

First Supplement to Memorandum 2001-40

SB 562 (Morrow): Additional Issues

In re-reading materials relating to SB 562, the staff identified a few additional points that the Commission should consider:

COMMENTS TO CODE OF CIVIL PROCEDURE SECTIONS 86 AND 564

The proposed Comment to Code of Civil Procedure Section 86 (shown on page 4 of Memorandum 2001-40) states in part that “This is not a significant change.” On reflection, we **recommend deleting this statement, because it is unnecessary and inconsistent with the Commission’s policy of avoiding argumentation in Comments:**

Comment. ... Subdivision (a)(8) is amended to delete the language on circumstances for appointment of a receiver in a limited civil case, and insert a cross-reference to Section 564, which now governs appointment of receivers in both limited and unlimited civil cases. The language deleted from the first clause of subdivision (a)(8) is continued in Section 564(b)(8), but broadened to apply to all cases. ~~This is not a significant change.~~ See Section 564 Comment. The language deleted from the second clause of subdivision (a)(8) is not continued, because it is redundant with Section 564(b)(3) and (b)(4).

A similar change should be made in the Comment to Section 564:

Comment. ... Subdivision (b)(9) (former subdivision (b)(8)) is amended to delete language authorizing appointment of a receiver “where receivers have heretofore been appointed by the usages of court of equity,” and insert more readily understandable language formerly found in Section 86. ~~This is not a significant change.~~ The deleted language conferred broad authority to appoint a receiver, but only where other remedies were found to be inadequate. See, e.g., *Golden State Glass Corp. v. Superior Court*, 13 Cal. 2d 384, 393, 90 P.2d 75 (1939) (superior court should appoint receiver only where necessary to “adequately protect the rights of the parties”); *Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp.*, 116 Cal. App. 2d 869, 873, 254 P.2d 599 (1953) (where less severe remedy will adequately protect parties, court ordinarily should not

appoint receiver); see also *Murray v. Murray*, 115 Cal. 266, 275, 47 p. 37 (1896) (in equity, receiver may be appointed where plaintiff has equitable claim to property and “receiver is necessary to preserve the same from loss”). Similarly, subdivision (a)(9) authorizes appointment of a receiver only “where necessary to preserve the property or rights of any party.” (Emphasis added.)

....

The preliminary part of the Commission’s recommendation is sufficient to explain the effect of the proposed reform:

The differences in standards for appointment of a receiver in limited civil cases and unlimited civil cases are minor, and appear to be the result of historical development. Court unification creates an opportunity to simplify practice and procedure without a significant change in substance, by consolidating the provisions.

Authority to Appoint Receivers, 30 Cal. L. Revision Comm’n Reports 291, 298 (2000) (footnotes omitted).

VEHICLE CODE SECTIONS 16370, 16373, 16376, AND 16379

The Vehicle Code sets forth a procedure for suspending the driver’s license of a person who fails to satisfy a judgment against the person for certain damages resulting from operation of a motor vehicle in California. Veh. Code §§ 16250-16381. The procedure applies not only to a judgment entered by a California court, but also to a judgment entered by a court of another state or by a federal court. Veh. Code § 16250.

Thus, in amending Vehicle Code Section 16370 to delete the obsolete reference to a “docket,” we inserted a reference to the register of actions “or a comparable court record of another jurisdiction:”

16370. The department shall suspend the privilege of any person to operate a motor vehicle upon receiving a certified copy of a judgment, or a certified copy of the ~~docket entries~~ register of actions (or a comparable court record of another jurisdiction) in an action resulting in a judgment for damages, and a certificate of facts relative to the judgment, on a form provided by the department, indicating that the person has failed for a period of 30 days to satisfy a judgment rendered against him or her.

Comment. ...Section 16370 is amended to refer not only to the register of actions but also to a comparable court record of another jurisdiction, because the provision applies to judgments rendered

by courts in other states, not just judgments rendered by the California courts. See Section 16250 (“judgment” defined); see also Section 16251 (“cause of action” defined).

This treatment appears appropriate.

