

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 1200 (Skinner)
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Hearing Date: April 19, 2022
Fiscal: Yes
Urgency: No
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SUBJECT

Enforcement of judgments: renewal and interest

DIGEST

This bill restricts the renewal of money judgments to those pursuant to which a lien has been created. The bill reduces the interest rate applied to certain outstanding money judgments and extends the period of time within which a judgment debtor can move to vacate or modify a renewal.

EXECUTIVE SUMMARY

A judgment creditor has 10 years in which to enforce a money judgment. However, this period of enforceability may be extended by filing an application for renewal of the judgment with the court in which the judgment was entered. The filing of the application renews the judgment and extends the period of enforceability for a period of 10 years. The judgment debtor is provided 30 days within which to make a motion to vacate or modify the renewal. While a money judgment is outstanding, interest accrues at the rate of 10 percent per annum on the principal amount outstanding, in addition to any fees and penalties charged by the original creditor.

In response to concerns in California, as well as across the nation, that this legal structure is burying consumers in debt and incentivizing judgment creditors to sit on judgments rather than collect in a timely fashion, the bill limits the ability to renew money judgments to only those judgments to which a lien has been created, reduces the interest that accrues on certain outstanding money judgments, and increases the period of time within which a debtor has to respond to a notice of renewal.

This bill is sponsored by the East Bay Community Law Center. It is supported by community and legal services groups, including Centro Legal de la Raza. The bill is opposed by a variety of groups, including the California Association of Collectors, Encore Capital Group, and the Association of Certified Family Law Specialists.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Defines “judgment creditor” as a person in whose favor a judgment is rendered. (Code Civ. Proc. § 680.240.)
- 2) Defines “judgment debtor” as a person against whom a judgment is rendered. (Code Civ. Proc. § 680.250.)
- 3) Defines “money judgment” as that part of a judgment which requires the payment of money. (Code Civ. Proc. § 680.270.)
- 4) Provides for enforceability of judgments in a civil action, including money judgements. (Code Civ. Proc. § 681.010.)
- 5) Provides that upon the expiration of 10 years after the date of entry of a money judgment or a judgment for possession or sale of property the judgment may not be enforced; all enforcement procedures shall cease; and any lien created by an enforcement procedure pursuant to the judgment is extinguished. (Code Civ. Proc. § 683.020.)
- 6) Authorizes the extension of the period of enforceability of a money judgment or a judgment for possession or sale of property by renewal of the judgment as provided. A judgment shall not be renewed if the application for renewal is filed within five years from the time the judgment was previously renewed. (Code Civ. Proc. § 683.110.)
- 7) Allows the judgment creditor to renew a judgment by filing an application for renewal with the court in which the judgment was entered. The filing of the application renews the judgment in the amount determined under Section 683.150 and extends the period of enforceability of the judgment as renewed for a period of 10 years from the date the application is filed. In the case of a money judgment payable in installments, for the purposes of enforcement and of any later renewal, the amount of the judgment as renewed shall be treated as a lump-sum money judgment entered on the date the application is filed. (Code Civ. Proc. § 683.120.)
- 8) Provides that in the case of a lump-sum money judgment or a judgment for possession or sale of property, the application for renewal of the judgment may be filed at any time before the expiration of the 10-year period of enforceability or, if the judgment is a renewed judgment, at any time before the expiration of the 10-year period of enforceability of the renewed judgment. It also provides timelines for money judgments payable in installments. (Code Civ. Proc. § 683.130.)

- 9) Provides the legal requirements for the contents of an application for renewal, attendant fees, the vacation or modification of a renewal, and the service of notice of renewal. The notice must inform the judgment debtor that they have 30 days to move to vacate or modify the renewal. (Code Civ. Proc. §§ 683.140-683.170.)
- 10) Provides that interest accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied. The Legislature reserves the right to lower that rate of interest at any time. A change in the rate of interest may be made applicable only to the interest that accrues after the operative date of the statute that changes the rate. (Code Civ. Proc. § 685.010.)

