

Assembly Bill No. 1549

CHAPTER 153

An act to amend Sections 697.530, 697.590, and 700.140 of the Code of Civil Procedure, relating to judgment liens.

[Approved by Governor August 5, 2009. Filed with
Secretary of State August 6, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1549, Committee on Banking and Finance. Judgment liens: priority.

Existing law provides that a judgment lien on personal property is a lien on all interests in specified personal property, including accounts receivable, chattel paper, equipment, farm products, inventory, and negotiable documents of title, that are subject to enforcement of a money judgment against the judgment debtor at the time the lien is created if a security interest in the property could be perfected by filing a financing statement at that time with the Secretary of State, as specified.

This bill would provide, with respect to those judgment liens on specified personal property, that the judgment debtor or subject property must be located in this state. This bill would also remove the requirement that a security interest in the property could be perfected at the time the lien is created. The bill would exclude from the operation of these provisions personal property that is as-extracted collateral, as defined, and timber to be cut.

Existing law provides that priority between a judgment lien on personal property and a conflicting security interest in the same personal property shall be determined according to priority in time of filing or perfection.

This bill would make agricultural liens on personal property also subject to this provision in determining priority of conflicting interests, except as provided.

Existing law provides that, in order to levy an execution lien or attachment lien upon a deposit account, the levying officer shall personally serve a copy of the writ and a notice of levy on the financial institution with which the deposit account is maintained, or shall personally serve the writ and notice of levy to a centralized location within the county as designated by the financial institution.

This bill would instead provide that the levying officer shall personally serve the writ and notice of levy to a centralized location within the state as designated by the financial institution.

The bill would make other technical and nonsubstantive changes.

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

SECTION 1. Section 697.530 of the Code of Civil Procedure is amended to read:

697.530. (a) A judgment lien on personal property is a lien on all interests in the following personal property that are subject to enforcement of the money judgment against the judgment debtor pursuant to Article 1 (commencing with Section 695.010) of Chapter 1 at the time when the lien is created if the personal property is, at that time, any of the following:

(1) Accounts receivable, and the judgment debtor is located in this state.
(2) Tangible chattel paper, as defined in paragraph (78) of subdivision (a) of Section 9102 of the Commercial Code, and the judgment debtor is located in this state.

(3) Equipment, located within this state.

(4) Farm products, located within this state.

(5) Inventory, located within this state.

(6) Negotiable documents of title, located within this state.

(b) If any interest in personal property on which a judgment lien could be created under subdivision (a) is acquired after the judgment lien was created, the judgment lien attaches to the interest at the time it is acquired.

(c) To the extent provided by Section 697.620, a judgment lien on personal property continues on the proceeds received upon the sale, collection, or other disposition of the property subject to the judgment lien.

(d) Notwithstanding any other provision of this section, the judgment lien does not attach to:

(1) A vehicle or vessel required to be registered with the Department of Motor Vehicles or a mobilehome or commercial coach required to be registered pursuant to the Health and Safety Code.

(2) As-extracted collateral, as defined in paragraph (6) of subdivision (a) of Section 9102 of the Commercial Code, and timber to be cut.

(3) The inventory of a retail merchant held for sale except to the extent that the inventory of the retail merchant consists of durable goods having a unit retail value of at least five hundred dollars (\$500). For the purposes of this paragraph, "retail merchant" does not include either of the following:

(A) A person whose sales for resale exceeded 75 percent in dollar volume of the person's total sales of all goods during the 12 months preceding the filing of the notice of judgment lien on personal property.

(B) A cooperative association organized pursuant to Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code (agricultural cooperative associations) or Part 3 (commencing with Section 13200) of Division 3 of Title 1 of the Corporations Code (Fish Marketing Act).

(e) If property subject to a lien under this article becomes a fixture, as defined in paragraph (41) of subdivision (a) of Section 9102 of the Commercial Code, the judgment lien on that property is extinguished.

(f) Notwithstanding the filing of a notice of judgment lien, subject to the provisions of Chapter 6 (commencing with Section 708.010), a person

obligated on an account receivable or chattel paper is authorized to pay or compromise the amount without notice to or consent of the judgment creditor unless and until there is a levy pursuant to Chapter 3 (commencing with Section 699.010).

(g) For purposes of this section, whether a person is located in this state is determined in accordance with Section 9307 of the Commercial Code, except that the location of a registered organization, as defined in paragraph (70) of subdivision (a) of Section 9102 of the Commercial Code, that is organized under the law of another state is determined without regard to subdivision (e) of Section 9307 of the Commercial Code.

SEC. 2. Section 697.590 of the Code of Civil Procedure is amended to read:

697.590. (a) As used in this section:

(1) “Filing” means:

(A) With respect to a judgment lien on personal property, the filing of a notice of judgment lien in the office of the Secretary of State to create a judgment lien on personal property under this article.

(B) With respect to a security interest or agricultural lien, as defined in paragraph (5) of subdivision (a) of Section 9102 of the Commercial Code, the filing of a financing statement pursuant to Division 9 (commencing with Section 9101) of the Commercial Code.

