

**Assembly Bill No. 2364**

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Passed the Assembly August 29, 2012

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*Chief Clerk of the Assembly*

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Passed the Senate August 27, 2012

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2012, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend Sections 482.070, 488.455, 488.460, 488.600, 488.610, 684.110, 700.140, 700.150, 700.160, 701.030, and 703.570 of, and to add Section 684.115 to, the Code of Civil Procedure, to amend Sections 1450 and 1620 of the Financial Code, and to amend Sections 1755 and 1755.1 of the Unemployment Insurance Code, relating to civil procedure.

## LEGISLATIVE COUNSEL'S DIGEST

AB 2364, Wagner. Civil procedure: attachment.

Existing law establishes procedures for service of various legal processes on financial institutions, and procedures for attachment and execution of levies served on financial institutions. Existing law requires service in connection with a levy to be made upon the branch or at the office that has actual possession of the property levied upon, or where the deposit account levied upon is carried, as specified.

This bill would instead require a financial institution that has more than 9 branch offices in California to designate one or more central locations for service of legal process within the state, and would authorize a financial institution with fewer than 9 branch offices in California to do the same. The bill would establish procedures for service of process and execution of levies at a financial institution's central locations and other branches. The bill would require financial institutions designating central locations to file a notice of the designation with the Department of Financial Institutions. The bill would require the department to update its online records to reflect the designation, and would require the department to provide a copy of the current notice to any person upon request, as specified. The bill would establish procedures for a judgment creditor to engage in a levy action against a specific deposit account or safe deposit box at a financial institution, including by filing a written request with the financial institution for enforcement against the account or safe deposit box. The bill would require the request to contain specified information.

The bill would require a levying officer to give at least 3 days' notice to the judgment creditor regarding opening and seizing the

contents of a safe deposit box pursuant to these provisions, as specified.

The bill would make additional conforming changes.

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

SECTION 1. Section 482.070 of the Code of Civil Procedure is amended to read:

482.070. (a) (1) Except as otherwise provided in this title, legal process required or permitted to be served under this title may be served personally or by mail.

(2) For purposes of this title, the term “legal process” shall refer to each and all of the writs, notices, orders, or other papers required or permitted to be served pursuant to this title.

(b) Except as otherwise provided in this section, service of legal process under this title is governed by Article 1 (commencing with Section 684.010) and Article 2 (commencing with Section 684.110) of Chapter 4 of Division 1 of Title 9, including the provisions of Section 684.120 extending time when service is made by mail.

(c) For the purpose of subdivision (b), in Article 1 (commencing with Section 684.010) and Article 2 (commencing with Section 684.110) of Chapter 4 of Division 1 of Title 9:

(1) References to the “judgment debtor” shall be deemed references to the defendant.

(2) References to the “judgment creditor” shall be deemed references to the plaintiff.

(3) References to a “writ” shall be deemed references to a writ of attachment.

(4) References to a “notice of levy” shall be deemed references to a notice of attachment.

(d) If the defendant has not appeared in the action and legal process is required to be personally served on the defendant under this title, service shall be made in the same manner as a summons is served under Chapter 4 (commencing with Section 413.10) of Title 5.

(e) Except for service of a subpoena or other process to require the attendance of the defendant or service of a paper to bring the defendant into contempt, if the defendant has an attorney of record in the action, service shall be made on the attorney rather than on the defendant.

(f) Proof of service under this title is governed by Article 3 (commencing with Section 684.210) of Chapter 4 of Division 1 of Title 9.

SEC. 2. Section 488.455 of the Code of Civil Procedure is amended to read:

488.455. (a) Subject to Sections 488.465 and 684.115, to attach a deposit account, the levying officer shall personally serve a copy of the writ of attachment and a notice of attachment on the financial institution with which the deposit account is maintained.

(b) The attachment lien that arises upon service of a writ of attachment and notice of attachment reaches only amounts in a deposit account at the time of service on the financial institution, including the amount of any deposit not yet finally collected, unless the deposit is returned unpaid to the financial institution.

(c) The levying officer shall serve a copy of the writ of attachment and a notice of attachment on any third person in whose name any deposit account described therein stands. That service shall be made personally or by mail as follows:

(1) At the time of levy or promptly thereafter, if the party seeking the levy informs the levying officer of that person and his, her, or its residence or business address.

(2) Promptly following the levying officer's receipt of a garnishee's memorandum if service was not accomplished pursuant to paragraph (1), if the garnishee's memorandum identifies that person and his, her, or its residence or business address.

(d) The financial institution shall not honor a withdrawal request or a check or other order for the payment of money from the deposit account if presentation of that withdrawal request or item to the financial institution occurs during the time the attachment lien is in effect unless, following that withdrawal or payment, sufficient funds are available to cover the levy. For these purposes, a withdrawal from the deposit account to cover the financial institution's standard fee or charge for processing the levy shall not be considered a payment of money from the account in violation of this subdivision.

(e) During the time the attachment 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 or transfer of money drawn or presented against the deposit account

if the nonpayment is pursuant to the requirements of subdivision (d).

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

(f) For the purposes of this section, none 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.