This bill:

- 1) Limits the ability to renew money judgments to only those pursuant to which a lien has been created and such renewal is limited to renewing the lien.
- 2) Extends the period within which a judgment debtor can move to vacate or modify a renewal to 60 days.
- 3) Reduces the interest that accrues on money judgments entered in favor of public entities and those related to personal debt or personal credit to a rate of three percent per annum on the principal amount of the relevant money judgment remaining unsatisfied.
- 4) Defines “personal debt” and “personal credit” to mean money, property, or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a transaction in which a natural person acquires property, services, or money on credit for personal, family, or household purposes.

COMMENTS

1. Money judgments in California

Pursuant to the Enforcement of Judgments Law, Code of Civil Procedure section 680.010 et seq., a “money judgment” is that part of a judgment which requires the payment of money. A “judgment creditor” is the person in whose favor a judgment is rendered, and a “judgment debtor” is the person against whom a judgment is rendered.

When a money judgment is entered in a court of this state, the judgment creditor has 10 years in which to enforce such judgment. However, this period of enforceability may be extended by filing an application for renewal of the judgment with the court in which the judgment was entered. This may be done no sooner than five years after the initial judgment, but no later than ten years thereafter. The filing of the application renews the

judgment and extends the period of enforceability of the judgment as renewed for a period of 10 years from the date the application is filed. Interest accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied.

The judgment creditor is required to serve a notice of renewal of the judgment on the judgment debtor, and that service shall be made personally or by first-class mail and proof of service shall be filed with the court clerk. The notice must be in a form prescribed by the Judicial Council and shall inform the judgment debtor that they have 30 days within which to make a motion to vacate or modify the renewal.

In response, the judgment debtor may apply by noticed motion for an order of the court vacating the renewal of the judgment. The renewal may be vacated on any ground that would be a defense to an action on the underlying judgment, including the ground that the amount of the renewed judgment as entered is incorrect. The judgment debtor is required to serve notice of the motion on the judgment creditor.

The law provides a number of different mechanisms that judgment creditors can use to try to collect the money they are owed from the judgment debtors. For example, a judgment creditor can have a lien imposed on any property that the judgment debtor owns. (Code Civ. Proc. § 697.010 *et seq.*) A judgment creditor can arrange to have the money taken out of the judgment debtor's financial accounts through a bank levy. (Code Civ. Proc. § 700.140 *et seq.*) A judgment creditor can also arrange to have some of the judgment debtor's wages garnished for purposes of satisfying the debt owed. (Code Civ. Proc. § 706.010 *et seq.*)

2. The burdens of indefinite renewal and exorbitant interest rates

Concerns have been raised across the country about the impact state laws governing money judgments have on debtors, especially low-income consumers. The focus is on several components: the interest rate that applies to such judgments, often in addition to other fees and interest already applied by creditors; the procedural protections granted debtors in connection with money judgments and attendant renewals; and the renewability of such judgments, sometimes indefinitely:

Post-judgment interest is a feature of the nation's complex debt collection system that has increasingly become a hotly contested battleground for creditors, loan buyers, and consumer advocates. The underlying judgments are often bought and sold by debt collectors who in many cases have the power to seize the wages and put liens on property of consumers, who sometimes only learn a judgment has been made against them years after a loan balance has started ballooning at a high interest rate.

In some states, consumer advocates have successfully pushed post-judgment interest rates lower, while in other states the debt collection industry has fought to maintain higher rates. As a result, where a debt collection judgment is entered can play a large role in whether it ticks up modestly or grows substantially. In states like New Jersey, the post judgment rate is as low as 1.5%, while in other states, like Massachusetts, rates are as high as 12%. In federal court, judgments are assessed at the one-year treasury constant maturity rate.¹

In California, as discussed above, money judgments are subject to an interest rate of ten percent, placing it on the higher extreme in the country. For reference, the one-year treasury constant maturity rate is only slightly above one percent. Legal aid attorneys representing debtors argue it is low-income consumers who most often face such debt collection actions. They assert that the high interest rates often result in the debt ballooning, making it nearly impossible for these debtors to pay them off, and resulting in some declaring bankruptcy.