(2) “Perfection” means perfection of a security interest or agricultural lien pursuant to Division 9 (commencing with Section 9101) of the Commercial Code.

(3) “Personal property” means:

(A) With respect to a judgment lien on personal property, the property to which a judgment lien has attached pursuant to this article.

(B) With respect to a security interest, the collateral subject to a security interest pursuant to Division 9 (commencing with Section 9101) of the Commercial Code.

(C) With respect to an agricultural lien, the farm products subject to an agricultural lien pursuant to Division 9 (commencing with Section 9101) of the Commercial Code.

(4) “Purchase money security interest” has the same meaning as used in Section 9103 of the Commercial Code.

(b) Except as provided in subdivisions (d), (e), (g), and (h), priority between a judgment lien on personal property and a conflicting security interest or agricultural lien in the same personal property shall be determined according to this subdivision. Conflicting interests rank according to priority in time of filing or perfection. In the case of a judgment lien, priority dates from the time filing is first made covering the personal property. In the case of a security interest or agricultural lien, priority dates from the earlier of the time a filing is first made covering the personal property or the time the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(c) For the purposes of subdivision (b), a date of filing or perfection as to personal property is also a date of filing or perfection as to proceeds.

(d) A purchase money security interest has priority over a conflicting judgment lien on the same personal property or its proceeds if the purchase money security interest is perfected at the time the judgment debtor, as a debtor under the security agreement, receives possession of the personal property or within 20 days thereafter.

(e) If a purchase money security interest in inventory has priority over a judgment lien pursuant to subdivision (d) and a conflicting security interest has priority over the purchase money security interest in the same inventory pursuant to Section 9324 of the Commercial Code, the conflicting security interest also has priority over the judgment lien on the inventory subject to the purchase money security interest, notwithstanding that the conflicting security interest would not otherwise have priority over the judgment lien.

(f) A judgment lien that has attached to personal property, and that is also subordinate under subdivision (b) to a security interest in the same personal property, is subordinate to the security interest only to the extent that the security interest secures advances made before the judgment lien attached or within 45 days thereafter or made without knowledge of the judgment lien or pursuant to a commitment entered into without knowledge of the judgment lien. For the purpose of this subdivision, a secured party shall be deemed not to have knowledge of a judgment lien on personal property until (1) the judgment creditor serves a copy of the notice of judgment lien on the secured party personally or by mail and (2) the secured party has knowledge of the judgment lien on personal property, as “knowledge” is defined in Section 1201 of the Commercial Code. If service on the secured party is by mail, it shall be sent to the secured party at the address shown in the financing statement or security agreement.

(g) A perfected agricultural lien on personal property has priority over a judgment lien on the same personal property if the statute creating the agricultural lien so provides.

(h) A security interest in personal property perfected by the filing of a financing statement under the law of a jurisdiction other than this state, or perfected by another method pursuant to the law of a jurisdiction other than this state, has priority over a judgment lien in the same personal property.

SEC. 3. Section 700.140 of the Code of Civil Procedure is amended to read:

700.140. (a) Subject to Section 700.160, to levy upon a deposit account, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the financial institution with which the deposit account is maintained, or shall personally serve the writ of execution and notice of levy to a centralized location within this state as designated by the financial institution. If the writ of execution is received at the designated central location, it shall apply to all deposit accounts held by the financial institution regardless of the location of that property. The execution lien reaches only amounts in the deposit account at the time of service on the financial institution, including any item in the deposit account that is in the process of being collected, unless the item is returned unpaid to the financial institution. This section does not require a financial institution to designate

a central location for personal service of the writ of execution and notice of levy.

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ of execution and a notice of levy on any third person in whose name the deposit account stands. Service shall be made personally or by mail.

(c) During the time the execution lien is in effect, the financial institution shall not honor a check or other order for the payment of money drawn against, and shall not pay a withdrawal from, the deposit account that would reduce the deposit account to an amount that is less than the amount levied upon. For the purposes of this subdivision, in determining the amount of the deposit account, the financial institution shall not include the amount of items deposited to the credit of the deposit account that are in the process of being collected.

(d) During the time the execution lien is in effect, the financial institution is not liable to any person for any of the following:

(1) Performance of the duties of a garnishee under the levy.

(2) Nonpayment of a check or other order for the payment of money drawn or presented against the deposit account if the nonpayment is pursuant to the requirements of subdivision (c).

(3) Refusal to pay a withdrawal from the deposit account if the refusal is pursuant to the requirements of subdivision (c).

(e) When the amount levied upon pursuant to this section is paid to the levying officer, the execution lien on the deposit account levied upon terminates.

(f) For the purposes of this section, neither of the following is a third person in whose name the deposit account stands:

(1) A person who is only a person named as the beneficiary of a Totten trust account.

(2) A person who is only a payee designated in a pay-on-death provision in an account pursuant to Section 18318.5 of the Financial Code or Section 5140 of the Probate Code, or other similar provision.