(3) A person who is only acting in a representative or custodial capacity with respect to benefits paid or payable by the United States government. Rather, accounts maintained by the representative or custodian shall be deemed to stand in that beneficiary's name, and the amounts therein shall be covered by a levy against that beneficiary.

(g) For purposes of this section, final payment of a deposit shall be deemed to have occurred in accordance with Section 4215 or 11210 of the Commercial Code or with automated clearinghouse or Federal Reserve System rule, regulation, operating circular, or similar governing document, as applicable to the deposit. If, for any reason, a deposit is returned by the financial institution upon which it is drawn, that deposit shall not be deemed finally collected for purposes of this subdivision regardless of any later payment by the financial institution upon which the deposit is drawn.

(h) When a deposit account has been attached, as an alternative to paying the amount of the deposit account that is attached to the levying officer as required by Section 488.600, the financial institution may continue to hold the deposit account until the deposit account is levied upon after judgment in the action or is earlier released, the deposit account to be held in one of the following manners:

(1) If the entire deposit account is attached, the financial institution may hold the deposit account on the terms applicable before the attachment, subject to the requirements of subdivision (d).

(2) If less than the entire deposit account is attached:

(A) With the consent of the defendant, and any third person in whose name the deposit account stands, the financial institution may hold in the deposit account on the same terms an amount larger than the attached amount as necessary to avoid a penalty or a reduction of the rate of interest.

(B) If the defendant, and any third person in whose name the deposit account stands, do not consent as provided in subparagraph (A), the financial institution may hold the attached amount on the same terms affecting the deposit account before the attachment, subject to the requirements of subdivision (d).

(3) The financial institution may hold the attached deposit account in any other manner agreed upon by the plaintiff, the defendant, and any third person in whose name the deposit account stands.

(i) Subdivision (h) does not prevent a financial institution that is holding an attached deposit account as provided in subdivision (h) from paying the attached amount to the levying officer before the time the financial institution otherwise is required to pay the amount under subdivision (h).

SEC. 3. Section 488.460 of the Code of Civil Procedure is amended to read:

488.460. (a) Subject to Sections 488.465 and 684.115, to attach property in a safe-deposit box, the levying officer shall personally serve a copy of the writ of attachment and a notice of attachment on the financial institution with which the safe-deposit box is maintained.

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ of attachment and a notice of attachment on any third person in whose name the safe-deposit box stands.

(c) During the time the attachment lien is in effect, the financial institution may not permit the removal of any of the contents of the safe-deposit box except as directed by the levying officer.

(d) Upon receipt of a garnishee's memorandum from the financial institution, as required by Section 488.610, indicating a safe-deposit box is under levy, the levying officer shall promptly mail a written notice to the judgment creditor demanding an additional fee as required by Section 26723 of the Government Code, plus the costs to open the safe-deposit box and seize and store the contents. The levying officer shall release the levy on the

safe-deposit box if the plaintiff does not pay the required fee, plus costs, within three business days plus the extended time period specified in subdivision (a) of Section 1013 for service by mail by the levying officer.

(e) The levying officer may first give the person in whose name the safe-deposit box stands an opportunity to open the safe-deposit box to permit the removal pursuant to the attachment of the attached property. The financial institution may refuse to permit the forcible opening of the safe-deposit box to permit the removal of the attached property unless the plaintiff or levying officer pays in advance the cost of forcibly opening the safe-deposit box and of repairing any damage caused thereby.

(f) During the time the attachment 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 attachment.

(2) Refusal to permit access to the safe-deposit box by the person in whose name it stands.

(3) Removal of any of the contents of the safe-deposit box pursuant to the attachment.

(g) If the levying officer removes any property from the safe-deposit box to satisfy the levy, but allows other property to remain in the safe-deposit box, the attachment lien is released automatically with respect to any property that remains in the safe-deposit box.

SEC. 4. Section 488.600 of the Code of Civil Procedure is amended to read:

488.600. (a) Sections 701.010, 701.020, 701.040, 701.050, 701.060, and 701.070 prescribe duties and liabilities of a third person under a levy made under this title.

(b) For the purposes of this section, references in Sections 701.010, 701.020, 701.040, 701.050, and 701.060 to:

(1) “Amount required to satisfy the judgment” shall be deemed references to the amount required to satisfy the amount to be secured by the attachment.

(2) “Execution lien” or “lien” shall be deemed references to the attachment lien.

(3) “Judgment creditor” shall be deemed references to the plaintiff.

(4) “Judgment debtor” shall be deemed references to the defendant.

(5) “Levy” shall be deemed references to levy of attachment.

(6) “Notice of levy” shall be deemed references to notice of attachment.

(7) “Release” of property shall be deemed references to release of property pursuant to this title.

(8) “Satisfaction or discharge of the judgment” shall be deemed references to the satisfaction or termination of the attachment.

(9) “Writ” or “writ of execution” shall be deemed references to a writ of attachment.

(c) For the purposes of this section, references in Section 701.070 to:

(1) “Levy” shall be deemed references to levy of attachment.

(2) “Notice of the levy” shall be deemed references to notice of attachment.

