

Memorandum 75-6

Subject: Study 39.30 - Wage Garnishment

BACKGROUND

At the last meeting, the Commission approved for printing and submission to the 1975-76 Regular Session a Recommendation relating to Wage Garnishment Exemptions. The recommendation has been sent to the printer, and the proposed legislation has been introduced as Assembly Bill 90.

At the same meeting, the Commission also determined that it would submit a recommendation relating to wage garnishment procedure to the 1975-76 session. This recommendation, which is to be based on AB 101 of the last session, is the subject of this memorandum.

GENERAL POLICY DECISIONS

Wage Assignments for Support

The 1973-74 session enacted legislation to amend Section 4701 of the Civil Code (set out in Exhibit I attached) to require that the court order a wage assignment when a person is two months delinquent in support payments for a minor child. The court ordered wage assignment is good for 18 months and thereafter may be terminated upon petition by the person whose wages have been ordered to be assigned. The employer is permitted to deduct \$1 for each payment made pursuant to the order. The employer pays the amount withheld to the person to whom the support has been ordered to be paid or to a county officer designated by the court to receive such payments. Payments made to the person having custody of the minor child are made directly; they are not made through the sheriff or other levying officer as is the case with an ordinary wage garnishment.

The staff recommends that the Commission not integrate the wage assignment for support provisions into the comprehensive wage garnishment provisions being drafted. The withholding order for support was a subject of some controversy in connection with AB 101. Moreover, we expect that the wage assignment for support system will be in general operation by the time our comprehensive wage garnishment statute is enacted, and we do not believe that it would be desirable to change the whole system of wage assignments for support merely to obtain uniformity in wage garnishment procedure. Accordingly, we have drafted a comprehensive wage garnishment procedure statute that does not disturb Civil Code Section 4701 and the related sections relating to wage assignments for support. Wage assignments for support will take preference over ordinary wage garnishments as under Civil Code Section 4701. We do not give any preference to wage garnishments on judgments for delinquent support payments. This greatly simplifies the proposed legislation.

Service and Collection by Levying Officer

The major policy issue for Commission decision is raised by a letter from the Association of Municipal Court Clerks of California. This letter is attached as Exhibit II.

The suggestion of the Municipal Court Clerks Association is that legislation be proposed that would merely authorize the sheriff or other levying officer to make mail service of a writ of execution on earnings. Apparently, no other changes would be made in existing law. We assume that this proposal would not affect our recommendation to revise the wage garnishment exemptions.

An alternative proposal would be to revise AB 101 to retain its procedural improvements but to retain the role of the levying officer in making service (by mail) and in collecting the money pursuant to the earnings withholding order.

With respect to the first alternative--when the only change proposed in existing law would be to authorize the levying officer to make mail service-- the following are some of the benefits of AB 101 that would be lost:

1. Comprehensive statute. Public employee wage garnishment procedure would not be affected. This is a one-shot levy, not a continuing levy, and there are procedural problems with the existing statute, and it is unworkable as far as creditors are concerned. No reform would be made in the provisions dealing with garnishments for state tax liability.

2. Forms and instructions. AB 101 provided for a system of forms and instructions that would have helped creditors, employees, and employers comply with wage garnishment requirements in an efficient, business-like way. This benefit would be lost.

3. Service charge. AB 101 provided that the employer could make a \$1 service charge for each deduction. This benefit would be lost.

4. Delay in effective date of order. AB 101 provided for a five-day delay in the effective date of the order (10 days for the state) to avoid the need to compute the amount to be withheld for only part of a pay period and to permit the employer to process the order in a business-like way rather than having to withhold on earnings due on the date the order is received. This benefit would be lost.

5. Monthly payment. AB 101 permitted the employer to make monthly payments of withheld earnings rather than having to prepare and send a check for the withheld earnings after each payday. This benefit would be lost.

6. Protection from liability for good faith errors. AB 101 included provisions to protect the employer from civil or criminal liability for good faith errors. This benefit would be lost.

7. Wage assignments. AB 101 permitted an employee to revoke a wage assignment insofar as it relates to wages unearned at the time he revokes the assignment. This benefit would be lost.

8. Paid earnings; retirement benefits. Provisions were included in AB 101 to provide exemptions for certain amounts of paid earnings and retirement benefits. This benefit would be lost.

9. Enforcing employer compliance. AB 101 included provisions to preclude the employer and employee from deferring or accelerating the payment of earnings to defeat the creditor's rights and authorized civil actions by creditors to obtain the amounts that employers are required to withhold but fail to withhold and pay over to the creditor. This benefit would be lost.

10. Coordination with federal law. AB 101 contained provisions permitting the Judicial Council to apply for an exemption from the enforcement in California of the federal wage garnishment restrictions and otherwise provide information to federal authorities. This benefit would be lost.

11. Rules governing treatment of various types of earnings. AB 101 contained provisions requiring the Judicial Council to adopt rules governing the treatment of various types of earnings. This would permit coordination of the state law with federal interpretations of the federal law. This benefit would be lost.

12. Notice to employee of his right to exemption. AB 101 contained provisions that assured that the employee would be given a notice of the effect of the garnishment of his earnings and how he could obtain any exemption he was entitled to claim. This benefit would be lost.

13. Longer withholding period. AB 101 extended the existing 90-day withholding period to 120 days. This benefit would be lost.

14. Protection of other creditors. AB 101 contained a provision that gave other creditors an opportunity to obtain a wage garnishment that would have priority over the creditor whose wage garnishment just terminated. This benefit would be lost.

15. Simplified system for claiming exemption. AB 101 contained simplified provisions, based on Section 690.50 of the Code of Civil Procedure, that greatly simplified the procedure for claiming a hardship exemption in a wage garnishment case.

16. Other improvements. In addition to the improvements listed above, AB 101 also made a number of other improvements that are not listed.

The staff believes that the benefits outlined above demonstrate that the option of merely authorizing mail service by the levying officer would not be a desirable alternative. At the same time, the staff believes that serious consideration should be given to the revision of AB 101 to retain many of the desirable features listed above but to retain the role of the levying officer as the one to make service and to collect the money. This probably would eliminate the objections of the municipal court clerks. Possibly it would eliminate the objections of sheriffs, marshals, and constables, but that would depend--I would guess--to a considerable extent on the fee schedule provided for the levying officer.

The major problem with retaining the levying officer in the wage garnishment procedure is the cost. While we could perhaps reduce the court clerk's fee from \$5.00 to the \$2.00 fee we originally proposed in AB 101, there would be a substantial additional cost for service and collection by the levying officer even if mail service were authorized. The levying officer has a \$5.00 fee for a levy of execution. In addition, the cost of service is charged--\$1.50 if service is by certified mail (according to letter from municipal court clerks) and much higher if personal service is required. In

addition, a collection fee of one percent of the amount collected, with a minimum fee of \$1 for each collection is charged by the levying officer. At legislative hearings, representatives of the levying officers stated that the \$1 fee is not charged on each payment made to the levying officer by the employer; the fee is charged only if the total amount collected is less than \$100. We do not know if this is the general practice; the statute appears to authorize a minimum \$1 fee for each payment by the employer.

The staff believes that, if we are to provide a procedure that retains the levying officer for service and collection, the statute should provide a fee that covers all the duties of the levying officer under the statute. We would prefer a fee schedule that provides a flat fee for making the levy and serving the same, regardless of the method of service. We have included a \$6.50 fee in our draft. We would eliminate the minimum \$1 fee for collection and provide a fee of one percent of the amount collected. Perhaps the collection fee should be eliminated entirely, and the fee for all services of the levying officer fixed at \$7.50 or some greater amount. We believe that the amount of the fee is the most important consideration in determining the procedure we should provide. The cost of the levying officer for each garnishment must be weighed against the possible benefits that might exist in some wage garnishment cases if the levying officer is retained in the procedure. The staff believes that we should have some agreement with the levying officers as to the amount of the fee if we are to retain the levying officer in the procedure.

The other problem with retaining the levying officer is the delay in payment of the creditor. The staff believes that it is a highly desirable improvement to permit the employer to make monthly payments. The cost to the employer of writing checks and transmitting payments should be minimized

to the extent possible. However, when the payment is made to the levying officer rather than directly to the employer, there will be an additional delay of perhaps as much as 30 days. Not only does this delay payment to the creditor but also the judgment debtor is accruing interest costs on the unpaid judgment during the period of delay.

The major advantage of having the levying officer as the administrator of the wage garnishment system is that he will serve as an advisor to the uninformed creditor or debtor, will be a source of information to the employer, and will provide uniform administration of the statute since he will be well informed on the procedure and the forms. The judgment creditor who rarely uses wage garnishment will have to study the forms and procedure in order to make a wage garnishment if the levying officer is not involved. Also, the municipal court clerks express great concern that they would not be able to administer a wage garnishment system as proposed by AB 101.

For the convenience of the Commission, we have prepared two draft statutes which are attached to this memorandum. The draft on white pages retains the system proposed by AB 101 which does not involve the levying officer. The draft on green pages retains the desirable improvements AB 101 would have made and, in addition, would provide for service and collection by the levying officer.

When the Commission has made a decision on which approach to take, the staff suggests that we go through the statute section by section at the meeting. At the meeting, the staff would provide further background and answers to any questions that are raised concerning the provisions of the draft selected. After the January meeting, we will prepare a recommendation for consideration at the February meeting for approval for printing and submission to the 1975-76 session.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

CIVIL CODE SECTION 4701

SECTION 1. Section 4701 of the Civil Code is amended to read: 4701. (a) In any proceeding where the court has ordered either or both parents to pay any amount for the support of a minor child, the court may order either parent or both parents to assign to the county clerk, probation officer, or other officer of the court or county officer designated by the court to receive such payment, that portion of salary or wages of either parent due or to be due in the future as will be sufficient to pay the amount ordered by the court for the support, maintenance and education of the minor child. Such order shall operate as an assignment and shall be binding upon any existing or future employer of the defaulting parent upon whom a copy of such order is served. The Judicial Council shall prescribe forms for such orders. The employer may deduct the sum of one dollar (\$1) for each payment made pursuant to such order. Any such order may be modified or revoked at any time by the court. Any such assignment made pursuant to court order shall have priority as against any attachment, execution, or other assignment, unless otherwise ordered by the court. The employer shall cooperate with and provide relevant employment information to the district attorney for the purpose of enforcing the child support obligation.

(b) Notwithstanding the provisions of subdivision (a), in any proceeding where the court has ordered either or both parents to pay any amount for the support of a minor child, upon both a petition by the person to whom support has been ordered to have been paid and a finding by the court that the parent so ordered is in arrears in payment in a sum equal to the amount of two months of such payments within the 24-month period immediately preceding submission of such petition, the court shall order the defaulting parent to assign either to the person to whom support has been ordered to have been paid or to a county officer designated by the court to receive such payment, that portion of the salary or wages of the parent due or to be due in the future as will be sufficient to pay the amount ordered by the court for the support, maintenance, and education of the minor child. Such an order shall operate as an assignment and shall be binding upon any existing or future employer of the defaulting parent upon whom a copy of such order is served. The Judicial Council shall prescribe forms for such orders. The employer may deduct the sum of one dollar (\$1) for each payment made pursuant to the order. Any such assignment made pursuant to court order shall have priority as against any attachment, execution, or other assignment, unless otherwise ordered by the court.

The parent to whom support has been ordered to be paid shall notify the court and the employer of the parent ordered to pay support, by any form of mail requiring a return receipt, of any change of address within a reasonable period of time after any such change. In instances in which payments have been ordered to be made to a county officer designated by the court, the parent to whom support has been ordered to be paid shall notify the court and such county officer, by any form of mail requiring a return receipt, of any address change within a reasonable period of time after any such change. If the employer or county officer is unable to deliver payments under the assignment for a period of three months due to the failure of the person to whom support has been ordered to be paid to notify the employer or county officer of a change of address, the employee or county officer shall not make any further payments under the assignment and shall return all undeliverable payments to the employee.

For purposes of this subdivision, arrearages in payment shall be computed on the basis of the payments owed and unpaid on the date that the defaulting parent has been given notice pursuant to law of the application for the order of assignment, and the fact that the defaulting parent may have subsequently paid such arrearages shall not relieve the court of its duty under this subdivision to order the assignment.

Upon a petition by the defaulting parent, the court shall terminate such order of assignment entered pursuant to this subdivision if (1) there has been 18 continuous and uninterrupted months of full payment under the wage assignment or (2) the employer or county officer has been unable to deliver payments under the assignment for a period of three months due to the failure of the person to whom support has been ordered to be paid to notify the employer or county officer of a change of address.

(c) No employer shall use any assignment authorized by this section as grounds for the dismissal of such employee.

(d) As used in this section "employer" includes any public entity as defined in Section 811.2 of the Government Code.

(e) On declaration or affidavit of the parent to whom support has been ordered to be paid to the court that: (1) the parent ordered to make support payments is in default in such payment in the amount specified in subdivision (b), and (2) the whereabouts of such defaulting parent or the identity of his employer are unknown to the parent to whom support has been ordered to be paid, the district attorney shall contact the central registry maintained by the Department of Justice in the manner prescribed in Section 11478.5 of the Welfare and Institutions Code, and upon receiving the requested information, notify the court of the last known address of the absent parent and the name and address of the absent parent's last known employer. The court shall then order the parent obligated to make support payments to show cause why an order for assignment pursuant to subdivision (b) should not issue. The county may charge a reasonable fee not to exceed two dollars and fifty cents (\$2.50) for the services of the district attorney under this subdivision.

(f) Nothing in this section shall limit the authority of the district attorney to utilize any and all civil and criminal remedies to enforce child support obligations regardless of whether or not the custodial parent receives welfare moneys.

EXHIBIT II
THE MUNICIPAL COURT
LONG BEACH JUDICIAL DISTRICT
415 WEST OCEAN BOULEVARD
P. O. BOX 2846
LONG BEACH, CALIFORNIA 90801
ROBERT N. HOWARD
CLERK AND ADMINISTRATIVE OFFICER

December 5, 1975

California Law Revision Commission
Stanford Law School
Stanford, CA 94305

Attention: Mr. John H. DeMouilly
Executive Secretary

Reference: Proposed Wage Garnishment Law
(Formerly AB 101)

Gentlemen:

The Association of Municipal Court Clerks of California, representing the 77 municipal courts and most of the justice courts in this State, has again gone on record opposing an "AB 101" version of a Wage Garnishment Law.

The proposal has twice previously been presented to the Legislature and failed to pass. It is our understanding that the Law Revision Commission is again considering re-introducing this legislation in the 1975 Legislative Session.

Our Association has been vitally interested and concerned with effects of this proposal on the lower trial courts of the State, mainly with the confusion and confrontation the former AB 101 would have created in shifting the duties of the Marshal/Sheriff onto the Clerk's offices. There would be no protection for the debtor from dishonest and careless judgment creditors - it is frightening to think of lay people handling the debtor's wages under the proposed "Earnings Withholding Orders".

We feel the courts would be log-jammed, especially in Small Claims where most of the Judgment Creditors are lay people and usually one-time creditors. Telephone calls alone from the creditors, employers and debtors would be endless.

Our strong opinion is that the system of wage garnishments is operating efficiently well at present with the Marshal/Sheriff/Constable as levying officer, bookkeeper and buffer. The present system also provides for a continuing levy of 90 days with only the issuance of one writ. Also, all partial satisfactions and full satisfactions of levy or garnishment returns are filed immediately and correctly by the Marshal/Sheriff/Constable.

December 5, 1974

In order to continue this time honored, protective and efficient method of wage garnishments, our State Association would like to respectfully propose an alternate, modification or compromise to your Commission for consideration.

Our suggestion which is very brief and conclusive is as follows:

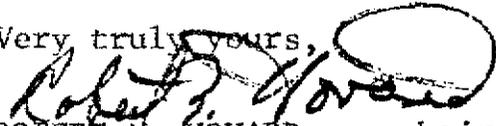
- a. Amend the present law or include in the proposed new legislation that the Marshal/Sheriff/Constable be permitted to serve Writs of Execution on Wage Garnishments by Registered or Certified Mail. These would be served only on Employers and the fees would be the \$5.00 levy fee plus \$1.50 for the certified mail, making a total cost of the levy only \$6.50. If the employer refused the service by mail (which would be rare) the writ could then be served by personal service by the Marshal, Sheriff, or Constable. The money held on garnishment would be sent directly to the levying officer who would then be in a position to make a proper return to the court in conformance with existing Section 683 CCP. Retention for a period of ten days by the levying officer would also provide an opportunity for the debtor to file his "Claim of Exemption" as provided in existing § 690.50 CCP.
- b. This modification would certainly end the alleged high costs of levy service (which incidentally in the Long Beach area only averages \$8.13 per service).
- c. The immediate filing of partial satisfactions and full satisfactions would be continued under the efficient bookkeeping procedures of the Marshal/Sheriff/Constable. Also, the 90 days continuing levy would remain in effect.

We hope the Law Revision Commission will sincerely consider this proposed modification and suggestion. While we do support your effort to minimize levy costs, we firmly believe in an approach that would insure that the debtor's interests are also protected.

We possibly might suggest that a sub-committee of the Commission be appointed to work with a sub-committee of our Association to perhaps mutually agree on a compromise. We welcome the opportunity to work with the Law Revision Commission in coming up with a practical and workable solution to this problem.

Please advise.

Very truly yours,


ROBERT N. HOWARD, co-chairman
Legislative Committee
Association of Municipal Court
Clerks of California

AMENDED IN SENATE AUGUST 5, 1974
AMENDED IN SENATE APRIL 29, 1974
AMENDED IN SENATE AUGUST 28, 1973
AMENDED IN ASSEMBLY AUGUST 13, 1973
AMENDED IN ASSEMBLY JUNE 18, 1973
AMENDED IN ASSEMBLY MAY 22, 1973
AMENDED IN ASSEMBLY APRIL 25, 1973

CALIFORNIA LEGISLATURE—1973-74 REGULAR SESSION

ASSEMBLY BILL

No. 101

Introduced by Assemblymen Warren and McAlister
(Coauthor: Senator Song)

January 18, 1973

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend ~~Section 4701 of the Civil Code, to amend~~ Sections 682, ~~683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000~~, 690.30, and 710 of, to add Sections 690.8a and 690.23 to, to add Chapter 2.5 (commencing with Section 723.010) to Title 9 of Part 2 of, and to repeal Section 682.3 of, the Code of Civil Procedure, to amend Section 300 and ~~690.6~~ of the Labor Code, to amend Sections ~~690.6~~ and 1208 of the Penal Code, and to amend Section 11489 of the Welfare and Institutions Code, relating to ~~attachment, garnishment, and execution~~ wage garnishment.

and 690.6

683,

LEGISLATIVE COUNSEL'S DIGEST

AB 101, as amended, Warren (Jud.). Attachment, garnishment, and execution.

Revises law relating to attachment, garnishment and execution, and adds new chapter to the Code of Civil Procedure regarding the protection of employees' earnings in specified situations.

Provides that neither appropriation is made nor obligation created for the reimbursement of any local agency for any costs incurred by it pursuant to the act.

Incorporates changes in Section 2929, Labor Code made by AB 1217.

Incorporates changes made in Section 4701 of the Civil Code by AB 1946 if this bill and AB 1946 are both chaptered and this bill is chaptered last.

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

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

1 ~~SECTION 1. Section 4701 of the Civil Code~~
2 ~~amended to read:~~
3 ~~4701. In any proceeding where the court has ordered~~
4 ~~a parent to pay any amount for the support, maintenance,~~
5 ~~or education of a minor child, the court may issue an~~
6 ~~earnings withholding order under Section 723.030 of the~~
7 ~~Code of Civil Procedure to require the employer of such~~
8 ~~parent to withhold and pay to the county clerk, probation~~
9 ~~officer, or other officer of the court or county officer~~
10 ~~designated by the court to receive such payment, that~~
11 ~~portion of the earnings of such parent as will be sufficient~~
12 ~~to pay the amount ordered by the court for the support,~~
13 ~~maintenance, and education of the minor child.~~
14 ~~SEC. 1.5. Section 4701 of the Civil Code is amended to~~
15 ~~read:~~
16 ~~4701. (a) In any proceeding where the court has~~
17 ~~ordered a parent to pay any amount for the support,~~
18 ~~maintenance, or education of a minor child, the court~~
19 ~~may issue an earnings withholding order under Section~~
20 ~~723.030 of the Code of Civil Procedure to require the~~

No amend-
ment of
§4701 to
be made.

1 ~~employer of such parent to withhold and pay to the~~
2 ~~county clerk, probation officer, or other officer of the~~
3 ~~court or county officer designated by the court to receive~~
4 ~~such payment, that portion of the earnings of such parent~~
5 ~~as will be sufficient to pay the amount ordered by the~~
6 ~~court for the support, maintenance and education of the~~
7 ~~minor child.~~
8 (b) Notwithstanding the provisions of subdivision (a),
9 in any proceeding where the court has ordered either or
10 both parents to pay any amount for the support of a minor
11 child, upon both a petition by the person to whom
12 support has been ordered to have been paid and a finding
13 by the court that the parent so ordered is in arrears in
14 payment in a sum equal to the amount of two months of
15 such payments within the 24-month period immediately
16 preceding submission of such petition, the court shall
17 order the defaulting parent to assign either to the person
18 to whom support has been ordered to have been paid or
19 to a county officer designated by the court to receive such
20 payment, that portion of the salary or wages of the parent
21 due or to be due in the future as will be sufficient to pay
22 the amount ordered by the court for the support,
23 maintenance, and education of the minor child. Such an
24 order shall operate as an assignment and shall be binding
25 upon any existing or future employer of the defaulting
26 parent upon whom a copy of such order is served. The
27 Judicial Council shall prescribe forms for such orders. The
28 employer may deduct the sum of one dollar (\$1) for each
29 payment made pursuant to the order. Any such
30 assignment made pursuant to court order shall have
31 priority as against any attachment, execution, or other
32 assignment, unless otherwise ordered by the court.
33 The parent to whom support has been ordered to be
34 paid shall notify the court and the employer of the parent
35 ordered to pay support, by any form of mail requiring a
36 return receipt, of any change of address within a
37 reasonable period of time after any such change. In
38 instances in which payments have been ordered to be
39 made to a county officer designated by the court, the
40 ~~parent to whom support has been ordered to be paid shall~~

No amendment
of § 4701
to be made.

1 ~~notify the court and such county officer, by any form of~~
2 ~~mail requiring a return receipt, of any address change~~
3 ~~within a reasonable period of time after any such change.~~
4 ~~If the employer or county officer is unable to deliver~~
5 ~~payments under the assignment for a period of three~~
6 ~~months due to the failure of the person to whom support~~
7 ~~has been ordered to be paid to notify the employer or~~
8 ~~county officer of a change of address, the employee or~~
9 ~~county officer shall not make any further payments~~
10 ~~under the assignment and shall return all undeliverable~~
11 ~~payments to the employee.~~

12 For purposes of this subdivision, arrearages in payment
13 shall be computed on the basis of the payments owed and
14 unpaid on the date that the defaulting parent has been
15 given notice pursuant to law of the application for the
16 order of assignment, and the fact that the defaulting
17 parent may have subsequently paid such arrearages shall
18 not relieve the court of its duty under this subdivision to
19 order the assignment.

20 Upon a petition by the defaulting parent, the court
21 shall terminate such order of assignment if (1) there has
22 been 18 continuous and uninterrupted months of full
23 payment under the wage assignment or (2) the employer
24 or county officer has been been unable to deliver
25 payments under the assignment for a period of three
26 months due to the failure of the person to whom support
27 has been ordered to be paid to notify the employer or
28 county officer of a change of address.

29 (c) No employer shall use any assignment authorized
30 by this section as grounds for the dismissal of such
31 employee.

32 (d) As used in this section "employer" includes any
33 public entity as defined in Section 811.2 of the
34 Government Code.

35 (e) On declaration or affidavit of the parent to whom
36 support has been ordered to be paid to the court that: (1)
37 the parent ordered to make support payments is in
38 default in such payment in the amount specified in
39 subdivision (b), and (2) the whereabouts of such
40 defaulting parent or the identity of his employer are

*No amendment
of § 4701 to
be made.*

1 ~~unknown to the parent to whom support has been~~
 2 ~~ordered to be paid, the district attorney shall contact the~~
 3 ~~central registry maintained by the Department of Justice~~
 4 ~~in the manner prescribed in Section 11476.5 of the~~
 5 ~~Welfare and Institutions Code, and upon receiving the~~
 6 ~~requested information, notify the court of the last known~~
 7 ~~address of the absent parent and the name and address~~
 8 ~~of the absent parent's last known employer. The court~~
 9 ~~shall then order the parent obligated to make support~~
 10 ~~payments to show cause why an order for assignment~~
 11 ~~pursuant to subdivision (b) should not issue. The county~~
 12 ~~may charge a reasonable fee not to exceed two dollars~~
 13 ~~and fifty cents (\$2.50) for the services of the district~~
 14 ~~attorney under this subdivision.~~
 15 (f) ~~Nothing in this section shall limit the authority of~~
 16 ~~the district attorney to utilize any and all civil and~~
 17 ~~criminal remedies to enforce child support obligations~~
 18 ~~regardless of whether or not the custodial parent receives~~
 19 ~~welfare money.~~

SECTION 1.

