two motor vehicles are necessary to enable both spouses to work. This point is discussed in the First Supplement to Memorandum 81-24 where the staff concludes that it would be poor policy to permit a creditor to take a motor vehicle that is necessary so that both spouses are able to continue to work. Preventing one of the spouses from working by taking the necessary motor vehicle will operate to the detriment of other creditors who might otherwise be paid. The staff does propose tightening up the language creating exemption for the second vehicle. See the staff recommended amendments attached to Memorandum 81-24.

§ 704.060. Tools of trade exemption (pages 102-103 of bill)

The Association strongly objects to (1) the double exemption for tools of the trade where both the judgment debtor and spouse work in a business and (2) the exemption for proceeds from sale or insurance involving tools of the trade.

The staff has recommended in the First Supplement to Memorandum 81-24 that AB 707 be amended to restrict the proceeds exemption to proceeds of an execution sale, so this objection of the Association would be met if the staff recommendation is acceptable.

The other objection--doubling the exemption in the case of married persons operating the same business--was also made by the California Collectors Association but the staff recommended no change in the bill in response to this objection. There is some feeling that the amount of this exemption (\$2,500) is grossly inadequate and that not doubling the exemption when both spouses earn a livelihood in the same business would unfairly discriminate against married persons.

§ 704.070. Deposit account exemption (pages 103-104 of bill)

The Association objects to the exemption provided for bank checking and deposit accounts. The same objection was made by the California Association of Collectors and the staff refers you to the discussion on pages 7-8 of the First Supplement to Memorandum 81-24 where the staff recommends elimination of the proposed deposit account exemption for banks.

§§ 704.140, 704.150. Personal injury and wrongful death award exemptions (pages 110-111 of bill)

The Association objects to the exemptions involving damages for personal injury or wrongful death and suggests that an attempt be made to allow a percentage amount of the money to be exempted and anything in excess of that percentage to be subject to the judgment creditors' claims. The staff has recommended this approach for periodic payments of personal injury awards and wrongful death awards. See pages 8-9 of First Supplement to Memorandum 81-24. The California Association of Collectors suggests that if the payment of a personal injury award or wrongful death award is received in one lump sum, there should be no exemption at all. This issue is discussed in the First Supplement to Memorandum 81-24. Perhaps there should be no exemption for the lump sum award; the judgment debtor could obtain some protection from creditors by an agreement that the award be paid in installments if a provision were added to the statute giving such an agreement this effect.

§ 703.050. Exemptions in effect at time of lien govern (page 92 of bill)

The Association objects to Section 703.050, which provides that the amounts of the exemptions and the right to the exemptions are to be determined as of the time the creditor's lien attaches. The primary reason for the Association's objection is that the creditor will not be able to obtain an early trial on a matter that must go to trial. It should be recognized that in a commercial setting the creditor may obtain an attachment and the time the attachment lien attaches will determine the exemptions that are applicable. Moreover, there are no exemptions for debtors that are corporations or partnerships. Only individual debtors are entitled to exemptions. This provision has been discussed at length by the Commission, and the staff does not recommend any change in the provision of AB 707.

§ 703.080. Tracing exempt amounts (page 94 of bill)

The Association suggests that the statute include language that places the burden of proof on the debtor to trace the exempt proceeds. AB 707 already so provides; subdivision (b) of Section 703.080 includes specific language that places the burden on tracing on the judgment debtor.

The Association also suggests that the statute place on the judgment debtor the burden of establishing the method for tracing. AB 707 already so provides in substance; subdivision (c) of Section 703.080

prescribes the method of tracing and requires that this method be used unless the court determines that another method is better suited to the circumstances of the case. The burden of establishing that some other method should be used is on the party who seeks approval of that method.

§ 708.120. Examination of third party owing money to judgment debtor (page 146 of bill)

The Association objects to the provision in Section 708.120 which permits examination of a third person who owes not less than \$250 to the judgment debtor since this provision raises the existing \$50 amount to \$250. The Association recognizes that as a practical matter the judgment creditor will not examine on amounts less than \$250 because of the costs involved in an examination. The Commission was more concerned, however, when it proposed that the amount be raised from \$50 to \$250 with the burden that an order for examination places on the third person who owes less than \$250 to the judgment debtor. To require a person who owes only \$50 to the judgment debtor to appear for a creditor's examination is obviously unreasonable.

