

Assembly Bill No. 680

CHAPTER 4

An act to amend Sections 685.050, 701.810, and 701.820 of the Code of Civil Procedure, to amend Sections 905, 26680, and 26746 of, and to amend, add, and repeal Sections 26720.9, 26726, 26731, 26736, 26738, 26744.5, and 26746.1 of, the Government Code, relating to process fees.

[Approved by Governor February 9, 2010. Filed with
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LEGISLATIVE COUNSEL'S DIGEST

AB 680, Hall. Local government: fees and judgments.

(1) Existing law, in the case of a writ issued to enforce a judgment, requires a levying officer to, among other things, compute and collect the amount of additional interest accrued on the principal amount of the judgment remaining unsatisfied from the date of issuance of the writ until the date interest ceases to accrue. Existing law permits the levying officer to adjust the amount of daily interest to reflect partial satisfaction, if the amounts collected periodically do not fully satisfy the money judgment.

This bill would instead require the levying officer to make that adjustment.

(2) Existing law requires a levying officer to distribute the proceeds or collection of a money judgment by a writ of execution in order of priority, including to the judgment creditor to (A) satisfy costs and interest accruing after issuance of the writ pursuant to which the sale or collection is conducted, and (B) satisfy the amount due on the judgment with costs and interest, as entered on the writ.

This bill would specify that the proceeds or collection of a money judgment to a judgment creditor be distributed in that order. The bill would also specify that a distribution to the judgment creditor (A) satisfy any costs and interest accruing on the judgment after issuance of the writ pursuant to which the sale or collection is conducted, and (B) satisfy the principal amount due on the judgment with costs and interest, as entered on the writ.

(3) Existing law requires the levying officer to promptly distribute the proceeds of a sale or collection to the entitled parties, and authorizes the levying officer, if the proceeds are not to be received in one payment, to accumulate proceeds received during a 30-day period and make payment of those proceeds to the entitled parties within 20 days of the end of the 30-day period.

This bill would require the levying officer, if proceeds are not received in one payment, to make payment of those proceeds to the entitled parties within 10 days of the end of the 30-day period.

(4) Existing law authorizes a person entitled to money held by a sheriff to make a demand for that money, and if the sheriff neglects or refuses to

pay over to that person the amount owed, the person is authorized to recover the amount owed, 25% damages, and interest at a rate of 10% per month from the time of a demand.

These provisions apply to a levying officer if the levying officer fails to pay the proceeds or deposit them with the court, as specified, a person entitled to any of the proceeds has filed a written demand for payment with the levying officer, and the levying officer has failed, within 10 days after the demand is filed, to pay the person that filed the demand the proceeds to which the person is entitled.

The bill would authorize a judgment creditor to file an ex parte application for an order directing the levying officer to show cause why relief should not be granted pursuant to those provisions, as specified. The bill would also authorize a person to make a demand for proceeds to the levying officer in person or by certified mail.

This bill would also authorize a person who has made a demand for payment to the sheriff, if the sheriff has neglected or refused to pay over to that person the amount owed, to receive costs, including reasonable attorney's fees.

(5) Existing law bars a suit for money or damages against a local public entity on a cause of action for which a claim is required to be presented, until a written claim for it has been presented to the public entity and acted upon by the governing body of the local public entity, or has been deemed to have been rejected, except as specified.

This bill would exempt claims for the recovery of money from a levying officer pursuant to a money judgment, under specified circumstances from these provisions.

(6) Existing law prescribes fees for serving, executing, and processing required court notices, writs, orders, and other services provided by sheriffs and marshals.

This bill would, as of January 1, 2011, revise and increase these fees, as specified.

(7) Existing law prescribes a processing fee of \$10 to be assessed for each disbursement of money collected pursuant to specified writs, and further requires that the proceeds of these fees be deposited in a special fund in the county treasury for vehicle fleet replacement and equipment, maintenance, and computer automation for sheriff court services and civil process operations.

This bill would increase that processing fee to \$12.

