

Introduced by Senator Ackerman

January 28, 2002

An act to amend Sections 515.060, 514.020, 515.010, 515.020, 703.580, 703.610, and 715.010 of the Code of Civil Procedure, relating to debtor and creditor relations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1322, as introduced, Ackerman. Debtor and creditor relations.

(1) Existing law permits a plaintiff to apply for a writ of possession, which must show, among other things, the basis of the plaintiff's claim and that the plaintiff is entitled to the property claimed. Existing law requires a hearing on a noticed motion before the writ of possession may be issued, except as specified, and prohibits a court from issuing a writ until the plaintiff posts an undertaking in a value of at least twice the defendant's interest. Existing law permits a defendant to post an undertaking to prevent the seizure of the property or reclaim it.

This bill would provide an alternative procedure for writs of possession if a court finds that a defendant has no interest in the property. The bill would require, under these circumstances, that a court waive the requirement of the plaintiff's undertaking and that the court determine the amount of the defendant's undertaking, as specified. The bill would also require a levying officer to deliver to the person in possession of the property a copy of the court order for issuance of the writ of possession.

(2) Under the existing Enforcement of Judgments Law, a judgment creditor may levy upon the property of a judgment debtor to satisfy the judgment, and the judgment debtor may claim that certain property is exempt from the levy by following a specified procedure. Under that

existing law, a levying officer holds the property until the final determination of the exemption.

This bill would require that if an exemption of property, as described above, is not determined within a specified time, the property claimed to be exempt shall be released, unless otherwise ordered by the court. The bill would further permit a levying officer to release the property described above after an appeal is waived or the time for filing an appeal has expired.

(3) The existing Enforcement of Judgments Law, requires judgment debtors to vacate real property wrongfully possessed within 5 days after the proper service of a specified writ.

This bill would require that the copy of the above-described writ that is served contain the date and manner of the service of the writ and the last date to vacate the premises. The bill would further provide that an error or omission in these entries does not affect the validity of the service or the writ. By requiring local officials to enter new information on the copy of the writ served, and thus perform additional duties, this bill would create a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 512.060 of the Code of Civil Procedure
2 is amended to read:

3 512.060. (a) At the hearing, a writ of possession shall issue
4 if both of the following are found:

5 (1) The plaintiff has established the probable validity of ~~his~~ *the*
6 *plaintiff's* claim to possession of the property.



1 (2) ~~The plaintiff has provided an undertaking as required by~~
2 ~~requirements of Section 515.010 are satisfied.~~

3 (b) No writ directing the levying officer to enter a private place
4 to take possession of any property shall be issued unless the
5 plaintiff has established that there is probable cause to believe that
6 ~~such~~ the property is located there.

7 SEC. 2. Section 514.020 of the Code of Civil Procedure is
8 amended to read:

9 514.020. (a) At the time of levy, the levying officer shall
10 deliver to the person in possession of the property a copy of the writ
11 of possession with a copy of the plaintiff's undertaking ~~attached,~~
12 ~~if any, and a copy of the order for issuance of the writ.~~

13 (b) If no one is in possession of the property at the time of levy,
14 the levying officer shall subsequently serve the writ and attached
15 undertaking on the defendant. If the defendant has appeared in the
16 action, service shall be accomplished in the manner provided by
17 Chapter 5 (commencing with Section 1010) of Title 14 ~~of this part.~~
18 If the defendant has not appeared in the action, service shall be
19 accomplished in the manner provided for the service of summons
20 and complaint by Article 3 (commencing with Section 415.10) of
21 Chapter 4 of Title 5 ~~of this part.~~

22 SEC. 3. Section 515.010 of the Code of Civil Procedure is
23 amended to read:

24 515.010. ~~The~~ (a) *Except as provided in subdivision (b), the*
25 court shall not issue a temporary restraining order or a writ of
26 possession until the plaintiff has filed with the court an
27 undertaking. The undertaking shall provide that the sureties are
28 bound to the defendant for the return of the property to the
29 defendant, if return of the property is ordered, and for the payment
30 to the defendant of any sum recovered against *the* plaintiff. The
31 undertaking shall be in an amount not less than twice the value of
32 *the* defendant's interest in the property or in a greater amount. The
33 value of the defendant's interest in the property is determined by
34 the market value of the property less the amount due and owing on
35 any conditional sales contract or security agreement and all liens
36 and encumbrances on the property, and ~~such~~ any other factors ~~as~~
37 ~~may be~~ necessary to determine the defendant's interest in the
38 property.