§ 708.180. Determination of third person's adverse claim in examination proceeding (pages 150-151 of bill)

The Association objects to Section 708.180 which gives the court discretion to determine the adverse claim of a third person made in an examination proceeding. The Association is concerned about the substantial costs that this provision could impose on the judgment creditor who is merely seeking to obtain information by examination of the third party. Perhaps the provision should be revised to provide that the determination of the adverse claim in the examination proceeding is to be made only if the judgment creditor so requests. That would make available to the judgment creditor at the judgment creditor's option the summary proceeding to determine the claim of the third party rather than requiring the judgment creditor to commence a separate creditor's suit against the third party. If this solution is acceptable to the Commission, the staff proposes the following amendment:

Amendment

On page 150, line 32, after "may" insert:
, if the judgment creditor so requests,

§ 720.360. Burden of proof on third-party claim (page 186 of bill)

The Association most strongly objects to the provision of Section 720.360 that places on the judgment creditor the burden of proof where the third-party claim is a claim of a security interest. The staff recommended amendments attached to Memorandum 81-24 would eliminate the objectionable provision.

Respectfully submitted,

John H. DeMouilly
Executive Secretary



CALIFORNIA STATE LEGISLATIVE COMMITTEE CREDIT MANAGERS ASSOCIATIONS



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June 24, 1981

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

Dear John:

Upon my return last night from six weeks in British Columbia I was surprised to find the analysis of AB 707 from the Credit Managers Associations. I expected them to have this in your hands by May 27th and I can only assume that "communications" went astray.

We sincerely hope that it is not too late for your organization to consider our comments.

It will be deeply appreciated if you will acknowledge this communication along with your comments.

Kind personal regards.

Cordially

W. J. Kumli
W. J. Kumli
Chairman

ANALYSIS OF ASSEMBLY BILL NO. 707 THROUGH ANALYSIS AND
COMMENTARY OF THE "SUMMARY OF REPORT" DOCUMENT PROVIDED
BY THE CALIFORNIA LEGISLATURE IN CONJUNCTION WITH SAID
ASSEMBLY BILL NO. 707

1. (Page 2009) TIME FOR ENFORCEMENT OF JUDGMENTS:

This provision would not appear to have any substantial negative effects upon the Commercial Collection Industry as it pertains to the procedures for extending the period of enforceability of judgment in incremental ten (10) year segments. However there is one aspect of this provision which should be considered and that is in the area of service upon the debtor of the Application for Renewal of the Judgment for an additional ten (10) year period of time. It is here suggested that the language of this section be changed to clarify that service upon the debtor of this Notice of Application for Renewal could be made at the last known address of the debtor as reflected in the court file at the time judgment was originally entered and/or the last known address of the attorney representing said judgment debtor by means of mailing said Application by first class mail with the appropriate Proof of Service document attached thereto.

2. (Page 2010) INTEREST ON JUDGMENTS:

The significant portion of this provision is to change the existing interest rate on Judgments from seven percent (7%) to ten percent (10%). Naturally this is a favorable change in the law however, it would be our recommendation that if at all possible the interest rate be established at a percentage higher than the suggested ten percent (10%) considering the cost of money in the market place, etc. An additional argument in support of a higher interest rate would be that the context of interest on Judgments in the Commercial Collection Industry is necessarily involved with an account receivable situation where the creditor was required to retain the services of a lawfirm to file suit against his debtor to obtain a Judgment on an amount rightfully owed to the creditor and therefore, there does exist by its very nature of the transaction an onus upon the debtor's actions and this failure to pay a rightful obligation should carry with it a higher interest rate.

3. (Page 2010) JUDGMENT LIEN ON REAL PROPERTY:

This provision would not appear to have any substantial negative effect upon the Commercial Collection Industry and would apparently expand existing law to allow for a lien on leasehold interests, equitable interests and contingent interest in real property. However it would be suggested that the argument but forth in paragraph number 1 TIME FOR ENFORCEMENT OF JUDGMENTS (Page 2009) again be established with regard to the renewal of the judgment lien on real property for additional ten (10) year periods of time.

4. (Page 2010) JUDGMENT LIEN ON PERSONAL PROPERTY:

This provision would appear to expand existing law to allow for a judgment lien on personal property by means of filing a Notice of said lien with the Secretary of State which would follow in a similar context as a recorded lien on real property. It should be noted that there is the possibility that this provision could be a "two-edged sword" with regard to removal of the debtor's business assets by means of a keeper levy in that the judgment creditor proceeding on said levy against the judgment debtor could be faced with the problem of a Third Party Claim being filed by a previous judgment creditor who has filed its lien with the Secretary of State on the business assets of the judgment debtor. This "two-edged sword" problem would appear to be most bothersome in those limited situations where the judgment creditor actually proceeds with removal of the judgment debtor's assets for sale at a public auction to enforce his judgment rights.

