

#39.30

4/6/72

Memorandum 72-22

Subject: Study 39.30 - Attachment, Garnishment, Execution (Employees' Earnings Protection Law)

BACKGROUND

Senate Bill 88 (wage garnishment and related matters) was heard by the Senate Judiciary Committee on April 4. Various organizations--including but not limited to the Teamsters and the Credit Unions--had contacted members of the committee prior to the hearing and made known their objections to the bill unless the bill was amended as they requested. I thought that the first portion of the hearing went well, and it appeared that the votes were there to obtain a do pass recommendation from the committee. However, when the vice chairman of the committee asked for those opposing the bill to come forward and then asked them to identify themselves, the attitude of the committee changed. Appearing in opposition to the bill were the following:

- Representatives of the sheriffs, marshals, and constables (four persons)
- Representative of the Teamsters Union
- Representative of the Credit Union League
- Representative of the California Rural Legal Assistance
- Representative of the Western Center on Law and Poverty
- Representative of the Legal Aid Foundation of Long Beach
- Representative of the Franchise Tax Board

The bill digest, prepared by the staff of the legislative committee, also identified the State Teachers' Retirement Board as being in opposition to the bill, but no representative of the board came forward at the hearing. Another group having objections to the bill that did not appear at the hearing (but apparently had discussed the bill with some committee members) was the Merchants and Manufacturers Association.

As soon as the opponents to the bill had identified themselves and before any of them testified on the bill, one member of the committee stated that

the bill appeared to be one that would need interim study and made a motion that it be referred for interim study. Action on this motion was deferred, the vice chairman of the committee suggesting that perhaps the objections were such that they could be taken care of by amendments adopted by the committee. The committee heard the representative of the Credit Union League and was sympathetic to his request that the existing exemption for credit union accounts be restored. The committee heard the objection from the sheriffs, marshals, and constables and still seemed to believe it would be possible to work out the problems on the bill. The committee next heard from the poverty lawyers (see Exhibit X) and, upon hearing those objections, it became clear that the committee was not going to be able to resolve the controversy on the bill by a few relatively insignificant amendments. Senator Song then informally polled the committee. There were only two members willing to support the bill even if the credit union exemption was restored. Senator Song then moved that the bill be referred to interim study, and the motion was adopted without any discussion.

I discussed the bill with representatives of the Franchise Tax Board, State Bar, California Collectors Association, Judicial Council, and others. All were unhappy with the action taken by the committee. It appeared to them that the problems with the bill (except for those raised by the poverty lawyers) were ones that could be taken care of by amendments that would not significantly change the essential provisions of the bill. I then discussed the matter with Senator Song and various other members of the committee. I asked: If we could obtain support for the bill from all groups other than the present levying officers (sheriffs and the like) would he be willing to request that the committee reconsider its action and approve the bill? There would, I believe, be sufficient votes to report the bill if we can obtain this degree of support.

Except for the poverty lawyers and possibly the Franchise Tax Board, I believe that we can reach agreement with all interested persons and organizations on amendments that will remove objections to the bill (other than objections to the mail levy which I believe is an essential provision of the bill). There is a good chance we can reach agreement with the Franchise Tax Board on the withholding tax provisions, and we can always remove the special tax order provisions from the bill entirely if no agreement can be reached. However, unless the representatives of the poverty lawyers are willing to accept the bill substantially as it now is (with various technical amendments and possibly with some revision in the language of the hardship exemption or in the Comment to this provision), it would appear that it will not be possible to obtain its enactment this year. In such case, it is exceedingly unlikely that the bill would actually be considered in the interim (with the election being held in November and the vacations that will occur thereafter), and we will be in the same position next session that we are now. There are other possible alternatives: Should the bill be amended merely to provide for a mail levy procedure (which, I believe, could be enacted)? Or should we continue to work on the bill with a view to submitting a revised recommendation next session? Or should we drop the bill for the foreseeable future and wait to see what the experience is under the continuing levy which recently went into effect? In any case, whatever our ultimate decision, we should go through the bill in detail with the representatives of the federal Wage and Hour Division who will be at our meeting on Friday so we can determine exactly what they would like to see in a statute to satisfy federal requirements.

In this memorandum, the staff sets out various substantive and technical amendments that should be made. At my urging, Senator Song did not accept

some of these substantive amendments. As a result, the bill was in effect killed at the hearing. The Commission is now in a position where--having made a sensible recommendation to the Legislature--it must consider some amendments that I consider undesirable but nevertheless recommend be accepted.

The California Collectors Association, despite its misgivings with various provisions of the bill which have been previously expressed, is not requesting any concessions. It accepts the bill in its latest amended form and would not, I believe, reject reasonable technical amendments. I understand, however, that some other creditors are opposed to the bill.

The amendments discussed in this memorandum fall into two classes. Amendments that are not really desirable but would restore existing law and would not cause any other group to oppose the bill. Examples of these types of amendments are the ones (discussed later) insisted on the by Credit Union League (restore existing credit union account exemption) and Teamsters Union (restore exception to hardship exemption for garnishment where the debt is incurred for personal services by any employee or former employee of the debtor). The staff suggests that this type of amendment be made if the amendment would not represent a significant change in an essential provision of the bill. Other amendments would make significant changes in the bill and would cause the bill to be opposed by others who now support the bill. The staff suggests in this memorandum what we believe would be appropriate action on these other suggested amendments.

The amendments proposed by the staff are attached. Many are technical and are not discussed in this memorandum. The memorandum discusses the various problems and, where the language of the amendment is significant, refers to the pertinent amendment.

With the exception of some poverty lawyers (see Exhibits IV (gold), VI (buff), XI (gold); compare Exhibit XIV (white) attached), there seems to be general agreement among all interested persons that the enactment of Senate Bill 88 would be a substantial improvement over existing law. There are, of course, a number of specific objections to the bill which appear to be possible of solution without destroying the bill significantly.

ANALYSIS OF AMENDMENTS

Bank account exemptions. A major objection to the bill is the elimination of the credit union exemption. See Exhibit XII (blue) attached. The restoration of this exemption is essential and the attached revised bill restores the exemption. On page 43 of the revised bill, Section 16 (repealing Section 15406 of the Financial Code) is deleted. On page 6 of the revised bill, lines 33-35 are deleted, thus restricting the scope of the three new deposit account exemptions to exclude credit union accounts. These revisions will restore existing law and will not, I believe, cause anyone to object to the bill.

Section 690.7 (pages 6-8 of the revised bill) has been revised to limit the scope of the exemption to accounts subject to withdrawal by the debtor or his spouse or both for the use of the debtor or his spouse or both. See definition on page 7, lines 1-4, of revised bill. This conforms to the decision made at the last meeting. Also, the revised bill limits the accounts that must be listed in the affidavit of exemption to those owned by or standing in the name of the debtor or his spouse.

Section 690.7-1/4 is revised to use the concept "beneficially owned" (see insert between lines 11 and 12 on page 8 of revised bill). This broader definition for the purposes of Section 690.7-1/4 permits an exemption for any account that will be used for the support of the debtor or his family. Note the revised standard for the exemption (set out on page 8 of the revised

bill, lines 12-24). Finally, a new subdivision (f) is added to the section (see page 9 of the revised bill) to make clear that the standard provided for the exemption does not affect the protection afforded debtors under the rules of law relating to spendthrift trusts. We believe that these revisions will not give rise to objections to the bill.

The poverty lawyers object to the reduction of the deposit account exemption from \$500 to \$100. See Exhibit X (green) attached. See also Exhibit I (pink) page 3, making the suggestion that a \$500 exemption is not enough. The bill is dead if the exemption is raised above \$100. You may find Senate Bill No. 1071 (attached as Exhibit XIII) of interest. This bill, introduced at the current session by Senator Zenovich (D-Fresno) would replace the present Savings and Loan Association exemption with a broader deposit account exemption (including checking accounts) based on a theory of tracing earnings. The staff personally believes that the Commission's proposal is actually more beneficial to debtors than Senate Bill 1071.

Teamster Union objection. You will recall that, under existing law, the hardship exemption is subject to an exception for common necessities and an exception for debts incurred for personal services rendered by any employee or former employee of the judgment debtor. The Teamster Union objects to the elimination of the exception for employees or former employees of the judgment debtor and requested that this exception be restored and expanded to cover contributions to union health and benefit funds. See Exhibit II (yellow) attached. I have discussed the problem with the attorney for the union. He indicates that the union will give the bill its unqualified support if we restore the existing language. While he would like to have the scope of the exception expanded, he is willing to accept restoration of the existing language in the interest of obtaining the general agreement of

all interested persons that is necessary if the bill is to be enacted at the 1972 session. The pertinent amendments are found on the top portion of page 6 of the revised bill (independent contractors) and on page 26 of the revised bill (employees). These revisions, being merely restoration of existing law, should not cause anyone to object to the bill.

Retirement plan exemption. Section 690.18 provides an exemption for certain retirement plans. You will recall that the Commission in its printed recommendation determined to retain subdivision (c) of Section 690.18, which provides an exemption for certain private retirement plans "from execution, attachment, or garnishment in any bankruptcy proceeding" but determined to delete the portion of subdivision (c) relating to Keogh Act plans. At the last meeting, it was decided to delete subdivision (c) entirely, and the bill was amended accordingly. However, it is apparent that this last decision has caused concern. See Exhibit III (green) attached. It is not possible at this time to draft a sensible retirement exemption. Some time ago the Commission decided that sometime in the future we would retain a consultant for this purpose. To avoid possible objections to the bill, the staff recommends that the Commission go back to its original decision to retain subdivision (c) without change (except for the deletion of the Keogh Act provision). This will eliminate the objections to the deletion of subdivision (c) entirely and should not give rise to additional objections since the proposed amendment merely restores existing law. The existing language of subdivision (c) is restored on page 11 of the revised bill.

Withholding order for support. The extent to which, if at all, a withholding order for support could be used to recover delinquent amounts was unclear under the bill. Several persons have raised this problem. Merchants and Manufacturers Association (orally); Exhibit I (pink) attached. The staff has attempted to provide a practical solution to the problem in the revised bill. We have adopted the solution that has developed in the court ordered wage assignments for support. The continuing order is for the current support (amount of support provided in judgment) plus such additional amount as the court determines for delinquent payments. The employer withholds the same amount each month until the delinquent amount is made up. This revision is accomplished by the new language added to Section 723.030 on page 22 of the revised bill. We have also made clear that the exemption for hardship is applicable (a suggestion made by the legislative committee counsel) and have indicated that the amount to be withheld cannot exceed the net amount payable to the employee after taxes and other required deductions have been made (a matter of concern to the tax administrators). An additional provision has been added (page 22a of revised bill) to cover the manner of withholding when the support judgment provides for so much a month and the employee's pay periods are, for example, weekly. Also the last sentence of the new provision (page 22a) permits payment monthly if the employer so elects (a matter of great concern to the Merchants and Manufacturers Association). These revisions are essential to remove objections to our new concept of a "withholding order for support."

Hardship exemption. The poverty lawyers are greatly concerned that the "rare and unusual cases" standard in Section 723.051 will preclude the court from granting relief in cases where the judgment debtor has a large

family; they fear some judges will take the view that a large family is not "rare and unusual." See Exhibit I (green) attached. We think that this is a basic matter that needs full discussion at the meeting. We believe that Sections 723.050 and 723.051, taken together, significantly improve the position of the judgment debtor. See, e.g., Exhibit XIV (white) attached. See also the tables (one showing amounts withheld; the other showing disposable earnings after garnishment) attached after the last exhibit to this memorandum.

The only possible solution to the problem would be to substitute "extraordinary circumstances" for "rare and unusual cases" in Section 723.051. Whether this would loosen up the standard too much is a question for discussion at the meeting. Also, the representatives of the creditors who support the bill (and not all creditors support the bill) have been pushed to the extreme limits in making concessions and their cooperative attitude is the main reason the bill treats the debtors so fairly in its present form. At the same time, the poverty lawyers argue that they can not exempt all of the earnings of a low income debtor with a large family and fear they will not be able to accomplish this under the bill as it is presently drafted.

Tax withholding orders. Drafting the portion of the statute dealing with withholding orders for taxes has been a most difficult task. The revised bill includes provisions that should make the bill satisfactory in substance to the Franchise Tax Board. These provisions go beyond what the Commission previously has been willing to permit the state tax authorities to do. If the provisions can not be worked out at the meeting, the alternative is to delete entirely the withholding order for taxes provisions from the bill. I do not believe that this is a desirable alternative since the bill as revised still provides the taxpayer with greater protection than existing law.

This portion of the bill has not previously been reviewed by the Commission.

I suggest that we go through the tax provisions carefully at the meeting. The revised draft represents my interpretation of the minimum the Franchise Tax Board considers essential to effective tax administration. For a summary of their suggestions, see Exhibit IX (yellow) attached. The tax representatives have taken a very cooperative attitude and are willing to discuss their problems and to consider alternative methods of meeting the problems.

Notice to judgment debtor. For more than 10 years, the Franchise Tax Board has followed the procedure of sending a notice for the judgment debtor to the employer who is required to deliver the notice to the employee. The board finds this a more effective method of giving notice than a notice mailed to the taxpayer's last known address. Also there is a saving to the board by avoiding two mailings. The poverty lawyers also suggested that a notice sent to the place of employment was more likely to reach the employee than a notice sent to his last known home address.

The revised bill provides in Sections 723.103 and 723.104 a revised notice system. (See pages 33-33a of revised bill.) There are two reasons for suggesting the revised notice system. First, the tax authorities consider it essential to their operation and we avoid having different systems for different types of orders by making the same system apply to all earnings withholding orders. Second, and more important, we think that the employer should call the employee in anyway and advise him when an earnings withholding order is received, and it will be useful to the employee if he is given a copy of the order and a statement of his rights at that time. The new system should not impose any undue burden on employers.

Discharge from employment. The Merchants and Manufacturers Association is strongly opposed to the expansion of the protection against discharge because of wage garnishment. Last session, this organization was able to hold up the Commission recommended bill on this subject until the bill was amended to their

satisfaction. The staff believes that it is essential that we eliminate the objections of the Merchants and Manufacturers Association. Accordingly, we suggest that the bill be revised so that it makes no substantive change in the existing law (Labor Code Section 2929). We propose an amendment on page 46 of the revised bill that will preserve the substance of existing law but will make clear that a continuing garnishment for support is a garnishment for the payment of one judgment for the purposes of the section. This is comparable to the treatment given garnishment for state tax liability under the revision made in subdivision (a) (1) of Section 2929 (page 45 of revised bill).

Contents of receipt provided debtor by creditor. The poverty lawyers orally suggested that the content of the receipt required by Section 723.026 should be specified. See revised section on page 21 of revised bill. I have added a provision to Section 723.026 that no receipt is required for payments received pursuant to a withholding order for support. In most cases, the person receiving the support money would probably fail to send a receipt for the payment; and, if the payment is not received on time, both the judgment debtor and the employer will soon be aware of that fact. These revisions should not give rise to objections to the bill.

Hearing on hardship exemption before garnishment goes into effect. The poverty lawyers (Exhibit X-green) object to the bill because it provides no advance notice to the employee of a pending wage ~~garnishment~~; a claim of exemption does not delay the order from going into effect. This decision of the Commission to retain the substance of existing law is the result of a long and

Careful study of the procedure suggested by the poverty lawyers and the rejection of that procedure. The Commission has considered this feature of the bill one of its most essential provisions. At the same time, the bill includes provisions that improve the situation of the employee. First, he will receive, before the garnishment goes into effect, a statement of his rights and how they may be claimed. Second, the procedure for claiming the hardship exemption has been set up so the judgment debtor can claim the exemption himself in most cases. Third, the garnishment under existing law picks up all earnings due and owing at the time it is served; under the Commission's proposal, the garnishment does not begin to pick up earnings until the 5-day period has expired, the garnishment then picking up earnings for any pay period which ends five days or more after service on the employer.

Informational pamphlet. The representatives of the Judicial Council believe that it may be possible to provide the instructions to the employer and the withholding tables as a part of the forms provided to the employer. Accordingly, the revised bill eliminates the designation "Informational Pamphlet" and uses instead "Employer's Instructions." The substance of the concept that the employer will get an adequate set of written instructions is retained.

OTHER MATTERS NOTED FOR ATTENTION

Opportunity of another creditor to obtain garnishment. One commentator (Exhibit I - pink) notes that the statutory scheme is to have an order good for 120 days and then to preclude that creditor from serving another order for 10 days in order that other creditors have a chance to obtain payment on their judgment. He points up some of the ways this scheme could be defeated. However, the Commission has discussed this very problem at length and concluded

that the problem is so complex that complex provisions would be required to deal with it and that it is unlikely that such provisions would be effective. The problem of defining what constitutes a "creditor" and providing a means of enforcing any prohibition were ones that caused the Commission to reject the commentator's suggestion.

Mail service. The representatives of the sheriffs, marshals, and constables opposed the mail service provisions. See also Exhibit V (blue). Mail service is an essential feature of the bill.

Other matters. The attached exhibits contain letters that mention various minor matters. You may wish to read the letters. Also, we anticipate that various technical amendments will be suggested at the meeting.

REVISED COMMENTS

Time does not permit us to prepare revised comments to the various sections of the statute. If there are any significant matters that should be dealt with in the comments, please bring them to the staff's attention at the meeting. It appears that almost all of the comments in our report will need to be revised.

We plan to prepare the revised comments, to distribute them to interested persons and to give them a brief time to review the comments, and then to try to get the legislative committee (if the bill is approved) to have the comments printed in the Senate Journal.

Respectfully submitted,

John M. DeMouilly
Executive Secretary

Memo 72-22

EXHIBIT I

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March 10, 1972

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Re: Recommendation relating to attachment, garnishment and
exemptions from execution (employee's earnings protection law)

Dear Sirs:

I wish to communicate for your consideration my thoughts after reviewing the proposed changes set forth in your November 1971 recommendation dealing with earnings garnishment.

In order for you to evaluate my comments you may wish to know something about me. I have practiced law for three years and have practiced during that entire time in Morro Bay, San Luis Obispo County. San Luis Obispo County is primarily an agricultural county. The firm with which I am associated is plaintiff oriented and I have had exposure to all fields of law since the area is too small to support a true specialist. Our clients range from sophisticated business enterprises to individuals, from the extremely wealthy to low-moderately wealthy, and from county residents to out of county and out of state residents. We have not handled any volume credit or collection work for either plaintiff or defendant. The views expressed herein are strictly my own views as I have not had the opportunity to discuss this letter with the other members of the office.

With respect to the alternating withholding orders which are good for only 120 days and then a ten day interval before service upon the same employer, it is my thought that this could be easily abused by a collection agency obtaining two or more judgments, or having two or more judgments assigned to it, and alternate between the two judgments to the detriment of any other judgment creditor. Since collection agencies are the largest representative class of judgment creditors and since the purpose of the alternating levy is to allow a sharing among judgment creditors, it does not seem that the purpose is served by establishing a system which could easily be circumvented by the largest representative class of judgment creditors. Perhaps the solution would be in requiring that no identical plaintiff or assignee may serve successive withholding orders without the ten day interval.

