

39

1/6/71

Memorandum 71-2

Study 39 - Attachment, Garnishment, Execution (Earnings Protection Law)

BACKGROUND

Prior Commission decision. You will recall that the Commission decided at the last meeting to schedule the Earnings Protection Law (based on Professor Warren's report) for submission in 1972. It was, and still is, the staff's view that the Commission will be hard put to draft a smoothly operating, "bug-free" statute for submission in 1972.

Suggested revision in schedule for submission. After the last meeting, Professor Warren wrote me that he had discussed the timing of the submission of the recommendation to the Legislature with representatives of creditors and that he believes the bill should be submitted at the 1971 session. We can discuss this proposal at the meeting. In order to make as much progress as possible on this proposal, the staff has prepared the draft statute attached to this memorandum. Had we not done this, there would be no possibility of submitting a bill in 1971.

Schedule that must be followed to submit bill in 1971. The draft statute which is attached to this memorandum is the best the staff could do in the available time. There are many problems and policy questions presented by the draft. After the Commission has considered these problems and questions, the staff will revise the draft and write the preliminary portion of the recommendation for consideration at the February meeting. The recommendation, including the statute, must then be sent out for comment early in March after the revisions made at the February meeting have been incorporated in the recommendation. The bill could be introduced sometime in March or early in

April, after it has been reviewed by the Legislative Counsel, and the Comments on the recommendation could be considered after the bill has been introduced.

Undoubtedly, a bill drafted with this haste will have defects; there is insufficient time for careful staff work, and interested persons and organizations will have no real opportunity to review it. Moreover, no printed report would be available until toward the end of the session at the earliest.

GENERAL MATTERS FOR DISCUSSION

The following matters should be noted before considering the staff draft on a section-by-section basis. Decisions on the matters noted probably should be deferred until the pertinent statute sections are considered.

Gross earnings approach. A decision to submit the recommended legislation in 1971 will make it impossible to frame the statute using the concept of "gross earnings" as distinguished from "disposable earnings." Time did not permit the staff to give any further consideration to the gross earnings approach. In this memorandum, the staff will make some suggestions that might render the concept of disposable earnings more capable of application.

Wage assignments. We cannot ignore wage assignments. Under Labor Code Section 300, a wage assignment is given priority over any subsequent attachment (which is no longer permitted) or levy of execution. Section 300 includes a provision dealing with assignments for necessities. For additional background on Section 300, see Exhibit I (pink) attached--an extract from Witkin.

What function, if any, will wage assignments serve if the new statute is enacted? We have asked Professor Warren to look into this question and to submit his recommendations for consideration at the January meeting. Pending receipt of these recommendations, the staff believes that Labor Code Section 300 should be revised to make all wage assignments revocable at any time (like other voluntary deductions from earnings) and to eliminate any priority a wage assignment now has over a subsequent attempt to levy on wages. A wage assignment should be treated, in effect, like any other authorized deduction that can be revoked at will. An assignment should not serve to protect the earnings of the employee from withholding under the Earnings Protection Law.

Priorities generally. After considerable thought, the staff recommends that a four-month period be provided during which an earnings withholding order is effective. The first order received by the employer will be the only effective order for a four-month period. Then, the first order received after the prior order expires becomes effective. And, to provide other creditors with a chance to compete, the judgment creditor whose order goes into effect should be precluded for a one-month period from obtaining another order after his expires.

Priority depending on type of debt. The staff believes that an earnings withholding order which is based on a support order should have priority over any other type of earnings withholding order. Moreover, the limitations on the amounts that may be withheld should not apply to such an order (this is permitted by federal law). The amount withheld under an earnings withholding order for support should be deducted from gross earnings in determining the disposable earnings of the debtor.

Another earnings withholding order should concurrently be effective if the amount of disposable earnings thus computed is sufficient to permit withholding pursuant to the second order.

A number of state tax provisions provide that debts for particular taxes have priority in collection procedures. In the interest of simplicity, the staff recommends that an earnings withholding order for any state tax, including interest and penalties, have priority over all other earnings withholding orders (including a prior order) other than for support. An order for tax debts should suspend collection under a prior order. However, the limitations on the amounts that may be withheld should apply to a tax earnings withholding order. This is consistent with the policy of existing statutes.

Out-of-court adjustment of amount to be withheld. The staff believes it is important that the judgment creditor and the judgment debtor be permitted to work out a payment plan which permits the payment of less than the maximum permitted by law each pay period. Included in the draft statute are several provisions designed to give this flexibility in the hope that court hearings on the hardship exemption can be made unnecessary as a practical matter.

For example, one provision permits the judgment debtor and judgment creditor, after an earnings withholding order is in effect, to make an agreement that the employer is to withhold less than the amounts provided in the order (thus avoiding a hardship hearing in an appropriate case) or that the employer is to withhold nothing (thus permitting the judgment debtor to make voluntary payments pursuant to an agreed plan). In both cases, the judgment debtor would be protected from another creditor going

after his earnings during the four-month effective period of the order suspended by the agreement.

Another provision permits in effect a consent order. The judgment debtor who claims the hardship exemption is required to set out a proposed plan for payment if he believes he is able to pay something, but not the maximum allowed by law to be withheld from his earnings. The creditor can file an acceptance of the plan in which case the hearing is avoided, and an order is issued in accordance with the debtor's plan as consented to by the creditor. If this approach is taken, no other creditor can get an earnings withholding order during the period of the order.

Forms. The staff is impressed by the quality of the forms for attachment procedures devised by the Judicial Council. The statute has been drafted on the assumption that the State Administrator will prescribe the substance of all forms while the Judicial Council will prescribe the form itself in the cases where it is to be used in court. We believe that this division of functions is essential to sound administrative practice in the courts. The placing of particular matters on the form is important, for example, in the use of computers or other office equipment or to avoid addressing envelopes or for efficient administration to assure sufficient copies of a particular form.

Elimination of inconsistent procedures. The staff sees no need to perpetuate present inconsistent or overlapping procedures for compulsory withholding from an employee's earnings to satisfy judgments. Accordingly, as mentioned above, the staff recommends the elimination of wage assignments except on a voluntary basis. Wage assignments should have no effect on withholding under an earnings withholding order. Likewise, the permanent

wage assignment for support of a minor child provided by Section 4701 of the Civil Code should be converted into a permanent earnings withholding order under the Earnings Protection Law. This latter change would not be substantive except that it would give desirable flexibility to Section 4701 and reduce the cost to the support obligor. Further, the staff recommends that Section 710 of the Code of Civil Procedure be amended so that public employees, like everyone else, and public employers, like all other employers, will be covered by the uniform provisions of the Earnings Protection Law.

State Administrator. The State Administrator--which the Commission has yet to specify--will be responsible for the administration and enforcement of the Earnings Protection Law. However, the staff believes that any provisions relating to wrongful discharge from employment are properly within the competence and jurisdiction of the Labor Commissioner. Accordingly, the wrongful discharge provision and its enforcement have been segregated from the Earnings Protection Law and placed in a separate recommendation, which should be enacted concurrently with the Earnings Protection Law if California is to meet the federal minimum requirements.

Effective date. If the new statute is enacted at the 1971 session, the staff believes that it should become operative on July 1, 1972. This would give time for the necessary forms and procedures to be developed. Difficulties resulted from the revision of the attachment-garnishment law at the 1970 session; the bill was enacted late in the session, and there was not time for the Judicial Council to develop the necessary forms before the statute went into effect. Moreover, deferring the operative date until July 1, 1972, would permit corrective amendments to be adopted on an urgency

basis at the 1972 session. Finally, the deferred operative date would give interested persons and organizations time to become familiar with the act and the regulations adopted under it before the act becomes operative. The staff believes that this deferred operative date is very important if the legislation is to be proposed in 1971.

Comments to sections. Time did not permit the staff to prepare Comments to the various sections of the draft that are adequate for purposes of our report. We hope to prepare such Comments before the February meeting.

Conforming amendments and repeals. The staff has made some obvious conforming amendments and repeals in the draft. However, time did not permit a careful search of the existing statutes to determine all the amendments and repeals that are needed. We hope to make such a search before the statute is presented to the Legislature.

SECTION-BY-SECTION ANALYSIS OF DRAFT

The following is a section-by-section analysis of the attached draft. In some cases, several related sections are discussed together.

Civil Code § 4701 (page 1)

Civil Code Section 4701 now provides for a court-ordered wage assignment for support of a minor child that is good until otherwise ordered by the court and has priority as against any attachment, execution, or other assignment unless otherwise ordered by the court.

In view of the staff scheme on wage assignments, we have revised Section 4701 to provide that a court may issue an earnings withholding order for child support which remains in effect until revoked or modified by the court. The suggested amendment preserves the substance of the existing section with two changes: (1) the employer will no longer get \$1 for each payment made pursuant to the order and (2) the payment will be made to the person specified in the order rather than only to one of the public officers now specified in Section 4701. The court may, under the proposed amendment, have the employer send the amounts withheld directly to the person having custody of the child rather than to the public officer who then sends it to such person.

The staff believes that approval of the suggested amendment to Section 4701 of the Civil Code is essential to work out a sensible system of priorities and to eliminate unnecessary overlapping and inconsistent procedures.

Code of Civil Procedure § 690.6 (page 3)

The amendment of this section is taken from the tentative recommendation on checking accounts prepared for submission to the 1971 Legislature. However,

the section is revised to exempt all earnings from attachment and to exempt a specified amount of paid earnings from execution. Earnings which are unpaid are covered by the Earnings Protection Law. Also, the exemptions under the Earnings Protection Law for earnings payable to the judgment debtor are made applicable to paid earnings. This, or something similar, is an essential amendment if the Earnings Protection Law is to be enacted.

Code of Civil Procedure § 690.7 (page 8)

The amendment to this section is taken from the tentative recommendation on checking accounts prepared for submission to the 1971 Legislature. We need to make some provision dealing with checking accounts, and the suggested amendment is the one the staff believes most desirable. Rather than drafting a statute to protect checking accounts based on the federal minimum wage, the staff would prefer to reduce the amount exempted to \$750 (if this is politically feasible). See the discussion in Memorandum 71-1 and the tentative recommendation attached thereto.

Code of Civil Procedure § 690.18 (page 10)

You will recall that the federal Consumer Credit Protection Act of 1968 includes periodic payments from a pension or retirement fund as "earnings." California exempts these payments from execution. If the fund is one set up by a public entity, the exemption is automatic; if it is set up by a private employer, the exemption must be claimed.

We have amended Code of Civil Procedure Section 690.18 to provide a way to handle pension and retirement funds that will avoid complexity under the Earnings Protection Law. Generally, public and private funds are treated consistently although the public employee will still receive

additional protections (such as "vacation credits"). The staff suggests no amendments other than those that are essential.