5. (Page 2011) LEVY UNDER WRIT OF EXECUTION:

It would appear that the significant portions of this provision would be that the proposed law would establish procedures for permitting a levy on assets of the judgment debtor located at a "private place" which would imply that the sheriff/marshal would now be able to levy at a residence location of a judgment debtor on those occasions where the judgment debtor operates his business out of his home, etc. which is clearly not allowed for under existing law. Another aspect of the proposed law is that there would be a procedure established whereby the judgment debtor could be ordered by the court to transfer possession of property to the levying officer which would appear to facilitate the chances of satisfying a judgment more readily than is the case under existing law.

6. (Page 2011) LEVY ON PROPERTY SUBJECT TO SECURITY INTEREST:

This provision would appear to establish a procedure whereby in those instances where a third party such as a judgment debtor employer is making payments to another party other than the judgment debtor on behalf of the judgment debtor (for example, payments being made to a bank obligation owed by the judgment debtor, etc.,) then the party levied upon will continue to make said payments pending the outcome of a hearing between the judgment creditor doing the levy and the outside party receiving the payments to determine who has a priority claim to those payments. Naturally should the circumstances be such that the payments are being made directly to the judgment debtor then the party levied upon, such as the employer of the judgment debtor, is then required to make the payments directly to the levying officer.

7. (Page 2011) DUTIES OF GARNISHEE:

This provision provides what would appear to be a very beneficial change in existing law which would allow for a continuing levy during a one year period of time after a garnishee has been served by the levying officer and an appropriate example of this would be a wage levy upon the judgment debtors employer which would then continue for a period of twelve (12) months, or until such time as the judgment amount has been satisfied or in the case of a bank levy, would not only attach to the funds on hand at the bank at the time of the levy but would continue on for a period of one year however, the application of this provision in the area of a bank levy is not clear at this time and will no doubt be subject to further interpretation and clarification as the bill progresses through the legislature. However there is what would appear to be a negative aspect of this provision in that the section merely states that a garnishee who fails to comply with the requirement of providing a memorandum describing the property of the judgment debtor in the garnishee's possession and the debts owed to the judgment debtor is merely liable for costs of obtaining the required information and it has been our experience that this type of language only covers the "out-of-pocket" court costs such as the service of a Subpoena Duces Tecum, etc., and does not include attorneys fees and it is here suggested that this provision be amended to include reasonable attorneys fees.

8. (Page 2012) PROPERTY EXEMPT FROM ENFORCEMENT OF MONEY JUDGMENTS:

It is recommended that any and all exemptions be opposed as these are never going to be of benefit to the judgment creditor, however the opposition to these exemptions must be tempered with the understanding that to oppose an exemption such as the one provided for cemetery plots would have the possibility of creating a "line of resistance" to other areas of changes that may be suggested which would have a more far reaching affect on the Commercial Collection Industry than any positive results that would be realized on attacking an exemption such as this.

The following items listed under this heading involving exemptions will only be touched upon in relationship to what would appear to be areas most objectionable from the standpoint of its affect on the Commercial Collection Industry.

*Dwelling Exemptions:

The provision providing that the proceeds from a voluntary or involuntary sale are exempt in the amount of the Homestead Exemption for a period of 18 months in place of the six month proceeds exemption of existing law should most definitely be opposed as there would not appear to be any viable argument to increase this exemption period the additional 12 months and in the Commercial Collection Industry a lapse of time exceeding 6 months will almost assuredly reduce the chances of recovery to the judgment creditor.

*Household and Personal Affects:

This provision is more involved with the area of retail collection efforts for enforcement of judgment rights however since there are times when the Commercial Collection Industry is involved with enforcement of judgments against individuals who have left the business environment in which the debt was originally incurred, it is recommended that specific opposition be directed to the language allowing the court to determine that the "reasonable sentimental or psychological value to the judgment debtor or the spouse or a dependent of the judgment debtor outweighs the right of the judgment creditor to enforce the judgment to such an extent that it would be clearly inequitable to subject the property to enforcement" and rather have the language incorporate a more "objective" formula which might be something in the area of establishing, through the use of appraisers, etc., the value of the items in questions and to establish that any one item or group of items exceeding a set dollar amount should be subject to levy over and above that set dollar amount.

*Motor Vehicles:

It is suggested that this provision be opposed by the use of a "general judgment creditor argument" suggesting that the law should not so favor the judgment debtor so as to remove the chances of recovery to the judgment creditor and specifically in the area of allowing a judgment debtor to maintain more than one car, etc.

