

#39.30

5/19/71

Memorandum 71-37

Subject: Study 39.30 - Attachment, Garnishment, Execution (Earnings Protection Law--General Approach)

Summary

The staff has redrafted the Earnings Protection Law and certain related provisions in conformity with the decisions of the Commission at the last meeting. The revised statute is attached to Memorandum 71-32 which outlines the changes made. In reexamining this statute, the staff is increasingly concerned that our solutions to the problems in this area of the law are not entirely satisfactory and that the procedures we have provided are unnecessarily complex. Specifically, we believe (1) that a noticed procedure to obtain the earnings withholding order is unnecessary--these orders can properly be obtained ex parte; (2) voluntary agreements relating to the withholding of earnings can be accommodated without the need for special procedures. Whether the staff's view is sound depends upon the amounts to be withheld pursuant to Section 723.50; if these amounts are small, the need for these provisions is avoided.

Existing Law

Before discussing the staff's conclusions, it is desirable to consider the existing law and the problems it presents. Under existing law, a writ of execution is obtained upon the ex parte application of the judgment creditor. The first notice to the debtor that this debt collection procedure is going to be used is the levy itself. Although multiple writs may be obtained upon one application, a writ is effective for only 60 days and each writ must be separately and personally served by a sheriff or similar officer. As to

earnings, the maximum amount subject to garnishment is limited by federal law--generally to 25 percent of "disposable earnings." A procedure for claiming a greater amount is provided, but the debtor must show that the amount is "necessary for the support" of himself or his family and the exemption is not available if the debt sought to be collected is for a "common necessary."

Defects in Existing Law and Solutions

Reduction of expense. Our study to date would certainly indicate that the present levy procedures are unnecessarily expensive. However, we believe that we have alleviated this problem by providing a continuing levy and service by mail.

Amounts withheld. Debtors, particularly low income debtors, have complained that the federal limitations on garnishment do not provide them with adequate relief and that the present procedures for claiming a greater exemption are unsatisfactory. To answer this complaint, we have greatly reduced the amounts withheld from the earnings of low income debtors and have permitted the family to retain more earnings on the same gross income than the single debtor. Attached is a table (pink) indicating the amounts to be withheld from the earnings of (1) a single person and (2) a person with a family under existing law and under the proposed Earnings Protection Law. It should be noted that the employer's "service charge" is to be added to the amounts withheld under the Earnings Protection Law (so the amounts shown in the table would be increased by \$1 for each deduction made). Nevertheless, even with this addition, the comparison between the present situation and that proposed seems striking. In view of the modest amounts to be withheld, we do not see any need for a hearing on a "hardship exemption" prior to issuance of the order

(see below). Inasmuch as the proposed scheme is designed to elicit comments, it may be premature to make revisions in the amount to be withheld at the present time. Also, as the amount withheld is increased, pressure to provide a prior hearing and to encourage voluntary agreements also increases. At the same time, the Commission should not distribute something for comment unless the Commission itself believes that the material distributed represents a fair balance between the interests of the creditors and debtors. Are revisions needed in the amounts to be withheld?

Employer's compliance problems. So far we have heard almost nothing from employers. We are told by creditors that the federal rules regarding the amounts to be withheld have caused few problems of interpretation. Whether or not this is accurate, we believe our scheme for a continuing levy based on gross income would, if anything, simplify the employer's task when his employee's earnings are garnished.

Earnings Protection Law

The three areas of concern listed above, we believe, represented the major areas of concern when we started work on this topic. It would be difficult, if not impossible, to satisfy completely the conflicting interests involved. However, we should certainly avoid creating unnecessary difficulties by our solutions to the present problems. As suggested above, the staff is concerned that we may perhaps have done just this in drafting the Earnings Protection Law.

