

#39.100

5/15/73

Memorandum 73-52

Subject: Study 39.100 - Enforcement of Sister State Money Judgments

Attached to this memorandum are two copies of the Tentative Recommendation Relating to the Enforcement of Sister State Money Judgments which has been revised in accordance with the decisions made at the May meeting. We would like to send this tentative recommendation out for comment after the June meeting. Mark your suggested editorial changes on one copy and turn it in to the staff at the June meeting.

The Commission should take note of Senate Bill 811 (attached as an exhibit) which if enacted would add the registration procedure of the Revised Uniform Reciprocal Enforcement of Support Act of 1968 to Title 10a (commencing with Section 1650) of the Code of Civil Procedure. The Uniform Reciprocal Enforcement of Support Act of 1950 was enacted originally in California in 1953. In 1970, it was substantially amended in accordance with the 1968 version of the Uniform Act; however, the registration provisions of Part IV of the Uniform Act now proposed by S.B. 811 were omitted. The proposed Sections 1698.3 and 1699 are quite similar to the revised Uniform Enforcement of Foreign Judgments Act of 1964 which was the inspiration for the Tentative Recommendation Relating to Sister State Money Judgments. Hence, S.B. 811 makes no distinction between residents and nonresidents, and it relies on notice sent by registered or certified mail by the clerk. Apparently enforcement of the order by execution may take place before any notice is received by the obligor. This procedure obviously is at variance with that of the tentative recommendation.

Support orders which had accrued would be enforceable under the tentative recommendation. since they are money judgments as well as under either the action or registration procedures of the Uniform Reciprocal Enforcement of Support Act. Both acts contain provisions to the effect that they are not exclusive procedures. See Section 1654 and, in the tentative recommendation, Section 1710.65. However, if S.B. 811 is enacted, presumably support obligees would find the procedures of the Uniform Reciprocal Enforcement of Support Act advantageous.

Respectfully submitted,

Stan G. Ulrich
Legal Counsel

EXHIBIT I

SENATE BILL

No. 811

Introduced by Senator Robbins

April 23, 1973

An act to amend and renumber Sections 1695, 1696, and 1697 of, and to add Sections 1697, 1698, 1698.1, 1698.2, 1698.3, and 1699 to, the Code of Civil Procedure, relating to foreign support orders, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 811, as introduced, Robbins. Foreign support orders.

Provides for additional remedies for obligees to enforce foreign support orders in this state, including registration of foreign support orders in a court of this state, representation of obligee by prosecuting attorney or Attorney General, and enforcement of order by prosecuting attorney when foreign support order has been registered as provided.

Appropriates an unspecified amount to the State Controller for allocation and disbursement to local agencies for costs incurred by them pursuant to this act.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

* * * * *

SEC. 4. Section 1697 is added to the Code of Civil Procedure, to read:

1697. If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in Sections 1698 to 1699, inclusive.

SEC. 5. Section 1698 is added to the Code of Civil Procedure, to read:

1698. The obligee may register the foreign support order in a court of this state in the manner, with the effect, and for the purposes provided in this chapter.

SEC. 6. Section 1698.1 is added to the Code of Civil Procedure, to read:

1698.1. The clerk of the court shall maintain a registry of foreign support orders in which he shall file foreign support orders.

SEC. 7. Section 1698.2 is added to the Code of Civil Procedure, to read:

1698.2. If this state is acting either as a rendering or a registering state the prosecuting attorney shall represent the obligee in proceedings under this part.

If the prosecuting attorney neglects or refuses to represent the obligee, the Attorney General may order him to represent the obligee or may undertake the representation.

SEC. 8. Section 1698.3 is added to the Code of Civil Procedure, to read:

1698.3. (a) An obligee seeking to register a foreign support order in a court of this state shall transmit to the clerk of the court (1) three certified copies of the order with all modifications thereof, (2) one copy of the reciprocal enforcement of support act of the state in which the order was made, and (3) a statement verified and signed by the obligee, showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the states in which the order is registered. Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the registry of foreign support orders. The filing constitutes registration under this chapter.

(b) Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

SEC. 9. Section 1699 is added to the Code of Civil Procedure, to read:

1699. (a) Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this state. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this state and may be enforced and satisfied in like manner.

(b) The obligor has 20 days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition the registered support order is confirmed.

(c) At the hearing to enforce the registered support order the obligor may present only matters that would be available to him as defenses in an action to enforce a support judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering state. If he shows to the court any ground upon which enforcement of a support order of this state may be stayed the court shall stay enforcement of the order of an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this state.

* * * * *

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE

RECOMMENDATION

relating to

ENFORCEMENT OF SISTER STATE MONEY JUDGMENTS

June 1973

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford University
Stanford, California 94305

Important Note: This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Comments should be sent to the Commission not later than August 20, 1973.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature. Any comments sent to the Commission will be considered when the Commission determines what recommendation, if any, it will make to the California Legislature.