*Tools of a Trade:

It is strongly recommended that this additional exemption to be allowed the debtor's spouse as well as the proposal to exempt proceeds from the sale or insurance involving the tools of the trade be opposed on the same general argument on behalf of a judgment creditor that he should have the opportunity to recover against a judgment debtor and that an exemption for tools of the trade of \$5,000.00 would appear to be excessive in both the commercial and retail market place.

*Deposit Accounts:

The language of this provision would appear to have both a good and bad effect on the rights of judgment creditors to enforce their judgments in that the existing exemptions in the area of money on hand at a savings and loan association or a credit union account be reduced by 50% however, the new law proposes a \$250.00 exemption for bank accounts. From a Commercial Collection Industry standpoint, it is rare to realize recovery against a judgment debtor by means of a levy against his savings and loan association and/or his credit union account as the more common means of recovery is through the use of a levy against his bank accounts. This proposed law would not only allow the judgment debtor to claim the exemption, but also the judgment debtor's spouse. This provision would appear to be a "pandora's box" and it is strongly recommended that full support be given to changing the language of this provision, or having this provision eliminated entirely.

*Life Insurance; Disability & Health Benefits; Damages for Personal Injury or Wrongful Death; Strike Benefits; Charitable Aid; Prisoner's Trust Funds; Cemetery Plots; Earnings

These provisions would appear to be directed more to the Retail Collection Industry, rather than the Commercial Collection Industry, however it is suggested that the section involving "damages for personal or wrongful death" be opposed

as the language of this exemption which states "a new exemption is provided for damages for personal injury or wrongful death to the extent necessary for the support of the debtor or the debtor's family" is too vague and would allow an unacceptable degree of subjective decision making by the courts as to the dollar amount exempted. It is suggested that an attempt be made to change the language of this provision to allow for a percentage amount of the money to be exempted and anything in excess of that percentage be subject to judgment creditors' claims.

9. (Page 2015) EXEMPTIONS DETERMINED UNDER LAW IN EFFECT WHEN LIEN CREATED:

This provision would provide for the determination of exemptions under the law in effect at the time the creditor's lien attached to the property rather than the exemptions in effect at the time an obligation is incurred. Due to the general direction of the law in California for continual additions to further protect judgment debtors' assets, it would appear that this provision should be opposed as it would generally be better to have laws in effect at the time the debt was incurred be used rather than existing law in the area of exemptions and this would come into play most prominently on those matters which were required to go to trial before judgment was entered which could create a time delay from the date that the debt was incurred to the date judgment was entered of 3, 4 or more years.

10. (Page 2015) TRACING EXEMPT AMOUNTS:

It is suggested that the language of this provision be amended to include wording that would place the burden of proof regarding the balance maintained in the account upon the judgment debtor as this information is more readily available to the judgment debtor than the judgment creditor and should further place the burden upon the judgment debtor of establishing the method for tracing regarding the application of the exemption and that unless the judgment debtor can meet this burden, the exemption is lost.

11. (Page 2015) EXCEPTION TO EXEMPTIONS IN SUPPORT CASES:

The language of this provision would not appear to be applicable to the Commercial Collection Industry and therefore no comment is supplied in relationship to this analysis.

12. (Page 2016) GENERAL EXEMPTION PROCEDURES:

There does not appear to be any language in this provision that would have an adverse affect upon judgment creditors in the area of commercial collection.

13. (Page 2016) EXECUTION SALE PROCEDURE:

The general language of this provision would appear to be in line with much of the current law in this area except for the allowance that a bid at an execution sale in excess of \$5,000.00 may be treated as a credit transaction thereby creating a greater chance for the judgment creditor to realize a larger amount for the sale of the judgment debtor's assets than is currently the case in that under existing law, all transactions must be handled by means of cash or cashier's checks which most definitely limits the amount realized at the sale.

14. (Page 2017) DISTRIBUTION OF PROCEEDS AT EXECUTION SALE:

The language of this provision can only be interpreted by relation back to the actual language of Assembly Bill 707 under Article 7 entitled Distribution of Proceeds of Sale or Collection, which basically establishes a means by which the levying officer prepares a schedule of proposed distribution of proceeds from the sale which shall be available for inspection in the office of the levying officer. Notice of this schedule shall be served on the judgment debtor, the judgment creditor and any other perspn known to the levying officer to have or claim a lien on/or interest in the property. Within ten (10) days after service of the scheduled proposed distribution of proceeds, any interested person may file exceptions thereto with the levying officer and then apply to the court on noticed Motion for a determination of exceptions.