SEC. 5. Section 488.610 of the Code of Civil Procedure is amended to read:

488.610. (a) At the time of service of a copy of the writ of attachment and a notice of attachment on a third person, the levying officer shall request the third person to give the levying officer a garnishee’s memorandum containing the information required by this section. Within 10 days after the request is made, the third person shall mail or deliver the garnishee’s memorandum to the levying officer whether or not the levy is effective.

(b) The garnishee’s memorandum shall be executed under oath and shall contain the following information:

(1) A description of any property of the defendant sought to be attached that is not delivered to the levying officer and the reason for not delivering the property.

(2) A statement of the amount and terms of any obligation to the defendant sought to be attached that is due and payable and is not paid to the levying officer and the reason for not paying the obligation.

(3) A statement of the amount and terms of any obligation to the defendant sought to be attached that is not due and payable at the time of levy.

(4) A description of claims and rights of other persons to the attached property or obligation that are known to the third person and the names and addresses of those other persons.

(5) A statement that the garnishee holds neither any property nor any obligations in favor of the judgment debtor.

(c) If a garnishee's memorandum is received from the third person, the levying officer shall promptly mail or deliver a copy of the memorandum to the plaintiff and attach the original to the writ when it is returned to the court. If a garnishee's memorandum is not received from the third person, the levying officer shall so state in the return.

(d) Except as provided in subdivisions (e) and (f), if a third person does not give the levying officer a garnishee's memorandum within the time provided in subdivision (a) or does not provide complete information, the third person may, in the court's discretion, be required to pay the costs and reasonable attorney's fees incurred in any proceedings to obtain the information required in the garnishee's memorandum.

(e) Notwithstanding subdivision (a), where a deposit account or property in a safe-deposit box is attached, the financial institution need not give a garnishee's memorandum to the levying officer if the financial institution fully complies with the levy and, if a garnishee's memorandum is required, the garnishee's memorandum need provide information with respect only to property which is carried on the records available at the office or branch where the levy is made, unless the levy has been served at a central location designated by a financial institution in accordance with Section 684.115, in which case the garnishee's memorandum shall apply to all offices and branches of the financial institution except to the extent acceptance of the levy at that central location is limited pursuant to paragraph (3) of subdivision (a) of Section 684.115.

(f) Notwithstanding subdivision (a), the third person need not give a garnishee's memorandum to the levying officer if both of the following conditions are satisfied:

(1) The third person has delivered to the levying officer all of the property sought to be attached.

(2) The third person has paid to the levying officer the amount due at the time of levy on any obligation to the defendant that was attached and there is no additional amount that thereafter will become payable on the obligation levied upon.

SEC. 6. Section 684.110 of the Code of Civil Procedure is amended to read:

684.110. (a) (1) Subject to subdivisions (b), (c), and (d), if legal process is required to be personally served under this title, service shall be made in the same manner as a summons is served under Chapter 4 (commencing with Section 413.10) of Title 5.

(2) For purposes of this title, the term “legal process” shall refer to each and all of the writs, notices, orders, or other papers required or permitted to be served pursuant to this title.

(b) If the legal process is required to be personally served under this title and service on an attorney is required under Article 1 (commencing with Section 684.010), service shall be made on the attorney in the manner provided in Section 684.040.

(c) If the legal process is required to be personally served on (1) a financial institution in connection with a deposit account or with property held for safekeeping, as collateral for an obligation owed to the financial institution or in a safe-deposit box, (2) a title insurer (as defined in Section 12340.4 of the Insurance Code) or underwritten title company (as defined in Section 12340.5 of the Insurance Code), or (3) an industrial loan company (as defined in Section 18003 of the Financial Code), service shall be made at the office or branch that has actual possession of the property levied upon or at which a deposit account levied upon is carried and shall be made upon the officer, manager, or other person in charge of the office or branch at the time of service. For purposes of this section, the office or branch at which a deposit account levied upon is carried shall mean the branch, office, or other location where the financial institution maintains the account.

(d) Notwithstanding subdivision (c), with respect to legal process served on a financial institution, if the financial institution has designated a central location for service of legal process pursuant to Section 684.115, unless the financial institution elects to treat legal process served at a branch or office as effective, that legal process so served on the branch or office will not reach those accounts or property and need not be reported on the financial institution’s garnishee memorandum.

(e) Notwithstanding subdivision (c), a financial institution, title insurer, or industrial loan company, in its discretion and without violating any obligation to its customer, may act upon service of legal process at any of its offices or branches, whether or not the office or branch is the location wherein accounts or property that may be reached by the process is or are maintained or located.

SEC. 7. Section 684.115 is added to the Code of Civil Procedure, to read:

684.115. (a) A financial institution may, and if it has more than nine branches or offices at which it conducts its business within this state, shall, designate one or more central locations for service of legal process within this state. Each designated location shall be referred to as a “central location.” If a financial institution elects or is required to designate a central location for service of legal process, the financial institution shall file a notice of its designation with the Department of Financial Institutions, which filing shall be effective upon filing and shall contain all of the following:

(1) The physical address of the central location.  
(2) The days and hours during which service will be accepted at the central location.

