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AB-1119 Enforcement of judgments. (2023-2024)

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Assembly Bill No. 1119

CHAPTER 562

An act to amend Sections 708.110 and 708.170 of, and to add section 708.111 to, the Code of Civil Procedure, and to amend Section 70617 of the Government Code, relating to civil actions.

[Approved by Governor October 08, 2023. Filed with Secretary of State October 08, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1119, Wicks. Enforcement of judgments.

Existing law permits a judgment creditor to apply to the court for an order requiring the judgment debtor, or another person who is in possession and control of property of the judgment debtor, to appear before the court to provide information to aid in the enforcement of a money judgment, as specified. Existing law requires the judgment creditor to personally serve a copy of that order on the judgment debtor not less than 10 days before the date set for the examination. Existing law permits the court to issue a warrant for the arrest of, a warrant to compel the attendance of, and may hold in contempt, a judgment debtor who fails to appear in response to such an order.

This bill would extend the notice of the examination required to be given to the judgment debtor to not less than 30 days before the examination. The bill would authorize a judgment debtor in a case involving consumer debt, as defined, to serve a financial affidavit signed under penalty of perjury, as specified, and file with the court a notice of financial affidavit and proof of service in lieu of appearing for the examination. If the judgment debtor files the notice and proof of service, the bill would require the court to cancel the financial examination unless the judgment creditor files, under oath, as specified, a notice of motion for an order determining the need for the debtor to appear for a debtor's examination. If the judgment creditor files such a notice of motion in a timely manner, the bill would require the court to decide, either on the pleadings or through a hearing, whether the judgment debtor must appear for a debtor's examination, as provided. By expanding the scope of the crime of perjury, the bill would impose a state-mandated local program.

This bill would also prohibit a court from issuing a warrant for the arrest of a judgment debtor in a case concerning consumer debt based on the judgment debtor's failure to appear or failure to file a judgment debtor's financial affidavit. In these circumstances, the bill would authorize the court to issue an order to show cause to determine whether a warrant to compel the judgment debtor's attendance should be issued, which the judgment debtor could satisfy by filing a judgment debtor's financial affidavit described above. The bill would require the Judicial Council to create and update its forms to reflect these changes.

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.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 708.110 of the Code of Civil Procedure is amended to read:

708.110. (a) The judgment creditor may apply to the proper court for an order requiring the judgment debtor to appear before the court, or before a referee appointed by the court, at a time and place specified in the order, to furnish information to aid in enforcement of the money judgment.

(b) If the judgment creditor has not caused the judgment debtor to be examined under this section during the preceding 120 days, the court shall make the order upon ex parte application of the judgment creditor.

(c) If the judgment creditor has caused the judgment debtor to be examined under this section during the preceding 120 days, the court shall make the order if the judgment creditor by affidavit or otherwise shows good cause for the order. The application shall be made on noticed motion if the court so directs or a court rule so requires. Otherwise, it may be made ex parte.

(d) The judgment creditor shall personally serve a copy of the order on the judgment debtor not less than 30 days before the date set for the examination. Service shall be made in the manner specified in Section 415.10. Service of the order creates a lien on the personal property of the judgment debtor for a period of one year from the date of the order unless extended or sooner terminated by the court.

(e) Except as provided in section 708.111, the order shall contain the following statement in 14-point boldface type if printed or in capital letters if typed: "NOTICE TO JUDGMENT DEBTOR. If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court and the court may make an order requiring you to pay the reasonable attorney's fees incurred by the judgment creditor in this proceeding."

SEC. 2. Section 708.111 is added to the Code of Civil Procedure, to read:

708.111. (a) This section applies to an application pursuant to Section 708.110 by a judgment creditor with a judgment concerning a consumer debt awarded on or after January 1, 2025.

(b) "Consumer debt" as used in this Section means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes. Consumer debt does not include debts incurred due to, or obtained by tortious or fraudulent conduct or judgments for unpaid wages, damages, or penalties owed to an employee. Consumer debt does not include rental debt, which means unpaid rent or other unpaid financial obligation of a tenant under the tenancy that has come due.

(c) Notwithstanding subdivision (e) of Section 708.110, if the order issued pursuant to section 708.110 requires a judgment debtor to appear in a case concerning consumer debt, as indicated by the judgment creditor in the application and order for appearance and examination, the order shall be accompanied by the Judicial Council form containing the list of exemptions from the enforcement judgments adopted pursuant to Section 681.030 and the notice of financial affidavit and financial affidavit forms adopted by the Judicial Council pursuant to subdivision (h). The order shall contain the following statement in 14-point boldface type if printed or in capital letters if typed: "NOTICE TO JUDGMENT DEBTOR. If you fail to appear at the time and place specified in this order, the court may make an order requiring you to pay the reasonable attorney's fees and costs incurred by the judgment creditor in this proceeding. Instead of appearing at the examination, you may file a notice of judgment debtor's financial affidavit in a form prescribed by the court and signed under penalty of perjury and serve copies of all filed documents and the financial affidavit on the judgment creditor no later than 15 days prior to the date set for the examination."