At its core, the purpose of charging interest on money judgments is to compensate the judgment creditor for the loss of the use of the underlying funds and to incentivize judgment debtors to pay off the judgment amount promptly.²

However, such a balancing of interests is arguably off kilter when the interest rate automatically placed on judgments is set well above market rates, especially in the context of consumer debts:

[I]n many states, the current post-judgment interest rate is a vestige of a different era, a time when interest rates were broadly much higher. These abnormally high rates have the potential of creating a windfall for creditors and a mismatch between the rate at which a judgment grows and the return rate of any savings or investment vehicle a consumer might reasonably use today to raise money to pay the judgment.³

Other states have recently addressed such gross discrepancies, including New York:

¹ Jillian Berman, *'I was barely making ends meet already and worrying about garnishment from your check – it's scary.'* *How post-judgment interest became the new debt collection battleground* (December 15, 2021) MarketWatch, <https://www.marketwatch.com/story/i-was-barely-making-ends-meet-already-and-worrying-about-garnishment-from-your-checkits-scary-how-post-judgment-interest-became-the-new-debt-collection-battleground-11639575950>. All internet citations are current as of April 12, 2022.

² Christine Abely, *Adjusting Pre- and Post-Judgment Interest Rates for Consumer Debt Collection Actions*, 88 Tennessee Law Review 219 (2020). *See also, Hess v. Ford Motor Company* (2002) 27 Cal. 4th 516, 533 (pre-judgment interest).

³ *See* Note 1.

In 2021, the New York legislature enacted groundbreaking regulatory reform to reduce the pre- and post-judgment interest rates on consumer debt judgments. The legislature recognized how significantly out of step the 9 percent statutory rate was in the record low interest rate environment. It lowered that rate from 9 percent to 2 percent.⁴

Courts have also noted the gross discrepancy in this state for years:

[I]t appears to have escaped legislative notice that, over the past two decades, a large disparity has developed between the legal rate of interest and market returns on conservative investments. The legal rate of interest in section 685.010 of the Code of Civil Procedure was enacted during a period of double-digit interest rates. Since then there has been a major deflationary recession in the early 1990's and, at this writing, a number of interest rates are at lows that haven't been seen since the 1960's. For most of the past decade, for example, passbook savings accounts and money market accounts have paid less than 2 percent. . . . To put the relationship between market rates of interest and the legal rate another way: For more than a decade now, it has been more profitable to leave a judgment uncollected and let the interest mount up for a while than immediately collect it--assuming, of course, that the judgment debtor is good for it when the judgment creditor tries to collect it.⁵

In fact, the California Constitution specifically provides a ceiling on the rate of interest that accrues upon a money judgment, which is the level set in Section 685.010, ten percent:

The rate of interest upon a judgment rendered in any court of this state shall be set by the Legislature at not more than 10 percent per annum. Such rate may be variable and based upon interest rates charged by federal agencies or economic indicators, or both.

In the absence of the setting of such rate by the Legislature, the rate of interest on any judgment rendered in any court of the state shall be 7 percent per annum.⁶

Therefore, the interest rate could not be higher constitutionally. For reference, the one-year treasury yield approached 13 percent when this section of the Constitution was last amended.

⁴ Karuna Patel, *Dismantling Unjust Interest Rates for Debt Collection Judgments* (March 30, 2022) The Regulatory Review, <https://www.theregreview.org/2022/03/30/patel-dismantling-unjust-interest-rates-for-debt-collection-judgments/>.

⁵ *In re Marriage of Cordero*, 95 Cal. App. 4th 653, 658 (2002).

⁶ Cal. Const, art. XV, § 1.