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

SECTION 1. Section 685.050 of the Code of Civil Procedure is amended to read:

685.050. (a) If a writ is issued pursuant to this title to enforce a judgment, the costs and interest to be satisfied in a levy under the writ are the following:

- (1) The statutory fee for issuance of the writ.
 - (2) The amount of interest that has accrued from the date of entry or renewal of the judgment to the date of issuance of the writ, as adjusted for partial satisfactions, if the judgment creditor has filed an affidavit with the court clerk stating such amount.
 - (3) The amount of interest that accrues on the principal amount of the judgment remaining unsatisfied from the date of issuance of the writ until the date interest ceases to accrue.
 - (4) The levying officer's statutory costs for performing the duties under the writ.
- (b) In a levy under the writ, the levying officer shall do all of the following:
- (1) Collect the amount of costs and interest entered on the writ pursuant to paragraphs (1) and (2) of subdivision (a).
 - (2) Compute and collect the amount of additional interest required to be collected by paragraph (3) of subdivision (a) by reference to the daily interest entered on the writ. If amounts collected periodically do not fully satisfy the money judgment, the levying officer shall adjust the amount of daily interest to reflect the partial satisfactions, and make later collections by reference to the adjusted amount of daily interest.
 - (3) Determine and collect the amount of additional costs pursuant to paragraph (4) of subdivision (a).

SEC. 2. Section 701.810 of the Code of Civil Procedure is amended to read:

701.810. Except as otherwise provided by statute, the levying officer shall distribute the proceeds of sale or collection in the following order:

- (a) To persons having preferred labor claims that are required by Section 1206 to be satisfied from the proceeds, in the amounts required by Section 1206 to be satisfied.
- (b) To the state department or agency having a state tax lien (as defined in Section 7162 of the Government Code) that is superior to the judgment creditor's lien, in the amount of the lien.
- (c) If a deposit has been made pursuant to Section 720.260 and the purchaser at the sale is not the judgment creditor, to the judgment creditor in the amount required to repay the deposit with interest thereon at the rate on money judgments from the date of the deposit.
- (d) To the judgment debtor in the amount of any applicable exemption of proceeds pursuant to Section 704.010 (motor vehicle), 704.020 (household furnishings and other personal effects), or 704.060 (tools of trade), except that such proceeds shall be used to satisfy all of the following in the order of their respective priorities:
 - (1) Any consensual liens and encumbrances, and any liens for labor or materials, that are subordinate to the judgment creditor's lien.
 - (2) Subject to Section 688.030, any state tax lien (as defined in Section 7162 of the Government Code) on the property sold if the notice of state tax lien on the property has been recorded or filed pursuant to Section 7171

of the Government Code prior to the time the levying officer received the proceeds of the sale or collection.

(e) To the levying officer for the reimbursement of the levying officer's costs for which an advance has not been made.

(f) To the judgment creditor to satisfy the following, in the following order:

(1) First, any costs and interest accruing on the judgment after issuance of the writ pursuant to which the sale or collection is conducted.

(2) Second, the principal amount due on the judgment with costs and interest, as entered on the writ.

(g) To any other judgment creditors who have delivered writs to the levying officer, accompanied by instructions to levy upon the judgment debtor's property or the proceeds of its sale or collection, or any other persons actually known by the levying officer to have a claim, lien, or other interest subordinate to the judgment creditor's lien that is extinguished by the sale and that is not otherwise satisfied pursuant to this section, in the amounts to which they are entitled in order of their respective priorities.

(h) To the judgment debtor in the amount remaining.

SEC. 3. Section 701.820 of the Code of Civil Procedure is amended to read:

701.820. (a) Promptly after a sale or collection under this title, the levying officer shall distribute the proceeds to the persons entitled thereto or, in cases covered by Section 701.830, deposit the proceeds with the court.

(b) Except as otherwise provided by statute, the proceeds shall be paid to the persons entitled thereto within 30 days after the proceeds are received by the levying officer.

(c) If the proceeds are not received by the levying officer in one payment, the levying officer may accumulate proceeds received during a 30-day period and the accumulated proceeds shall be paid to the persons entitled thereto not later than 10 days after the expiration of the 30-day period.

(d) When proceeds are received by the levying officer in the form of a check or other form of noncash payment that is to be honored upon presentation by the levying officer for payment, the proceeds are not received for the purposes of this section until the check or other form of noncash payment has actually been honored upon presentation for payment.

(e) The provisions of Section 26680 of the Government Code apply to the levying officer only if all of the following conditions are satisfied:

(1) The levying officer has failed to pay the proceeds or deposit them with the court as provided in this article within the time provided in this section.

(2) Upon such failure, a person entitled to any of the proceeds has filed, in person or by certified mail, with the levying officer a written demand for the payment of the proceeds to the persons entitled thereto.

(3) The levying officer has failed within 10 days after the demand is filed to pay to the person filing the demand the proceeds to which that person is entitled.