As amended, Section 690.18(d) provides an automatic exemption for moneys held by a private fund. (This is the same treatment now given moneys held by a public fund.) A new subdivision (c) is added to protect amounts "paid" to the member of a private fund. Note that the exemption provided in subdivision (c) must be claimed. (The subdivision is consistent with subdivision (a) which applies to public employees.)

Unless an amendment of Section 690.18 is approved, the exemption in Section 690.18 will protect moneys in a public retirement fund automatically whereas moneys in a private fund will be protected to a minimum 75%, and the remaining amount must be claimed. It would only be through gross negligence that a private fund would fail to advise its members that they could claim the excess exemption; nevertheless, the private funds may be subjected to attempts by creditors to garnish the moneys. Since it is clear that the moneys are exempt, there appears to be no reason why the exemption must be claimed, particularly because a portion of the funds is automatically exempt and there will be great difficulty in calculating the amount of the automatically exempt portion.

Accordingly, the staff believes that the amendment to Section 690.18 is a highly desirable one. If the Commission wishes to consider substantive changes in the section, consideration might be given to deleting the exemptions given in subdivisions (a) and (c) of the amended section entirely, relying upon the Earnings Protection Law for the limited exemption for periodic payments to members. If such a change were made, there would have to be provision for return of contributions and interest when a person quits his job and draws down his share in the retirement fund in a lump sum.

Code of Civil Procedure § 690.50 (page 15)

This amendment is technical. It eliminates the reference to the court hearing to determine the priority of various creditors to garnish earnings in payment of a judgment. We have provided a first-come, first-served system and will not need court hearings to administer the priorities under the system.

Code of Civil Procedure § 710 (page 16)

Section 710 is amended to make the procedure provided in the section inapplicable to earnings of public employees. The only method for withholding earnings of public employees for payment of judgments will be the Earnings Protection Law. Note that the section remains applicable to independent contractors even though the Earnings Protection Law may also apply to independent contractors. The staff believes that Section 710 will work better than the Earnings Protection Law insofar as independent contractors are concerned.

§ 723.10. Short title (page 19)

No comment.

§ 723.11. Definitions (page 20)

Read the Comment under this section.

We have not indicated the state agency that would administer the new law. Background information on this policy question is presented in the First Supplement to Memorandum 71-2. We have invited representatives of the three agencies that might administer the new law to attend the meeting at 10:00 a.m. on January 15 so that the members of the Commission can obtain any additional information needed to make a decision on which agency will administer the law.

This draft retains the formula of basing the restrictions on the amounts that can be garnished on the concept of "disposable earnings." Previous discussion at Commission meetings has revealed that the meaning of "disposable earnings" is uncertain. The draft contains a provision authorizing the State Administrator to make regulations to give meaning to this concept, and we assume that he would follow the federal regulations if any are ever issued.

It would be possible to give more meaning to the term "disposable earnings" by statute while, at the same time, creating a system that applies more uniformly to all employees. For example, we could list the types of deductions from salary or wages that may be used in computing disposable earnings. For example, the following might be deducted in computing disposable earnings: union dues required to be withheld from pay pursuant to a union agreement with the employer; deductions from pay for medical plans not to exceed \$20 per month; deductions from pay for a private or public retirement plan described in Section 690.18 not to exceed \$150 per month; and the like. If we take this approach, we will have to include a provision that anything required to be recognized as a deduction in computing disposable earnings under the federal Consumer Credit Protection Act of 1968 is also required to be recognized in computing disposable earnings under the California law.

The staff has given thought to the definition of "employer" but is unable to suggest a better term. Actually, we do not believe that the new statute will work very well anyway when a person who employs an independent contractor receives an "earnings withholding order." Garnishment in such a case probably would be best covered by another set of statutory provisions. However, we have the problem of the federal law and its limitations on garnishment which may apply in the case of an independent contractor. The matter is a complex one, and we suggest that we defer (possibly forever) an attempt to deal with it.

We have inserted the phrase "and includes his representative" in the definition of "judgment creditor." When the draft is revised after the meeting, we will eliminate the reference to the creditor's representative which appears in many sections of the draft as unnecessary in view of the definition.

Note the discussion of periodic payments from pension or retirement funds in the Comment to Section 723.11 and consider the proposed amendment to Section 690.18 in connection with this Comment.

§ 723.20. Withholding earnings of judgment debtor (page 22)

Section 723.20 represents an attempt to make the procedure provided in the new statute the exclusive procedure for earnings garnishment. This is a feasible objective in the case of true employees. However, problems arise where the judgment debtor is an independent contractor. In such a case, it might be appropriate to use some other procedure to obtain the money due to the judgment debtor. (We previously recommended retaining the procedure for garnishment of moneys due independent contractors from public entities in Section 710.) One method of dealing with the problem would be to insert "employee" in place of or after "individual" in subdivision (b).

The staff does believe that there is considerable benefit to employers to have only one procedure whereby they are required to withhold and pay out earnings to judgment creditors. We should seek to accomplish that objective in this new law.

§ 723.21. Levy made by earnings withholding order (page 23)

No comment.

§ 723.22. Continuing withholding order (page 24)

Note subdivision (b) which contains some provisions designed to ease the employer's problems in complying with the statute.

§ 723.23. Period covered by withholding order (page 25)

After considerable thought, the staff recommends a four-month period for the continuing levy procedure. Support and tax orders will continue until the entire debt is paid or the order is terminated or modified.

We think that many judgments will be paid in full by withholding for four months. We have asked a representative of creditors to give us information on the average amount of debts collected by collection agencies so we can test our belief on this point. In any case, it seems that after four months the other creditors should have a chance to collect something on their judgments.

§ 723.24. When earnings withholding order terminates (page 26)

See the Comment under the section in the draft statute.

§ 723.25. Priority of orders generally (page 28)

This section states the first-come, first-served rule.

§ 723.26. Limitations on obtaining additional earnings withholding orders (page 29)

This section is explained in the Comment under the section in the draft statute.

§ 723.27. Orders for support (page 31)

This section is explained in the Comment under the section. For more information, see the Second Supplement to Memorandum 71-2.

§ 723.28. Orders for tax collection (page 33)

This section is explained in the Comment under the section. For more information, see the Second Supplement to Memorandum 71-2.

§ 723.29. Withholding orders for costs and interest (page 35)

This section, suggested by Professor Warren, makes clear how costs and interest subsequent to the application for the order are to be treated.

§ 723.30. Agreement between debtor and creditor (page 36)

See the Comment under the section for the reasons the staff believes it is a highly desirable, if not essential, provision. How should the burden of proving good faith be allocated?

§ 723.31. Creditor required to notify employer when judgment satisfied (page 38)

No comment.

§ 723.32. Judgment debtor under wage earner's plan (page 39)

This section is not really necessary since it states the applicable rule if the section were not included. The section is included in the statute primarily because the federal Consumer Credit Protection Act has a comparable provision.

§ 723.33. Order or process in violation of restrictions unenforceable (page 40)

This section is not really necessary since it states the applicable rule if the section were not included. The section is included in the statute primarily because the federal Consumer Credit Protection Act has a comparable provision.

§ 723.50. Restrictions on earnings withholding (page 41)

See the Third Supplement to Memorandum 71-2 for information pertinent to this section.

§ 723.51. Amounts essential for family support exempt (page 43)

We have phrased this exemption as restrictively as possible. This is desirable if an adequate dollar exemption is provided. See the Third Supplement to Memorandum 71-2 for additional discussion.

§ 723.100. Application for issuance of earnings withholding order (page 44)

We anticipate that the Judicial Council will prepare a much better form than the one in the statute. Accordingly, we have not attempted to do much with the form proposed by Professor Warren. The Commission should seriously consider omitting forms from the statute altogether since they merely repeat substantive provisions.

§ 723.101. Court to which application made (page 45)

This section makes clear to which court it is proper to apply for a withholding order under the 150-mile rule adopted by the Commission.

§ 723.102. Notice to judgment debtor (page 46)

No comment.

§ 723.103. Application and notice in default judgment cases (page 47)

This section reflects a prior Commission decision to permit the application for and notice of earnings withholding to be sent with the notice of the application for entry of default.

§ 723.104. Form of notice (page 48)

This section should be carefully examined. Note that the 15 days is from the date of the notice, not from the date of its receipt by the debtor. This is essential; otherwise, there would be no way of knowing when the earnings withholding order would issue in cases where no request for a hearing is made.

§ 723.105. Application for hearing (page 50)

This section contains two important provisions: (1) the requirement of the judgment debtor's proposed plan for payment on the basis of which an order will be issued without any hearing if accepted by the creditor and (2) the requirement of a financial statement if the debtor claims the hardship exemption (this will give the creditor a basis for determining whether to agree to the debtor's plan and will give the court information needed to make a decision on the claim).

As a technical matter, the staff suggests that the first sentence of Section 723.105 be revised to read:

If the judgment debtor wishes to claim that the earnings withholding order should not be issued or should not be issued in the maximum amount provided by law, he shall complete and file an application for a hearing and, if he claims the exemption provided by Section 723.51, a financial statement.

§ 723.106. Setting matter for hearing; information to judgment creditor (page 52)

We assume that the clerk would comply with subdivision (c) by use of a form that would contain several copies of the application and financial statement and would have the judgment creditor's name and address in a position on the form for insertion in a window envelope. We do not specifically prescribe in the statute, however, how the application and financial statement are to be provided to the creditor.

§ 723.107. Judgment creditor's acceptance of debtor's plan (page 53)

We assume that many judgment debtors will contact their creditor when they receive the notice of the application for an earnings withholding order. The debtor and creditor, after working out a payment plan, can then insert the plan in the application of the judgment debtor for a hearing and the judgment creditor can consent to the plan. Probably all this can be accomplished on the same form.

§ 723.108. Hearing on judgment debtor's application (page 54)

This section deals with various matters previously discussed by the Commission. These matters have not previously been considered in draft form.

§ 723.109. Multiple employment (page 55)

Check carefully.

§ 723.110. Issuance of earnings withholding order (page 57)

Check carefully. The reference in subdivision (a) should be to Section 723.105(a).

§ 723.111. Form of earnings withholding order (page 58)

Check carefully.

§ 723.112. Form for computation of amounts to be withheld (page 61)

Very important. Requires State Administrator to provide information for computation of "disposable earnings."

§ 723.113. Employer's return (page 62)

Check carefully.

§ 723.114. Form for employer's return (page 63)

Check carefully. Should the statute contain a provision that the employer compile a statement of the employee's gross earnings and the deductions used in computing "disposable earnings" for each pay period which is to be sent to the creditor with the check for the amount withheld? Should the statute provide some fee for the employer to comply with the earnings withholding order? For example, a one-time deduction of \$5 from employee's pay might be made for an earnings withholding order that becomes effective but not for one that is rejected because a prior order is in effect.

