

First Supplement to Memorandum 87-13

Subject: Study L - 1025 -- Amendments to AB 708 (Creditor Claims)

Attached are amendments to add a statute of limitations provision to the bill and to make technical changes relating to creditor claims. The Commission approved the statute of limitations provision for addition to the bill in connection with its consideration of actions involving a decedent at the February, 1987, Commission meeting in San Diego.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

Exhibit 1

AMENDMENTS TO AB 708 (CREDITOR CLAIMS)

AMENDMENT 1

On page 2, before line 1, insert:

SEC. . Section 353 of the Code of Civil Procedure is amended to read:

353. If a person entitled to bring an action dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced by his representatives, after the expiration of that time, and within six months from his death. If a person against whom an action may be brought dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced against his representatives, after the expiration of that time, and within one year after the ~~issuing of letters testamentary or of administration~~ date of death, or an action against the estate provided for by subdivision (b) of Section 385 of the Code of Civil Procedure, subdivision (b) of Section 707 of the Probate Code or Section 721 of the Probate Code may be commenced within one year after the expiration of the time otherwise limited for the commencement thereof.

AMENDMENT 2

On page 29, lines 34 and 35, strike out "first issuance of letters as provided in Section 700" and insert:
date letters are first issued to a general personal representative as defined in Section 58

AMENDMENT 3

On page 29, line 36, strike out "or presenting".

AMENDMENT 4

On page 31, line 3, strike out "or presenting".

AMENDMENT 5

On page 31, line 37, strike out "or presented".

AMENDMENT 6

On page 31, line 39, strike out "or presented".

AMENDMENT 7

On page 36, line 31, strike out "or presenting".

AMENDMENT 8

On page 48, line 29, strike out "Section 980" and insert:
Chapter 3 (commencing with Section 11440) of Part 9 of Division 7

AMENDMENT 9

On page 56, line 6, strike out "714" and insert:
9257

AMENDMENT 10

On page 67, between lines 34 and 35, insert:

SEC. . Section 6611 of the Probate Code is amended to read:

6611. (a) Subject to the limitations and conditions specified in this section, the person or persons in whom title vested pursuant to Section 6609 are personally liable for the unsecured debts of the decedent.

(b) The personal liability of a person under this section shall not exceed the fair market value at the date of the decedent's death of the property title to which vested in that person pursuant to Section 6609, less the total of all of the following:

- (1) The amount of any liens and encumbrances on that property.
- (2) The value of any probate homestead interest set apart under Section 6520 out of that property.
- (3) The value of any other property set aside under Section 6510 out of that property.

(c) The personal liability under this section ceases one year after the date the court makes its order under Section 6609, except with respect to an action or proceeding then pending in court.

(d) In any action or proceeding based upon an unsecured debt of the decedent, the surviving spouse of the decedent, the child or children of the decedent, or the guardian of the minor child or children of the decedent, may assert any defense, cross-complaint, or setoff which would have been available to the decedent if the decedent had not died.

(e) If proceedings are commenced in this state for the administration of the estate of the decedent and the time for filing ~~or presenting~~ claims has commenced, any action upon the personal liability of a person under this section is barred to the same extent as provided for claims under ~~Article 1 (commencing with Section 700) of Chapter 12 of Division 3~~ Part 4 (commencing with Section 9000) of Division 7, except as to the following:

(1) Creditors who commence judicial proceedings for the enforcement of the debt and serve the person liable under this section with the complaint therein prior to the expiration of the time for filing ~~or presenting~~ claims.

(2) Creditors who have or who secure an acknowledgment in writing of the person liable under this section that that person is liable for debts.

(3) Creditors who file a timely claim in the proceedings for the administration of the estate of the decedent.

AMENDMENT 11

On page 79, line 27, strike out "or presenting".

AMENDMENT 12

On page 119, line 16, strike out "or presenting".

AMENDMENT 13

On page 134, line 37, after "allowed" insert:
or approved

AMENDMENT 14

On page 135, line 32, strike out "presented or allowed" and insert:
filed, allowed, or approved

AMENDMENT 15

On page 135, line 37, after "allowed" insert:
or approved

AMENDMENT 16

On page 136, line 2, strike out "presented or allowed" and insert:
filed, allowed, or approved

AMENDMENT 17

On page 136, line 12, strike out "presented or allowed" and insert:
filed, allowed, or approved

AMENDMENT 18

On page 136, line 16, after "allowance" insert:
or approval

AMENDMENT 19

On page 159, line 22, insert:

SEC. . Section 13552 of the Probate Code is amended to read:

13552. If proceedings are commenced in this state for the administration of the estate of the deceased spouse and the time for filing ~~or presenting~~ claims has commenced, any action upon the liability of the surviving spouse pursuant to Section 13550 is barred to the same extent as provided for claims under ~~Article 1 (commencing with Section 700) of Chapter 12 of Division 3~~ Part 4 (commencing with Section 9000) of Division 7, except as to the following:

(1) Creditors who commence judicial proceedings for the enforcement of the debt and serve the surviving spouse with the complaint therein prior to the expiration of the time for filing ~~or presenting~~ claims.

(2) Creditors who have or who secure the surviving spouse's acknowledgment in writing of the liability of the surviving spouse for the debts.

(3) Creditors who file a timely claim in the proceedings for the administration of the estate of the deceased spouse.