This tentative recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

C O N T E N T S

	<u>Page</u>
Background	1
Recommendation	3
Proposed Legislation	4
 Code of Civil Procedure	
§ 674 (amended)	5
§ 1713.1 (amended).	6
§ 1713.3 (amended).	7
§ 1915 (repealed)	8
 Title 11. Sister State and Foreign Money Judgments	 10
Chapter 1. Sister State Money Judgments	 10
§ 1710.10. "Sister state judgment"	10
§ 1710.15. "Judgment creditor"	11
§ 1710.20. Application for entry of judgment	12
§ 1710.25. Venue	14
§ 1710.30. Entry of judgment	14
§ 1710.35. Notice of entry of judgment	15
§ 1710.40. Effect of judgment; enforcement	15
§ 1710.45. Vacation of judgment.	16
§ 1710.50. Issuance of writ of execution	17
§ 1710.55. Stay of enforcement	19
§ 1710.60. Limitations on entry of judgment.	20
§ 1710.65. Optional procedure.	21

TENTATIVE
RECOMMENDATION OF THE CALIFORNIA
LAW REVISION COMMISSION

relating to

ENFORCEMENT OF SISTER STATE MONEY JUDGMENTS

BACKGROUND

The full faith and credit clause of Article IV, Section 1, of the United States Constitution requires states to enforce¹ the valid money judgments² of the courts of sister states subject to certain defenses.³

1. "Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State." U.S. Const., Art. IV, § 1 (in part). The manner of enforcing sister state money judgments is not specified by the federal Constitution or statutes but rather is determined by the law of the forum state. Restatement (Second) of Conflict of Laws § 99 (1971).
2. Restatement (Second) of Conflict of Laws § 100 & Introductory Note §§ 99-102 (1971); Milwaukee County v. M.E. White Co., 296 U.S. 268 (1935). The United States Supreme Court has not yet decided whether or not judgments ordering the performance of an act other than the payment of money—e.g., orders to convey land—are required by the full faith and credit clause to be enforced. Restatement (Second) of Conflict of Laws § 102, Comment c (1971). California courts have allowed the enforcement of sister state decrees to convey land. *Rozan v. Rozan*, 49 Cal.2d 322, 317 P.2d 11 (1957) (dictum); *Spalding v. Spalding*, 75 Cal. App. 569, 243 P. 445 (1925); *Redwood Inv. Co. v. Exley*, 64 Cal. App. 455, 221 P. 973 (1923). Restatement (Second) of Conflict of Laws § 102, Reporter's Notes to Comments c and d (1971). This recommendation is limited to consideration of a procedure for enforcing money judgments entitled to full faith and credit.
3. Defenses to enforcement include the following: the judgment is not final and unconditional; the judgment was obtained by extrinsic fraud; the judgment was rendered in excess of jurisdiction; the judgment is not enforceable in the state of rendition; misconduct of the plaintiff; the judgment has already been paid; suit on the judgment is barred by the statute of limitations in the state where enforcement is sought. 5 B. Witkin, California Procedure Enforcement of Judgment § 194 at 3549-3550 (2d ed. 1971); Restatement (Second) of Conflict of Laws §§ 103-121 (1971).

In California, the exclusive way to enforce a sister state money judgment is to bring an action on the judgment in a California court; when a California judgment is obtained, then execution may issue.⁴ This traditional manner of enforcing judgments of sister states requires all the normal trappings of an original action. The judgment creditor must file a complaint. There must be judicial jurisdiction. The creditor may want to seek a writ of attachment, if available, until such time as the judgment has been established. A trial (however summary) must be held in order to establish the sister state judgment at which time the judgment debtor may raise any defenses to the validity of the judgment that he may have. Only after the entry of the California judgment may the judgment creditor seek execution on the debtor's assets in this state.

The formal, traditional process of enforcing sister state judgments understandably has been the subject of criticism.⁵ A simpler and more efficient method of enforcing sister state judgments is offered by a registration system similar to the procedure enacted by Congress in 1948 for the enforcement of federal district court judgments in other districts⁶ and the

-
4. 5 B. Witkin, California Procedure Enforcement of Judgment § 193 at 3548 (2d ed. 1971); Restatement (Second) of Conflict of Laws § 99, Comment b; § 100, Comment b (1971); cf. Code Civ. Proc. §§ 337.5(3), 1913.
 5. See, e.g., Kulzer, The Uniform Enforcement of Foreign Judgments Act and The Uniform Enforcement of Foreign Judgments Act (Revised 1964 Act), State of New York Judicial Conference, 13th Annual Report 248 (1968); Report of the Standing Committee on Jurisprudence and Law Reform, 52 A.B.A. Report 292 (1927); Jackson, Full Faith and Credit—The Lawyer's Clause of the Constitution, 45 Colum. L. Rev. 1 (1945); Paulsen, Enforcing the Money Judgment of a Sister State, 42 Iowa L. Rev. 202 (1957).
 6. 28 U.S.C. § 1963 (1970); see Stanford v. Utley, 341 F.2d 265 (8th Cir. 1965); Juneau Spruce Co. v. International Longshoremen's & Warehousemen's Union, 128 F. Supp. 697 (D. Hawaii 1955); Matanuska Valley Lines, Inc. v. Molitor, 365 F.2d 358 (1966), cert. denied, 386 U.S. 914 (1967). Registration systems have long been used successfully in other countries with federated states, e.g., Australia. See Yntema, The Enforcement of Foreign Judgments in Anglo-American Law, 33 Mich. L. Rev. 1129 (1935); Leflar, The New Uniform Foreign Judgments Act, 24 N.Y.U. L.Q. Rev. 336, 343-345 (1949); Morison, Extra-Territorial Enforcement of Judgments Within the Commonwealth of Australia, 21 Aust. L.J. 298 (1947).