Exacerbating these issues in California is the fact that money judgments can be renewed after five years, and be renewed indefinitely. Upon renewal, the accrued interest is added to the principal, creating a new principal amount that is thereafter accruing interest at ten percent. That means a creditor can essentially continue to compound the interest every five to ten years and continue to do this forever.

In response, this bill reduces the interest that accrues on certain money judgments, those entered in favor of public entities and those related to personal debt or personal credit, from the current rate of ten percent to three percent per annum on the principal amount remaining unsatisfied. "Personal debt" and "personal credit" mean money, property, or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a transaction in which a natural person acquires property, services, or money on credit for personal, family, or household purposes. In addition, the bill restricts the ability to renew money judgments to only those pursuant to which a lien has already been created and such renewal is limited to renewing the lien.

The author makes the case:

At the end of 2021, 61% of the U.S. population was living paycheck to paycheck. For families in that circumstance, an unexpected medical bill, car repair or the rising costs of basic goods can start a spiral of falling behind on credit card, loan or other payments. Under current California law, If the debt ends up in court, the interest rate on a court ordered debt payment is 10%, an amount additional to any interest that may have been accrued on the original debt.

SB 1200 seeks to provide relief to financially burdened Californians and increase their ability to pay off personal debt by reducing the interest rate a civil court can order on such debt from 10% to 3%, and removing unlimited renewals of personal debt judgments.

The bill also extends the period within which a judgment debtor can move to vacate or modify a renewal to 60 days. This allows more time for a debtor, who may not even remember the original debt or money judgment, to present their case.

There are concerns that including all judgments entered in favor of public entities fails to be supported by the noble policy goals asserted. For instance, a large corporation that owes a massive judgment to the state for polluting a river should not benefit from these changes. In addition, there were some concerns from groups that the category for personal debt was also insufficiently narrow and that three percent was too low. A coalition of groups, including the California Association of Collectors, and the California Chamber of Commerce, argue that "[s]eeking post-judgment interest is a valid, court-approved remedy if a creditor is awarded a judgement, and SB 1200 slashes the post-judgment

interest rate by 70%, from the current 10% to 3%, for judgments related to personal debt or personal credit." They assert:

It is critical to maintain creditors' ability to collect valid post judgement interest, so that California continues to be a state where creditors who have extended money and have not been repaid are able to recoup the outstanding debt owed to them. Without the ability to recoup valid debt obligations, and the costs associated with those obligations, creditors will inevitably pass along those costs to consumers by raising the cost of credit.

In response, the author has agreed to the following amendments that narrow the judgments eligible for a reduced interest rate. In addition, the author has agreed to tie the interest rate to the federal prime rate in order to have it move more freely with the economy as a whole. The federal prime rate will be the rate of interest only on money judgments entered against natural persons that arise from that person's personal debt and that amount to no more than \$50,000. In addition, this same rate will apply to \$200,000 worth of medical debt. The interest rates on these judgments will be capped at five percent. It will not be limited to any specified creditors, but will continue to include money judgments arising from personal debt in favor of public entities.

Amendment

Amend Section 685.010(a)(2) to read as follows:

(A) Except in the case of a money judgment involving a finding of fraud or elder abuse, interest accrues at the federal prime rate as it stood on December 31 of the year prior to the entry of judgment, with a maximum of 5 percent per annum, on the principal amount of a money judgment remaining unsatisfied that is entered against a debtor in a claim related to medical expenses under \$200,000 or to personal debt under \$50,000, which includes, but is not limited to, a claim based on any of the following transactions:

- (i) An agreement governing the use of a credit card as defined in subdivision (a) of Section 1747.02 of the Civil Code.
- (ii) A conditional sale contract as defined in subdivision (a) of Section 2981 of the Civil Code.
- (iii) A deferred deposit transaction as defined in subdivision (a) of Section 23001 of the Financial Code.