§ 723.115. Hearings at request of judgment debtor after issuance of earnings withholding order (page 64)

Check carefully. All references in this section should be to Section 723.105.

Article 5. Remedies (page 65)

Should the State Administrator be authorized to bring actions for judgment debtors or is the provision for a civil penalty and for recovery of attorney's fees and costs sufficient to permit private enforcement of the judgment debtor's rights? The Labor Commissioner collects unpaid wages.

§ 723.130. Remedies of judgment debtor (page 65)

Check carefully.

§ 723.131. Remedies of judgment creditor (page 67)

Check carefully. Do we want to grant indemnity to the employer here?

§ 723.132. Civil penalty (page 68)

Check carefully.

§ 723.133. Fraudulent withholding by employer (page 69)

Do we want this section?

§ 723.134. Costs and attorney's fees (page 70)

Drafted in accord with Commission decision at last meeting.

§§ 723.150 to 723.154. Administrative provisions (pages 71-75)

The staff presents a variety of methods of administrative enforcement in Sections 723.150 to 723.154. The sections should be checked with care.

§ 723.155. Rules and regulations (page 76)

No comment.

§ 723.156. Studies and investigations (page 77)

Check carefully.

§ 723.157. Investigatory powers (page 78)

This section picks up by reference general procedures by which state offices and agencies subpoena witnesses and records and enforce such subpoenas.

§ 723.158. Liaison with federal administrator (page 79)

See Comment under section in draft statute.

§ 723.159. Public information; counseling (page 81)

See Comment under section in draft statute.

§ 723.160. Fees of clerk (page 82)

The relatively modest fee schedule is in recognition of the fact that all costs are being charged to the debtor and that earnings withholding cases will normally concern low-income debtors.

Labor Code § 300 (page 83)

Labor Code Section 300 is amended to eliminate a wage assignment as a means of obtaining priority over other creditors. Under the scheme proposed by the staff, a wage assignment would be ignored in determining the amount to be withheld pursuant to an earnings withholding order. This would not be a hardship to the judgment debtor since the amended section allows him to revoke his assignment in the same way he can revoke other deductions from his earnings that he has authorized.

The staff does not recommend the repeal of Section 300 because it can serve a useful purpose in authorizing deductions from earnings when the requirements of the section are met.

Financial Code § 15406 (page 86)

Superseded. See Comment in draft statute.

Operative date (page 87)

This matter is discussed in the preliminary portion of this memorandum.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

3. Assignment of Wages.

(a) [§330] Statutory Restrictions.

(1) *Formal Requisites.* Lab.C. 300 (formerly C.C. 955, considerably amended and enlarged) states a number of requisites for the validity of any assignment of, or order for, wages or salary, earned or to be earned:

(a) *Separate written instrument:* The assignment must be by a separate written instrument, signed by the employee, and *identifying specifically the transaction* to which the assignment relates.

(b) *Consent of spouse, parent or guardian:* If the employee is married, the *written consent* of the other spouse must be *attached* to the instrument. (See Lab. C. 97 [Labor Commissioner not bound by requirement].) If the employee is a minor, the written consent of a parent or guardian must be attached. If the employee is an adult or unmarried, his written statement of such fact must be attached.

(c) *Statement as to no other assignments by assignor:* The assignor's written statement, that no other assignment or order exists in connection with the same transaction or series of transactions, must be attached.

(d) *Filing copy with employer:* A copy of the instrument and attached statement, authenticated by a notary, must be filed with the employer, accompanied by an *itemized statement of the amount then due*; and the employer may make payments in reliance on the statements (adult or unmarried, no other assignment) without inquiry.

(2) *Other Conditions to Validity.* In addition to the requirements of form, Lab.C. 300 states the following conditions which govern validity of such assignment or order:

(a) *Future wages*, i.e., those not yet earned, can only be assigned for *necessities of life*, to the person *directly furnishing them*, and only in the *amount needed* therefor. If the assignment is for future wages, only 25% can be reached if the employee has family dependents in the state, and 50% if he has none. (See, as to prior provision, *Orkow v. Orkow* (1933) 133 C.A. 50, 23 P.2d 781; *Walker v. Rich* (1926) 79 C.A. 139, 249 P. 56; 5 So. Cal. L. Rev. 159.)

(b) No assignment of present or future wages can be made at all if the employee works interchangeably for several employers under a plan for payment at a central place, pursuant to Lab.C. 204a.

(c) The assignment is not valid if at the time thereof another assignment or order is subject to payment, or an attachment or execution is in force; but a valid assignment takes priority over a subsequent attachment or execution.

(d) Any *power of attorney* to assign or collect wages is *always revocable*.

(b) [§331] Scope and Waiver of Restrictions.

In *Lunde v. Jurisich* (1943) 59 C.A.2d 613, 139 P.2d 657, the court held that Lab.C. 300 is to be liberally construed to carry out its purpose, and that, although technically a *lien* is not an "assignment" or "order," and a contract imposing a lien on future wages might be permissible under C.C. 2883, it is void unless it complies with Lab.C. 300. "[T]he Legislature obviously sought to reach every form of instrument which would result in the impounding of a wage earner's wages before he received them." (59 C.A.2d 619.) (Cf. Lab.C. 97 [Labor Commissioner taking assignment of wage claim for collection is not subject to Lab.C. 300].)

The statutory language ("wages or salary") is intended to cover comprehensively all kinds of earnings, whether called wages, salary, fees or compensation. (*Reynolds v. Reynolds* (1936) 14 C.A.2d 481, 58 P.2d 660.) But by express provision, the section does not apply to *deductions* by the employer at the request of the employee for insurance premiums, taxes, contributions, or payment for goods or services furnished by the employer to the employee or his family at the employee's request.

The assignment of future salary by a *public officer* is void, for reasons of public policy. But ordinary *public employees*, such as engineers and teachers hired by contract, may make valid assignments of future earnings, subject to the statutory restrictions. (*Kimball v. Ledford* (1936) 13 C.A.2d 602, 57 P.2d 163.)

In a case arising under the former statute, where the assignment lacked written consent of the wife, it was held that the defects could be waived by failure to plead them, and that the wife might give her consent at any time, even after commencement of an action, and thus cure them. (*Berg v. Standard Light Co.* (1928) 89 C.A. 542, 265 P. 369; see also *Mathewson v. Alderman* (1930) 107 C.A. 272, 290 P. 317.)

STAFF DRAFT STATUTE

§ 4701

Civil Code § 4701 (amended)

Sec. 1. Section 4701 of the Civil Code is amended to read:

~~4701. 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 be binding upon an employer upon the service of a copy of such order upon such employer and until further order of the court. 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.~~

(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 issue an earnings withholding order for any amounts designated by the court sufficient to pay for the support, maintenance, and education of the minor child. The earnings withholding order shall clearly indicate that it is an order for support.

(b) The order shall be directed to the parent's employer, who shall pay the withheld earnings to the person specified in the order

to receive such payment. The order remains in effect until modified or revoked by the court.

(c) An earnings withholding order issued pursuant to this section is governed by the provisions relating to earnings withholding orders in Chapter 2.5 (commencing with Section 723.10) of Title 9 of Part 2 of the Code of Civil Procedure.

Code of Civil Procedure § 690.6 (amended)

Sec. 2. Section 690.6 of the Code of Civil Procedure is amended to read:

690.6. (a) All the earnings of the debtor due or owing for his personal services shall be exempt from levy of attachment without filing a claim for exemption as provided in Section 690.50.

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

(c) All of such earnings, 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.

(d) 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.

(e) 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.

(a) As used in this section, "earnings" means compensation for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(b) From levy of attachment, all earnings of the debtor which are due and owing to him, or have been paid to him and are in his possession in a form identifiable by the levying officer as earnings, without filing a claim for exemption as provided in Section 690.50.

(c) From levy of attachment, all earnings of the debtor which have been paid to him and are retained in the form in which paid or as cash but which are not identified by the levying officer as earnings.

(d) All earnings of the debtor which are due and owing to him shall be exempt from levy of execution. Such earnings shall only be subject to garnishment pursuant to Chapter 2.5 (commencing with Section 723.10) of Title 9 of Part 2.

(e) From levy of execution, earnings of the debtor which have been paid to him and are in his possession in a form identifiable by the levying officer as earnings, in the amount that is exempted from garnishment by Section 723.50, without filing a claim for exemption as provided in Section 690.50.

(f) From levy of execution, earnings of the debtor which have been paid to him and are retained in the form in which paid or as cash but which are not identified by the levying officer as earnings, in the amount that is exempted from garnishment by Section 723.50.

(g) From levy of execution, that portion of his earnings which the judgment debtor establishes, by clear and convincing proof, is absolutely essential for the support of his family.

Comment. Section 690.6 is amended and integrated with new Chapter 2.5 (commencing with Section 723.10) to satisfy the restrictions upon the attachment of and execution upon earnings imposed by recent judicial decisions and federal legislation. See Chapter 2.5 (commencing with Section 723.10) and Comments thereto. See also Recommendation Relating to Attachment, Garnishment, Exemptions From Execution (). It should be emphasized that Section 690.6 states the exemptions from prejudgment levy of attachment for all earnings, both paid and payable. This section is also the source of exemption from postjudgment levy of execution for paid earnings. Unpaid earnings, i.e., earnings "due and owing," are provided for by Chapter 2.5 (commencing with Section 723.10).

Subdivision (a) defines "earnings" in accordance with Section 302(a) of the Consumer Credit Protection Act. 15 U.S.C. § 1672(a). See also Section 723.11 and Comment thereto. The federal reference to compensation "paid or payable" is omitted in the definition set forth here but forms the basis for the categories of exempt assets protected under Chapter 2.5 (commencing with Section 723.10)(earnings owed to judgment debtor) and subdivisions (b) through (f) of this section. That is, earnings which are "payable" are those which are referred to as "due and owing" under this section. "Paid" earnings are covered here by reference to earnings which have been paid to the debtor--whether or not they are still in a form identifiable as "earnings." It should be noted that certain analogous types of periodic payments--for example,

welfare assistance and unemployment benefits--are not covered here but by other provisions of the 690 series. See, e.g., Sections 690.175 (unemployment compensation), 690.19 (public assistance), 690.18 (payments pursuant to a pension or retirement program).

Former subdivision (a) of Section 690.6 provided an automatic, total exemption from prejudgment levy of attachment of all earnings "due and owing" to the debtor; this aspect of the former law is carried forward without change in subdivision (b). Compare Cal. Stats. 1970, Ch. 1523, § 19.