LAW OFFICES
COLE AND GALLO

The present procedure for claiming an exemption to garnished wages requires that the garnishing officer withhold the wages until the claim is adjudicated. Under the recommended amendment, garnishments would be effected by mail and so far as I can discover there is no procedure freezing the delivery of the wages to the creditor pending adjudication. There appears to be a procedure permitting the employer to retain the funds if he has not paid them at the time the hearing is requested. But the only apparent remedy to a successful judgment debtor to recover funds paid the judgment creditor prior to a notice of hearing being received by the employer is a remedy against the judgment creditor which may prove so bothersome for a wage earner to prosecute so as to be meaningless.

Support judgments have long been protected from discharge in bankruptcy and under the recommended garnishment procedure they apparently are also going to take on a priority over dischargable judgments. The reason for the priority may be valid in some cases and invalid in other cases. For example: Will a child support order which is nine years old and which was to have provided funds to support children who are now 30 years old obtain the same priority as a currently delinquent support order? Will a support order which has been assigned to a collection agency receive the same priority as the one prosecuted entirely by the party aggrieved? Will a support delinquency which has mounted up to the thousands of dollars retain its priority until it is entirely extinguished even though it may require 10 or more years of continual withholding? Will a money judgment obtained in a California court and based upon an out-of-state support order receive the priority? If the object is to provide funds for the current support of the dependants whom the judgment debtor has been ordered to support, then the preference is not objectionable. However, in order for the preference to be applied only for that purpose it would seem that the proposed legislation would require amendment. Furthermore, although the recommendation indicates in part that a delinquent support order may be modified it is my understanding that it may be modified prospectively and not as to amounts already delinquent.

It seems to me that the largest single problem facing the judgment debtor who wishes to avail himself of the exemption statute is the problem of financing legal services. The debtors' fight has recently been fought by public legal services groups upon the behalf of low income debtors. However, many debtors do not fall in the group which qualifies for free legal assistance and thus the moderate wage earner is often unable to qualify for free assistance and unable to afford a private attorney. Limiting exemptions would not seem to help the problem any as it makes it even less likely that the judgment debtor will want to put out the money in order to hire an attorney. The recommendations limit the exemptions in a number of ways, most notably in the size of savings which are exempt and in the "essential for support" entire wage exemption.

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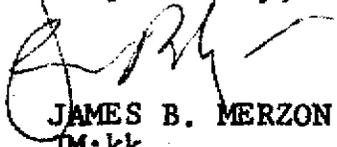
One suggestion which might make legal services more palatable and thus available to both the moderate and low income wage earner is to require the judgment creditor to either pay reasonable attorney fees to the prevailing judgment debtor upon an exemption claim or, more attractive yet to the judgment creditor, it could be required that the judgment be reduced in a sum equal to a reasonable attorney fee. In this manner the judgment debtor does not spend more for attorney fees than he is saving by claiming his legal rights and the judgment creditor doesn't have to expend any money if he loses but merely obtains a debit against what may very well be an uncollectable debt anyway.

The \$500 bank account exemption is patently inadequate to provide a cushion for any type of unexpected expenditure. Additionally, there appears to be no reason why a man and woman who are each employed and who each can claim a \$500 exemption prior to marriage must lose \$500 exemption merely because they marry one another. An additional inconsistency would make \$500 available to a creditor in a situation where a debtor has \$500 in savings and also deposits in his checking account a \$500 wage check, but in a similar situation a judgment debtor could retain a much larger exemption by keeping \$500 in savings and cashing his wage check without depositing its proceeds into an account. If I am correct in supposing a distinction in treatment exists between the two situations, the reason for the distinction is not apparent. Also, if retirement funds are to be exempt from execution why is such a small limit placed upon savings which in many instances serve a purpose similar to a retirement fund.

Provision is made for the termination of a withholding order as of a day prior to the hearing but the court's discretion appears to be unguided and it is suggested that some guidance be given the court and counsel in this area, such as the date of filing the claim of exemption.

Rambling though they may be, I hope that my thoughts set forth above as I reviewed the proposed garnishment law changes may be of assistance to the Commission.

Respectfully,



JAMES B. MERZON
JM:kk

Memo 72-22

EXHIBIT II

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March 10, 1972

IN REPLY REFER TO:

Mr. Vern Cannon
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Dear Brother Cannon:

As I indicated to you previously, I have reviewed the recommendations of the California Law Review Commission's Monograph on Tentative Recommendations dealing with wage garnishment and related matters.

My only objection to the Commission's proposals now embodied in SB 88, is their refusal to provide garnishment protection to those Judgment creditors who are seeking to recover wages or fringe benefit contributions from former employers.

Presently the California Code of Civil Procedure, Section 690(C)(2) provides that the debtor may not assert an exemption against a garnishment, where the garnishor's claim is bottomed on unpaid wages or fringe benefit contributions. The concept of fringe benefit contributions is not clearly spelled out in the

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cited section, but the California Supreme Court has held that fringe benefit contributions constitute a form of deferred wages and are entitled to priority as wages (Dunlop v. Tremayne 62 Cal. 2d 427, 1965).

Under the proposed scheme of SB 88, a worker seeking to recover his wages, or a trust fund seeking to recover unpaid fringe benefit contributions from a former employer, may have the bar of exemption asserted against them each time such person levies an execution and be required to stand in the same line with creditors who supplied goods to the employer.

The philosophic difference between labor creditors and other creditors of an employer is clearly emphasized by the public policy espoused in the Labor Code, (especially Sections 200 through 227) the Code of Civil Procedure, Sections 7071.5 and 7071.10 (Contractors' License bond providing priority for wages and fringe benefit contributions) 11612 (Sub-Division Lands Bond for Labor) and in the recent enactment of AB 296 (1971 Legislative session) clarifying the rights of wage earners and trust funds.

There is no logic for depriving wage creditors and trust fund creditors of historic rights under the garnishment law.

The undersigned represents some 80 trust funds (both teamsters and construction industry trusts) created by collective

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bargaining agreements, and is engaged on their behalf in the recovery of unpaid fringe benefit contributions from delinquent employers. The money recovered on behalf of the trusts more often than not, has made a worker or his family immediately eligible for hospitalization benefits, or permitted the trusts to pay on medical claims previously denied because of the employer's failure to make contributions. In numerous cases the recovery established pension credits enabling a worker to retire, who would otherwise have been denied his pension or had his pension deferred, until by further work, he could accumulate sufficient pension credits.

In many other cases the recovery of the unpaid fringe benefit contributions on behalf of the trusts also enabled workers to receive past due vacation-holiday benefits, or become eligible for such benefits on a current basis.

Before being admitted to the bar, the undersigned was for six and a half years a Deputy Labor Commissioner in the Division of Labor Law Enforcement. The undersigned's experience demonstrated a clear need for a no exemption rule with respect to wage garnishments where the creditor is a wage claimant (or where the Labor Commissioner is such an assignee of the wage claimant).

Were the exemption bar available then, as the California Law Commission now proposes, many wage claimants before the Labor Commission would still be begging for their justly earned wages.

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It is important to a wage earner, in the scheme of things, to feel justice has been served through recovery of his wages even though that recovery may come over a period of time by successive garnishments, reaching various amounts, large or small.

It would be economically impractical if not near physically impossible, for a wage claimant or trust fund to recover any money if the exemption bar were available to debtor-employers against the garnishments of wage or trust fund creditors.

There is nothing in the United States Supreme Court's discussion of wages in Sniadach v. Family Finance Corp. 395 U.S. 337, 23 L. Ed 2d 349 (1969) to even suggest that when wage claimants are creditors they are to be treated differently than when they are debtors. The Court pointed out that when wages are tied up, the wage earner is in no position to resist demands for collection fees, or other forms of harassment (Sniadach (supra) 395 U.S. at 341, 23 L. Ed 2d at 353. Likewise when a wage creditor has his wages tied up he is equally in no position to resist offers and demands to settle the wages for a substantial discount (sometimes a pittance). Given the bar of an exemption against garnishment covering all the wages due the debtor-employer, the employer is then vaulted into a superior position to demand and obtain a discount in settlement upon wages justly due. Wages, said the Court, in Sniadach are a specialized type of property presenting distinct problems in our economic system. Sniadach (supra) 395 U.S. at 340, 23 L. Ed. 2d at 353. If wages may be characterized

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thusly for wage debtor problems, why should the wages of the same wage earner (and the claims of trust funds that hold money in trust for the benefit of that wage earner) be treated differently merely because of a legal juxtaposition?

Consider that any worker, as a wage earner, is preyed upon by the purveyors of shoddy goods, by credit agencies offering "liberal" credit and by other hosts offering similar enticements. When that worker succumbs to their enticements, how can he effectively deal with these persons when he himself is bereft of wages by his employer's failure to pay same? Is he really in a different position as a wage creditor in our complex economic system than was the wage earner in Sniadach? Definitely not. The wage earner's ability to deal with his creditors depends in the given instance on the potential for recovery of his wages from his employer.

Therefore it is totally unfair and inequitable to pass SB 88 unless it is amended thusly:

690.5 1/2 (b)

All earnings of the debtor which are due or owing to him are exempt from levy of attachment and execution without filing a claim for exemption as provided in Section 690.50, except for debts incurred for wages and fringe benefit contributions for labor and personal services rendered by any employee or former employee of the debtor; and are subject to levy only by means of an earnings withholding order in the manner and to the extent

Mr. Vern Cannon

- 6 -

March 10, 1972

provided in Chapter 2.5 (commencing with Section 723.010).

690.6 (b)

All the earnings of the debtor received for his personal services shall be exempt from levy of attachment without filing a claim for exemption as provided in Section 690.50., except for debts incurred for wages and fringe benefit contributions for labor and personal services rendered by any employee or former employee of the debtor.

At the cost of repetition, it is clear that unless such amendment is obtained both wage earners and trust funds will have great difficulties obtaining the recovery of wages or fringe benefit contributions.

I will be happy to cooperate with you in any manner suggested.

Very truly yours,

BRUNDAGE, NEYHART, MILLER,
ROSS & REICH

BY:


ROGER FROMMER

RF:jb

P.S. With your kind permission, I am sending a copy of this letter to Jimmy Lee of the California State Building and Construction Trades Council.

Memo 72-22

EXHIBIT III

GRAHAM & JAMES

ATTORNEYS AT LAW

310 SANSOME STREET

SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE (AREA 415) 964-2171

CABLE ADDRESS ALL OFFICES

"CHALGRAY"

TELEX

SAN FRANCISCO 470042

OTHER OFFICES
LOS ANGELES, CALIFORNIA
LONG BEACH, CALIFORNIA
WASHINGTON, D. C.
ROME, ITALY
MILAN, ITALY
SEOUL, KOREA

March 22, 1972

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, CA 94305

Re: Senate Bill No. 88

Dear Mr. DeMouilly:

Thank you very much for forwarding us the copy of the aforementioned Senate bill, the commission's initial report and the draft report regarding amendments to the bill. We have reviewed this material and offer the following comments and suggestions.

As you know, from the telephone conversation which you had with Mr. Marchant of this office, our interest in this bill is limited specifically to existing Section 690.18(c) of the Code of Civil Procedure, insofar as that section provides an exemption for income received from an annuity.

We understand from counsel who drafted AB 2240, which resulted in Section 690.18(c) of the Code of Civil Procedure, that said section did not include the language which appears to narrow the exemption to only bankruptcy proceedings. Apparently, such language was inserted in the bill at a later date. There appears to be no good reasons for limiting the exemption of annuities to instances where bankruptcy proceedings are present, and it is our understanding that AB 2240 was not intended to impose such a limitation.

Mr. John H. DeMouilly

March 22, 1972

Page Two

That the qualifying language is ambiguous and in conflict with current federal bankruptcy law is made manifest by the comment contained in Study 39.30, page 34.

Our concern with the present status of Senate Bill 88 as amended is that the deletion of the entire subparagraph (c) of Section 690.18 eliminates the existing exemption for annuities. It is one of the private retirement plans which the drafters of AB 2240 intended to include as exempt from execution and attachment.

We appreciate that the deletion of sub-division (c) in its entirety was premised on the fact that some of the property exempted by that section was already exempted by Sections 28002 and 28005 of the Corporations Code. However, those Corporations Code sections cover only private pension and retirement plans, and do not include any exemption for payments under an annuity.

We would recommend that Section 690.18(c) be reinstated in SB 88, deleting, however, the aforementioned qualifying language which reads, "are exempt from execution, attachment, or garnishment in any bankruptcy proceeding." In this manner, the exemption for annuities is retained and the ambiguity with §690(c) and apparent incongruity with federal bankruptcy law are eliminated. We would prefer to see Section 690.18(c) retained because it is normally not the Corporations Code but the Code of Civil Procedure where attorneys would expect to find exemptions, and indeed Section 690 was presumably intended as the vehicle to set forth all exemptions.

Mr. John H. DeMouilly

March 22, 1972

Page Three

We are quite anxious in assuring that our suggestion, if it meets with your commission's approval, be written into the bill as soon as possible to insure that the exemption for annuities shall not be lost. We stand ready to provide any assistance which we can offer and await your advice as to what steps are necessary to accomplish this objective.

Very truly yours,

Boris H. Lakusta

Boris H. Lakusta
of
GRAHAM & JAMES

BHL:la

lcc:Senator Alfred H. Song

Memo 72-22

EXHIBIT IV
LAW OFFICES

2618 PASADENA AVENUE • LOS ANGELES, CALIFORNIA 90051 • (213) 223-3417

March 15, 1972

IN REPLY PLEASE REFER TO:

The Honorable Alfred H. Song
California State Senate
Sacramento, California

Dear Senator Song:

It has come to our attention Senate Bill 88, which you sponsor with a view to changing the present Wage Garnishment Law of California.

It is obvious that this bill is inspired by the interests of the Collection Agencies and Finance Companies. This bill purports to repeal Section 682.3 of the Code of Civil Procedure, and the suggested legislation would increase the seriousness of the problems created by C.C.P. 682.3.

Permitting the creditor to serve directly the employer for the apparent purpose of doing away with the Sheriff's fees, opens the way to so many abuses that it is hardly necessary to point them out.

For instance, the proposed Section 723.103, Subdivision (c) reads as follows:

"The failure of the judgment debtor to receive the papers specified in Subdivision (a) does not affect the validity of a properly issued earnings withholding order."

Knowing what "eager collectors" may do in order to put pressure on the debtor, it is easy to imagine what can happen when the debtor doesn't receive this notice. Again, assuming that an element of surprise should be retained in garnishing someone's wages, we cannot understand what practical purpose it would serve to have such an order outstanding for 120 days.

The Honorable Alfred H. Song
March 15, 1972
Page 2

If we are afraid that the person might quit his job not to pay his debt; clearly, he will do so anyway, and the 120 days period would become meaningless.

If instead, the assumption is that he will keep his job; then, why is there the necessity at all to "surprise" his employer in the first place; and secondly, why is the burden of claiming the exemption again placed upon the debtor.

Creditors are usually Finance Companies and Collection Agencies; that is, generally speaking, people familiar with business and legal matters, who have a way to go about pursuing their legal remedies, and, of course, benefit from the assistance of their lawyers.

On the other hand, employees affected by this kind of orders are low-income earners, generally unfamiliar with their legal rights. They would just as simply forego any available defense or claim of exemption, rather than being confronted with the prospect of having to have their wages subjected to withholding for such a lengthy time.

Generally speaking, wage garnishment has been a harassment tool in the hands of Collection Agencies. This proposed law preserves the same features as in the past; and in addition, removes the only minimal guarantee of a certain elementary due process by doing away with service of process by the Sheriff altogether.

We urge you to open and advertise hearings on S.B. 88 holding them in the major cities throughout the state, and you will reach the conclusion that the only true protection for an employee's wages, at least up to certain amounts, is by doing away with wage garnishment as a whole.

The Honorable Alfred H. Song
March 15, 1972
Page 3

In addition, assuming the validity of competing public interest as to the creditor's rights, and the rights of the debtor, clearly, the danger that the debtor may lose his job, and eventually wind up on Public Assistance, far outweighs the creditor's interest.

There are now cases pending in both State and Federal Courts challenging the constitutionality of wage garnishment. We urge the Legislature to take the initiative and do away with this relic from the past and not wait for the Courts to "legislate" on their behalf.

Very truly yours,


JOHN TRAPANI
Senior Attorney

JT:svb

Copies to: Members of Senate Judiciary Committee
CRLA - Sacramento Office
Western Center on Law and Poverty

EXHIBIT V

County of Los Angeles
Office of the Sheriff
Hall of Justice
Los Angeles, California 90012



PETER J. PITCHESS, SHERIFF

March 10, 1972

The Honorable Alfred H. Song
California Senate
State Capitol
Sacramento, California 95814

Dear Senator Song:

I am writing to express this Department's opposition to Senate Bill 88 authored by you. A considerable amount of time and attention has been directed by staff personnel of the Los Angeles County Sheriff's Department to this proposal. It is our Department's opinion, and I am informed that of the other fifty-seven similar departments throughout the State Sheriffs' Association, that this bill in its present form is possessive in a great number of areas of inherent weaknesses that would create problems more detrimental and more severe than those already in existence.

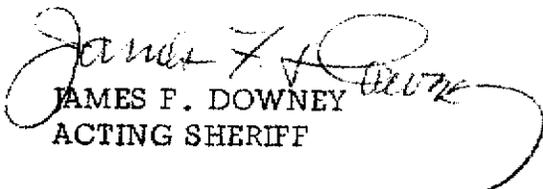
It appears to us that the proposed new chapter being considered as an addition to the Code of Civil Procedure titled "Employee's Earnings Protection Law" would do little in providing additional protection to the employee (judgment debtor), however, would cause a great amount of unnecessary burdens upon the employer (garnishee).

The suggestion of eliminating the garnishment procedure from the present statutory control of the Sheriff, Marshal, or Constable would cause an uncalculated additional burden on the court, eliminate incoming tax-reducing county revenue, increase the overall cost of the levy to all parties concerned, create a continuous hardship on the employee, and decrease, due to the lack of authority behind the levy, its effectiveness.

For the several reasons stated, it is this Department's feeling that Senate Bill 88 is unwarranted legislation and not in the best interests of the citizens of this county and state.