(3) If the central location will not accept service of legal process directed at deposit accounts maintained or property held at all of the financial institution’s branches or offices within this state, or if the service accepted at the central location will not apply to safe-deposit boxes or other property of the judgment debtor held by or for the judgment debtor, the filing shall also contain sufficient information to permit a determination of the limitation or limitations, including, in the case of a limitation applicable to certain branches or offices, an identification of the branches or offices as to which service at the central location will not apply and the nature of the limitation applicable to those branches or offices. If the limitation will apply to all branches or offices of the financial institution within this state, the filing may indicate the nature of the limitation and that it applies to all branches or offices, in lieu of an identification of branches or offices as to which the limitation applies. To the extent that a financial institution’s designation of a central location for service of legal process covers the process directed at deposit accounts, safe-deposit boxes, or other property of the judgment debtor held by or for the judgment debtor at a particular branch or office located within this state, the branch or office shall be a branch or office covered by central process.

(b) Should a financial institution required to designate a central location fail to do so, each branch of that institution located in this state shall be deemed to be a central location at which service of

legal process may be made, and all of the institution's branches or offices located within this state shall be deemed to be a branch or office covered by central process.

(c) Subject to any limitation noted pursuant to paragraph (3) of subdivision (a), service of legal process at a central location of a financial institution shall be effective against all deposit accounts and all property held for safekeeping, as collateral for an obligation owed to the financial institution or in a safe-deposit box if the same is described in the legal process and held by the financial institution at any branch or office covered by central process and located within this state. However, while service of legal process at the central location will establish a lien on all property, if any property other than deposit accounts is physically held by the financial institution in a county other than that in which the designated central location is located, the financial institution shall include in its garnishee's memorandum the location or locations of the property, and the judgment creditor shall obtain a writ of execution covering the property and directed to the levying officer in that county to accomplish the turnover of the property and shall forward the writ and related required documentation to the levying officer in the county in which the property is held.

(d) A financial institution may modify or revoke any designation made pursuant to subdivision (a) by filing the modification or revocation with the Department of Financial Institutions. The modification or revocation shall be effective when the Department of Financial Institutions' records have been updated to reflect the modification or revocation, provided that the judgment creditor may rely upon the superseded designation during the 30-day period following the effective date of the revocation or modification.

(e) (1) The Department of Financial Institutions shall update its online records to reflect a filing by a financial institution pursuant to subdivision (a) or a modification or revocation filed by a financial institution pursuant to subdivision (d) within 10 business days following the filing by the financial institution. The Department of Financial Institutions' Internet Web site shall reflect the date its online records for each financial institution have most recently been updated.

(2) The Department of Financial Institutions shall provide any person requesting it with a copy of each current filing made by a financial institution pursuant to subdivision (a). The Department

of Financial Institutions may satisfy its obligation under this subdivision by posting all current designations of a financial institution, or the pertinent information therein, on an Internet Web site available to the public without charge, and if that information is made available, the Department of Financial Institutions may impose a reasonable fee for furnishing that information in any other manner.

(f) As to deposit accounts maintained or property held for safekeeping, as collateral for an obligation owed to the financial institution or in a safe-deposit box at a branch or office covered by central process, service of legal process at any location other than a central location designated by the financial institution shall not be effective unless the financial institution, in its absolute discretion, elects to act upon the process at that location as if it were effective. In the absence of an election, the financial institution may respond to the legal process by mailing or delivery of the garnishee's memorandum to the levying officer within the time otherwise provided therefor, with a statement on the garnishee's memorandum that the legal process was not properly served at the financial institution's designated location for receiving legal process, and, therefor, was not processed, and the address at which the financial institution is to receive legal process.

(g) If any legal process is served at a central location of a financial institution pursuant to this section, all related papers to be served on the financial institution shall be served at that location, unless agreed to the contrary between the serving party and the financial institution.

(h) This subdivision shall apply whenever a financial institution operates within this state at least one branch or office in addition to its head office or main office, as applicable, or a financial institution headquartered in another state operates more than one branch or office within this state, and no central location has been designated or deemed to have been designated by the institution for service of legal process relating to deposit accounts maintained at the financial institution's head office or main office, as applicable, and branches located within this state. If a judgment creditor reasonably believes that, pursuant to Section 700.140 and, if applicable, Section 700.160, any act of enforcement would be effective against a specific deposit account maintained at a financial institution described in this subdivision, the judgment creditor may

file with the financial institution a written request that the financial institution identify the branch or office within this state at which a specified account might be maintained by the financial institution. The written request shall contain the following statements or information:

(1) The name of the person reasonably believed by the judgment creditor to be a person in whose name the specified deposit account stands.

(2) If the name of the person reasonably believed by the judgment creditor to be a person in whose name the specified deposit account stands is not a judgment debtor identified in the writ of execution, a statement that a person reasonably believed by the judgment creditor to be a person in whose name the specified deposit account stands will be appropriately identified in the legal process to be served pursuant to Section 700.160, including any supplementary papers, such as a court order or affidavit if the same will be required by Section 700.160.

(3) The specific identifying number of the account reasonably believed to be maintained with the financial institution and standing in the name of the judgment debtor or other person.