revised Uniform Enforcement of Foreign Judgments Act of 1964.⁷ The registration system of the Uniform Act has been adopted in the major commercial states of New York and Pennsylvania and also in Arizona, Colorado, Kansas, North Dakota, Oklahoma, Wisconsin, and Wyoming.⁸

RECOMMENDATION

The Law Revision Commission recommends that a registration system for the enforcement of sister state judgments be enacted in California. Under the recommended system, the judgment creditor files an application in a California superior court for the entry of a California judgment based on the sister state judgment. The application is accompanied by an authenticated copy of the sister state judgment. The clerk enters the judgment as he would a judgment of the superior court.

The judgment creditor is required to promptly serve notice of entry of the judgment in the manner provided for service of summons. The judgment debtor, upon noticed motion made not later than 30 days after service by the creditor of the notice of entry of the judgment, may have the judgment vacated on any ground that would be a defense to an action in California to enforce the sister state judgment.

The judgment creditor may obtain a writ of execution and have it levied prior to notice of entry of judgment where "great or irreparable injury" would otherwise result or where the judgment debtor is a nonresident (a nonresident individual, a corporation which has not qualified to do business in California, or a partnership which has not designated an agent for

7. 9A Uniform Laws Ann. 488 (1965).

8. In addition, an earlier act--the Uniform Enforcement of Foreign Judgments Act of 1948--which provides a summary judgment procedure, has been adopted in Arkansas, Illinois, Missouri, Nebraska, Oregon, and Washington. 9A Uniform Laws Ann. 475 (1965); National Conference of Commissioners on Uniform State Laws, Handbook (1970).

service of process in California). However, in such cases, assets levied upon may not be sold (except where the property is perishable) or distributed to the creditor until at least 20 days after the creditor serves notice of entry of the judgment on the judgment debtor. In all other cases, the judgment creditor may not obtain a writ of execution until 10 days after he serves the judgment debtor with notice of entry of judgment.

The recommended registration procedure offers several distinct advantages over the traditional enforcement process. The registration system is speedy, efficient, and inexpensive to utilize. It offers savings in time and money to both courts and creditors. The procedure is fair to the judgment debtor since his opportunity to attack the enforcement of the sister state judgment is preserved. The registration procedure avoids the necessity under current law of obtaining a writ of attachment in order to preserve assets during the time suit is brought to establish the sister state judgment.

PROPOSED LEGISLATION

The Commission's recommendation would be effectuated by the enactment of the following measure:

An act to amend Sections 674, 1713.1, and 1713.3 of, to amend the heading of Title 11 of Part 3 of, to add Chapter 1 (commencing with Section 1710.10) to Title 11 of Part 3 of, and to repeal Section 1915 of, the Code of Civil Procedure, relating to enforcement of judgments.

The people of the State of California do enact as follows:

Section 1. Section 674 of the Code of Civil Procedure is amended to read:

674. An abstract of the judgment or decree of any court of this State, including a judgment entered pursuant to Chapter 1 (commencing with Section 1710.10) of Title 11 of Part 3, or a judgment of any court sitting as a

small claims court, or any court of record of the United States, the enforcement of which has not been stayed on appeal, certified by the clerk, judge or justice of the court where such judgment or decree was rendered, may be recorded with the recorder of any county and from such recording the judgment or decree becomes a lien upon all the real property of the judgment debtor, not exempt from execution, in such county, owned by him at the time, or which he may afterward and before the lien expires, acquire. Such lien continues for 10 years from the date of the entry of the judgment or decree unless the enforcement of the judgment or decree is stayed on appeal by the execution of a sufficient undertaking or the deposit in court of the requisite amount of money as provided in this code, or by the statutes of the United States, in which case the lien of the judgment or decree, and any lien or liability now existing or hereafter created by virtue of an attachment that has been issued and levied in the action, unless otherwise by statutes of the United States provided, ceases, or upon an undertaking on release of attachment, or unless the judgment or decree is previously satisfied, or the lien otherwise discharged. The abstract above mentioned shall contain the following: title of the court and cause and number of the action; date of entry of the judgment or decree; names of the judgment debtor and of the judgment creditor; amount of the judgment or decree, and where entered in judgment book, minutes or docket in the justice court.