(B) For purposes of this paragraph, the following definitions apply:

- (i) "Debtor" means a natural person from whom money is due or owing or alleged to be due or owing.
- (ii) "Personal debt" means money due or owing or alleged to be due or owing from a natural person arising out of a transaction in which the money, property,

insurance, or services which are the subject of the transaction are primarily for the debtors personal, family, or household purposes.

3. Stakeholder positions

Centro Legal de la Raza explains their support:

Californians are already struggling under immense financial pressure. With unceasing student debt burdens, uncertain employment, lack of affordable childcare, and exploding housing costs, families are struggling to get ahead. These hardships have only been compounded by the last two years with a once-in-a-lifetime global pandemic which caused an inequitable economic recovery and a cascade of geopolitical and geoeconomical disasters.

We know there are many barriers that can prevent someone from realizing financial stability. A decade is long enough to enforce a judgment. It's time to allow people to move forward with their lives and have the opportunity to start fresh without the costs and resources of bankruptcy.

Housing and Economic Rights Advocates supports the bill because it "seeks to provide relief to financially burdened Californians and increase their ability to pay off personal and credit card debt over time."

Writing in opposition, the California Credit Union League argues:

SB 1200 will limit a creditor if they have not obtained a lien on some property under the original judgement during the 10 year enforcement period by not allowing the renewal of the judgement. The second limitation that is being proposed is the renewal is "limited to only the purpose of renewing the lien." In other words, a renewed judgment merely renews existing judgment liens. It appears the renewal will not allow a creditor to find new property upon which to impress a judgment lien. Creditors often renew judgements because if the judgment debtor acquires real property during the period of the renewed judgment the abstract lien will attach to the newly purchased property.

CCUL feels that these changes to the abstract lien process will encourage debtors to "run out the clock" and wait until the lien expires after 10 years. The entire lien process, especially renewing after 10 years, is costly for creditors so it is reserved for higher dollar debts. The reduction in interest from 10% down to 3% is a significant change as well which will directly impact the dollars recovered by the creditor.

Bay Area Legal Aid offers a different experience. In its work, BayLegal finds “many of these assembly-line debt collection lawsuits are for balances of less than \$10,000, and many are under \$5,000 or even \$2,000. Debt collectors file these cases in order to obtain judgments, nearly two-thirds of the time by default,⁷ with as little time and effort as possible.” BayLegal explains its support:

A decade is long enough to enforce a judgment. Already vulnerable Californians who have been unable to pay a judgment within 10 years should not face a permanent, ever-growing barrier to financial stability. Debt collectors should not be permitted to treat the economic well-being of judgment debtors as a commodity—to sit on suspect judgments for more than a decade only to wipe out earnings and savings the minute the debtor begins to recover.

The Association of Certified Family Law Specialists writes in opposition:

SB 1200 changes exiting law regarding renewal of money judgments and interest that runs on such judgments. The bill appears aimed at providing relief from continuing accrual of interest through a series of judgment renewals. While this might be intended to provide relief for personal and consumer debts, and thereby lessen the burden of long-term debt, this bill will have an immediate, collateral effect of limiting rights afforded to recipients of child support, spousal support, and other monetary awards under the Family Code. ACFLS opposes this bill unless it is amended to address its impact on family law litigants.

However, others write in support for precisely this outcome. The Felony Murder Elimination Project writes:

Reducing the interest rate for low-income families' child support debt will have more than just a financial impact. Studies show that accruing child support debt prevents family engagement, and results in noncustodial parents having less contact with their children.

Please reverse the harmful and racist impact of this backward policy, and better support low-income families, particularly low-income families of color. Reducing the interest rate on government-owed child support arrears from 10 percent to 3 percent would tremendously help low-income parents struggling to support their children. It would show California's

⁷ Julia Barnard, et al., *Court System Overload The State of Debt Collection in California after the Fair Debt Buyer Protection Act* (October 2020) Center for Responsible Lending, <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-california-debt-oct2020.pdf>.

commitment to reducing child poverty by getting out of the way of parents supporting their children, instead of the current practice of fleecing low-income families with an excessive interest rate.

