

Introduced by Senator Gaines

February 22, 2013

An act to amend ~~Section~~ *Sections 683.140 and 699.510* of the Code of Civil Procedure, relating to enforcement of judgments.

LEGISLATIVE COUNSEL'S DIGEST

SB 551, as amended, Gaines. ~~Writs of execution~~ *Renewal and execution of judgments*: judgment debtor.

Existing law provides that the period of enforceability of a money judgment or a judgment for possession or sale of property may be extended by renewal of the judgment upon application by the judgment creditor to the court in which the judgment was entered. Existing law requires that the application for renewal of the judgment be executed under oath and include, along with other items, the name and address of the judgment creditor and the name and last known address of the judgment debtor.

Existing law requires that, after entry of a money judgment, a writ of execution be issued by the clerk of the court upon application by the judgment creditor, and directed to the levying officer in the county where the levy is to be made and to any registered process server. *Existing law requires that the writ of execution be issued in the name of the judgment debtor as listed on the judgment.*

This bill would ~~authorize~~ *require* the judgment creditor to omit the name of a judgment debtor from the application for *renewal of the judgment and the application for a writ of execution* if the liability of that judgment debtor has ceased with regard to the judgment. ~~The bill would specify the conditions upon which a judgment debtor's liability~~

would be deemed to have ceased for this purpose, which would include the judgment debtor obtaining a discharge of the judgment pursuant to specified federal bankruptcy statutes or the judgment creditor filing an acknowledgment of satisfaction of judgment with regard to the judgment debtor, as specified.

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

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

1 SECTION 1. Section 683.140 of the Code of Civil Procedure
2 is amended to read:

3 683.140. The application for renewal of the judgment shall be
4 executed under oath and shall include all of the following:

5 (a) The title of the court where the judgment is entered and the
6 cause and number of the action.

7 (b) The date of entry of the judgment and of any renewals of
8 the judgment and where entered in the records of the court.

9 (c) The name and address of the judgment creditor and the name
10 and last known address of the judgment debtor. *However, the*
11 *judgment creditor shall omit the name of a judgment debtor from*
12 *the application for a writ of execution if the liability of that*
13 *judgment debtor has ceased with regard to the judgment, including*
14 *either of the following occurrences:*

15 (1) *The judgment debtor has obtained a discharge of the*
16 *judgment pursuant to Title 11 of the United States Code and notice*
17 *thereof has been filed with the court.*

18 (2) *The judgment creditor files an acknowledgment of*
19 *satisfaction of judgment with regard to the judgment debtor*
20 *pursuant to Chapter 1 (commencing with Section 724.010) of*
21 *Division 5.*

22 (d) In the case of a money judgment, the information necessary
23 to compute the amount of the judgment as renewed. In the case of
24 a judgment for possession or sale of property, a description of the
25 performance remaining due.

26 ~~SECTION 1.~~

27 SEC. 2. Section 699.510 of the Code of Civil Procedure is
28 amended to read:

29 699.510. (a) Subject to subdivision (b), after entry of a money
30 judgment, a writ of execution shall be issued by the clerk of the

1 court, upon application of the judgment creditor, and shall be
2 directed to the levying officer in the county where the levy is to
3 be made and to any registered process server. The clerk of the
4 court shall give priority to the application for, and issuance of,
5 writs of execution on orders or judgments for child support and
6 spousal support. A separate writ shall be issued for each county
7 where a levy is to be made. Writs may be issued successively until
8 the money judgment is satisfied, except that a new writ may not
9 be issued for a county until the expiration of 180 days after the
10 issuance of a prior writ for that county unless the prior writ is first
11 returned.

12 (b) If the judgment creditor seeks a writ of execution to enforce
13 a judgment made, entered, or enforceable pursuant to the Family
14 Code, in addition to the requirements of this article, the judgment
15 creditor shall satisfy the requirements of any applicable provisions
16 of the Family Code.

17 (c) (1) The writ of execution shall be issued in the name of the
18 judgment debtor as listed on the judgment ~~and~~, *except that the*
19 *judgment creditor shall omit the name of a judgment debtor from*
20 *the application for a writ of execution if the liability of that*
21 *judgment debtor has ceased with regard to the judgment, including*
22 *either of the following occurrences:*

23 (A) *The judgment debtor has obtained a discharge of the*
24 *judgment pursuant to Title 11 of the United States Code and notice*
25 *thereof has been filed with the court.*

26 (B) *The judgment creditor files an acknowledgment of*
27 *satisfaction of judgment with regard to the judgment debtor*
28 *pursuant to Chapter 1 (commencing with Section 724.010) of*
29 *Division 5.*

30 (2) *The writ of execution shall include the additional name or*
31 *names, and the type of legal entity, by which the judgment debtor*
32 *is known, as set forth in the affidavit of identity, as defined in*
33 *Section 680.135, filed by the judgment creditor with the application*
34 *for issuance of the writ of execution. Prior to the clerk of the court*
35 *issuing a writ of execution containing any additional name or*
36 *names by which the judgment debtor is known that are not listed*
37 *on the judgment, the court shall approve the affidavit of identity.*
38 *If the court determines, without a hearing or a notice, that the*
39 *affidavit of identity states sufficient facts upon which the judgment*
40 *creditor has identified the additional names of the judgment debtor,*

1 the court shall authorize the issuance of the writ of execution with
2 the additional name or names.

3 ~~(2)~~

4 (d) In any case where the writ of execution lists any name other
5 than that listed on the judgment, the person in possession or control
6 of the levied property, if other than the judgment debtor, shall not
7 pay to the levying officer the amount or deliver the property being
8 levied upon until being notified to do so by the levying officer.
9 The levying officer may not require the person, if other than the
10 judgment debtor, in possession or control of the levied property
11 to pay the amount or deliver the property levied upon until the
12 expiration of 15 days after service of notice of levy.

13 ~~(3)~~

14 (e) If a person who is not the judgment debtor has property
15 erroneously subject to an enforcement of judgment proceeding
16 based upon an affidavit of identity, the person shall be entitled to
17 the recovery of reasonable attorney’s fees and costs from the
18 judgment creditor incurred in releasing the person’s property from
19 a writ of execution, in addition to any other damages or penalties
20 to which an aggrieved person may be entitled to by law, including
21 Division 4 (commencing with Section 720.010).

22 ~~(d) The judgment creditor may omit the name of a judgment
23 debtor from the application for a writ of execution if the liability
24 of that judgment debtor has ceased with regard to the judgment.
25 For purposes of this subdivision, a judgment debtor’s liability has
26 ceased with regard to a judgment if, before the writ of execution
27 is issued, either of the following occur:~~

28 ~~(1) The judgment debtor files a petition in bankruptcy pursuant
29 to Title 11 of the United States Code, and the bankruptcy court
30 grants an automatic stay or a discharge that applies to the judgment.~~

31 ~~(2) The judgment creditor files an acknowledgment of
32 satisfaction of judgment with regard to the judgment debtor
33 pursuant to Chapter 1 (commencing with Section 724.010) of
34 Division 5.~~