(4) The address of the requesting party.

(5) An affidavit by the judgment creditor or the judgment creditor's counsel stating substantially the following:

I hereby declare that this deposit account location request complies with Section 684.115 of the Code of Civil Procedure, that the account or accounts of the judgment debtor or other person or persons appropriately identified in the legal process and specified herein are subject to a valid writ of execution, or court order, that I have a reasonable belief, formed after an inquiry reasonable under the circumstances, that the financial institution receiving this deposit account location request has an account standing in the name of the judgment debtor or other person or persons appropriately identified in the legal process, and that information pertaining to the location of the account will assist the judgment creditor in enforcing the judgment.

(i) The affidavit contemplated by subdivision (h) shall be signed by the judgment creditor or the judgment creditor's counsel and filed at the financial institution's head office located within this

state or, if the financial institution's head office is in another state, at one of its branches or offices within this state. Failure to comply with the requirements of subdivision (h) and this subdivision shall be sufficient basis for the financial institution to refuse to produce the information that would otherwise be required by subdivision (j).

(j) Within 10 banking days following receipt by a financial institution at the applicable location specified in subdivision (i) of a request contemplated by subdivision (h), as to each specific deposit account identified in the request contemplated by subdivision (h), the financial institution shall respond by mailing, by first-class mail with postage prepaid, to the requester's address as specified in the request a response indicating the branch or office location of the financial institution at which the specified deposit account might be maintained, or, if the specified deposit account, if it exists, would not be maintained at a specific location, at least one place within this state at which legal process relating to the deposit account should or may be served. The response to be furnished pursuant to this subdivision shall not require the financial institution to determine whether an account exists or, if an account does exist, whether it would be reached by the legal process, rather, the branch or office location shall be determined and reported by the financial institution based solely upon its determination that an account with the identifying number provided by the requester would be maintained at that branch if an account did exist, and the response shall not contain any information about the name in which the account stands or any other information concerning the account, if it exists. If more than one account number is specified in the request, the financial institution's responses as to some or all of those account numbers may be combined in a single writing.

(k) A response furnished in good faith by the financial institution pursuant to subdivision (j) shall not be deemed to violate the privacy of any person in whose name the specified deposit account stands nor the privacy of any other person, and shall not require the consent of the person in whose name the account stands nor that of any other person.

(l) A financial institution shall not notify the person in whose name the specified deposit account stands or any other person related to the specified account of the receipt of any request made pursuant to subdivision (h) and affecting that person's or persons'

accounts at the financial institution, provided that the financial institution shall have no liability for its failure to comply with the provisions of this subdivision.

SEC. 8. Section 700.140 of the Code of Civil Procedure is amended to read:

700.140. (a) Subject to Sections 684.115 and 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.

(b) The execution lien that arises upon service of a writ of execution and notice of levy reaches only amounts in a deposit account at the time of service on the financial institution, including the amount of any deposit not yet finally collected unless the deposit is returned unpaid to the financial institution.

(c) The levying officer shall serve a copy of the writ of execution and a notice of levy on any third person in whose name any deposit account described therein stands. Service shall be made personally or by mail as follows:

(1) At the time of levy or promptly thereafter, if the party seeking the levy informs the levying officer of the person and his, her, or its residence or business address.

(2) Promptly following the levying officer's receipt of a garnishee's memorandum if service was not accomplished pursuant to paragraph (1) if the garnishee's memorandum identifies the person and his, her, or its residence or business address.

(d) The financial institution shall not honor a withdrawal request or a check or other order for the payment of money from the deposit account if presentment of the withdrawal request or item to the financial institution occurs during the time the execution lien is in effect unless, following the withdrawal or payment, sufficient funds are available to cover the levy. For these purposes, a withdrawal from the deposit account to cover the financial institution's standard fee or charge for processing the levy shall not be considered a payment of money from the account in violation of this subdivision.

(e) 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 or transfer of money drawn or presented against the deposit account

if the nonpayment is pursuant to the requirements of subdivision (d).

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

(f) 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.

(g) For the purposes of this section, none 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.

(3) A person who is only acting in a representative or custodial capacity with respect to benefits paid or payable by the United States government. Rather, accounts maintained by the representative or custodian shall be deemed to stand in the beneficiary's name, and the amounts therein shall be covered by a levy against the beneficiary.

(h) For purposes of this section, final payment of a deposit shall be deemed to have occurred in accordance with Section 4215 or 11210 of the Commercial Code or with automated clearinghouse or Federal Reserve System rule, regulation, operating circular, or similar governing document, as applicable to the deposit. If, for any reason, a deposit is returned by the financial institution upon which it is drawn, the deposit shall not be deemed finally collected for purposes of this subdivision regardless of any later payment by the financial institution upon which the deposit is drawn.

SEC. 9. Section 700.150 of the Code of Civil Procedure is amended to read:

700.150. (a) Subject to Section 700.160, to levy upon property in a safe-deposit box, 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 safe-deposit box is maintained.

(b) At the time of the 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 safe-deposit box stands. Service shall be made personally or by mail.

(c) During the time the execution lien is in effect, the financial institution may not permit the removal of any of the contents of the safe-deposit box except as directed by the levying officer.