Comment. Section 674 is amended to make clear that a judgment entered pursuant to Section 1710.10 et seq. may be recorded and become a lien pursuant to Section 674. See Section 1710.10 et seq. and Comments.

Sec. 2. Section 1713.1 of the Code of Civil Procedure is amended to read:

1713.1. As used in this chapter:

(1) "Foreign state" means any governmental unit other than the United States, or any state, district, commonwealth, territory, insular possession thereof, or the Panama Canal Zone, OR the Trust Territory of the Pacific Islands, ~~or the Ryukyu Islands;~~

(2) "Foreign judgment" means any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial or family matters.

Comment. Section 1713.1(1) is amended to reflect the return to Japan of administrative rights over the Ryukyu Islands effective May 15, 1972. See Agreement Between Japan and the United States of America Concerning the Ryukyu Islands and the Daito Islands, June 17, 1971, art. I, para. 1, art. V, paras. 1 & 2 (effective May 15, 1972).

Sec. 3. Section 1713.3 of the Code of Civil Procedure is amended to read:

1713.3. Except as provided in Section 1713.4, a foreign judgment meeting the requirements of Section 1713.2 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. The foreign judgment is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit, except that it may not be enforced pursuant to the provisions of Chapter 1 (commencing with Section 1710.10).

Comment. The amendment of Section 1713.3 makes clear that the procedure for filing sister state judgments provided by Chapter 1 (commencing with Section 1710.10) is not available for the enforcement of foreign nation money judgments. See Section 1710.10 and Comment.

Sec. 4. Section 1915 of the Code of Civil Procedure is repealed.

~~1915.--Except-as-provided-in-Chapter-2-(commencing-with-Section-1713)
of-Title-11-of-Part-3-of-this-code,-a-final-judgment-of-any-other-tribunal-of
a-foreign-country-having-jurisdiction,-according-to-the-laws-of-such-country,
to-pronounce-the-judgment,-shall-have-the-same-effect-as-in-the-country
where-rendered,-and-also-the-same-effect-as-final-judgments-rendered-in
this-state.~~

Comment. Section 1915 is repealed because it has been largely ignored by the courts and has served no useful purpose. See A. Ehrenzweig, Conflict of Laws § 45 at 163, n.25 (1962) ("Being much too sweeping in its language. . . . this provision has remained ineffective."). See also Ryder v. Ryder, 2 Cal. App.2d 426, 37 P.2d 1069 (1935); DeYoung v. DeYoung, 27 Cal.2d 521, 165 P.2d 457 (1946); Harlan v. Harlan, 70 Cal. App.2d 657, 161 P.2d 490 (1945); Sohnlein v. Winchell, 230 Cal. App.2d 508, 41 Cal. Rptr. 145 (1964).

Section 1915 apparently was enacted in nearly its present form in 1907 with an eye to the doctrine of reciprocity to assure the foreign execution of judgments entered in California against insurance companies in foreign nations, primarily Germany, involving claims arising out of the 1906 earthquake and fire. However, the section failed to achieve its basic historical purpose when in 1909 the imperial court of Germany refused to permit the execution of California judgments rendered by default against German insurance companies. See Lorenzen, The Enforcement of American Judgments Abroad, 29 Yale L.J. 188,

§ 1915

202-205 (1919). Since that time, the meaning and effect of Section 1915 have been a source of confusion. See, e.g., Scott v. Scott, 51 Cal.2d 249, 254, 331 P.2d 641, ___ (1958)(Traynor, J., concurring); Ryder v. Ryder, supra; Comment, Recognition of Foreign Country Divorces: Is Domicile Really Necessary?, 40 Cal. L. Rev. 93 (1952). Section 1915 became of even less possible use with the enactment of the Uniform Foreign Money-Judgments Recognition Act (Sections 1713-1713.8) in 1967, which removed foreign nation money judgments entitled to recognition under that act from the effect of Section 1915. With the repeal of Section 1915, the enforcement of foreign nation judgments is a matter of other statutory provisions and decisions of the courts under principles of the common law and private international law. See Sections 1713-1713.8; Scott v. Scott, supra (Traynor, J., concurring); Restatement (Second) of Conflict of Laws § 98, Comment b (1971); Smit, International Res Judicata and Collateral Estoppel in the United States, 9 U.C.L.A. L. Rev. 44 (1962).

Sec. 5. The heading of Title 11 of Part 3 of the Code of Civil Procedure is amended to read:

TITLE 11. OF PROCEEDINGS IN PROBATE COURTS

SISTER STATE AND FOREIGN MONEY JUDGMENTS

Sec. 6. Chapter 1 (commencing with Section 1710.10) is added to Title 11 of Part 3 of the Code of Civil Procedure, to read:

Chapter 1. Sister State Money Judgments

§ 1710.10. "Sister state judgment"

1710.10. As used in this chapter, "sister state judgment" means that part of any judgment, decree, or order of a court of a state of the United States requiring the payment of money which is entitled to full faith and credit in this state.