20 ~~Section 682~~ Section 682 of the Code of Civil Procedure is
 21 amended to read:

682. The writ of execution must be issued in the name of the people, sealed with the seal of the court, and subscribed by the clerk or judge, and be directed to the sheriff, constable, or marshal, and it must intelligibly refer to the judgment, stating the court, the county, and in municipal and justice courts, the judicial district, where the judgment is entered, and if it be for money, the amount thereof, and the amount actually due thereon, and if made payable in a specified kind of money or currency, as provided in Section 667, the execution must also state the kind of money or currency in which the judgment is payable, and must require the officer to whom it is directed to proceed substantially as follows:

1. If it be against the property of the judgment debtor, it must require such officer to satisfy the judgment, with interest, out of the personal property of such debtor, ~~or if it is against the earnings of such debtor, such levy shall be made in accordance with Section 682.3,~~ and if sufficient personal property cannot be found, then out of his real property; or if the judgment be a lien upon real property, then out of the real property belonging to him on the day when the abstract of judgment was filed as provided in Section 674 of this code, or at any time thereafter.

2. If it be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants, or trustees, it must require such officer to satisfy the judgment, with interest, out of such property.

3. If it be against the person of the judgment debtor, it must require such officer to arrest such debtor and commit him to the jail of the county until he pay the judgment, with interest, or be discharged according to law.

4. If it be issued on a judgment made payable in a specified kind of money or currency, as provided in Section 667, it must also require such officer to satisfy the same in the kind of money or currency in which the judgment is made payable, and such officer must refuse payment in any other kind of money or currency; and in case of levy and sale of the property of the judgment debtor, he must refuse payment from any purchaser at such sale in any other kind of money or currency than that specified in the execution. Any such officer collecting money or currency in the manner required by this chapter, must pay to the plaintiff or party entitled to recover the same, the same kind of money or currency received by him, and in case of neglect or refusal to do so, he shall be liable on his official bond to the judgment creditor in three times the amount of the money so collected.

5. If it be for the delivery of the possession of real or personal property, it must require such officer to deliver the possession of the same, describing it, to the party entitled thereto, and may at the same time require such officer to satisfy any cost, damages, rents, or profits recovered by the same judgment, out of the personal property of the person against whom it was rendered, and the value of the property for which the judgment was rendered to be specified therein if a delivery thereof cannot be had; and if sufficient personal property cannot be found, then out of the real property, as provided in the first subdivision of this section.

SEC. 2. Section 682.3 of the Code of Civil Procedure, as amended by Chapter 649 of the Statutes of 1972, is repealed.

~~682.3. (a) Whenever the levy of execution is against the earnings of a judgment debtor, the employer served with the writ of execution shall withhold the amount specified in the writ from earnings then or thereafter due to the judgment debtor and not exempt under Section 690.6, and shall pay such amount, each time it is withheld, to the sheriff, constable or marshal who served the writ. If such person shall fail to pay each amount to the sheriff, constable or marshal, the judgment creditor may commence a proceeding against him for the amounts not paid. The execution shall terminate and the person served with the writ shall cease withholding sums thereunder when any one of the following events takes place:~~

~~(1) Such person receives a direction to release from the levying officer. Such release shall be issued by the levying officer in any of the following cases:~~

(a) Upon receipt of a written direction from the judgment creditor.

(b) Upon receipt of an order of the court in which the action is pending, or a certified copy of such order, discharging or recalling the execution or releasing the property. This subdivision shall apply only if no appeal is perfected and undertaking executed and filed as provided in Section 917.8 or a certificate to that effect has been issued by the clerk of the court.

(c) In all other cases provided by law.

(2) Such person has withheld the full amount specified in the writ of execution from the judgment debtor's earnings.

(3) The judgment debtor's employment is terminated by a resignation or dismissal at any time after service of the execution and he is not reinstated or reemployed within 90 days after such termination.

(4) A period of 90 days has passed since the time such person was served with the writ of execution.

(b) At any time after a levy on his earnings the judgment debtor may proceed to claim a full exemption of his earnings in accordance with the provisions of Sections 690.6 and 690.50. The exemption so claimed shall extend to any wages withheld pursuant to the levy of execution whether or not withheld after the claim of exemption is filed.

(c) Subject to the provisions of Section 690.50, the sheriff, constable or marshal who serves the writ of execution and receives the amounts withheld from the judgment debtor's earnings, shall account for and pay to the person entitled thereto, all sums collected under the writ, less his lawful fees and expenses at least once every 30 days, and make return on collection thereof to the court.

SEC. 3. Section 683 of the Code of Civil Procedure is amended to read:

683. The execution may be made returnable, at any time not less than 10 nor more than 60 days after its receipt by the officer to whom it is directed, ~~or, if the execution is upon the earnings of the judgment debtor, upon the termination of the levy of execution as provided in Section 682.3,~~ to the court in which the judgment is entered. When the execution is returned, the clerk must attach it to the judgment roll, or the judge must make the proper entry in the docket.

If an execution is returned unsatisfied, another may be afterward issued within the time specified in this code.

If property either personal or real be levied upon under such writ of execution but the sale thereunder be

*New
amendment*

postponed beyond or not held within the return date after it is received by the officer to whom it was delivered and which has been returned to the clerk of the court in which the judgment is entered, upon request of the person in whose favor the writ runs the court may direct the clerk to redeliver said execution to the officer to whom it was directed in order to permit the officer to make an alias return of the proceedings of the sale or levy thereon as in the case of an original return of execution.

new amendment

Whenever a writ of execution issued against real property containing a dwelling house has been returned, proof that notice required by Section 682b has been served shall be indicated on the writ, or separately and attached to the writ.

~~40~~ ~~SEC. 4. Section 688 of the Code of Civil Procedure is~~

~~1 amended to read:~~

~~2 688. Except as provided in Chapter 2.5 (commencing~~

~~3 with Section 723.010):~~

~~4 (a) All goods, chattels, moneys or other property, both~~
~~5 real and personal, or any interest therein, of the~~
~~6 judgment debtor, not exempt by law, and all property~~
~~7 and rights of property seized and held under attachment~~
~~8 in the action, are subject to execution.~~

~~9 (b) Shares and interests in any corporation or~~
~~10 company, and debts and credits, and all other property,~~
~~11 both real and personal, or any interest in either real or~~
~~12 personal property, and all other property not capable of~~
~~13 manual delivery, may be levied upon or released from~~
~~14 levy in like manner as like property may be attached or~~
~~15 released from attachment, except that a copy of the~~
~~16 complaint in the action from which the writ issued need~~
~~17 not accompany the writ; provided, that no cause of action~~
~~18 nor judgment as such, nor license issued by this state to~~
~~19 engage in any business, profession, or activity shall be~~
~~20 subject to levy or sale on execution.~~

~~21 (c) Until a levy, the property is not affected by the~~
~~22 execution; but no levy shall bind any property for a longer~~
~~23 period than one year from the date of the issuance of the~~
~~24 execution, except a levy on the interests or claims of heirs,~~
~~25 devisees, or legatees in or to assets of deceased persons~~
~~26 remaining in the hands of executors or administrators,~~
~~27 thereof prior to distribution and payment. However, an~~
~~28 alias execution may be issued on said judgment and~~
~~29 levied on any property not exempt from execution.~~

*No amendment
to § 688
is to be made.*

10 ~~SEC. 4.5. Section 688 of the Code of Civil Procedure~~
11 ~~is amended to read:~~
12 ~~688. (a) Except as provided in Chapter 2.5~~
13 ~~(commencing with Section 723.010), All all goods,~~
14 ~~chattels, moneys or other property, both real and~~
15 ~~personal, or any interest therein, of the judgment debtor,~~
16 ~~not exempt by law, except as provided for in Section~~
17 ~~680.6, and all property and rights of property seized and~~
18 ~~held levied upon under attachment in the action, are~~
19 ~~liable subject to execution.~~
20 ~~(b) All property subject to execution Shares and~~

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2 interests in any corporation or company, and debts and
3 credits, and all other property, both real and personal, or
4 any interest in either real or personal property, and all
5 other property not capable of manual delivery may be
6 levied upon or released from levy in like manner as like
7 property may be attached levied upon or released from
8 attachment, except that a copy of the complaint in the
9 action from which the writ issued need not accompany
10 the writ, provided, that no cause of action nor judgment
11 as such, nor license issued by this state to engage in any
12 business, profession, or activity shall be subject to levy or
13 sale on execution. Gold dust must be returned by the
14 officer as so much money collected at its current value,
15 without exposing the same to sale tangible personal
16 property in the possession of the judgment debtor shall
17 always be levied upon in the manner provided by Section
18 488.320. Notwithstanding the provisions of Title 6.5
19 (commencing with Section 481.010), service on the
20 judgment debtor of a copy of the writ of execution shall
21 be made either by personal delivery or by mail to the
22 judgment debtor at the address furnished by the
23 judgment creditor. To levy upon any property or debt
24 owned to the judgment debtor which is subject to
25 execution but for which a method of levy of attachment
26 is not provided, the levying officer shall serve upon the
27 person in possession of such property or owing such debt
28 or his agent (1) a copy of the writ of execution and (2)
29 a notice that such property or debt is levied upon in
30 pursuance of such writ.

31 (c) Until a levy, the property is not affected by the
32 execution, but no property shall be affected by issuance
33 of a writ of execution or its delivery to the levying officer

34 (d) No levy shall bind any property for a longer period
35 than one year from the date of the issuance of the
36 execution, except a levy on the interests or claims of heirs
37 devisees, or legates in or to assets of deceased persons
38 remaining in the hands of executors or administrators
39 thereof prior to distribution and payment. However, an
40 alias execution may be issued on said judgment and
levied on any property not exempt from execution.

No amendment
to § 688 to
be made.

~~1 (c) Notwithstanding subdivision (a), no cause of
 2 action nor judgment as such, nor license issued by this
 3 state to engage in any business, profession, or activity,
 4 shall be subject to levy or sale on execution.~~

No amendment of
 § 688 is to be
 made.

4 5 ~~SEC. 5. Section 690.6 of the Code of Civil Procedure is
 6 as amended by Chapter 43 of the Statutes of 1978, is
 7 amended to read: repealed.~~

~~690.6. (a) One-half or such greater portion as is
 allowed by statute of the United States, of the earnings of
 the debtor received for his personal services rendered at
 any time within 30 days next preceding the date of a
 withholding by the employer under Section 682.3, shall
 be exempt from execution without filing a claim for
 exemption as provided in Section 690.50.~~

(b) All earnings of the debtor received for his personal
 services rendered at any time within 30 days next
 preceding the date of a withholding by the employer
 under Section 682.3, if necessary for the use of the
 debtor's family residing in this state and supported in
 whole or in part by the debtor, unless the debts are:

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(1) Incurred by the debtor, his wife, or his family for
 the common necessities of life.

(2) Incurred for personal services rendered by any
 employee or former employee of the debtor.

(c) The court shall determine the priority and division
 of payment among all of the creditors of a debtor who
 have levied an execution upon nonexempt earnings upon
 such basis as is just and equitable.

(d) Any creditor, upon motion, shall be entitled to a
 hearing in the court in which the action is pending or
 from which the writ issued for the purpose of
 determining the priority and division of payment among
 all the creditors of the debtor who have levied an
~~execution upon nonexempt earnings pursuant to this
 section.~~

5/ 15 ~~SEC. 6. Section 690.8a is added to the Code of Civil
 16 Procedure, to read:~~

17 690.8a. Earnings of the debtor which have been paid
 18 to him and are retained in the form in which paid or as
 19 cash are exempt from levy of execution to the extent they
 20 are essential for the support of the debtor or his family.

~~21 SEC. 7. Section 690.18 of the Code of Civil Procedure
 22 is amended to read:~~

~~23 690.18. (a) All money received by any person, a
 24 resident of the state, as a pension, or as an annuity or
 25 retirement or disability or death or other benefit, or as a
 26 return of contributions and interest thereon, from the
 27 United States government, or from the state, or any~~

No amendment
 to § 690.18 to
 be made.

~~28 county, city, or city and county, or other political
29 subdivision of the state, or any public trust, or public
30 corporation, or from the governing body of any of them,
31 or from any public board or boards, or from any
32 retirement, disability, or annuity system established by
33 any of them pursuant to statute, whether the same shall
34 be in the actual possession of such pensioner or
35 beneficiary, or deposited by him.~~

~~36 (b) All money held, controlled, or in process of
37 distribution by the state, or a city, city and county,
38 county, or other political subdivision of the state, or any
39 public trust or public corporation, or the governing body
40 of any of them, or by any public board or boards, derived~~

No amend-
ment to
§ 690.18
to be
made

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~~1 from the contributions by the state or such city, county,
2 city and county, or other political subdivision, or such
3 public trust, public corporation, governing body, or
4 public board or boards, or by any officer or employee
5 thereof, for retirement or pension purposes or the
6 payment of disability, death, or other benefits, or the
7 payment of benefits payable to, or the reimbursement of
8 benefits paid to, employees thereof under the provisions
9 of the Unemployment Insurance Code, and all rights and
10 benefits accrued or accruing to any person under any
11 system established pursuant to statute by the state, city,
12 city and county, county, or other political subdivision of
13 the state, or any public trust or public corporation for
14 retirement, annuity, or pension purposes or payment of
15 disability or death benefits, and all vacation credits
16 accumulated by a state employee pursuant to the
17 provisions of Section 18050 of the Government Code, or
18 any other public employee pursuant to any law for the
19 accumulation of vacation credits applicable to such
20 employee. Such moneys, benefits, and credits shall be
21 exempt without filing a claim of exemption as provided
22 in Section 690.50.~~

~~23 (c) Nothing in this section limits the applicability of
24 any exemption otherwise provided by statute.~~

6/ 25 **SEC. 1.** Section 690.23 is added to the Code of Civil
26 Procedure, to read:

27 690.23. (a) All periodic payments payable by a
28 pension or retirement plan that are not otherwise exempt
29 by law are exempt from levy of execution in the amount
30 that is exempted by Section 723.050 without filing a claim
31 for exemption as provided in Section 690.50.

32 (b) Nothing in this section limits the applicability of
33 any exemption otherwise provided by law.

7/ ~~SEC. 1~~ Section 690.50 of the Code of Civil Procedure is amended to read:

690.50. (a) If the property mentioned in Section 690.1 to 690.29, inclusive, shall be levied upon under writ of attachment or execution, the defendant or judgment debtor (herein referred to as "the debtor"), in order to avail himself of his exemption rights as to such property, shall within 20 days, in the case of real property described in Section 690.235, and 10 days, in the case of all other property, from the date such property was levied upon deliver to the levying officer an affidavit of himself or his agent, together with a copy thereof, alleging that the property levied upon, identifying it, is exempt, specifying the section or sections of this code on which he relies for his claim to exemption, and all facts necessary to support his claim, and also stating therein his address within this state for the purpose of permitting service by mail upon him of the counteraffidavit and any notice of the motion herein provided. ~~For purposes of this section, if the property levied upon consists of the earnings of a judgment debtor, each date that earnings are withheld from the judgment debtor shall be deemed to be the date such earnings were levied upon. A judgment debtor shall have the right to file a separate claim of exemption each time that a withholding of earnings occurs, provided, that if a prior claim of exemption has been adjudicated under the same levy, that each separate claim of exemption thereafter be supported by a statement under oath alleging the changed circumstances which support the new claim of exemption. If a claim of exemption be allowed, the judgment creditor shall have the right, at any time during the effective period of the claim of exemption, to move the court for consideration of the claim previously granted on the grounds of a material change of circumstances affecting the debtor's exemption rights. If the judgment creditor does make such a motion, he must support his motion by a statement under oath alleging the changed circumstances which support his motion for consideration.~~

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(b) Forthwith upon receiving the affidavit of exemption, the levying officer shall serve upon the plaintiff or the person in whose favor the writ runs (herein referred to as "the creditor"), either personally or by mail, a copy of the affidavit of exemption, together with a writing, signed by the levying officer, stating that the claim to exemption has been received and that the officer will release the property unless he receives from the creditor a counteraffidavit within 10 days after service of such writing, in the case of real property described in Section 690.235, and within five days after service of such writing, in all other cases.

(c) If the creditor desires to contest the claim to exemption, he shall, within such period of 10 days, in the case of real property described in Section 690.235, and five days, in all other cases, file with the levying officer a counteraffidavit alleging that the property is not exempt within the meaning of the section or sections of this code relied upon, or if the claim to exemption be based on Sections 690.2, 690.3, 690.4, ~~690.5~~, alleging that the value of the property claimed to be exempt is in excess of the value stated in the applicable section or sections, together with proof of service of a copy of such counteraffidavit upon the debtor.

690.8a, or
690.23,

(d) If no such counteraffidavit, with such proof of service, is so filed with the levying officer within the time allowed, the officer shall forthwith release the property.

(e) If such counteraffidavit, with such proof of service, is so filed, either the creditor or the debtor shall be entitled to a hearing in the court in which the action is pending or from which the writ issued for the purpose of determining the claim to exemption, ~~the priority or division of payment between one or more creditors from nonexempt earnings under the provision of Section 600.6~~ or the value of the property claimed to be exempt. Such hearing shall be granted by the court upon motion of either party made within five days after the counteraffidavit is filed with the levying officer, and such hearing must be had within 15 days from the date of the making of such motion unless continued by the court for good cause. The party making the motion for hearing shall give not less than five days' notice in writing of such hearing to the levying officer and to the other party, and specify therein that the hearing is for the purpose of determining the claim to exemption. The notice may be of motion or of hearing and upon the filing of the notice with the clerk of the court, the motion is deemed made.

(f) If neither party makes such motion within the time allowed, or if the levying officer shall not have been served with a copy of the notice of hearing within 10 days after the filing of the counteraffidavit, the levying officer shall forthwith release the property to the debtor.

(g) At any time while the proceedings are pending, upon motion of either party or upon its own motion, the court may (1) order the sale of any perishable property held by such officer and direct disposition of the proceeds of such sale, and (2) make such other orders as may be proper under the particular circumstances of the case. Any orders so made may be modified or vacated by the court or judge granting the same, or by the court in which the proceedings are pending, at any time during the pendency of the proceedings, upon such terms as may be just.

(h) The levying officer in all cases shall retain physical possession of the property levied upon if it is capable of physical possession, or in the case of property not capable of physical possession, the levy shall remain in full force and effect, pending the final determination of the claim to exemption. However, no sale under execution shall be had prior to such final determination unless an order of the court hearing the claim for exemption shall so provide.

(i) At such hearing, the party claiming the exemption shall have the burden of proof. The affidavits and counteraffidavits shall be filed by the levying officer with the court and shall constitute the pleadings, subject to the power of the court to permit an amendment in the interests of justice. The affidavit of exemption shall be deemed controverted by the counteraffidavit and both shall be received in evidence. Nothing herein shall be construed to deprive anyone of the right to a jury trial in any case where, by the Constitution, such right is given, but a jury trial may be waived in any such case in like manner as in the trial of an action. No findings shall be required in a proceeding under this section. When the hearing is before the court sitting without a jury, and no evidence other than the affidavit and counteraffidavit is offered, the court, if satisfied that sufficient facts are shown thereby, may make its determination thereon. Otherwise, it shall order the hearing continued for the production of other evidence, oral or documentary, or the filing of other affidavits and counteraffidavits. At the conclusion of the hearing, the court shall give judgment determining whether the claim to exemption shall be allowed or not, in whole or in part, ~~and may give judgment~~

~~determining the priority of claims of payment between one or more creditors from time to time under the provisions of Section 690.6, which judgment shall be determinative as to the right of the creditor to have the property taken and sold by the officer or to subject the property to payment or other satisfaction of his judgment. In such judgment the court shall make all proper orders for the disposition of such property or the proceeds thereof.~~

(j) A copy of any judgment entered in the trial court shall be forthwith transmitted by the clerk to the levying officer in order to permit such officer to either release the property attached or to continue to hold it to sell it, in accordance with the provisions of the writ previously delivered to him. Such officer, unless an appeal from the judgment is waived, or the judgment has otherwise become final, shall continue to hold such property under attachment or execution, continuing the sale of any property held under execution until such judgment becomes final. However, if a claim to exemption under Section 690.4 is allowed by such judgment, the debtor shall be entitled to a release of the earnings so exempted at the expiration of three days, unless otherwise ordered by the court, or unless the levying officer shall have been served with a copy of a notice of appeal from the judgment.

690.8a

(k) When any documents required hereunder are served by mail, the provisions of this code relating to service by mail shall be applicable thereto.

(l) Whenever the time allowed for an act to be done hereunder is extended by the court, written notice thereof shall be given promptly to the opposing party, unless such notice be waived, and to the levying officer.

(m) An appeal lies from any judgment under this section. Such appeal to be taken in the manner provided for appeals in the court in which the proceeding is had.

SEC. 8. Section 710 of the Code of Civil Procedure is amended to read:

710. (a) Whenever a judgment for the payment of money is rendered by any court of this state against a defendant to whom money is owing and unpaid by this state or by any county, city and county, city or municipality, quasi-municipality, district or public corporation, the judgment creditor may file a duly authenticated abstract or transcript of such judgment together with an affidavit stating the exact amount then due, owing and unpaid thereon and that he desires to avail himself of the provisions of this section in the manner as follows:

1. If such money; ~~wages or salary~~ is owing and unpaid by this state to such judgment debtor, said judgment creditor shall file said abstract or transcript and affidavit with the state department, board, office or commission owing such money; ~~wages or salary~~ to said judgment debtor prior to the time such state department, board, office or commission presents the claim of such judgment debtor therefor to the State Controller. Said state department, board, office or commission in presenting

such claim of such judgment debtor to said State Controller shall note thereunder the fact of the filing of such abstract or transcript and affidavit and state the amount unpaid on said judgment as shown by said affidavit and shall also note any amounts advanced to the judgment debtor by, or which the judgment debtor owes to, the State of California by reason of advances for expenses or for any other purpose. Thereupon the State Controller, to discharge such claim of such judgment debtor, shall pay into the court which issued such abstract or transcript by his warrant or check payable to said court the whole or such portion of the amount due such judgment debtor on such claim, after deducting from such claim an amount sufficient to reimburse the state department, board, office or commission for any amounts advanced to said judgment debtor or by him owed to the State of California, ~~and after deducting therefrom an amount equal to one-half or such greater portion as is allowed by statute of the United States, of the earnings owing to the judgment debtor for his personal services to the state rendered at any time within 30 days next preceding the filing of such abstract or transcript,~~ as will satisfy in full or to the greatest extent the amount unpaid on said judgment and the balance thereof, if any, to the judgment debtor.

2. If such money, ~~wages or salary~~ is owing and unpaid to such judgment debtor by any county, city and county, city or municipality, quasi-municipality, district or public corporation, said judgment creditor shall file said abstract or transcript and affidavit with the auditor of such county, city and county, city or municipality, quasi-municipality, district or public corporation (and in case there be no auditor then with the official whose duty corresponds to that of auditor). Thereupon said auditor (or other official) to discharge such claim of such judgment debtor shall pay into the court which issued such abstract or transcript by his warrant or check payable to said court the whole or such portion of the amount due on such claim of such judgment debtor, ~~less an amount equal to one-half or such greater portion as is allowed by statute of the United States, of the earnings of the debtor owing by the county, city and county, city, municipality, quasi/municipality, district or public corporation to the judgment debtor for his personal services to such public body rendered at any time within 30 days next preceding the filing of such abstract or transcript,~~ as will satisfy in full or to the greatest extent the amount unpaid on said judgment and the balance thereof, if any, to the judgment debtor.

(b) The judgment creditor upon filing such abstract or transcript and affidavit shall pay a fee of two dollars and fifty cents (\$2.50) to the person or agency with whom the same is filed.

(c) Whenever a court receives any money hereunder, it shall pay as much thereof as is not exempt from execution under this code to the judgment creditor and the balance thereof, if any, to the judgment debtor. The procedure for determining the claim of exemption shall be governed by the procedure set forth in Section §90.50 of this code, and the court rendering the judgment shall be considered the levying officer for the purpose of that section.

(d) In the event the moneys owing to a judgment debtor by any governmental agency mentioned in this section are owing by reason of an award made in a condemnation proceeding brought by the governmental agency, such governmental agency may pay the amount of the award to the clerk of the court in which such condemnation proceeding was tried, and shall file therewith the abstract or transcript of judgment and the affidavit filed with it by the judgment creditor. Such payment into court shall constitute payment of the condemnation award within the meaning of Section 1251 of this code. Upon such payment into court and the filing with the county clerk of such abstract or transcript of judgment and affidavit, the county clerk shall notify by mail, through their attorneys, if any, all parties interested in said award of the time and place at which the court which tried the condemnation proceeding will determine the conflicting claims to said award. At said time and place the court shall make such determination and order the distribution of the money held by the county clerk in accordance therewith.

(e) The judgment creditor may state in the affidavit any fact or facts tending to establish the identity of the judgment debtor. No public officer or employee shall be liable for failure to perform any duty imposed by this section unless sufficient information is furnished by the abstract or transcript together with the affidavit to enable him in the exercise of reasonable diligence to ascertain such identity therefrom and from the papers and records on file in the office in which he works. The word "office" as used herein does not include any branch or subordinate office located in a different city.

