

## First Supplement to Memorandum 83-11

Subject: Study D-301 - Creditors' Remedies

The following are additional matters in connection with the Enforcement of Judgments Law.

Collection of Child Support Out of Unemployment Insurance Benefits

It has recently come to the staff's attention that new provisions were added to the law in 1982 to deal with collection of child support out of unemployment insurance benefits. Two new sections were added to provide an administrative procedure for withholding by the state of unemployment benefits to pay child support. These two sections are set out in Exhibit 1. If a California support judgment is being enforced, 25 percent of each weekly unemployment compensation payment may be withheld.

The Commission's new Enforcement of Judgments Law is inconsistent with the new provisions. It provides that the amount of unemployment compensation benefits that may be applied to child support obligations is determinable by the court, thus requiring a hearing in every case. The staff proposes to amend the Enforcement of Judgments Law to conform it to the new provisions set out in Exhibit 1. The proposed amendments to AB 99 are set out in Exhibit 2. We should add an urgency clause to the bill so that the amendments will become operative on July 1, 1983, when the Enforcement of Judgments Law becomes operative.

§ 708.140. Power and qualifications of referee

Section 708.140 (page 1501 of Commission publication of law as enacted) specifies the powers of a court-appointed referee in conducting examination proceedings. Subdivision (b) of this section provides that only a member of the State Bar of California is eligible for appointment as a referee pursuant to the article on examination proceedings.

Under prior law, there was no generally applicable provision specifying the qualifications of a referee. A special provision (applicable only to a referee appointed by a superior court in a county or city and county having a population of one million or more) required the referee to have been a member of the State Bar for at least five years. We are advised that at least one county not covered by this special provision

appointed persons who were not members of the bar as referees. Should a provision be added to AB 99 to "grandfather" these non-lawyer referees so that they will retain their positions when the new law becomes operative on July 1, 1983? If so, we should add an urgency provision to the bill to make it take effect on July 1, 1983, the date when the comprehensive statute enacted in 1982 will become operative. Absent such a grandfather clause, there is a possibility that a claim may be made that the lawyer qualification will be a state mandated cost and that the state will have to pay the cost of meeting the qualification requirement.

Penal Code § 987.8

A conforming amendment to Penal Code Section 987.8 was "chaptered out" by a later enacted amendment to the section. Exhibit 3 attached will make the same amendment as was made by AB 798 (revisions to conform to Enforcement of Judgments Law). We would add this to AB 99 of the 1983 session.

Respectfully submitted,

Robert J. Murphy III  
Staff Counsel

EXHIBIT 1

Unemployment Insurance Code § 1255.7 (added by 1982 Cal. Stats. ch. 1072)

1255.7. (a) The Department of Social Services shall notify the director whether an individual filing a claim for unemployment compensation after October 1, 1982, owes child support obligations as defined under subdivision (g).

(b) Pursuant to Section 11350.5 of the Welfare and Institutions Code, the department shall deduct and withhold child support obligations as defined under subdivision (g) from any unemployment compensation payable to an individual who owes these obligations.

(c) Any amount deducted and withheld under subdivision (b) shall be paid by the department to the Department of Social Services.

(d) Any amount deducted and withheld under subdivision (b) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the Department of Social Services.

(e) For purposes of subdivisions (a) through (d), "unemployment compensation" means any compensation payable under this division, except Part 2 (commencing with Section 2601), but including amounts payable by the department pursuant to an agreement under any federal unemployment compensation law.

(f) This section applies only if appropriate arrangements have been made for reimbursement by the Department of Social Services for the administrative costs incurred by the Employment Development Department.

(g) For purposes of this section, "child support obligations" means obligations which are being enforced pursuant to a plan described in Section 454 of the Social Security Act which has been approved by the Secretary of Health and Human Services under Part D of Title IV of the Social Security Act.

Welfare and Institutions Code § 11350.5 (added by 1982 Cal. Stats.  
ch. 1072)

11350.5. (a) To the extent required by Section 454 of the Social Security Act, the following actions shall be taken in order to enforce child support obligations which are not being met. Whenever a child support judgment has been rendered by a court of this state against a support judgment debtor who is entitled to any unemployment compensation as provided for in Division 1 (commencing with Section 100), except for Part 2 (commencing with Section 2601), of the Unemployment Insurance Code, the district attorney may file with the State Department of Social Services certification of support judgment or support order verifying under penalty of perjury that there is or has been an order for support with sums overdue thereunder. The department shall periodically present and update, by deletions and additions, a list of the certified support judgments to the Employment Development Department.