Comment. Section 1710.10 is based on Section 1 of the revised Uniform Enforcement of Foreign Judgments Act of 1964. 9A Uniform Laws Ann. 488 (1965). However, unlike the Uniform Act which applies to all state and federal judgments entitled to full faith and credit, Section 1710.10 is limited to sister state judgments which require the payment of money. It should be noted that "sister state judgment" is defined as a judgment or part of a judgment requiring the payment of money. Hence, if a judgment of a sister state requires both the payment of money and the performance of some other act, only the part requiring the payment of money is considered a "sister state judgment" under this chapter and is thereby enforceable by its filing provisions. See Section 1710.20.

Section 1710.60(b) prevents the filing of a "sister state judgment" pursuant to this chapter if an action has been brought or judgment previously rendered in California (in either federal or state court) based on the "sister state judgment." In view of the definition of "sister state judgment" to include part of a judgment requiring the payment of money, if a judgment creditor has brought an action on the part of the judgment of the sister state which requires performance of an act other than the payment

of money but has not brought an action on the part of the judgment for money damages, then the judgment creditor is not precluded by subdivision (b) of Section 1710.60 from filing under this chapter in order to enforce the part of the judgment for the payment of money (that is, the "sister state judgment"). Similarly, if the creditor has filed a "sister state judgment" as defined in this section, he is not precluded by subdivision (b) of Section 1710.65 from bringing an action in this state on the nonmoney damages part of his judgment.

Section 1710.10 also requires that the sister state money judgment be one that is "entitled to full faith and credit in this state," a matter determined by the decisions interpreting the full faith and credit clause of the United States Constitution. See U.S. Const., Art. IV, § 1. See also 5 B. Witkin, California Procedure Enforcement of Judgment § 194 at 3549-3550 (2d ed. 1971); Restatement (Second) of Conflict of Laws §§ 100, 102, Comment c and Reporter's Note (1971).

Federal money judgments may be registered in California federal district courts pursuant to federal procedures. 28 U.S.C. § 1963 (1970).

Nothing in this chapter affects the right of a judgment creditor to bring an action in California to enforce a sister state, federal, or foreign nation money judgment except that enforcement of a "sister state judgment" may not be had both by an action and under this chapter. See Sections 1710.20(b)(4), 1710.60(b), and 1710.65.

§ 1710.15. "Judgment creditor"

1710.15. As used in this chapter, "judgment creditor" means the person or persons who could bring an action to enforce a sister state judgment.

Comment. Section 1710.15 incorporates the law relating to which judgment holders may enforce the judgment where there are multiple judgment creditors. See Code Civ. Proc. §§ 378, 389, and 578. See also Code Civ. Proc. § 17 (singular includes the plural).

§ 1710.20. Application for entry of judgment

1710.20. (a) A judgment creditor may apply for the entry of a judgment based on a sister state judgment by filing an application with the superior court for the county designated by Section 1710.25.

(b) The application shall be executed under oath and shall include all of the following:

(1) A statement that an action in this state on the sister state judgment is not barred by the applicable statute of limitations.

(2) A statement, based on the applicant's knowledge and belief, that no stay of enforcement of the sister state judgment has been granted and currently is in effect in the sister state.

(3) A statement of the amount remaining unpaid under the judgment.

(4) A statement that no action based on the sister state judgment is currently pending in any court in this state and that no judgment based on such sister state judgment has previously been entered in any proceeding in this state.

(5) Where the judgment debtor is an individual, a statement setting forth the name and last known residence address of the judgment debtor. Where the judgment debtor is a corporation, a statement of the corporation's name, place of incorporation, and whether the corporation, if foreign, has qualified to do business in this state under the provisions of Chapter 3 (commencing with Section 6403) of Part 11 of Division 1 of Title 1 of the Corporations Code. Where the judgment debtor is a partnership, a statement of the partnership's name, place of domicile, and whether the partnership, if foreign, has filed a designation pursuant to Section 15700 of the Corporations Code. A statement required by this paragraph may be made on the basis of the judgment creditor's information and belief.

(6) A statement setting forth the name and address of the judgment creditor.

(c) A properly authenticated copy of the sister state judgment shall be attached to the application.

Comment. Section 1710.20 requires that the application be filed with a superior court. See also Section 1710.25. Use of the procedure provided by this chapter should not be so frequent as to be burdensome, and the consolidation of all such proceedings in the superior court should promote efficient and uniform operation. Although normally claims of not more than \$1,000 are heard in justice court (Code Civ. Proc. § 112) and claims of not more than \$5,000 are heard in municipal court (Code Civ. Proc. § 89), proceedings under this chapter take place in superior court regardless of amount.