(d) Upon receipt of a garnishee's memorandum from the financial institution indicating a safe-deposit box is under levy, the levying officer shall promptly mail a written notice to the judgment creditor demanding an additional fee as required by Section 26723 of the Government Code, plus the costs to open the safe-deposit box and seize and store the contents. The levying officer shall release the levy on the safe-deposit box if the judgment creditor does not pay the required fee, plus costs, within three business days plus the extended time period specified in subdivision (a) of Section 1013 for service by mail by the levying officer.

(e) The levying officer may first give the person in whose name the safe-deposit box stands an opportunity to open the safe-deposit box to permit the removal pursuant to the levy of the property levied upon. The financial institution may refuse to permit the forcible opening of the safe-deposit box to permit the removal of the property levied upon unless the levying officer or the judgment creditor pays in advance the cost of forcibly opening the safe-deposit box and of repairing any damage caused thereby.

(f) The levying officer shall give the judgment creditor at least three court days' advance notice of the date and time the levying officer will open the safe-deposit box and seize the contents thereof, and the judgment creditor shall be entitled to be present at that time.

(g) 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) Refusal to permit access to the safe-deposit box by the person in whose name it stands.
- (3) Removal of any of the contents of the safe-deposit box pursuant to the levy.

(h) If the levying officer removes any property from the safe-deposit box to satisfy the levy, but allows other property to remain in the safe-deposit box, the execution lien is released automatically with respect to any property that remains in the safe-deposit box.

SEC. 10. Section 700.160 of the Code of Civil Procedure is amended to read:

700.160. (a) Except as provided in subdivision (b), a deposit account or safe-deposit box standing in the name of a person other than the judgment debtor, either alone or together with third persons, is not subject to levy under Section 700.140 or 700.150 unless the legal process served on the third party includes a court order authorizing the levy.

(b) A court order is not required to levy on a deposit account or safe-deposit box standing in the name of any of the following:

(1) The judgment debtor, whether alone or together with third persons.

(2) The judgment debtor's spouse or registered domestic partner, whether alone or together with other persons, provided an affidavit is delivered to the financial institution at the time of levy showing that person is the judgment debtor's spouse or registered domestic partner.

(3) A fictitious business name, provided a copy of an unexpired statement certified in accordance with Section 17926 of the Business and Professions Code is delivered to the financial institution at the time of levy, the fictitious business name statement does not list any person other than the judgment debtor, the judgment debtor's spouse or the judgment debtor's registered domestic partner as the person or persons doing business under the fictitious business name, and, if a person other than the judgment debtor is listed in the statement, an affidavit stating that the other person is the judgment debtor's spouse or registered domestic partner is delivered to the financial institution at the time of the levy.

(4) The additional name of a judgment debtor listed on the legal process pursuant to an affidavit of identity as provided by Section 680.135, whether alone or together with third persons.

(c) In any case where a deposit account in the name of a person other than the judgment debtor, whether alone or together with the judgment debtor, is levied upon, the financial institution shall not pay to the levying officer the amount levied upon until being notified to do so by the levying officer. The levying officer may not require the financial institution to pay the amount levied upon until the expiration of 15 days after service of notice of levy on the third person.

SEC. 11. Section 701.030 of the Code of Civil Procedure is amended to read:

701.030. (a) At the time of service of a copy of the legal process on a third person, the levying officer shall request the third person to give the levying officer a garnishee's memorandum containing the information required by this section. Within 10 days after the legal process is served, the third person shall mail or deliver the garnishee's memorandum to the levying officer whether or not the levy is effective.

(b) The garnishee's memorandum shall be executed under oath and shall contain the following information, as applicable:

(1) A description of any property of the judgment debtor sought to be levied upon that is not delivered to the levying officer and the reason for not delivering the property.

(2) A description of any property of the judgment debtor not sought to be levied upon that is in the possession or under the control of the third person at the time of levy.

(3) A statement of the amount and terms of any obligation to the judgment debtor sought to be levied upon that is due and payable and is not paid to the levying officer, and the reason for not paying the obligation.

(4) A statement of the amount and terms of any obligation to the judgment debtor sought to be levied upon that is not due and payable at the time of levy.

(5) A statement of the amount and terms of any obligation to the judgment debtor at the time of levy not sought to be levied upon.

(6) A description of claims and rights of other persons to the property or obligation levied upon that are known to the third person and the names and addresses of those other persons.

(7) A statement that the garnishee holds neither any property nor any obligations in favor of the judgment debtor.

(c) If a garnishee's memorandum is received from the third person, the levying officer shall retain a copy and promptly mail or deliver a copy of the memorandum to the judgment creditor.

(d) Except as provided in subdivisions (e) and (f), if a third person does not give the levying officer a garnishee's memorandum within the time provided in subdivision (a), or does not provide complete information, the third person may, in the court's discretion, be required to pay the costs and reasonable attorney's

fees incurred in any proceedings to obtain the information required in the garnishee's memorandum.

