

Memorandum 81-25

Subject: Study D-300 - Enforcement of Judgments (A.B. 798)

Attached to this memorandum is a copy of Assembly Bill 798 and staff recommended amendments to the bill. Assembly Bill 798 makes amendments, additions, and repeals in various codes to conform them to the new proposed enforcement of judgment law.

Most of the amendments are technical. Amendments 11 and 19 are technical amendments suggested by the levying officers. See Exhibit 3 (blue) to Memorandum 81-24.

The following are important amendments (suggested by the levying officers--Exhibit 3 of Memorandum 81-24) that present significant policy issues:

(1) Amendment 32 provides a new additional fee for the levying officer in the case a levy is made by use of a keeper. Under existing law, the levying officer gets \$11 as a fee for levy of execution when a keeper is used. Under the amendment, the levying officer gets \$11 for the levy of execution when a keeper is used and, in addition, a new fee of \$11 for each day following the first day when a keeper is used. The additional fee covers the expense to the levying officer of supervision of the keeper.

(2) The fee allowed a keeper when a levying officer prepares a Not Found Return is increased from \$8.50 to \$11 to conform to the standard \$11 fee provided in other sections.

(3) The fee for all duties under a wage garnishment is increased from \$8.50 to \$11. This increase recognizes the many duties that the levying officer must perform in connection with a wage garnishment and adopts the standard fee of \$11 provided in other sections.

A significant amendment is made by Amendment 36 to Labor Code Section 300 to delete subdivision (c) which delays the time when an earnings withholding order goes into effect if a wage assignment is in effect when the earnings withholding order is received by the employer. The deleted provision unduly complicates the law. The Judicial Council forms which include instructions to the employer and the employee do not mention the special provision in Section 300, despite the fact that the

statutory provision relating to the wage garnishment forms requires that it be mentioned. The reason for the omission from the official forms is that the Judicial Council decided the law is too complex to explain in the forms.

Amendment 38 revises Section 3088 of the Probate Code to add provisions consistent with those found in other wage assignment for support sections. These new provisions deal with wage assignments for support directed against public retirement funds and the prohibition against dismissal of the employee because of the wage assignment.

One benefit of A.B. 707 is that it will permit the earlier destruction of court records relating to lump sum money judgments. This is because the judgment must be renewed within 10 years from the date of entry or the judgment can no longer be enforced. The staff requested the County Clerk's Association to determine whether any revisions of existing law were needed to permit the earlier destruction of court records of lump sum money judgments so that the full benefit of the new renewal provisions could be achieved. The first two pages of Exhibit 1 of Memorandum 81-24 set out the suggestions we received in response to this request. Upon reviewing the suggestions, the staff has concluded that they go beyond the authorization for the study of creditors' remedies and that destruction of court records is not a matter that should be studied by the Commission.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

AMENDMENTS TO ASSEMBLY BILL NO. 798

Amendment 1

In line 9 of the title of the printed bill, strike out "490.050,"

Amendment 2

In line 10 of the title, after "1162a," insert:

1166a,

Amendment 3

In line 15 of the title, strike out "675" and insert:

875

Amendment 4

In line 17 of the title, after "Sections" insert:

490.050,

Amendment 5

In line 18 of the title, strike out "802,"

Amendment 6

In line 19 of the title, strike out "Section" and insert:

Sections 9301 and

Amendment 7

In line 24 of the title, after "6103.2," insert:

7170,

Amendment 8

In line 26 of the title, after "66499.6," insert:

69503.1,

Amendment 9

In the second line of the title on page 2, after "101,"

insert:

300,

Amendment 10

In the sixth line of the title on page 2, after "3073,"
insert:
3088,

Amendment 11

On page 6, between lines 29 and 30, insert:
(6) To the sale or resale of a work of fine art under the
provisions of Title 9 (commencing with Section 680.010) of Part 2 of the
Code of Civil Procedure.

Amendment 12

On page 26, line 33, strike out "funiture" and insert:
furniture

Amendment 13

On page 33, line 19, strike out the first comma

Amendment 14

On page 40, strike out lines 1 to 11, inclusive, and insert:
Procedure is repealed.

