

Memorandum 81-43

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

Attached to this memorandum is a copy of some additional amendments to AB 707, the proposed Enforcement of Judgments Law. A copy of AB 707 was sent to you for the July meeting. The amendments approved by the Commission at the July meeting have been forwarded to the Legislative Counsel, but we have not yet received a printed copy of the amended bill. Accordingly, the attached amendments are drafted with reference to the bill as originally printed. The staff will adjust the form of the amendments when we receive the reprinted bill.

Amendments 6, 7, 10, and 14 are proposed in response to suggestions made by Professor Lloyd Tevis in a letter attached hereto as Exhibit 1. Section 699.050 (see pages 54 and 55 of AB 707) would be deleted by Amendments 6 and 7. This section provides in general that the judgment creditor may not levy on additional property if there is property subject to an attachment lien. The staff proposes to deal with this problem in the attachment recommendation (see Memorandum 81-45) by permitting the judgment debtor to apply to the court after judgment for the release of attached property on the ground that the value of the property clearly exceeds the amount necessary to satisfy the judgment creditor's judgment.

Amendment 11 is proposed to deal with a suggestion from the State Controller's Office in the letter attached hereto as Exhibit 2.

The remainder of the amendments are technical.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel



LOYOLA LAW SCHOOL

July 7, 1981

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, California 94306

Attention: Stan G. Ulrich, Staff Counsel

Gentlemen: Re: Assembly Bill 707

Thank you for your very informative letter of June 4, 1981 which was in response to some comments of mine concerning AB 707. You solicited further comments and this letter is the result. I am sorry that I could not get this to you before the end of June, but my schedule made that impossible.

1. §701.520 provides that certain property levied upon shall be collected rather than sold. General intangibles are included. This term is defined in §680.210 by reference to Comm. Code §9106. As thus defined the term includes property other than rights to payment, e.g. copyrights and patents. Therefore, I suggest that, as used in §701.520, it be limited to "general intangibles consisting of any right to payment." This is the terminology presently used in Civil Code §955.1. As to other general intangibles sale would be appropriate.

2. §699.050 provides that if property of the judgment debtor has been attached, no additional property of the judgment debtor may be levied upon until certain steps have been taken. I have no problem with the policy, but am uncertain about its implementation. If a writ of execution is delivered to the same levying officer who levied under the writ of attachment, that officer might well refuse to proceed to levy on other property because of the dictates of this section. However a different levying officer, knowing nothing of the prior levy, would not be in a position to hold up the levy on additional property. Perhaps this could be solved by requiring a statement concerning prior attachments on the form used to give instructions to the levying officer. In any event I have failed to find any penalty attached to non-compliance. If there is one it should be noted in the Comment. If there is to be no penalty, then it seems that the policy should be abandoned as unenforceable.

3. §720.610 et seq. deal with undertakings given by a third person to release property which has been levied upon. §720.620 requires that this person also file a third party claim. Under §720.310 this claim is subject to a hearing on the merits. This hearing may result in a judgment in favor of the levying creditor. It is at this point that my uncertainty begins. If I read §720.430 correctly, it does not permit the levying creditor to again levy on the property or otherwise apply it to the satisfaction of the judgment, because the property was not released pursuant to either of the sections mentioned. Rather, it was released pursuant to §720.660. I am uncertain whether it is intended that the sole remedy of the judgment creditor is to proceed on the bond, or whether a creditor's suit can be maintained against the third party, or whether the court may order the property applied to satisfaction of the claim under §720.390. Perhaps I have missed something in the proposed law or the comments. It does seem to me that this matter might profitably be addressed in the comments. Frankly, I am not persuaded that the levying creditor should be deprived of the right to levy again on the property if the question of priority has been litigated. The rights of the parties have been conclusively determined. What purpose is served by requiring further proceedings?

The more I study AB 707 the more favorably impressed I become. It takes a great deal of effort to absorb, but much less than it takes to search out the answers in obscure cases and code sections as we must now do.

Very truly yours,



Lloyd Tevis
Professor of Law

LT:gt

STATE OF CALIFORNIA

STATE CONTROLLER'S OFFICE

PERSONNEL/PAYROLL SERVICES DIVISION

1900 Capitol Avenue
Palo Alto, CA 95814

DATE: July 24, 1981

TO: John DeMouilly, Executive Secretary
California Law Revision Commission
400 Middlefield
Palo Alto, CA 93406

Kathy Elbe
FROM: KATHY ELBE, Chief
Payroll Services Section

RE: PROPOSED REVISION TO ASSEMBLY BILL 707

The purpose of this letter is to revise the proposed version of Assembly Bill 707 as previously discussed by John Harrigan, Chief, Personnel/Payroll Services Division, State Controller's Office, and you. Specifically, the State Controller's Office would like to modify AB 707, Article 5, Section 706.101, subsection (a) (1), as outlined below.

This section (commencing on page 132 with line 12) currently states:

"(a) An earnings withholding order shall be served by the levying officer upon the employer by delivery of the order to any of the following:

(1) The managing agent or person in charge, at the time of service, of the branch or office where the employee works or the office from which the employee is paid."

It is our opinion that a levying officer could interpret this statement to mean that service of an Earnings Withholding Order can be accomplished by delivering or mailing the order directly to the State Controller's Office. However, the order should only go to the personnel office of the agency for which the employee works.

To preclude the direct service of Earnings Withholding Orders upon the State Controller's Office, and to make clear those persons to whom the order should be delivered, we are proposing the following revision to AB 707, Section 706.101, subsection (a) (1):

"(1) The employing agency or direct employer in charge at the time of service, of the branch or office of the employee, or the employing agency which releases wages directly to the employee."

Your assistance in this matter is greatly appreciated. If you have any questions; please contact Dave Barrow, of my staff, at 322-7108 or 322-7950.

STAFF DRAFT

AMENDMENTS TO ASSEMBLY BILL 707

Amendment 1

On page 17, line 13, strike out "and Section 684.125"

Amendment 2

On page 17, strike out lines 15 to 18, inclusive, and insert:

(c) Unless the court prescribes a shorter period of time, any prescribed period of notice and any right or duty to do any act or make any response within any prescribed period or on a date certain after a paper is served by mail is extended:

Amendment 3

On page 17, strike out lines 30 to 40, inclusive

Amendment 4

On page 18, strike out lines 1 to 5, inclusive

Amendment 5

On page 32, line 2, strike out "and delivery" and insert:
or delivery of possession

Amendment 6

On page 54, strike out lines 37 to 40, inclusive

Amendment 7

On page 55, strike out lines 1 to 8, inclusive

Amendment 8

On page 77, line 33, strike out "party" and insert:
person

Amendment 9

On page 77, line 35, strike out "party" and insert:
person

Amendment 10

On page 79, line 30, after "intangibles" insert:
consisting of any right to payment

Amendment 11

On page 132, line 18, after the period, insert:
In the case of a state employee, the office from which the employee is paid does not include the State Controller's Office unless the employee works directly for the State Controller's Office.

Amendment 12

On page 157, line 12, strike out "court, cause," and insert:
the court and the cause

Amendment 13

On page 161, line 9, strike out "execution" and insert:
withholding under an earnings withholding order

Amendment 14

On page 187, line 38, strike out "or 720.270," and insert:
, 720.270, or 720.660,