Paragraph (1) of subdivision (b) adopts the statute of limitations applicable to bringing an action in this state on the sister state judgment. The limitations period is determined by Title 2 of Part 2 of this code. Subdivision 3 of Section 337.5 prescribes a basic 10-year period for commencement of an action upon a sister state judgment. The 10-year period is tolled while the judgment debtor is absent from the state. See Code Civ. Proc. § 351; Cvecich v. Giardino, 37 Cal. App.2d 394, 99 P.2d 573 (1940). A lesser period may be applicable under the borrowing provision of Section 361. Biewind v. Biewind, 17 Cal.2d 108, 109 P.2d 701 (1941); Parhm v. Parhm, 2 Cal. App.3d 311, 82 Cal. Rptr. 570 (1969); Weir v. Corbett, 229 Cal. App.2d 290, 40 Cal. Rptr. 161 (1964); Stewart v. Spaulding, 72 Cal. 264, 13 P. 661 (1887). But cf. Mark v. Safren, 227 Cal. App.2d 151, 38 Cal. Rptr. 500 (1964). For a good discussion of the problems of applying a borrowing statute like Section 361, see Juneau Spruce Corp. v. International Longshoremen's & Warehousemen's Union, 128 F. Supp. 697 (D. Hawaii 1955). If the judgment is made payable in installments, the statute of limitations for each installment runs from the time each payment falls due. Biewind v. Biewind, *supra*; DeUprey v. DeUprey, 23 Cal. 352 (1863); Mark v. Safren, *supra*. It should be noted that the bar of the statute of limitations is also a defense to enforcement of a sister state judgment. See Section 1710.45 and Comment.

Subdivision (b)(2) reflects the substantive requirement of subdivision (a) of Section 1710.60. See also Section 1710.55(a)(2). Subdivision (b)(3) is designed to prevent double recovery. Subdivision (b)(4) reflects the substantive requirement of subdivision (b) of Section 1710.60.

The statement required by paragraph (5) of subdivision (b) permits an initial check as to proper venue. See Section 1710.25 and Comment. It also provides information necessary to determine whether a writ of execution may issue before notice of entry is given the judgment debtor. See Section 1710.55(b) and Comment.

Subdivision (c) requires that a properly authenticated copy of the sister state judgment be attached to the application. Section 1738 of Title 28 of the United States Code requires that full faith and credit be given to judgments authenticated in the manner there set forth and thereby provides certain maximum restrictions. For California provisions relating to authentication of judgments, see, e.g., Evid. Code §§ 1452, 1453, 1530(a).

§ 1710.25. Venue

1710.25. Subject to the power of the court to transfer the proceeding pursuant to Title 4 (commencing with Section 392) of Part 2, the application shall be filed in the office of the clerk of the superior court for:

- (a) The county in which any judgment debtor resides; or
- (b) If no judgment debtor is a resident, any county in this state.

Comment. Section 1710.25 states the venue requirements for proceedings under this chapter. Where a judgment creditor errs in his application, the judgment debtor may request a transfer of the proceeding. A transfer will not, however, affect the validity of actions already taken.

§ 1710.30. Entry of judgment

1710.30. Upon the filing of the application, the clerk shall enter a judgment based upon the application. Entry shall be made in the same manner as entry of a judgment of the superior court.

Comment. Section 1710.30 is similar to Section 2 of the revised Uniform Enforcement of Foreign Judgments Act of 1964. 9A Uniform Laws Ann. 488 (1965). Section 2 requires the clerk to file a sister state judgment and treat it in the same manner as a judgment of his state. Section 1710.30 accomplishes the same end by requiring entry of a judgment on the basis of the judgment creditor's application (attached to which is an authenticated copy of the sister state judgment).

§ 1710.35. Notice of entry of judgment

1710.35. Notice of entry of judgment shall be served promptly by the judgment creditor upon the judgment debtor in the manner provided for service of summons by Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2.

Comment. Section 1710.35 requires the judgment creditor to promptly serve notice of entry of judgment. In proceedings under this chapter, the court clerk does not send notice of entry of judgment as provided in Section 664.5.

Ordinarily, service of notice of entry of judgment must be made at least 10 days before a writ of execution may issue. See Section 1710.50(a) and Comment. In certain circumstances, the judgment creditor may obtain a writ of execution before he serves notice of entry of judgment. See Section 1710.50(b), (c), and Comment. In these latter cases, the judgment debtor may receive notice of the judgment creditor's enforcement activities before notice of entry of judgment is served since the levying officer is required to serve a copy of the writ of execution on the judgment debtor at the time of levy or to mail a copy to him after levy. See Code Civ. Proc. § 682.1.

§ 1710.40. Effect of judgment; enforcement

1710.40. Except as otherwise provided in this chapter, a judgment entered pursuant to this chapter shall have the same effect as a money judgment of a superior court of this state and may be enforced or satisfied in like manner.

