

## Memorandum 88-1

Subject: Study L - Cleanup Bill for AB 708 (Urgency Bill--priority of federal and state claims)

At the December meeting the Commission discussed, but did not resolve, the problem that AB 708 may give federal and state claims a higher priority against the decedent's estate than existing law gives them. After discussing several different approaches to this problem, the Commission referred the matter to the staff for further work.

The staff suggests the following amendment to Probate Code Section 11421, which we believe will resolve the problem created by AB 708. The amendment restores the law to what it was before AB 708 was enacted.

11421. As soon as the personal representative has sufficient funds, after retaining sufficient funds to pay expenses of administration ~~and debts owed to the United States or to this state that have preference under the laws of the United States or of this state~~, the personal representative shall pay the following debts:

- (a) Funeral expenses.
- (b) Expenses of last illness.
- (c) Family allowance.
- (d) Wage claims.

Comment. Section 11421 is amended to delete the reference to debts given preference by federal or state law. The amendment recognizes that such debts are not given preference over expenses of administration or charges against the estate, but only over other debts due from the decedent. See, e.g., Estate of Muldoon, 128 Cal. App. 2d 284, 275 P.2d 597 (1954) (federal preference); Estate of Jacobs, 61 Cal. App. 2d 152, 142 P.2d 454 (1943) (state preference). The amendment also has the effect of reinstating the priority given wage claims by former Section 951. See also Rev. & Tax. Code § 19265 (personal income tax priority over claims other than taxes, expenses of administration, funeral expenses, expenses of last illness, family allowance, and wage claims).

Respectfully submitted,

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