Delay in issuance of earnings withholding order. The Earnings Protection Law requires a judgment creditor to give notice to the debtor of his application for an earnings withholding order. No hearing is required prior to issuance

of the order; however, the debtor can delay the effective date of an order by requesting a hearing. The staff suggests that the debtor should not be given this power. Our statute substantially increases the protection afforded to earnings--particularly earnings of the low income debtor or the debtor with a family. We have already attempted to discourage applications for a greater exemption by stiffening the standard for exemption to "essential for support." We suspect that rarely will a debtor actually be able to show that he is entitled to a greater exemption and that the request for a hearing will be used simply as a delaying tactic--burdening the courts with a useless procedure. Where the debtor can in fact show a need for relief, a hearing procedure can be provided that is expeditious enough to provide substantial protection. With the relatively modest amounts withheld, we see no injustice resulting from withholding pursuant to the order until the debtor can obtain relief from the court upon his own application. If the staff suggestion is adopted, we suggest that a notice to the debtor of the application for an order (or of the ex parte issuance of an order) be required and such notice should provide the debtor with information concerning the hardship exemption. We would not, however, require that the creditor send the debtor the forms for applying for a hearing--thus saving considerable mailing expense and avoiding confusion by providing the debtor with a great mass of materials he will only rarely use. The clerk of court could provide debtors with the form of the application for hearing and the financial statement upon request.

Voluntary agreements. The draft statute also permits a debtor and creditor to enter into voluntary agreements regarding the amount of payment. The staff suspects that rarely, if ever, will bona fide agreements be entered into. Here again, the amounts subject to garnishment are so low that we doubt that a debtor

will be likely to complain about the amount taken or that a creditor will be likely to agree to take an even lower amount. Moreover, where agreements are entered into we believe that (1) they will be troublesome to employers--who will have either to adjust the amounts to be taken or "suspend" the order-- and (2) they will be suspect by other creditors--who will feel that collection is not being aggressively pursued and hence may attempt to have the agreement set aside in court. In addition, voluntary agreements can generally be worked out outside of the withholding procedure. In the case of acute need, the debtor can ask the court to reduce the amount subject to garnishment under the order. If the creditor is agreeable, he can stipulate to the reduction and the matter can probably be handled without appearances. Accordingly, the staff suggests that the provisions relating to voluntary agreements be eliminated from the statute.

Respectfully submitted,

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EARNINGS PROTECTION LAW--WITHHOLDING TABLE

NOTE: Deductions made for federal withholding, social security, state unemployment insurance, and state income tax. State income tax deduction is based on tax tables for 1970 state taxes. The actual amount deducted for social security tax is 5.2% of gross earnings on the first \$7,800 of annual earnings; for weekly earnings over \$150, the table averages the social security tax deduction over the entire year even though the actual amount deducted will not be averaged over the entire year. State unemployment insurance rates vary, depending on the type of employment; a rate of 0.7%--an average rate--has been used in preparing the table. The amount withheld under the Earnings Protection Law is rounded upward to the next higher whole dollar amount.

GROSS EARNINGS (weekly/annual)	SINGLE PERSON (claiming 1 exemption)		MARRIED + 2 CHILDREN (claiming 4 exemptions)		EARNINGS PROTECTION LAW	
	Disposable earnings	Amount withheld (CCPA)	Disposable earnings	Amount withheld (CCPA)	\$ 723.50 Amount withheld (\$50 exempt; 25%)	Amount withheld (\$48 exempt; 25%)
\$60/3,120	\$52.11	\$4.11	\$56.46	\$8.46	\$1.00	\$2.00
70/3,640	59.46	11.46	65.87	16.47	3.00	3.00
80/4,160	68.64	17.16	73.88	18.47	5.00	6.00
90/4,680	73.82	18.46	81.89	20.47	6.00	7.00
100/5,200	80.95	20.24	89.66	22.42	8.00	9.00
110/5,720	88.07	22.02	97.37	24.34	10.00	11.00
120/6,240	95.30	23.83	105.08	26.27	12.00	12.00
135/7,020	105.89	26.47	116.72	29.18	14.00	15.00
150/7,800	116.76	29.19	128.25	32.06	17.00	18.00
170/8,840	131.46	32.87	144.52	36.13	21.00	21.00
200/10,400	153.14	38.29	167.36	41.84	26.00	27.00
250/13,000	187.86	46.97	207.48	51.87	35.00	35.00
300/15,600	220.99	55.25	245.51	61.38	43.00	44.00
400/20,800	286.29	71.57	318.65	79.66	60.00	60.00
600/31,200	416.89	104.22	452.27	113.07	92.00	93.00

One-dollar service charge. The one-dollar service charge, which an employer is entitled to make for each payment, could be in addition to the amount listed in the table or it could be deducted by the employer from the amount listed in the table.