Comment. Section 1710.40 provides that a judgment entered pursuant to this chapter is to be treated as a judgment of the superior court for purposes of enforcement. Hence, for example, Code of Civil Procedure provisions regarding judgment liens (Section 674), execution (Section 681 et seq.), and supplemental proceedings (Section 714 et seq.) all apply to the judgment. However, some variations exist between the enforcement procedures of this chapter and those generally applicable. See, e.g., Section 1710.50. The judgment may be renewed for purposes of execution or other enforcement after 10 years as provided by Section 685. However, the same sister state judgment may not serve as the basis for entry of more than one California judgment. See Sections 1710.60(b) and 1710.65 and Comments.

§ 1710.45. Vacation of judgment

1710.45. (a) A judgment entered pursuant to this chapter may be vacated on any ground which would be a defense to an action in this state on the sister state judgment.

(b) Not later than 30 days after service of notice of entry of judgment pursuant to Section 1710.35, proof of which has been made in the manner provided by Article 5 (commencing with Section 417.10) of Chapter 4 of Title 5 of Part 2, the judgment debtor may, on written notice to the judgment creditor make a motion to vacate the judgment under this section.

Comment. Section 1710.45 allows the judgment debtor to make a noticed motion to vacate the entry of judgment on any ground which in an action would be a defense to granting full faith and credit to a sister state judgment in California. Common defenses to enforcement of sister state judgments include the following: the judgment is not final and unconditional (finality here means no further action by the court rendering the judgment is necessary to resolve the matter litigated); the judgment was obtained by extrinsic fraud; the judgment was rendered in excess of jurisdiction; the judgment is not enforceable in the state of rendition; misconduct of the plaintiff; the judgment has already been paid; suit on the judgment is barred by the statute of limitations in the state where enforcement is sought. 5 B. Witkin, California Procedure Enforcement of Judgment § 194 at 3549-3550 (2d ed. 1971); Restatement (Second) of Conflict of Laws §§ 103-121 (1971).

Where it appears that a writ of execution may be issued or levied before the 10-day notice of motion period specified in Section 1005 has run, the court may either shorten the time of notice under Section 1005 or grant a stay of enforcement under Section 1710.55 in order to prevent execution before the judgment debtor's motion can be heard. The right of the judgment debtor to make a motion to vacate the judgment under this section ceases after the 30-day period provided has expired. However, equitable relief from the judgment may be available in certain circumstances thereafter. See 5 B. Witkin, California Procedure Attack on Judgment in Trial Court § 175 at 3744-3745 (2d ed. 1971); Restatement of Judgments § 112 et seq. (1942).

§ 1710.50. Issuance of writ of execution

1710.50. (a) Except as otherwise provided in this section, a writ of execution on a judgment entered pursuant to this chapter shall not issue until at least 10 days after the judgment creditor serves notice of entry of the judgment upon the judgment debtor, proof of which has been made in the manner provided by Article 5 (commencing with Section 417.10) of Chapter 4 of Title 5 of Part 2.

(b) A writ of execution may be issued before service of the notice of entry of judgment if the judgment debtor is any of the following:

(1) An individual who does not reside in this state.

(2) A foreign corporation not qualified to do business in this state under the provisions of Chapter 3 (commencing with Section 6403) of Part 11 of Division 1 of Title 1 of the Corporations Code.

(3) A foreign partnership which has not filed a designation pursuant to Section 15700 of the Corporations Code.

(c) The court may order that a writ of execution be issued before service of the notice of entry of judgment if the court finds upon an ex parte showing that great or irreparable injury would result to the judgment creditor if issuance of the writ were delayed as provided in subdivision (a).

(d) Property levied upon pursuant to a writ issued under subdivision (b) or (c) shall not be sold or distributed before 20 days after the judgment creditor serves notice of entry of the judgment upon the judgment debtor, proof of which has been made in the manner provided by Article 5 (commencing with Section 417.110) of Chapter 4 of Title 5 of Part 2. However, if property levied upon is perishable, it may be sold in order to prevent its destruction or loss of value, but the proceeds of the sale shall not be distributed to the judgment creditor before the date sale is permissible for nonperishable property.

Comment. The exceptions to subdivision (a) of Section 1710.50, which requires service of the notice of entry of judgment at least 10 days before a writ of execution may be issued, are stated in subdivisions (b) and (c). A writ of execution may not be issued under subdivision (a) unless proof of service has been filed which shows that the 10-day requirement has been satisfied.

Subdivision (b) permits the issuance and levy of a writ of execution before notice against the assets of three types of nonresident debtors. Subdivision (c) permits issuance of a writ upon an ex parte showing that great or irreparable injury would result if the judgment creditor were required to give notice before obtaining a writ of execution. Although the clerk may issue writs of execution against the debtors described in subdivision (b), the creditor must obtain a court order before a writ of execution may issue under subdivision (c). The clerk should have no trouble making the factual determinations required by subdivision (b) since the necessary information is required in the creditor's application. See Section 1710.20(b)(5). However, the determination required by subdivision (c) is a judicial function.