(f) Nothing in this section shall authorize the filing of any abstract or transcript and affidavit against: ~~(1) any wages, or salary owing to the Governor, Lieutenant Governor, Secretary of State, Controller, Treasurer, and Attorney General, or~~ ~~(2) any overpayment of tax, penalty or interest, or interest allowable with respect to such overpayment, under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code.~~

(g) Any fees received by a state agency under this section shall be deposited to the credit of the fund from

which payments were, or would be, made on account of a garnishment under this section. For the purpose of this paragraph, payments from the State Pay Roll Revolving Fund shall be deemed payments made from the fund out of which moneys to meet such payments were transferred to said revolving fund.

(h) (1) In the event the moneys owing to a judgment debtor by any governmental agency mentioned in this section are for wages or salary, the judgment creditor shall mail under a separate cover at the time of filing the affidavit with the governmental agency, in an envelope marked "Personal and Confidential", a copy of the affidavit and a Notice to Judgment Debtor as provided in paragraph (2) of this subdivision, addressed to the judgment debtor at his place of employment.

(2) The Notice to Judgment Debtor shall be in 10-point bold type, and in substantially the following form:

You may be entitled to file a claim exempting your salary or wages from execution. You may seek the advice of any attorney or may, within 10 days from the date your salary or wages were levied upon, deliver an affidavit to the court rendering the judgment to exempt such salary or wages, as provided in Section 600.50 of the Code of Civil Procedure.

(h) *This section does not authorize the withholding of earnings of a public officer or employee. The earnings of a public officer or employee may be withheld only pursuant to Chapter 2.5 (commencing with Section 723.010).*

9/ 14 SEC. 4. Chapter 2.5 (commencing with Section
15 723.010) is added to Title 9 of Part 2 of the Code of Civil
16 Procedure, to read:

17

18 CHAPTER 2.5. EMPLOYEES' EARNINGS PROTECTION
19 LAW

20

21

Article 1. Definitions

22

23 723.010. This chapter shall be known and may be
24 cited as the "Employees' Earnings Protection Law."

25 723.011. As used in this chapter:

26 (a) "Earnings" means compensation payable by an
27 employer to an employee for personal services
28 performed by such employee whether denominated as
29 wages, salary, commission, bonus, or otherwise.

30 (b) "Employee" means a public officer and any
31 individual who performs services subject to the control of
32 an employer as to both what shall be done and how it shall
33 be done.

34 (c) "Employer" means a person for whom an
35 individual performs services as an employee.

36 (d) "Judgment" includes a support order.

37 (e) "Judgment creditor" means the person in favor of
38 whom a judgment is rendered and includes his
39 representative. As applied to the state, "judgment
40 creditor" means the specific state agency seeking to

1 collect a judgment or tax liability.
 2 (f) "Judgment debtor" means the person against
 3 whom a judgment is rendered and includes a person from
 4 whom the state is seeking to collect a tax liability.
 5 (g) "Person" includes an individual, a corporation, a
 6 partnership or other unincorporated association, and a
 7 public entity.

8

9

Article 2. General Provisions

10

11 723.020. ~~The~~ earnings of an employee shall not be
 12 required to be withheld for payment of a debt by means
 13 of any judicial procedure other than pursuant to the
 14 provisions of this chapter.

15 723.021. ~~A~~ levy upon the earnings of a judgment
 16 debtor shall be made by an earnings withholding order,
 17 directed to his employer, in accordance with this chapter.

18 723.022. (a) As used in this section, "withholding
 19 period" means the period which commences on the fifth
 20 day after service of an earnings withholding order upon
 21 the employer and which continues until the first of the
 22 following dates:

- 23 (1) The 125th day after the order was served.
- 24 (2) The date of termination requested by the creditor
- 25 or ordered by the court.
- 26 (3) The date the employer has withheld the full
- 27 amount specified in the order.

28 (b) Except as otherwise provided by statute, an
 29 employer shall withhold the amounts required by an
 30 earnings withholding order from all earnings of the
 31 employee payable for any pay period of such employee
 32 which ends during the withholding period.

33 (c) Notwithstanding subdivision (b), an employer
 34 shall cease withholding pursuant to an earnings
 35 withholding order whenever he is served with a copy of
 36 a satisfaction of the judgment upon which the order is
 37 based.

38 (d) An employer is not liable for any amounts
 39 withheld and paid over to a judgment creditor pursuant
 40 to an earnings withholding order prior to service upon

Except as provided in Section 4701 of the Civil Code, the

Notwithstanding Section 688, &

1 the employer of a written notice of termination of such
2 order or a copy of a satisfaction of the judgment upon
3 which the order is based.

4 (e) For the purposes of this section, service shall be
5 deemed complete on the date the paper served is
6 actually first received at either the branch or office
7 where the employee works or the office from which he
8 is paid.

9 (f) Notwithstanding subdivision (a), in the case of an
10 employee of a state agency, the withholding period
11 commences on the 10th day after service of the earnings
12 withholding order.

13 723.023. (a) Except as otherwise provided in this
14 chapter:

15 (1) An employer shall comply with the first
16 withholding order served upon him.

17 (2) If the employer is served with two or more orders
18 on the same day, he shall comply with the order issued
19 pursuant to the judgment first entered. If two or more
20 orders served on the same day are also based on
21 judgments entered upon the same day, the employer
22 shall comply with whichever one of such orders he
23 selects.

24 (3) If an earnings withholding order is served during
25 the period that an employer is required to comply with
26 another earnings withholding order for the same
27 judgment debtor, the subsequent order is ineffective and
28 the employer shall not withhold earnings pursuant to the
29 subsequent order.

30 (b) For the purposes of this section, service of an
31 earnings withholding order shall be deemed complete on
32 the date it is actually first received at either the branch
33 or office where the employee works or the office from
34 which he is paid.

35 723.024. Each time an employer makes a deduction
36 from an employee's earnings pursuant to an earnings
37 withholding order, he may make an additional deduction
38 of one dollar (\$1) and retain it as a charge for his services
39 in complying with the earnings withholding order.

40 723.025. The amount required to be withheld

1 pursuant to an earnings withholding order shall be paid
2 to the person specified in the order within 15 days after
3 each payment of earnings is made to the employee unless
4 the employer elects to pay in regular monthly payments
5 made not later than the 15th day of each month. In the
6 latter case, the initial monthly payment shall include all
7 amounts required to be withheld from the earnings of the
8 employee during the preceding calendar month up to
9 the close of the employee's pay period ending closest to
10 the last day of that month, and thereafter each monthly
11 payment shall include amounts withheld from the
12 employee's earnings for services rendered in the interim
13 up to the close of the employee's pay period ending
14 closest to the last day of the preceding calendar month.

15 723.026. Within 15 days after he receives a request
16 from the judgment debtor for an accounting of the
17 payments received pursuant to an earnings withholding
18 order, the judgment creditor shall send the accounting to
19 the judgment debtor by first-class mail, postage prepaid.
20 The judgment creditor is not required to make such an
21 accounting more frequently than once every 30 days. The
22 accounting shall state the payments received by the
23 judgment creditor during the period covered by the
24 accounting, the maximum additional amount that may be
25 withheld pursuant to the earnings withholding order, ~~and~~
26 the total amount received by the creditor during the
27 period the order has been in effect.

28 723.027. (a) If the judgment pursuant to which the
29 earnings withholding order is issued is satisfied prior to
30 the end of the withholding period provided in Section
31 723.022, the judgment creditor, within 10 days of such
32 satisfaction, shall:

33 (1) File a satisfaction of judgment in the court which
34 issued such order; and

35 (2) Serve a copy of such satisfaction on the judgment
36 debtor's employer.

37 (b) If an earnings withholding order is served on the
38 employer but is ineffective because the employer is
39 complying with another earnings withholding order, the
40 judgment creditor who served the subsequent order may

and the
unpaid
balance
of the
judgment.

1 serve on the judgment creditor whose order is being
2 complied with a request for notification of satisfaction of
3 judgment; and, if such request is so served, the first
4 judgment creditor shall mail to the judgment creditor
5 who served the subsequent order a copy of the
6 satisfaction of judgment within five days from the time it
7 is served on the judgment debtor's employer pursuant to
8 subdivision (a).

9 723.028. Subject to Section 723.107, after the amount
10 stated as owing in the earnings withholding order is paid,
11 the judgment creditor may apply for issuance of another
12 earnings withholding order covering costs and interest
13 that may have accrued since application for the prior
14 order.

15 723.029. Service of an earnings withholding order
16 creates a lien upon the earnings required to be withheld
17 pursuant to such order. Such lien shall continue for a
18 period of one year from the date such earnings became
19 payable.

20 723.030. (a) A "withholding order for support" is a
21 earnings withholding order to enforce a court order for
22 the support of any person. A withholding order for
23 support shall be denoted as such on its face.

24 (b) Notwithstanding any other provision of this
25 chapter:

26 (1) The restrictions on earnings withholding
27 contained in Section 723.050 do not apply to a
28 withholding order for support. The amount to be
29 withheld pursuant to a withholding order for support
30 shall be limited to the amount of the continuing periodic
31 payments ordered by the court in a prior judgment
32 except that, upon motion of the judgment creditor, after
33 notice and hearing and upon good cause shown, the court
34 may order that the amount to be withheld pursuant to a
35 withholding order for support be increased to include
36 payment, in whole or in part, of delinquent amounts
37 owing on the prior judgment. In no case shall the amount
38 an employer withholds pursuant to a withholding order
39 for support exceed the amount of earnings payable to the
40 judgment debtor by the employer after deducting (i) all

1 amounts required to be withheld by law and (ii) all
2 amounts required to be withheld by the employer
3 pursuant to any collective bargaining agreement except
4 to the extent that the deduction of any such amount is
5 revocable by the employee or at his insistence.

6 (2) An employer shall continue to withhold pursuant
7 to a withholding order for support until it expires by its
8 terms or the court orders its termination, except that an
9 earnings withholding order for support shall
10 automatically terminate one year after the employee is
11 no longer employed by the employer.

12 (3) A withholding order for support shall be given
13 priority over any other earnings withholding order. An
14 employer upon whom a withholding order for support is
15 served shall withhold and pay over earnings of the
16 employee pursuant to such order even though he is
17 already required to comply with another earnings
18 withholding order.

19 (4) Subject to paragraph (3) and to Article 3
20 (commencing with Section 723.050), an employer shall
21 withhold earnings of an employee pursuant to both a
22 withholding order for support and another earnings
23 withholding order simultaneously.

24 (5) An employer shall withhold the amount of the
25 periodic payments specified in the withholding order for
26 support. Where the period provided in the order is
27 different from the pay period of the employee, the
28 employer shall prorate the amounts withheld so that the
29 total amount withheld and paid over to the judgment
30 creditor for any given period equals the amount required
31 by the order to be withheld for the same period. The
32 amounts withheld shall be paid to the person specified in
33 the order in accordance with Section 723.025.

34 (c) Except as provided in Section 4701 of the Civil
35 Code and Section 270h of the Penal Code, no withholding
36 order for support may be issued under this section unless
37 the order is issued by the court upon a showing that the
38 person required to pay the support is in arrears in
39 payment in a sum equal to the amount of two months of
40 such payments within the 24-month period immediately

1 preceding the application for the order. For the purposes
 2 of this subdivision, arrearages in payment shall be
 3 computed on the basis of the payments owed and unpaid
 4 on the date that the person ordered to pay the support
 5 has been given notice pursuant to law of the application
 6 for the withholding order for support, and the fact that
 7 the person ordered to pay the support may have
 8 subsequently paid such arrearages does not relieve the
 9 court of its duty under this section to issue the
 10 withholding order for support. Except for an order
 11 described in Section 4701 of the Civil Code or Section
 12 270h of the Penal Code, upon petition by the person
 13 ordered to pay support and after 18 continuous and
 14 uninterrupted months of full payment under a
 15 withholding order for support, the court shall terminate
 16 the withholding order for support.
 17

723.030. (a) Nothing in this chapter affects an order made pursuant to Section 4701 of the Civil Code.

(b) An order made pursuant to Section 4701 of the Civil Code shall be given priority over any earnings withholding order. An employer upon whom an order made pursuant to Section 4701 is served shall withhold and pay over the earnings of the employee pursuant to such order even though he is already required to comply with an earnings withholding order.

(c) Subject to subdivisions (b) and (d), an employer shall withhold earnings of an employee pursuant to both an order made under Section 4701 of the Civil Code and an earnings withholding order.

(d) The employer shall withhold pursuant to an earnings withholding order only to the extent that the sum of the amount withheld pursuant to the order made under Section 4701 of the Civil Code and the amount withheld pursuant to the earnings withholding order does not exceed the amount that may be withheld under Article 3 (commencing with Section 723.050).

18 Article 3. Restrictions on Earnings Withholding

19
 20 723.050. (a) As used in this section, "~~nonexempt~~
 21 earnings" for any workweek means the earnings of the
 22 judgment debtor for that workweek less the sum of all the
 23 following:

available

24 (1) The amount that would be withheld for federal
 25 personal income taxes from the same amount of earnings
 26 of a single person who claims ~~one exemption~~ no exemptions.

27 (2) The amount that would be withheld for federal
28 social security taxes from the same amount of earnings if
29 earned during the first week of a calendar year by a
30 person subject to withholding for that tax.

31 (3) The amount that would be withheld for state
32 ~~disability insurance contributions~~ under Sections 984 and
33 985 of the Unemployment Insurance Code from the same
34 amount of earnings if earned during the first week of a
35 calendar year by a person subject to withholding for that
36 purpose.

37 (4) The amount that would be withheld for state
38 personal income taxes from the same amount of earnings
39 of a single person who claims ~~one exemption~~ *no exemptions*.

40 (5) An amount equal to 50 times the federal minimum

for worker con-
tributions to the
Unemployment
Compensation
Disability Fund

1 hourly wage prescribed by Section 6(a) (1) of the Fair
2 Labor Standards Act of 1938 in effect at the time the
3 earnings are payable.

4 (b) Except as otherwise provided in Sections ~~723.030,~~
5 ~~723.074, 723.075, and 723.076,~~ the maximum amount of the
6 earnings of a judgment debtor in any workweek which
7 may be withheld pursuant to this chapter shall be
8 computed as provided in this subdivision. ~~If the~~
9 ~~nonexempt earnings of the judgment debtor for the~~
10 ~~workweek are less than twenty dollars (\$20), nothing~~
11 ~~shall be withheld. If the nonexempt earnings of the~~
12 ~~judgment debtor for the workweek are twenty dollar~~
13 ~~(\$20) or more, ten dollars (\$10) plus 25 percent of the~~
14 ~~nonexempt earnings in excess of twenty dollars (\$20)~~
15 ~~shall be withheld. Where the nonexempt earnings of the~~
16 ~~judgment debtor for the workweek are twenty dollar~~

Where the available earnings of the judgment debtor for
the workweek are less than ten dollars (\$10), nothing
shall be withheld. If the available earnings of the
judgment debtor for the workweek are at least ten dollars
(\$10) but not more than forty-five dollars (\$45), 50 per-
cent of the available earnings shall be withheld. Where
the available earnings of the judgment debtor for the
workweek are greater than forty-five dollars (\$45), twenty-
three dollars (\$23) plus 25 percent of the available earn-
ings in excess of forty-five dollars (\$45) shall be with-
held. Where the available earnings of the judgment debtor
for the workweek are ten dollars (\$10)

17 ~~(\$20)~~ or more, if the amount computed under this
18 subdivision is not a multiple of one dollar (\$1), fractional
19 amounts less than one-half dollar (\$0.50) shall be
20 disregarded and fractional amounts of one-half dollar
21 (\$0.50) or more shall be rounded upward to the next
22 higher whole dollar.

23 (c) The Judicial Council shall prescribe by rule the
24 method of computing the amount to be withheld in the
25 case of earnings for any pay period other than a week,
26 which method shall be substantially equivalent in effect
27 to that prescribed in subdivision (b).

28 (d) The Judicial Council shall prepare withholding
29 tables for determining the amount to be withheld from
30 the earnings of employees for representative pay periods.
31 The tables may prescribe the amounts to be withheld
32 according to reasonable earnings brackets. The tables
33 prepared by the Judicial Council pursuant to this
34 subdivision shall be used to determine the amount to be
35 withheld in all cases where the tables permit
36 computation of the amount to be withheld.

37 723.051. ~~40~~ The portion of his earnings which a
38 judgment debtor proves is essential for the support of
39 himself or his family is exempt from levy under this
40 chapter unless the debt is incurred for personal services

1 rendered by any employee or former employee of the
 2 judgment debtor. This standard recognizes that the
 3 exemption provided by Section 723.050 should be
 4 adequate, except in rare and unusual cases, to provide the
 5 amount essential for the support of the judgment debtor
 6 or his family. This standard also recognizes that the
 7 exemption provided by Section 723.050 may not be
 8 adequate, for example, in cases where there are a large
 9 number of members of the judgment debtor's family who
 10 are dependent upon his earnings for their support.
 11 Neither the judgment debtor's accustomed standard of
 12 living nor a standard of living "appropriate to his station
 13 in life" is ~~the~~ criterion for measuring the debtor's claim
 14 for exemption under this section.

a/

judgment/

15 ~~(b) If the earnings withholding order is one described~~
 16 ~~in Section 723.030 and the judgment debtor claims the~~
 17 ~~exemption provided by subdivision (a), the court shall~~
 18 ~~make an equitable division of the judgment debtor's~~
 19 ~~earnings and shall make an appropriate order on the~~
 20 ~~claim of exemption.~~

21
 22 Article 4. Earnings Withholding Orders for Taxes

23
 24 723.070. As used in this article:

25 (a) "State" means the State of California and includes
 26 any officer, department, board, or agency thereof.

27 (b) "State tax liability" means a liability, including any
 28 penalties and accrued interest and costs, for which the
 29 state would be authorized to issue (1) a warrant pursuant
 30 to Section 1785 of the Unemployment Insurance Code or
 31 Section 6776, 7881, 9001, 16071, 18906, 26191, 30341, or
 32 32365 of the Revenue and Taxation Code or (2) a notice
 33 of levy pursuant to Section 1753 of the Unemployment
 34 Insurance Code or (3) a notice or order to withhold
 35 pursuant to Section 6702, 7851, 8952, 11451, 16101, 18817,
 36 26132, 30311, or 32381 of the Revenue and Taxation Code.

37 723.071. This chapter shall not limit the state's right to
 38 collect a state tax liability except that (a) no levy upon
 39 earnings of an employee held by an employer shall be
 40 effective unless such levy is made in accordance with the

1 provisions of this chapter and (b) the methods of
2 collection referred to in subdivision (b) of Section 723.070
3 may not be used to require an employer to withhold
4 earnings of an employee in payment of a state tax
5 liability.

6 723.072. (a) A "withholding order for taxes" is an
7 earnings withholding order issued pursuant to this article
8 to collect a state tax liability and shall be denoted as a
9 withholding order for taxes on its face.

10 (b) A withholding order for taxes may only be issued
11 where:

12 (1) The existence of the state tax liability appears on
13 the face of the taxpayer's return, including a case where
14 such tax liability is disclosed from the taxpayer's return
15 after errors in mathematical computations in the return
16 have been corrected; or

17 (2) The state tax liability has been assessed or
18 determined, as provided in the Revenue and Taxation
19 Code or Unemployment Insurance Code, and the
20 taxpayer had notice of the proposed assessment or
21 determination and had available an opportunity to have
22 the proposed assessment or determination reviewed by
23 appropriate administrative procedures, whether or not
24 he took advantage of that opportunity.

25 (c) In any case where a state tax liability has been
26 assessed or determined prior to ~~July 1, 1975~~ *January 1,*
27 ~~1976~~, and the state determines that the requirements of
28 subdivision (b) may not have been satisfied, the state
29 may send a "Notice of Proposed Issuance of Withholding
30 Order for Taxes" to the taxpayer at his last known address
31 by first-class mail, postage prepaid. The notice shall
32 advise the taxpayer that he may have the assessment or
33 determination reviewed by appropriate administrative
34 procedures and how he may obtain such a review. If the
35 taxpayer is sent such a notice and requests such a review
36 within 30 days from the date the notice was mailed to
37 him, the state shall provide appropriate administrative
38 procedures for review of the assessment or
39 determination and shall not issue the withholding order
40 for taxes until the administrative review procedure is

1 completed. If the taxpayer is sent such a notice and does
2 not request such a review within 30 days from the date
3 the notice was mailed to him, the state may issue the
4 withholding order for taxes.

5 (d) A withholding order for taxes may be issued
6 whether or not the state tax liability has been reduced to
7 judgment.

8 723.073. Except as otherwise provided in this article,
9 the provisions of this chapter govern the procedures and
10 proceedings concerning a withholding order for taxes.

11 723.074. (a) The state may itself issue a withholding
12 order for taxes under this section to collect a state tax
13 liability. The order shall specify the maximum amount
14 that may be withheld pursuant to the order (unpaid tax
15 liability including any penalties, accrued interest, and
16 costs).

17 (b) The amount to be withheld by the employer
18 pursuant to an order issued under this section shall be the
19 amount required to be withheld pursuant to subdivision
20 (c) or such lesser amount as is specified in the order.

21 (c) Unless a lesser amount is specified in the order, the
22 amount to be withheld pursuant to an order issued under
23 this section is two times the maximum amount that may
24 be withheld under Section 723.050, except that the state
25 may require that ten dollars (\$10) be withheld if ~~(1) the~~
26 ~~taxpayer's nonexempt earnings (as defined in Section~~
27 ~~723.050) are twenty dollars (\$20) or more but less than~~
28 ~~thirty dollars (\$30) or (2) the amount of the taxpayer's~~
29 earnings is sufficient that a portion of his earnings would
30 be withheld pursuant to Section 18806 of the Revenue
31 and Taxation Code if such earnings were subject to
32 withholding under that section but the amount of his
33 earnings is not sufficient to permit withholding under
34 Section 723.050. In determining whether the earnings are
35 sufficient so that a portion of the earnings would be
36 withheld pursuant to Section 18806 of the Revenue and
37 Taxation Code, the table issued under that section
38 applicable to a single person without allowance for
39 additional exemptions shall be used. The state shall
40 prepare withholding tables for determining the amount

1 to be withheld from the earnings of employees for
2 representative pay periods pursuant to orders issued
3 under this section. The tables may prescribe the amounts
4 to be withheld according to reasonable earnings brackets.
5 The tables shall be used to determine the amount to be
6 withheld in all cases where the tables permit
7 computation of the amount to be withheld.

8 723.075. (a) This section applies to any withholding
9 order for taxes issued under this article.

10 (b) Together with the withholding order for taxes, the
11 state shall serve upon the employer an additional copy of
12 the order and a notice informing the taxpayer of the
13 effect of the order and of his right to hearings and
14 remedies provided in this chapter. Within five days from
15 the date of service, the employer shall deliver to the
16 taxpayer a copy of the order and the notice, except that
17 immediate delivery shall be made where a jeopardy
18 withholding order for taxes has been served. If the
19 taxpayer is no longer employed by the employer and the
20 employer does not owe him any earnings, the employer
21 is not required to make such delivery.

22 (c) The state shall provide for an administrative
23 hearing to reconsider or modify the amount to be
24 withheld pursuant to the withholding order for taxes, and
25 the taxpayer may request such a hearing at any time after
26 service of the order. If the taxpayer requests a hearing,
27 the hearing shall be provided, and the matter shall be
28 determined, within 15 days after the request is received
29 by the state.

30 (d) After the state has made its determination under
31 subdivision (c), the taxpayer may file a claim of
32 exemption to claim the exemption provided by Section
33 723.051, in the manner provided in Section 723.105, with
34 a court of record in his county of residence. No fee shall
35 be charged for filing such claim of exemption. After
36 hearing, the court may modify the withholding order for
37 taxes previously issued, but in no event shall the amount
38 required to be withheld be less than that permitted to be
39 withheld under Section 723.050.

40 723.076. (a) A withholding order for taxes may be

1 issued pursuant to this section requiring the employer of
2 the taxpayer to withhold an amount in excess of the
3 amount that may be required to be withheld pursuant to
4 an order issued under Section 723.074.

5 (b) The state may, at any time, apply to a court of
6 record in the county where the taxpayer was last known
7 to reside for the issuance of a withholding order for taxes
8 under this section to collect a state tax liability.

9 (c) The application for the order shall include an
10 affidavit stating that the state has served upon the
11 taxpayer both of the following:

12 (1) A copy of the application.

13 (2) A notice informing the taxpayer of the purpose of
14 the application and his right to appear in regard to the
15 application.

16 (d) Upon the filing of the application, the court shall
17 immediately set the matter for hearing and the court
18 clerk shall send a notice of the time and place of the
19 hearing by first-class mail, postage prepaid, to the state
20 and the taxpayer. The notice shall be deposited in the
21 mail at least 10 days before the day set for the hearing.

22 (e) After hearing, the court shall issue a withholding
23 order for taxes which shall require the taxpayer's
24 employer to withhold and pay over all earnings of the
25 taxpayer other than that amount which the taxpayer
26 proves is exempt under Section 723.051, but in no event
27 shall the amount to be withheld be less than that
28 permitted to be withheld under Section 723.050.

