AMENDED IN SENATE JULY 21, 1995

AMENDED IN SENATE JULY 14, 1995

AMENDED IN ASSEMBLY MARCH 30, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL No. 1515

Introduced by Assembly Member Kuehl
(Coauthors: Senators Mello and Solis)

February 24, 1995

An act to amend Sections 708.730 and 708.780 of the Code of Civil Procedure, relating to family law.

LEGISLATIVE COUNSEL'S DIGEST

AB 1515, as amended, Kuehl. Support: enforcement.

(1) Provisions of law operative until January 1, 1994, specified a procedure for the collection of a support judgment where the judgment debtor is a creditor of a state agency on a claim for refund for taxes or as a result of winnings in the California State Lottery, whereby the judgment creditor could file with the court an abstract or a certified copy of the judgment, together with a specified request, affidavit, and proof of service, as provided. Under these procedures, the Controller was authorized to deduct from the income tax refunds and lottery winnings the amount due the judgment creditor.

~~This bill would require the State Department of Social Services to report to the Legislature regarding the use and effect of these provisions on or before December 31, 2000.~~

This bill would *revise these procedures and also* provide that these procedures shall again be operative on January 1, 1996, but shall become inoperative on December 31, 2000. The bill would impose a state-mandated local program by increasing the duties of the court clerk.

This bill would require the State Department of Social Services, upon request, to report to the Legislature regarding the use and effect of these provisions on or before December 31, 2000.

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

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

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

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

1 SECTION 1. Section 708.730 of the Code of Civil
2 Procedure is amended to read:
3 708.730. (a) If money is owing and unpaid to the
4 judgment debtor by a public entity, the judgment
5 creditor may file, in the manner provided in this article,
6 an abstract of the money judgment or a certified copy of
7 the money judgment, together with an affidavit that
8 states that the judgment creditor desires the relief
9 provided by this article and states the exact amount then
10 required to satisfy the judgment. The judgment creditor
11 may state in the affidavit any fact tending to establish the
12 identity of the judgment debtor.
13 (b) Promptly after filing the abstract or certified copy
14 of the judgment and the affidavit with the public entity,

the judgment creditor shall serve notice of the filing on the judgment debtor. Service shall be made personally or by mail.

(c) If the judgment is for support and related costs and money is owing and unpaid to the judgment debtor by a state agency, including, but not limited to, money owing and unpaid to the judgment debtor by a state agency on a claim for refund from the Franchise Tax Board under the Personal Income Tax Law, Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code, or the Bank and Corporation Tax Law, Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code, and the district attorney is enforcing the support obligation pursuant to Section 11475.1 of the Welfare and Institutions Code, the claim may be submitted as follows: The district attorney may file the affidavit referred to in subdivision (a) without filing an abstract or certified copy of the judgment. In lieu thereof, the affidavit shall also state that an abstract of the judgment could be obtained. Where there is more than one judgment debtor, the district attorney may include all the judgment debtors in a single affidavit. Separate affidavits need not be submitted for each judgment debtor. The affidavit need not on its face separately identify each judgment debtor or the exact amount required to satisfy the judgment, so long as it incorporates by reference forms or other automated data transmittals, as required by the State Department of Social Services, which contain this information. Affidavits submitted pursuant to this subdivision by the district attorney shall meet the standards and procedures prescribed by the state agency to which the affidavit is submitted, except that those affidavits submitted with respect to moneys owed and unpaid to the judgment debtor as a result of a claim for refund from the Franchise Tax Board under the Personal Income Tax Law, Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code, or the Bank and ~~Corporations~~ *Corporation* Tax Law, Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code, shall meet

the standards and procedures prescribed by the Franchise Tax Board.

In serving the notice required by subdivision (b), the Director of the State Department of Social Services or his or her designee may act in lieu of the judgment creditor as to judgments enforced under this division.

(d) If the judgment is for child, spousal, or family support and related costs and money is owing and unpaid to the judgment debtor by a state agency on a claim for refund from the Franchise Tax Board under the Personal Income Tax Law, Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code, or the Bank and Corporation Tax Law, Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code, or as a result of the judgment debtor's winnings in the California State Lottery, the judgment creditor may file with the court an abstract or a certified copy of the judgment ordering the payment of child, spousal, or family support, together with a request that the court issue a Notice of Support Arrearage, as provided in Section 708.780, to which any personal income tax refunds and lottery winnings owed the judgment debtor by the State of California will be subject. The request shall be accompanied by an affidavit, signed under penalty of perjury, which shall state that the judgment creditor desires the relief provided by this subdivision and shall state the exact amount then required to satisfy the judgment. In addition, the affidavit shall specify the beginning and ending dates of all periods during which the arrearage for support occurred, specify the arrearage for each month, and state that the support is at least 90 days overdue or is overdue in an amount equal to 90 days of support. It shall also certify that the child or children are not recipients, and during the period for which payment is requested, were not recipients, of Aid to Families with Dependent Children and there was no assignment to a state or county agency of support and shall certify on information and belief that there is not current or past action by a district attorney pending for

support or support enforcement on the judgment creditor's behalf.

