

1/14/82

Memorandum 82-5

Subject: Legislative Program

Generally

The status of the 1982 legislative program of the Law Revision Commission is set out below.

| <u>Measure</u>   | <u>Status</u>  |
|--|--|
| AB 325 (nonprobate transfers)  | Dead. Held in Assembly Judiciary Committee on 1/6/82. See discussion below.                |
| AB 707 (enforcement of judgments)  | Approved by Assembly Judiciary Committee with amendments on 1/13/82. See discussion below. |
| AB 798 (conforming changes to enforcement of judgments statute)  | Approved by Assembly Judiciary Committee on 1/13/82.                                       |
| AB 2331 (wills)  | Introduced by Assemblyman McAlister  |
| AB 2331 (attachment)   | Introduced by Assemblyman McAlister  |
| ACR 76 (continues authority to study previously authorized topics)   | Introduced by Assemblyman McAlister  |
| AJR ____ (federal pensions and benefits subject to state marital property law)   | Introduced by Assemblyman McAlister with all female members of Legislature as coauthors    |
| AB ____ (Marketable Title Act)   | McAlister will introduce   |
| AB ____ (Escheat)  | McAlister will introduce   |
| AB ____ (authorizes P.O.D. accounts in financial institutions)   | McAlister will introduce   |
| Bonds and Undertakings (two bills--being drafted by Legislative Counsel--Senator Rains is considering introduction of these bills) |  |

Assembly Bill 325 (nonprobate transfers)

On January 6, the Assembly Committee Judiciary killed AB 325 (nonprobate transfers). Representatives of the State Bar Estate Planning, Trusts and Probate Section and the National Association of Retired Persons testified in favor of the bill. The Association of Credit Unions, originally opposed to the bill, came out in support of the bill prior to the hearing. However, the California Bankers Association testified in opposition to the bill at the hearing and lobbied members of the Committee prior to the hearing.

The California Bankers Association (CBA) took the position that the bill was unneeded and would impose substantial expense on banks and other financial institutions at a time when these institutions are in a difficult financial situation. They believed that banks would have an obligation to inform depositors of the provisions of the new law and would have to develop new forms and instruct bank employees as to the substance of the new law. It was apparent at the hearing that prior to the hearing many members of the Committee had promised the CBA not to vote in favor of the bill. The vote on the bill was three for, four against, and seven not voting.

The staff believes that the objectives of AB 325 can be accomplished if the substance of portions of the bill is included in new recommendations:

(1) Assemblyman McAlister is planning to introduce legislation to authorize banks, savings and loan associations, and credit unions to offer P.O.D. (pay-on-death) accounts.

(2) AB 325 includes a provision that contracts and instruments containing pay-on-death provisions are not invalid because the contract or instrument was not executed in compliance with the requirements for a formal will. We would include this provision in our recommendation relating to wills.

(3) AB 325 includes provisions governing the rights between depositors during their lifetime and upon their death. We would include these provisions in the recommendation resulting from the staff study now in progress relating to joint tenancy and related problems.

(4) AB 325 contains provisions protecting the bank or other financial institution where amounts are paid out in compliance with the terms of the deposit contract or terms of the deposit agreement. We would not propose such provisions unless they are requested by the financial institutions.

Attached is a copy of AB 325 in its latest amended form.

#### Assembly Bills 707 and 798

A number of technical amendments were made to these bills at the hearing on January 13. Three substantive amendments were made to AB 707

(comprehensive enforcement of judgments statute) on January 13 prior to its approval by the Assembly Judiciary Committee:

(1) The amount of the homestead exemption was restored to the amount provided by existing law. This reduced the proposed \$60,000 (for family units and persons over 65 years of age) to \$45,000. Assemblyman McAlister concluded that in view of the strong opposition to this increase the change should be made in a separate bill (if some legislator wishes to propose the change) rather than in AB 707. Retention of the increase in AB 707 would have resulted in substantial opposition to the bill.

(2) The exemption for private retirement accounts exempt under federal tax law was modified. The Commission proposed to expand this exemption to include the increased amount available under the most recent IRC revisions and to pick up any future revisions of the IRC. This expansion was retained but a provision added that the property was exempt only to the extent necessary to provide for the support of the judgment debtor upon retirement and for the support of the family of the judgment debtor. If the property is paid out to the judgment debtor in periodic payments, the amount exempt would be the amount exempt under the Wage Garnishment Law on a like amount of earnings. Assemblyman McAlister decided to make these modifications to meet the objections to this exemption.

(3) At the hearing, it was apparent that the members of the Assembly Judiciary Committee were of the view that a homestead exemption should not be allowed in one instance where the bill made specific provision that it be allowed. This is the case where a judgment lien is recorded and the judgment debtor later acquires a dwelling with the intent to move into it. Absent a specific provision, the dwelling exemption would not be allowed for the later acquired dwelling because the judgment lien is prior. The Committee indicated that they did not believe the Commission recommended specific provision was desirable and it was deleted.

Members of the Committee expressed the desire that the Commission review the various exemptions that exempt property "to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor." The view expressed was that this standard is not an adequate standard and leaves the amount to be exempt to the

judge. For example, is the standard for support to be support at the level that permits the judgment debtor to live at a modest level or at the level in accord with the judgment debtor's station in life? Does the Commission wish to make any revisions in response to this concern?

Respectfully submitted,

John H. DeMouilly  
Executive Secretary