Sincerely,

PETER J. PITCHESS, SHERIFF


JAMES F. DOWNEY
ACTING SHERIFF

Memo 72-22

EXHIBIT VI
LAW OFFICES OF
LEGAL AID FOUNDATION OF LONG BEACH

CENTRAL AREA OFFICE
1006 E. PACIFIC COAST HIGHWAY - LONG BEACH, CALIFORNIA 90806 - 591-8771

March 27, 1972

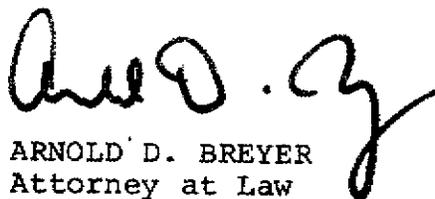
IN REPLY PLEASE REFER TO:

The Honorable Senator Song
State Capitol
Sacramento, California

Dear Senator Song:

As an attorney engaged in the representation of among others, low income wage earners, I strongly urge that S.B. 88 be defeated. It is my opinion that this bill is against the best interests of the vast majority of Californians, i.e. wage earners.

Very truly yours,


ARNOLD D. BREYER
Attorney at Law

ADB/ce

Memo 72-22

EXHIBIT VII

Founded 1863



California Teachers Association

GOVERNMENTAL RELATIONS OFFICE

450
ROOM 450 • ELEVENTH AND L BUILDING • SACRAMENTO 95814 • 442-5895

March 21, 1972

The Honorable Alfred H. Song
Member of the State Senate
State Capitol, Room 3048
Sacramento, Calif. 95814

Subject: SB 88

Dear Senator Song:

Based on study and discussion by the State Council of Education,
which met on March 18, 1972, the California Teachers Association
supports SB 88.

Sincerely,

Bill Logan
Governmental Relations Executive

BL:th

STATE TEACHERS' RETIREMENT SYSTEM

SACRAMENTO - 1416 Ninth Street



March 6, 1972

Senator Alfred H. Song
28th Senatorial District
Room 3048, State Capitol
Sacramento, California 95814

Dear Senator Song:

I am writing in regard to Senate Bill 88. The Teachers' Retirement Board desires to make a statement of board policy regarding exemption from execution, garnishment, attachment and assignment or other legal process of member funds resident in the Teachers' Retirement Fund.

It is the policy of the board that the protection from invasion of the individual's funds in the system should be total, as long as the funds are held by the retirement system. After the funds have been disbursed to the retirant or beneficiary, it is the opinion of the board that the exemption and protection from creditors should cease.

I would like to emphasize the importance of the unequivocal exemption of public pension retirement funds while resident in the system. It is mandatory to protect the teachers' pension rights and the system to ensure the provision of a financially sound plan for the retirement, with adequate retirement allowances of teachers in the public schools of the state. After payment of the allowance, however, it becomes the individual's duty to assume full responsibility for his debts and obligations.

In view of the foregoing, the Teachers' Retirement Board recommends a position of opposition to SB 88, unless it is amended to reflect the cessation of exemption after the funds have been disbursed.

Very truly yours,

A handwritten signature in cursive script that reads "Michael N. Thome".

MICHAEL N. THOME
Chief Executive Officer

cc: Agriculture and Services Agency (2)
cc: Senate Judiciary Committee

Memorandum

To : Hon. Alfred H. Song, Chairman
Senate Committee on Judiciary
Room 3048, State Capitol
Sacramento

Date : March 31, 1972

File No:

From : Martin Huff

Subject: Opposition to Senate Bill 88
(Song)

The department has reviewed Senate Bill 88, as amended on March 20, 1972, and offers the following comments for the information of your committee.

1. This bill will provide a state garnishment procedure so that state law rather than federal law will govern garnishment proceedings in this state. The department's collection procedures are substantially affected since the new law provides for a new and exclusive procedure for levying on the earnings of a debtor, including tax debtors.
2. As amended on March 20, 1972, many of the department's original objections to the bill have been eliminated. However, the following concerns remain:
 - a. The bill could be interpreted to authorize the withholding order for support to reach income that is required to be withheld for state income tax or other statutory deductions. The bill should be amended to avoid such possible conflict in its application.
 - b. The bill is not clear in respect to its affect on state personal income tax withholding and other state statutory deductions which are withheld or as to its affect on offset of state tax liability against state tax refunds. The bill should be amended to make it clear that there is no intent to impose restrictions in either of these areas.
 - c. The bill permits the employer to deduct \$1 from the employee's wages for processing costs each time he makes a deduction pursuant to a withhold order. If amounts are paid over, and it is subsequently determined the order was issued in error or there was no tax liability, there is no provision for refunding the \$1 processing deductions to the employee.

Hon. Alfred H. Song
March 31, 1972
Page 2.

- d. The bill governs levies where earnings arise through the employer-employee relationship but this is not always a clearly recognizable situation. The bill should be amended to provide for treatment of an Order to Withhold issued under Section 18817 of the Revenue and Taxation Code as a withholding order for taxes under the Employee Earnings Protection Law.
- e. The bill requires a separate notification and statement of rights to the taxpayer. This provision will increase the department's costs unless amended to permit this department's present, successful procedure to continue.
- f. The bill gives the Judicial Council responsibility to prescribe procedures for hearings affecting this department. The need and desirability of this provision has not been demonstrated.
- g. This bill would prevent collection of tax from earnings in jeopardy situations. The bill should be amended to provide a jeopardy collection procedure for use in instances where collection would be jeopardized by delay.
- h. The bill does not permit tax collection in situations where the amount of income would qualify for withholding of state personal income tax. The bill should be amended to permit collection of tax from income that is subject to withholding so taxpayers that come within withholding exceptions cannot escape payment under this law.
- i. Enactment of this bill will require conforming changes to Revenue and Taxation Code sections that deal with assessment of tax in order to provide notice and opportunity for hearing.
- j. The bill will result in additional administrative costs to the department which have not yet been fully determined.


Executive Officer

cc: Mr. Earl Coke, Secretary
Agricultural and Services Agency
Governor's Office
Attention: Legislative Unit

Memorandum 72-22

EXHIBIT X

WESTERN CENTER ON LAW AND POVERTY
LEGISLATIVE ADVOCACY CENTER FOR SOUTHERN CALIFORNIA

1900 "K" STREET, SUITE 112
SACRAMENTO, CALIFORNIA 95812
TELEPHONE (916) 442-0753

BRIAN PADDOCK
DIRECTING ATTORNEY

April 4, 1972

Dear Member of the Senate Judiciary Committee:

RE: Senate Bill 88 (Senator Song)
Attachment, Garnishment and
Execution

Senate Bill 88 is scheduled for hearing this morning in the Judiciary Committee. This bill revises the system of wage garnishments and changes the law regarding exemptions for impecunious debtors.

There are several basic concepts in SB 88 which we greatly favor. For example, under current law, the employer must calculate the amount to be withheld from an employee's pay, using a complex formula. SB 88 would provide a table to ease and simplify this task while also providing greater protection for low income debtors. Under current law, deposits in a savings and loan association or credit union are exempt up to certain limits. SB 88 would extend this protection to include the more common bank savings or checking accounts. The proposed elimination of the levying officer in garnishments substantially reduces the cost to the debtor of this already onerous collection procedure.

There are, however, several areas in SB 88 about which we have serious reservations. First of all, we feel that the provision for a hardship exemption in wage garnishments is much too limited. California has recognized that money which is provably "necessary for the use of the debtor's family" should be protected. But SB 88 creates a presumption against the hardship exemption, which seriously impairs the debtor's ability to provide for his family. The problem is particularly acute for large families as the new exemption table fails to take into consideration the size of a family in establishing the amount which can be withheld.

Secondly, the procedure for claiming the hardship exemption presents problems. This bill, like existing law, has no provision

for advance notice and determination of a claim of exemption prior to the withholding of possibly "essential" earnings. In addition to the possible Constitutional invalidity of this procedure, it seems to violate the very public policy which protects the right of even the most impecunious person to a bare minimum existence.

A third problem area is the amount of the "deposit account" exemption. The bill in its current form allows only a \$100.00 exemption for all deposit accounts. This is a drastic reduction from the \$500.00 figure in previous drafts of the bill, and from the much higher levels of exemption under present law. \$100.00 is not enough to provide the protection the exemption was intended to give to a debtor in times of financial difficulty.

There are several other difficulties, most of which are more technical in nature. We feel that some of the problems can be worked out between us and the Law Revision Commission. The next meeting of this Commission is scheduled for this Thursday. We therefore respectfully request that SB 88 be put over for further hearings in one week to allow sufficient time for the Commission to deal with some of these problems.

Sincerely



Toby Rothschild
Attorney at Law
Legal Aid Foundation of
Long Beach



Brian Paddock
Legislative Advocate
Western Center on
Law and Poverty



Edgar A. Kerry
Legislative Advocate
California Rural Legal
Assistance

LAW OFFICES

2618 PASADENA AVENUE • LOS ANGELES, CALIFORNIA 90031 • (213) 223-3417

IN REPLY PLEASE REFER TO:

March 27, 1972

John H. DeMouilly, Esq.
California Law Revision Commission
School of Law - Stanford University
Stanford, California 94305

Dear Mr. DeMouilly:

I have just received your letter of March 24, 1972 and I would like to let you have some of my thoughts on the matter, pending a more thorough answer to your arguments in support of S. B. 88.

It goes without saying that we are assuming that S.B. 88 would be enacted, while we know that CCP 682.3 is already the law. That is, wage garnishment has already become "worse," even before consideration of S.B. 88 has started.

My main objection to S.B. 88 is that it perpetrates wage garnishment as a harassment device without in fact becoming a satisfactory collection device.

Without going into the details of whether a family of four taking home \$87.00 a week can make it on \$77.00, it would seem that the Commission ignores the reality that the individual who is being garnished is usually almost at the end of the road leading to financial disaster.

In my experience, the triggering fact that leads to garnishment is the unwillingness of the collection agency to settle for the amounts that the debtor was already paying. Generally speaking, garnishment applies to only one of the many debts that usually low income wage earners have. It would hardly appear to be necessary for me to call to your attention the fact that often these people find themselves in this situation because of periods of unemployment or extraordinary expenses, usually of a medical nature. Once you permit one creditor to go after three months or four months of a debtor's wages at a time, you also destroy whatever arrangement he may have made with other creditors. And if the second creditor garnishes, he may get fired and that's the end of it all.

I hope that the Commission does not consider a "solution" to a debtor's plight the fact that he could declare bankruptcy. For low income wage earners, bankruptcy is never a solution,

 *Legal Aid Foundation of Los Angeles*

because they generally have already pledged their furniture for what often is only a "refinanced loan," and their car is still subject to security, or if not an exempt car, they risk losing it.

Chapter XIII can hardly be considered a solution in the light of the excessive administrative costs and the fact that no matter how minimal an account is being withheld, if in any one month the debtor runs into an emergency, he wouldn't have any way to meet it.

So we come back to the very root of this problem. Wage Garnishment collects very little money, and interferes with the employment situation to the point of often resulting in the loss of the job.

How can the Commission call protection for the employee from firing, when he cannot be discharged if garnished for any one indebtedness. At the second creditor's garnishment, out he goes. The reality is that you have wage garnishment at low level of income, not high level of income. The sophisticated debtors, highly paid executives, etc., will hardly permit their wages to be garnished.

In fact, both the Heller and the Adair cases which so "thoughtfully" the Commission has injected into S.B.88 fought seizures of furniture, not of wages. In an apparent aim at equality, the Commission suggests equalization downward, that is, trying to downgrade the "wealthy" down to the level of the "poor" debtor. This may be justice, but we hardly see any improvement for the low income wage earner.

Incidentally, this "essential" standard, in my mind, would be interpreted just as it was under the past law, because to a lawyer it is essential to pay \$200 a month rent, while to a working man only \$100 would be essential. The same would go for the working man who can resort to a lunch box while the professional man must go to a restaurant, and so on, with the end result that under comparative similar circumstances, more money would be taken from the poorer debtor than the wealthier one.

S.B. 88 again places the burden of initiating the claim of exemption procedure on the debtor. It ignores the undisputed fact that most low income wage earners have very little familiarity with the law, and are practically terrorized by collection agencies.

In as much as we are dealing with employees usually with low skills or no skills at all, the temptation for the employer to "get rid" of a garnished employee is too strong and of course it wouldn't take much to let him go without having garnishment come into the picture.

The often made argument by the finance companies that credit would be affected is, I believe, adequately answered by the Randone case.

The wage garnishment study of the Western Center on Law and Poverty clearly points out the fact that states with tougher wage garnishment laws have higher percentages of bankruptcies than states with more lenient wage garnishment laws.

I would venture to say that possibly finance companies would like to see debtors go bankrupt so that they may step in with a fresh new obligation which the unfortunate debtor cannot now discharge, at least for six more years.

As for the collection agencies, they know very well that wage garnishment is such a weapon in their hands that the debtor will find a way, no matter what, to prevent his wages from being garnished.

All the while I have of course assumed the validity of the underlying obligation. It appears to me that some concepts of a contractual law dating back to the time when most of our transactions were on a cash and carry basis, would hardly fit present economic conditions where the individual consumer is practically left to sign a contract prepared by the financial institution after he has been bombarded by so many inducements -- easy credit, easy repayment, etc.

It would appear at least necessary that, before any garnishment procedure be set into motion, that the judgment be obtained after an appearance by the debtor. I do not see why the order for payment contemplated in the small claims court, should not be made available in the municipal court or even Superior Court.

These are only some of the thoughts that I have on this matter, and I do hope I have an opportunity to elaborate on the foregoing.

Yours very truly,


John Trapani
Senior Attorney

JT:af

[From a letter we received.]

Now it seems they turned their bills over to collection agencies - these people are an impossibility to deal with - They tell us we have to pay so much or else - we are being threatened by taken to court - we are at our wit's end - I can't take much more & my husband is very discouraged & depressed - we had even considered suicide - we do not live high - we want to do what is right but we keep getting knocked down -

What can we do? My husband has stated if they garnish his wages - that will be the end -

Is bankruptcy any answer - we are so very desperate that any advise you could give us would be greatly appreciated -

CALIFORNIA CREDIT UNION LEAGUE
2322 SO. GAREY AVE. • POMONA, CALIF. 91766 • 714/628-6044

REPLY TO:
Governmental Affairs Office
455 Capitol Mall, Suite 205
Sacramento, California 95814
916/443-7935

20 March 1972

Honorable Alfred H. Song
Chairman, Senate Judiciary Committee

Re: SB 88

Senator, the California Credit Union League is the trade association which serves 626 state-licensed credit unions in California. Our association is much concerned with a section of Senate Bill 88, the proposed "Employees' Earnings Protection Law", which is scheduled for hearing before the Senate Judiciary Committee on 14 April.

The provision which gives rise to our concern is that which would repeal Section 15406 of the Financial Code, a part of the California Credit Union Law. The section provides for exemption up to \$1,500 of credit union shares on attachment or execution.

We believe Section 15406 should be left undisturbed because of the peculiar nature of savings in a credit union and the insurance protection generally afforded by them. Credit union shares are characteristically purchased over a period of time by successive small deposits, usually through payroll deductions. They are often the first and only savings ever accumulated by a family of modest income.

More importantly, the credit union share account, in many cases, represents the same family's only insurance protection. Most credit unions provide life insurance on a matching dollar-for-dollar basis, equal to the share account up to \$2,000. The premiums are paid by the credit union from its earnings. For example, a credit union member dies. His widow or other beneficiary immediately becomes the owner of the account plus a matching amount from the insurance carrier. We have seen many hardship situations eased because of the ready availability of credit union savings accounts and insurance proceeds when they were needed most.

Section 15406 has been in the Financial Code since 1927. In 1969, when Assemblymen Beverly and Brathwaite introduced legislation to revise the exemption statutes, we were successful in persuading the authors to leave Section 15406 undisturbed. In 1970, Assemblymen Hayes and Brathwaite supported our like request after they had introduced a similar proposal.



Honorable Alfred H. Song

Page 2

20 March 1972

We have written to Mr. John DeMouilly of the California Law Revision Commission, outlining our objection to the provision in the bill. However, this was not done until after SB 88 had appeared in print.

We earnestly request your support of an amendment to SB 88 which would leave Section 15406 of the California Credit Union Law undisturbed.

Respectfully,

Charles M. Rossie
Assistant Director
Governmental Affairs

SENATE BILL

No. 1071

Introduced by Senator Zenovich

March 15, 1972

An act to add Section 690.7 to, and to repeal Section 690.7 of, the Code of Civil Procedure, relating to execution of judgment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1071, as introduced, Zenovich. Execution of judgment.

Repeals present law granting an exemption from levy of execution or attachment of a maximum of \$1,00 held in any combination of the following: savings deposits in, shares or other accounts in, or shares of stock of, any state or federal savings and loan association.

Exempts from levy of execution or attachment, under specified conditions, moneys representing earnings of the debtor earned within the 30 days preceding such levy held in checking and savings deposits of a bank or savings and loan association.

Defines "savings deposits" to include share of stock in a savings institution.

Vote—Majority: Appropriation—No; Fiscal Committee—No.

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

- 1 SECTION 1. Section 690.7 is added to the Code of Civil
- 2 Procedure, to read:
- 3 690.7. To the extent such moneys represent earnings
- 4 of the debtor earned within the last 30 days, the debtor
- 5 shall be entitled to the same exemption as is provided in
- 6 Section 690.6 of all his moneys held in checking and
- 7 savings deposits of a bank or savings and loan association,
- 8 whether it be federal or state. "Savings deposits" shall

1 include "investment certificates" and "withdrawable
2 shares" as defined in Sections 5061 and 5067 of the
3 Financial Code, respectively, and also shares of stock in
4 a savings institution.

5 SEC. 2. Section 690.7 of the Code of Civil Procedure
6 is repealed.

7 ~~690.7. (a) To the maximum aggregate value of one~~
8 ~~thousand dollars (\$1,000), any combination of the~~
9 ~~following: savings deposits in, shares or other accounts in,~~
10 ~~or shares of stock of, any state or federal savings and loan~~
11 ~~association; "savings deposits" shall include "investment~~
12 ~~certificates" and "withdrawable shares" as defined in~~
13 ~~Section 5061 and 5067 of the Financial Code, respectively.~~

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

Memorandum 72-22

EXHIBIT XIV

LEGAL AID SOCIETY OF SANTA CRUZ COUNTY, INC.

MAIN OFFICE P.O. BOX 1621
238 LOCUST STREET, SANTA CRUZ, CALIF. 95060
TELEPHONE (408) 426-6157
(408) 688-3515

NORMAN S. NAYFACH
DIRECTING ATTORNEY

421 LETTUNICH BUILDING
MAIN AND THIRD STREETS
WATSONVILLE, CALIF. 95076
TELEPHONE: (408) 724-2288

April 5, 1972

ADDRESS REPLY TO:

Santa Cruz

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Re: Recommendation of Law Revision Commission
Relating to "Attachment, Garnishment and Exemptions
from Execution"---November, 1971.

Gentlemen:

We are one of the organizations that receive your tentative recommendations relating to changes in California law.