(e) Notwithstanding subdivision (a), when the levy is made upon a deposit account or upon property in a safe-deposit box, the financial institution need not give a garnishee's memorandum to the levying officer if the financial institution fully complies with the levy and, if a garnishee's memorandum is required, the garnishee's memorandum needs to provide information with respect only to property that is carried on the records available at the office or branch where the levy is made provided that if a levy has been served at a central location designated by a financial institution in accordance with Section 684.115, the garnishee's memorandum shall apply to all offices and branches of the financial institution except to the extent acceptance of the levy at those central locations is limited pursuant to paragraph (3) of subdivision (a) of Section 684.115.

(f) Notwithstanding subdivision (a), the third person need not give a garnishee's memorandum to the levying officer if both of the following conditions are satisfied:

(1) The third person has delivered to the levying officer all of the property sought to be levied upon.

(2) The third person has paid to the levying officer the amount due at the time of levy on any obligation to the judgment debtor that was levied upon, and there is no additional amount that thereafter will become payable on the obligation levied upon.

(g) The garnishee may electronically transmit the garnishee's memorandum to the levying officer pursuant to Chapter 2 (commencing with Section 263) of Title 4 of Part 1.

SEC. 12. Section 703.570 of the Code of Civil Procedure is amended to read:

703.570. (a) The hearing on the motion shall be held not later than 30 days from the date the notice of motion was filed with the court unless continued by the court for good cause.

(b) Not less than 10 days prior to the hearing, the judgment creditor shall serve a notice of the hearing and a copy of the notice of opposition to the claim of exemption on the claimant and on the judgment debtor, if other than the claimant. Service shall be made personally or by mail.

SEC. 13. Section 1450 of the Financial Code is amended to read:

1450. Notice to any bank of an adverse claim (the person making the adverse claim being hereafter called “adverse claimant”) to a deposit standing on its books to the credit of or to personal property held for the account of any person shall be disregarded, and the bank, notwithstanding the notice, shall honor the checks, notes, or other instruments requiring payment of money by or for the account of the person to whose credit the account stands and on demand shall deliver that property to, or on the order of, the person for whose account the property is held, without any liability on the part of the bank; subject, however, to the exceptions provided in subdivisions (a) and (b):

(a) If an adverse claimant delivers to the bank at the office at which the deposit is carried or at which the property is held an affidavit of the adverse claimant stating that of the adverse claimant’s own knowledge the person to whose credit the deposit stands or for whose account the property is held is a fiduciary for the adverse claimant and that the adverse claimant has reason to believe the fiduciary is about to misappropriate the deposit or the property, and stating the facts on which the claim of fiduciary relationship and the belief are founded, the bank shall refuse payment of the deposit and shall refuse to deliver the property for a period of not more than three court days (including the day of delivery) from the date that the bank received the adverse claimant’s affidavit, without liability on its part and without liability for the sufficiency or truth of the facts alleged in the affidavit.

(b) If at any time, either before, after, or in the absence of the filing of an affidavit by the adverse claimant, the adverse claimant procures and serves upon the bank at the office at which the deposit is carried or at which the property is held a restraining order, injunction, or other appropriate order against the bank from a court of competent jurisdiction in an action in which the adverse claimant and all persons in whose names the deposit stands or for whose account the property is held are parties, the bank shall comply with the order or injunction, without liability on its part.

(c) This section shall be applicable even though the name of the person appearing on the bank’s books to whose credit the deposit stands or for whose account the property is held is modified by a qualifying or descriptive term such as “agent,” “trustee,” or other

word or phrase indicating that the person may not be the owner in his or her own right of the deposit or property.

(d) Nothing in the California Multiple-Party Accounts Law contained in Part 2 (commencing with Section 5100) of Division 5 of the Probate Code limits the applicability of this section.

(e) For purposes of this section, the term “office at which the deposit is carried” shall mean the branch, office, or other location where the account containing the subject deposit is carried or maintained.

(f) Notwithstanding subdivisions (a) and (b), if a central location has been designated by the bank pursuant Section 684.115 of the Code of Civil Procedure for service of legal process, as that term is defined in Section 684.110 of the Code of Civil Procedure, the adverse claimant shall serve a notice of adverse claim or related affidavit, order, injunction, or other order contemplated herein at the central location. If a central location has not but should have been designated by the bank pursuant Section 684.115 of the Code of Civil Procedure for service of legal process, as that term is defined in Section 684.110 of the Code of Civil Procedure, the adverse claimant may serve a notice of adverse claim or related affidavit, order, injunction, or other order contemplated herein at any branch or office of the institution located in this state.