(d) If the judgment debtor in a case concerning consumer debt states in a financial affidavit, signed under penalty of perjury, that all of their income and assets are exempt, and files with the court a notice of financial affidavit with a proof of service, the court shall cancel the examination and provide notice of cancellation to the parties. If copies of the financial affidavit are not timely served or the notice and proof of service are not timely filed with the court, the court shall not cancel the examination.

(1) Within 15 days after the filing of the notice and proof of service of the financial affidavit, a judgment creditor who objects to the affidavit shall file with the court a notice of motion for an order determining the need for the debtor to appear for a debtor's examination. If the notice of motion is not timely filed with the court, the debtor's examination shall remain canceled.

(2) The notice of motion for an order determining the need for a debtor to appear for a debtor's examination shall include a declaration executed under oath and include a statement of facts showing good cause why a debtor's examination is necessary notwithstanding the debtor's financial affidavit. In an action in which the consumer debt is secured by real property or personal property, a showing of good cause is established when the plaintiff demonstrates that the debtor has not provided the plaintiff with accurate information regarding the location or condition of the security, the status of insurance on the security, or the status of the taxes due on the security.

(3) The judgment creditor shall file and serve the motion described in paragraph (1) pursuant to Section 1005 and the hearing shall be held pursuant to the same section.

(4) The financial affidavit and motion for an order determining the need for a debtor to appear for a debtor's examination, as well as any pleading filed in support of the motion and any reply by the judgment debtor, shall constitute the pleadings, subject to the power of the court to permit amendments in the interest of justice.

(5) If no other evidence is offered, the court, if satisfied that sufficient facts are shown by the financial affidavit and the notice of motion, may make its determination thereon. If not satisfied, the court shall order the hearing continued for the production of other oral or documentary evidence.

(6) At the conclusion of the hearing, the court shall determine by order whether the judgment debtor shall appear for a debtor's examination. If the judgment debtor is ordered to appear, the judgment creditor shall schedule the time and place of the examination with the court. There shall be no filing fee for the judgment creditor to refile the application and order for appearance and examination for the rescheduled exam. The judgment creditor is not required to serve the application and order by personal service, but may serve them by mail or electronic service at least 30 days before the date set for examination, pursuant to Sections 1013 and 1010.6.

(7) If the examination is canceled because the judgment creditor does not object or for another reason, the judgment creditor shall not file another application and order for appearance and examination until one year from the date of the prior filed application and order for appearance and examination.

(e) The financial affidavit shall include the following information:

(1) The number of people relying on the judgment debtor for support, including spouse, dependents, and other household members.

(2) Gross monthly income from employment, including withholdings and take home pay.

(3) Total monthly income from all sources other than employment.

(4) Property owned, including cash, bank accounts, real estate equity, vehicles (e.g., cars, motorcycles, and boats), jewelry, securities, certificates of deposit, entity ownership, life insurance policies, and tax refunds.

(5) Itemized monthly expenses.

(6) Any outstanding debts, including balance owed and to whom.

(7) Any other facts which support the claim of exemption.

(f) In a case concerning consumer debt in which the judgment debtor claims property is exempt pursuant to law exempting property to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor, the financial affidavit shall also include the following information. The financial affidavit shall also be signed under penalty of perjury by the spouse of the judgment debtor, unless the spouses are living separate and apart.

(1) The name of the spouse of the judgment debtor.

(2) The age and relationship of all persons dependent upon the judgment debtor or the spouse of the judgment debtor for support.

(3) All sources and the amounts of earnings and other income of the spouse and dependents of the judgment debtor.

(4) A list of the assets of the spouse and dependents of the judgment debtor and the value of such assets.

(5) All outstanding debts of the spouse and dependents of the judgment debtor.

(g) A judgment debtor in a case concerning consumer debt who elects to file a financial affidavit in lieu of appearing before the court for an examination shall serve a copy of all filed documents on the judgment creditor no later than 15 days prior to the date set for the examination.

(h) The Judicial Council shall adopt a notice of financial affidavit form and a financial affidavit form and revise any existing forms as necessary to implement the requirements of this section.

(i) Notwithstanding Section 708.170, 1209, or 1993, or any other applicable law or court rule, for a case involving consumer debt:

(1) No warrant for arrest or to appear shall be issued for a judgment debtor in a case concerning consumer debt who fails to appear for an examination under this section or to file and serve the judgment debtor's financial affidavit. In such cases, the court shall issue an order to show cause to determine whether to issue a warrant to compel the attendance of the judgment debtor.

(2) The court shall provide a judgment debtor who is ordered to appear pursuant to an order to show cause described in paragraph (1) with a reasonable opportunity to complete and file a judgment debtor's financial affidavit described in subdivision (e). The warrant to compel the attendance of the judgment debtor shall be satisfied by the judgment debtor's appearance or the filing of a notice of financial affidavit and proof of service pursuant to subdivision (d) certifying that the notice and financial affidavit was served on the judgment creditor.