In two other provisions (Vehicle Code Section 16373 and 16379), we followed the same approach, for the same reason. On reviewing these two provisions more closely, however, it appears that they are directed only to California courts, not to courts of other states. Thus, **the references to “a comparable court record of another jurisdiction” should be deleted from the proposed amendments of these two provisions, as shown in bold below:**

Veh. Code § 16373 (amended). Certification to judgment creditor

SEC. _____. Section 16373 of the Vehicle Code is amended to read:

16373. (a) The clerk of a court, ~~or the judge of a court which has no clerk,~~ shall, subject to subdivision (b), issue upon the request of a judgment creditor a certified copy of any judgment or a certified copy of the docket entries register of actions ~~(or a comparable court record of another jurisdiction)~~ in an action resulting in a judgment for damages, and a certificate of facts relative to the judgment on a form provided by the department.

(b) The judgment creditor may pay the required fees and request the documents specified in subdivision (a) upon the expiration of 30 days after the judgment has become final, if the judgment has not been stayed or satisfied within the amounts specified in this chapter as shown by the records of the court. The court shall determine the required fees, which shall be commensurate with the cost incurred by the court in carrying out this section.

~~Comment. ... Section 16373 is amended to refer not only to the register of actions but also to a comparable court record of another jurisdiction, because the provision applies to judgments rendered by courts in other states, not just judgments rendered by the California courts. See Section 16250 (“judgment” defined); see also Section 16251 (“cause of action” defined).~~

Veh. Code § 16379 (amended). Payment of judgment in installments

SEC. _____. Section 16379 of the Vehicle Code is amended to read:

16379. (a) The department shall not suspend a license and shall restore any suspended license following nonpayment of a final judgment when the judgment debtor gives proof of financial responsibility for future damages and when the trial court in which

the judgment was rendered orders the payment of the judgment in installments and while the payment of any installment payment is not in default.

(b) Whenever the trial court orders the payment of a judgment in installments as provided in this section, upon payment of the required fees by the judgment creditor, it shall forward a certified copy of the order to the department, together with a certified copy of the judgment or a certified copy of the docket entries register of actions ~~(or a comparable court record of another jurisdiction)~~ in an action resulting in a judgment for damages and a certificate of facts relative to the judgment on a form provided by the department.

(c) The court shall determine the required fees, which shall be commensurate with cost incurred by the court in carrying out the provisions of this section.

Comment. ... Section 16379 is amended to refer not only to the register of actions but also to a comparable court record of another jurisdiction, because the provision applies to judgments rendered by courts in other states, not just judgments rendered by the California courts. See Section 16250 (“judgment” defined); see also Section 16251 (“cause of action” defined).

If the Commission approves, we will take steps to have the bill amended accordingly.

Further, an amendment of Vehicle Code Section 16376 should be added to the bill, to eliminate a reference to “the docket of a court not of record.” That reference is obsolete, because all California courts are “courts of record.” Cal. Const. art. VI, § 1. Justice courts became “courts of record” in 1988, and were eliminated in 1995. **We suggest the following amendment:**

Veh. Code § 16376 (amended). Action against nonresident

SEC. _____. Section 16376 of the Vehicle Code is amended to read:

16376. (a) If the person against whom judgment is rendered is a nonresident and the person fails within the prescribed time to satisfy the judgment in full or to the extent specified in this chapter, all privileges of operating a motor vehicle in this state given to the person under this code shall be suspended while the judgment remains in effect and unsatisfied and until the nonresident gives proof of his or her financial responsibility in the manner and to the extent provided in Chapter 3 (commencing with Section 16430) for accidents occurring after the date of the giving of proof.

(b) The department shall forward a certified copy of the judgment of a court of record ~~or a certified copy of the docket of a~~

~~court not of record~~ to the appropriate officer in charge of the licensing of drivers in the state of which the person is a resident.

Comment. Section 16376 is amended to insert subdivisions and eliminate the reference to “the docket of a court not of record,” which is obsolete because all courts are “courts of record.” Cal. Const. art. VI, § 1.

Respectfully submitted,

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