The impact on child support judgments is particularly nuanced. One issue is that many low-income custodial parents are required to sign over their child support rights to the government when they are receiving public assistance. There is a pass through to the custodial parent, but a large amount of child support payments never makes it to families but is instead directed to various government coffers. A recent article, *California Keeps Millions In Child Support While Parents Drown In Debt*, delved into the issue:

When custodial parents – in most cases, mothers – apply for government aid such as CalWorks, they must sign away their rights to child support they are already receiving to the government in repayment. That money, once considered private funds between two individuals, is now reclassified as public child support, collectible by the state to repay their aid.

The state continues to pass only a portion of the now-public child support to the mother and siphons off the rest, which advocates say is often a nasty surprise to both parents.

“Parents who have their child support taken by the state feel like they have to choose between supporting their children and paying their child support,” said Heather Hahn, a researcher with the Urban Institute.⁸

The 10 percent interest rate on money judgments applies to these funds and accrues regardless of whether the child support is owed to a family or to a county that has assumed the family’s right to child support. Additional penalties also attach and a parent can have their driver’s license suspended just 30 days after falling behind on payments, exacerbating their financial situation. Requiring low-income families to forfeit child support to pay back public assistance and charging this high rate of interest harms families in numerous ways, including: lowering payment rates among people who do not want to see their money go to the government instead of their children; driving noncustodial parents to exit the formal economy to avoid wage garnishment; and increasing conflict in already fraught relationships, further disconnecting children and noncustodial parents.

⁸ Kate Cimini, *California Keeps Millions In Child Support While Parents Drown In Debt* (May 3, 2021) CapRadio, <https://www.capradio.org/articles/2021/05/03/california-keeps-millions-in-child-support-while-parents-drown-in-debt/>.

It should be noted that there was a recent attempt to specifically address these issues. AB 1092 (Jones-Sawyer, 2019) would have prohibited the Department of Child Support Services and local child support agencies from collecting interest that accrues on the principal amount of child support that has been assigned to a county. This would have at least removed the application of the ten percent rate as to child support that was not going to the families in need. The bill passed the Legislature but was vetoed by Governor Newsom, who explained in his veto message that he could not support the bill because “it would lead to an estimated revenue loss of millions of dollars outside the budget process.”

SUPPORT

East Bay Community Law Center (sponsor)
Bay Area Legal Aid
Center for Responsible Lending
Centro Legal de la Raza
Community Legal Aid SoCal
Felony Murder Elimination Project
Housing and Economic Rights Advocates
Initiate Justice
Legal Services for Prisoners with Children
Root & Rebound
San Francisco Financial Justice Project
Tipping Point Community
United Way Bay Area
Western Center on Law & Poverty, Inc.

OPPOSITION

Association of Certified Family Law Specialists
California Association of Collectors
California Bankers Association
California Chamber of Commerce
California Credit Union League
California Financial Services Association
California Judgment Preservation Alliance
California Land Title Association
Encore Capital Group, Inc.
Receivables Management Association International
One individual

RELATED LEGISLATION

Pending Legislation: SB 1477 (Wieckowski, 2022), in part, sets the maximum amount of disposable earnings of a judgment debtor that is subject to levy at 10 percent of the

amount by which the individual's disposable earnings for a given week exceed 80 times the state minimum hourly wage. This bill is currently on the Senate Floor.

Prior Legislation:

SB 642 (Wieckowski, 2017) would have specified that a judgment debtor applying for an order of the court vacating a renewal of a judgment must serve notice of the motion personally or by first-class mail within three days of the application for the order. This bill died on the Assembly Floor.

SB 1117 (Walters, 2010) would have provided that pre- and post-judgment interest accrues at the federal short-term rate plus two percent, except as otherwise provided in a written contract, not to exceed ten percent per annum on judgments, as specified. The bill would have required the Controller to annually establish the interest rate, as specified. This bill died in the Senate Judiciary Committee.