Subdivision (b) also includes as exempt from attachment all earnings of the debtor which "are in his possession in a form identifiable by the levying officer as earnings." It would be completely inconsistent with the rationale of Sniadach and McCallop to exempt earnings payable by an employer but to make these same earnings subject to attachment as soon as they pass into the hands of the employee-debtor. (The term "debtor" is used here to include a defendant or cross-defendant subject to attachment. See Section 690(c).) Accordingly, to avoid such an anomaly, subdivision (b) provides the same exemption for all earnings whether "due and owing" or paid but still in a form identifiable as earnings. Included in the latter category would, for example, be an uncashed paycheck. The identification is done by the levying officer--sheriff, constable, or marshal. He is protected from any liability for a mistaken identification by the immunity for discretionary acts afforded by Government Code Section 820.2. Where an officer does mistakenly attach earnings, the debtor may still claim an exemption under subdivision (c). Under subdivision (b), however, the exemption is automatic; no claim pursuant to Section 690.50 is required.

Subdivision (c) is necessary to cover the logical hiatus left by subdivision (b), i.e., earnings paid but not in a form identifiable as earnings or, at least, not in fact so identified by the levying officer. Subdivision (c) is intended to cover the relatively rare case where the officer cannot or does not properly identify earnings as earnings. This can happen, for example, where cash in the possession of the debtor is attached. Circumstances may clearly indicate that the money is "earnings"--for example, cash in a pay envelope attached shortly after the debtor leaves his place of employment upon a payday. Nevertheless, in other circumstances, subdivision (c) affords the debtor an opportunity at least to claim an exemption pursuant to Section 690.50 by showing that "earnings" have been attached. Subdivision (c) does not, however, protect earnings after they have been converted into another form. Protection of assets in these other forms must be sought under other exemption provisions. See, e.g., Civil Code Section 1240 (homestead exemption from execution); Code of Civil Procedure Sections 690.1 (household furnishings and appliances); 690.2 (motor vehicles); 690.7 (money deposited in bank, credit union, or savings and loan association).

Subdivision (d) makes clear that the levy of execution may no longer be used to garnish the wages of an employee while they are still in the hands of his employer. A judgment creditor now may only reach this asset of a debtor pursuant to Chapter 2.5 (commencing with Section 723.10). However, Chapter 2.5 deals only with unpaid earnings, i.e., earnings which are "due and owing." Earnings, once paid, are subject to levy of execution. Subdivisions (e) and (f), therefore, provide exemptions for paid earnings comparable to the exemptions provided for unpaid earnings by Sections 723.50 and 723.51.

Code of Civil Procedure Section 690.7 (amended)

Sec. 3 . Section 690.7 of the Code of Civil Procedure is amended to read:

690.7. (a) To the maximum aggregate value of one thousand dollars (\$1,000), any combination of the following:

(1) ~~savings~~ Savings deposits in, shares or other accounts in, or shares of stock of, any state or federal savings and loan association ; .
As used in this paragraph, "savings deposits" shall include "investment certificates" and "withdrawable shares" as defined in Sections 5061 and 5067 of the Financial Code, respectively.

(2) Shares and certificates for funds received of members of any credit union and all the accumulation on such shares and certificates.

(3) Deposits or accounts in any bank. As used in this paragraph, the term "bank" is defined in Financial Code Section 102.

(b) ~~Such~~ The exemption set forth in subdivision (a) shall be a maximum of one thousand dollars (\$1,000) per person, whether the character of the property be separate or community.

Comment. Section 690.7 is amended to provide the same basic exemption for all types of savings or commercial accounts whether in a bank (paragraph (3)), savings and loan association (paragraph (1)), or credit union (paragraph (2)). The exemption is an aggregate one; that is, up to one thousand dollars may be exempted hereunder from one or any combination of accounts. However, the total amount exempted by any one person from all accounts is limited to one thousand dollars.

The exemption must be claimed pursuant to Section 690.50. Such procedure is necessary to control the accumulation of accounts. (The

alternative of exempting a fixed amount from each account would permit a debtor to avoid levy altogether by the opening of multiple accounts.) However, it is anticipated that the release of funds pursuant to the exemption granted by this section will be expeditiously accomplished. The exemption itself is fixed and clear, and the asset is completely liquid. Accordingly, there should be little occasion for the filing of counteraffidavits by a creditor, thus permitting the attaching officer to make the necessary distributions on the basis of the debtor's affidavit alone.

Paragraph (1) of subdivision (a) continues, without substantive change, subdivision (a) of former Section 690.7. Paragraph (2) incorporates the substance of former Section 15406 of the Financial Code, except that the amount of the exemption is reduced from \$1,500 to \$1,000 to conform with the exemption provided for accounts held in a savings and loan association. Paragraph (3) is added to afford bank accounts--both savings and checking accounts--the protection granted similar assets. Their omission was logically inconsistent with the former exemptions. More importantly, the failure to provide any exemption for personal checking accounts--the usual depository for current earnings--violated the spirit if not the letter of both recent federal legislation and judicial decisions. See 15 U.S.C. §§ 1671-1677; Sniadach v. Family Finance Corp., 395 U.S. 337 (1969); McCallop v. Carberry, 1 Cal.3d 903, 464 P.2d 122, 83 Cal. Rptr. 666 (1970). See also Recommendation Relating to Attachment, Garnishment, Exemptions From Execution ().

Code of Civil Procedure § 690.18 (amended)

Sec. 4. Section 690.18 of the Code of Civil Procedure is amended to read:

690.18. (a) All money received by any person, a resident of this state, as a pension, or as an annuity or retirement or disability or death or other benefit, or as a return of contributions and interest thereon, from the United States government, or from the state, or any county, city, or city and county, or other political subdivision of the state, or any public trust, or public corporation, or from the governing body of any of them, or from any public board or boards, or from any retirement, disability, or annuity system established by any of them pursuant to statute, whether the same shall be in the actual possession of such pensioner or beneficiary, or deposited by him.

(b) All money held, controlled, or in process of distribution by the state, or a city, city and county, county, or other political subdivision of the state, or any public trust or public corporation, or the governing body of any of them, or by any public board or boards, derived from the contributions by the state or such city, county, city and county, or other political subdivision, or such public trust, public corporation, governing body, or public board or boards, or by any officer or employee thereof, for retirement or pension purposes or the payment of disability, death, or other benefits, or the payment of benefits payable to, or the reimbursement of benefits paid to, employees thereof under the provisions of the Unemployment Insurance Code, and all rights and benefits accrued or accruing to any person under any system established pursuant to statute by the state, city, city and county, county, or other political subdivision of the state, or any

public trust or public corporation for retirement, annuity, or pension purposes or payment of disability or death benefits, and all vacation credits accumulated by a state employee pursuant to the provisions of Section 18050 of the Government Code, or any other public employee pursuant to any law for the accumulation of vacation credits applicable to such employee. Such moneys, benefits, and credits shall be exempt without filing a claim of exemption as provided in Section 690.50.

(c) All moneys received by any person, a resident of the state, as an annuity, pension, retirement allowance, disability payment, or death benefit from any private retirement plan, including, but not limited to, union retirement plans, or any profit-sharing plan designed and used for retirement purposes, and all contributions and interest thereon returned to any member of such retirement or profit-sharing plan, whether the same shall be in the actual possession of such pensioner or beneficiary, or deposited by him. This subdivision shall not apply to any moneys received in any manner by persons from any retirement program established pursuant to the federal "Self-Employed Individuals Tax Retirement Act of 1962" (P.L. 87-792; 76 Stat. 809).

~~(e)~~ (d) All money held, controlled, or in process of distribution by any private retirement plan, including, but not limited to, union retirement plans, or any profit-sharing plan designed and used for retirement purposes, or the payment of benefits as an annuity, pension, retirement allowance, disability payment or death benefit from such retirement or profit-sharing plans ~~,-and-all-contributions-and-interest~~

§ 690.18

~~thereon returned to any member of any such retirement or profit-sharing plan, are exempt from execution, attachment, or garnishment in any bankruptcy proceeding .~~ Such moneys and benefits shall be exempt without filing a claim of exemption as provided in Section 690.50. This subdivision shall not apply to any moneys held in any retirement program established pursuant to the federal "Self-Employed Individuals Tax Retirement Act of 1962" (P.L. 87-792; 76 Stat. 809) ~~, nor to any moneys received in any manner by persons from any such retirement program so established .~~

Sec. 5 . Section 690.50 of the Code of Civil Procedure is

amended to read:

¶ 690.50.)

(a) If the property mentioned in Sections 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 10 days 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.

(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 five days after service of such writing.

(c) If the creditor desires to contest the claim to exemption, he shall, within such period of five days, 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.

(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 court, the motion is deemed made.

§ 690.50

(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 non-exempt 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 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.

§ 690.50

(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. 6 . 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 ~~or to the State Personnel Board~~. Said state department, board, office or commission in presenting such claim of such judgment debtor to said State Controller shall note thereunder the fact that 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, officer 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 80 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 ~~690.26 of this code.~~ Section 690.50.

(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 any wages, or salary owing to the Governor, Lieutenant Governor, Secretary of State, Controller, Treasurer, and Attorney General.~~

C
H (g) (f)

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.~~

(g) This section does not authorize the withholding of earnings of a public employee. The earnings of a public employee may be withheld only pursuant to Chapter 2.5 (commencing with Section 723.10) of Title 9 of Part 2.

Sec. 7 . Chapter 2.5 (commencing with Section 723.10) is added to Title 9 of Part 2 of the Code of Civil Procedure, to read:

CHAPTER 2.5. EARNINGS PROTECTION LAW

Article 1. Short Title; Definitions

§ 723.10. Short title

723.10. This chapter shall be known and may be cited as the "Earnings Protection Law."

§ 723.11. Definitions

723.11. As used in this chapter:

(a) "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

(b) "Earnings" means compensation payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(c) "Employer" means any person who owes earnings to another.

(d) "Judgment" includes a support order.

(e) "Judgment creditor" means the person in favor of whom a judgment is rendered and includes his representative.

(f) "Judgment debtor" means the person against whom a judgment is rendered.

(g) "State Administrator" means

Comment. Subdivisions (a) and (b) of Section 723.11 are taken from the federal Consumer Credit Protection Act of 1968 (Section 302). However, the federal phrase referring to compensation "paid or payable" is omitted in the definition set forth in Section 723.11. See the Comment to Section 690.6.

Subdivision (a) defines disposable earnings in terms of the deduction of amounts required by law to be withheld. The particular deductions which meet this standard are listed by the state administrator pursuant to Section

723.112. Among the amounts required by law to be withheld are earnings subject to withholding pursuant to a support order. See Section 732.27.