29 (f) The state may issue a temporary earnings holding
30 order, which shall be denoted as such on its face, in any
31 case where the state intends to apply for a withholding
32 order for taxes under this section and has determined
33 that the collection of the state tax liability will be
34 jeopardized in whole or in part if the temporary earnings
35 holding order is not issued. The temporary earnings
36 holding order shall be directed to the taxpayer's
37 employer and shall require him to retain in his possession
38 or under his control all or such portion of the earnings of
39 the taxpayer then or thereafter due as is specified in the
40 order. Together with the temporary earnings holding

1 order, the state shall serve upon the employer an
 2 additional copy of the order and a notice informing the
 3 taxpayer of the effect of the order and of his right to
 4 remedies provided in this chapter. Upon receipt of the
 5 order, the employer shall deliver to the taxpayer a copy
 6 of the order and notice. If the taxpayer is no longer
 7 employed by the employer and the employer does not
 8 owe him any earnings, the employer is not required to
 9 make such delivery. The temporary earnings holding
 10 order expires 15 days from the date it is served on the
 11 employer unless it is extended by the court on ex parte
 12 application for good cause shown. If a temporary earnings
 13 holding order is served on an employer, the state may not
 14 thereafter, for a period of six months, serve on the same
 15 employer another temporary earnings holding order for
 16 the same employee unless the court for good cause shown
 17 otherwise orders. Sections 723.153 and 723.154 apply to
 18 temporary earnings holding orders issued under this
 19 section.

20 723.077. (a) Subject to subdivision (b), an employer
 21 upon whom a withholding order for taxes is served shall
 22 withhold and pay over earnings of the employee
 23 pursuant to such order and shall cease to withhold
 24 earnings pursuant to any prior order except that ~~a~~
 25 ~~withholding order for support~~ shall be given priority as
 26 ~~provided in Section 723.056.~~ When an employer is
 27 required to cease withholding earnings pursuant to a
 28 prior order, he shall notify the judgment creditor who
 29 obtained the prior order that a supervening withholding
 30 order for taxes is in effect.

31 (b) An employer shall not withhold earnings of an
 32 employee pursuant to a withholding order for taxes if a
 33 prior withholding order for taxes is in effect, and, in such
 34 case, the subsequent withholding order for taxes is
 35 ineffective.

36 723.078. (a) Except as provided in subdivision (b),
 37 the employer shall not withhold pursuant to a
 38 withholding order for taxes from earnings of the
 39 employee payable for any pay period of such employee
 40 that ends prior to the fifth day after service of the order.

that section.

An order made
 pursuant to
 Section 4701
 of the Civil
 Code

1 (b) A "jeopardy withholding order for taxes," which
2 shall be denoted as such on its face, is a withholding order
3 for taxes that requires that the employer withhold
4 pursuant to the order from earnings due to the employee
5 at the time of service of the order on the employer and
6 from earnings thereafter due. A jeopardy withholding
7 order for taxes may be issued only where the state has
8 determined that the collection of a state tax liability will
9 be jeopardized in whole or in part by delaying the time
10 when withholding from earnings commences.

11 (c) An employer shall continue to withhold pursuant
12 to a withholding order for taxes until the amount
13 specified in the order has been paid in full or the order
14 is withdrawn, except that the order shall automatically
15 terminate one year after the employee is no longer
16 employed by the employer. The state shall promptly
17 serve on the employer a notice terminating the
18 withholding order for taxes if the state tax liability for
19 which the withholding order for taxes was issued is
20 satisfied before the employer has withheld the full
21 amount specified in the order, and the employer shall
22 discontinue withholding in compliance with such notice.
23 Section 723.027 does not apply to a withholding order for
24 taxes.

25 723.079. No receipt need be sent to the taxpayer for
26 amounts paid over to the state pursuant to a withholding
27 order for taxes unless the taxpayer has requested in
28 writing that he be sent receipts for such amounts.

29 723.080. Service of a withholding order for taxes or of
30 any other notice or document required under this
31 chapter in connection with a withholding order for taxes
32 may be made by first-class mail, postage prepaid, or by
33 any authorized state employee. Service of a withholding
34 order for taxes is complete when it is received by the
35 employer. Service of, or the providing of, any other
36 notice or document required to be served or provided
37 under this chapter in connection with a withholding
38 order for taxes is complete when the notice or document
39 is deposited in the mail addressed to the last known
40 address of the person on whom it is served or to whom

1 it is to be provided.

2 723.081. Except for the forms referred to in Section
3 723.076, the state shall prescribe the form of any order,
4 notice, or other document required by this chapter in
5 connection with a withholding order for taxes
6 notwithstanding Sections 723.100 and 723.120, and any
7 form so prescribed is deemed to comply with this
8 chapter.

9 723.082. No review of the taxpayer's tax liability shall
10 be permitted in any court proceedings under this
11 chapter.

12 723.083. If the state determines that a withholding
13 order for taxes has been issued in error or that there is no
14 tax liability, the state may refund to the employee any
15 amounts deducted by his employer pursuant to Section
16 723.024.

17 723.084. Where a warrant, notice of levy, or notice or
18 order to withhold (referred to in subdivision (b) of
19 Section 723.070) is served on the employer, it shall be
20 deemed to be a withholding order for taxes if the form
21 provides notice on its face that it is to be treated as a
22 withholding order for taxes as to any earnings that are
23 subject to the provisions of this chapter.

24

25 Article 5. Procedure for Issuance of
26 Earnings Withholding Orders

27

28 723.100. Notwithstanding any other provision of law,
29 the Judicial Council may provide by rule for the practice
30 and procedure in proceedings under this chapter except
31 for the state's administrative hearings provided by
32 Article 4 (commencing with Section 723.070).

33 723.101. (a) Service under this chapter shall be by
34 personal delivery or by registered or certified mail,
35 postage prepaid with return receipt requested. When
36 service is made by mail, service is completed at the time
37 the return receipt is executed by the recipient or his
38 representative.

39 (b) Notwithstanding Section 1032.6, except as
40 provided in subdivision (c), a judgment creditor is not

1 entitled to the costs of service under this chapter which
2 exceed the cost of service by certified mail with return
3 receipt requested.

4 (c) If the employer of the judgment debtor refuses to
5 accept service by registered or certified mail, the cost of
6 service by personal delivery may be recovered from the
7 judgment debtor.

8 (d) Where the employer of the judgment debtor
9 refuses to accept service by mail of an earnings
10 withholding order and the judgment creditor
11 subsequently serves such order by personal delivery and
12 his order is denied effect because an intervening order
13 has been given effect, upon application of the judgment
14 creditor, the court which issued the judgment creditor
15 his original earnings withholding order shall make a
16 special order directed to the employer to cease
17 withholding under the intervening order and to comply
18 with the original order. In these circumstances, for the
19 purposes of Section 723.022, service of the original order
20 shall be deemed complete on the date of service of the
21 special order directing the employer to comply with the
22 original order. At least 10 days before the hearing on the
23 application, the judgment creditor who obtained the
24 original earnings withholding order shall serve on the
25 judgment creditor who served the intervening order a
26 notice of the time and place of the hearing on the
27 application and a copy of the application.

28 723.102. (a) A judgment creditor may apply for the
29 issuance of an earnings withholding order by filing an
30 application, in the form prescribed by the Judicial
31 Council, with the clerk of the court which entered the
32 judgment pursuant to which the earnings withholding
33 order is sought. (b) Within five days (Saturday, Sunday,
34 and holidays excepted) after the filing of the application,
35 the court clerk shall issue an earnings withholding order
36 in the form prescribed pursuant to Sections 723.120 and
37 723.125. This subdivision does not apply where the
38 earnings withholding order is a withholding order for
39 ~~support described in Section 723.030, a withholding order~~
40 ~~for~~ taxes to be issued under Section 723.076, or other

1 earnings withholding order that may only be issued by
2 the court as distinguished from the court clerk.

3 723.103. (a) The judgment creditor shall serve upon
4 the designated employer all of the following:

5 (1) Two copies of the earnings withholding order.

6 (2) The form for the employer's return.

7 (3) Notice to employee of earnings withholding order
8 in the form prescribed pursuant to Sections 723.120 and
9 723.122.

10 (b) At the time he makes service pursuant to
11 subdivision (a), the judgment creditor shall provide the
12 employer with a copy of the employer's instructions and
13 withholding tables referred to in Section 723.127. The
14 Judicial Council may adopt rules prescribing the
15 circumstances when compliance with this subdivision is
16 not required.

17 (c) An earnings withholding order served upon the
18 employer more than 45 days after its date of issuance is
19 ineffective.

20 723.104. Any employer who is served with an earnings
21 withholding order shall:

22 (a) Deliver to the judgment debtor a copy of the
23 earnings withholding order and the notice to employee
24 of earnings withholding order within five days from the
25 date of service. If the judgment debtor is no longer
26 employed by the employer and the employer does not
27 owe him any earnings, the employer is not required to
28 make such delivery.

29 (b) Complete the employer's return on the form
30 provided by the judgment creditor and mail it by
31 first-class mail, postage prepaid, to the judgment creditor
32 within 15 days from the date of service unless a longer
33 period is specified by the judgment creditor. If the
34 earnings withholding order is ineffective, the employer
35 shall state in his employer's return that he is not
36 complying with the order for this reason and shall return
37 the order to the judgment creditor with the employer's
38 return.

39 723.105. (a) A judgment debtor may claim an
40 exemption under ~~this chapter~~ if:

Section 723.051

1 (1) No prior hearing has been held with respect to the
2 earnings withholding order; or

3 (2) There has been a material change in
4 circumstances since the time of the last prior hearing on
5 the earnings withholding order.

6 (b) A claim of exemption shall be made by filing with
7 the court clerk an original and one copy of (1) the
8 judgment debtor's claim of exemption and (2) ~~if he~~
9 ~~claims the exemption provided by Section 723.001, his~~
10 financial statement.

the judgment debtor's

11 (c) Forthwith upon the filing of the claim of
12 exemption, the court clerk shall send to the judgment
13 creditor by first-class mail, postage prepaid, all of the
14 following:

15 (1) A copy of the claim of exemption.

16 (2) A copy of the financial statement ~~if there is one.~~

17 (3) A notice of claim of exemption, stating that the
18 claim of exemption has been filed and that the earnings
19 withholding order will be terminated, or modified to
20 reflect the amount of earnings claimed to be exempt in
21 the claim of exemption, unless a notice of opposition to
22 the claim of exemption is filed with the court clerk by the
23 judgment creditor within 10 days after the date of the
24 mailing of the notice of claim of exemption.

25 (d) A judgment creditor who desires to contest a claim
26 of exemption shall, within 10 days after the date of the
27 mailing of the notice of claim of exemption, file with the
28 court clerk a notice of opposition to the claim of
29 exemption.

30 (e) If the court clerk does not receive a notice of
31 opposition within the 10-day period, he shall send to the
32 employer by first-class mail, postage prepaid, one of the
33 following:

34 (1) A notice that the earnings withholding order has
35 been terminated if all of the judgment debtor's earnings
36 was claimed to be exempt.

37 (2) A modified earnings withholding order which
38 reflects the amount of earnings claimed to be exempt in
39 the claim of exemption if only a portion of the judgment
40 debtor's earnings was claimed to be exempt.

1 (f) If a notice of opposition to the claim of exemption
2 is filed with the court clerk within the 10-day period, the
3 court clerk shall set the matter for hearing, which hearing
4 shall be held within 15 days after the date the notice of
5 opposition is filed. The court clerk shall send a notice of
6 the time and place of the hearing to the judgment debtor
7 and judgment creditor by first-class mail, postage
8 prepaid. The notice shall be deposited in the mail at least
9 10 days before the day set for hearing.

10 (g) If, after hearing, the court orders that the earnings
11 withholding order be modified or terminated, the clerk
12 shall promptly send by first class mail, postage prepaid, to
13 the employer of the judgment debtor (1) a copy of the
14 modified earnings withholding order or (2) a notice that
15 the earnings withholding order has been terminated. The
16 court may order that the earnings withholding order be
17 terminated as of a date which precedes the date of
18 hearing.

19 (h) If the earnings withholding order is terminated by
20 the court, unless the court otherwise orders or unless
21 there is a material change of circumstances since the time
22 of the last prior hearing on the earnings withholding
23 order, the judgment creditor may not apply for another
24 earnings withholding order directed to the same
25 employer with respect to the same judgment debtor for
26 a period of 125 days following the date of service of the
27 earnings withholding order or 60 days after the date of
28 the termination of the order, whichever is later.

29 (i) If an employer has withheld and paid over amounts
30 pursuant to an earnings withholding order after the date
31 of termination of such order but prior to the receipt of
32 notice of its termination, the judgment debtor may
33 recover such amounts only from the judgment creditor.
34 If the employer has withheld amounts pursuant to an
35 earnings withholding order after termination of the order
36 but has not paid over such amounts to the judgment
37 creditor, the employer shall pay over such amounts to the
38 judgment debtor.

39 723.106. No findings shall be required in court
40 proceedings under this chapter.

1 723.107. If an employer withholds earnings pursuant
2 to an earnings withholding order, the judgment creditor
3 who obtained such withholding order may not serve
4 another withholding order on the same employer
5 requiring him to withhold earnings of the same employee
6 during the 10 days following the expiration of the prior
7 earnings withholding order

8

9 Article 6. Forms; Employer's Instructions;
10 Withholding Tables

11

12 723.120. The Judicial Council shall prescribe the form
13 of the applications, notices, claims of exemption, orders,
14 and other documents required by this chapter and only
15 such forms may be used to implement this chapter. Any
16 such form prescribed by the Judicial Council is deemed
17 to comply with this chapter.

18 723.121. The "application for issuance of earnings
19 withholding order" shall be executed under oath and
20 shall include all of the following:

21 (a) The name and last known address of the judgment
22 debtor and, if known, his social security number.

23 (b) The name and address of the judgment creditor.

24 (c) The court where the judgment was entered and
25 the date the judgment was entered.

26 (d) The amount sought to be collected, indicating the
27 amount of the judgment, plus additional accrued items,
28 less partial satisfactions, if any. ~~Where a withholding~~
29 ~~order for support is sought, the application shall state the~~
30 ~~amount of the periodic payments required by the~~
31 ~~judgment to be made to the judgment creditor.~~

32 (e) The name and address of the employer to whom
33 the order will be directed.

34 (f) The name and address of the person to whom the
35 withheld money is to be paid.

36 (g) The name and address of the person designated by
37 the judgment creditor to receive notices.

38 723.122. The "notice to employee of earnings
39 withholding order" shall inform the judgment debtor of
40 all of the following:

1 (a) The court has ordered the named employer to
2 withhold from the earnings of the judgment debtor the
3 maximum amounts allowed by law, or such other
4 amounts as are specified in the order, and to pay these
5 amounts over to the person specified in the order in
6 payment of the judgment described in the order.

7 (b) The maximum amounts allowed by law to be
8 withheld pursuant to Section 723.050 on illustrative
9 amounts of earnings.

10 (c) No amount can be withheld from the earnings of
11 a judgment debtor which he can prove is essential for the
12 support of himself or his family.

because they
are essential
to the support
of himself or
his family,

13 (d) If a judgment debtor wishes a court hearing to
14 prove that amounts should not be withheld from his
15 earnings, he shall file with the clerk of court two copies
16 of the "judgment debtor's claim of exemption," and, in
17 addition, if he claims the exemption referred to in
18 subdivision (c), he shall also file with the clerk two copies
19 of the "judgment debtor's financial statement." The
20 notice shall also advise the judgment debtor that the
21 claim of exemption form and the financial statement
22 form may be obtained at the office of any clerk of a trial
23 court. The clerk of each trial court shall have the forms
24 available at his office.

25 (e) Section 723.026 of the Code of Civil Procedure
26 requires that, upon request of the judgment debtor, the
27 judgment creditor shall provide an accounting of the
28 payments received by the judgment creditor pursuant to
29 the earnings withholding order.

unless the
assignment is
made pursuant
to Section 4701
of the Civil Code.

30 (f) Under Section 300 of the Labor Code, the
31 judgment debtor may revoke an assignment of wages or
32 salary to be earned after the time of the revocation.

The

33 723.123. The "judgment debtor's claim of exemption"
34 shall be executed under oath. ~~Where the judgment~~
35 ~~debtor claims the exemption provided by Section 723.051,~~
36 his claim of exemption shall indicate how much he
37 believes should be withheld from his earnings each pay
38 period by his employer pursuant to the earnings
39 withholding order.

the judgment
debtor

40 723.124. The "judgment debtor's financial statement"

1 shall be executed under oath and shall include all of the
2 following information:

3 (a) Name, age, and relationship of all persons
4 dependent upon judgment debtor's income.

5 (b) All sources of the judgment debtor's earnings and
6 other income and the amounts of such earnings and other
7 income.

8 (c) All sources and the amounts of earnings and other
9 income of the persons listed in subdivision (a).

10 (d) A listing of all assets of the judgment debtor and
11 of the persons listed in subdivision (a) and the value of
12 such assets.

13 (e) All outstanding obligations of the judgment
14 debtor.

15 (f) Whether any earnings withholding orders are in
16 effect for the judgment debtor or the persons listed in
17 subdivision (a).

(g) Whether any orders made under Section 4701 of the
Civil Code are in effect for the judgment debtor or the
persons listed in subdivision (a).

18 723.125. The "earnings withholding order" shall
19 include all of the following:

20 (a) The name and address of the judgment debtor
21 and, if known, his social security number.

22 (b) The name and address of the employer to whom
23 the order is directed.

24 (c) The court where the judgment was entered, the
25 date the judgment was entered, and the name of the
26 judgment creditor.

27 (d) ~~Except for a withholding order for support,~~ The
28 maximum amount that may be withheld pursuant to the
29 order (the amount of the judgment, plus additional
30 accrued items, less partial satisfactions, if any).

31 (e) A description of the withholding period and an
32 order to the employer to withhold from the earnings of
33 the judgment debtor the amount required by law to be
34 withheld or the amount specified in the order, as the case
35 may be, during such period.

36 (f) An order to the employer to pay over to the
37 judgment creditor or his representative at a specified
38 address the amount required to be withheld pursuant to
39 the order in the manner and within the times provided
40 by law.

1 (g) An order that the employer fill out the
2 "employer's return" and return it by first-class mail,
3 postage prepaid, to the judgment creditor or his
4 representative at a specified address within 15 days after
5 service of the earnings withholding order.

6 (h) An order that the employer deliver to the
7 judgment debtor a copy of the earnings withholding
8 order and the "notice to employee of earnings
9 withholding order" within five days after service of the
10 earnings withholding order; but, if the judgment debtor
11 is no longer employed by the employer and the employer
12 does not owe him any earnings, the employer is not
13 required to make such delivery.

14 (i) The name and address of the person designated by
15 the judgment creditor to receive notices.

16 723.126. (a) The "employer's return" shall be
17 executed under oath. The form for the return provided
18 to the employer shall state all of the following
19 information:

20 (1) The name and address of the person to whom the
21 form is to be returned.

22 (2) A direction that the form be mailed to such person
23 by first-class mail, postage prepaid, no later than 15 days
24 after the date of service of the earnings withholding
25 order.

26 (3) The name and address of the judgment debtor
27 and, if known, his social security number.

28 (b) In addition, the employer's return form shall
29 require the employer to supply all of the following
30 information:

31 (1) Whether the judgment debtor is now employed by
32 the employer or whether the employer otherwise owes
33 him earnings.

34 (2) If the judgment debtor is employed by the
35 employer or the employer otherwise owes him earnings,
36 the amount of his earnings for the last pay period and the
37 length of this pay period.

38 (3) Whether the employer is presently required to
39 comply with a prior earnings withholding order and, if so,
40 the name of the judgment creditor who secured the prior

1 order, the court which issued such order, the date it was
2 issued, the date it was served, and the expiration date of
3 such order.

(4) Whether the employer is presently required to comply with an order made pursuant to Section 4701 of the Civil Code and, if so, the court which issued such order and the date it was issued.

5/ ~~4~~ (4) If the employer elects to make payments to the
5 judgment creditor monthly as authorized under Section
6 723.025, a statement that the employer has made such
7 election.

8 723.127. (a) The Judicial Council shall prepare
9 "employer's instructions" for employers and revise or
10 supplement these instructions to reflect changes in the
11 law or rules regulating the withholding of earnings.

12 (b) Except to the extent that they are included in the
13 forms required to be provided to the employer by the
14 judgment creditor, the Judicial Council shall publish the
15 employer's instructions and the withholding tables
16 adopted pursuant to Section 723.050. The Judicial Council
17 may impose a charge for copies sufficient to recover the
18 cost of printing.

19

20 Article 7. Administration and Enforcement

21

22 723.150. The Judicial Council shall adopt rules for the
23 administration of this chapter, including rules
24 prescribing the pay period or periods to which various
25 forms of prepaid or deferred earnings are to be allocated
26 and the method of computing the amount to be withheld
27 from such forms of earnings under Section 723.050.

28 723.151. The Judicial Council may perform all acts
29 required by the Administrator of the Wage and Hour
30 Division of the United States Department of Labor as
31 conditions to exemption of this state from the earnings
32 garnishment provisions of the Consumer Credit
33 Protection Act of 1968 (15 U.S.C. Secs. 1671-1677),
34 including, but not limited to:

35 (a) Representing and acting on behalf of the state in
36 relation to the Administrator of the Wage and Hour
37 Division and his representatives with regard to any
38 matter relating to, or arising out of, the application,
39 interpretation, and enforcement of the laws of this state
40 regulating withholding of earnings.

1 (b) Submitting to the Administrator of the Wage and
 2 Hour Division in duplicate and on a current basis, a
 3 certified copy of every statute of this state affecting
 4 earnings withholding, and a certified copy of any decision
 5 in any case involving any of those statutes, made by the
 6 Supreme Court of this state.

7 (c) Submitting to the Administrator of the Wage and
 8 Hour Division any information relating to the
 9 enforcement of earnings withholding laws of this state
 10 which he may request.

11 723.152. If an employer withholds earnings pursuant
 12 to this chapter and, with the intent to defraud either the
 13 judgment creditor or the judgment debtor, fails to pay
 14 such withheld earnings over to the judgment creditor,
 15 the employer is guilty of a misdemeanor.

16 723.153. (a) No employer shall defer or accelerate
 17 any payment of earnings to an employee with the intent
 18 to defeat or diminish the creditor's rights under an
 19 earnings withholding order issued pursuant to the
 20 procedures provided by this chapter.

21 (b) If an employer violates this section, the judgment
 22 creditor may bring a civil action against the employer to
 23 recover the amount that would have been payable to the
 24 judgment creditor pursuant to this chapter had the
 25 employer not violated this section. The remedy provided
 26 by this subdivision is not exclusive.

27 723.154. (a) If an employer fails to withhold or to pay
 28 over the amount he is required to withhold and pay over
 29 pursuant to this chapter, the judgment creditor may
 30 bring a civil action against such employer to recover such
 31 amount. The remedy provided by this subdivision is not
 32 exclusive.

33 (b) Notwithstanding subdivision (a), an employer
 34 who complies with any written order or written notice
 35 which purports to be given or served in accordance with
 36 the provisions of this chapter is not subject to any civil or
 37 criminal liability for such compliance unless he has
 38 actively participated in a fraud.

39 723.155. An employer is not subject to any civil
 40 liability for failure to comply with subdivision (b) of

1 Section 723.075 or subdivision (a) of Section 723.104.

2 723.156. The fee for filing an application for an
 3 earnings withholding order under Section 723.102 is ~~two~~
 4 ~~dollars~~ ~~(\$2)~~ *five dollars (\$5)*. No other filing fees may be
 5 charged under this chapter.

SEC. 10. Section 300 of the Labor Code is amended to read:

300. (a) As used in this section, the phrase "assignment of wages" includes the sale or assignment of, or giving of an order for, wages or salary.

(b) No assignment of, or order for wages or salary, earned or to be earned, shall be valid unless all of the following conditions are satisfied:

(a) Such (1) The assignment is contained in a separate written instrument, signed by the person by whom the said wages or salary have been earned or are to be earned, and identifying specifically the transaction to which the assignment relates; and.

(b) (2) Where such the assignment of, or order for wages or salary is made by a married person, the written consent of the husband or wife spouse of the person making such the assignment or order is attached to such the assignment or order; and. No such consent is required of any married person (i) after entry of a judgment decreeing his legal separation from his spouse or (ii) if the married person and his spouse are living separate and apart after entry of an interlocutory judgment of dissolution of their marriage, if a written statement by the person making the assignment, setting forth such facts, is attached to or included in the assignment.

(c) (3) Where such the assignment or order for wages or salary is made by a minor, the written consent of a parent or guardian of such the minor is attached to such order or the assignment; and.

(d) (4) Where such the assignment of or order for wages or salary is made by a person who is unmarried or who is an adult or who is both unmarried and adult, a written statement by the person making such the assignment or order, setting forth such facts, is attached to or included in such the assignment or order.

(e) (5) No other assignment or order exists in connection with the same transaction or series of transactions and a written statement by the person making such the assignment or order to that effect; is attached thereto to or included therein; and in the assignment.

(f) (6) A copy of such an the assignment or order and of the written statement provided for in subdivision (d) hereof paragraphs (2), (4), and (5), authenticated by a notary public, shall have been is filed with the employer, accompanied by an itemized statement of the amount then due to the assignee;.