15. (Page 2017) REPEAL OF STATUTORY REDEMPTION:

This provision repeals the one year right of redemption and makes the sale of the real property absolute. However, the language of this provision does allow for a grace period of 120 days to the judgment debtor. This provision would appear to be of substantial benefit to all levying judgment creditors as the feasibility of levying upon real property under existing law has been greatly restrained, due to the one year right of redemption vested in the judgment debtor and as such, has made it difficult to obtain a substantial bid on the sale of real property at the auction of same.

10. (Page 2017) MISCELLANEOUS PROCEDURES FOR ENFORCEMENT OF
MONEY JUDGMENTS:

*Examinations:

Under the proposed law, a third person owing money to the judgment debtor may not be examined unless the debt is \$250.00 or more. Existing law sets this amount at \$50.00. Obviously it is recommended that the amount not be increased to \$250.00 however, it is doubtful in the Commercial Collection Industry that examinations of third persons owing money to the judgment debtor such as an employer, etc., would be done on amounts less than \$250.00 due to the costs involved of such an examination. On the other hand the language allowing the court the discretion to determine an adverse claim of a third person made in examination proceedings should most definitely be opposed in that here again, we would be opening a "pandora's box" whereby, third parties not immediately involved in the judgment debtor/debtor of judgment debtor/judgment creditor proceeding can take this opportunity to use the judgment creditors forum to establish his own right to money that the judgment creditor is currently attempting to obtain from the debtor of the judgment debtor such as his employer. This provision would therefore increase the possibilities of a judgment creditor being left with no recovery at the conclusion of the examination proceedings, but at the same time, faced with payment of a substantial cost for going forward with those proceedings.

*Creditors' Suits:

The language of this provision would appear to relate back to the language contained under the above referenced section noted as examinations.

*Receivers:

The language of this provision allowing for the appointment of receivers to sell alcoholic beverage licenses would appear to be of great benefit to all judgment creditors as the procedures under existing law for proceeding against a judgment debtors liquor license is for all practical purposes non-existent.

*Lien in Pending Action:

The general language contained in this provision would appear to be of benefit to the judgment creditor in that it would more readily allow the judgment creditor to establish his rights to any monies that the judgment debtor may ultimately realize with regard to litigation being maintained by the judgment debtor against parties other than the judgment creditor.

*Interest of Trust Beneficiary & Contingent Future Interests:

The provisions of this new law would allow a judgment creditor to reach interests of the judgment debtor that are currently not available under existing law.

17. (Page 2019) THIRD-PARTY CLAIMS:

The language of this provision eliminating the existing law requiring that the levying judgment creditor provide an Undertaking (i.e., bond) of twice the amount of the property levied upon in the event of a Third-Party Claim being filed would appear to be of great benefit to the levying judgment creditor since many times the property being levied upon and set for sale is of a value such that the cost to the judgment creditor posting an Undertaking of twice the value is prohibitive, and thereby virtually eliminates this procedure for realizing recovery on the judgment. Under the provisions of the new law, the undertaking will be established at a flat amount; \$7,500.00 in Superior Court and \$2,500.00 in Municipal and Justice Courts. PLEASE TAKE NOTICE that additional language contained in this provision states that the burden of proof at a hearing on a Third-Party Claim by a secured party is shifted to the judgment creditor which is diametrically opposed to existing law which places the burden of proof on the third-party claimant. It is most strongly suggested that the language of this provision be changed to conform with the existing law maintaining the requirement that the burden of proof on Third-Party Claims lies with the third-party claimant, as the cost to the judgment creditor of meeting such a burden of proof would be prohibitive and further, the information necessary to establish a third party claimant's rights as superior to that of the judgment creditor in a Third-Party Claim hearing is more readily available to the third-party claimant than to the judgment creditor (i.e.-security interest documentation, agreements executed by the judgment debtor, etc.).

18. (Page 2020) SERVICE OF WRITS, NOTICES, AND OTHER PAPERS:

The language of this provision would not appear to have any substantial adverse affect upon the judgment creditors in the Commercial Collection Industry.

19. (Page 2020) COSTS OF ENFORCEMENT:

The language of this provision would not appear to have any substantial adverse affect upon the judgment creditors in the Commercial Collection Industry.

20. (Page 2021) ENFORCEMENT BY ASSIGNEE OF JUDGMENT:

The language of this provision would not appear to have any substantial adverse affect upon the judgment creditors in the Commercial Collection Industry.

21. (Page 2021) SATISFACTION OF JUDGMENT:

The language of this provision would not appear to have any substantial adverse affect upon the judgment creditors in the Commercial Collection Industry.

22. (Page 2021) FORMS & JUDICIAL COUNSEL RULES:

The language of this provision would not appear to have any substantial adverse affect upon the judgment creditors in the Commercial Collection Industry.