SEC. 3. Section 708.170 of the Code of Civil Procedure is amended to read:

708.170. (a) If an order requiring a person to appear for an examination under subdivision (e) of Section 708.110 was served by a sheriff, marshal, a person specially appointed by the court in the order, or a registered process server, and the person fails to appear:

(1) The court may do either of the following:

(A) Pursuant to a warrant, have the person brought before the court to answer for the failure to appear and may punish the person for contempt.

(B) Issue a warrant for the arrest of the person who failed to appear as required by the court order, pursuant to Section 1993.

(2) If the person's failure to appear is without good cause, the judgment creditor shall be awarded reasonable attorney's fees incurred in the examination proceeding. Attorney's fees awarded against the judgment debtor shall be added to and become part of the principal amount of the judgment.

(b) A person who willfully makes an improper service of an order for an examination which subsequently results in the arrest pursuant to subdivision (a) of the person who fails to appear is guilty of a misdemeanor.

SEC. 4. Section 70617 of the Government Code is amended to read:

70617. (a) Except as provided in subdivisions (d) and (e), the uniform fee for filing a motion, application, or any other paper requiring a hearing subsequent to the first paper, is sixty dollars (\$60). Papers for which this fee shall be charged include the following:

(1) A motion listed in paragraphs (1) to (12), inclusive, of subdivision (a) of Section 1005 of the Code of Civil Procedure.

(2) A motion or application to continue a trial date.

(3) An application for examination of a third person controlling defendant's property under Section 491.110 or 491.150 of the Code of Civil Procedure.

(4) Discovery motions under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure.

(5) A motion for a new trial of a civil action or special proceeding.

(6) An application for an order for a judgment debtor examination under Section 708.110 or 708.160 of the Code of Civil Procedure.

(7) An application for an order of sale of a dwelling under Section 704.750 of the Code of Civil Procedure.

(8) An ex parte application that requires a party to give notice of the ex parte appearance to other parties.

(9) A motion for an order determining the need for a debtor to appear for a debtor's examination under Section 708.111 of the Code of Civil Procedure.

(b) There shall be no fee under subdivision (a) or (c) for filing any of the following:

(1) A motion, application, demurrer, request, notice, or stipulation and order that is the first paper filed in an action and on which a first paper filing fee is paid.

(2) An amended notice of motion.

(3) A civil case management statement.

(4) A request for trial de novo after judicial arbitration.

(5) A stipulation that does not require an order.

(6) A request for an order to prevent civil harassment.

(7) A request for an order to prevent domestic violence.

(8) A request for entry of default or default judgment.

(9) A paper requiring a hearing on a petition for emancipation of a minor.

(10) A paper requiring a hearing on a petition for an order to prevent abuse of an elder or dependent adult.

(11) A paper requiring a hearing on a petition for a writ of review, mandate, or prohibition.

(12) A paper requiring a hearing on a petition for a decree of change of name or gender.

(13) A paper requiring a hearing on a petition to approve the compromise of a claim of a minor.

(c) The fee for filing the following papers not requiring a hearing is twenty dollars (\$20):

(1) A request, application, or motion for, or a notice of, the continuance of a hearing or case management conference. The fee shall be charged no more than once for each continuance. The fee shall not be charged if the continuance is required by the court.

(2) A stipulation and order.

(3) A request for an order authorizing service of summons by posting or by publication under Section 415.45 or 415.50 of the Code of Civil Procedure.

(d) The fee for filing a motion for summary judgment or summary adjudication of issues is five hundred dollars (\$500).

(e) (1) The fee for filing in the superior court an application to appear as counsel pro hac vice is five hundred dollars (\$500). This fee is in addition to any other fee required of the applicant. Two hundred fifty dollars (\$250) of the fee collected under this paragraph shall be transmitted to the state for deposit into the State Court Facilities Construction Fund, established in Section 70371. The remaining two hundred fifty dollars (\$250) of the fee shall be transmitted to the state for deposit into the Trial Court Trust Fund, established in Section 68085.

(2) An attorney whose application to appear as counsel pro hac vice has been granted shall pay to the superior court, on or before the anniversary of the date the application was granted, an annual renewal fee of five hundred dollars (\$500) for each year that the attorney maintains pro hac vice status in the case in which the application was granted. The entire fee collected under this paragraph shall be transmitted to the state for deposit into the Trial Court Trust Fund, established in Section 68085.

(3) Fees imposed by this subdivision shall be waived when the applicant is an attorney representing a tribe in a child welfare matter under the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

(f) Regardless of whether each motion or matter is heard at a single hearing or at separate hearings, the filing fees required by subdivisions (a), (c), (d), and (e) apply separately to each motion or other paper filed. The Judicial Council may publish rules to give uniform guidance to courts in applying fees under this section.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.