(7) provided, that at such time At the time the assignment is filed with the employer, no other assignment or order for the payment of any wages or

but does not
include an order
or assignment
made pursuant
to Section 4701
of the Civil
Code.

salary of the employee is subject to payment; and no attachment or levy on execution earnings withholding order against said his wages or salary is in force. Any valid assignment, when filed in accordance with the provisions contained herein, shall have priority with respect to any subsequently filed assignment or order or subsequent attachment or levy on execution. Any power of attorney to assign or collect wages or salary shall be revocable at any time by the maker thereof.

(c) A valid assignment of wages in effect at the time an earnings withholding order is served suspends the operation of the earnings withholding order until after the end of the pay period during which the earnings withholding order is served. Thereafter the employer shall withhold from the employee's wages or salary pursuant to the earnings withholding order without regard to whether the assignment remains in effect.

No assignment of, or order for wages or salary shall be valid unless at the time of the making thereof, such wages or salary have been earned, except for the necessities of life and then only to the person or persons furnishing such necessities of life directly and then only for the amount needed to furnish such necessities.

(d) Under any assignment of, or order for wages or salary to be earned, a sum not to exceed 50 per centum of the assignor's wages or salary; and not to exceed 25 per centum of the assignor's wages or salary, upon the showing that such wages or salary are necessary for the support of his mother, father, spouse, children or other members of his family, residing in this State and supported in whole or in part by his labor, shall be withheld by, and be collectible from, the assignor's employer at the time of each payment of such wages or salary.

(e) The employer shall be is entitled to rely upon the statements of fact in the written statement provided for in subdivisions (d) and (e) hereof paragraphs (2), (4), and (5) of subdivision (b), without the necessity of inquiring into the truth thereof, and the employer shall incur no liability whatsoever by reason of any payments made by him to an assignee under any assignment or order, in reliance upon the facts so stated.

(f) An assignment of wages to be earned is revocable at any time by the maker thereof. Any power of attorney to assign or collect wages or salary is revocable at any time by the maker thereof. No revocation of such an assignment or power of attorney is effective as to the employer until he receives written notice of revocation from the maker.

(g) No assignment of or order for wages or salary, earned or to be earned, shall be is valid under any circumstances; if the wages or salary earned or to be earned are paid under a plan for payment at a central place or places established under the provisions of Section 204a of this code.

(h) This section shall does not apply to deductions which the employer may be requested by the employee to make for the payment of life, retirement, disability or unemployment insurance premiums, for the payment of taxes owing from the employee, for contribution to funds, plans or systems providing for death, retirement, disability, unemployment, or other benefits, for the payment for goods or services furnished by the employer to the employee or his family at the request of the employee, or for charitable, educational, patriotic or similar purposes.

(i) No assignment of wages or salary shall be valid unless at the time of the making thereof, such wages or salary have been earned, except for necessities of life and then only to the person or persons furnishing such necessities of life directly and then only for the amount needed to furnish such necessities.

~~20 Sec. 18. Section 2929 of the Labor Code is amended
21 to read:
22 2929. (a) As used in this section:
23 (1) "Garnishment" means any judicial procedure
24 through which the wages of an employee are required to
25 be withheld for the payment of any debt. For the
26 purposes of this section, "garnishment" includes the
27 withholding of the wages of an employee pursuant to an
28 earnings withholding order for taxes issued pursuant to
29 Article 4 (commencing with Section 723.070) of Chapter
30 2.5 of Title 9 of Part 2 of the Code of Civil Procedure, and
31 the withholding of wages pursuant to such an order shall
32 be deemed to be a garnishment for the payment of a
33 judgment for the purposes of subdivision (c).
34 (2) "Wages" has the same meaning as that term has
35 under Section 200.
36 (b) No employer may discharge any employee by
37 reason of the fact that the garnishment of his wages has
38 been threatened.
39 (c) No employer may discharge any employee by
40 reason of the fact that his wages have been subjected to~~

No amend-
ment to
§ 2929 to
be made

1 garnishment for the payment of one judgment.
 2 (d) An earnings withholding order issued pursuant to
 3 Section 723.030 of the Code of Civil Procedure (support
 4 order) shall be considered a garnishment for the
 5 payment of one judgment for the purposes of this section.
 6 (e) A provision of a contract of employment that
 7 provides an employee with less protection than is
 8 provided by subdivisions (b) and (c) is against public
 9 policy and void.
 10 (f) Unless the employee has greater rights under the
 11 contract of employment, the wages of an employee who
 12 is discharged in violation of this section shall continue
 13 until reinstatement notwithstanding such discharge, but
 14 such wages shall not continue for more than 30 days and
 15 shall not exceed the amount of wages earned during the
 16 30 calendar days immediately preceding the date of the
 17 levy of execution upon the employee's wages which
 18 resulted in his discharge. The employee shall give notice
 19 to his employer of his intention to make a wage claim
 20 under this subdivision within 30 days after being
 21 discharged; and, if he desires to have the Labor
 22 Commissioner take an assignment of his wage claim, the
 23 employee shall file a wage claim with the Labor
 24 Commissioner within 60 days after being discharged. The
 25 Labor Commissioner may, in his discretion, take
 26 assignment of wage claims under this subdivision as
 27 provided for in Section 96. A discharged employee shall
 28 not be permitted to recover wages under this subdivision
 29 if a criminal prosecution based on the same discharge has
 30 been commenced for violation of Section 304 of the
 31 Consumer Credit Protection Act of 1968 (15 U.S.C. Sec.
 32 1674).
 33 (g) Nothing in this section affects any other rights the
 34 employee may have against his employer.
 35 (h) This section is intended to aid in the enforcement
 36 of the prohibition against discharge for garnishment of
 37 earnings provided in the Consumer Credit Protection
 38 Act of 1968 (15 U.S.C. Secs. 1671-1677) and shall be
 39 interpreted and applied in a manner which is consistent
 40 with the corresponding provisions of such act.

No amend-
 ment to
 § 2929
 to be
 made.

1 SEC. 13.5. Section 2929 of the Labor Code is amended
 2 to read:
 3 2929. (a) As used in this section:
 4 (1) "Garnishment" means any judicial procedure
 5 through which the wages of an employee are required to
 6 be withheld for the payment of any debt. For the
 7 purposes of this section, "garnishment" includes the
 8 withholding of the wages of an employee pursuant to an
 9 earnings withholding order for taxes issued pursuant to
 10 Article 4 (commencing with Section 723.070) of Chapter
 11 2.5 of Title 9 of Part 2 of the Code of Civil Procedure, and
 12 the withholding of wages pursuant to such an order shall
 13 be deemed to be a garnishment for the payment of a
 14 judgment for the purposes of subdivision (c).
 15 (2) "Wages" has the same meaning as that term has
 16 under Section 200.
 17 (b) No employer may discharge or threaten to
 18 discharge any employee by reason of the fact that the
 19 garnishment of his wages has been threatened.
 20 (c) No employer may discharge any employee by
 21 reason of the fact that his wages have been subjected to
 22 garnishment for the payment of two judgments, or less,
 23 during any period of 12 months or less. A judgment for
 24 which garnishments are levied in more than one
 25 12-month period may only be considered as one of the
 26 two judgments during a 12-month period which includes
 27 the date on which the first garnishment is made, and shall
 28 not be considered as one of the two judgments in any
 29 other 12-month period.
 30 (d) An earnings withholding order issued pursuant to
 31 Section 723.030 of the Code of Civil Procedure (support
 32 order) shall be considered a garnishment for the
 33 payment of one judgment for the purposes of this section.
 34 (e) A provision of a contract of employment that
 35 provides an employee with less protection than is
 36 provided by subdivisions (b) and (c) is against public
 37 policy and void.
 38 (f) Unless the employee has greater rights under the
 39 contract of employment, the wages of an employee who
 40 is discharged in violation of this section shall continue

No amendment
 of § 2929
 to be made

1 until reinstatement notwithstanding such discharge, but
 2 such wages shall not continue for more than 30 days and
 3 shall not exceed the amount of wages earned during the
 4 30 calendar days immediately preceding the date of the
 5 levy of execution upon the employee's wages which
 6 resulted in his discharge. The employee shall give notice
 7 to his employer of his intention to make a wage claim
 8 under this subdivision within 30 days after being
 9 discharged; and, if he desires to have the Labor
 10 Commissioner take an assignment of his wage claim, the
 11 employee shall file a wage claim with the Labor
 12 Commissioner within 60 days after being discharged. The
 13 Labor Commissioner may, in his discretion, take
 14 assignment of wage claims under this subdivision as
 15 provided for in Section 96. A discharged employee shall
 16 be permitted to recover wages under this subdivision
 17 even though a criminal prosecution based on the same
 18 discharge has been commenced for violation of Section
 19 304 of the Consumer Credit Protection Act of 1968 (15
 20 U.S.C. Sec. 1674).

21 (g) Nothing in this section affects any other rights the
 22 employee may have against his employer.

23 (h) This section is intended to aid in the enforcement
 24 of the prohibition against discharge for garnishment of
 25 earnings provided in the Consumer Credit Protection
 26 Act of 1968 (15 U.S.C. Secs 1671-1677) and shall be
 27 interpreted and applied in a manner which is consistent
 28 with the correspondence provisions of such act.

29 ~~Sec. 14. Section 270h of the Penal Code, as amended~~
 30 ~~by Chapter 1587 of the Statutes of 1971, is amended to~~
 31 ~~read:~~

32 270h. In any case where there is a conviction under
 33 the provisions of either Section 270 or 270a and there is
 34 an order granting probation which includes an order for
 35 support, the court may:

36 (a) Issue an execution on such order for the support
 37 payments that accrue during the time such probation
 38 order is in effect, in the same manner as on a judgment
 39 in a civil action for support payments. This remedy shall
 40 apply only when there is no existing civil order of this

No amend-
 ment of
 § 2929
 to be
 made

No amend-
 ment of
 § 270h
 to be
 made.

~~state or a foreign court order that has been reduced to a judgment of this state for support of the same person or persons included in the probation support order.~~
 (b) ~~Issue an earnings withholding order under Section 723.030 of the Code of Civil Procedure to enforce the order for support.~~
 These remedies are ~~in addition to any other remedies available to the court~~

No amendment of §270h to be made.

SEC. 11. Section 1208 of the Penal Code is amended to read:

1208. (a) The provisions of this section, insofar as they relate to employment, shall be operative in any county in which the board of supervisors by ordinance finds, on the basis of employment conditions, the state of the county jail facilities, and other pertinent circumstances, that the operation of this section, insofar as it relates to employment, in that county is feasible. The provisions of this section, insofar as they relate to education, shall be operative in any county in which the board of supervisors by ordinance finds, on the basis of education conditions, the state of the county jail facilities, and other pertinent circumstances, that the operation of this section, insofar as it relates to education, in that county is feasible. In any such ordinance the board shall prescribe whether the sheriff, the probation officer, or the superintendent of a county industrial farm or industrial road camp in the county shall perform the functions of the work furlough administrator. The board of supervisors may also terminate the operativeness of this section, either with respect to employment or education in the county if it finds by ordinance that, because of changed circumstances, the operation of this section, either with respect to employment or education in that county is no longer feasible.

Notwithstanding any other provision of law, the board of supervisors may by ordinance designate a facility for confinement of prisoners classified for the work furlough program and designate the work furlough administrator as the custodian of the facility. The sheriff may transfer custody of such prisoners to the work furlough administrator to be confined in such facility for the period during which they are in the work furlough program.

(b) When a person is convicted of a misdemeanor and sentenced to the county jail, or is imprisoned therein for nonpayment of a fine, for contempt, or as a condition of probation for any criminal offense, or committed under the terms of Section 6404 or 6406 of the Welfare and

Institutions Code as a habit-forming drug addict, the work furlough administrator may, if he concludes that such person is a fit subject therefor, direct that such person be permitted to continue in his regular employment, if that is compatible with the requirements of subdivision (d), or may authorize the person to secure employment for himself, unless the court at the time of sentencing or committing has ordered that such person not be granted work furloughs. The work furlough administrator may, if he concludes that such person is a fit subject therefor, direct that such person be permitted to continue in his regular educational program, if that is compatible with the requirements of subdivision (d), or may authorize the person to secure education for himself, unless the court at the time of sentencing has ordered that such person not be granted work furloughs.

(c) If the work furlough administrator so directs that the prisoner be permitted to continue in his regular employment or educational program, the administrator shall arrange for a continuation of such employment or education, so far as possible without interruption. If the prisoner does not have regular employment or a regular educational program, and the administrator has authorized the prisoner to secure employment or education for himself, the prisoner may do so, and the administrator may assist him in doing so. Any employment or education so secured must be suitable for the prisoner. Such employment or educational program, if such educational program includes earnings by the prisoner, must be at a wage at least as high as the prevailing wage for similar work in the area where the work is performed and in accordance with the prevailing working conditions in such area. In no event may any such employment or educational program involving earnings by the prisoner be permitted where there is a labor dispute in the establishment in which the prisoner is, or is to be, employed or educated.

(d) Whenever the prisoner is not employed or being educated and between the hours or periods of employment or education, he shall be confined in the facility designated by the board of supervisors for work furlough confinement unless the work furlough administrator directs otherwise. If the prisoner is injured during a period of employment or education, the work furlough administrator shall have the authority to release him from the facility for continued medical treatment by private physicians or at medical facilities at the expense of the employer, workman's compensation insurer, or the

prisoner. Such release shall not be construed as assumption of liability by the county or work furlough administrator for medical treatment obtained.

The work furlough administrator may release any prisoner classified for the work furlough program for a period not to exceed 72 hours for medical, dental, or psychiatric care, and for family emergencies or pressing business which would result in severe hardship if the release were not granted.

(e) The earnings of the prisoner may be collected by the work furlough administrator, and it shall be the duty of the prisoner's employer to transmit such wages to the administrator at the latter's request. Earnings levied upon pursuant to writ of ~~other lawful manner~~ **execution or in the Employees' Earnings Protection Law, Chapter 2.5 (commencing with Section 723.010) of Title 9 of Part 2 of the Code of Civil Procedure,** shall not be transmitted to the administrator. If the administrator has requested transmittal of earnings prior to ~~levy, such request shall have priority.~~ **service of an earnings withholding order under the Employees' Earnings Protection Law, none of the earnings of the prisoner shall be withheld pursuant to such order unless and until the administrator terminates his request that the prisoner's employer transmit the prisoner's earnings to the administrator. In a case in which the functions of the administrator are performed by a sheriff, and such sheriff receives a writ of** ~~execution for the earnings of a prisoner subject to this section but has not yet requested transmittal of the prisoner's earnings pursuant to this section, he shall first levy on the earnings pursuant to the writ.~~ When an employer or

educator transmits such earnings to the administrator pursuant to this subdivision he shall have no liability to the prisoner for such earnings. From such earnings the administrator shall pay the prisoner's board and personal expenses, both inside and outside the jail, and shall deduct so much of the costs of administration of this section as is allocable to such prisoner, and, in an amount determined by the administrator, shall pay the support of the prisoner's dependents, if any. If sufficient funds are available after making the foregoing payments, the administrator may, with the consent of the prisoner, pay, in whole or in part, the preexisting debts of the prisoner. Any balance shall be retained until the prisoner's discharge and thereupon shall be paid to him.

(f) The prisoner shall be eligible for time credits pursuant to Sections 4018, 4019, and 4019.2.

(g) In the event the prisoner violates the conditions laid down for his conduct, custody, education, or

employment, the work furlough administrator may order the balance of the prisoner's sentence to be spent in actual confinement.

(h) Willful failure of the prisoner to return to the place of confinement not later than the expiration of any period during which he is authorized to be away from the place of confinement pursuant to this section is punishable as provided in Section 4532 of the Penal Code.

(i) As used in this section, "education" includes vocational and educational training and counseling; and psychological, drug abuse, alcoholic and other rehabilitative counseling. "educator" includes a person or institution providing such training or counseling.

(j) This section shall be known and may be cited as the "Cobey Work Furlough Law."

12/ ~~SEC. 12.~~ Section 11489 of the Welfare and Institutions Code is amended to read:

11489. After judgment in any court action brought to enforce the support obligation of an absent parent pursuant to the provisions of this chapter, a writ of execution may be issued against one-half of the earnings of the absent parent due or owing for his personal services and no claim for exemption shall be effective against the enforcement of such writ of execution the court may

order an assignment of wages pursuant to Section 4701 of the Civil Code .

8 SEC. 13. ~~(a)~~ Any levy made pursuant to a writ of
9 execution against the earnings of an employee that has
10 been served on the employer prior to ~~January~~ January
11 1, 1976, shall be given effect after the operative date of
12 this act to the same extent as it would have been given
13 effect had this act not been enacted, and the law in effect
14 prior to the operative date of this act shall govern such
15 levy. No earnings withholding order served pursuant to
16 this act ~~on or after January 1, 1976~~ on or after January 1, 1976, shall
17 be given any effect during the period that a levy made
18 pursuant to a writ of execution against the earnings of an
19 employee has been given effect, and any earnings
20 withholding order served on an employer during the
21 period such a levy is in effect shall be ineffective.

~~22 (b) Except as otherwise prescribed by rules adopted
23 by the Judicial Council, any order made pursuant to
24 Section 4701 of the Civil Code or Section 270h of the
25 Penal Code prior to the operative date of this act shall
26 remain in effect after the operative date of this act and
27 shall be deemed to be a withholding order for support
28 issued pursuant to Section 723.036~~

14/ 29 SEC. 1. This act shall become operative on [REDACTED]
30 [REDACTED] January 1, 1976, but the Judicial Council, sufficient
31 funds being available to the Judicial Council, the state
32 agencies concerned with Article 4 (commencing with
33 Section 723.070) of the Employees' Earnings Protection
34 Law, and the court clerks shall, prior to that date, do
35 whatever is necessary so that this act may [REDACTED]
36 [REDACTED] become operative on January 1, 1976.

15/ 3 SEC. 2. Notwithstanding Section 2231 of the
4 Revenue and Taxation Code, there shall be no
5 reimbursement pursuant to that section nor shall there
6 be an appropriation made by this act because
7 self-financing authority is provided in this act to cover
8 such costs.

REVISION OF AB 101 TO RETAIN LEVYING OFFICER
FOR SERVICE AND COLLECTION OF
WAGE GARNISHMENT

SECTION 1.

~~20~~ ~~Section 682~~ Section 682 of the Code of Civil Procedure is
21 amended to read:

682. The writ of execution must be issued in the name of the people, sealed with the seal of the court, and subscribed by the clerk or judge, and be directed to the sheriff, constable, or marshal, and it must intelligibly refer to the judgment, stating the court, the county, and in municipal and justice courts, the judicial district, where the judgment is entered, and if it be for money, the amount thereof, and the amount actually due thereon, and if made payable in a specified kind of money or currency, as provided in Section 667, the execution must also state the kind of money or currency in which the judgment is payable, and must require the officer to whom it is directed to proceed substantially as follows:

1. If it be against the property of the judgment debtor, it must require such officer to satisfy the judgment, with interest, out of the personal property of such debtor, or if it is against the earnings of ~~such debtor~~, such levy shall be made in accordance with ~~Section 682.5~~, and if sufficient personal property cannot be found, then out of his real property; or if the judgment be a lien upon real property, then out of the real property belonging to him on the day when the abstract of judgment was filed as provided in Section 674 of this code, or at any time thereafter.

an employee

*Chapter
25 (am-
ending
with Section
723.010)*

2. If it be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants, or trustees, it must require such officer to satisfy the judgment, with interest, out of such property.

3. If it be against the person of the judgment debtor, it must require such officer to arrest such debtor and commit him to the jail of the county until he pay the judgment, with interest, or be discharged according to law.

4. If it be issued on a judgment made payable in a specified kind of money or currency, as provided in Section 667, it must also require such officer to satisfy the same in the kind of money or currency in which the judgment is made payable, and such officer must refuse payment in any other kind of money or currency; and in case of levy and sale of the property of the judgment debtor, he must refuse payment from any purchaser at such sale in any other kind of money or currency than that specified in the execution. Any such officer collecting money or currency in the manner required by this chapter, must pay to the plaintiff or party entitled to recover the same, the same kind of money or currency received by him, and in case of neglect or refusal to do so, he shall be liable on his official bond to the judgment creditor in three times the amount of the money so collected.

5. If it be for the delivery of the possession of real or personal property, it must require such officer to deliver the possession of the same, describing it, to the party entitled thereto, and may at the same time require such officer to satisfy any cost, damages, rents, or profits recovered by the same judgment, out of the personal property of the person against whom it was rendered, and the value of the property for which the judgment was rendered to be specified therein if a delivery thereof cannot be had; and if sufficient personal property cannot be found, then out of the real property, as provided in the first subdivision of this section.

SEC. 2. Section 682.3 of the Code of Civil Procedure, as amended by Chapter 649 of the Statutes of 1972, is repealed.

~~682.3. (a) Whenever the levy of execution is against the earnings of a judgment debtor, the employer served with the writ of execution shall withhold the amount specified in the writ from earnings then or thereafter due to the judgment debtor and not exempt under Section 690.6; and shall pay such amount, each time it is withheld, to the sheriff, constable or marshal who served the writ. If such person shall fail to pay each amount to the sheriff, constable or marshal, the judgment creditor may commence a proceeding against him for the amounts not paid. The execution shall terminate and the person served with the writ shall cease withholding sums thereunder when any one of the following events takes place:~~

~~(1) Such person receives a direction to release from the levying officer. Such release shall be issued by the levying officer in any of the following cases:~~

(a) Upon receipt of a written direction from the judgment creditor.

(b) Upon receipt of an order of the court in which the action is pending, or a certified copy of such order, discharging or recalling the execution or releasing the property. This subdivision shall apply only if no appeal is perfected and undertaking executed and filed as provided in Section 917.2 or a certificate to that effect has been issued by the clerk of the court.

(c) In all other cases provided by law.

(2) Such person has withheld the full amount specified in the writ of execution from the judgment debtor's earnings.

(3) The judgment debtor's employment is terminated by a resignation or dismissal at any time after service of the execution and he is not reinstated or reemployed within 90 days after such termination.

(4) A period of 90 days has passed since the time such person was served with the writ of execution.

(b) At any time after a levy on his earnings the judgment debtor may proceed to claim a full exemption of his earnings in accordance with the provisions of Sections 600.6 and 600.50. The exemption so claimed shall extend to any wages withheld pursuant to the levy of execution whether or not withheld after the claim of exemption is filed.

(c) Subject to the provisions of Section 600.50, the sheriff, constable or marshal who serves the writ of execution and receives the amounts withheld from the judgment debtor's earnings, shall account for and pay to the person entitled thereto, all sums collected under the writ, less his lawful fees and expenses at least once every 30 days, and make return on collection thereof to the court.

SEC. 3 Section 683 of the Code of Civil Procedure is amended to read:

683. The execution may be made returnable, at any time not less than 10 nor more than 60 days after its receipt by the officer to whom it is directed, or, if the execution is upon the earnings of ~~the judgment debtor~~, upon the termination of the levy of execution as provided in Section ~~682.3~~, to the court in which the judgment is entered. When the execution is returned, the clerk must attach it to the judgment roll, or the judge must make the proper entry in the docket.

If an execution is returned unsatisfied, another may be afterward issued within the time specified in this code.

If property either personal or real be levied upon under such writ of execution but the sale thereunder be

723.026

any employee
under Chapter
2.5 (commencing
with Section
723.010)

New
amendment

postponed beyond or not held within the return date after it is received by the officer to whom it was delivered and which has been returned to the clerk of the court in which the judgment is entered, upon request of the person in whose favor the writ runs the court may direct the clerk to redeliver said execution to the officer to whom it was directed in order to permit the officer to make an alias return of the proceedings of the sale or levy thereon as in the case of an original return of execution.

Whenever a writ of execution issued against real property containing a dwelling house has been returned, proof that notice required by Section 682b has been served shall be indicated on the writ, or separately and attached to the writ.

4 5 ~~SEC. 5.~~ Section 690.6 of the Code of Civil Procedure is
6 ~~as amended by Chapter 49 of the Statutes of 1972, is~~
7 ~~amended to read: repealed.~~

~~690.6. (a) One-half or such greater portion as is allowed by statute of the United States, of the earnings of the debtor received for his personal services rendered at any time within 30 days next preceding the date of a withholding by the employer under Section 682.3, shall be exempt from execution without filing a claim for exemption as provided in Section 690.50.~~

(b) All earnings of the debtor received for his personal services rendered at any time within 30 days next preceding the date of a withholding by the employer under Section 682.3, if necessary for the use of the debtor's family residing in this state and supported in whole or in part by the debtor, unless the debts are:

(1) Incurred by the debtor, his wife, or his family for the common necessities of life.

(2) Incurred for personal services rendered by any employee or former employee of the debtor.

(c) The court shall determine the priority and division of payment among all of the creditors of a debtor who have levied an execution upon nonexempt earnings upon such basis as is just and equitable.

(d) Any creditor, upon motion, shall be entitled to a hearing in the court in which the action is pending or from which the writ issued for the purpose of determining the priority and division of payment among all the creditors of the debtor who have levied an ~~execution upon nonexempt earnings pursuant to this section.~~

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5 / 15 ~~SEC. 8.~~ Section 690.8a is added to the Code of Civil
16 Procedure, to read:
17 690.8a. Earnings of the debtor which have been paid
18 to him and are retained in the form in which paid or as
19 cash are exempt from levy of execution to the extent they
20 are essential for the support of the debtor or his family.