The 20-day period provided in subdivision (d) gives the judgment debtor an opportunity to make a motion to vacate the judgment before his property is sold or distributed. See Section 1710.45.

It should be noted that Section 692 provides for notice to the debtor 10 days before sale of personal property, and 20 days before sale of real

property, and that Section 690.50 provides for a 10-day period during which the judgment debtor may claim exemptions. Section 1710.50 does not affect these requirements, but the delays in sale and distribution provided by Sections 690.50 and 692 run concurrently with the delay provided by subdivision (d) if the other requirements of Sections 690.50 and 692 are met.

§ 1710.55. Stay of enforcement

1710.55. (a) The court shall grant a stay of enforcement where:

(1) An appeal from the sister state judgment is pending or will be taken in the state which originally rendered the judgment. Under this paragraph, enforcement shall be stayed until the appeal is concluded or the time for appeal has expired.

(2) A stay of enforcement of the sister state judgment has been granted in the sister state. Under this paragraph, enforcement shall be stayed until the sister state stay of enforcement expires or is vacated.

(3) The judgment debtor has made a motion to vacate pursuant to Section 1710.45. Under this paragraph, enforcement shall be stayed until the judgment debtor's motion to vacate is determined.

(4) Any other circumstance exists where the interests of justice require a stay of enforcement.

(b) The court shall grant a stay of enforcement under this section on such terms and conditions as are just. The court may grant a stay on its own motion, on ex parte motion, or on noticed motion. The court may require an undertaking in an amount it thinks just, but the amount of the undertaking shall not exceed double the amount of the judgment creditor's claim. If a writ of execution has been issued, the court may order that it remain in effect. If property of the judgment debtor has been levied upon under a writ of execution, the court may order the levying officer to re-

tain possession of the property capable of physical possession and to maintain the levy on other property.

Comment. Section 1710.55 gives broad discretion to the court to grant stays of enforcement in the interests of justice. Where the court has adequate information, it may grant the stay on its own motion. Otherwise, it is up to the judgment debtor to show a need for the stay on ex parte or noticed motion. Subdivision (b) gives the court broad discretion in fashioning the terms of the stay in order to adequately protect the interests of both the judgment creditor and the judgment debtor. The matter of undertakings is left up to the court which may consider factors such as the probability of a successful defense, the propensity of the debtor to conceal or transfer his assets, that the debtor has already given a bond on appeal in the sister state, or that the debtor prefers having his property held subject to levy rather than giving an undertaking.

§ 1710.60. Limitations on entry of judgment

1710.60. No judgment based on a sister state judgment may be entered pursuant to this chapter if:

(a) A stay of enforcement of the sister state judgment has been granted and is currently in effect in the sister state; or

(b) An action based on such judgment is currently pending in any court in this state or if a judgment based on such judgment has previously been entered in any proceeding in this state.

Comment. Subdivision (a) of Section 1710.60 prevents the judgment creditor from using the procedures of this chapter to obtain the entry of a judgment based on a sister state judgment where enforcement has been stayed in the sister state. See Section 1710.20(a)(2). If entry of judgment is obtained in this state before the stay of enforcement of the sister state judgment is granted in the sister state, the judgment debtor may seek to stay enforcement of the California judgment under subdivision (a)(2) of Section 1710.55.

Subdivision (b) of Section 1710.60, together with subdivision (b) of Section 1710.65, precludes a judgment creditor from using his sister state judgment as the basis for more than one California judgment. See Section 1710.10 and Comment. The creditor may either secure enforcement pursuant to this chapter or bring a separate action to enforce his sister state judgment in California, but he may not do both, nor may he apply more than once under this chapter on the same sister state judgment. See Section 1710.10 and Comment. The judgment creditor may, of course, renew the California judgment pursuant to Section 685.

§ 1710.65. Optional procedure

1710.65. (a) Except as provided in subdivision (b), nothing in this chapter affects any right a judgment creditor may have to bring an action to enforce a sister state judgment.

(b) No action to enforce a sister state judgment may be brought where a judgment based on such sister state judgment has previously been entered pursuant to this chapter.

Comment. Subdivision (a) of Section 1710.65 is similar to Section 6 of the revised Uniform Enforcement of Foreign Judgments Act of 1964. 9A Uniform Laws Ann. 488, 489 (1965). The enactment of this chapter is not intended to restrict the traditional means of enforcing sister state money judgments which require the judgment creditor to bring an independent action in this state. See 5 B. Witkin, California Procedure Enforcement of Judgment § 193 at 3548-3549 (2d ed. 1970); Restatement (Second) of Conflict of Laws §§ 99, 100, Comment b (1971); Restatement of Judgments § 47, Comment e (1942). However, subdivision (b) makes clear that the judgment creditor must choose between the methods of enforcement offered. He may not obtain two judgments in this state based on one sister state judgment as defined in Section 1710.10 by using the two different procedures. See Sections 1710.10 and 1710.60(b) and Comments.