39 (b) *If the court finds that the defendant has no interest in the*
40 *property, the court shall waive the requirement of the plaintiff's*

1 *undertaking and shall include in the order for issuance of the writ*
2 *the amount of the defendant's undertaking sufficient to satisfy the*
3 *requirements of subdivision (b) of Section 515.020.*

4 SEC. 4. Section 515.020 of the Code of Civil Procedure is
5 amended to read:

6 515.020. (a) The defendant may prevent the plaintiff from
7 taking possession of property pursuant to a writ of possession or
8 regain possession of property so taken by filing with the court in
9 which the action was brought an undertaking in an amount equal
10 to the amount of the plaintiff's undertaking ~~required by~~ *pursuant*
11 *to subdivision (a) of Section 515.010 or in the amount determined*
12 *by the court pursuant to subdivision (b) of Section 515.010. The*

13 (b) The undertaking shall state that, if the plaintiff recovers
14 judgment on the action, the defendant shall pay all costs awarded
15 to the plaintiff and all damages that the plaintiff may sustain by
16 reason of the loss of possession of the property. The damages
17 recoverable by the plaintiff pursuant to this section shall include
18 all damages proximately caused by the plaintiff's failure to gain or
19 retain possession.

20 ~~(b)~~

21 (c) The defendant's undertaking may be filed at any time before
22 or after levy of the writ of possession. A copy of the undertaking
23 shall be mailed to the levying officer.

24 ~~(c)~~

25 (d) If an undertaking for redelivery is filed and *the* defendant's
26 undertaking is not objected to, the levying officer shall deliver the
27 property to the defendant, or, if the plaintiff has previously been
28 given possession of the property, the plaintiff shall deliver ~~such~~ *the*
29 property to the defendant. If an undertaking for redelivery is filed
30 and *the* defendant's undertaking is objected to, the provisions of
31 Section 515.030 apply.

32 SEC. 5. Section 703.580 of the Code of Civil Procedure is
33 amended to read:

34 703.580. (a) The claim of exemption and notice of
35 opposition to the claim of exemption constitute the pleadings,
36 subject to the power of the court to permit amendments in the
37 interest of justice.

38 (b) At a hearing under this section, the exemption claimant has
39 the burden of proof.

(c) The claim of exemption is deemed controverted by the notice of opposition to the claim of exemption and both shall be received in evidence. If no other evidence is offered, the court, if satisfied that sufficient facts are shown by the claim of exemption (including the financial statement if one is required) and the notice of opposition, may make its determination thereon. If not satisfied, the court shall order the hearing continued for the production of other evidence, oral or documentary.

(d) At the conclusion of the hearing, the court shall determine by order whether or not the property is exempt in whole or in part. Subject to Section 703.600, the order is determinative of the right of the judgment creditor to apply the property to the satisfaction of the judgment. No findings are required in a proceeding under this section.

(e) The court clerk shall promptly transmit a certified copy of the order to the levying officer. Subject to Section 703.610, the levying officer shall, in compliance with the order, release the property or apply the property to the satisfaction of the money judgment.