6/ 25 SEC. 1. Section 690.23 is added to the Code of Civil
26 Procedure, to read:
27 690.23. (a) All periodic payments payable by a
28 pension or retirement plan that are not otherwise exempt
29 by law are exempt from levy of execution in the amount
30 that is exempted by Section 723.050 without filing a claim
31 for exemption as provided in Section 690.50.
32 (b) Nothing in this section limits the applicability of
33 any exemption otherwise provided by law.

7/ SEC. 1. Section 690.50 of the Code of Civil Procedure is amended
to read:

690.50. (a) If the property mentioned in Section 690.1 to 690.29,
inclusive, shall be levied upon under writ of attachment or execution,
the defendant or judgment debtor (herein referred to as "the
debtor"), in order to avail himself of his exemption rights as to such
property, shall within 20 days, in the case of real property described
in Section 690.235, and 10 days, in the case of all other property, from
the date such property was levied upon deliver to the levying officer
an affidavit of himself or his agent, together with a copy thereof,
alleging that the property levied upon, identifying it, is exempt,
specifying the section or sections of this code on which he relies for
his claim to exemption, and all facts necessary to support his claim,
and also stating therein his address within this state for the purpose
of permitting service by mail upon him of the counteraffidavit and
any notice of the motion herein provided. ~~For purposes of this
section, if the property levied upon consists of the earnings of a~~
judgment debtor, each date that earnings are withheld from the
judgment debtor shall be deemed to be the date such earnings were
levied upon. A judgment debtor shall have the right to file a separate
claim of exemption each time that a withholding of earnings occurs,
provided, that if a prior claim of exemption has been adjudicated
under the same levy, that each separate claim of exemption
thereafter be supported by a statement under oath alleging the
changed circumstances which support the new claim of exemption.
If a claim of exemption be allowed, the judgment creditor shall have
the right, at any time during the effective period of the claim of
exemption, to move the court for consideration of the claim
previously granted on the grounds of a material change of
circumstances affecting the debtor's exemption rights. If the
judgment creditor does make such a motion, he must support his
~~motion by a statement under oath alleging the changed
circumstances which support his motion for consideration.~~

(b) Forthwith upon receiving the affidavit of exemption, the
levying officer shall serve upon the plaintiff or the person in whose
favor the writ runs (herein referred to as "the creditor"), either
personally or by mail, a copy of the affidavit of exemption, together
with a writing, signed by the levying officer, stating that the claim
to exemption has been received and that the officer will release the
property unless he receives from the creditor a counteraffidavit
within 10 days after service of such writing, in the case of real
property described in Section 690.235, and within five days after
service of such writing, in all other cases.

(c) If the creditor desires to contest the claim to exemption, he
shall, within such period of 10 days, in the case of real property
described in Section 690.235, and five days, in all other cases, file with
the levying officer a counteraffidavit alleging that the property is not
exempt within the meaning of the section or sections of this code
relied upon, or if the claim to exemption be based on Sections 690.2,
690.3, 690.4, ~~690.6~~, alleging that the value of the property claimed to
be exempt is in excess of the value stated in the applicable section
or sections, together with proof of service of a copy of such
counteraffidavit upon the debtor.

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690.8a, or
690.23,

(d) If no such counteraffidavit, with such proof of service, is so filed with the levying officer within the time allowed, the officer shall forthwith release the property.

(e) If such counteraffidavit, with such proof of service, is so filed, either the creditor or the debtor shall be entitled to a hearing in the court in which the action is pending or from which the writ issued for the purpose of determining the claim to exemption, ~~the priority or division of payment between one or more creditors from nonexempt earnings under the provisions of Section 690.6~~ or the value of the property claimed to be exempt. Such hearing shall be granted by the court upon motion of either party made within five days after the counteraffidavit is filed with the levying officer, and such hearing must be had within 15 days from the date of the making of such motion unless continued by the court for good cause. The party making the motion for hearing shall give not less than five days' notice in writing of such hearing to the levying officer and to the other party, and specify therein that the hearing is for the purpose of determining the claim to exemption. The notice may be of motion or of hearing and upon the filing of the notice with the clerk of the court, the motion is deemed made.

(f) If neither party makes such motion within the time allowed, or if the levying officer shall not have been served with a copy of the notice of hearing within 10 days after the filing of the counteraffidavit, the levying officer shall forthwith release the property to the debtor.

(g) At any time while the proceedings are pending, upon motion of either party or upon its own motion, the court may (1) order the sale of any perishable property held by such officer and direct disposition of the proceeds of such sale, and (2) make such other orders as may be proper under the particular circumstances of the case. Any orders so made may be modified or vacated by the court or judge granting the same, or by the court in which the proceedings are pending, at any time during the pendency of the proceedings, upon such terms as may be just.

(h) The levying officer in all cases shall retain physical possession of the property levied upon if it is capable of physical possession, or in the case of property not capable of physical possession, the levy shall remain in full force and effect, pending the final determination of the claim to exemption. However, no sale under execution shall be had prior to such final determination unless an order of the court hearing the claim for exemption shall so provide.

(i) At such hearing, the party claiming the exemption shall have the burden of proof. The affidavits and counteraffidavits shall be filed by the levying officer with the court and shall constitute the pleadings, subject to the power of the court to permit an amendment in the interests of justice. The affidavit of exemption shall be deemed controverted by the counteraffidavit and both shall be received in evidence. Nothing herein shall be construed to deprive anyone of the right to a jury trial in any case where, by the Constitution, such right is given, but a jury trial may be waived in any such case in like manner as in the trial of an action. No findings shall be required in a proceeding under this section. When the hearing is before the court sitting without a jury, and no evidence other than the affidavit and counteraffidavit is offered, the court, if satisfied that sufficient facts are shown thereby, may make its determination thereon. Otherwise, it shall order the hearing continued for the production of other evidence, oral or documentary, or the filing of other affidavits and counteraffidavits. At the conclusion of the hearing, the court shall give judgment determining whether the claim to exemption shall be allowed or not, in whole or in part, ~~and may give judgment~~

~~determining the priority or division of payment between one or more creditors from nonexempt earnings under the provisions of Section 690.6,~~ which judgment shall be determinative as to the right of the creditor to have the property taken and held by the officer or to subject the property to payment or other satisfaction of his judgment. In such judgment the court shall make all proper orders for the disposition of such property or the proceeds thereof.

(j) A copy of any judgment entered in the trial court shall be forthwith transmitted by the clerk to the levying officer in order to permit such officer to either release the property attached or to continue to hold it to sell it, in accordance with the provisions of the writ previously delivered to him. Such officer, unless an appeal from the judgment is waived, or the judgment has otherwise become final, shall continue to hold such property under attachment or execution, continuing the sale of any property held under execution until such judgment becomes final. However, if a claim to exemption under Section ~~690.6~~ ^{690.8a} is allowed by such judgment, the debtor shall be entitled to a release of the earnings so exempted at the expiration of three days, unless otherwise ordered by the court, or unless the levying officer shall have been served with a copy of a notice of appeal from the judgment.

(k) When any documents required hereunder are served by mail, the provisions of this code relating to service by mail shall be applicable thereto.

(l) Whenever the time allowed for an act to be done hereunder is extended by the court, written notice thereof shall be given promptly to the opposing party, unless such notice be waived, and to the levying officer.

(m) An appeal lies from any judgment under this section. Such appeal to be taken in the manner provided for appeals in the court in which the proceeding is had.

SEC. 8. Section 710 of the Code of Civil Procedure is amended to read:

710. (a) Whenever a judgment for the payment of money is rendered by any court of this state against a defendant to whom money is owing and unpaid by this state or by any county, city and county, city or municipality, quasi-municipality, district or public corporation, the judgment creditor may file a duly authenticated abstract or transcript of such judgment together with an affidavit stating the exact amount then due, owing and unpaid thereon and that he desires to avail himself of the provisions of this section in the manner as follows:

1. If such money; ~~wages or salary~~ is owing and unpaid by this state to such judgment debtor, said judgment creditor shall file said abstract or transcript and affidavit with the state department, board, office or commission owing such money; ~~wages or salary~~ to said judgment debtor prior to the time such state department, board, office or commission presents the claim of such judgment debtor therefor to the State Controller. Said state department, board, office or commission in presenting

such claim of such judgment debtor to said State Controller shall note thereunder the fact of the filing of such abstract or transcript and affidavit and state the amount unpaid on said judgment as shown by said affidavit and shall also note any amounts advanced to the judgment debtor by, or which the judgment debtor owes to, the State of California by reason of advances for expenses or for any other purpose. Thereupon the State Controller, to discharge such claim of such judgment debtor, shall pay into the court which issued such abstract or transcript by his warrant or check payable to said court the whole or such portion of the amount due, such judgment debtor on such claim, after deducting from such claim an amount sufficient to reimburse the state department, board, office or commission for any amounts advanced to said judgment debtor or by him owed to the State of California, and after deducting therefrom an amount equal to one-half or such greater portion as is allowed by statute of the United States, of the earnings owing to the judgment debtor for his personal services to the state rendered at any time within 30 days next preceding the filing of such abstract or transcript, as will satisfy in full or to the greatest extent the amount unpaid on said judgment and the balance thereof, if any, to the judgment debtor.

2. If such money, wages or salary is owing and unpaid to such judgment debtor by any county, city and county, city or municipality, quasi-municipality, district or public corporation, said judgment creditor shall file said abstract or transcript and affidavit with the auditor of such county, city and county, city or municipality, quasi-municipality, district or public corporation (and in case there be no auditor then with the official whose duty corresponds to that of auditor). Thereupon said auditor (or other official) to discharge such claim of such judgment debtor shall pay into the court which issued such abstract or transcript by his warrant or check payable to said court the whole or such portion of the amount due on such claim of such judgment debtor, less an amount equal to one-half or such greater portion as is allowed by statute of the United States, of the earnings of the debtor owing by the county, city and county, city, municipality, quasi-municipality, district or public corporation to the judgment debtor for his personal services to such public body rendered at any time within 30 days next preceding the filing of such abstract or transcript, as will satisfy in full or to the greatest extent the amount unpaid on said judgment and the balance thereof, if any, to the judgment debtor.

(b) The judgment creditor upon filing such abstract or transcript and affidavit shall pay a fee of two dollars and fifty cents (\$2.50) to the person or agency with whom the same is filed.

(c) Whenever a court receives any money hereunder, it shall pay as much thereof as is not exempt from execution under this code to the judgment creditor and the balance thereof, if any, to the judgment debtor. The procedure for determining the claim of exemption shall be governed by the procedure set forth in Section 690.50 of this code, and the court rendering the judgment shall be considered the levying officer for the purpose of that section.

(d) In the event the moneys owing to a judgment debtor by any governmental agency mentioned in this section are owing by reason of an award made in a condemnation proceeding brought by the governmental agency, such governmental agency may pay the amount of the award to the clerk of the court in which such condemnation proceeding was tried, and shall file therewith the abstract or transcript of judgment and the affidavit filed with it by the judgment creditor. Such payment into court shall constitute payment of the condemnation award within the meaning of Section 1251 of this code. Upon such payment into court and the filing with the county clerk of such abstract or transcript of judgment and affidavit, the county clerk shall notify by mail, through their attorneys, if any, all parties interested in said award of the time and place at which the court which tried the condemnation proceeding will determine the conflicting claims to said award. At said time and place the court shall make such determination and order the distribution of the money held by the county clerk in accordance therewith.

(e) The judgment creditor may state in the affidavit any fact or facts tending to establish the identity of the judgment debtor. No public officer or employee shall be liable for failure to perform any duty imposed by this section unless sufficient information is furnished by the abstract or transcript together with the affidavit to enable him in the exercise of reasonable diligence to ascertain such identity therefrom and from the papers and records on file in the office in which he works. The word "office" as used herein does not include any branch or subordinate office located in a different city.

(f) Nothing in this section shall authorize the filing of any abstract or transcript and affidavit against: ~~(1) any wages, or salary owing to the Governor, Lieutenant Governor, Secretary of State, Controller, Treasurer, and Attorney General, or~~ ~~(2) any overpayment of tax, penalty or interest, or interest allowable with respect to such overpayment, under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code.~~

(g) Any fees received by a state agency under this section shall be deposited to the credit of the fund from

which payments were, or would be, made on account of a garnishment under this section. For the purpose of this paragraph, payments from the State Pay Roll Revolving Fund shall be deemed payments made from the fund out of which moneys to meet such payments were transferred to said revolving fund.

(h) (1) In the event the moneys owing to a judgment debtor by any governmental agency mentioned in this section are for wages or salary, the judgment creditor shall mail under a separate cover at the time of filing the affidavit with the governmental agency, in an envelope marked "Personal and Confidential", a copy of the affidavit and a Notice to Judgment Debtor as provided in paragraph (2) of this subdivision, addressed to the judgment debtor at his place of employment.

(2) The Notice to Judgment Debtor shall be in 10-point bold type, and in substantially the following form:

You may be entitled to file a claim exempting your salary or wages from execution. You may seek the advice of any attorney or may, within 10 days from the date your salary or wages were levied upon, deliver an affidavit to the court rendering the judgment to exempt such salary or wages, as provided in Section 600.50 of the Code of Civil Procedure.

(h) *This section does not authorize the withholding of earnings of a public officer or employee. The earnings of a public officer or employee may be withheld only pursuant to Chapter 2.5 (commencing with Section 723.010).*

9/ 14 ~~SEC. 14.~~ Chapter 2.5 (commencing with Section
15 723.010) is added to Title 9 of Part 2 of the Code of Civil
16 Procedure, to read:

17
18 **CHAPTER 2.5. EMPLOYEES' EARNINGS PROTECTION**
19 **LAW**

20
21 **Article 1. Definitions**

22
23 723.010. This chapter shall be known and may be
24 cited as the "Employees' Earnings Protection Law."

25 723.011. As used in this chapter:

26 (a) "Earnings" means compensation payable by an
27 employer to an employee for personal services
28 performed by such employee whether denominated as
29 wages, salary, commission, bonus, or otherwise.

30 (b) "Employee" means a public officer and any
31 individual who performs services subject to the control of
32 an employer as to both what shall be done and how it shall
33 be done.

34 (c) "Employer" means a person for whom an
35 individual performs services as an employee.

36 (d) "Judgment" includes a support order.

37 (e) "Judgment creditor" means the person in favor of
38 whom a judgment is rendered and includes his
39 representative. As applied to the state, "judgment
40 creditor" means the specific state agency seeking to

1 collect a judgment or tax liability.
 2 (f) "Judgment debtor" means the person against
 3 whom a judgment is rendered and includes a person from
 4 whom the state is seeking to collect a tax liability.
 5 (g) "Person" includes an individual, a corporation, a
 6 partnership or other unincorporated association, and a
 7 public entity.

8
9 Article 2. General Provisions

10
11 Except as provided in Section 4901 of the Civil Code, the

12 Notwithstanding Section 688, a

11 723.020. ~~The~~ earnings of an employee shall not be
 12 required to be withheld for payment of a debt by means
 13 of any judicial procedure other than pursuant to the
 14 provisions of this chapter.

15 723.021. ~~A~~ levy upon the earnings of a judgment
 16 debtor shall be made by an earnings withholding order,
 17 directed to his employer, in accordance with this chapter.

18 723.022. (a) As used in this section, "withholding
 19 period" means the period which commences on the fifth
 20 day after service of an earnings withholding order upon
 21 the employer and which continues until the first of the
 22 following dates:

23 (1) The 125th day after the order was served.

24 (2) The date of termination requested by the creditor
25 or ordered by the court.

26 (3) The date the employer has withheld the full
27 amount specified in the order.

(4) The date of termination specified in a notice sent
 by the levying officer. The levying officer shall send a
 notice of termination upon receipt of a written direction
 from the judgment creditor.

28 (b) Except as otherwise provided by statute, an
 29 employer shall withhold the amounts required by an
 30 earnings withholding order from all earnings of the
 31 employee payable for any pay period of such employee
 32 which ends during the withholding period.

33 (c) Notwithstanding subdivision (b), an employer
 34 shall cease withholding pursuant to an earnings
 35 withholding order whenever he is served with a copy of
 36 a satisfaction of the judgment upon which the order is
 37 based.

38 (d) An employer is not liable for any amounts
 39 withheld and paid over to a judgment creditor, pursuant
 40 to an earnings withholding order prior to service upon

of execution
service of
upon

levying officer

1 the employer of a written notice of termination of such
2 order or a copy of a satisfaction of the judgment upon
3 which the order is based.

4 (e) For the purposes of this section, service shall be
5 deemed complete on the date the paper served is
6 actually first received at either the branch or office
7 where the employee works or the office from which he
8 is paid.

9 (f) Notwithstanding subdivision (a), in the case of an
10 employee of a state agency, the withholding period
11 commences on the 10th day after service of the earnings
12 withholding order.

13 723.023. (a) Except as otherwise provided in this
14 chapter:

15 (1) An employer shall comply with the first
16 withholding order served upon him.

17 (2) If the employer is served with two or more orders
18 on the same day, he shall comply with the order issued
19 pursuant to the judgment first entered. If two or more
20 orders served on the same day are also based on
21 judgments entered upon the same day, the employer
22 shall comply with whichever one of such orders he
23 selects.

24 (3) If an earnings withholding order is served during
25 the period that an employer is required to comply with
26 another earnings withholding order for the same
27 judgment debtor, the subsequent order is ineffective and
28 the employer shall not withhold earnings pursuant to the
29 subsequent order.

30 (b) For the purposes of this section, service of an
31 earnings withholding order shall be deemed complete on
32 the date it is actually first received at either the branch
33 or office where the employee works or the office from
34 which he is paid.

35 723.024. Each time an employer makes a deduction
36 from an employee's earnings pursuant to an earnings
37 withholding order, he may make an additional deduction
38 of one dollar (\$1) and retain it as a charge for his services
39 in complying with the earnings withholding order.

40 723.025. The amount required to be withheld

pursuant to an earnings withholding order shall be paid to the ~~person specified in the order~~ within 15 days after each payment of earnings is made to the employee unless the employer elects to pay in regular monthly payments made not later than the 15th day of each month. In the latter case, the initial monthly payment shall include all amounts required to be withheld from the earnings of the employee during the preceding calendar month up to the close of the employee's pay period ending closest to the last day of that month, and thereafter each monthly payment shall include amounts withheld from the employee's earnings for services rendered in the interim up to the close of the employee's pay period ending closest to the last day of the preceding calendar month.

levying officer

~~723.026. Within 15 days after he receives a request from the judgment debtor for an accounting of the payments received pursuant to an earnings withholding order, the judgment creditor shall send the accounting to the judgment debtor by first class mail, postage prepaid. The judgment creditor is not required to make such an accounting more frequently than once every 30 days. The accounting shall state the payments received by the judgment creditor during the period covered by the accounting, the maximum additional amount that may be withheld pursuant to the earnings withholding order, and the total amount received by the creditor during the period the order has been in effect.~~

723.026. The levying officer shall:

(a) Receive and account for all amounts received pursuant to Section 723.025 and pay such amounts over to the person entitled thereto, less his fee provided in Section 26750 of the Government Code, at least every 30 days.

(b) Make a return on the levy of execution upon the termination of withholding pursuant to the earnings withholding order as provided in Section 683.

723.027. ~~(a)~~ If the judgment pursuant to which the earnings withholding order is issued is satisfied prior to the end of the withholding period provided in Section 723.022, the judgment creditor, within 10 days of such satisfaction, shall:

(a) ~~(1)~~ File a satisfaction of judgment in the court which issued such order; and

(b) ~~(2)~~ Serve a copy of such satisfaction on the judgment debtor's employer.

~~(b) If an earnings withholding order is served on the employer but is ineffective because the employer is complying with another earnings withholding order, the judgment creditor who served the subsequent order may~~

1 ~~serve on the judgment creditor whose order is being~~
2 ~~complied with a request for notification of satisfaction of~~
3 ~~judgment, and if such request is so served, the first~~
4 ~~judgment creditor shall mail to the judgment creditor~~
5 ~~who served the subsequent order a copy of the~~
6 ~~satisfaction of judgment within five days from the time it~~
7 ~~is served on the judgment debtor's employer pursuant to~~
8 ~~subdivision (a).~~

9 723.028. Subject to Section 723.107, after the amount
10 stated as owing in the earnings withholding order is paid,
11 the judgment creditor may apply for issuance of another
12 earnings withholding order covering costs and interest
13 that may have accrued since application for the prior
14 order.

15 723.029. Service of an earnings withholding order
16 creates a lien upon the earnings required to be withheld
17 pursuant to such order. Such lien shall continue for a
18 period of one year from the date such earnings became
19 payable.

20 723.050. (a) A "withholding order for support" is a
21 earnings withholding order to enforce a court order for
22 the support of any person. A withholding order for
23 support shall be denoted as such on its face.

24 (b) Notwithstanding any other provision of this
25 chapter:

26 (1) The restrictions on earnings withholding
27 contained in Section 723.050 do not apply to a
28 withholding order for support. The amount to be
29 withheld pursuant to a withholding order for support
30 shall be limited to the amount of the continuing periodic
31 payments ordered by the court in a prior judgment
32 except that, upon motion of the judgment creditor, after
33 notice and hearing and upon good cause shown, the court
34 may order that the amount to be withheld pursuant to a
35 withholding order for support be increased to include
36 payment, in whole or in part, of delinquent amounts
37 owing on the prior judgment. In no case shall the amount
38 an employer withholds pursuant to a withholding order
39 for support exceed the amount of earnings payable to the
40 judgment debtor by the employer after deducting (i) all

1 amounts required to be withheld by law and (ii) all
2 amounts required to be withheld by the employer
3 pursuant to any collective bargaining agreement except
4 to the extent that the deduction of any such amount is
5 revocable by the employee or at his insistence.

6 (2) An employer shall continue to withhold pursuant
7 to a withholding order for support until it expires by its
8 terms or the court orders its termination, except that an
9 earnings withholding order for support shall
10 automatically terminate one year after the employee is
11 no longer employed by the employer.

12 (3) A withholding order for support shall be given
13 priority over any other earnings withholding order. An
14 employer upon whom a withholding order for support is
15 served shall withhold and pay over earnings of the
16 employee pursuant to such order even though he is
17 already required to comply with another earnings
18 withholding order.

19 (4) Subject to paragraph (3) and to Article 3
20 (commencing with Section 723.050), an employer shall
21 withhold earnings of an employee pursuant to both a
22 withholding order for support and another earnings
23 withholding order simultaneously.

24 (5) An employer shall withhold the amount of the
25 periodic payments specified in the withholding order for
26 support. Where the period provided in the order is
27 different from the pay period of the employee, the
28 employer shall prorate the amounts withheld so that the
29 total amount withheld and paid over to the judgment
30 creditor for any given period equals the amount required
31 by the order to be withheld for the same period. The
32 amounts withheld shall be paid to the person specified in
33 the order in accordance with Section 723.025.

34 (c) Except as provided in Section 4701 of the Civil
35 Code and Section 270h of the Penal Code, no withholding
36 order for support may be issued under this section unless
37 the order is issued by the court upon a showing that the
38 person required to pay the support is in arrears in
39 payment in a sum equal to the amount of two months of
40 such payments within the 24-month period immediately

1 preceding the application for the order. For the purposes
 2 of this subdivision, arrearages in payment shall be
 3 computed on the basis of the payments owed and unpaid
 4 on the date that the person ordered to pay the support
 5 has been given notice pursuant to law of the application
 6 for the withholding order for support, and the fact that
 7 the person ordered to pay the support may have
 8 subsequently paid such arrearages does not relieve the
 9 court of its duty under this section to issue the
 10 withholding order for support. Except for an order
 11 described in Section 4701 of the Civil Code or Section
 12 270h of the Penal Code, upon petition by the person
 13 ordered to pay support and after 18 continuous and
 14 uninterrupted months of full payment under a
 15 withholding order for support, the court shall terminate
 16 the withholding order for support.
 17

723.030. (a) Nothing in this chapter affects an order made pursuant to Section 4701 of the Civil Code.

(b) An order made pursuant to Section 4701 of the Civil Code shall be given priority over any earnings withholding order. An employer upon whom an order made pursuant to Section 4701 is served shall withhold and pay over the earnings of the employee pursuant to such order even though he is already required to comply with an earnings withholding order.

(c) Subject to subdivisions (b) and (d), an employer shall withhold earnings of an employee pursuant to both an order made under Section 4701 of the Civil Code and an earnings withholding order.

(d) The employer shall withhold pursuant to an earnings withholding order only to the extent that the sum of the amount withheld pursuant to the order made under Section 4701 of the Civil Code and the amount withheld pursuant to the earnings withholding order does not exceed the amount that may be withheld under Article 3 (commencing with Section 723.050).

18 Article 3. Restrictions on Earnings Withholding

19

20 723.050. (a) As used in this section, "nonexempt
 21 earnings" for any workweek means the earnings of the
 22 judgment debtor for that workweek less the sum of all the
 23 following:

available

24 (1) The amount that would be withheld for federal
 25 personal income taxes from the same amount of earnings
 26 of a single person who claims ~~one exemption~~ no exemptions.