(f) If all proceeds have not been received within 10 days after the filing of the demand specified by paragraph (3) of subdivision (e), a judgment creditor may file an ex parte application for an order directing the levying officer to show cause why relief should not be granted pursuant to Section 26680 of the Government Code. The order shall name a date and time for the levying officer to appear not less than 20 and not more than 30 days after filing of the application. If the levying officer pays all proceeds as provided in subdivision (e) of Section 701.810 to the judgment creditor no later than 10 days prior to the hearing, the judgment creditor shall notify the court of full payment no later than three days prior to the hearing and the court shall withdraw the order and vacate the hearing.

(g) An ex parte application filed pursuant to subdivision (f) shall state the date and manner of all of the following:

- (1) Delivery of the writ of execution to the levying officer.
- (2) Remittance of the proceeds to the levying officer.
- (3) Filing of the 10-day demand pursuant to subdivision (e).

(h) If the court finds that the facts alleged in the ex parte application filed pursuant to subdivision (f) to be knowingly false, or made in bad faith, the court may award costs and reasonable attorney fees to the levying officer.

SEC. 4. Section 905 of the Government Code is amended to read:

905. There shall be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) all claims for money or damages against local public entities except any of the following:

(a) Claims under the Revenue and Taxation Code or other statute prescribing procedures for the refund, rebate, exemption, cancellation, amendment, modification, or adjustment of any tax, assessment, fee, or charge or any portion thereof, or of any penalties, costs, or charges related thereto.

(b) Claims in connection with which the filing of a notice of lien, statement of claim, or stop notice is required under any law relating to liens of mechanics, laborers, or materialmen.

(c) Claims by public employees for fees, salaries, wages, mileage, or other expenses and allowances.

(d) Claims for which the workers' compensation authorized by Division 4 (commencing with Section 3200) of the Labor Code is the exclusive remedy.

(e) Applications or claims for any form of public assistance under the Welfare and Institutions Code or other provisions of law relating to public assistance programs, and claims for goods, services, provisions, or other assistance rendered for or on behalf of any recipient of any form of public assistance.

(f) Applications or claims for money or benefits under any public retirement or pension system.

(g) Claims for principal or interest upon any bonds, notes, warrants, or other evidences of indebtedness.

(h) Claims that relate to a special assessment constituting a specific lien against the property assessed and that are payable from the proceeds of the assessment, by offset of a claim for damages against it or by delivery of any warrant or bonds representing it.

(i) Claims by the state or by a state department or agency or by another local public entity or by a judicial branch entity.

(j) Claims arising under any provision of the Unemployment Insurance Code, including, but not limited to, claims for money or benefits, or for refunds or credits of employer or worker contributions, penalties, or interest, or for refunds to workers of deductions from wages in excess of the amount prescribed.

(k) Claims for the recovery of penalties or forfeitures made pursuant to Article 1 (commencing with Section 1720) of Chapter 1 of Part 7 of Division 2 of the Labor Code.

(l) Claims governed by the Pedestrian Mall Law of 1960 (Part 1 (commencing with Section 11000) of Division 13 of the Streets and Highways Code).

(m) Claims made pursuant to Section 340.1 of the Code of Civil Procedure for the recovery of damages suffered as a result of childhood sexual abuse. This subdivision shall apply only to claims arising out of conduct occurring on or after January 1, 2009.

(n) Claims made pursuant to Section 701.820 of the Code of Civil Procedure for the recovery of money pursuant to Section 26680.

SEC. 5. Section 26680 of the Government Code is amended to read:

26680. If on demand the sheriff neglects or refuses to pay over to the person entitled any money which comes into his or her hands by virtue of his or her office, after deducting all legal fees, the person may recover the amount owed to that person, 25 percent damages, interest at the rate of 10 percent per month from the time of demand, and costs, including reasonable attorney's fees.

SEC. 6. Section 26720.9 of the Government Code is amended to read:

26720.9. Notwithstanding any other provision of law, the amounts set forth in Sections 26721, 26721.1, 26725, 26728, 26734, 26742, and 26743 shall be increased to thirty dollars (\$30) on January 1, 2001.

This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 7. Section 26720.9 is added to the Government Code, to read:

26720.9. Notwithstanding any other provision of law, the amounts set forth in Sections 26721, 26721.1, 26725, 26728, 26734, 26742, and 26743 shall be thirty-five dollars (\$35).

This section shall become operative on January 1, 2011.

SEC. 8. Section 26726 of the Government Code is amended to read:

26726. (a) The fee for keeping and caring for property under a writ of attachment, execution, possession, or sale shall be one hundred twenty dollars (\$120) when necessarily employed for any eight-hour period or any part thereof. If an additional keeper or keepers are required during these

periods, the fee for the additional keeper or keepers shall be the same as fixed, but, in no event shall any one keeper receive more than two hundred forty dollars (\$240) during any 24-hour period when so employed.