(b) Notwithstanding any other provision of law, the Employment Development Department shall withhold the amounts specified below from the judgment debtor's unemployment compensation and shall periodically forward them to the State Department of Social Services for distribution to the appropriate certifying county. The amount withheld shall be equal to 25 percent of each weekly unemployment compensation payment, rounded down to the nearest whole dollar, which is due the support judgment debtor identified on the certified list. However, the amount withheld may be reduced to a lower whole dollar amount through a written agreement between the judgment debtor and district attorney's office or through an order of the court. The State Department of Social Services shall resolve any claims for refunds of amounts overwithheld by the Employment Development Department.

(c) No later than the time of the first withholding, the judgment debtor shall be notified of all of the following:

(1) That his or her unemployment compensation benefits have been reduced by a court-ordered child support judgment pursuant to the provisions of this section.

(2) The address and phone number of the district attorney's office which submitted the certificate of support judgment.

(d) The judgment debtor may ask the appropriate court for an equitable division of the judgment debtor's unemployment compensation income to take into account the needs of all the persons the judgment debtor is required to support.

(e) The State Department of Social Services and the Employment Development Department shall enter into any agreements necessary to carry out the provisions of this section.

## EXHIBIT 2

Code of Civil Procedure § 704.120 (amended). Unemployment benefits and contributions; strike benefits

704.120. (a) Contributions by workers payable to the Unemployment Compensation Disability Fund and by employers payable to the Unemployment Fund are exempt without making a claim.

(b) Before payment, amounts held for payment of the following benefits are exempt without making a claim:

(1) Unemployment compensation benefits payable under Part 1 (commencing with Section 100) of Division 1 of the Unemployment Insurance Code.

(2) Unemployment compensation disability benefits payable under Part 2 (commencing with Section 2601) of Division 1 of the Unemployment Insurance Code.

(3) Extended duration benefits payable under Part 3 (commencing with Section 3501) of Division 1 of the Unemployment Insurance Code.

(4) Federal-state extended benefits payable under Part 4 (commencing with Section 4001) of Division 1 of the Unemployment Insurance Code.

(5) Incentive payments payable under Division 2 (commencing with Section 5000) of the Unemployment Insurance Code.

(6) Benefits under a plan or system established by an employer that makes provision for employees generally or for a class or group of employees for the purpose of supplementing unemployment compensation benefits.

(7) Unemployment benefits by a fraternal organization to bona fide members.

(8) Benefits payable by a union due to a labor dispute.

(c) After payment, the benefits described in subdivision (b) are exempt.

(d) Notwithstanding subdivision (b), where benefits exempt under subdivision (b) become payable to a person and are sought to be applied to the satisfaction of a judgment for child support against that person:

(1) Except as provided in paragraph (2), the amount is exempt only to the extent that the court determines under subdivision (e) of Section 703-070.

(2) If the amount sought to be applied to the satisfaction of the judgment is payable periodically, the amount payable is subject to a wage assignment for support as defined in Section 706-011 or any other applicable enforcement procedure, but the amount to be withheld pursuant to the assignment or other procedure shall not exceed the amount permitted to be withheld on an earnings withholding order for support under Section 706-052. The paying entity may deduct from each payment made pursuant to a wage assignment under this paragraph an amount reflecting the actual cost of administration caused by the wage assignment up to two dollars (\$2) for each payment. a judgment for child support against a person who is entitled to unemployment compensation may be enforced as provided in Section 11350.5 of the Welfare and Institutions Code.

(e) Nothing in this section precludes the Department of Social Services from deducting and withholding child support obligations as provided in Section 1255.7 of the Unemployment Insurance Code.

Comment. Section 704.120 is amended to preserve the substance of Chapter 1072 of the Statutes of 1982.