The following relate to your November, 1971, recommendations which have presumably already been submitted to the California Legislature. As I understand your proposed California Code of Civil Procedure Section 723.051, it would roughly correspond to the present Section 690.6. Apparently, however, it would eliminate any distinction between debts based on "common necessities" and those not based on common necessities. Thus, if a debtor was able to demonstrate that all of his earnings were essential to the support of himself and his family, he would be able to avail himself of the exemption as to all of his earnings, rather than only as to the first 75 percent.

If this is, indeed, your recommendation, I think that it is a very good one and long overdue. The presently existing exception for debts based on "common necessities" is not only unjust and unfair and possibly unconstitutional (it discriminates against a particular economic class) but it probably bears no relationship to the 19th century idea that creditors would only extend credit to low-income individuals where there was no danger that there would be an exemption of any part of the debtor's earnings should attachment or execution of such earnings ultimately be necessary to collect the debt.

RE
AKS

California Law Revision Commission
Page Two
April 5, 1972

Please advise as to whether I have understood your recommendation correctly. In any case, please accept this letter as a statement of support for what I understand the recommendation to be. Also enclosed find our office's request to be kept on your mailing list with respect to attachment and garnishment recommendations.

Thank you very much.

Very truly yours,

NORMAN S. MAYFACH
Directing Attorney

NSN/mav

Enclosure

Withholding Comparison Table

Deductions have been made for federal withholding, social security, state disability insurance, and state income tax. The state income tax deduction is based on withholding tables for 1972. The federal social security tax rate is 5.2% on the first \$9,000 of annual gross earnings. The state disability insurance rate is 1% on the first \$7,400 of annual gross earnings. The amounts shown as disposable earnings in this table are based on a full deduction for social security and disability insurance respectively even though, under present law, in the higher earnings brackets this amount would not be deducted during the entire year. The one-dollar service charge, which an employer would be entitled to make for each payment under the Commission's proposed legislation, is in addition to the amount listed in the table.

GROSS EARNINGS (weekly/annual)	EXISTING LAW						PROPOSED STATUTE Amount withheld
	SINGLE PERSON (claiming 0 exemptions)		MARRIED + 2 CHILDREN (claiming 4 exemptions)		MARRIED + 6 CHILDREN (claiming 8 exemptions)		
	Disposable earnings	Amount withheld	Disposable earnings	Amount withheld	Disposable earnings	Amount withheld	
\$60/3,120	\$47.68	-0-	\$56.28	\$8.28	\$56.28	\$8.28	-0-
70/3,640	55.06	\$7.06	65.26	16.32	65.66	16.67	-0-
80/4,160	62.14	14.14	73.24	18.31	75.04	18.76	-0-
88/4,576	67.95	16.99	79.65	19.91	82.55	20.64	-0-
90/4,680	69.22	17.31	81.22	20.31	84.42	21.11	-0-
97/5,044	74.39	18.60	86.99	21.75	90.99	22.75	-0-
98/5,096	74.92	18.73	87.62	21.91	91.92	22.98	\$10.00
100/5,200	75.90	18.98	88.90	22.23	93.80	23.45	10.00
110/5,720	82.88	20.72	96.68	24.17	103.18	25.80	12.00
120/6,240	89.76	22.44	104.46	26.12	112.56	28.14	14.00
135/7,020	100.13	25.03	116.13	29.03	125.03	31.26	16.00
150/7,800	109.80	27.45	127.20	31.80	136.60	34.15	19.00
170/8,840	123.36	30.84	142.36	35.59	152.16	38.04	22.00
200/10,400	143.10	35.78	164.70	41.18	174.50	43.63	27.00
250/13,000	173.90	43.48	200.60	50.15	211.70	52.93	35.00
300/15,600	201.70	50.43	233.80	58.45	247.50	61.88	42.00
400/20,800	251.70	62.93	298.60	74.15	312.00	78.00	55.00
600/31,200	351.00	87.75	404.50	101.13	425.90	106.48	80.00

DISPOSABLE EARNINGS AFTER GARNISHMENT

Table assumes that employee is under social security and state disability insurance. If he is not, disposable earnings after garnishment would increase by about 5% for social security and 1% for state disability insurance.

GROSS EARNINGS (weekly/annual)	SINGLE PERSON (claiming 0 exemptions)		MARRIED + 2 CHILDREN (claiming 4 exemptions)		MARRIED + 4 CHILDREN (claiming 8 exemptions)	
	Existing law	SB 88	Existing law	SB 88	Existing law	SB 88
\$60/3,120	\$47.68	<u>\$47.68</u>	\$48.00	<u>\$56.28</u>	\$48.00	<u>\$56.28</u>
70/3,640	48.00	<u>55.06</u>	48.94	<u>65.26</u>	48.99	<u>65.66</u>
80/4,160	48.00	<u>62.14</u>	54.93	<u>73.24</u>	56.28	<u>75.04</u>
88/4,576	50.96	<u>67.95</u>	59.74	<u>79.65</u>	61.91	<u>82.55</u>
90/4,680	51.91	<u>69.22</u>	60.91	<u>81.22</u>	63.31	<u>84.42</u>
97/5,044	55.79	<u>74.39</u>	65.24	<u>86.99</u>	68.24	<u>90.99</u>
98/5,096	56.19	<u>64.92</u>	65.71	<u>77.62</u>	68.94	<u>81.92</u>
100/5,200	56.92	<u>65.90</u>	66.67	<u>78.90</u>	70.35	<u>83.80</u>
110/5,720	62.16	<u>70.88</u>	72.51	<u>84.68</u>	77.38	<u>91.18</u>
120/6,240	67.32	<u>75.76</u>	78.34	<u>90.46</u>	84.42	<u>98.56</u>
135/7,020	75.10	<u>84.13</u>	87.10	<u>100.13</u>	93.77	<u>109.03</u>
150/7,800	82.35	<u>90.80</u>	95.40	<u>108.20</u>	102.45	<u>117.60</u>
170/8,840	92.52	<u>101.36</u>	106.77	<u>120.36</u>	114.12	<u>130.16</u>
200/10,400	107.32	<u>116.10</u>	123.52	<u>137.70</u>	130.87	<u>147.50</u>
250/13,000	130.42	<u>138.90</u>	150.45	<u>165.60</u>	158.77	<u>176.70</u>
300/15,600	151.27	<u>159.70</u>	175.35	<u>191.80</u>	185.62	<u>205.50</u>
400/20,800	188.77	<u>196.70</u>	222.45	<u>241.60</u>	234.00	<u>257.00</u>
600/31,200	263.25	<u>271.00</u>	303.37	<u>324.50</u>	319.42	<u>345.90</u>

AMENDED IN SENATE MARCH 20, 1972
AMENDED IN SENATE FEBRUARY 29, 1972

SENATE BILL

No. 88

Introduced by Senator Song

January 18, 1972

An act to amend Section 4701 of the Civil Code, to amend Sections 682, 688, 690.6, 690.18, 690.50, and 710 of, to add Sections 690.5½, 690.7, 690.7¼, 690.7½, and 690.18½ to, to add Chapter 2.5 (commencing with Section 723.010) to Title 9 of Part 2 of, and to repeal Sections 682.3 and 690.7 of, the Code of Civil Procedure, to repeal Section 15406 of the Financial Code, to amend Sections 300 and 2929 of the Labor Code, to amend Sections 270h and 1208 of the Penal Code, and to amend Section 11489 of the Welfare and Institutions Code, relating to attachment, garnishment, and execution.

LEGISLATIVE COUNSEL'S DIGEST

SB 88, as amended, Song. Attachment, garnishment, and execution.

Revises law relating to attachment, garnishment and execution, and adds new chapter to C.C.P., headed "Employees' Earnings Protection Law."

Vote—Majority; Appropriation—No; Fiscal Committee—Yes.

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

- 1 SECTION 1. Section 4701 of the Civil Code is
- 2 amended to read:
- 3 4701. In any proceeding where the court has ordered
- 4 a parent to pay any amount for the support, maintenance,
- 5 or education of a minor child, the court may issue an

Corrected 3-21-72

1 earnings withholding order under Section 723.030 of the
2 Code of Civil Procedure for the amount so ordered. The
3 withholding order may require the parent's employer to
4 pay the withheld earnings to the county clerk, probation
5 officer, or other officer of the court, to a county officer,
6 to the person having custody of the child, or to such other
7 person as is specified in the order to receive such
8 payment.

9 SEC. 2. Section 682 of the Code of Civil Procedure, as
10 amended by Chapter 1684 of the Statutes of 1971, is
11 amended to read:

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

25 1. If it be against the property of the judgment debtor,
26 it must require such officer to satisfy the judgment, with
27 interest, out of the personal property of such debtor, or
28 if it is against the earnings of such debtor, out of the
29 earnings subject to execution under subdivision (e) of
30 Section 690.5½ and subdivision (c) of Section 690.6, and
31 if sufficient personal property cannot be found, then out
32 of his real property; or if the judgment be a lien upon real
33 property, then out of the real property belonging to him
34 on the day when the abstract of judgment was filed as
35 provided in Section 674 of this code, or at any time
36 thereafter.

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

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

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

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

35 SEC. 3. Section 682.3 of the Code of Civil Procedure,
36 as added by Chapter 1684 of the Statutes of 1971, is
37 repealed.

38 SEC. 4. Section 688 of the Code of Civil Procedure is
39 amended to read:

40 688. Except as provided in Chapter 2.5 (commencing

1 with Section 723.010):

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

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

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

28 SEC. 5. Section 690.5½ is added to the Code of Civil
29 Procedure, to read:

30 690.5½. (a) As used in this section, "earnings" means
31 compensation paid or payable by an employer to an
32 employee for personal services performed by such
33 employee whether denominated as wages, salary,
34 commission, bonus, or otherwise.

35 (b) All earnings of the debtor which are due or owing
36 to him are exempt from levy of attachment and execution
37 without filing a claim for exemption as provided in
38 Section 690.50 and are subject to levy only by means of an
39 earnings withholding order in the manner and to the
40 extent provided in Chapter 2.5 (commencing with

1 Section 723.010).

2 (c) All earnings of the debtor which have been paid to
3 him and are in his possession in a form identified by the
4 levying officer as earnings are exempt from levy of
5 attachment without filing a claim for exemption as
6 provided in Section 690.50.

7 (d) All earnings of the debtor which have been paid to
8 him and are retained in the form in which paid or as cash
9 but which are not identified by the levying officer as
10 earnings are exempt from levy of attachment.

11 (e) The earnings of the debtor for his pay period
12 immediately preceding the levy which have been paid to
13 him and are retained in the form in which paid or as cash
14 are subject to levy of execution only in an amount not to
15 exceed the maximum amount of ~~such earnings~~ that could
16 be withheld by his employer under Section 723.050 less
17 any amounts withheld ~~from such earnings~~ by the debtor's
18 employer pursuant to any earnings withholding order.

19 (f) Such additional portion of the earnings described
20 in subdivision (e) which a debtor proves is essential for
21 the support of himself or his family is exempt from levy
22 of execution.

23 (g) A levying officer is not liable for any injury
24 resulting from any identification or misidentification of
25 assets made pursuant to this section, whether or not such
26 identification or misidentification be negligent, unless he
27 is guilty of actual fraud, corruption, or actual malice.

28 SEC. 6. Section 690.6 of the Code of Civil Procedure,
29 as amended by Chapter 1684 of the Statutes of 1971, is
30 amended to read:

31 690.6. (a) As used in this section, "earnings" means
32 those earnings not included within the definition of
33 "earnings" stated in subdivision (a) of Section 690.5½.

34 (b) All the earnings of the debtor received for his
35 personal services shall be exempt from levy of
36 attachment without filing a claim for exemption as
37 provided in Section 690.50.

38 (c) One-half or such greater portion as is allowed by
39 statute of the United States, of the earnings of the debtor
40 received for his personal services rendered at any time

1 within 30 days next preceding the levy of execution shall
2 be exempt from execution without filing a claim for
3 exemption as provided in Section 690.50.

4 (d) Such additional portion of his earnings which a
5 debtor proves is essential for the support of himself or his
6 family shall be exempt from levy of execution unless
the debt is incurred for personal services rendered
by any employee or former employee of the debtor .

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

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

18 SEC. 7. Section 690.7 of the Code of Civil Procedure
19 is repealed.

20 SEC. 8. Section 690.7 is added to the Code of Civil
21 Procedure, to read:

22 690.7. (a) As used in this section, "debtor" means an
23 individual and does not include a corporation,
24 partnership, or unincorporated association.

25 (b) As used in this section, "deposit account" means
26 any of the following:

27 (1) A deposit or account in any "bank" described in
28 Section 102 of the Financial Code.

29 (2) A deposit or account in any state or federal savings
30 and loan association. As used in this paragraph, "deposit
31 or account" includes investment certificate, share
32 account, and withdrawable share.

33 ~~(3) A share or certificate for funds received from a~~
34 ~~member of a credit union and all the accumulation on~~
35 ~~such share or certificate.~~

36 (c) As used in this section, "spouse" means the
37 debtor's husband or wife except (1) after entry of a
38 judgment decreeing their legal separation or (2) while
39 they are living separate and apart after entry of an
40 interlocutory judgment of dissolution of their marriage.

1 (d) For the purposes of this section, a deposit account
2 is ~~"beneficially owned"~~ by the debtor or his spouse if the owned
3 account is subject to withdrawal by the debtor or his
4 spouse or both for the use of the debtor or his spouse or
5 both.

6 (e) There is exempt from execution an aggregate ~~five~~
7 ~~hundred dollars (\$500)~~ one hundred dollars (\$100) in all
8 deposit accounts ~~beneficially~~ owned by the debtor or his
9 spouse on the date of the first levy on any of such
10 accounts. The amount exempt in any deposit account
11 levied upon shall be computed by applying the
12 exemption first to amounts ~~beneficially~~ owned by the
13 debtor or his spouse in accounts not levied upon, and
14 then to amounts ~~beneficially~~ owned by the debtor or his
15 spouse in accounts levied upon in the reverse of the order
16 in which they were levied upon, first exempting amounts
17 in the account last levied upon, then progressing in like
18 manner until the exemption has been exhausted. The
19 amount that is exempt in an account ~~beneficially~~ owned
20 by joint debtors is the cumulative amount of the
21 individual exemptions of each debtor in that account,
22 except that spouses who are joint debtors are limited to
23 one exemption between them.

24 ~~(e)~~ (f) A debtor who claims an exemption under this
25 section shall list in his affidavit of exemption under
26 Section 690.50 all amounts held in all deposit accounts owned by or
27 standing in the name of the debtor or his spouse ~~or in~~
28 ~~which either was listed as a beneficiary or had a beneficial~~
29 ~~interest~~, whether alone or with others, on the date of the
30 first levy on any of such accounts. For the purpose of this
31 section, it shall be presumed that all amounts in such
32 accounts were ~~beneficially~~ owned by the debtor or his
33 spouse on the date of the levy. The presumption
34 established by this subdivision is a presumption affecting
35 the burden of proof.

36 ~~(f)~~ (g) The exemption provided by this section is not
37 applicable where the execution is sought to enforce a
38 court order for the support of any person or to collect a
39 state tax liability as that term is defined in ~~paragraph (2)~~
40 ~~of subdivision (a)~~ of Section ~~723.021~~. subdivision (b) of

1 *Section 723.070 or amounts due to the Department of*
 2 *Human Resources Development under Sections 1375 to*
 3 *1380, inclusive, Sections 2735 to 2741, inclusive, or Section*
 4 *3751 of the Unemployment Insurance Code.*

5 ~~(g)~~ (h) Nothing in this section shall affect the rights
 6 of a banker under Section 3054 of the Civil Code.

7 SEC. 9. Section 690.7¼ is added to the Code of Civil
 8 Procedure, to read:

9 690.7¼. (a) As used in this section, "deposit account"
 10 has the meaning given that term in subdivision (b) of
 11 Section 690.7. For the purposes of this section, a
deposit account is "beneficially owned" by the debtor
if the account is one that may be used for the support
of the debtor or his family.

12 (b) A deposit account owned by the debtor is exempt
 13 from execution in the amount essential for the support of
 14 the debtor or his family. This standard recognizes that the
 15 exemption provided by Section 690.7 should be adequate
 16 except in rare and unusual cases. An exemption shall be
 17 allowed under this section only to the extent that the
 18 earnings and other current income of the debtor and his
 19 spouse are not adequate to provide the amount essential
 20 for the support of the debtor or his family. Neither the
 21 judgment debtor's accustomed standard of living nor a
 22 standard of living "appropriate to his station in life" is the
 23 criterion for measuring the debtor's claim for exemption
 24 under this section.

beneficially

25 (c) A debtor who claims an exemption under this
 26 section shall include a financial statement as a part of his
 27 affidavit of exemption required by Section 690.50. The
 28 financial statement shall be in the form prescribed by the
 29 Judicial Council and shall include all of the following
 30 information:

31 (1) Name, age, and relationship of all persons
 32 dependent upon the debtor or his spouse.

33 (2) All sources of the earnings and other income of the
 34 debtor and of his spouse and the amounts of such earnings
 35 and other income.

36 (3) A listing of all assets of the debtor and of his spouse
 37 and the value of such assets.

38 (4) All outstanding obligations of the debtor and of his
 39 spouse.

40 (5) Any extraordinary prospective expenses of the

1 debtor or of his spouse.

2 (6) Any other information required by the Judicial
3 Council.

4 (d) The exemption provided by this section is not
5 applicable where the execution ~~is~~ *is* sought to enforce a
6 court order for the support of any person or to collect a
7 state tax liability as that term is defined in ~~paragraph (2)~~
8 ~~of subdivision (a) of Section 723.031.~~ *subdivision (b) of*
9 *Section 723.070.*

10 (e) Nothing in this section shall affect the rights of a
11 banker under Section 3054 of the Civil Code.

(f) Nothing in this section shall limit the protec-
tion afforded debtors under the rules of law relating
to spendthrift trusts.

12 SEC. 10. Section 690.7½ is added to the Code of Civil
13 Procedure, to read:

14 690.7½. (a) As used in this section:

15 (1) "Deposit account" has the meaning given that
16 term in subdivision (b) of Section 690.7.

17 (2) "Earnings" means compensation paid by an
18 employer to an employee for personal services
19 performed by such employee, whether denominated as
20 wages, salary, commission, bonus, or otherwise.

21 (3) "Employer's payroll agent" means a financial
22 institution that computes for an employer the net amount
23 payable to an employee after making all required and
24 authorized deductions from his gross earnings and credits
25 the net amount to the employee's deposit account in that
26 financial institution.

27 (4) "Financial institution" includes any "bank"
28 described in Section 102 of the Financial Code and any
29 state or federal savings and loan association.