27 (2) The amount that would be withheld for federal
28 social security taxes from the same amount of earnings if
29 earned during the first week of a calendar year by a
30 person subject to withholding for that tax.

31 (3) The amount that would be withheld for ~~state~~
32 ~~disability insurance contributions~~ under Sections 984 and
33 985 of the Unemployment Insurance Code from the same
34 amount of earnings if earned during the first week of a
35 calendar year by a person subject to withholding for that
36 purpose.

37 (4) The amount that would be withheld for state
38 personal income taxes from the same amount of earnings
39 of a single person who claims ~~one exemption~~ *no exemptions*.

40 (5) An amount equal to 30 times the federal minimum

for worker con-
tributions to the
Unemployment
Compensation
Disability Fund

1 hourly wage prescribed by Section 6(a) (1) of the Fair
2 Labor Standards Act of 1938 in effect at the time the
3 earnings are payable.

4 (b) Except as otherwise provided in Sections ~~723.060;~~
5 ~~723.074, 723.075, and 723.076,~~ the maximum amount of the
6 earnings of a judgment debtor in any workweek which
7 may be withheld pursuant to this chapter shall be
8 computed as provided in this subdivision. ~~If the~~
9 ~~nonexempt earnings of the judgment debtor for the~~
10 ~~workweek are less than twenty dollars (\$20), nothing~~
11 ~~shall be withheld. If the nonexempt earnings of the~~
12 ~~judgment debtor for the workweek are twenty dollars~~
13 ~~(\$20) or more, ten dollars (\$10) plus 25 percent of the~~
14 ~~nonexempt earnings in excess of twenty dollars (\$20)~~
15 ~~shall be withheld. Where the nonexempt earnings of the~~
16 ~~judgment debtor for the workweek are twenty dollars~~

Where the available earnings of the judgment debtor for
the workweek are less than ten dollars (\$10), nothing
shall be withheld. If the available earnings of the
judgment debtor for the workweek are at least ten dollars
(\$10) but not more than forty-five dollars (\$45), 50 per-
cent of the available earnings shall be withheld. Where
the available earnings of the judgment debtor for the
workweek are greater than forty-five dollars (\$45), twenty-
three dollars (\$23) plus 25 percent of the available earn-
ings in excess of forty-five dollars (\$45) shall be with-
held. Where the available earnings of the judgment debtor
for the workweek are ten dollars (\$10)

17 ~~(\$20)~~ or more, if the amount computed under this
18 subdivision is not a multiple of one dollar (\$1), fractional
19 amounts less than one-half dollar (\$0.50) shall be
20 disregarded and fractional amounts of one-half dollar
21 (\$0.50) or more shall be rounded upward to the next
22 higher whole dollar.

23 (c) The Judicial Council shall prescribe by rule the
24 method of computing the amount to be withheld in the
25 case of earnings for any pay period other than a week,
26 which method shall be substantially equivalent in effect
27 to that prescribed in subdivision (b).

28 (d) The Judicial Council shall prepare withholding
29 tables for determining the amount to be withheld from
30 the earnings of employees for representative pay periods.
31 The tables may prescribe the amounts to be withheld
32 according to reasonable earnings brackets. The tables
33 prepared by the Judicial Council pursuant to this
34 subdivision shall be used to determine the amount to be
35 withheld in all cases where the tables permit
36 computation of the amount to be withheld.

37 723.051. ~~and~~ The portion of his earnings which a
38 judgment debtor proves is essential for the support of
39 himself or his family is exempt from levy under this
40 chapter unless the debt is incurred for personal services

1 rendered by any employee or former employee of the
 2 judgment debtor. This standard recognizes that the
 3 exemption provided by Section 723.050 should be
 4 adequate, except in rare and unusual cases, to provide the
 5 amount essential for the support of the judgment debtor
 6 or his family. This standard also recognizes that the
 7 exemption provided by Section 723.050 may not be
 8 adequate, for example, in cases where there are a large
 9 number of members of the judgment debtor's family who
 10 are dependent upon his earnings for their support.
 11 Neither the judgment debtor's accustomed standard of
 12 living nor a standard of living "appropriate to his station
 13 in life" is the criterion for measuring the debtor's claim
 14 for exemption under this section.

a/

judgment/

15 ~~(b) If the earnings withholding order is one described~~
 16 ~~in Section 723.030 and the judgment debtor claims the~~
 17 ~~exemption provided by subdivision (a), the court shall~~
 18 ~~make an equitable division of the judgment debtor's~~
 19 ~~earnings and shall make an appropriate order on the~~
 20 ~~claim of exemption.~~

21
 22 **Article 4. Earnings Withholding Orders for Taxes**

23
 24 **723.070. As used in this article:**

25 (a) "State" means the State of California and includes
 26 any officer, department, board, or agency thereof.

27 (b) "State tax liability" means a liability, including any
 28 penalties and accrued interest and costs, for which the
 29 state would be authorized to issue (1) a warrant pursuant
 30 to Section 1785 of the Unemployment Insurance Code or
 31 Section 6776, 7881, 9001, 16071, 18906, 26191, 30341, or
 32 32365 of the Revenue and Taxation Code or (2) a notice
 33 of levy pursuant to Section 1755 of the Unemployment
 34 Insurance Code or (3) a notice or order to withhold
 35 pursuant to Section 6702, 7851, 8952, 11451, 16101, 18817,
 36 26132, 30311, or 32381 of the Revenue and Taxation Code.

37 **723.071.** This chapter shall not limit the state's right to
 38 collect a state tax liability except that (a) no levy upon
 39 earnings of an employee held by an employer shall be
 40 effective unless such levy is made in accordance with the

1 provisions of this chapter and (b) the methods of
2 collection referred to in subdivision (b) of Section 723.070
3 may not be used to require an employer to withhold
4 earnings of an employee in payment of a state tax
5 liability.

6 723.072. (a) A "withholding order for taxes" is an
7 earnings withholding order issued pursuant to this article
8 to collect a state tax liability and shall be denoted as a
9 withholding order for taxes on its face.

10 (b) A withholding order for taxes may only be issued
11 where:

12 (1) The existence of the state tax liability appears on
13 the face of the taxpayer's return, including a case where
14 such tax liability is disclosed from the taxpayer's return
15 after errors in mathematical computations in the return
16 have been corrected; or

17 (2) The state tax liability has been assessed or
18 determined, as provided in the Revenue and Taxation
19 Code or Unemployment Insurance Code, and the
20 taxpayer had notice of the proposed assessment or
21 determination and had available an opportunity to have
22 the proposed assessment or determination reviewed by
23 appropriate administrative procedures, whether or not
24 he took advantage of that opportunity.

25 (c) In any case where a state tax liability has been
26 assessed or determined prior to ~~July 1, 1975~~ *January 1,*
27 ~~1976~~, and the state determines that the requirements of
28 subdivision (b) may not have been satisfied, the state
29 may send a "Notice of Proposed Issuance of Withholding
30 Order for Taxes" to the taxpayer at his last known address
31 by first-class mail, postage prepaid. The notice shall
32 advise the taxpayer that he may have the assessment or
33 determination reviewed by appropriate administrative
34 procedures and how he may obtain such a review. If the
35 taxpayer is sent such a notice and requests such a review
36 within 30 days from the date the notice was mailed to
37 him, the state shall provide appropriate administrative
38 procedures for review of the assessment or
39 determination and shall not issue the withholding order
40 for taxes until the administrative review procedure is

1 completed. If the taxpayer is sent such a notice and does
2 not request such a review within 30 days from the date
3 the notice was mailed to him, the state may issue the
4 withholding order for taxes.

5 (d) A withholding order for taxes may be issued
6 whether or not the state tax liability has been reduced to
7 judgment.

8 723.073. Except as otherwise provided in this article,
9 the provisions of this chapter govern the procedures and
10 proceedings concerning a withholding order for taxes.

11 723.074. (a) The state may itself issue a withholding
12 order for taxes under this section to collect a state tax
13 liability. The order shall specify the maximum amount
14 that may be withheld pursuant to the order (unpaid tax
15 liability including any penalties, accrued interest, and
16 costs).

17 (b) The amount to be withheld by the employer
18 pursuant to an order issued under this section shall be the
19 amount required to be withheld pursuant to subdivision
20 (c) or such lesser amount as is specified in the order.

21 (c) Unless a lesser amount is specified in the order, the
22 amount to be withheld pursuant to an order issued under
23 this section is two times the maximum amount that may
24 be withheld under Section 723.050, except that the state
25 may require that ten dollars (\$10) be withheld if ~~(1) the~~
26 ~~taxpayer's nonexempt earnings (as defined in Section~~
27 ~~723.050) are twenty dollars (\$20) or more but less than~~
28 ~~thirty dollars (\$30) or (2) the amount of the taxpayer's~~
29 earnings is sufficient that a portion of his earnings would
30 be withheld pursuant to Section 18806 of the Revenue
31 and Taxation Code if such earnings were subject to
32 withholding under that section but the amount of his
33 earnings is not sufficient to permit withholding under
34 Section 723.050. In determining whether the earnings are
35 sufficient so that a portion of the earnings would be
36 withheld pursuant to Section 18806 of the Revenue and
37 Taxation Code, the table issued under that section
38 applicable to a single person without allowance for
39 additional exemptions shall be used. The state shall
40 prepare withholding tables for determining the amount

1 to be withheld from the earnings of employees for
2 representative pay periods pursuant to orders issued
3 under this section. The tables may prescribe the amounts
4 to be withheld according to reasonable earnings brackets.
5 The tables shall be used to determine the amount to be
6 withheld in all cases where the tables permit
7 computation of the amount to be withheld.

8 723.075. (a) This section applies to any withholding
9 order for taxes issued under this article.

10 (b) Together with the withholding order for taxes, the
11 state shall serve upon the employer an additional copy of
12 the order and a notice informing the taxpayer of the
13 effect of the order and of his right to hearings and
14 remedies provided in this chapter. Within five days from
15 the date of service, the employer shall deliver to the
16 taxpayer a copy of the order and the notice, except that
17 immediate delivery shall be made where a jeopardy
18 withholding order for taxes has been served. If the
19 taxpayer is no longer employed by the employer and the
20 employer does not owe him any earnings, the employer
21 is not required to make such delivery.

22 (c) The state shall provide for an administrative
23 hearing to reconsider or modify the amount to be
24 withheld pursuant to the withholding order for taxes, and
25 the taxpayer may request such a hearing at any time after
26 service of the order. If the taxpayer requests a hearing,
27 the hearing shall be provided, and the matter shall be
28 determined, within 15 days after the request is received
29 by the state.

30 (d) After the state has made its determination under
31 subdivision (c), the taxpayer may file a claim of
32 exemption to claim the exemption provided by Section
33 723.051, in the manner provided in Section 723.105, with
34 a court of record in his county of residence. No fee shall
35 be charged for filing such claim of exemption. After
36 hearing, the court may modify the withholding order for
37 taxes previously issued, but in no event shall the amount
38 required to be withheld be less than that permitted to be
39 withheld under Section 723.050.

40 723.076. (a) A withholding order for taxes may be

1 issued pursuant to this section requiring the employer of
2 the taxpayer to withhold an amount in excess of the
3 amount that may be required to be withheld pursuant to
4 an order issued under Section 723.074.

5 (b) The state may, at any time, apply to a court of
6 record in the county where the taxpayer was last known
7 to reside for the issuance of a withholding order for taxes
8 under this section to collect a state tax liability.

9 (c) The application for the order shall include an
10 affidavit stating that the state has served upon the
11 taxpayer both of the following:

12 (1) A copy of the application.

13 (2) A notice informing the taxpayer of the purpose of
14 the application and his right to appear in regard to the
15 application.

16 (d) Upon the filing of the application, the court shall
17 immediately set the matter for hearing and the court
18 clerk shall send a notice of the time and place of the
19 hearing by first-class mail, postage prepaid, to the state
20 and the taxpayer. The notice shall be deposited in the
21 mail at least 10 days before the day set for the hearing.

22 (e) After hearing, the court shall issue a withholding
23 order for taxes which shall require the taxpayer's
24 employer to withhold and pay over all earnings of the
25 taxpayer other than that amount which the taxpayer
26 proves is exempt under Section 723.051, but in no event
27 shall the amount to be withheld be less than that
28 permitted to be withheld under Section 723.050.

29 (f) The state may issue a temporary earnings holding
30 order, which shall be denoted as such on its face, in any
31 case where the state intends to apply for a withholding
32 order for taxes under this section and has determined
33 that the collection of the state tax liability will be
34 jeopardized in whole or in part if the temporary earnings
35 holding order is not issued. The temporary earnings
36 holding order shall be directed to the taxpayer's
37 employer and shall require him to retain in his possession
38 or under his control all or such portion of the earnings of
39 the taxpayer then or thereafter due as is specified in the
40 order. Together with the temporary earnings holding

1 order, the state shall serve upon the employer an
 2 additional copy of the order and a notice informing the
 3 taxpayer of the effect of the order and of his right to
 4 remedies provided in this chapter. Upon receipt of the
 5 order, the employer shall deliver to the taxpayer a copy
 6 of the order and notice. If the taxpayer is no longer
 7 employed by the employer and the employer does not
 8 owe him any earnings, the employer is not required to
 9 make such delivery. The temporary earnings holding
 10 order expires 15 days from the date it is served on the
 11 employer unless it is extended by the court on ex parte
 12 application for good cause shown. If a temporary earnings
 13 holding order is served on an employer, the state may not
 14 thereafter, for a period of six months, serve on the same
 15 employer another temporary earnings holding order for
 16 the same employee unless the court for good cause shown
 17 otherwise orders. Sections 723.153 and 723.154 apply to
 18 temporary earnings holding orders issued under this
 19 section.

20 723.077. (a) Subject to subdivision (b), an employer
 21 upon whom a withholding order for taxes is served shall
 22 withhold and pay over earnings of the employee
 23 pursuant to such order and shall cease to withhold
 24 earnings pursuant to any prior order except that a
 25 ~~withholding order for support~~ shall be given priority as
 26 provided in ~~Section 723.050~~. When an employer is
 27 required to cease withholding earnings pursuant to a
 28 prior order, he shall notify the judgment creditor who
 29 obtained the prior order that a supervening withholding
 30 order for taxes is in effect.

31 (b) An employer shall not withhold earnings of an
 32 employee pursuant to a withholding order for taxes if a
 33 prior withholding order for taxes is in effect, and, in such
 34 case, the subsequent withholding order for taxes is
 35 ineffective.

36 723.078. (a) Except as provided in subdivision (b),
 37 the employer shall not withhold pursuant to a
 38 withholding order for taxes from earnings of the
 39 employee payable for any pay period of such employee
 40 that ends prior to the fifth day after service of the order.

that section.

An order made
 pursuant to
 Section 4701
 of the Civil
 Code

1 (b) A "jeopardy withholding order for taxes," which
2 shall be denoted as such on its face, is a withholding order
3 for taxes that requires that the employer withhold
4 pursuant to the order from earnings due to the employee
5 at the time of service of the order on the employer and
6 from earnings thereafter due. A jeopardy withholding
7 order for taxes may be issued only where the state has
8 determined that the collection of a state tax liability will
9 be jeopardized in whole or in part by delaying the time
10 when withholding from earnings commences.

11 (c) An employer shall continue to withhold pursuant
12 to a withholding order for taxes until the amount
13 specified in the order has been paid in full or the order
14 is withdrawn, except that the order shall automatically
15 terminate one year after the employee is no longer
16 employed by the employer. The state shall promptly
17 serve on the employer a notice terminating the
18 withholding order for taxes if the state tax liability for
19 which the withholding order for taxes was issued is
20 satisfied before the employer has withheld the full
21 amount specified in the order, and the employer shall
22 discontinue withholding in compliance with such notice.
23 Section 723.027 does not apply to a withholding order for
24 taxes.

25 723.079. No receipt need be sent to the taxpayer for
26 amounts paid over to the state pursuant to a withholding
27 order for taxes unless the taxpayer has requested in
28 writing that he be sent receipts for such amounts.

29 723.080. Service of a withholding order for taxes or of
30 any other notice or document required under this
31 chapter in connection with a withholding order for taxes
32 may be made by first-class mail, postage prepaid, or by
33 any authorized state employee. Service of a withholding
34 order for taxes is complete when it is received by the
35 employer. Service of, or the providing of, any other
36 notice or document required to be served or provided
37 under this chapter in connection with a withholding
38 order for taxes is complete when the notice or document
39 is deposited in the mail addressed to the last known
40 address of the person on whom it is served or to whom

by the state

1 it is to be provided.

2 723.081. Except for the forms referred to in Section
3 723.076, the state shall prescribe the form of any order,
4 notice, or other document required by this chapter in
5 connection with a withholding order for taxes
6 notwithstanding Sections 723.100 and 723.120, and any
7 form so prescribed is deemed to comply with this
8 chapter.

9 723.082. No review of the taxpayer's tax liability shall
10 be permitted in any court proceedings under this
11 chapter.

12 723.083. If the state determines that a withholding
13 order for taxes has been issued in error or that there is no
14 tax liability, the state may refund to the employee any
15 amounts deducted by his employer pursuant to Section
16 723.024.

17 723.084. Where a warrant, notice of levy, or notice or
18 order to withhold (referred to in subdivision (b) of
19 Section 723.070) is served on the employer, it shall be
20 deemed to be a withholding order for taxes if the form
21 provides notice on its face that it is to be treated as a
22 withholding order for taxes as to any earnings that are
23 subject to the provisions of this chapter.

24

25

Article 5. Procedure for Issuance of Earnings Withholding Orders

26

27

28 723.100. Notwithstanding any other provision of law,
29 the Judicial Council may provide by rule for the practice
30 and procedure in proceedings under this chapter except
31 for the state's administrative hearings provided by
32 Article 4 (commencing with Section 723.070).

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723.101. ~~(a)~~ Service under this chapter shall be by
personal delivery or by registered or certified mail,
postage prepaid with return receipt requested. When
service is made by mail, service is completed at the time
the return receipt is executed by the recipient or his
representative.

~~(b) Notwithstanding Section 1992.6, except as
provided in subdivision (c), a judgment creditor is not~~

1 entitled to the costs of service under this chapter which
2 exceed the cost of service by certified mail with return
3 receipt requested.

4 (c) If the employer of the judgment debtor refuses to
5 accept service by registered or certified mail, the cost of
6 service by personal delivery may be recovered from the
7 judgment debtor.

8 (d) Where the employer of the judgment debtor
9 refuses to accept service by mail of an earnings
10 withholding order and the judgment creditor
11 subsequently serves such order by personal delivery and
12 his order is denied effect because an intervening order
13 has been given effect, upon application of the judgment
14 creditor, the court which issued the judgment creditor
15 his original earnings withholding order shall make a
16 special order directed to the employer to cease
17 withholding under the intervening order and to comply
18 with the original order. In these circumstances, for the
19 purposes of Section 723.022, service of the original order
20 shall be deemed complete on the date of service of the
21 special order directing the employer to comply with the
22 original order. At least 10 days before the hearing on the
23 application, the judgment creditor who obtained the
24 original earnings withholding order shall serve on the
25 judgment creditor who served the intervening order a
26 notice of the time and place of the hearing on the
27 application and a copy of the application.

28 723.102. (a) A judgment creditor may apply for the
29 issuance of an earnings withholding order by filing an
30 application, in the form prescribed by the Judicial
31 Council, with the clerk of the court which entered the
32 judgment pursuant to which the earnings withholding
33 order is sought. (b) Within five days (Saturday, Sunday,
34 and holidays excepted) after the filing of the application,
35 the court clerk shall issue an earnings withholding order
36 in the form prescribed pursuant to Sections 723.120 and
37 723.125. This subdivision does not apply where the
38 earnings withholding order is a withholding order for
39 support described in Section 723.286, a withholding order
40 for taxes to be issued under Section 723.076, or other

1 earnings withholding order that may only be issued by
2 the court as distinguished from the court clerk.

3 723.103. (a) The ~~judgment creditor~~ shall serve upon
4 the designated employer all of the following:

levying officer

5 (1) Two copies of the earnings withholding order.

6 (2) The form for the employer's return.

7 (3) Notice to employee of earnings withholding order
8 in the form prescribed pursuant to Sections 723.120 and
9 723.122.

10 (b) At the time he makes service pursuant to
11 subdivision (a), the ~~judgment creditor~~ shall provide the
12 employer with a copy of the employer's instructions and
13 withholding tables referred to in Section 723.127. The
14 Judicial Council may adopt rules prescribing the
15 circumstances when compliance with this subdivision is
16 not required.

levying officer

17 (c) An earnings withholding order served upon the
18 employer more than 45 days after its date of issuance is
19 ineffective.

20 723.104. Any employer who is served with an earnings
21 withholding order shall:

22 (a) Deliver to the judgment debtor a copy of the
23 earnings withholding order and the notice to employee
24 of earnings withholding order within five days from the
25 date of service. If the judgment debtor is no longer
26 employed by the employer and the employer does not
27 owe him any earnings, the employer is not required to
28 make such delivery.

29 (b) Complete the employer's return on the form
30 provided by the ~~judgment creditor~~, and mail it by
31 first-class mail, postage prepaid, to the ~~judgment creditor~~,
32 within 15 days from the date of service unless a longer
33 period is specified by the judgment creditor. If the
34 earnings withholding order is ineffective, the employer
35 shall state in his employer's return that he is not
36 complying with the order for this reason and shall return
37 the order to the ~~judgment creditor~~ with the employer's
38 return.

the levying officer pursuant to a written direction from

levying officer

39 723.105. (a) A judgment debtor may claim an
40 exemption under this chapter if:

Section 723.051

1 (1) No prior hearing has been held with respect to the
2 earnings withholding order; or

3 (2) There has been a material change in
4 circumstances since the time of the last prior hearing on
5 the earnings withholding order.

6 (b) A claim of exemption shall be made by filing with
7 the ~~court clerk~~ an original and one copy of (1) the
8 judgment debtor's claim of exemption and (2) ~~if he~~
9 ~~claims the exemption provided by Section 723.001, his~~
10 financial statement.

levying officer

the judgment debtor's

11 (c) Forthwith upon the filing of the claim of
12 exemption, the ~~court clerk~~ shall send to the judgment
13 creditor by first-class mail, postage prepaid, all of the
14 following:

15 (1) A copy of the claim of exemption.

16 (2) A copy of the financial statement ~~if there is one.~~

17 (3) A notice of claim of exemption, stating that the
18 claim of exemption has been filed and that the earnings
19 withholding order will be terminated, or modified to
20 reflect the amount of earnings claimed to be exempt in
21 the claim of exemption, unless a notice of opposition to
22 the claim of exemption is filed with the ~~court clerk~~ by the
23 judgment creditor within 10 days after the date of the
24 mailing of the notice of claim of exemption.

levying officer

25 (d) A judgment creditor who desires to contest a claim
26 of exemption shall, within 10 days after the date of the
27 mailing of the notice of claim of exemption, file with the
28 ~~court clerk~~ a notice of opposition to the claim of
29 exemption.

levying officer

30 (e) If the ~~court clerk~~ does not receive a notice of
31 opposition within the 10-day period, he shall send to the
32 employer by first-class mail, postage prepaid, one of the
33 following:

34 (1) A notice that the earnings withholding order has
35 been terminated if all of the judgment debtor's earnings
36 was claimed to be exempt.

37 (2) A modified earnings withholding order which
38 reflects the amount of earnings claimed to be exempt in
39 the claim of exemption if only a portion of the judgment
40 debtor's earnings was claimed to be exempt.

1 (f) If a notice of opposition to the claim of exemption
 2 is filed with the court clerk within the 10-day period, the
 3 court clerk shall set the matter for hearing, which hearing
 4 shall be held within 15 days after the date the notice of
 5 opposition is filed. The court clerk shall send a notice of
 6 the time and place of the hearing to the judgment debtor
 7 and judgment creditor by first-class mail, postage
 8 prepaid. The notice shall be deposited in the mail at least
 9 10 days before the day set for hearing.

levying officer

levying officer shall notify the court clerk of that fact and the

10 (g) If, after hearing, the court orders that the earnings
 11 withholding order be modified or terminated, the clerk
 12 shall promptly send by first-class mail, postage prepaid, to
 13 the employer of the judgment debtor (1) a copy of the
 14 modified earnings withholding order or (2) a notice that
 15 the earnings withholding order has been terminated. The
 16 court may order that the earnings withholding order be
 17 terminated as of a date which precedes the date of
 18 hearing.

transmit a copy of the order to the levying officer who shall

19 (h) If the earnings withholding order is terminated by
 20 the court, unless the court otherwise orders or unless
 21 there is a material change of circumstances since the time
 22 of the last prior hearing on the earnings withholding
 23 order, the judgment creditor may not apply for another
 24 earnings withholding order directed to the same
 25 employer with respect to the same judgment debtor for
 26 a period of 125 days following the date of service of the
 27 earnings withholding order or 60 days after the date of
 28 the termination of the order, whichever is later.

29 (i) If an employer has withheld and paid over amounts
 30 pursuant to an earnings withholding order after the date
 31 of termination of such order but prior to the receipt of
 32 notice of its termination, the judgment debtor may
 33 recover such amounts only from the judgment creditor.
 34 If the employer has withheld amounts pursuant to an
 35 earnings withholding order after termination of the order
 36 but has not paid over such amounts to the judgment
 37 creditor, the employer shall pay over such amounts to the
 38 judgment debtor.

from the levying officer if he still holds such amounts or, if such amounts have been paid over to the judgment creditor,

levying officer

39 723.106. No findings shall be required in court
 40 proceedings under this chapter.