(b) In addition to the fees provided by Section 26721, the fee for maintaining custody of property under levy by the use of a keeper is thirty dollars (\$30) for each day custody is maintained after the first day.

(c) Notwithstanding any other fee charged, a keeper shall receive forty dollars (\$40) when, pursuant to Section 26738, a levying officer prepares a not-found return.

(d) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 9. Section 26726 is added to the Government Code, to read:

26726. (a) The fee for keeping and caring for property under a writ of attachment, execution, possession, or sale shall be one hundred forty dollars (\$140) when necessarily employed for any eight-hour period or any part thereof. If an additional keeper or keepers are required during these periods, the fee for the additional keeper or keepers shall be the same as fixed, but, in no event shall any one keeper receive more than two hundred eighty dollars (\$280) during any 24-hour period when so employed.

(b) In addition to the fees provided by Section 26721, the fee for maintaining custody of property under levy by the use of a keeper is thirty-five dollars (\$35) for each day custody is maintained after the first day.

(c) Notwithstanding any other fee charged, a keeper shall receive fifty dollars (\$50) when, pursuant to Section 26738, a levying officer prepares a not-found return.

(d) This section shall become operative on January 1, 2011.

SEC. 10. Section 26731 of the Government Code is amended to read:

26731. Ten dollars (\$10) of any fee collected by the sheriff's civil division or marshal under Sections 26721, 26722, 26725, 26726, 26728, 26730, 26733.5, 26734, 26736, 26738, 26742, 26743, 26744, and 26750 of the Government Code shall be deposited in a special fund in the county treasury. A separate accounting of funds deposited shall be maintained for each depositor, and funds deposited shall be for the exclusive use of the sheriff's civil division or marshal.

Ninety-five percent of the moneys in the special fund shall be expended to supplement the costs of the depositor for the implementation, maintenance, and purchase of auxiliary equipment and furnishings for automated systems or other nonautomated operational equipment and furnishings deemed necessary by the sheriff's civil division or marshal. Five percent of the moneys in the special fund shall be used to supplement the expenses of the sheriff's civil division or marshal in administering the funds.

This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 11. Section 26731 is added to the Government Code, to read:

26731. Fifteen dollars (\$15) of any fee collected by the sheriff's civil division or marshal under Sections 26721, 26722, 26725, 26726, 26728, 26730, 26733.5, 26734, 26736, 26738, 26742, 26743, 26744, and 26750 of the Government Code shall be deposited in a special fund in the county treasury. A separate accounting of funds deposited shall be maintained for each depositor, and funds deposited shall be for the exclusive use of the sheriff's civil division or marshal.

Ninety-five percent of the moneys in the special fund shall be expended to supplement the costs of the depositor for the implementation, maintenance, and purchase of auxiliary equipment and furnishings for automated systems or other nonautomated operational equipment and furnishings deemed necessary by the sheriff's civil division or marshal. Five percent of the moneys in the special fund shall be used to supplement the expenses of the sheriff's civil division or marshal in administering the funds.

This section shall become operative on January 1, 2011.

SEC. 12. Section 26736 of the Government Code is amended to read:

26736. The fee for cancellation of the service or execution of any process or notice prior to its completion shall be twenty-eight dollars (\$28). The fee provided by this section shall not be charged where a charge is made pursuant to any other section of this article in attempting to serve or execute the process or notice.

This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 13. Section 26736 is added to the Government Code, to read:

26736. The fee for cancellation of the service or execution of any process or notice prior to its completion shall be thirty-five dollars (\$35). The fee provided by this section shall not be charged where a charge is made pursuant to any other section of this article in attempting to serve or execute the process or notice.

This section shall become operative on January 1, 2011.

SEC. 14. Section 26738 of the Government Code is amended to read:

26738. The fee for making a not-found return on a summons, affidavit and order, order for appearance, subpoena, writ of attachment, writ of execution, writ of possession, order for delivery of personal property, or other process or notice required to be served, certifying that the person or property cannot be found at the address specified is thirty dollars (\$30).

This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 15. Section 26738 is added to the Government Code, to read:

26738. The fee for making a not-found return on a summons, affidavit and order, order for appearance, subpoena, writ of attachment, writ of execution, writ of possession, order for delivery of personal property, or other process or notice required to be served, certifying that the person or property cannot be found at the address specified is thirty-five dollars (\$35).