30 (b) Where a financial institution acts as the employer's
31 payroll agent for a debtor's employer, the deposit
32 account of the debtor is exempt from levy of execution to
33 the extent of the amount of the debtor's earnings that the
34 agent has credited to that account for the last pay period
35 prior to the levy, less all amounts debited to that account
36 after the time the earnings for that pay period were
37 credited to the account.

38 (c) The debtor is entitled to the exemption provided
39 by this section without filing a claim for exemption as
40 provided by Section ~~690.60~~ *690.50*, whether or not the

1 debtor or his spouse has any other deposit accounts. In
2 lieu of the exemption provided by this section, the debtor
3 shall be allowed the exemption provided by Section 690.7
4 if the amount exempt under that section is greater than
5 the amount exempt under this section, but the amount in
6 the account described in this section shall be included in
7 computing the amount exempt under Section 690.7.

8 (d) Nothing in this section shall be construed to
9 authorize an employer to pay his employees through an
10 employer's payroll agent. Whether an employer is
11 authorized to pay his employees through such a payroll
12 agent is to be determined by the applicable provisions of
13 law other than this section.

14 SEC. 11. Section 690.18 of the Code of Civil Procedure
15 is amended to read:

16 690.18. (a) All money received by any person, a
17 resident of the state, as a pension, or as an annuity or
18 retirement or disability or death or other benefit, or as a
19 return of contributions and interest thereon, from the
20 United States government, or from the state, or any
21 county, city, or city and county, or other political
22 subdivision of the state, or any public trust, or public
23 corporation, or from the governing body of any of them,
24 or from any public board or boards, or from any
25 retirement, disability, or annuity system established by
26 any of them pursuant to statute, whether the same shall
27 be in the actual possession of such pensioner or
28 beneficiary, or deposited by him.

29 (b) All money held, controlled, or in process of
30 distribution by the state, or a city, city and county,
31 county, or other political subdivision of the state, or any
32 public trust or public corporation, or the governing body
33 of any of them, or by any public board or boards, derived
34 from the contributions by the state or such city, county,
35 city and county, or other political subdivision, or such
36 public trust, public corporation, governing body, or
37 public board or boards, or by any officer or employee
38 thereof, for retirement or pension purposes or the
39 payment of disability, death, or other benefits, or the
40 payment of benefits payable to, or the reimbursement of

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

(c) All money held, controlled, or in process of distribu-
tion by any private retirement plan, including, but not lim-
ited 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, dis-
ability payment or death benefit from such retirement or
profit-sharing plans, and all contributions and interest
thereon returned to any member of any such retirement or
profit-sharing plan, are exempt from execution, attachment,
or garnishment in any bankruptcy proceeding.

16 SEC. 12. Section 690.18½ is added to the Code of Civil
17 Procedure, to read:

18 690.18½. (a) All periodic payments payable by a
19 pension or retirement plan that are not otherwise exempt
20 by law are exempt from levy of execution in the amount
21 that is exempted by Section 723.050 without filing a claim
22 for exemption as provided in Section 690.50.

23 (b) Periodic payments received by the debtor from a
24 pension or retirement plan during the 30 days
25 immediately preceding the levy of execution which have
26 been retained by him in the form in which received or
27 as cash and which are not otherwise exempt by law from
28 levy of execution are subject to levy of execution only in
29 an amount not to exceed the maximum amount of such
30 payments that could be withheld by the plan under
31 subdivision (a), less any amounts withheld from such
32 payments by the plan pursuant to a levy of execution.

33 (c) Nothing in this section limits the applicability of
34 any exemption otherwise provided by statute law .

35 SEC. 13. Section 690.50 of the Code of Civil Procedure
36 is amended to read:

37 690.50. (a) If the property mentioned in Sections
38 690.1 to 690.29, inclusive, shall be levied upon under writ
39 of attachment or execution, the defendant or judgment
40 debtor (herein referred to as "the debtor"), in order to

1 avail himself of his exemption rights as to such property,
2 shall within 10 days from the date such property was
3 levied upon deliver to the levying officer an affidavit of
4 himself or his agent, together with a copy thereof,
5 alleging that the property levied upon, identifying it, is
6 exempt, specifying the section or sections of this code on
7 which he relies for his claim to exemption, and all facts
8 necessary to support his claim, and also stating therein his
9 address within this state for the purpose of permitting
10 service by mail upon him of the counteraffidavit and any
11 notice of the motion herein provided.

12 (b) Forthwith upon receiving the affidavit of
13 exemption, the levying officer shall serve upon the
14 plaintiff or the person in whose favor the writ runs
15 (herein referred to as "the creditor"), either personally
16 or by mail, a copy of the affidavit of exemption, together
17 with a writing, signed by the levying officer, stating that
18 the claim to exemption has been received and that the
19 officer will release the property unless he receives from
20 the creditor a counteraffidavit within five days after
21 service of such writing.

22 (c) If the creditor desires to contest the claim to
23 exemption, he shall, within such period of five days, file
24 with the levying officer a counteraffidavit alleging that
25 the property is not exempt within the meaning of the
26 section or sections of this code relied upon, or if the claim
27 to exemption be based on Sections 690.2, 690.3, 690.4,
28 690.5½, 690.6, 690.7, 690.7¼, 690.18½, alleging that the
29 value of the property claimed to be exempt is in excess
30 of the value stated in the applicable section or sections,
31 together with proof of service of a copy of such
32 counteraffidavit upon the debtor.

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

36 (e) If such counteraffidavit, with such proof of service,
37 is so filed, either the creditor or the debtor shall be
38 entitled to a hearing in the court in which the action is
39 pending or from which the writ issued for the purpose of
40 determining the claim to exemption, the priority or

1 division of payment between one or more creditors from
2 nonexempt earnings under the provisions of Section 690.6
3 or the value of the property claimed to be exempt. Such
4 hearing shall be granted by the court upon motion of
5 either party made within five days after the
6 counteraffidavit is filed with the levying officer, and such
7 hearing must be had within 15 days from the date of the
8 making of such motion unless continued by the court for
9 good cause. The party making the motion for hearing
10 shall give not less than five days' notice in writing of such
11 hearing to the levying officer and to the other party, and
12 specify therein that the hearing is for the purpose of
13 determining the claim to exemption. The notice may be
14 of motion or of hearing and upon the filing of the notice
15 with the clerk of court, the motion is deemed made.

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

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

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

1 (i) At such hearing, the party claiming the exemption
2 shall have the burden of proof. The affidavits and
3 counteraffidavits shall be filed by the levying officer with
4 the court and shall constitute the pleadings, subject to the
5 power of the court to permit an amendment in the
6 interests of justice. The affidavit of exemption shall be
7 deemed controverted by the counteraffidavit and both
8 shall be received in evidence. Nothing herein shall be
9 construed to deprive anyone of the right to a jury trial in
10 any case where, by the Constitution, such right is given,
11 but a jury trial may be waived in any such case in like
12 manner as in the trial of an action. No findings shall be
13 required in a proceeding under this section. When the
14 hearing is before the court sitting without a jury, and no
15 evidence other than the affidavit and counteraffidavit is
16 offered, the court, if satisfied that sufficient facts are
17 shown thereby, may make its determination thereon.
18 Otherwise, it shall order the hearing continued for the
19 production of other evidence, oral or documentary, or
20 the filing of other affidavits and counteraffidavits. At the
21 conclusion of the hearing, the court shall give judgment
22 determining whether the claim to exemption shall be
23 allowed or not, in whole or in part, and may give
24 judgment determining the priority or division of
25 payment between one or more creditors from
26 nonexempt earnings under the provisions of Section
27 690.6, which judgment shall be determinative as to the
28 right of the creditor to have the property taken and held
29 by the officer or to subject the property to payment or
30 other satisfaction of his judgment. In such judgment the
31 court shall make all proper orders for the disposition of
32 such property or the proceeds thereof.

33 (j) A copy of any judgment entered in the trial court
34 shall be forthwith transmitted by the clerk to the levying
35 officer in order to permit such officer to either release the
36 property attached or to continue to hold it to sell it, in
37 accordance with the provisions of the writ previously
38 delivered to him. Such officer, unless an appeal from the
39 judgment is waived, or the judgment has otherwise
40 become final, shall continue to hold such property under

1 attachment or execution, continuing the sale of any
2 property held under execution until such judgment
3 becomes final. However, if a claim to exemption under
4 Section 690.5½ or 690.6 is allowed by such judgment, the
5 debtor shall be entitled to a release of the earnings so
6 exempted at the expiration of three days, unless
7 otherwise ordered by the court, or unless the levying
8 officer shall have been served with a copy of a notice of
9 appeal from the judgment.

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

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

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

20 ~~SEC. 14. Section 710 of the Code of Civil Procedure,~~
21 ~~as amended by Chapter 1480 of the Statutes of 1971, is~~
22 ~~amended to read:~~

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

34 1. If such money is owing and unpaid by this state to
35 such judgment debtor, said judgment creditor shall file
36 said abstract or transcript and affidavit with the state
37 department, board, office or commission owing such
38 money to said judgment debtor prior to the time such
39 state department, board, office or commission presents
40 ~~the claim of such judgment debtor therefor to the State~~

1 ~~Controller. Said state department, board, office or~~
2 ~~commission in presenting such claim of such judgment~~
3 ~~debtor to said State Controller shall note thereunder the~~
4 ~~fact of the filing of such abstract or transcript and~~
5 ~~affidavit and state the amount unpaid on said judgment~~
6 ~~as shown by said affidavit and shall also note any amounts~~
7 ~~advanced to the judgment debtor by, or which the~~
8 ~~judgment debtor owes to, the State of California by~~
9 ~~reason of advances for expenses or for any other purpose.~~
10 ~~Thereupon the State Controller, to discharge such claim~~
11 ~~of such judgment debtor, shall pay into the court which~~
12 ~~issued such abstract or transcript by his warrant or check~~
13 ~~payable to said court the whole or such portion of the~~
14 ~~amount due such judgment debtor on such claim, after~~
15 ~~deducting from such claim an amount sufficient to~~
16 ~~reimburse the state department, board, office or~~
17 ~~commission for any amounts advanced to said judgment~~
18 ~~debtor or by him owed to the State of California, as will~~
19 ~~satisfy in full or to the greatest extent the amount unpaid~~
20 ~~on said judgment and the balance thereof, if any, to the~~
21 ~~judgment debtor.~~

22 2. If such money is owing and unpaid to such judgment
23 debtor by any county, city and county, city or
24 municipality, quasi-municipality, district or public
25 corporation, said judgment creditor shall file said abstract
26 or transcript and affidavit with the auditor of such
27 county, city and county, city or municipality,
28 quasi-municipality, district or public corporation (and in
29 case there be no auditor then with the official whose duty
30 corresponds to that of auditor). Thereupon said auditor
31 (or other official) to discharge such claim of such
32 judgment debtor shall pay into the court which issued
33 such abstract or transcript by his warrant or check
34 payable to said court the whole or such portion of the
35 amount due on such claim of such judgment debtor as
36 will satisfy in full or to the greatest extent the amount
37 unpaid on said judgment and the balance thereof, if any,
38 to the judgment debtor.

39 (b) ~~The judgment creditor upon filing such abstract or~~
40 ~~transcript and affidavit shall pay a fee of two dollars and~~

1 ~~fifty cents (\$2.50) to the person or agency with whom the~~
2 ~~same is filed.~~

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

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

33 ~~(e) The judgment creditor may state in the affidavit~~
34 ~~any fact or facts tending to establish the identity of the~~
35 ~~judgment debtor. No public officer or employee shall be~~
36 ~~liable for failure to perform any duty imposed by this~~
37 ~~section unless sufficient information is furnished by the~~
38 ~~abstract or transcript together with the affidavit to enable~~
39 ~~him in the exercise of reasonable diligence to ascertain~~
40 ~~such identity therefrom and from the papers and records~~

1 ~~on file in the office in which he works. The word "office"~~
 2 ~~as used herein, does not include any branch or~~
 3 ~~subordinate office located in a different city.~~
 4 ~~(f) Any fees received by a state agency under this~~
 5 ~~section shall be deposited to the credit of the fund from~~
 6 ~~which payments were, or would be, made on account of~~
 7 ~~a garnishment under this section.~~
 8 ~~(g) This section does not authorize the withholding of~~
 9 ~~earnings of a public officer or employee. The earnings of~~
 10 ~~a public officer or employee may be withheld only~~
 11 ~~pursuant to Chapter 2.5 (commencing with Section~~
 12 ~~723.010).~~
 13 ~~(h) Nothing in this section shall authorize the filing of~~
 14 ~~any abstract or transcript and affidavit against any~~
 15 ~~overpayment of tax, penalty or interest, or interest~~
 16 ~~allowable with respect to such overpayment, under Part~~
 17 ~~10 (commencing with Section 17001), or Part 11~~
 18 ~~(commencing with Section 23001), of Division 2 of the~~
 19 ~~Revenue and Taxation Code.~~

Sec. 14. Section 710 of the Code of Civil Procedure is amended to read:

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

1. If such money, ~~wages or salary~~ is owing and unpaid by this state to such judgment debtor, said judgment creditor shall file said abstract or transcript and affidavit with the state department, board, office or commission owing such money, ~~wages or salary~~ to said judgment debtor prior to the time such state department, board, office or commission presents the claim of such judgment debtor therefor to the State Controller. Said state department, board, office or commission in presenting such claim of such judgment debtor to said State Controller shall note thereunder the fact of the filing of such abstract or transcript and affidavit and state the amount unpaid on said judgment as shown by said affidavit and shall also note any amounts advanced to the judgment debtor by, or which the judgment debtor owes to, the State of California by reason of advances for expenses or for any other purpose. Thereupon the State Controller, to discharge

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

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

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

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

(d) In the event the moneys owing to a judgment debtor by any governmental agency mentioned in this section are owing by reason of an award made in a condemnation proceeding brought by the governmental agency, such governmental agency may pay the amount of the award to the clerk of the court in which such condemnation proceeding was tried, and shall file therewith the abstract or

transcript of judgment and the affidavit filed with it by the judgment creditor. Such payment into court shall constitute payment of the condemnation award within the meaning of Section 1251 of this code. Upon such payment into court and the filing with the county clerk of such abstract or transcript of judgment and affidavit, the county clerk shall notify by mail, through their attorneys, if any, all parties interested in said award of the time and place at which the court which tried the condemnation proceeding will determine the conflicting claims to said award. At said time and place the court shall make such determination and order the distribution of the money held by the county clerk in accordance therewith.

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

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

(g) Any fees received by a state agency under this section shall be deposited to the credit of the fund from which payments were, or would be, made on account of a garnishment under this section. ~~For the purpose of this paragraph, payments from the State Pay Roll Revolving Fund shall be deemed payments made from the fund out of which moneys to meet such payments were transferred to said revolving fund.~~

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

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

You may be entitled to file a claim exempting your salary or wages from execution. You may seek the advice of any attorney or may, within 10 days from the date your salary or wages were levied upon, deliver an affidavit to the court rendering the judgment to exempt such salary or wages, as provided in Section 690.50 of the Code of Civil Procedure.

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

20 SEC. 15. Chapter 2.5 (commencing with Section
21 -723.010) is added to Title 9 of Part 2 of the Code of Civil
22 Procedure, to read:

23
24 CHAPTER 2.5. EMPLOYEES' EARNINGS PROTECTION
25 LAW

26
27 Article 1. Definitions

28
29 723.010. This chapter shall be known and may be
30 cited as the "Employees' Earnings Protection Law."

31 723.011. As used in this chapter:

32 (a) "Earnings" means compensation payable by an
33 employer to an employee for personal services
34 performed by such employee whether denominated as
35 wages, salary, commission, bonus, or otherwise.

36 (b) "Employee" means ~~an~~ a public officer and any
37 individual who performs services subject to the control of
38 an employer as to both what shall be done and how it shall
39 be done.

40 (c) "Employer" means a person for whom an

1 individual performs services as an employee.

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

3 (e) "Judgment creditor" means the person in favor of
4 whom a judgment is rendered and includes his
5 representative. As applied to the state, "judgment
6 creditor" means the specific state agency seeking to
7 collect a judgment or tax liability.

8 (f) "Judgment debtor" means the person against
9 whom a judgment is rendered and includes a person
from whom the state is seeking to collect a tax
liability .

10 (g) "Person" includes an individual, a corporation, a
11 partnership or other unincorporated association, and a
12 public entity.

13 ~~(h) "State Administrator" means the Director of~~
14 ~~Industrial Relations.~~

15
16 Article 2. General Provisions
17

18 723.020. The earnings of an employee shall not be
19 required to be withheld for payment of a debt by means
20 of any judicial procedure other than pursuant to the
21 provisions of this chapter.

22 723.021. A levy upon the earnings of a judgment
23 debtor shall be made by an earnings withholding order,
24 directed to his employer, in accordance with this chapter.

25 723.022. (a) As used in this section, "withholding
26 period" means the period which commences on the fifth
27 day after service of an earnings withholding order upon
28 the employer and which continues until the first of the
29 following dates:

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

31 (2) The date of termination requested by the creditor
32 or ordered by the court.

33 (3) The date the employer has withheld the full
34 amount specified in the order.

35 (b) Except as otherwise provided by statute, an
36 employer shall withhold the amounts required by an
37 earnings withholding order from all earnings of the
38 employee payable for any pay period of such employee
39 which ends during the withholding period.

40 (c) Notwithstanding subdivision (b), an employer

1 shall cease withholding pursuant to an earnings
2 withholding order whenever he is served with a certified
3 copy of a satisfaction of the judgment upon which the
4 order is based.

5 (d) An employer is not liable for any amounts
6 withheld and paid over to a judgment creditor pursuant
7 to an earnings withholding order prior to service upon
8 the employer of a written notice of termination of such
9 order or a certified copy of a satisfaction of the judgment
10 upon which the order is based.

11 (e) For the purposes of this section, service shall be
12 deemed complete on the date the paper served is
13 actually first received at either the branch or office
14 where the employee works or the office from which he
15 is paid.

16 723.023. (a) Except as otherwise provided in this
17 chapter:

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

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

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

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

38 723.024. Each time an employer makes a deduction
39 from an employee's earnings pursuant to an earnings
40 withholding order, he may make an additional deduction

1 of one dollar (\$1) and retain it as a charge for his services
2 in complying with the earnings withholding order.

3 723.025. The amount required to be withheld
4 pursuant to an earnings withholding order shall be paid
5 to the person specified in the order within 15 days after
6 each payment of earnings is made to the employee unless
7 the employer elects to pay in regular monthly payments
8 made not later than the 15th day of each month. In the
9 latter case, the initial monthly payment shall include all
10 amounts required to be withheld from the earnings of the
11 employee during the preceding calendar month up to
12 the close of the employee's pay period ending closest to
13 the last day of that month, and thereafter each monthly
14 payment shall include amounts withheld from the
15 employee's earnings for services rendered in the interim
16 up to the close of the employee's pay period ending
17 closest to the last day of the preceding calendar month.