"Earnings" is defined in subdivision (b) to include "periodic payments pursuant to a pension or retirement program." Moneys held in pension and retirement funds (except for Keogh Act plans) are exempt from execution under Section 690.18 and, as amended, that section provides for an automatic exemption that need not be claimed under Section 690.50. Moneys received from a pension or retirement fund are also exempt under Section 690.18 as amended, but that exemption must be claimed under Section 690.50. The classification of periodic payments pursuant to a pension or retirement program as "earnings" for the purposes of the Earnings Protection Law does not affect the exemption provided by Section 690.18. Exempt pension or retirement funds cannot be reached under this chapter. Where the judgment debtor has income from salary or wages and also retirement payments, only the salary or wages can be reached under this chapter. However, in applying the restrictions on the amount of earnings that can be withheld (Section 723.50), the amount of periodic payments pursuant to a pension or retirement program must be taken into account in determining disposable income.

Subdivision (c) defines "employer" broadly to include anyone owing earnings to another because, in almost all cases in which a creditor is seeking to reach those earnings, the person owing them will be an employer in the popular sense of that word. However, in some cases, the chapter may apply to a person who is not an employer in the popular sense, such as a person who hires an independent contractor.

Article 2. General

§ 723.20. Withholding earnings of judgment debtor

723.20. (a) A judgment creditor may have earnings of a judgment debtor withheld in accordance with the provisions of this chapter.

(b) The earnings of an individual shall not be required to be withheld for payment of a debt by means of any judicial procedure other than pursuant to the provisions of this chapter.

Comment. Section 723.20 makes the Earnings Protection Law the exclusive judicial method of compelling an employer to withhold earnings. Attachment of earnings before judgment is abolished by Section 690.6(b). Nothing in the Earnings Protection Law affects wage assignments by contract between creditor and debtor, but such a wage assignment no longer has any priority over a subsequent levy on the earnings of a judgment debtor and is revocable at any time. See Labor Code § 300. See also Civil Code § 4701.

Of course, the Earnings Protection Law has no effect on matters that are preempted by the federal law, such as federal bankruptcy proceedings and federal tax collection procedures (Int. Rev. Code of 1954, § 6334(c)). See also Section 723.32 (wage earner's plan).

§ 723.21. Levy made by earnings withholding order

723.21. A levy upon the earnings of a judgment debtor is made by an earnings withholding order, directed to the judgment debtor's employer, in accordance with this chapter.

§ 723.22. Continuing withholding order

723.22. (a) Except as otherwise provided in this chapter, receipt by an employer of an earnings withholding order, until the order expires or terminates:

(1) Constitutes a lien upon unpaid earnings of the judgment debtor and upon future earnings as earned; and

(2) Imposes upon the employer a continuing duty to withhold from the judgment debtor's earnings amounts in accordance with the earnings withholding order and to pay over those amounts to the person specified in the order.

(b) The amount required to be withheld shall be paid by check to the person specified in the order within 30 days after each payment of earnings is made to the judgment debtor. The employer is not required to pay over an amount withheld that is less than \$10 until the accumulated amount that has been withheld and not paid over reaches \$10.

Comment. See the Comments to Sections 723.23 and 723.24.

§ 723.23. Period covered by withholding order

723.23. Except as otherwise provided by statute, an earnings withholding order is effective for a period of four months from the date of the end of the first pay period which ends after the employer receives the order or until it terminates, whichever first occurs.

Comment. Section 723.23 provides that an earnings withholding order is effective for a four-month period and expires at the end of that time. In some cases, the earnings withholding order is not limited to the four-month period. See Sections 723.27 (support), 723.28 (state taxes). See also Civil Code Section 4701 (child support).

The earnings withholding order may terminate before the end of the four-month period for any of the reasons listed in Section 723.24.

§ 723.24. When earnings withholding order terminates

723.24. An earnings withholding order terminates when any of the following occurs:

(a) The employer receives a restraining order from a referee or court in bankruptcy or a certified copy of any court order declaring that the debt upon which the judgment is based is discharged in bankruptcy.

(b) The employer receives a modified order, or a notice of termination of the order, from the clerk of court.

(c) The employer receives written notice from the judgment creditor that the judgment has been satisfied.

(d) The employer has withheld from the earnings of the judgment debtor the full amount specified in the order.

Comment. The events listed in subdivisions (a) through (d) of Section 723.24 will terminate any earnings withholding order in effect at the time they occur, despite a later expiration date for the order as provided in Section 723.23.

Subdivision (a) recognizes the federal preemption of the bankruptcy field and makes the earnings withholding order subordinate to any later federal proceedings.

Subdivision (b) reflects the fact that a court may modify or even terminate a prior withholding order due to substantial changes in the debtor's position--significant alterations in disposable earnings, hardship occurrences, and the like. See Section 723.115. See also Section 723.30.

Subdivision (c) enables the judgment creditor himself to terminate the withholding order which he has obtained when the underlying debt has been satisfied. The judgment debtor has an affirmative duty to so inform the employer. See Section 723.31.

Subdivision (d) specifies that the withholding order ends when the full amount specified in the order has been withheld.

§ 723.25. Priority of orders generally

723.25. Except as otherwise provided in this chapter:

(a) An employer shall withhold and pay over earnings of a judgment debtor pursuant to the first withholding order which the employer receives when there is no other earnings withholding order in effect for that judgment debtor.

(b) If at any time when an earnings withholding order is in effect the employer receives another earnings withholding order for the same judgment debtor, the employer shall not withhold earnings pursuant to the subsequent order. In such a case, the employer shall notify the judgment creditor that a prior order is in effect and shall accompany the notification with the information required by the form referred to in Section 723.114.

Comment. Section 723.25 establishes the rules governing priority of earnings withholding orders. Generally, the first order received is given priority. For exceptions to this rule, see Sections 723.27 (support orders) and 723.28 (taxes). See the Comments to Sections 723.27 and 723.28.

§ 723.26. Limitation on obtaining additional earnings withholding orders

723.26. (a) If an employer withholds earnings pursuant to an earnings withholding order, the judgment creditor who obtained such withholding order may not apply for another withholding order on the same indebtedness for a period of five months from the effective date of the first earnings withholding order.

(b) If a court orders, after a hearing held pursuant to this chapter, that nothing should be withheld from the earnings of a judgment debtor:

(1) The judgment creditor may not apply for another earnings withholding order on the same indebtedness for a period of four months from the date of the court's order unless the order otherwise provides.

(2) For the purposes of this chapter, the order is conclusive on the issues decided for a period of four months from the date of the court's order unless the order otherwise provides.

Comment. Subdivision (a) of Section 723.26 precludes a creditor who has obtained an earnings withholding order which has gone into effect from obtaining another order during the one-month period following the expiration of his order. The effect of this limitation is that other creditors are given a one-month period of time during which they can attempt to have their earnings withholding orders go into effect while the original creditor is precluded from competing with them. Of course, after the expiration of the one-month period, the original creditor is treated like any other creditor.

§ 723.26

Subdivision (b) of Section 723.26 is designed to preclude the debtor and his creditors from having a hearing more frequently than once every four months on the question whether all the debtor's earnings are absolutely essential to the support of his family. Note that a determination made by the court on an application for an earnings withholding order by one creditor that all the debtor's earnings are absolutely essential for support is conclusive as to all creditors for a period of four months. In some cases, however, the court may determine that it would be appropriate for the court to reconsider the matter at an earlier time and Section 723.26(b) permits the court to reserve the authority to revise its earlier determination within such time as the court orders.

An order to withhold nothing from earnings is subject to all the rules governing priority of earnings withholding orders. See Section 723.25.

For a provision permitting hearings more frequently than every four months in hardship cases, see Section 723.115.

§ 723.27. Orders for support

723.27. Notwithstanding any other provision of this chapter:

(a) An earnings withholding order to enforce a court order for support of any person shall be denoted as such on its face.

(b) The restrictions on earnings withholding contained in Sections 723.50 and 723.51 do not apply to an earnings withholding order described in subdivision (a).

(c) An earnings withholding order described in subdivision (a) remains in effect as a continuous withholding order until the court orders its termination.

(d) Regardless whether any other earnings withholding order is already in effect for a judgment debtor, an employer who receives an order described in subdivision (a) shall withhold and pay over earnings of the judgment debtor pursuant to such order or orders.

(e) An employer shall withhold earnings of a judgment debtor pursuant to both a support order and another earnings withholding order simultaneously, but the amount withheld pursuant to the earnings withholding order described in subdivision (a) shall be deducted from the earnings of the judgment debtor in computing his disposable earnings for the purposes of this chapter.

Comment. Section 723.27 provides special rules for an earnings withholding order to enforce a court order for the support of any person, including a former spouse of the judgment debtor. An earnings withholding order for support is given a different effect than other withholding orders: it is effective until terminated by the issuing court; it is unrestricted in amount; it goes into effect, but it does not necessarily preclude withholding on a prior order.

The amount specified in the earnings withholding order for support is withheld from the support obligor's earnings and paid over to the person specified in the order. The amount withheld for support is deducted in determining "disposable earnings" of the judgment debtor and **any prior order** continues in effect with the amount withheld based on the "disposable earnings" thus recomputed. Likewise, subject to the rule for computing "disposable earnings," a judgment creditor may obtain an earnings withholding order where there is already in effect a prior earnings withholding order for support.

§ 723.28. Orders for tax collection

723.28. Notwithstanding any other provision of this chapter:

(a) An earnings withholding order for collection of a judgment for any state tax, including penalties and interest, shall be denoted as such on its face.

(b) An earnings withholding order described in subdivision (a) shall remain in effect as a continuous withholding order until the amount specified in the order has been paid in full.

(c) Regardless whether any other earnings withholding order is in effect for a judgment debtor, an employer who receives an order described in subdivision (a) shall withhold and pay over earnings of the judgment debtor pursuant to such order, and shall cease to withhold earnings pursuant to any **prior order except an order** described in subdivision (a) of this section or in subdivision (a) of Section 723.27.

(d) When an employer ceases to withhold earnings of a judgment debtor pursuant to subdivision (c), he shall notify the judgment creditor who obtained the prior order that a supervening order for collection of state taxes is in effect.

(e) When the order described in subdivision (a) has been satisfied, the employer shall withhold and pay over earnings on the prior order referred to in subdivision (c) if it is still in effect.

Comment. Section 723.28 provides an exception to the general rule governing priority of earnings withholding orders. An order based on a judgment for unpaid state taxes, including penalties and interest, takes priority over any prior order except one for state taxes or for support.

Code Civ. Proc. § 723.28

If the earnings withholding order for taxes is satisfied before the expiration of the prior order (four months--Section 723.23), the employer must then again withhold pursuant to the prior order.

§ 723.29. Withholding order for costs and interest

723.29. Subject to Section 723.23, after the amount stated as owing in the earnings withholding order is paid, the judgment creditor may apply for issuance of another earnings withholding order covering costs and interest that may have accrued since application for the prior order.