This section shall become operative on January 1, 2011.

SEC. 16. Section 26744.5 of the Government Code is amended to read:
26744.5. (a) The fees for processing a warrant issued pursuant to Section 1993 of the Code of Civil Procedure shall be paid by the moving party, as follows:

(1) Thirty dollars (\$30) to receive and process the warrant, which shall include the issuance and mailing of a notice advising the person to be arrested of the issuance of the warrant and demanding that the person appear in court.

(2) Twenty-eight dollars (\$28) to cancel the service of the warrant.

(3) Sixty dollars (\$60) if unable to find the person at the address specified using due diligence.

(4) Seventy-five dollars (\$75) to arrest the person, which shall include the arrest and release of the person on a promise to appear pursuant to Section 1993.2 of the Code of Civil Procedure.

(b) The in forma pauperis fee waiver provisions under Rules 3.50 to 3.63, inclusive, of the California Rules of Court shall apply to the collection of fees under this section.

(c) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 17. Section 26744.5 is added to the Government Code, to read:

26744.5. (a) The fees for processing a warrant issued pursuant to Section 1993 of the Code of Civil Procedure shall be paid by the moving party, as follows:

(1) Thirty-five dollars (\$35) to receive and process the warrant, which shall include the issuance and mailing of a notice advising the person to be arrested of the issuance of the warrant and demanding that the person appear in court.

(2) Thirty-five dollars (\$35) to cancel the service of the warrant.

(3) Seventy-five dollars (\$75) if unable to find the person at the address specified using due diligence.

(4) Eighty-five dollars (\$85) to arrest the person, which shall include the arrest and release of the person on a promise to appear pursuant to Section 1993.2 of the Code of Civil Procedure.

(b) The in forma pauperis fee waiver provisions under Rules 3.50 to 3.63, inclusive, of the California Rules of Court shall apply to the collection of fees under this section.

(c) This section shall become operative on January 1, 2011.

SEC. 18. Section 26746 of the Government Code is amended to read:

26746. In addition to any other fees required by law, a processing fee of twelve dollars (\$12) shall be assessed for each disbursement of money collected under a writ of attachment, execution, possession, or sale, but excluding any action by the local child support agency for the establishment or enforcement of a child support obligation. The fee shall be collected from the judgment debtor in addition to, and in the same manner as, the moneys collected under the writ. All proceeds of this fee shall be deposited in a special fund in the county treasury. A separate accounting of funds deposited

shall be maintained for each depositor, and funds deposited shall be for the exclusive use of the depositor.

The special fund shall be expended to supplement the county's cost for vehicle fleet replacement and equipment, maintenance, and civil process operations.

A fee may not be charged if the only disbursement is the return of the judgment creditor's deposit for costs.

SEC. 19. Section 26746.1 of the Government Code is amended to read:

26746.1. A fifteen-dollar (\$15) fee shall be assessed by the sheriff or marshal for certification of correction on each citation that requires inspection for proof of correction of any violation pursuant to Section 40616 of the Vehicle Code.

All proceeds of the fee shall be deposited in a special fund in the county treasury. A separate accounting of funds deposited shall be maintained for each depositor, and funds deposited shall be for the exclusive use of the sheriff's civil division or marshal.

Ninety-five percent of the moneys in the special fund shall be expended to supplement the costs of the depositor for the implementation, maintenance, and purchase of auxiliary equipment and furnishings for automated systems or other nonautomated operational equipment and furnishings deemed necessary by the sheriff's civil division or marshal. Five percent of the moneys in the special fund shall be used to supplement the expenses of the sheriff's civil division or marshal in administering the funds.

This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 20. Section 26746.1 is added to the Government Code, to read:

26746.1. A seventeen-dollar (\$17) fee shall be assessed by the sheriff or marshal for certification of correction on each citation that requires inspection for proof of correction of any violation pursuant to Section 40616 of the Vehicle Code.

All proceeds of the fee shall be deposited in a special fund in the county treasury. A separate accounting of funds deposited shall be maintained for each depositor, and funds deposited shall be for the exclusive use of the sheriff's civil division or marshal.

Ninety-five percent of the moneys in the special fund shall be expended to supplement the costs of the depositor for the implementation, maintenance, and purchase of auxiliary equipment and furnishings for automated systems or other nonautomated operational equipment and furnishings deemed necessary by the sheriff's civil division or marshal. Five percent of the moneys in the special fund shall be used to supplement the expenses of the sheriff's civil division or marshal in administering the funds.

This section shall become operative on January 1, 2011.