18 723.026. Within ~~35~~ 10 days after he receives any
19 payment pursuant to an earnings withholding order, the
20 judgment creditor shall send the judgment debtor a
21 receipt for such payment by first-class mail, *postage*
22 *prepaid*. The receipt shall indicate the amount of
the payment received and shall also indicate the total
amount received by the creditor during the period the
order has been in effect and the unpaid balance (the
amount of the judgment, plus additional accrued items,
less partial satisfactions and amounts received pursuant
to the order). No receipt is required for payments re-
ceived pursuant to a withholding order for support.

23 723.027. If the judgment pursuant to which the
24 earnings withholding order is issued is satisfied prior to
25 the end of the withholding period provided in Section
26 723.022, the judgment creditor shall promptly file a
27 satisfaction of judgment in the court which issued such
28 order and shall ~~send a certified copy of such satisfaction~~
29 ~~to the judgment debtor's employer by first-class mail,~~
30 *postage prepaid*.

31 723.028. Subject to Section 723.109, after the amount
32 stated as owing in the earnings withholding order is paid,
33 the judgment creditor may apply for issuance of another
34 earnings withholding order covering costs and interest
35 that may have accrued since application for the prior
36 order.

37 723.029. Service of an earnings withholding order
38 creates a lien upon the earnings required to be withheld
39 pursuant to such order. Such lien shall continue for a
40 period of one year from the date such earnings became

on

serve

1 payable.

2 723.030. (a) A "withholding order for support" is an
3 earnings withholding order to enforce a court order for
4 the support of any person. A withholding order for
5 support shall be denoted as such on its face.

6 (b) Notwithstanding any other provision of this
7 chapter:

8 (1) The restrictions on earnings withholding
9 contained in Section 723.050 do not apply to a
10 withholding order for support. The amount to be with-
held pursuant to a withholding order for support shall
be limited to the amount of the continuing periodic pay-
ments ordered by the court in a prior judgment except
that, upon motion of the judgment creditor, after notice
and hearing and upon good cause shown, the court may order
that the amount to be withheld pursuant to a withholding
order for support be increased to include payment, in
whole or in part, of delinquent amounts owing on the prior
judgment. The exemption provided by Section 723.051 ap-
plies to a withholding order for support. In no case
shall the amount an employer withholds pursuant to a with-
holding order for support exceed the amount of earnings
payable to the judgment debtor by the employer after de-
ducting all amounts required to be withheld by law or by
any contract which is not revocable by the employee or at
his instance.

11 (2) An employer shall continue to withhold pursuant
12 to a withholding order for support until it expires by its
13 terms or the court orders its termination.

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

19 (4) An employer shall withhold earnings of an
20 employee pursuant to both a withholding order for
21 support and another earnings withholding order
22 simultaneously. The amount to be withheld under the
23 withholding order for support shall be deducted first
24 from the earnings of the employee; the amount to be
25 withheld pursuant to the other withholding order shall
26 then be computed, based on the earnings remaining after
27 this deduction.

(5) An employer shall withhold the amount of the
periodic payments specified in the withholding order
for support. Where the period provided in the order
is different from the pay period of the employee, the
employer shall prorate the amounts withheld so that
the total amount withheld and paid over to the judg-
ment creditor for any given period equals the amount
required by the order to be withheld for the same
period. The amounts withheld shall be paid to the per-
son specified in the order in accordance with Section
723.025.

28 **723.031. (a) As used in this section:**

29 **(1) "State" means the State of California and includes**
30 **any officer, department, board, or agency thereof.**

31 **(2) "State tax liability" means a liability, including any**
32 **penalties and accrued interest and costs, for which the**
33 **state would be authorized to issue (i) a warrant pursuant**
34 **to Section 1785 of the Unemployment Insurance Code, or**
35 **Section 6776, 7881, 9001, 10111, 16071, 18906, 26191, 30341,**
36 **or 32365 of the Revenue and Taxation Code or (ii) a**
37 **notice or order to withhold pursuant to Section 1755 of**
38 **the Unemployment Insurance Code, or Section 6702,**
39 **7851, 8952, 10051, 11451, 16101, 18807, 26132, 30311, or**
40 **32381 of the Revenue and Taxation Code.**

1 ~~(b)~~ A "withholding order for taxes" is one issued
2 pursuant to this section and shall be denoted as such on
3 its face.

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

7 ~~(d)~~ A withholding order for taxes may only be issued
8 where the existence of the state tax liability either
9 appears on the face of the taxpayer's return or has been
10 determined in either an administrative or judicial
11 proceeding in which the taxpayer had notice and an
12 opportunity to be heard. No review of the taxpayer's tax
13 liability shall be permitted in proceedings under this
14 section.

15 ~~(e)~~ Except as otherwise provided in this section, the
16 provisions of this chapter shall apply to a withholding
17 order for taxes and shall govern the procedures and
18 proceedings concerning such order.

19 ~~(f)~~ The following special provisions apply to a
20 withholding order for taxes:

21 ~~(1)~~ The state may itself issue a withholding order for
22 taxes to collect a state tax liability. The amount required
23 to be withheld pursuant to an order issued under this
24 paragraph shall be specified in the order and shall be not
25 more than two times the maximum amount that is
26 permitted to be withheld under Section 723.050. At the
27 time of issuance, the state shall serve upon the taxpayer
28 ~~(i)~~ a copy of the order and ~~(ii)~~ a notice informing the
29 taxpayer of the effect of the order and his right to review
30 and modification of such order. The taxpayer may apply
31 in the manner provided in Section 723.105 to a court of
32 record in his county of residence for a hearing to claim
33 the exemption provided by Section 723.051. No fee shall
34 be charged for filing such application. After hearing, the
35 court may modify the withholding order for taxes
36 previously issued; but in no event shall the amount
37 required to be withheld be less than that permitted to be
38 withheld under Section 723.050.

39 ~~(2)~~ The state may, at any time, apply to a court of
40 record in the county where the taxpayer was last known

1 to reside for the issuance of a withholding order for taxes
2 to collect a state tax liability. Such application shall
3 include an affidavit stating that the state has served upon
4 the taxpayer (i) a copy of the application and (ii) a notice
5 informing the taxpayer of the purpose of the application
6 and his right to appear with regard to such application.
7 The court shall immediately set the matter for hearing
8 and the court clerk shall notify the state and the taxpayer
9 at least 10 days before the hearing of its time and place.
10 After hearing, the court shall issue a withholding order
11 for taxes which shall require the taxpayer's employer to
12 withhold and pay over all earnings of the taxpayer other
13 than that amount which the taxpayer proves is exempt
14 under Section 723.051, but in no event shall the amount
15 required to be withheld be less than that permitted to be
16 withheld under Section 723.050.

17 ~~(3)~~ Subject to paragraph ~~(1)~~, an employer who
18 receives a withholding order for taxes shall withhold and
19 pay over earnings of the employee pursuant to such order
20 and shall cease to withhold earnings pursuant to any prior
21 order except a withholding order for support. When an
22 employer is required to cease withholding earnings
23 pursuant to a prior order, he shall notify the judgment
24 creditor who obtained the prior order that a supervening
25 withholding order for taxes is in effect.

26 ~~(4)~~ An employer shall not withhold earnings of an
27 employee pursuant to a withholding order for taxes if a
28 prior withholding order for taxes is in effect.

29 ~~(5)~~ An employer shall continue to withhold pursuant
30 to a withholding order for taxes until the amount
31 specified in the order has been paid in full.

32 ~~(g)~~ No method of collection of an unpaid tax liability
33 from the earnings of an employee may be used by the
34 state, except as provided in this chapter.

35

36 Article 3. Restrictions on Earnings Withholding

37

38 723.050. (a) As used in this section, "nonexempt
39 earnings" for any workweek means the earnings of the
40 judgment debtor for that workweek less the sum of all the

1 following:

2 (1) The amount that would be withheld for federal
3 personal income taxes from the same amount of earnings
4 of a single person who claims one exemption.

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

9 (3) The amount that would be withheld for state
10 disability insurance contributions under Sections 984 and
11 985 of the Unemployment Insurance Code from the same
12 amount of earnings if earned during the first week of a
13 calendar year by a person subject to withholding for that
14 purpose.

15 (4) The amount that would be withheld for state
16 personal income taxes from the same amount of earnings
17 of a single person who claims one exemption.

18 (5) An amount equal to 30 times the federal minimum
19 hourly wage prescribed by Section 6(a) (1) of the Fair
20 Labor Standards Act of 1938 in effect at the time the
21 earnings are payable.

22 (b) Except as otherwise provided in Sections 723.030,
23 ~~723.031~~ 723.074, 723.075, 723.076, and 723.106, the
24 maximum amount of the earnings of a judgment debtor
25 in any workweek which can be withheld pursuant to this
26 chapter shall be computed as provided in this subdivision.
27 If the nonexempt earnings of the judgment debtor for the
28 workweek are less than thirty dollars (\$30), nothing shall
29 be withheld. If the nonexempt earnings of the judgment
30 debtor for the workweek are thirty dollars (\$30) or more,
31 ten dollars (\$10) plus 25 percent of the nonexempt
32 earnings in excess of thirty dollars (\$30) shall be withheld.
33 Where the nonexempt earnings of the judgment debtor
34 for the workweek are thirty dollars (\$30) or more, if the
35 amount computed under this subdivision is not a multiple
36 of one dollar (\$1), fractional amounts less than one-half
37 dollar (\$0.50) shall be disregarded and fractional amounts
38 of one-half dollar (\$0.50) or more shall be rounded
39 upward to the next higher whole dollar.

40 (c) The ~~State Administrator~~ *Judicial Council* shall

1 prescribe by ~~regulation~~ *rule* the method of computing
 2 the amount to be withheld in the case of earnings for any
 3 pay period other than a week, which method shall be
 4 substantially equivalent in effect to that prescribed in
 5 subdivision (b).

6 (d) The ~~State Administrator~~ *Judicial Council* shall
 7 prepare withholding tables for determining the amount
 8 to be withheld from the earnings of employees for
 9 representative pay periods. The tables may prescribe the
 10 amounts to be withheld according to reasonable earnings
 11 brackets. The tables prepared by the ~~State Administrator~~
 12 *Judicial Council* pursuant to this subdivision shall be used
 13 to determine the amount to be withheld in all cases
 14 where the tables permit computation of the amount to be
 15 withheld.

16 723.051. The portion of his earnings which a judgment
 17 debtor proves is essential for the support of himself or his
 18 family is exempt from levy under this chapter. This
 19 standard recognizes that the exemption provided by
 20 Section 723.050 should be adequate except in rare and
 21 unusual cases. Neither the judgment debtor's accustomed
 22 standard of living nor a standard of living "appropriate to
 23 his station in life" is the criterion for measuring the
 24 debtor's claim for exemption under this section.

unless the debt is incurred
for personal services ren-
dered by any employee or
former employee of the judg-
ment debtor .

25
 26 *Article 4. Earnings Withholding Orders*
 27 *for Taxes*
 28

29 723.070. *As used in this article:*

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

32 (b) "State tax liability" means a liability, including any
 33 penalties and accrued interest and costs, for which the
 34 state would be authorized to issue (1) a warrant pursuant
 35 to Section 1785 of the Unemployment Insurance Code or
 36 Section 6776, 7881, 9001, 10111, 16071, 18906, 26191, 30341,
 37 or 32365 of the Revenue and Taxation Code or (2) a
 38 notice of levy pursuant to Section 1755 of the
 39 Unemployment Insurance Code or (3) a notice or order
 40 to withhold pursuant to Section 6702, 7851, 8952, 10051,

1 11451, 16101, 18817, 26132, 30311, or 32381 of the Revenue
2 and Taxation Code.

3 ~~723.071. No method of collection of an unpaid state~~
4 ~~tax liability from the earnings of an employee may be~~
5 ~~used by the state except as provided in this chapter.~~

6 ~~723.072. (a) A "withholding order for taxes" is one~~
7 ~~issued pursuant to this article and shall be denoted as such~~
8 ~~on its face.~~

723.071. This chapter shall not limit the state's
right to collect a state tax liability except that no levy
upon earnings of an employee held by an employer shall be
effective unless such levy is made in accordance with the
provisions of this chapter and the methods of collection
referred to in subdivision (b) of Section 723.070 may not
be used to require an employer to withhold earnings of an
employee in payment of a state tax liability.

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

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

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

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

24 (c) In any case where a state tax liability has been
25 assessed or determined prior to January 1, 1974, and the
26 state determines that the requirements of subdivision (b)
27 may not have been satisfied, the state may send a "Notice
28 of Proposed Issuance of Withholding Order for Taxes" to
29 the taxpayer at his last-known address by first-class mail,
30 postage prepaid. The notice shall advise the taxpayer that
31 he may have the assessment or determination reviewed
32 by appropriate administrative procedures and how he
33 may obtain such a review. If the taxpayer is sent such a
34 notice and requests such a review within 15 days from the
35 date the notice was mailed to him, the state shall provide
36 appropriate administrative procedures for review of the
37 assessment or determination and shall not issue the
38 withholding order for taxes until the administrative
39 review procedure is completed. If the taxpayer is sent
40 such a notice and does not request such a review within

1 15 days from the date the notice was mailed to him, the
2 state may issue the withholding order for taxes.

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

6 723.073. Except as otherwise provided in this article,
7 the provisions of this chapter govern the procedures and
8 proceedings concerning a withholding order for taxes.

9 723.074. (a) The state may itself issue a withholding
10 order for taxes under this section to collect a state tax
11 liability. The order shall specify the maximum amount
12 that may be withheld pursuant to the order (unpaid tax
13 liability including any penalties, accrued interest, and
14 costs).

15 (b) The amount to be withheld by the employer
16 pursuant to an order issued under this section shall be the
17 amount required to be withheld pursuant to subdivision

18 (c) or such lesser amount as is specified in the order.

19 (c) Unless a lesser amount is specified in the order, the
20 amount to be withheld pursuant to an order issued under
21 this section is two times the maximum amount that is to

22 be withheld under Section 723.050, except that the state
23 may require that ten dollars (\$10) be withheld if, the

24 taxpayer's nonexempt earnings (as defined in Section
25 723.050) are twenty dollars (\$20) or more but less than

26 thirty dollars (\$30). The state shall prepare withholding
27 tables for determining the amount to be withheld from

28 the earnings of employees for representative pay periods
29 pursuant to orders issued under this section. The tables

30 may prescribe the amounts to be withheld according to
31 reasonable earnings brackets. The tables shall be used to
32 determine the amount to be withheld in all cases where

33 the tables permit computation of the amount to be
34 withheld.

35 723.075. (a) This section applies only to a
36 withholding order for taxes issued under Section 723.074.
37 (b) ~~At the time of issuance of a withholding order for~~
38 ~~taxes, the state shall serve upon the taxpayer both of the~~
39 ~~following:~~

40 (1) ~~A copy of the order.~~

may

(1)

or (2) the amount of the taxpayer's earnings is sufficient that a portion of his earnings would be withheld pursuant to Section 18806 of the Revenue and Taxation Code if such earnings were subject to withholding under that section but the amount of his earnings is not sufficient to permit withholding under Section 723.050 .

1 ~~(2) A notice informing the taxpayer of the effect of the~~
2 ~~order and of his right to review and modification of the~~
3 ~~order.~~

(b) Together with the withholding order for taxes,
the state shall serve upon the employer an additional copy
of the order and a notice informing the taxpayer of the
effect of the order and of his right to hearings and remedies
provided in this chapter. Within five days from the date of
service, the employer shall deliver to the taxpayer a copy of
the order and the notice. If the taxpayer is no longer em-
ployed by the employer and the employer does not owe him any
earnings, the employer is not required to make such delivery.

4 (c) *The state may provide for an administrative*
5 *hearing to reconsider or modify the amount to be*
6 *withheld pursuant to the withholding order for taxes, and*
7 *the taxpayer may request such a hearing at any time after*
8 *service of the order. If the taxpayer requests a hearing,*
9 *the hearing shall be provided, and the matter shall be*
10 *determined, within 15 days after the request is received*
11 *by the state.*

12 (d) *After the state has made its determination under*
13 *subdivision (c), the taxpayer may apply in the manner*
14 *provided in Section 723.105 to a court of record in his*
15 *county of residence for a hearing to claim the exemption*
16 *provided by Section 723.051. No fee shall be charged for*
17 *filing such application. After hearing, the court may*
18 *modify the withholding order for taxes previously issued,*
19 *but in no event shall the amount required to be withheld*
20 *be less than that permitted to be withheld under Section*
21 *723.050.*

22 723.076. (a) *A withholding order for taxes may be*
23 *issued pursuant to this section that requires the employer*
24 *of the taxpayer to withhold an amount in excess of the*
25 *amount that may be required to be withheld pursuant to*
26 *an order issued under Section 723.074.*

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

31 (c) *The application for the order shall include an*
32 *affidavit stating that the state has served upon the*
33 *taxpayer both of the following:*

34 (1) *A copy of the application.*

35 (2) *A notice informing the taxpayer of the purpose of*
36 *the application and his right to appear in regard to the*
37 *application.*

38 (d) *Upon the filing of the application, the court shall*
39 *immediately set the matter for hearing and the court*
40 *clerk shall send a notice of the time and place of the*

1 hearing by first-class mail, postage prepaid, to the state
2 and the taxpayer. The notice shall be deposited in the
3 mail at least 10 days before the day set for the hearing.
4 (e) After hearing, the court shall issue a withholding
5 order for taxes which shall require the taxpayer's
6 employer to withhold and pay over all earnings of the
7 taxpayer other than that amount which the taxpayer
8 proves is exempt under Section 723.051, but in no event
9 shall the amount to be withheld be less than that
10 permitted to be withheld under Section 723.050.

(f) The state may issue a temporary earnings holding order,
which shall be denoted as such on its face, in any case where the
state intends to apply for withholding order for taxes under this
section and has determined that the collection of the state tax
liability will be jeopardized in whole or in part if the temporary
earnings holding order is not issued. The temporary earnings hold-
ing order shall be directed to the taxpayer's employer and shall require
him to retain in his possession or under his control all or such portion
of the earnings of the taxpayer then or ^{thereafter} / due as is specified in the
order. The temporary earnings holding order expires 15 days from the
date it is served on the employer unless it is extended by the court
on ex parte application for good cause shown. If a temporary earnings
holding order is served on an employer, the state may not thereafter,
for a period of six months, serve on the same employer another tempo-
rary earnings holding order for the same employee unless the court
for good cause shown otherwise orders. Sections 723.153 and 723.154
apply to temporary earnings holding orders issued under this section.

11 723.077. (a) Subject to subdivision (b), an employer
12 upon whom a withholding order for taxes is served shall
13 withhold and pay over earnings of the employee
14 pursuant to such order and shall cease to withhold
15 earnings pursuant to any prior order except a
16 withholding order for support. When an employer is
17 required to cease withholding earnings pursuant to a
18 prior order, he shall notify the judgment creditor who
19 obtained the prior order that a supervening withholding
20 order for taxes is in effect.