~~490.050.~~ A person not originally a party to an action
whose property is attached is entitled to intervene in the action and
to recover damages for wrongful attachment to the same extent and in
the same manner as a defendant in the action. For this purpose, the
person whose property is attached shall be deemed to be the beneficiary
of the undertaking for the attachment of such property and shall have
all rights of the beneficiary, including the right to recover such
damages by using the procedure provided by Section ~~490.030.~~

Amendment 15

On page 41, line 23, strike out the semicolon and insert a
period

Amendment 16

On page 57, strike out lines 13 to 15, inclusive

Amendment 17

On page 57, line 33, strike out "675" and insert:

875

Amendment 18

On page 63, line 8, after "premises" insert a comma

Amendment 19

On page 65, between lines 10 and 11, insert:

SEC. 75.5. Section 1166a of the Code of Civil Procedure is amended to read:

1166a. (a) Upon filing the complaint, the plaintiff may, upon motion, have immediate possession of the premises by a writ of possession of real property issued by the court and directed to the sheriff of the county, or constable or marshal, for execution, where it appears to the satisfaction of the court, after a hearing on the motion, from the verified complaint and from any affidavits filed or oral testimony given by or on behalf of the parties, that the defendant resides out of state, has departed from the state, cannot, after due diligence, be found within the state, or has concealed himself or herself to avoid the service of summons.

(b) Written notice of the hearing on the motion shall be served on the defendant by the plaintiff in accordance with the provisions of Section 1011, and shall inform the defendant ~~that he~~ as follows:
"You may file affidavits on ~~his~~ your own behalf with the court and may appear and present testimony on ~~his~~ your own behalf, ~~and that, however,~~ if he ~~fails~~ you fail to appear, the plaintiff will apply to the court for ~~the a writ of possession,~~ possession of real property".

(c) The plaintiff shall file an undertaking with good and sufficient sureties, to be approved by the judge, in such sum as shall be fixed and determined by the judge, to the effect that, if the plaintiff fails to recover judgment against the defendant for the possession of

the premises or if the suit is dismissed, the plaintiff will pay to the defendant such damages, not to exceed the amount fixed in the undertaking, as may be sustained by the defendant by reason of such dispossession under the writ of ~~possession~~ possession of real property. An action to recover such damages shall be commenced by the defendant in a court of competent jurisdiction within one year from the date of entry of dismissal or of final judgment in favor of the defendant.

(d) If at the hearing on the motion the findings of the court be in favor of the plaintiff and against the defendant, an order shall be entered for the immediate restitution of the premises.

(e) The order for the immediate restitution of the premises may be enforced as provided in Division 3 (commencing with Section 712.010) of Title 9 of Part 2.

(f) For the purposes of this section, references in Division 3 (commencing with Section 712.010) of Title 9 of Part 2 and in subdivisions (e) to (m), inclusive, of Section 1174, to the "judgment debtor" shall be deemed references to the defendant, to the "judgment creditor" shall be deemed references to the plaintiff, and to the "judgment of possession or sale of property" shall be deemed references to an order for the immediate restitution of the premises.

Amendment 20

On page 65, line 16, strike out "restitution" and insert:
possession

Amendment 21

On page 66, strike out lines 33 and 34 and insert:
be restored to the tenant's estate. If payment as provided in

Amendment 22

On page 66, line 35, strike out "subdivision (c)" and insert:
this subdivision

Amendment 23

On page 66, line 38, strike out "The judgment" and insert:

(d) Subject to subdivision (c), the judgment

Amendment 24

On page 69, line 20, strike out the comma

Amendment 25

On page 77, between lines 23 and 24, insert:

SEC. 82.5. Section 9301 of the Commercial Code is amended to read:

9301. (1) Except as otherwise provided in subdivision (2), an unperfected security interest is subordinate to the rights of

(a) Persons entitled to priority under Section 9312;

(b) A person who becomes a lien creditor before the security interest is perfected;

(c) In the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) In the case of accounts and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within 10 days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like, or by filing a notice of judgment lien on personal property, and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within 45 days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

Amendment 26

On page 78, line 25, after "debt" insert a comma

Amendment 27

On page 78, line 32, after "the" insert:
deceased

Amendment 28

On page 89, between lines 37 and 38, insert:

SEC. 97.5. Section 7170 of the Government Code is amended to read:

7170. (a) Except as provided in subdivisions (b) and (c), a state tax lien attaches to all property and rights to property whether real or personal, tangible or intangible, including all after-acquired property and rights to property, belonging to the taxpayer and located in this state.

(b) A state tax lien is not valid as to real property against the right, title, or interest of any of the following persons where the person's right, title, or interest was acquired or perfected prior to recording of the notice of state tax lien in the office of the county recorder of the county in which the real property is located pursuant to Section 7171:

(1) A successor in interest of the taxpayer without knowledge of the lien.

(2) A holder of a security interest.

(3) A mechanic's lienor.

(4) A judgment lien creditor.

(c) A state tax lien is not valid as to personal property against:

(1) The holder of a security interest in the property whose interest is perfected pursuant to Section 9303 of the Commercial Code prior to the time the notice of the state tax lien is filed with the Secretary of State pursuant to Section 7171.