(f) *Unless otherwise ordered by the court, if an exemption is not determined within the time provided by Section 703.570, the property claimed to be exempt shall be released.*

SEC. 6. Section 703.610 of the Code of Civil Procedure is amended to read:

703.610. (a) Except as otherwise provided by statute or *ordered by the court*, the levying officer shall not release, sell, or otherwise dispose of the property for which an exemption is claimed ~~until the final determination of an appeal is waived, the time to file an appeal has expired, or the exemption is finally determined.~~

(b) At any time while the exemption proceedings are pending, upon motion of the judgment creditor or a claimant, or upon its own motion, the court may make such orders for disposition of the property as may be proper under the circumstances of the case. ~~Such an~~ The order may be modified or vacated by the court at any time during the pendency of the exemption proceedings upon such terms as are just.

(c) If an appeal of the determination of a claim of exemption is taken, notice of the appeal shall be given to the levying officer and the levying officer shall hold, release, or dispose of the property

1 in accordance with the provisions governing enforcement and stay
2 of enforcement of money judgments pending appeal.

3 SEC. 7. Section 715.010 of the Code of Civil Procedure is
4 amended to read:

5 715.010. (a) A judgment for possession of real property may
6 be enforced by a writ of possession of real property issued pursuant
7 to Section 712.010. The application for the writ shall provide a
8 place to indicate that the writ applies to all tenants, subtenants, if
9 any, ~~name~~ *named* claimants, if any, and any other occupants of the
10 premises.

11 (b) In addition to the information required by Section 712.020,
12 the writ of possession of real property shall contain the following:

13 (1) A description of the real property, possession of which is to
14 be delivered to the judgment creditor in satisfaction of the
15 judgment.

16 (2) A statement that if the real property is not vacated within
17 five days from the date of service of a copy of the writ on the
18 occupant or, if the copy of the writ is posted, within five days from
19 the date a copy of the writ is served on the judgment debtor, the
20 levying officer will remove the occupants from the real property
21 and place the judgment creditor in possession. *The levying officer*
22 *shall enter on the copy of the writ served pursuant to Section*
23 *715.020 the date and manner of service and the last date to vacate*
24 *the premises. An error or omission in the levying officer's entries*
25 *does not affect the validity of the service or the writ.*

26 (3) A statement that any personal property, except a
27 mobilehome, remaining on the real property after the judgment
28 creditor has been placed in possession will be sold or otherwise
29 disposed of in accordance with Section 1174 of the Code of Civil
30 Procedure unless the judgment debtor or other owner pays the
31 judgment creditor the reasonable cost of storage and takes
32 possession of the personal property not later than 15 days after the
33 time the judgment creditor takes possession of the real property.

34 (4) The date the complaint was filed in the action which
35 resulted in the judgment of possession.

36 (5) The date or dates on which the court will hear objections to
37 enforcement of a judgment of possession that are filed pursuant to
38 Section 1174.3, unless a summons, complaint, and prejudgment
39 claim of right to possession were served upon the occupants in
40 accordance with Section 415.46.



1 (6) The daily rental value of the property as of the date the
2 complaint for unlawful detainer was filed unless a summons,
3 complaint, and prejudgment claim of right of possession were
4 served upon the occupants in accordance with Section 415.46.

5 (7) If a summons, complaint, and prejudgment claim of right
6 to possession were served upon the occupants in accordance with
7 Section 415.46, a statement that the writ applies to all tenants,
8 subtenants, if any, named claimants, if any, and any other
9 occupants of the premises.

10 (c) At the time the writ of possession is served or posted, the
11 levying officer shall also serve or post a copy of the form for a
12 claim of right to possession, unless a summons, complaint, and
13 prejudgment claim of right to possession were served upon the
14 occupants in accordance with Section 415.46.

15 SEC. 8. Notwithstanding Section 17610 of the Government
16 Code, if the Commission on State Mandates determines that this
17 act contains costs mandated by the state, reimbursement to local
18 agencies and school districts for those costs shall be made pursuant
19 to Part 7 (commencing with Section 17500) of Division 4 of Title
20 2 of the Government Code. If the statewide cost of the claim for
21 reimbursement does not exceed one million dollars (\$1,000,000),
22 reimbursement shall be made from the State Mandates Claims
23 Fund.