§ 723.30. Agreement between debtor and creditor

723.30. (a) The judgment debtor and the judgment creditor or his representative may agree that the amounts to be withheld from the periodic earnings of the judgment debtor pursuant to an earnings withholding order are to be lesser amounts than the amounts that would otherwise be withheld pursuant to the order. Upon receipt of written notification from the judgment creditor or his representative of such agreement and of the amounts to be withheld pursuant to such agreement, the employer of the judgment debtor shall withhold such amounts and pay them over to the judgment creditor or his representative as provided in this chapter.

(b) The judgment debtor and the judgment creditor or his representative may agree that the employer of the judgment debtor is to discontinue withholding on an earnings withholding order pursuant to which the judgment debtor's earnings would otherwise be withheld so that the judgment debtor may make payments to the judgment creditor in accordance with a voluntary payment plan. Upon receipt of written notification from the judgment creditor or his representative of such agreement, the employer of the judgment debtor shall discontinue withholding earnings pursuant to the earnings withholding order.

(c) Except for an earnings withholding order issued under Section 723.27 or 723.28, where an agreement is made pursuant to this section, the employer shall not withhold earnings pursuant to any other earnings withholding order during the period the order superseded by the agreement is in effect unless a court, at a hearing held at the request of the person seeking the other order, finds that

§ 723.30

the agreement was not made in good faith and on that ground terminates the order superseded by the agreement. The burden of proof at such hearing on the issue of good faith is on the parties to the agreement.

Comment. Section 723.30 is included to permit the judgment debtor and judgment creditor to work out a payment plan and avoid the need for a court determination whether the judgment debtor is entitled to have a portion of his earnings exempt under Section 723.51 ("absolutely essential for the support of his family"). Subdivision (a) of Section 723.30 recognizes an agreement that reduces the amount an employer is to withhold; subdivision (b) recognizes an agreement where the withholding by the employer is to be discontinued and the employee is to pay a specified amount to the judgment creditor pursuant to the agreement.

Under subdivision (c), the agreement is given the same effect as if the court had held a hearing and determined that a portion of the judgment debtor's earnings should be exempt under Section 723.51. It is necessary to give the agreement this effect; otherwise, the judgment creditor would never be willing to dispense with the court determination on the extent to which the earnings are exempt under Section 723.51. To avoid collusion between the debtor and a friend, subdivision (c) imposes upon the parties to the agreement the burden of proving it was made in good faith when another creditor applies for an earnings withholding order.

§ 723.31. Creditor required to notify employer when judgment satisfied

723.31. If the judgment pursuant to which the earnings withholding order is issued is satisfied prior to the time the earnings withholding order expires under Section 723.23, the judgment creditor shall promptly notify the employer of the judgment debtor of that fact.

§ 723.32. Judgment debtor under wage earner's plan

723.32. No earnings withholding order shall be effective during the time the judgment debtor is under any wage earner's plan approved by any United States court.

Comment. Section 723.32 states the obvious proposition that no earnings can be garnished under state law when the judgment debtor is under a wage earner's plan approved by any United States court. Cf. federal Consumer Credit Protection Act of 1968, Section 303(b).

§ 723.33. Order or process in violation of restrictions unenforceable

723.33. No court may make, execute, or enforce an order or process in violation of the restrictions of this chapter.

Comment. Section 723.33 is based on a comparable provision of the federal Consumer Credit Protection Act of 1968 (Section 303(c)).

Article 3. Restrictions on Earnings Withholding

§ 723.50. Restrictions on earnings withholding

723.50. (a) As used in this section, "nonexempt disposable earnings" for any workweek means the aggregate disposable earnings of the judgment debtor for that workweek less an amount equal to 60 times the federal hourly wage prescribed by Section 6(a)(1) of the Fair Labor Standards Act of 1938 in effect at the time the earnings are payable.

(b) Except as otherwise provided in Section 723.27, the amount of the earnings of a judgment debtor in any workweek which is to be withheld pursuant to this chapter may not exceed an amount computed as follows:

If the nonexempt disposable earnings are:	The amount to be withheld is:
Not over \$50	50% of the nonexempt disposable earnings
Over \$50 but not over \$125	\$25 plus 40% of excess over \$50
Over \$125	\$55 plus 25% of excess over \$125

(c) In the case of earnings for any pay period other than a week, the State Administrator shall by regulation prescribe a method of computation which shall be equivalent in effect to that set forth in subdivisions (a) and (b).

Comment. The exemption provided by Section 723.50, like the exemption provided by Section 303(a) of the federal Consumer Credit Protection Act, is based on the federal minimum wage. Accordingly, the exemption will automatically reflect the effect of inflation because it will increase as the federal minimum wage is increased.

Code Civ. Proc. § 723.50

The exemption applies to all cases (including state taxes) other than support. See Sections 723.27 (support), 723.28 (taxes).

§ 723.51. Amounts essential for family support exempt

723.51. That portion of his earnings which a judgment debtor establishes, by clear and convincing proof, is absolutely essential for the support of his family is exempt from levy under this chapter.

Comment. Section 723.51 is based on the exemption formerly provided by subdivision (c) of Section 690.6, but omits the provision for the "common necessities of life." However, the exemption provided by Section 723.51 is more restrictive ("absolutely essential for support" as compared to "necessary for the use") than former subdivision (c) of Section 690.6 and requires "clear and convincing proof" rather than a mere preponderance of the evidence as was formerly the case under Section 690.6(c). This strict standard recognizes that the liberal exemption provided by Section 723.50 should be adequate except in extremely rare and unusual cases.

Article 4. Procedure for Issuance of
Earnings Withholding Orders

§ 723.100. Application for issuance of earnings withholding order

723.100. (a) A judgment creditor may apply for the issuance of an earnings withholding order by filing an affidavit in substantially the following form with the clerk of the court from which such order is sought:

1. On (date) , a judgment was entered by (description of court) in favor of (name and address of judgment creditor) and against (name and address of judgment debtor) and was entered in (where judgment entered). There is now owing on this judgment a net balance of \$ (judgment as entered plus accrued interest, costs, or fees less partial payments, if any). Of this amount, \$ was due on the judgment as entered and bears interest at 7 percent per annum from the date of entry.

2. It is requested that an earnings withholding order be issued requiring (name and address of employer) to withhold from the judgment debtor's earnings the amounts allowed by law and to pay these amounts to (name and address of person to receive money).

3. I have no information or belief that the judgment debtor has been adjudicated a bankrupt with reference to the indebtedness for which the order is sought or that the judgment debtor is, at the date of this application, under a wage earner's plan approved by a United States Court.

(b) An application for an earnings withholding order in form approved by the Judicial Council is deemed to comply with this section.

§ 723.101. Court to which application made

723.101. (a) The application for an earnings withholding order shall be made to the court which entered the judgment pursuant to which the earnings withholding order is sought if the address of the judgment debtor's last known residence is within 150 miles of the city where that court is located.

(b) In cases not covered by subdivision (a), the application shall be made only to a court of similar jurisdiction as the one which entered the judgment in the county where the judgment debtor was last known to reside or, if there be no court of similar jurisdiction in such county, by a court of higher jurisdiction therein. An application filed under this subdivision shall be accompanied by an abstract of the judgment in the form prescribed by Section 674.

Comment. Section 723.101 is based on Section 722 (proceedings supplemental to execution).

§ 723.102. Notice to judgment debtor

723.102. After filing his application for issuance of an earnings withholding order, the judgment creditor or his representative shall send by mail or otherwise to the judgment debtor at his last known residence address a notice that the judgment creditor has applied for an earnings withholding order and a copy of the application for the order. After the notice and the copy of the application have been sent to the judgment debtor, the judgment creditor or his representative shall file an affidavit stating that fact.

Comment. Section 723.102 is designed to give the judgment debtor notice of the imminence of an earnings withholding order so that he will be able to assert any facts which may affect the amount of the order prior to its issuance. If the judgment creditor fails to give the appropriate notice, or if he files a false affidavit, he may be subject to the ordinary sanctions for abuse of process and contempt, and any order issued may be subject to attack on grounds of extrinsic fraud. However, the fact that the judgment debtor fails to receive the notice does not affect the validity of the earnings withholding order.

§ 723.103. Application and notice in default judgment cases

723.103. (a) Where an action has been commenced and the plaintiff applies for entry of default in a case to which Section 587 applies, the plaintiff at any time may file in such action an application for issuance of an earnings withholding order and may send the notice required by Section 723.102 to the defendant with the copy of the application for entry of default sent pursuant to Section 587.

(b) In any case to which this section applies, the affidavit required by Section 723.102 may be combined with the affidavit required by Section 587.

(c) The Judicial Council shall adopt a form for the application for issuance of an earnings withholding order to be used in cases to which this section applies.

Comment. Section 723.103 permits a creditor to apply for an earnings withholding order in anticipation of a default judgment. Otherwise, the creditor would have to wait until his claim has been reduced to judgment before applying. See Section 723.100. Of course, if judgment is not entered in accordance with the facts stated in the withholding order application, a new application for a withholding order must be filed and notice sent.

§ 723.104. Form of notice

723.104. (a) The Judicial Council shall prescribe by rule the form of the notice of the application for issuance of an earnings withholding order.

(b) In addition to other matters deemed appropriate by the State Administrator, the notice shall inform the judgment debtor of all of the following:

(1) The judgment creditor has asked the court to order a named employer to withhold a certain indicated amount of the judgment debtor's earnings and to pay this amount over to the person specified in the application for the order in payment of the judgment described in the application.

(2) The maximum amounts allowed by law to be withheld pursuant to Section 723.50.

(3) No amount can be withheld from the judgment debtor's earnings which he can prove is for a debt which has been discharged in bankruptcy.

(4) No amount can be withheld from the judgment debtor's earnings which he can establish in court, by clear and convincing proof, is absolutely essential for the support of his family.

(5) If the judgment debtor wishes a court hearing to prove that pursuant to paragraph (3) or (4) amounts should not be withheld from his earnings, he must fill in the accompanying form entitled "Application for Hearing," and, in addition, if he claims the exemption under paragraph (4), the judgment debtor must complete the required financial statement (subdivision (c) of Section 723.105).

(6) The earnings withholding order will issue unless he returns by mail or otherwise his application for hearing and, if required, his financial statement to the clerk of court not later than 15 days after the date of the notice.

(7) If he fails to appear at the hearing or to complete the required form or forms truthfully and completely, the court may draw inferences adverse to the judgment debtor.

Comment. Section 723.104 lists some of the information to be given to the judgment debtor in his notice of earnings withholding.

Paragraphs (3) and (4) of subdivision (b) list two of the more salient reasons for denial of a withholding order among the possible grounds for hearing specified in Section 723.105(a).

The form for application for hearing referred to in subdivision (b)(5) is prescribed by the Judicial Council. See Section 723.105(a).

The 15-day deadline for hearing application referred to in subdivision (b)(6) is prescribed by Section 723.105(a). It should be noted that the judgment debtor may subsequently apply for a hearing after the 15-day deadline has passed, but such an application will not delay the issuance of the earnings withholding order.