21 (b) An employer shall not withhold earnings of an
22 employee pursuant to a withholding order for taxes if a
23 prior withholding order for taxes is in effect, and, in such
24 case, the subsequent withholding order for taxes is
25 ineffective.

~~26 723.078. An employer shall continue to withhold~~

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

(b) A "Jeopardy Withholding Order for Taxes," which shall
be denoted as such on its face, requires that the employer
withhold pursuant to the order from earnings due to the em-
ployee at the time of service of the order on the employer
and from earnings thereafter due. A Jeopardy Withholding
Order for Taxes may be issued only in those rare and unusual
cases where the state finds that the collection of a state
tax liability will be jeopardized in whole or in part by
delaying the time when withholding from earnings commences.

(c) An employer shall continue to withhold

27 pursuant to a withholding order for taxes until the
28 amount specified in the order has been paid in full. The
29 state shall promptly serve on the employer a notice
30 terminating the withholding order for taxes if the state
31 tax liability for which the withholding order for taxes was
32 issued is satisfied before the employer has withheld the
33 full amount specified in the order, and the employer shall
34 discontinue withholding in compliance with such notice.
35 723.079. No receipt need be sent to the taxpayer for
36 amounts paid over to the state pursuant to a withholding
37 order for taxes unless the taxpayer has requested in
38 writing that he be sent receipts for such amounts.
39 723.080. Service of a withholding order for taxes or of
40 any other notice or document required under this

1 *chapter in connection with a withholding order for taxes*
2 *may be made by first-class mail, postage prepaid. Service*
3 *of a withholding order for taxes is complete when it is*
4 *received by the employer. Service of, or the providing of,*
5 *any other notice or document required to be served or*
6 *provided under this chapter in connection with a*
7 *withholding order for taxes is complete when the notice*
8 *or document is deposited in the mail addressed to the last*
9 *known address of the person on whom it is served or to*
10 *whom it is to be provided.*

11 *723.081. Except for the forms referred to in Section*
12 *723.076, the state shall prescribe the form of any order,*
13 *notice, or other document required by this chapter in*
14 *connection with a withholding order for taxes*
15 *notwithstanding Sections 723.100 and 723.120, and any*
16 *form so prescribed is deemed to comply with this*
17 *chapter.*

18 *723.082. No review of the taxpayer's tax liability shall*
19 *be permitted in any court proceedings under this article, chapter .*

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

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

20

21

Article 4 5. Procedure for Issuance of
Earnings Withholding Orders

22

23

24 *723.100. The Judicial Council may provide by rule,*
25 *not inconsistent with this chapter, for practices and*
26 *procedures in proceedings under this chapter.*

27 *723.100. Notwithstanding any other provision of law,*
28 *the Judicial Council may provide by rule for the practice*
29 *and procedure in proceedings under this chapter.*

except for the state's administrative hearings
provided by Article 4 (commencing with Section
723.070) .

- 30 723.101. (a) Service under this chapter shall be by
31 personal delivery or by registered or certified mail,
32 postage prepaid with return receipt requested. When
33 service is made by mail, service is completed at the time
34 the return receipt is executed by the recipient or his
35 representative.
- 36 (b) Notwithstanding Section 1032.6, except as
37 provided in subdivision (c), a judgment creditor is not
38 entitled to the costs of service under this chapter which
39 exceed the cost of service by certified mail with return
40 receipt requested.

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

5 (d) Where the employer of the judgment debtor
6 refuses to accept service by mail of an earnings
7 withholding order and the judgment creditor
8 subsequently serves such order by personal delivery and
9 his order is denied effect because an intervening order
10 has been given effect, upon application of the judgment
11 creditor, the court which issued the judgment creditor
12 his original earnings withholding order shall make a
13 special order directed to the employer to cease
14 withholding under the intervening order and to comply
15 with the original order. In these circumstances, for the
16 purposes of Section 723.022, service of the original order
17 shall be deemed complete on the date of service of the
18 special order directing the employer to comply with the
19 original order.

20 723.102. A judgment creditor may apply for the
21 issuance of an earnings withholding order by filing an
22 application, in the form prescribed by the Judicial
23 Council, with the clerk of the court which entered the
24 judgment pursuant to which the earnings withholding
25 order is sought. Upon the filing of the application,

the court clerk shall promptly issue an earnings with-
holding order in the form prescribed pursuant to Sec-
tions 723.120 and 723.125.

26 ~~723.103. (a) At the time of filing an application for~~
27 ~~issuance of an earnings withholding order, the judgment~~
28 ~~creditor shall ~~mail~~ send the following to the judgment~~
29 ~~debtor by first-class mail, postage prepaid:~~

30 ~~(1) A copy of the application for the earnings~~
31 ~~withholding order.~~

32 ~~(2) A notice of the application.~~

33 ~~(b) The papers specified in subdivision (a) shall be~~
34 ~~mailed to the judgment debtor at his last known~~
35 ~~residence address or, if no such address is known to the~~
36 ~~judgment creditor, such papers may be mailed to the~~
37 ~~judgment debtor in an envelope marked~~
38 ~~"Personal—Important Documents" addressed to him at~~
39 ~~his place of employment.~~

40 ~~(c) The failure of the judgment debtor to receive the~~

1 ~~papers specified in subdivision (a) does not affect the~~
2 ~~validity of a properly issued earnings withholding order~~
3 ~~723.104. Upon application of a judgment creditor, the~~
4 ~~court clerk shall promptly issue an earnings withholding~~
5 ~~order in the form prescribed by Section 723.125.~~

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

(1) Two copies of the earnings withholding order.

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

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

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

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

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

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

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

6 723.105. (a) A judgment debtor may apply for a
7 hearing to claim an exemption under this chapter if:

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

10 (2) There has been a material change in
11 circumstances since the time of the last prior hearing on
12 the earnings withholding order.

13 (b) Application for a hearing shall be made by filing an
14 original and one copy of (1) the judgment debtor's
15 application for hearing and (2) if he claims the
16 exemption provided by Section 723.051, his financial
17 statement.

18 (c) The hearing shall be held within 15 days after the
19 date the application is filed. The court clerk shall ~~notify~~
20 ~~the judgment debtor and the judgment creditor at least~~
21 ~~10 days before the hearing of its time and place send a~~
22 ~~notice of the time and place of the hearing to the~~
23 ~~judgment debtor and judgment creditor by first-class~~
24 ~~mail, postage prepaid, and shall include with the notice~~
25 ~~to the judgment creditor a copy of the application for~~
26 ~~hearing and the financial statement, if any. The notice~~
27 ~~shall be deposited in the mail at least 10 days before the~~
28 ~~day set for the hearing.~~

29 (d) If, after hearing, the court orders that the earnings
30 withholding order be modified or terminated, the clerk
31 shall promptly send *by first-class mail, postage prepaid, to*
32 *the employer of the judgment debtor (1) a copy of the*
33 *modified earnings withholding order to the employer of*
34 *the judgment debtor or notify the employer in writing or*
35 *(2) a notice that the earnings withholding order has been*
36 *terminated. The court may order that the earnings*
37 *withholding order be terminated as of a date which*
38 *precedes the date of hearing.*

39 (e) Except as provided in Section 723.106, if the
40 earnings withholding order is terminated by the court,

1 unless the court otherwise orders or unless there is a
2 material change of circumstances since the time of the
3 last prior hearing on the earnings withholding order, the
4 judgment creditor may not apply for another earnings
5 withholding order directed to the same employer with
6 respect to the same judgment debtor for a period of 125
7 days following the date of service of the earnings
8 withholding order or 60 days after the date of the
termination of the order, whichever is later .

9 (f) If an employer has withheld and paid over amounts
10 pursuant to an earnings withholding order after the date
11 of termination of such order but prior to the receipt of
12 notice of its termination, the judgment debtor may
13 recover such amounts only from the judgment creditor.
14 If the employer has withheld amounts pursuant to an
15 earnings withholding order after termination of the order
16 but has not paid over such amounts to the judgment
17 creditor, the employer shall pay over such amounts to the
18 judgment debtor.

19 723.106. (a) As used in this section, "earnings"
20 includes all compensation (whether denominated as
21 wages, salary, commission, bonus, tips, or otherwise) for
22 personal services performed by an employee, whether
23 paid or payable by the employer or by any other person.

24 (b) Where a judgment debtor has earnings from more
25 than one source, an earnings withholding order may be
26 issued based on the debtor's total earnings but directed
27 to one employer.

28 (c) An employer shall not be required to withhold
29 pursuant to this section an amount in excess of the lesser
30 of either of the following:

31 (1) The amount of earnings payable to the judgment
32 debtor by the employer after deducting all amounts
33 required to be withheld by law or by any contract which
34 is not revocable by the employee or at his instance.

35 (2) An amount equal to that which would be
36 permitted to be withheld if the total earnings of the
37 debtor from all sources were used in computing the
38 amount that is permitted to be withheld under Section
39 723.050.

40 (d) A judgment creditor may, at any time, request a

1 hearing to prove that the judgment debtor receives
2 earnings from more than one source and that the
3 judgment creditor should be granted an order requiring
4 one employer to withhold a greater amount from the
5 earnings payable by that employer than he would have to
6 withhold were he the judgment debtor's only source of
7 earnings. The request shall set out the facts on which the
8 judgment creditor's claim is based. The request shall be
9 made to the court to which application is made for the
10 earnings withholding order.

11 (e) The court shall set the matter for hearing after
12 receiving the written request together with an affidavit
13 stating that the judgment creditor has served a copy of
14 the request for hearing in the manner provided in
15 Section 723.101. The court clerk shall ~~notify~~ *send a notice*
16 *of the time and place of the hearing to the judgment*
17 *debtor and the judgment creditor at least 10 days before*
18 *the hearing of its time and place by first-class mail,*
19 *postage prepaid. The notice shall be deposited in the mail*
20 *at least 10 days before the day set for the hearing.*

21 (f) The judgment creditor has the burden of proof on
22 the issue of his right to have a greater amount withheld
23 by one employer pursuant to this section. ~~If the court~~
24 ~~finds~~ that the judgment creditor is entitled to an order
25 requiring an employer to withhold a greater amount
26 from the judgment debtor's earnings than the employer
27 would have had to withhold were he the judgment
28 debtor's only source of earnings, the court shall make an
29 appropriate order.

30 (g) The hearing provided by this section may be
31 combined with a hearing under Section 723.105. If an
32 earnings withholding order has previously been issued
33 under this section, the court, after hearing held at the
34 request of either the judgment debtor or the judgment
35 creditor, may modify the prior order, and the clerk shall
36 promptly send a copy of the revised order to the
37 employer of the judgment debtor *by first-class mail,*
38 *postage prepaid.*

39 ~~723.107. (a) The earnings withholding order,~~
40 ~~together with the form for an employer's return, shall be~~

Upon determining

1 served upon the designated employer by the judgment
2 creditor.

3 (D) At the time he makes service pursuant to
4 subdivision (a), the judgment creditor shall provide the
5 employer with a copy of the informational pamphlet and
6 the withholding tables published by the State
7 Administrator Judicial Council.

8 (c) The State Administrator Judicial Council may
9 promulgate rules and regulations permitting waiver of or
10 variances from the requirements of subdivision (b).

11 (d) An earnings withholding order served upon the
12 employer more than 45 days after its date of issuance is
13 void ineffective.

14 723.108. Any employer who is served with an earnings
15 withholding order shall complete the employer's return
16 on the form provided by the judgment creditor and shall
17 mail it by first-class mail, postage prepaid, to the
18 judgment creditor within 15 days from the date of
19 service. If the earnings withholding order is ineffective or
20 void, the employer shall state in his employer's return
21 that he is not complying with the order for this reason
22 and shall return the order to the judgment creditor with
23 the employer's return.

723.107. No findings shall be required in court

proceedings under this chapter.

723.108.

24 ~~723.109.~~ If an employer withholds earnings pursuant
25 to an earnings withholding order, the judgment creditor
26 who obtained such withholding order may not serve
27 another withholding order on the same employer
28 requiring him to withhold earnings of the same employee
29 during the 10 days following the expiration of the prior
30 earnings withholding order.

31

32 Article 5 6. Forms; Instructional Pamphlet;
33 Withholding Table, Tables

Employer's
Instructions

34
35 723.120. The Judicial Council shall prescribe the form
36 of the applications, notices, orders, and other documents
37 required by this chapter and only such forms may be used
38 to implement this chapter. Such forms shall require the
39 information prescribed by this chapter and such
40 additional information as the Judicial Council requires.

1 Any such form prescribed by the Judicial Council is
2 deemed to comply with this chapter.

3 723.121. The "Application for Issuance of Earnings
4 Withholding Order" shall be executed under oath and
5 shall include all of the following:

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

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

9 court (c) The ~~date and place~~ where the judgment is was
10 entered and the date the judgment was entered.

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

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

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

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

20 (h) A statement that the applicant has no information
21 or belief that the indebtedness for which the order is
22 sought has been discharged by a discharge granted to the
23 judgment debtor under the National Bankruptcy Act or federal
24 that the prosecution of the proceeding has been stayed in
25 a proceeding under the National Bankruptcy Act. federal

26 ~~(i) A statement that the applicant has complied with
27 the requirements of Section 723.103~~

28 ~~723.122. In addition to other information required by
29 the rules and regulations of the State Administrator, the~~

30 ~~723.122. The "Notice of the Application for Issuance
723.122. The "Notice to Employee~~

31 of an Earnings Withholding Order" shall inform the
32 judgment debtor of all of the following:

33 (a) The ~~judgment creditor has asked the court to~~
34 ~~order~~ the named employer to withhold from the earnings
35 of the judgment debtor the maximum amounts allowed
36 by law and to pay these amounts over to the person
37 specified in the application for the order in payment of
38 the judgment described in the application. order

39 (b) The maximum amounts allowed by law to be
40 withheld pursuant to Section 723.050 on illustrative

has
ordered

or such
other amount
as is speci-
fied in the
order.

1 amounts of earnings.

2 (c) No amount can be withheld from the earnings of
 3 a judgment debtor (1) for a debt which he can prove has
 4 been discharged by a discharge granted to him under the
 5 ~~National~~ federal Bankruptcy Act or (2) where he can prove that
 6 further proceedings for the collection of such debt have
 7 been stayed in a proceeding under the ~~National~~ federal
 8 Bankruptcy Act.

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

12 (e) If a judgment debtor wishes a court hearing to
 13 prove that amounts should not be withheld from his
 14 earnings, he shall file with the clerk of court two copies
 15 of the "Application of Judgment Debtor for Hearing,"
 16 and, in addition, if he claims the exemption referred to in
 17 paragraph (d), he shall also file with the clerk two copies
 18 of the "Judgment Debtor's Financial Statement." The
 19 notice shall also advise the judgment debtor that the
 20 forms needed to apply for a hearing and for the financial
 21 ~~statement may be obtained at the office of the county~~
 22 ~~clerk clerks and at the offices of the clerk of such other~~
 23 ~~courts as the Judicial Council may determine. The county~~
 24 ~~clerk and such other clerks shall have the forms available~~
 25 ~~at their offices.~~

statement may be obtained at the office of any clerk
of a trial court. The clerk of each trial court shall
have the forms available at his office.

26 723.123. The "Application of Judgment Debtor for
 27 Hearing" shall be executed under oath. Where the
 28 judgment debtor claims the exemption provided by
 29 Section 723.051, his application for a hearing shall indicate
 30 how much he believes should be withheld from his
 31 earnings each pay period by his employer pursuant to the
 32 earnings withholding order.

33 723.124. The "Judgment Debtor's Financial
 34 Statement" shall be executed under oath and shall
 35 include all of the following information:

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

38 (b) All sources of the judgment debtor's earnings and
 39 other income and the amounts of such earnings and other
 40 income.

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

3 (d) A listing of all assets of the judgment debtor and
4 of the persons listed in subdivision (a) and the value of
5 such assets.

6 (e) All outstanding obligations of the judgment
7 debtor.

8 (f) Any extraordinary prospective expenses that
9 would justify a reduction in the amount of earnings that
10 would otherwise be withheld pursuant to Section 723.050.

11 (g) Whether any earnings withholding orders are in
12 effect for the judgment debtor or the persons listed in
13 subdivision (a).

14 723.125. The "Earnings Withholding Order" shall
15 include all of the following:

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

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

20 (c) The ~~date and place~~ *court* where the judgment was
21 entered, *the date the judgment was entered*, and the
22 name of the judgment creditor.

23 (d) ~~The~~ maximum amount that may be withheld
24 pursuant to the order (the amount of the judgment, plus
25 additional accrued items, less partial satisfactions, if any).

26 (e) A description of the withholding period and an
27 order to the employer to withhold from the earnings of
28 the judgment debtor the amount required by law to be
29 withheld or the amount specified in the order, as the case
30 may be, during such period.

31 (f) An order to the employer to pay over to the
32 judgment creditor or his representative at a specified
33 address the amount required to be withheld pursuant to
34 the order in the manner and within the times provided
35 by law.

36 (g) An order that the employer fill out the
37 "Employer's Return" and return it by first-class mail,
38 *postage prepaid*, to the judgment creditor or his
39 representative at a specified address within 15 days after
40 service of the earnings withholding order.

(h) An order that the employer deliver to the judgment debtor a copy of the earnings withholding order and the "Notice to Employee of Earnings Withholding Order" within five days after service of the earnings withholding order; but, if the judgment debtor is no longer employed by the employer and the employer does not owe him any earnings, the employer is not required to make such delivery.

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

Except for a with-
holding order for
support, the

1 ~~723.126.~~ The requirements of Section 723.125 do not
2 apply to an earnings withholding order for taxes or for
3 support. The Judicial Council shall prescribe the form
4 and contents of withholding orders for taxes or for
5 support.

6 ~~723.127.~~ 723.126. (a) The "Employer's Return" shall
7 be executed under oath and, in addition to other matters
8 required by rules and regulations of the State
9 Administrator, the . The form for the return provided to
10 the employer shall state all of the following information:

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

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

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

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

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

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

29 (3) Whether the employer is presently required to
30 comply with a prior earnings withholding order and, if so,
31 the name of the judgment creditor who secured the prior
32 order, the court which issued such order, the date it was
33 issued, the date it was served, and the expiration date of
34 such order.

35 (4) *If the employer elects to make payments to the*
36 *judgment creditor monthly as authorized under Section*
37 *723.025, a statement that the employer has made such*
38 *election.*

39 ~~723.128.~~ (a) The State Administrator 723.127. (a)
40 The Judicial Council shall prepare ~~an informational~~

"Employer's Instructions"

these instructions

Except to the extent that they are included in the forms required to be provided to the employer by the judgment creditor, the

Employer's Instructions

1 pamphlet for employers and revise or supplement it, to
2 reflect changes in the law or rules regulating the
3 withholding of earnings.