1 723.107. If an employer withholds earnings pursuant
2 to an earnings withholding order, the judgment creditor
3 who obtained such withholding order may not ~~serve~~
4 another withholding order on the same employer
5 requiring him to withhold earnings of the same employee
6 during the 10 days following the expiration of the prior
7 earnings withholding order.

to be served

cause

8
9 Article 6. Forms; Employer's Instructions;
10 Withholding Tables

11
12 723.120. The Judicial Council shall prescribe the form
13 of the applications, notices, claims of exemption, orders,
14 and other documents required by this chapter and only
15 such forms may be used to implement this chapter. Any
16 such form prescribed by the Judicial Council is deemed
17 to comply with this chapter.

18 723.121. The "application for issuance of earnings
19 withholding order" shall be executed under oath and
20 shall include all of the following:

21 (a) The name and last known address of the judgment
22 debtor and, if known, his social security number.

23 (b) The name and address of the judgment creditor.

24 (c) The court where the judgment was entered and
25 the date the judgment was entered.

26 (d) The amount sought to be collected, indicating the
27 amount of the judgment, plus additional accrued items,
28 less partial satisfactions, if any. ~~Where a withholding~~
29 ~~order for support is sought, the application shall state the~~
30 ~~amount of the periodic payments required by the~~
31 ~~judgment to be made to the judgment creditor.~~

32 (e) The name and address of the employer to whom
33 the order will be directed.

34 (f) The name and address of the person to whom the
35 withheld money is to be paid *by the levying officer.*

36 (g) The name and address of the person designated by
37 the judgment creditor to receive notices.

38 723.122. The "notice to employee of earnings
39 withholding order" shall inform the judgment debtor of
40 all of the following:

1 (a) The court has ordered the named employer to
2 withhold from the earnings of the judgment debtor the
3 maximum amounts allowed by law, or such other
4 amounts as are specified in the order, and to pay these
5 amounts over to the person specified in the order in
6 payment of the judgment described in the order.

levying officer
for transmittal
to the

7 (b) The maximum amounts allowed by law to be
8 withheld pursuant to Section 723.050 on illustrative
9 amounts of earnings.

10 (c) No amount can be withheld from the earnings of
11 a judgment debtor which he can prove is essential for the
12 support of himself or his family.

because they
are essential
to the support
of himself or
his family,

13 (d) If a judgment debtor wishes a court hearing to
14 prove that amounts should not be withheld from his
15 earnings, he shall file with the clerk of court two copies
16 of the "judgment debtor's claim of exemption," and, in
17 addition, if he claims the exemption referred to in
18 subdivision (c), he shall also file with the clerk two copies
19 of the "judgment debtor's financial statement." The
20 notice shall also advise the judgment debtor that the
21 claim of exemption form and the financial statement
22 form may be obtained at the office of any clerk of a trial
23 court. The clerk of each trial court shall have the forms
24 available at his office.

The
levying
officer
who

25 ~~(e) Section 723.026 of the Code of Civil Procedure~~
26 ~~requires that, upon request of the judgment debtor, the~~
27 ~~judgment creditor shall provide an accounting of the~~
28 ~~payments received by the judgment creditor pursuant to~~
29 ~~the earnings withholding order.~~

(e)

unless the
assignment is
made pursuant
to Section 4701
of the Civil Code.

30 (f) Under Section 300 of the Labor Code, the
31 judgment debtor may revoke an assignment of wages or
32 salary to be earned after the time of the revocation.

The

33 723.123. The "judgment debtor's claim of exemption"
34 shall be executed under oath. ~~Where the judgment~~
35 ~~debtor claims the exemption provided by Section 723.051,~~
36 ~~his claim of exemption shall indicate how much he~~
37 believes should be withheld from his earnings each pay
38 period by his employer pursuant to the earnings
39 withholding order.

the judgment
debtor

40 723.124. The "judgment debtor's financial statement"

1 shall be executed under oath and shall include all of the
2 following information:

3 (a) Name, age, and relationship of all persons
4 dependent upon judgment debtor's income.

5 (b) All sources of the judgment debtor's earnings and
6 other income and the amounts of such earnings and other
7 income.

8 (c) All sources and the amounts of earnings and other
9 income of the persons listed in subdivision (a).

10 (d) A listing of all assets of the judgment debtor and
11 of the persons listed in subdivision (a) and the value of
12 such assets.

13 (e) All outstanding obligations of the judgment
14 debtor.

15 (f) Whether any earnings withholding orders are in
16 effect for the judgment debtor or the persons listed in
17 subdivision (a).

(g) Whether any orders made under Section 4701 of the
Civil Code are in effect for the judgment debtor or the
persons listed in subdivision (a).

18 723.125. The "earnings withholding order" shall
19 include all of the following:

20 (a) The name and address of the judgment debtor
21 and, if known, his social security number.

22 (b) The name and address of the employer to whom
23 the order is directed.

24 (c) The court where the judgment was entered, the
25 date the judgment was entered, and the name of the
26 judgment creditor.

27 ~~(d) Except for a withholding order for support, the~~
28 maximum amount that may be withheld pursuant to the
29 order (the amount of the judgment, plus additional
30 accrued items, less partial satisfactions, if any).

31 (e) A description of the withholding period and an
32 order to the employer to withhold from the earnings of
33 the judgment debtor the amount required by law to be
34 withheld or the amount specified in the order, as the case
35 may be, during such period.

36 (f) An order to the employer to pay over to the
37 ~~judgment creditor or his representative~~ at a specified
38 address the amount required to be withheld pursuant to
39 the order in the manner and within the times provided
40 by law.

levying
officer

1 (g) An order that the employer fill out the
 2 "employer's return" and return it by first-class mail,
 3 postage prepaid, to the judgment creditor or his
 4 representative at a specified address within 15 days after
 5 service of the earnings withholding order.

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of ficer

6 (h) An order that the employer deliver to the
 7 judgment debtor a copy of the earnings withholding
 8 order and the "notice to employee of earnings
 9 withholding order" within five days after service of the
 10 earnings withholding order; but, if the judgment debtor
 11 is no longer employed by the employer and the employer
 12 does not owe him any earnings, the employer is not
 13 required to make such delivery.

14 (i) The name and address of the person designated by
 15 the judgment creditor to receive notices.

16 723.126. (a) The "employer's return" shall be
 17 executed under oath. The form for the return provided
 18 to the employer shall state all of the following
 19 information:

levying
officer

20 (1) The name and address of the person to whom the
 21 form is to be returned.

22 (2) A direction that the form be mailed to such person
 23 by first-class mail, postage prepaid, no later than 15 days
 24 after the date of service of the earnings withholding
 25 order.

the levying
officer

26 (3) The name and address of the judgment debtor
 27 and, if known, his social security number.

28 (b) In addition, the employer's return form shall
 29 require the employer to supply all of the following
 30 information:

31 (1) Whether the judgment debtor is now employed by
 32 the employer or whether the employer otherwise owes
 33 him earnings.

34 (2) If the judgment debtor is employed by the
 35 employer or the employer otherwise owes him earnings,
 36 the amount of his earnings for the last pay period and the
 37 length of this pay period.

38 (3) Whether the employer is presently required to
 39 comply with a prior earnings withholding order and, if so,
 40 the name of the judgment creditor who secured the prior

1 order, the court which issued such order, the date it was
2 issued, the date it was served, and the expiration date of
3 such order.

(4) Whether the employer is presently required to com-
ply with an order made pursuant to Section 4701 of the Civil
Code and, if so, the court which issued such order and the
date it was issued.

5/ 4 (A) If the employer elects to make payments to the
5 ~~judgment creditor~~ monthly as authorized under Section
6 723.025, a statement that the employer has made such
7 election.

levying officer

8 723.127. (a) The Judicial Council shall prepare
9 "employer's instructions" for employers and revise or
10 supplement these instructions to reflect changes in the
11 law or rules regulating the withholding of earnings.

12 (b) Except to the extent that they are included in the
13 forms required to be provided to the employer by the
14 ~~judgment creditor~~, the Judicial Council shall publish the
15 employer's instructions and the withholding tables
16 adopted pursuant to Section 723.050. The Judicial Council
17 may impose a charge for copies sufficient to recover the
18 cost of printing.

levying officer

20 Article 7. Administration and Enforcement

21
22 723.150. The Judicial Council shall adopt rules for the
23 administration of this chapter, including rules
24 prescribing the pay period or periods to which various
25 forms of prepaid or deferred earnings are to be allocated
26 and the method of computing the amount to be withheld
27 from such forms of earnings under Section 723.050.

28 723.151. The Judicial Council may perform all acts
29 required by the Administrator of the Wage and Hour
30 Division of the United States Department of Labor as
31 conditions to exemption of this state from the earnings
32 garnishment provisions of the Consumer Credit
33 Protection Act of 1968 (15 U.S.C. Secs. 1671-1677),
34 including, but not limited to:

35 (a) Representing and acting on behalf of the state in
36 relation to the Administrator of the Wage and Hour
37 Division and his representatives with regard to any
38 matter relating to, or arising out of, the application,
39 interpretation, and enforcement of the laws of this state
40 regulating withholding of earnings.

1 (b) Submitting to the Administrator of the Wage and
 2 Hour Division in duplicate and on a current basis, a
 3 certified copy of every statute of this state affecting
 4 earnings withholding, and a certified copy of any decision
 5 in any case involving any of those statutes, made by the
 6 Supreme Court of this state.

7 (c) Submitting to the Administrator of the Wage and
 8 Hour Division any information relating to the
 9 enforcement of earnings withholding laws of this state
 10 which he may request.

11 723.152. If an employer withholds earnings pursuant
 12 to this chapter and, with the intent to defraud either the
 13 judgment creditor or the judgment debtor, fails to pay
 14 such withheld earnings over to the ~~judgment creditor~~,
 15 the employer is guilty of a misdemeanor.

levying officer

16 723.153. (a) No employer shall defer or accelerate
 17 any payment of earnings to an employee with the intent
 18 to defeat or diminish the creditor's rights under an
 19 earnings withholding order issued pursuant to the
 20 procedures provided by this chapter.

21 (b) If an employer violates this section, the judgment
 22 creditor may bring a civil action against the employer to
 23 recover the amount that would have been payable to the
 24 ~~judgment creditor~~ pursuant to this chapter had the
 25 employer not violated this section. The remedy provided
 26 by this subdivision is not exclusive.

withheld and paid over

27 723.154. (a) If an employer fails to withhold or to pay
 28 over the amount he is required to withhold and pay over
 29 pursuant to this chapter, the judgment creditor may
 30 bring a civil action against such employer to recover such
 31 amount. The remedy provided by this subdivision is not
 32 exclusive.

33 (b) Notwithstanding subdivision (a), an employer
 34 who complies with any written order or written notice
 35 which purports to be given or served in accordance with
 36 the provisions of this chapter is not subject to any civil or
 37 criminal liability for such compliance unless he has
 38 actively participated in a fraud.

39 723.155. An employer is not subject to any civil
 40 liability for failure to comply with subdivision (b) of

1 Section 723.075 or subdivision (a) of Section 723.104.

2 723.156. The fee for filing an application for an
 3 earnings withholding order under Section 723.102 is ~~two~~
 4 ~~dollars (\$2) five dollars (\$5)~~. No other filing fees may be
 5 charged under this chapter.

two dollars (\$2).

Sec. 10. Section 26750 is added to the Government Code, to read:

26750. (a) The fee for serving an earnings withholding order under the Employees' Earnings Protection Law, Chapter 2.5 (commencing with Section 723.010) of Title 9 of Part 2 of the Code of Civil Procedure, including but not limited to the costs of postage or traveling, and for performing all other duties of the levying officer under that law is the sum of the following:

(1) Six dollars and fifty cents (\$6.50).

(2) One percent of the moneys collected pursuant to the earnings withholding order.

(b) No additional fees, costs, or expenses may be charged by the levying officer for performing his duties under the Employees' Earnings Protection Law, Chapter 2.5 (commencing with Section 723.010) of Title 9 of Part 2 of the Code of Civil Procedure.

(11.)

SEC. Section 300 of the Labor Code is amended to read:

300. (a) As used in this section, the phrase "assignment of wages" includes the sale or assignment of, or giving of an order for, wages or salary.

(b) No assignment of; ~~or order for~~ wages or salary, earned or to be earned, ~~shall be~~ is valid unless all of the following conditions are satisfied:

(a) ~~Such~~ (1) The assignment is contained in a separate written instrument, signed by the person by whom the ~~said~~ wages or salary have been earned or are to be earned, and identifying specifically the transaction to which the assignment relates; ~~and~~.

(b) ~~(2)~~ Where ~~such~~ the assignment of; ~~or order for~~ wages or salary is made by a married person, the written consent of the ~~husband or wife~~ spouse of the person making ~~such~~ the assignment ~~or order~~ is attached to ~~such~~ the assignment ~~or order~~; ~~and~~. No such consent is required of any married person (i) after entry of a judgment decreeing his legal separation from his spouse or (ii) if the married person and his spouse are living separate and apart after entry of an interlocutory judgment of dissolution of their marriage, if a written statement by the person making the assignment, setting forth such facts, is attached to or included in the assignment.

(c) ~~(3)~~ Where ~~such~~ the assignment ~~or order for~~ wages or salary is made by a minor, the written consent of a parent or guardian of ~~such~~ the minor is attached to ~~such~~ order ~~or the~~ assignment; ~~and~~.

(d) ~~(4)~~ Where ~~such~~ the assignment of ~~or order for~~ wages or salary is made by a person who is unmarried or who is an adult or who is both unmarried and adult, a written statement by the person making ~~such~~ the assignment ~~or order~~, setting forth such facts, is attached to or included in ~~such~~ the assignment ~~or order~~;

(e) ~~(5)~~ No other assignment ~~or order~~ exists in connection with the same transaction or series of transactions and a written statement by the person making ~~such~~ the assignment ~~or order~~ to that effect; is attached ~~thereto~~ to or included ~~therein~~; ~~and~~ in the assignment.

(f) ~~(6)~~ A copy of ~~such~~ ~~an~~ the assignment ~~or order~~ and of the written statement provided for in ~~subdivision (d)~~ ~~hereof~~ paragraphs (2), (4), and (5), authenticated by a notary public, ~~shall have been~~ is filed with the employer, accompanied by an itemized statement of the amount then due to the assignee;

(7) ~~provided~~, that at such time ~~At the time the~~ assignment is filed with the employer, no other assignment ~~or order for~~ the payment of any wages or

but does not
include an order
or assignment
made pursuant
to Section 4101
of the Civil
Code.

salary of the employee is subject to payment, and no attachment or levy on execution earnings withholding order against said his wages or salary is in force. Any valid assignment, when filed in accordance with the provisions contained herein, shall have priority with respect to any subsequently filed assignment or order or subsequent attachment or levy on execution. Any power of attorney to assign or collect wages or salary shall be revocable at any time by the maker thereof.

(c) A valid assignment of wages in effect at the time an earnings withholding order is served suspends the operation of the earnings withholding order until after the end of the pay period during which the earnings withholding order is served. Thereafter the employer shall withhold from the employee's wages or salary pursuant to the earnings withholding order without regard to whether the assignment remains in effect.

No assignment of, or order for wages or salary shall be valid unless at the time of the making thereof, such wages or salary have been earned, except for the necessities of life and then only to the person or persons furnishing such necessities of life directly and then only for the amount needed to furnish such necessities.

(d) Under any assignment of, or order for wages or salary to be earned, a sum not to exceed 50 per centum of the assignor's wages or salary; and not to exceed 25 per centum of the assignor's wages or salary, upon the showing that such wages or salary are necessary for the support of his mother, father, spouse, children or other members of his family, residing in this State and supported in whole or in part by his labor, shall be withheld by, and be collectible from, the assignor's employer at the time of each payment of such wages or salary.

(e) The employer shall be is entitled to rely upon the statements of fact in the written statement provided for in subdivisions (d) and (e) hereof paragraphs (2), (4), and (5) of subdivision (b), without the necessity of inquiring into the truth thereof, and the employer shall incur no liability whatsoever by reason of any payments made by him to an assignee under any assignment or order, in reliance upon the facts so stated.

(f) An assignment of wages to be earned is revocable at any time by the maker thereof. Any power of attorney to assign or collect wages or salary is revocable at any time by the maker thereof. No revocation of such an assignment or power of attorney is effective as to the employer until he receives written notice of revocation from the maker.

(g) No assignment of or order for wages or salary, earned or to be earned, shall be is valid under any circumstances; if the wages or salary earned or to be earned are paid under a plan for payment at a central place or places established under the provisions of Section 204a of this code.

(h) This section ~~shall~~ *does* not apply to deductions which the employer may be requested by the employee to make for the payment of life, retirement, disability or unemployment insurance premiums, for the payment of taxes owing from the employee, for contribution to funds, plans or systems providing for death, retirement, disability, unemployment, or other benefits, for the payment for goods or services furnished by the employer to the employee or his family at the request of the employee, or for charitable, educational, patriotic or similar purposes.

(i) No assignment of wages or salary shall be valid unless at the time of the making thereof, such wages or salary have been earned, except for necessities of life and then only to the person or persons furnishing such necessities of life directly and then only for the amount needed to furnish such necessities.

SEC. 12. Section 1208 of the Penal Code is amended to read:

1208. (a) The provisions of this section, insofar as they relate to employment, shall be operative in any county in which the board of supervisors by ordinance finds, on the basis of employment conditions, the state of the county jail facilities, and other pertinent circumstances, that the operation of this section, insofar as it relates to employment, in that county is feasible. The provisions of this section, insofar as they relate to education, shall be operative in any county in which the board of supervisors by ordinance finds, on the basis of education conditions, the state of the county jail facilities, and other pertinent circumstances, that the operation of this section, insofar as it relates to education, in that county is feasible. In any such ordinance the board shall prescribe whether the sheriff, the probation officer, or the superintendent of a county industrial farm or industrial road camp in the county shall perform the functions of the work furlough administrator. The board of supervisors may also terminate the operativeness of this section, either with respect to employment or education in the county if it finds by ordinance that, because of changed circumstances, the operation of this section, either with respect to employment or education in that county is no longer feasible.

Notwithstanding any other provision of law, the board of supervisors may by ordinance designate a facility for confinement of prisoners classified for the work furlough program and designate the work furlough administrator as the custodian of the facility. The sheriff may transfer custody of such prisoners to the work furlough administrator to be confined in such facility for the period during which they are in the work furlough program.

(b) When a person is convicted of a misdemeanor and sentenced to the county jail, or is imprisoned therein for nonpayment of a fine, for contempt, or as a condition of probation for any criminal offense, or committed under the terms of Section 6404 or 6406 of the Welfare and

Institutions Code as a habit-forming drug addict, the work furlough administrator may, if he concludes that such person is a fit subject therefor, direct that such person be permitted to continue in his regular employment, if that is compatible with the requirements of subdivision (d), or may authorize the person to secure employment for himself, unless the court at the time of sentencing or committing has ordered that such person not be granted work furloughs. The work furlough administrator may, if he concludes that such person is a fit subject therefor, direct that such person be permitted to continue in his regular educational program, if that is compatible with the requirements of subdivision (d), or may authorize the person to secure education for himself, unless the court at the time of sentencing has ordered that such person not be granted work furloughs.

(c) If the work furlough administrator so directs that the prisoner be permitted to continue in his regular employment or educational program, the administrator shall arrange for a continuation of such employment or education, so far as possible without interruption. If the prisoner does not have regular employment or a regular educational program, and the administrator has authorized the prisoner to secure employment or education for himself, the prisoner may do so, and the administrator may assist him in doing so. Any employment or education so secured must be suitable for the prisoner. Such employment or educational program, if such educational program includes earnings by the prisoner, must be at a wage at least as high as the prevailing wage for similar work in the area where the work is performed and in accordance with the prevailing working conditions in such area. In no event may any such employment or educational program involving earnings by the prisoner be permitted where there is a labor dispute in the establishment in which the prisoner is, or is to be, employed or educated.

(d) Whenever the prisoner is not employed or being educated and between the hours or periods of employment or education, he shall be confined in the facility designated by the board of supervisors for work furlough confinement unless the work furlough administrator directs otherwise. If the prisoner is injured during a period of employment or education, the work furlough administrator shall have the authority to release him from the facility for continued medical treatment by private physicians or at medical facilities at the expense of the employer, workman's compensation insurer, or the

prisoner. Such release shall not be construed as assumption of liability by the county or work furlough administrator for medical treatment obtained.

The work furlough administrator may release any prisoner classified for the work furlough program for a period not to exceed 72 hours for medical, dental, or psychiatric care, and for family emergencies or pressing business which would result in severe hardship if the release were not granted.

(e) The earnings of the prisoner may be collected by the work furlough administrator, and it shall be the duty of the prisoner's employer to transmit such wages to the administrator at the latter's request. Earnings levied upon pursuant to writ of ~~execution or in other lawful manner~~ *the Employees' Earnings Protection Law, Chapter 2.5 (commencing with Section 723.010) of Title 9 of Part 2 of the Code of Civil Procedure*, shall not be transmitted to the administrator. If the administrator has requested transmittal of earnings prior to levy, ~~such request shall have priority; service of an earnings withholding order under the Employees' Earnings Protection Law, none of the earnings of the prisoner shall be withheld pursuant to such order unless and until the administrator terminates his request that the prisoner's employer transmit the prisoner's earnings to the administrator. In a case in which the functions of the administrator are performed by a sheriff, and such sheriff receives a writ of~~ *execution for the earnings of a prisoner subject to this section but has not yet requested transmittal of the prisoner's earnings pursuant to this section, he shall first levy on the earnings pursuant to the writ.* When an employer or

educator transmits such earnings to the administrator pursuant to this subdivision he shall have no liability to the prisoner for such earnings. From such earnings the administrator shall pay the prisoner's board and personal expenses, both inside and outside the jail, and shall deduct so much of the costs of administration of this section as is allocable to such prisoner, and, in an amount determined by the administrator, shall pay the support of the prisoner's dependents, if any. If sufficient funds are available after making the foregoing payments, the administrator may, with the consent of the prisoner, pay, in whole or in part, the preexisting debts of the prisoner. Any balance shall be retained until the prisoner's discharge and thereupon shall be paid to him.

(f) The prisoner shall be eligible for time credits pursuant to Sections 4018, 4019, and 4019.2.

(g) In the event the prisoner violates the conditions laid down for his conduct, custody, education, or

employment, the work furlough administrator may order the balance of the prisoner's sentence to be spent in actual confinement.

(h) Willful failure of the prisoner to return to the place of confinement not later than the expiration of any period during which he is authorized to be away from the place of confinement pursuant to this section is punishable as provided in Section 4532 of the Penal Code.

(i) As used in this section, "education" includes vocational and educational training and counseling; and psychological, drug abuse, alcoholic and other rehabilitative counseling; "educator" includes a person or institution providing such training or counseling.

(j) This section shall be known and may be cited as the "Cobey Work Furlough Law."

13. / SEC. 16. Section 11489 of the Welfare and Institutions Code is amended to read:

11489. After judgment in any court action brought to enforce the support obligation of an absent parent pursuant to the provisions of this chapter, a writ of execution may be issued against one-half of the earnings of the absent parent due or owing for his personal services and no claim for exemption shall be effective against the enforcement of such writ of execution *the court may*

order an assignment of wages pursuant to Section 4701 of the Civil Code

14,
8 SEC. / (a) Any levy made pursuant to a writ of
9 execution against the earnings of an employee that has
10 been served on the employer prior to ~~January~~ January
11 1, 1976, shall be given effect after the operative date of
12 this act to the same extent as it would have been given
13 effect had this act not been enacted, and the law in effect
14 prior to the operative date of this act shall govern such
15 levy. No earnings withholding order served pursuant to
16 this act ~~on or after January 1, 1976~~ on or after January 1, 1976, shall
17 be given any effect during the period that a levy made
18 pursuant to a writ of execution against the earnings of an
19 employee has been given effect, and any earnings
20 withholding order served on an employer during the
21 period such a levy is in effect shall be ineffective.

~~22 (b) Except as otherwise prescribed by rules adopted
23 by the Judicial Council, any order made pursuant to
24 Section 4701 of the Civil Code or Section 270h of the
25 Penal Code prior to the operative date of this act shall
26 remain in effect after the operative date of this act and
27 shall be deemed to be a withholding order for support
28 issued pursuant to Section 729.000~~

15.

29 SEC. 18. This act shall become operative on [redacted]
30 [redacted] January 1, 1976, but the Judicial Council, sufficient
31 funds being available to the Judicial Council, the state
32 agencies concerned with Article 4 (commencing with
33 Section 723.070) of the Employees' Earnings Protection
34 Law, and the court clerks shall, prior to that date, do
35 whatever is necessary so that this act may [redacted]
36 [redacted] become operative on January 1, 1976.

and levying
officers

16.

3 SEC. 19. Notwithstanding Section 2231 of the
4 Revenue and Taxation Code, there shall be no
5 reimbursement pursuant to that section nor shall there
6 be an appropriation made by this act because
7 self-financing authority is provided in this act to cover
8 such costs.