Code of Civil Procedure § 1801 (technical amendment). Exempt property where assignment for benefit of creditors

1801. In any general assignment for the benefit of creditors (as defined in Section 493.010), the assignor, if an individual, may choose to retain as exempt property either the property which is otherwise exempt under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 or, in the alternative, the following property:

(a) The assignor's aggregate interest, not to exceed seven thousand five hundred dollars (\$7,500) in value, in real property or personal property that the assignor or a dependent of the assignor uses as a residence, in a cooperative that owns property that the assignor or a dependent of the assignor uses as a residence, or in a burial plot for the assignor or a dependent of the assignor.

(b) The assignor's interest, not to exceed one thousand two hundred dollars (\$1,200) in value, in one motor vehicle.

(c) The assignor's interest, not to exceed two hundred dollars (\$200) in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the assignor or a dependent of the assignor.

(d) The assignor's aggregate interest, not to exceed five hundred dollars (\$500) in value, in jewelry held primarily for the personal, family, or household use of the assignor or a dependent of the assignor.

(e) The assignor's aggregate interest, not to exceed in value four hundred dollars (\$400) plus any unused amount of the exemption provided under subdivision (a), in any property.

(f) The assignor's aggregate interest, not to exceed seven hundred fifty dollars (\$750) in value, in any implements, professional books, or tools, of the trade of the assignor or the trade of a dependent of the assignor.

(g) Any unmaturred life insurance contract owned by the assignor, other than a credit life insurance contract.

(h) The assignor's aggregate interest, not to exceed in value four thousand dollars (\$4,000) in any accrued dividend or interest under, or loan value of, any unmaturred life insurance contract owned by the assignor under which the insured is the assignor or an individual of whom the assignor is a dependent.

(i) Professionally prescribed health aids for the assignor or a dependent of the assignor.

(j) The assignor's right to receive any of the following:

(1) A social security benefit, unemployment compensation, or a local public assistance benefit except that this paragraph does not preclude the application of Section 1255.7 of the Unemployment Code.

(2) A veterans' benefit.

(3) A disability, illness, or unemployment insurance benefit, except that this paragraph does not preclude the application of Section 1255.7 of the Unemployment Insurance Code.

(4) Alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the assignor and any dependent of the assignor.

(5) A payment under a stock bonus, pension, profit sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the assignor and any dependent of the assignor, unless:

(i) The plan or contract was established by or under the auspices of an employer of which the assignor was a partner, officer, director or controlling person at the time the assignor's rights under the plan or contract arose;

(ii) The payment is on account of age or length of service; and

(iii) Such plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue Code of 1954 (26 U.S.C. 401(a), 403(a), 403(b), 408, or 409).

(k) The assignor's right to receive, or property that is traceable to any of the following:

(1) An award under a crime victim's reparation law.

(2) A payment on account of the wrongful death of an individual of whom the assignor was a dependent, to the extent reasonably necessary for the support of the assignor and any dependent of the assignor.

(3) A payment under a life insurance contract that insured the life of an individual of whom the assignor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the assignor and any dependent of the assignor.

(4) A payment, not to exceed seven thousand five hundred dollars (\$7,500), on account of personal bodily injury, as compensation for pain and suffering or actual pecuniary loss (other than loss of future earnings), of the assignor or an individual of whom the assignor is a dependent.

(5) A payment in compensation of loss of future earnings of the assignor or an individual of whom the assignor is or was a dependent, to the extent reasonably necessary for the support of the assignor and any dependent of the assignor.

In this section, "dependent" includes spouse, whether or not actually dependent, "assignor" means each spouse, if the assignment is made by a married couple, and "value" means fair market value as of the date of the making of the assignment.

Comment. Section 1801 is amended to preserve the substance of amendments made to its predecessor section (Section 690.60) by Chapter 1072 of the Statutes of 1982.

EXHIBIT 3

Amendment \_

On page 31, between lines 17 and 18, insert:

SEC. 21.5. Section 987.8 of the Penal Code is amended to

read:

987.8. (a) In any case in which a defendant is provided legal assistance, either through the public defender or private counsel appointed by the court, upon conclusion of the criminal proceedings in the trial court, or upon the withdrawal of the public defender or appointed private counsel, the court may, after notice and a hearing, make a determination of the present ability of the defendant to pay all or a portion of the cost thereof. The court may, in its discretion, hold one additional hearing within six months of the conclusion of the criminal proceedings. The court may, in its discretion, order the defendant to appear before a county officer designated by the court to make an inquiry into the ability of the defendant to pay all or a portion of the legal assistance provided.