(2) Any person (other than the taxpayer) who acquires an interest in the property under the law of this state without knowledge of the lien or who perfects an interest in accordance with the law of this state prior to the time that the notice of state tax lien is filed with the Secretary of State pursuant to Section 7171.

(3) A buyer in ordinary course of business who, under Section 9307 of the Commercial Code, would take free of a security interest created by the seller.

(4) Any person (other than the taxpayer) who, notwithstanding the prior filing of the notice of the state tax lien:

(A) Is a holder in due course of a negotiable instrument.

(B) Is a holder to whom a negotiable document of title has been duly negotiated.

(C) Is a bona fide purchaser of a security.

(D) Is a purchaser of chattel paper or an instrument who gives new value and takes possession of the chattel paper or instrument in the ordinary course of business.

(E) Is a holder of a purchase money security interest.

(F) Is a collecting bank holding a security interest in items being collected, accompanying documents and proceeds, pursuant to Section 4208 of the Commercial Code.

(G) Acquires a security interest in a deposit account or in the beneficial interest in a trust or estate.

(H) Acquires any right or interest in letters of credit, advices of credit, or money.

(I) Acquires without actual knowledge of the state tax lien a security interest in or a claim in or under any policy of insurance including unearned premiums.

(J) Acquires any right or interest in property subject to a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate of title is required as a condition of perfection of the security interest.

(5) A judgment lien creditor whose lien was created by the filing of a notice of judgment lien on personal property with the Secretary of State prior to the time the notice of state tax lien is filed with the Secretary of State pursuant to Section 7171.

Amendment 29

On page 93, line 1, strike out "the creditor or"

Amendment 30

On page 93, line 2, after "attorney" insert:
of record or, if the creditor does not have an attorney of record, by
the creditor

Amendment 31

On page 93, line 15, after "26726" insert:

(a)

Amendment 32

On page 93, between lines 28 and 29, insert:

(b) In addition to the fees provided by Section 26721, the fee for maintaining custody of property under levy by the use of a keeper is eleven dollars (\$11) for each day custody is so maintained after the first day.

Amendment 33

On page 93, line 29, before "Notwithstanding" insert:

(c)

Amendment 34

On page 93, line 30, strike out "eight dollars and fifty cents (\$8.50)" and insert:
eleven dollars (\$11)

Amendment 35

On page 94, strike out line 35 and insert:
is eleven dollars (\$11).

Amendment 36

On page 103, between lines 21 and 22, insert:

SEC. 132.5. Section 300 of the Labor Code is amended to read:

300. (a) As used in this section, the phrase "assignment of wages" includes the sale or assignment of, or giving of an order for, wages or salary but does not include an order or assignment made pursuant to Section 4701 or 4801.6 of the Civil Code or Section 3088 of the Probate Code .

(b) No assignment of wages, earned or to be earned, is valid unless all of the following conditions are satisfied:

(1) The assignment is contained in a separate written instrument, signed by the person by whom the wages or salary have been earned or are to be earned, and identifying specifically the transaction to which the assignment relates.

(2) Where the assignment is made by a married person, the written consent of the spouse of the person making the assignment is attached to the assignment. No such consent is required of any married person (i) after entry of a judgment decreeing a legal separation from such person's spouse or (ii) if the married person and the spouse of the married person are living separate and apart after entry of an interlocutory judgment of dissolution of their marriage, if a written statement by the person making the assignment, setting forth such facts, is attached to or included in the assignment.

(3) Where the assignment is made by a minor, the written consent of a parent or guardian of the minor is attached to the assignment.

(4) Where the assignment is made by a person who is unmarried or who is an adult or who is both unmarried and an adult, a written statement by the person making the assignment, setting forth such facts, is attached to or included in the assignment.

(5) No other assignment exists in connection with the same transaction or series of transactions and a written statement by the

person making the assignment to that effect is attached to or included in the assignment.

(6) A copy of the assignment and of the written statement provided for in paragraphs (2), (4), and (5), authenticated by a notary public, is filed with the employer, accompanied by an itemized statement of the amount then due to the assignee.

(7) At the time the assignment is filed with the employer, no other assignment of wages of the employee is subject to payment and no earnings withholding order against the employee's wages or salary is in force.

~~(c)~~ A valid assignment of wages in effect at the time an earnings withholding order is served suspends the operation of the earnings withholding order until after the end of the pay period during which the earnings withholding order is served. Thereafter the employer shall withhold from the employee's wages or salary pursuant to the earnings withholding order without regard to whether the assignment remains in effect.

~~(d)~~ (c) Under any assignment of wages, a sum not to exceed 50 per centum of the assignor's wages or salary shall be withheld by, and be collectible from, the assignor's employer at the time of each payment of such wages or salary.