Subdivision (b)(7) includes the substance of Section 723.108(a) relating to court findings upon the debtor's failure to appear or to supply accurate information after applying for a hearing.

§ 723.105. Application for hearing

723.105. (a) If the judgment debtor wishes to claim the exemption provided by Section 723.51 or claims that the debt for which the earnings withholding order is sought is one discharged in bankruptcy or that he is under a wage earner's plan approved by a United States court or that for some other reason the earnings withholding order should not be issued, the judgment debtor shall complete and file an application for a hearing and, in addition, a financial statement if he claims the exemption provided by Section 723.51. Subject to Section 723.115, the application for hearing must be returned by the judgment debtor, by mail or otherwise, to the clerk of court no later than 15 days after the date of the notice given pursuant to Section 723.102.

(b) In addition to other matters deemed appropriate by the State Administrator, where the judgment debtor claims the exemption provided by Section 723.51, unless the judgment debtor claims that all of his earnings are absolutely essential for the support of his family, the application for a hearing shall indicate how much the judgment debtor believes should be withheld from his earnings each pay period by his employer pursuant to the earnings withholding order.

(c) The financial statement referred to in subdivision (a) shall include all of the following information:

(1) All sources of the judgment debtor's earnings and the amounts of such earnings.

(2) Any sources and amounts of earnings of members of the judgment debtor's family.

(3) A listing of all assets of the judgment debtor and of the members of his family.

- (4) All outstanding obligations of the judgment debtor.
 - (5) Names, age, and relationship of any persons dependent upon judgment debtor's income.
 - (6) Any extraordinary prospective expenses that would justify a reduction in the amount of earnings that would otherwise be withheld pursuant to Section 723.50.
 - (7) Whether any earnings withholding orders are in effect for the judgment debtor or members of his family.
 - (8) Such other information as is considered appropriate by the State Administrator.
- (d) The Judicial Council shall prescribe by rule the form of the application for hearing and for the financial statement.

§ 723.106. Setting matter for hearing; information to judgment creditor

723.106. (a) If the judgment debtor sends the application for a hearing within the time specified in subdivision (a) of Section 723.105, the court shall set for hearing the matter of the amount to be withheld from the judgment debtor's earnings. The hearing shall be had within 15 days of the date the clerk receives the application for the hearing unless continued by the court for good cause.

(b) The judgment debtor and the judgment creditor or his representative shall be notified at least 10 days before the hearing of its time and place.

(c) A copy of the judgment debtor's application for the hearing and his financial statement, if any, shall be made available by the clerk to the judgment creditor or his representative.

§ 723.107. Judgment creditor's acceptance of debtor's plan

723.107. The judgment creditor may file an acceptance stating that he is agreeable to having an earnings withholding order issued in the amount stated in the application pursuant to subdivision (b) of Section 723.105. If the judgment creditor files such an acceptance, no hearing shall be held.

Comment. The acceptance provided by Section 723.107 operates as a consent by both creditor and debtor to a withholding order for a stipulated amount. When this occurs, the clerk of court issues the designated order without further proceedings. See Section 723.110(b).

§ 723.108. Hearing on judgment debtor's application

723.108. (a) Neither the judgment debtor nor the judgment creditor or his representative is required to be present at the hearing. The court shall in every case require that the judgment creditor's judgment and that the claim of the judgment debtor be established by proof as required by law. No inferences shall be drawn against the judgment creditor if he fails to appear at the hearing but, if the judgment debtor fails to appear at the hearing or to complete the required form or forms truthfully and completely, the court may draw inferences adverse to the judgment debtor.

(b) If the court determines at the hearing that the judgment creditor is not entitled to have an amount withheld from the judgment debtor's earnings and paid over to him, the court shall so order and no earnings withholding order shall be issued.

(c) Subject to Section 723.50, if the court determines that the judgment creditor is entitled to have an amount withheld from the judgment debtor's earnings and paid over to him, the court shall make an appropriate order which may:

(1) State the amount to be withheld from the judgment debtor's earnings for each pay period;

(2) State the percentage of disposable income to be withheld from the judgment debtor's earnings for each pay period;

(3) State that the maximum amount allowed by law be withheld from the judgment debtor's earnings; or

(4) Otherwise determine the amount to be withheld or specify the manner in which it is to be computed.

§ 723.109. Multiple employment

723.109. (a) The judgment creditor may request a hearing to prove that, owing to the multiple employment of the judgment debtor, the judgment creditor is entitled to have an employer withhold a greater amount from the earnings than the employer would have to withhold were he the judgment debtor's only employer. The request shall set out the facts on which the judgment creditor's claim is based. The request shall be made to the court to which application is made for the earnings withholding order.

(b) The court shall set the matter for hearing after receiving the written request together with an affidavit stating that the judgment creditor or his representative has mailed a copy of the request for hearing to the judgment debtor's last known residence address. The judgment debtor and the judgment creditor or his representative shall be notified at least 10 days before the hearing of its time and place.

(c) The judgment creditor has the burden of proof on the issue of his right to have a greater amount withheld by an employer because of the judgment debtor's multiple employment. If the court finds that, owing to the multiple employment of the judgment debtor, the judgment creditor is entitled to have an employer withhold a greater amount from the judgment debtor's earnings than the employer would have had to withhold were he the judgment debtor's only employer, the court shall make an appropriate order.

(d) The hearing provided by this section may be combined with a hearing under Sections 723.105 to 723.108, inclusive. If an earnings withholding order has previously been issued under this section, the

Code Civ. Proc. § 723.109

court, after hearing held at the request of either the judgment debtor or the judgment creditor, may modify the prior order, and the clerk shall promptly send a copy of the revised order to the employer of the judgment debtor.

§ 723.110. Issuance of earnings withholding order

723.110. The clerk of court shall promptly issue an earnings withholding order if:

(a) The judgment creditor requests the issuance of such order and the judgment debtor has failed to send the application requesting a hearing to the clerk within the time specified in paragraph (4) of subdivision (b) of Section 723.104;

(b) The judgment creditor has filed an acceptance as provided in Section 723.107, in which case, the order shall be in the amount stated in the application for hearing pursuant to subdivision (b) of Section 723.105, but in no event shall the amount be in excess of the maximum amount allowed by law to be withheld from the judgment debtor's earnings; or

(c) After hearing, the court has found that a portion of the earnings of the judgment debtor is subject to withholding pursuant to this chapter.

§ 723.111. Form of earnings withholding order

723.111. (a) The earnings withholding order shall be in substantially the following form:

(Title of Court)

(Number and abbreviated title of action)

EARNINGS WITHHOLDING ORDER

To: (name and address of employer)

On (date), a judgment was entered in favor of (name of judgment creditor) against (name of judgment debtor) in (name of court and volume number, page number, and whether entered in judgment book, minute book, or docket).

There is owing on the judgment on the date of application for the earnings withholding order a net balance of \$ (judgment as entered plus accrued interest, costs, or fees less partial payments, if any). Of this amount, \$ was due on the judgment as entered and bears interest at 7 percent per annum from the date of entry.

You are ordered to pay the amounts indicated below out of the earnings of the judgment debtor by withholding appropriate amounts from his periodic earnings and paying those amounts to the person specified below after each periodic payment of earnings to the judgment debtor. You are ordered to continue to withhold out of the judgment debtor's earnings and to make payments as required by this order until the happening of the first of the following events:

(1) You have withheld the full amount specified in this order from the earnings of the judgment debtor.

(2) You have received a modified order or a notice of termination of the order from the clerk of court.

(3) You have received written notice from the judgment creditor that the judgment has been satisfied.

(4) You have received a restraining order from a court or referee in bankruptcy, or a certified copy of an order of any court declaring the debt upon which the judgment is based to be discharged in bankruptcy.

(5) You have received written notice from the judgment creditor or his representative that the amount to be withheld is to be less than the amount specified in the order, in which case you are to withhold the lesser amount and pay such lesser amount to the judgment creditor or his representative.

(6) You have received written notice from the judgment creditor that you are to discontinue withholding on the earnings withholding order.

(If there is no court order specifying the amount to be withheld, the following shall appear on the order: "The appropriate amount to be withheld from the judgment debtor's periodic earnings is that amount indicated by the accompanying form entitled 'Computation of Amounts to Be Withheld From Earnings.'")

(If there is a court order regarding the amount to be withheld, the order shall specify the amount to be withheld or the manner in which the amount is to be computed.)

You are ordered to pay over to (name of judgment creditor or his representative) at (his address) the amount required to be withheld pursuant to this order by check mailed within 30 days after each payment of earnings is made to the judgment debtor. (You are not required to pay over an amount withheld that is less than \$10 until the accumulated amount that has been withheld and not paid over reaches \$10.)

You are ordered to fill out the accompanying form entitled "Employer's Return" and to return it to the judgment creditor or his representative within 15 days after the date you receive the earnings withholding order.

(b) An earnings withholding order in form approved by the Judicial Council is deemed to comply with this section. The Judicial Council may approve special forms for the earnings withholding orders referred to in Sections 723.28 and 723.29.

§ 723.112. Form for computation of amounts to be withheld ~

723.112. The State Administrator shall prescribe by rule the form for the computation of amounts to be withheld from earnings. In addition to other matters deemed appropriate by the State Administrator, the form shall contain information enabling the employer to compute the amount of the judgment debtor's disposable earnings for the purposes of this chapter.

§ 723.113. Employer's return

723.113. The employer who receives an earnings withholding order shall make an employer's return in the form prescribed by Section 723.114 and send it by mail, or otherwise deliver it, to the judgment creditor or his representative within 15 days from the date he receives the earnings withholding order. The employer's return shall be made under oath.

§ 723.114. Form for employer's return

723.114. (a) The Judicial Council shall prescribe by rule the form of the employer's return.

(b) In addition to other matters deemed appropriate by the State Administrator, the form shall state all of the following:

(1) Identification and address of judgment creditor or his representative to whom the form is to be returned.

(2) Direction that the form be sent to the judgment creditor or his representative by mail or otherwise no later than 15 days after the date the employer receives the earnings withholding order.

(3) Name and address of judgment debtor and, if known, his social security number.

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

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

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

(3) Whether the judgment debtor's earnings are now being withheld pursuant to a prior earnings withholding order and, if so, the court which issued such order, the date it was issued, and the effective date of such order.