4 (b) ~~The State Administrator~~ *Judicial Council* shall
5 publish the ~~informational pamphlet~~ and the withholding
6 tables adopted by him pursuant to Section 723.050. He
7 ~~The Judicial Council~~ may impose a charge for copies
8 sufficient to recover the cost of printing.

10 Article 6 7. Administration and Enforcement

11
12 723.150. Except for those duties required of the
13 Judicial Council, the State Administrator shall administer
14 this chapter.

15 723.151. (a) The State Administrator, in accordance
16 with the provisions of Chapter 4.5 (commencing with
17 Section 11371) of Part 1 of Division 3 of Title 2 of the
18 Government Code, shall adopt, amend, and repeal such
19 rules and regulations as are reasonably necessary for the
20 purpose of administering this chapter and as are not
21 inconsistent with this chapter.

22 (b) The State Administrator shall prescribe by
23 regulation the pay period or periods to which various
24 forms of compensation, such as commissions, bonuses,
25 retroactive pay increases, and the like, are to be allocated
26 and the method of computing the amount to be withheld
27 from such forms of compensation under Section 723.050.

28 723.152. The State Administrator may perform all acts

29 723.150. *The Judicial Council shall adopt such rules*
30 *for the administration of this chapter, including rules*
31 *prescribing the pay period or periods to which various*
32 *forms of prepaid or deferred earnings are to be allocated*
33 *and the method of computing the amount to be withheld*
34 *from such forms of earnings under Section 723.050.*

35 723.151. *The Judicial Council may perform all acts*
36 *required by the Administrator of the Wage and Hour*
37 *Division of the United States Department of Labor as*
38 *conditions to exemption of this state from the earnings*
39 *garnishment provisions of the Consumer Credit*
40 *Protection Act of 1968 (15 U.S.C. Secs. 1671-1677),*

1 including, but not limited to:

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

8 (b) Submitting to the Administrator of the Wage and
9 Hour Division in duplicate and on a current basis, a
10 certified copy of every statute of this state affecting
11 earnings withholding, and a certified copy of any decision
12 in any case involving any of those statutes, made by the
13 Supreme Court of this state.

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

18 ~~723.153.~~ Any order of the court made pursuant to this
19 chapter may be enforced by the court by contempt or
20 other appropriate order.

21 ~~723.154.~~ 723.152. If an employer withholds earnings
22 pursuant to this chapter and, with the intent to defraud
23 either the judgment creditor or the judgment debtor,
24 fails to pay such withheld earnings over to the judgment
25 creditor, the employer is guilty of a misdemeanor.

26 ~~723.155.~~ 723.153. (a) No employer shall defer or
27 accelerate any payment of earnings to an employee with
28 the intent to defeat or diminish the satisfaction of a
29 judgment creditor's rights under an earnings withholding
30 order issued pursuant to the procedures provided by this
31 chapter.

32 (b) *If an employer violates this section, the judgment*
33 *creditor may bring a civil action against the employer to*
34 *recover the amount that would have been payable to the*
35 *judgment creditor pursuant to this chapter had the*
36 *employer not violated this section. The remedy provided*
37 *by this subdivision is not exclusive.*

38 ~~723.156.~~ 723.154. (a) If an employer fails to withhold
39 or to pay over the amount he is required to withhold and
40 pay over pursuant to this chapter, the judgment creditor

1 may bring a civil action against such employer to recover
2 such amount. *The remedy provided by this subdivision is*
3 *not exclusive.*

4 (b) Notwithstanding subdivision (a), an employer
5 who complies with any written order or written notice
6 which purports to be given or served in accordance with
7 the provisions of this chapter is not subject to any civil or
8 criminal liability for such compliance unless he has
9 actively participated in a fraud.

10 ~~723.157. 723.155.~~ The fee for filing an application for
11 an earnings withholding order under Section 723.102 is
12 two dollars (\$2). No other filing fees may be charged
13 under this chapter.

14 ~~SEC. 16. Section 15406 of the Financial Code, as~~
15 ~~amended by Chapter 625 of the Statutes of 1971, is~~
16 ~~repealed.~~

16 .

17 ~~SEC. 17A~~ Section 300 of the Labor Code is amended to
18 read:

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

22 (b) No assignment of wages, earned or to be earned,
23 is valid unless all of the following conditions are satisfied:

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

29 (2) Where the assignment is made by a married
30 person, the written consent of the spouse of the person
31 making the assignment is attached to the assignment. No
32 such consent is required of any married person (i) after
33 entry of a judgment decreeing his legal separation from
34 his spouse or (ii) if the married person and his spouse are
35 living separate and apart after entry of an interlocutory
36 judgment of dissolution of their marriage, if a written
37 statement by the person making the assignment, setting
38 forth such facts, is attached to or included in the
39 assignment.

40 (3) Where the assignment is made by a minor, the

1 written consent of a parent or guardian of the minor is
2 attached to the assignment.

3 (4) Where the assignment is made by a person who is
4 unmarried or who is an adult or who is both unmarried
5 and adult, a written statement by the person making the
6 assignment, setting forth such facts, is attached to or
7 included in the assignment.

8 (5) No other assignment exists in connection with the
9 same transaction or series of transactions and a written
10 statement by the person making the assignment to that
11 effect is attached to or included in the assignment.

12 (6) A copy of the assignment and of the written
13 statement provided for in paragraphs (2), (4), and (5),
14 authenticated by a notary public, is filed with the
15 employer, accompanied by an itemized statement of the
16 amount then due to the assignee.

17 (7) At the time the assignment is filed with the
18 employer, no other assignment of wages of the employee
19 is subject to payment and no earnings withholding order
20 against his wages or salary is in force.

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

29 (d) Under any assignment of wages, a sum not to
30 exceed 50 per centum of the assignor's wages or salary
31 shall be withheld by, and be collectible from, the
32 assignor's employer at the time of each payment of such
33 wages or salary.

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

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

8 (g) No assignment of wages, earned or to be earned,
9 is valid under any circumstances if the wages or salary
10 earned or to be earned are paid under a plan for payment
11 at a central place or places established under the
12 provisions of Section 204a.

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

17 .

24 ~~SEC. 18~~ Section 2929 of the Labor Code, as added by
25 Chapter 1607 of the Statutes of 1971, is amended to read:

26 2929. (a) As used in this section:

27 (1) "Garnishment" means any judicial procedure
28 through which the wages of an employee are required to
29 be withheld for the payment of any debt. *For the*
30 *purposes of this section, "garnishment" includes the*
31 *withholding of the wages of an employee pursuant to an*
32 *earnings withholding order for taxes issued pursuant to*
33 *Article 4 (commencing with Section 723.070) of Chapter*
34 *2.5 of Title 9 of Part 2 of the Code of Civil Procedure, and*
35 *the withholding of wages pursuant to such an order shall*
36 *be deemed to be a garnishment for the payment of a*
37 *judgment for the purposes of subdivision (c).*

38 (2) "Wages" has the same meaning as that term has
39 under Section 200.

40 (b) No employer may discharge any employee by

1 reason of the fact that the garnishment of his wages has
2 been threatened.

3 (c) No employer may discharge any employee by
4 reason of the fact that his wages have been subjected to
5 garnishment for the payment of one judgment.

6 ~~(d) No employer may discharge any employee by~~
7 ~~reason of the fact that his wages have been subjected to~~
8 ~~garnishment pursuant to Section 723.030 of the Code of~~
9 ~~Civil Procedure (support order), and the fact that an~~
10 ~~employee's wages have been subjected to garnishment~~
11 ~~pursuant to that section shall not be counted for the~~
12 ~~purposes of subdivision (e).~~

(d) A continuing garnishment of wages pursuant to
Section 723.030 of the Code of Civil Procedure (sup-
port order) shall be considered a garnishment for the
payment of one judgment for the purposes of this sec-
tion.

and (c)

13 (e) A provision of a contract of employment that
14 provides an employee with less protection than is
15 provided by subdivisions (b), ~~(e), and (d)~~, is against
16 public policy and void.

17 (f) Unless the employee has greater rights under the
18 contract of employment, the wages of an employee who
19 is discharged in violation of this section shall continue
20 until reinstatement notwithstanding such discharge, but
21 such wages shall not continue for more than 30 days and
22 shall not exceed the amount of wages earned during the
23 30 calendar days immediately preceding the date of the
24 levy of execution upon the employee's wages which
25 resulted in his discharge. The employee shall give notice
26 to his employer of his intention to make a wage claim
27 under this subdivision within 30 days after being
28 discharged; and, if he desires to have the Labor
29 Commissioner take an assignment of his wage claim, the
30 employee shall file a wage claim with the Labor
31 Commissioner within 60 days after being discharged. The
32 Labor Commissioner may, in his discretion, take
33 assignment of wage claims under this subdivision as
34 provided for in Section 96. A discharged employee shall
35 not be permitted to recover wages under this subdivision
36 if a criminal prosecution based on the same discharge has
37 been commenced for violation of Section 304 of the
38 Consumer Credit Protection Act of 1968 (15 U.S.C. Sec.
39 1674).

40 (g) Nothing in this section affects any other rights the

1 employee may have against his employer.

2 (h) This section is intended to aid in the enforcement
3 of the prohibition against discharge for garnishment of
4 earnings provided in the Consumer Credit Protection
5 Act of 1968 (15 U.S.C. Secs. 1671-1677) and shall be
6 interpreted and applied in a manner which is consistent
7 with the corresponding provisions of such act.

18 .

8 ~~SEC. 19.~~ Section 270h of the Penal Code, as amended
9 by Chapter 1587 of the Statutes of 1971, is amended to
10 read:

11 270h. In any case where there is a conviction under
12 the provisions of either Section 270 or 270a and there is
13 an order granting probation which includes an order for
14 support, the court may:

15 (a) Issue an execution on such order for the support
16 payments that accrue during the time such probation
17 order is in effect, in the same manner as on a judgment
18 in a civil action for support payments. This remedy shall
19 apply only when there is no existing civil order of this
20 state or a foreign court order that has been reduced to a
21 judgment of this state for support of the same person or
22 persons included in the probation support order.

23 (b) Issue an earnings withholding order under Section
24 723.030 of the Code of Civil Procedure to enforce the
25 order for support.

26 These remedies are in addition to any other remedies
27 available to the court.

19 .

28 ~~SEC. 20.~~ Section 1208 of the Penal Code, as amended
29 by Chapter 1313 of the Statutes of 1971, is amended to
30 read:

31 1208. (a) The provisions of this section, insofar as
32 they relate to employment, shall be operative in any
33 county in which the board of supervisors by ordinance
34 finds, on the basis of employment conditions, the state of
35 the county jail facilities, and other pertinent
36 circumstances, that the operation of this section, insofar
37 as it relates to employment, in that county is feasible. The
38 provisions of this section, insofar as they relate to
39 education, shall be operative in any county in which the
40 board of supervisors by ordinance finds, on the basis of

1 education conditions, the state of the county jail facilities,
2 and other pertinent circumstances, that the operation of
3 this section, insofar as it relates to education, in that
4 county is feasible. In any such ordinance the board shall
5 prescribe whether the sheriff, the probation officer, or
6 the superintendent of a county industrial farm or
7 industrial road camp in the county shall perform the
8 functions of the work furlough administrator. The board
9 of supervisors may also terminate the operativeness of
10 this section, either with respect to employment or
11 education in the county if it finds by ordinance that,
12 because of changed circumstances, the operation of this
13 section, either with respect to employment or education
14 in that county is no longer feasible.

15 (b) When a person is convicted of a misdemeanor and
16 sentenced to the county jail, or is imprisoned therein for
17 nonpayment of a fine, for contempt, or as a condition of
18 probation for any criminal offense, or committed under
19 the terms of Section 6404 or 6406 of the Welfare and
20 Institutions Code as a habit-forming drug addict, the
21 work furlough administrator may, if he concludes that
22 such person is a fit subject therefor, direct that such
23 person be permitted to continue in his regular
24 employment, if that is compatible with the requirements
25 of subdivision (d), or may authorize the person to secure
26 employment for himself, unless the court at the time of
27 sentencing or committing has ordered that such person
28 not be granted work furloughs. The work furlough
29 administrator may, if he concludes that such person is a
30 fit subject therefor, direct that such person be permitted
31 to continue in his regular educational program, if that is
32 compatible with the requirements of subdivision (d), or
33 may authorize the person to secure education for himself,
34 unless the court at the time of sentencing has ordered
35 that such person not be granted work furloughs.

36 (c) If the work furlough administrator so directs that
37 the prisoner be permitted to continue in his regular
38 employment or educational program, the administrator
39 shall arrange for a continuation of such employment or
40 education, so far as possible without interruption. If the

1 prisoner does not have regular employment or a regular
2 educational program, and the administrator has
3 authorized the prisoner to secure employment or
4 education for himself, the prisoner may do so, and the
5 administrator may assist him in doing so. Any
6 employment or education so secured must be suitable for
7 the prisoner. Such employment or educational program,
8 if such educational program includes earnings by the
9 prisoner, must be at a wage at least as high as the
10 prevailing wage for similar work in the area where the
11 work is performed and in accordance with the prevailing
12 working conditions in such area. In no event may any
13 such employment or educational program involving
14 earnings by the prisoner be permitted where there is a
15 labor dispute in the establishment in which the prisoner
16 is, or is to be, employed or educated.

17 (d) Whenever the prisoner is not employed or being
18 educated and between the hours or periods of
19 employment or education, he shall be confined in the
20 facility designated by the board of supervisors for work
21 furlough confinement unless the work furlough
22 administrator directs otherwise. If the prisoner is injured
23 during a period of employment or education, the work
24 furlough administrator shall have the authority to release
25 him from the facility for continued medical treatment by
26 private physicians or at medical facilities at the expense
27 of the employer, workman's compensation insurer, or the
28 prisoner. Such release shall not be construed as
29 assumption of liability by the county or work furlough
30 administrator for medical treatment obtained.

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

37 (e) The earnings of the prisoner may be collected by
38 the work furlough administrator, and it shall be the duty
39 of the prisoner's employer to transmit such wages to the
40 administrator at the latter's request. Earnings levied

1 upon pursuant to the Employees' Earnings Protection
2 Law, Chapter 2.5 (commencing with Section 723.010) of
3 Title 9 of Part 2 of the Code of Civil Procedure, shall not
4 be transmitted to the administrator. If the administrator
5 has requested transmittal of earnings prior to service of
6 an earnings withholding order under the Employees'
7 Earnings Protection Law, none of the earnings of the
8 prisoner shall be withheld pursuant to such order *unless*
9 *and until the administrator terminates his request that*
10 *the prisoner's employer transmit the prisoner's earnings*
11 *to the administrator*. In a case in which the functions of
12 the administrator are performed by a sheriff, and such
13 sheriff receives a writ of attachment or execution for the
14 earnings of a prisoner subject to this section but has not
15 yet requested transmittal of the prisoner's earnings
16 pursuant to this section, he shall first levy on the earnings
17 pursuant to the writ. When an employer or educator
18 transmits such earnings to the administrator pursuant to
19 this subdivision he shall have no liability to the prisoner
20 for such earnings. From such earnings the administrator
21 shall pay the prisoner's board and personal expenses, both
22 inside and outside the jail, and shall deduct so much of the
23 costs of administration of this section as is allocable to
24 such prisoner, and, in an amount determined by the
25 administrator, shall pay the support of the prisoner's
26 dependents, if any. If sufficient funds are available after
27 making the foregoing payments, the administrator may,
28 with the consent of the prisoner, pay, in whole or in part,
29 the preexisting debts of the prisoner. Any balance shall be
30 retained until the prisoner's discharge and thereupon
31 shall be paid to him.

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

34 (g) In the event the prisoner violates the conditions
35 laid down for his conduct, custody, education, or
36 employment, the work furlough administrator may order
37 the balance of the prisoner's sentence to be spent in
38 actual confinement.

39 (h) Willful failure of the prisoner to return to the place
40 of confinement not later than the expiration of any period

1 during which he is authorized to be away from the place
2 of confinement pursuant to this section is punishable as
3 provided in Section 4532 of the Penal Code.

4 (i) As used in this section, "education" includes
5 vocational training, and "educator" includes a person or
6 institution providing vocational training.

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

20

9 ~~SEC. 21~~, Section 11489 of the Welfare and Institutions
10 Code, as added by Chapter 578 of the Statutes of 1971, is
11 amended to read:

12 11489. After judgment in any court action brought to
13 enforce the support obligation of an absent parent
14 pursuant to the provisions of this chapter, the court may
15 issue an earnings withholding order under Section
16 723.030 of the Code of Civil Procedure to enforce such
17 obligation.

18 ~~SEC. 22~~. This act shall become operative on July 1,
19 1973, but the Director of Industrial Relations and the
20 Judicial Council may, prior to that date, do whatever is
21 necessary so that this act may go into effect on July 1,
22 1973. The Director of Industrial Relations shall publish
23 the earnings withholding tables and informational
24 pamphlets referred to in Section 723.128 before July 1,
25 1973. The Judicial Council shall prescribe by rule the
26 necessary forms as required by Section 723.129 before
27 July 1, 1973.

21

28 ~~SEC. 22~~, (a) Any levy made pursuant to a writ of
29 execution against the earnings of an employee that has
30 been served on the employer prior to January 1, 1974,
31 shall be given effect after the operative date of this act to
32 the same extent as it would have been given effect had
33 this act not been enacted, and the law in effect prior to
34 the operative date of this act shall govern such levy. No
35 earnings withholding order served pursuant to this act
36 after January 1, 1974, shall be given any effect during the
37 period that a levy made pursuant to a writ of execution
38 against the earnings of an employee has been given
39 effect, and any earnings withholding order served on an
40 employer during the period such a levy is in effect shall

1 *be ineffective.*
 2 ~~*(b) The Judicial Council may prescribe any rules it*~~
 3 ~~*determines are necessary to effectuate the legislative*~~
 4 ~~*intent expressed in this section.*~~

(b) Except as otherwise prescribed by rules adopted
by the Judicial Council, any order made pursuant to Sec-
tion 4701 of the Civil Code or Section 270h of the Penal
Code prior to the operative date of this act shall remain
in effect after the operative date of this act and shall
be deemed to be a withholding order for support issued
pursuant to Section 723.050.

22 .
sufficient
funds being avail-
able to the Judicial
Council,

the

5 ~~*SEC. 23,*~~ *This act shall become operative on January 1,*
 6 *1974, but the Judicial Council, the state agencies*
 7 *concerned with Article 4 (commencing with Section*
 8 *723.070) of the Employees' Earnings Protection Law, and*
 9 ~~*the*~~ *court clerks may, prior to that date, do whatever is*
 10 *necessary so that this act may go into effect on January 1,*
 11 *1974.*

shall ,