SEC. 14. Section 1620 of the Financial Code is amended to read:

1620. Notice to a bank operating a safety deposit department or to a company conducting a safety deposit business of an adverse claim (the person making the adverse claim being hereafter in this section called “adverse claimant”) to any personal property in a safe-deposit box maintained by a bank or company and rented to any person, or to any personal property held by the bank or company in safekeeping or storage for any person shall be disregarded, and the bank or company, notwithstanding such notice, shall permit access to the box to the person to whom it is rented or shall deliver the contents thereof to or on the order of the person or shall deliver the property held in storage or safekeeping to or on the order of the person for whom it is held, without any liability on the part of the bank or company; subject, however, to the exceptions provided in subdivisions (a) and (b) of this section:

(a) If an adverse claimant delivers to the bank at the office at which the safe-deposit box is maintained or the property is held

his or her affidavit stating that of his or her own knowledge the person in whose name the box stands or for whom the property is held is a fiduciary for the adverse claimant and that he or she has reason to believe that fiduciary is about to misappropriate the contents of the box or the property, and stating the facts upon which the claim of fiduciary relationship and the belief are founded, the bank or company shall refuse access to the safe-deposit box or refuse to deliver the personal property for a period of not more than three court days (including the day of delivery) from the date that the bank or company received the adverse claimant's affidavit, without liability on its part and without liability for the sufficiency or truth of the facts alleged in the affidavit.

(b) If at any time, either before, after, or in the absence of the filing of an affidavit by the adverse claimant, the adverse claimant procures and serves upon the bank or company at the office at which the safe-deposit box is maintained or the property is held a restraining order, injunction, or other appropriate order against the bank or company from a court of competent jurisdiction in an action in which the adverse claimant and all persons in whose names the box stands or for whom the property is held are parties, the bank or company shall comply with that order or injunction, without liability on its part.

(c) The provisions of this section shall be applicable even though the name of the person appearing on the bank's or company's books as the renter of the box or as the depositor of the property held in storage or safekeeping is modified by a qualifying or descriptive term such as "agent," "trustee," or other word or phrase indicating that the person may not be the owner in his or her own right of the contents of the box or of the property held in storage or safekeeping.

(d) Before giving access to any safe-deposit box, the bank or company may demand payment to it of all costs and expenses of opening the safe-deposit box and all costs and expenses of repairing any damage to the safe-deposit box caused by the opening thereof.

(e) Notwithstanding subdivisions (a) and (b), if a central location has been designated by the bank pursuant Section 684.115 of the Code of Civil Procedure for service of legal process, as that term is defined in Section 684.110 of the Code of Civil Procedure, the adverse claimant shall serve a notice of adverse claim or related affidavit, order, injunction, or other order contemplated herein at

the central location. If a central location has not but should have been designated by the bank pursuant Section 684.115 of the Code of Civil Procedure for service of legal process, as that term is defined in Section 684.110 of the Code of Civil Procedure, the adverse claimant may serve a notice of adverse claim or related affidavit, order, injunction, or other order contemplated herein at any branch or office of the institution located in this state.

SEC. 15. Section 1755 of the Unemployment Insurance Code is amended to read:

1755. (a) If any person or employing unit is delinquent in the payment of any contributions, penalties, or interest provided for in this division, the director may, not later than three years after the payment became delinquent or within 10 years after the last entry of a judgment under Article 5 (commencing with Section 1815) or within 10 years after the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, collect the delinquency or enforce any liens by levy served either personally or by first-class mail, to all persons having in their possession or under their control any credits or personal property belonging to the delinquent person or employing unit, or owing any debts to the person or employing unit at the time of the receipt of the notice of levy or coming into their possession or under their control for the period of one year from the time of receipt of the notice of levy. Any person upon whom a levy has been served having in his or her possession or under his or her control any credits or personal property belonging to the delinquent person or employing unit or owing any debts to the person or employing unit at the time of the receipt of the levy or coming into his or her possession or under his or her control for the period of one year from the time of receipt of the notice of levy, shall surrender the credits or personal property to the director or pay to the director the amount of any debt owing the delinquent employer within five days of service of the levy, and shall surrender the credits or personal property, or the amount of any debt owing to the delinquent employer coming into his or her possession or under his or her control within one year of receipt of the notice of levy within five days of the date of coming into possession or control of the credits or personal property, or the amount of any debt owing to the delinquent employer is incurred. Any person in possession of any credits or personal property or owing any debts to the

delinquent person or employing unit who surrenders the credits or personal property or pays the debts owing the delinquent person or employing unit shall be discharged from any obligation or liability to the delinquent person or employing unit with respect to the credits or personal property surrendered or debts paid to the director.

(b) (1) If the levy is made on a deposit or credits or personal property in the possession or under the control of a financial institution the notice of levy shall be served on that financial institution at the same location as legal process is required to be served pursuant to Section 684.115 of the Code of Civil Procedure, and the levy will apply to all credits or personal property in the deposit account only at the time that notice of levy is received by the financial institution.

(2) For purposes of this section:

(A) “Deposit account” has the same meaning as in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code.

(B) “Financial institution” has the same meaning as in Section 481.113 of the Code of Civil Procedure.

(C) “Legal process” has the same meaning as in Section 482.070 of the Code of Civil Procedure.

SEC. 16. Section 1755.1 of the Unemployment Insurance Code is amended to read:

1755.1. (a) In order to implement Section 1755, the department may serve notice to an address for any financial institution, as defined in Section 481.113 of the Code of Civil Procedure, by means of magnetic media, electronic transmission, or other electronic technology.

(b) For purposes of this section, the term “address” shall mean a telephone or modem number, facsimile machine, or any other reference number designated by the financial institution to receive data by electronic means.











Approved \_\_\_\_\_, 2012

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*Governor*