§ 723.115. Hearings at request of judgment debtor after issuance of earnings withholding order

723.115. If an earnings withholding order has been issued and the judgment debtor did not send in an application for a hearing within the time specified in subdivision (a) of Section 723.105, or if his disposable income is 20 percent less than it was at the time of the prior hearing, the judgment debtor may request a hearing to claim an exemption under this chapter by sending an application for a hearing to the clerk by mail or otherwise. The application for the hearing shall comply with Section 723.105 and shall be accompanied by the financial statement if such statement is required by subdivision (b) of Section 723.104. The clerk shall notify the judgment creditor or his representative that the application has been received and shall make a copy of it and of the financial statement, if any, available to the judgment creditor or his representative. The court shall then set the matter for hearing within 15 days after receipt of the application, but not less than 10 days after notification of the creditor. After hearing, the court may modify the prior earnings withholding order, and the clerk shall promptly send a copy of the revised order to the employer of the judgment debtor.

Article 5. Remedies

Comment. The statutory remedies contained in this article are supplementary to, and do not supersede, any common law remedies that would be available to any of the parties for violation of any provisions of this chapter, not just those violations listed in this article.

§ 723.130. Remedies of judgment debtor

723.130. (a) If an employer withholds from the judgment debtor's earnings more than he is authorized to withhold pursuant to this chapter and fails to return the excess to the judgment debtor, the judgment debtor may bring a civil action against his employer to recover the excess amount withheld.

(b) If a judgment creditor receives from an employer more than the judgment creditor is entitled to receive under this chapter and fails to return the excess to the judgment debtor, the judgment debtor may bring a civil action against the judgment creditor for the excess amount he received.

(c) If the employer withholds from the judgment debtor's earnings more than he is required to withhold pursuant to this chapter and pays such amount over to the judgment creditor and the excess is not returned to the judgment debtor, the judgment debtor may bring a civil action against his employer or the judgment creditor or both, but he is entitled to only one recovery for the excess amount and, if the judgment debtor recovers from his employer, the employer is entitled to be indemnified by the judgment creditor.

Code Civ. Proc. § 723.130

(d) If the employer withholds earnings pursuant to this chapter and fails to pay such earnings over to the judgment creditor within the time specified in subdivision (b) of Section 723.22, the judgment debtor may bring a civil action against his employer for any additional charges for interest and penalties he actually incurs because of such late payment.

§ 723.131. Remedies of judgment creditor

723.131. (a) If the employer fails to withhold the amount he is required to withhold pursuant to this chapter, the judgment creditor may bring a civil action against the employer for the amount he was required to withhold pursuant to this chapter.

(b) If an employer fails to pay over, in accordance with subdivision (b) of Section 723.22, the amount he is required to withhold pursuant to this chapter, the judgment creditor may bring a civil action to recover the amount not paid over to him.

Comment. If the creditor recovers from the employer pursuant to subdivision (a) of Section 723.131, the employer may have indemnity from the judgment debtor but may execute on the debtor's earnings to satisfy any judgment only in accordance with the provisions of this chapter.

§ 723.132. Civil penalty

723.132. If a judgment creditor receives an amount in excess of the amount he is entitled to receive pursuant to this chapter with actual knowledge of the overpayment and fails to return such excess amount to the judgment debtor within 30 days of its receipt, the judgment debtor may bring a civil action to have a civil penalty of \$100 assessed against the judgment creditor. The civil penalty shall be paid over to the judgment debtor.

Comment. Section 723.132 provides a civil penalty to be imposed on a creditor who receives withheld earnings in the knowledge that the earnings received are in excess of the amount to which he is entitled. It is necessary for assessment of the penalty that the creditor's knowledge be actual rather than constructive; notification by the debtor of an overpayment would put the creditor under a duty to investigate.

§ 723.133. Fraudulent withholding by employer

723.133. If an employer withholds earnings pursuant to this chapter and, with knowledge and intent to defraud either the judgment creditor or the judgment debtor, fails to pay such withheld earnings over to the judgment creditor, the employer is guilty of a misdemeanor.

Comment. Section 723.133 is based on Labor Code Section 227 (failure to make agreed payments to health, welfare, or similar fund).

§ 723.134. Costs and attorney's fees

723.134. In any civil action brought under this article, the court may, in its discretion, award costs and reasonable attorney's fees incurred by the prevailing party.

Article 6. Administration and Enforcement

§ 723.150. State Administrator

723.150. The [name of State Administrator] shall administer and enforce this chapter. He shall receive and act on complaints and may, on his own initiative:

(a) Take action designed to obtain voluntary compliance with this chapter.

(b) Commence proceedings to enforce compliance with this chapter.

§ 723.151. Warning to innocent violator

723.151. If the State Administrator determines that the public interest will be adequately served by such action, he may give a person who violates this chapter as a result of an innocent or careless mistake a suitable written notice or warning in lieu of using any other means available to enforce this chapter.

Comment. Section 723.151 is based on Health and Safety Code Sections 26332 and 26555.

§ 723.152. Conference with suspected violator

723.152. If the State Administrator has reason to believe that any violation of this chapter has occurred or is threatened, he may give written notice to the suspected violator to arrange a conference with the suspected violator or his authorized representative for the purpose of attempting to ascertain the facts relating to the suspected violation, and, if it appears that a violation has occurred or is threatened, to arrive at an adequate and effective means of correcting or preventing the violation.

Comment. Section 723.152 is based on Section 12533 of the Government Code, which relates to the powers of the Attorney General in connection with health care service plans.

§ 723.153. Cease and desist order

723.153. (a) The State Administrator, acting in the name of the people of the State of California, may issue an order directing any person to cease and desist from engaging in any act or practice in violation of any provision of this chapter.

(b) Within 15 days after service of the order of cease and desist, the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. The hearing shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and judicial review shall be available as provided by Section 11523 of the Government Code.

Comment. Section 723.153 is based on Section 12534 of the Government Code, which relates to powers of the Attorney General in connection with health care service plans.

§ 723.154. Injunctive relief

723.154. In case of any violation of this chapter, if the State Administrator elects not to issue a cease and desist order, or if the violator does not comply with a cease and desist order issued pursuant to Section 723.153, the State Administrator, acting in the name of the people of the State of California, may institute a proceeding to obtain injunctive relief or other appropriate relief in the superior court in and for the county in which the violation occurs or in which the principal place of business of the violator is located. Any proceeding under this section shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the State Administrator shall not be required to allege facts tending to show the lack of an adequate remedy at law or tending to show irreparable damage or loss.

Comment. Section 723.154 is based on Section 12535 of the Government Code, which relates to powers of the Attorney General in connection with health care service plans.

§ 723.155. Rules and regulations

723.155. The State Administrator, in accordance with the provisions of Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code, shall adopt, amend, and repeal such rules and regulations as are reasonably necessary for the purpose of administering and enforcing this chapter and as are not inconsistent with this chapter.

§ 723.156. Studies and investigations

723.156. The State Administrator may make such studies and investigations, conduct such research, and ~~make~~ such analysis of matters pertaining to earnings garnishment as he considers necessary to effectuate the purposes and policies of this chapter, to administer and enforce this chapter, and to make recommendations to the Governor and the Legislature for the revision of this chapter.

§ 723.157. Investigatory powers

723.157. For the performance of his duties, the State Administrator has the powers conferred by Article 2 (commencing with Section 11180) of Chapter 2, Part 1, Division 3, Title 2 of the Government Code.

§ 723.158. Liaison with federal administrator

723.158. The State Administrator shall perform all acts required by the Administrator of the Wage and Hour Division of the United States Department of Labor as conditions to exemption of this state from the earnings garnishment provisions of the Consumer Credit Protection Act of 1968, including, but not limited to:

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

(b) Submitting to the Administrator of the Wage and Hour Division in duplicate and on a current basis, a certified copy of every statute of this state affecting earnings withholding, and a certified copy of any decision in any case involving any of those statutes, made by the Supreme Court of this state, if properly presented to the court.

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

Comment. Section 723.158 authorizes the State Administrator to do whatever is required by the federal administrator to obtain and maintain a state exemption from the earnings garnishment provisions of the Consumer Credit Protection Act. A similarly broad grant of power as that contained in the first paragraph of Section 723.158 is found in Government Code

Code Civ. Proc. § 723.158

Section 25210 (county participation in Economic Opportunity Act of 1964).
Subdivisions (a), (b), and (c) are based on the language of 29 Code of
Federal Regulations Section 870.55(a), requiring the State Administrator
to act as liaison with the federal administrator.

§ 723.159. Public information; counseling

723.159. The State Administrator may:

(a) Counsel persons and groups on their rights and duties under this chapter.

(b) Develop programs of information about credit practices for the education of debtors and employers.

Comment. Section 723.159 gives the State Administrator general authority to counsel and inform those who might be affected by this chapter. The State Administrator will serve not only as a source of information for creditors and debtors but also for employers and the various public officers who will be involved in the administration of wage garnishments. A similar section gives general public education authority to the Division of Industrial Safety (Department of Industrial Relations). See Labor Code § 6316.

§ 723.160. Fees of clerk

723.160. (a) The fee for filing an application for an earnings withholding order under subdivision (a) of Section 723.101 is \$2.

(b) The fee for filing an application and abstract under subdivision (b) of Section 723.101 is two dollars (\$2) when filed in a justice court and four dollars (\$4) when filed in a superior or municipal court.

(c) No other fees may be charged under this chapter.

Labor Code § 300 (amended)

Sec. 8 . Section 300 of the Labor Code is amended to read:

300. (a) 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)~~ (1) ~~Such~~ 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 of the person making ~~such~~ the assignment ~~or order~~ is attached to ~~such~~ the assignment ~~or order; and~~ .

~~(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; and~~ .

~~(e)--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 assignment or order to that effect, is attached thereto or included therein; and~~

~~(f)~~ (5) A copy of ~~such an~~ the assignment ~~or order~~ and of the written statement provided for in ~~subdivision (d) hereof~~ paragraph (4) ,

Labor Code § 300

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; ~~provided, that at such time no other assignment or order for the payment of any wages or salary is subject to payment, and no attachment or levy on execution against said 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.~~

~~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, -- Under any assignment of, or order for wages or salary to be earned, a sum not to exceed 50 per centum of the assigner's wages or salary, and not to exceed 25 per centum of the assigner'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 collectible from the assigner's employer at the time of each payment of such wages or salary.~~

(b) 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 paragraph (4) of subdivision (a), 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.

(c) An assignment of wages or salary, earned or 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.

(d) 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~~.

(e) 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.

Financial Code Section 15406 (repealed)

Sec. 9 . Section 15406 of the Financial Code is repealed.

~~15406. --The shares and certificates for funds received of members of any credit union and all the accumulation on such shares and certificates are exempt from sale on execution and proceedings supplementary thereto, to the amount of one thousand five hundred dollars (\$1,500).~~

Comment. Section 15406 is superseded by paragraph (2) of subdivision (a) of Section 690.7 of the Code of Civil Procedure. See Section 690.7 and Comment thereto.

OPERATIVE DATE

Sec. 10. This act becomes operative on July 1, 1972, but the [State Administrator] and the Judicial Council may, prior to that date, do whatever is necessary so that this act may go into effect on July 1, 1972.