(b) In any case in which the defendant hires counsel replacing a publicly provided attorney; in which the public defender or appointed counsel was required by the court to proceed with the case after a determination by the public defender that the defendant was not indigent; or, in which the defendant, at the conclusion of the case, appears to have sufficient assets to repay, without undue hardship, all or a portion of the cost of the legal assistance provided to him or her, by monthly installments or otherwise; the court shall make a determination of the defendant's ability to pay as provided in subdivision (a), and may, in its discretion, make other orders as provided in that subdivision.

The provisions of this subdivision shall be operative in a county only upon the adoption of a resolution by the board of supervisors to that effect.

(c) If the defendant, after having been ordered to appear before a county officer, has been given proper notice and fails to appear before a county officer within 20 working days, the county officer shall recommend to the court that the full cost of the legal assistance shall be ordered to be paid by the defendant. The notice to the defendant shall contain (1) a statement of the cost of the legal assistance provided to the defendant as determined by the court; (2) the defendant's procedural rights under this section; (3) the time limit within which the defendant's response is required; and (4) a warning that if the defendant fails to appear before the designated officer, the officer will recommend that the court order the defendant to pay the full cost of the legal assistance provided to him or her.

(d) At a hearing, the defendant shall be entitled to, but shall not be limited to, all of the following rights:

(1) The right to be heard in person.

(2) The right to present witnesses and other documentary evidence.

(3) The right to confront and cross-examine adverse witnesses.

(4) The right to have the evidence against him or her disclosed to him or her.

(5) The right to a written statement of the findings of the court.

If the court determines that the defendant has the present ability to pay all or a part of the cost, the court shall set the amount to be

reimbursed and order the defendant to pay the sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability. Failure of a defendant who is not in custody to appear after due notice is a sufficient basis for an order directing the defendant to pay the full cost of the legal assistance determined by the court. Executions may be issued on the order in the same manner as on a judgment in a civil action. The order to pay all or a part of the costs ~~shall~~ may be enforced in the manner provided for enforcement of money judgments generally but may not be enforced by contempt.

Any order entered under this subdivision is subject to relief under the provisions of Section 473 of the Code of Civil Procedure.

(e) Prior to the furnishing of counsel or legal assistance by the court, the court shall give notice to the defendant that the court may, after a hearing, make a determination of the present ability of the defendant to pay all or a portion of the cost of counsel. The court shall also give notice that, if the court determines that the defendant has the present ability, the court shall order him or her to pay all or a part of the cost. The notice shall inform the defendant that the order shall have the same force and effect as a judgment in a civil action and shall be subject to execution enforcement against the property of the defendant in the same manner as any other money judgment.

(f) As used in this section:

(1) "Legal assistance" means legal counsel and supportive services including, but not limited to, medical and psychiatric examinations, investigative services, expert testimony and any other form of services provided to assist the defendant in the preparation and presentation of the defendant's case.

(2) "Ability to pay" means the overall capability of the defendant to reimburse the costs, or a portion of the costs, of the legal assistance provided to him or her, and shall include, but not be limited to, all of the following:

(A) The defendant's present financial position.

(B) The defendant's reasonably discernible future financial position. In no event shall the court consider a period of more than six months from the date of the hearing for purposes of determining the defendant's reasonably discernible future financial position. Unless the court finds unusual circumstances, a defendant sentenced to state prison shall be determined not to have a reasonably discernible future financial ability to reimburse the costs of his or her defense.

(C) The likelihood that the defendant shall be able to obtain employment within a six-month period from the date of the hearing.

(D) Any other factor which may bear upon the defendant's financial capability to reimburse the county for the costs of the legal assistance provided to the defendant.

(g) At any time during the pendency of the judgment rendered according to the terms of this section, a defendant against whom a judgment has been rendered may petition the rendering court to modify or vacate its previous judgment on the grounds of a change in circumstances with regard to the defendant's ability to pay the judgment. The court shall advise the defendant of this right at the time it renders the judgment.

(h) The provisions of this section shall apply to all proceedings, including contempt proceedings, in which the party is represented by a public defender or appointed counsel.