The request shall have attached a proof of service showing that copies of the request, the affidavit, and the abstract or certified copy of the judgment ordering the payment of support have been served on the judgment debtor and the district attorney of the county in which the support judgment is entered. Service shall be by certified mail, postage prepaid, return receipt requested, to the last known address of the party to be served, or by personal service.

This subdivision does not apply in any instance in which a district attorney initiated or participated as counsel in the action for support or if support is required to be paid through a district attorney's office.

The State Department of Social Services shall*, upon request,* inform the Legislature of the use and effect of this subdivision on or before December 31, 2000.

This subdivision shall become operative on January 1, 1996, and shall become inoperative on December 31, 2000.

(e) For purposes of this section, ''support'' means an obligation owing on behalf of a child, spouse, or family, or combination thereof.

SEC. 2. Section 708.780 of the Code of Civil Procedure is amended to read:

708.780. (a) Filing of the abstract or certified copy of the judgment and the affidavit pursuant to this article creates a lien on the money owing and unpaid to the judgment debtor by the public entity in an amount equal to that which may properly be applied to the satisfaction of the money judgment under this article.

(b) When an affidavit is filed pursuant to subdivision (c) of Section 708.730, it shall apply to all claims for refund from the Franchise Tax Board under the Personal Income Tax Law, Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code, or the Bank and Corporation Tax Law, Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code, which the judgment debtor subsequently claims

during a period one year after filing of the affidavit, or October 1 of the year following the filing of the affidavit, whichever occurs later, the same as if claims for these overpayments were filed by the judgment debtor with the appropriate state agency on the date the affidavit was filed.

(c) When a request is filed pursuant to subdivision (d) of Section 708.730 with the court, the clerk of the court shall issue a Notice of Support Arrearage. The clerk of the court shall issue the notice 30 days after the request was filed pursuant to subdivision (d) of Section 708.730 without a hearing if no objection has been raised by the judgment debtor pursuant to this subdivision. If an objection has been raised, the notice shall not be ordered until after a hearing. The notice shall contain the name of the person ordered to pay support and his or her social security number; the amount of the arrearage determined by the court; whether the arrearage is for child, spousal, or family support and the specific combination thereof; a statement of how the recipient may challenge the statement of arrearage; and the name, address, and social security number of the person to whom the arrearage is owed. Upon the clerk of the court issuing the Notice of Support Arrearage, a copy of the request, the affidavit, and the notice shall be served by the party who requested the court to issue the Notice of Support Arrearage upon the person ordered to pay support and the Controller. Service may be personal, in accordance with Section 1011, or by mail, in accordance with Section 1013. Service upon the Controller shall be at the Controller's office in Sacramento.

The judgment debtor may object to the request or affidavit upon any of the following grounds: (1) there is an error in the amount of the arrearage stated in the affidavit; (2) the alleged judgment debtor is not the judgment debtor from whom the support is due; (3) the amount to be intercepted exceeds that allowable under federal law; (4) a default in payment of the support for 30 days has not occurred; or (5) other necessary factual allegations contained in the affidavit are erroneous.

Upon receipt of the Notice of Support Arrearage, the Controller shall take reasonable measures to deduct from any personal income tax refunds and lottery winnings owed and processed for payment to the judgment debtor and deposit with the court a warrant, subject to Sections 708.770 and 708.775, with service of a copy of the warrant upon the district attorney of the county in which the support judgment is entered, payable to the court, the amount due the judgment creditor (after deducting an amount sufficient to reimburse the state for any amounts advanced to the judgment debtor or owed by the judgment debtor to the state) required to satisfy the money judgment as shown by the affidavit in full or to the greatest extent, and pay the balance thereof, if any, to the judgment debtor. At any hearing pursuant to Section 708.770, the judgment debtor may challenge the distribution of these funds on exemption or other grounds, including, but not limited to, an allegation that the judgment has been satisfied or that service was improper. The notice shall not apply to any money which is exempt by law from execution. The Controller shall determine the cost of enforcing the notice and may establish a notice filing fee not to exceed five dollars ($5).

Service of the Notice of Support Arrearage and of the request and affidavit pursuant to this subdivision creates a lien on the money owing and unpaid to the judgment debtor which shall become effective 30 days following service upon the Controller. This notice shall remain in effect for four years from the date of its issuance or until the arrearage for which the notice was issued is satisfied, whichever occurs first.

Any person who files a request with the court to issue a Notice of Support Arrearage pursuant to subdivision (d) of Section 708.730 shall notify the court and the Controller of any satisfaction of the arrearage after the Notice of Support Arrearage has been issued by the clerk of the court. The notice to the court and the Controller shall be filed with the court and the Controller and served upon the district attorney of the county in which the support judgment is entered within 30 days of the satisfaction or

discharge and shall show a partial or full satisfaction of the arrearage or any other resolution of the arrearage.

Upon filing and service, the Notice of Support Arrearage shall be of no force and effect.

The State Department of Social Services shall*, upon request,* inform the Legislature of the use and effect of this subdivision on or before December 31, 2000.

This subdivision shall become operative on January 1, 1996, and shall become inoperative on December 31, 2000.

(d) For purposes of this section, ‘‘support’’ means an obligation owing on behalf of a child, spouse, or family, or combination thereof.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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