~~(e)~~ (d) The employer is entitled to rely upon the statements of fact in the written statement provided for in paragraphs (2), (4), and (5) of subdivision (b), without the necessity of inquiring into the truth thereof, and the employer shall incur no liability whatsoever by reason of any payments made by the employer to an assignee under any assignment in reliance upon the facts so stated.

~~(f)~~ (e) An assignment of wages to be earned is revocable at any time by the maker thereof. Any power of attorney to assign or collect wages or salary is revocable at any time by the maker thereof. No revocation of such an assignment or power of attorney is effective as to the employer until the employer receives written notice of revocation from the maker.

~~(g)~~ (f) No assignment of wages, earned or to be earned, is valid under any circumstances if the wages or salary earned or to be earned are paid under a plan for payment at a central place or places established under the provisions of Section 204a.

~~(h)~~ (g) This section does not apply to deductions which the employer may be requested by the employee to make for the payment of life, retirement, disability or unemployment insurance premiums, for the payment of taxes owing from the employee, for contribution to funds, plans or systems providing for death, retirement, disability, unemployment, or other benefits, for the payment for goods or services furnished by the employer to the employee or the employee's family at the request of the employee, or for charitable, educational, patriotic or similar purposes.

~~(i)~~ (h) No assignment of wages is valid unless at the time of the making thereof, such wages or salary have been earned, except for necessities of life and then only to the person or persons furnishing such necessities of life directly and then only for the amount needed to furnish such necessities.

Amendment 37

On page 109, line 8, after "COMMUNITY" insert:

PROPERTY

Amendment 38

On page 115, between lines 15 and 16, insert:

SEC. 158.5. Section 3088 of the Probate Code is amended to read:

3088. (a) The court may order the spouse who has the management or control of community property to apply the income or principal, or both, of the community property to the support and maintenance of the conservatee (including care, treatment, and support of a conservatee who is a patient in a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services) as ordered by the court.

(b) In determining the amount ordered for support and maintenance, the court shall consider the following circumstances of the spouses:

- (1) The earning capacity and needs of each spouse.
- (2) The obligations and assets, including the separate property, of each spouse.
- (3) The duration of the marriage.

- (4) The age and health of the spouses.
- (5) The standard of living of the spouses.
- (6) Any other relevant factors which it considers just and equitable.

(c) At the request of any interested person, the court shall make appropriate findings with respect to the circumstances.

(d) The court may order the spouse who has the management or control of community property to make a specified monthly or other periodic payment to the conservator of the person of the conservatee or to such other person as is designated in the order. The court may order the spouse required to make the periodic payments to give reasonable security therefor.

(e) The court may order the spouse required to make the periodic payments to assign, to the person designated in the order to receive the payments, that portion of the earnings of the spouse due or to be due in the future as will be sufficient to pay the amount ordered by the court for the support and maintenance of the conservatee. Such order shall operate as an assignment and shall be binding upon any existing or future employer upon whom a copy of the order is served. The order shall be in the form for an order assigning salary or wages prescribed by the Judicial Council for use in family law proceedings. The employer may deduct the sum of one dollar (\$1) for each payment made pursuant to the order. Any such assignment made pursuant to court order shall have priority as against any execution or other assignment unless otherwise ordered by the court or unless the other assignment is made pursuant to Section 4701 of the Civil Code. No employer shall use any assignment authorized by this subdivision as grounds for the dismissal of such employee. As used in this subdivision, "employer" includes the United States government and any public entity as defined in Section 811.2 of the Government Code. The provisions of this subdivision apply to the money and benefits described in Sections 704.110 and 704.113 of the Code of Civil Procedure to the extent that such moneys and benefits are subject to a wage assignment for support under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(f) The court shall retain jurisdiction to modify or to vacate an order made under this section where justice requires, except as to any amount that may have accrued prior to the date of the filing of the petition to modify or revoke the order. At the request of any interested person, the order of modification or revocation shall include findings of fact and may be made retroactive to the date of the filing of the petition to revoke or modify, or to any date subsequent thereto. At least 15 days before the hearing on the petition to modify or vacate the order, the petitioner shall mail a notice of the time and place of the hearing on the petition, accompanied by a copy of the petition, to the spouse who has the management or control of the community property. Notice shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1 to any other persons entitled to notice of the hearing under that chapter.

(g) In a proceeding under Title 3 (commencing with Section 4500) of Part 5 of Division 4 of the Civil Code, the court has jurisdiction to modify or vacate an order made under this section to the same extent as it may modify or vacate an order made in a proceeding under that title.

Amendment 39

On page 126, line 12, strike out "1982" and insert:

1983

Amendment 40

On page 126, line 13, strike out "January" and insert:

July