

#39.30

2/4/71

Memorandum 71-9

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

Attached is a revised draft of the Earnings Protection Law. This revised draft, I believe, is a significant improvement over the version considered at the last meeting. Jack Horton and I have made substantial revisions and completely reorganized the previous draft.

The attached draft does not include conforming amendments to other statutes nor does it deal with bank accounts, retirement funds, wage assignments, and the like. We will prepare separate memoranda to deal with those problems for your separate consideration.

You should study the draft statute carefully prior to the meeting. We note only one matter below. We plan to go through the draft section by section at the meeting.

Section 723.50 (page 21)

This limitation would not be as liberal as the federal in the case of some state and local public employees. This is because it does not deduct amounts withheld for the public retirement funds--an amount that ranges from slightly above five percent to above ten percent of gross earnings.

We should deal with the problem of tips paid waiters, and the like, in this section. Perhaps we should define "gross earnings" to include tips for the purpose of applying the table provided by this section. Or we could consider tips as earnings from multiple employers and require a court hearing to determine the amount of the tips and the amount to be withheld by the employer from earnings.

In connection with Section 723.50, please read the informational material on the meaning of the federal limitation in the attachment to Memorandum 71-6. Additional background material on earnings of California employees is collected in Third Supplement to Memorandum 71-2.

See also Exhibit I attached to this memorandum.

Respectfully submitted,

John H. DeMouly  
Executive Secretary

Memorandum 71-9

EXHIBIT I

THE WALL STREET JOURNAL

January 19, 1971

**AFL-CIO PUTS a minimum wage boost high on its legislative want list.**

Increasing the Federal minimum wage to \$2 an hour from the present \$1.60 ranks second only to national health insurance among the federation's priorities. An AFL-CIO insider predicts a "serious" effort to get a boost through the new session of Congress opening tomorrow. "The \$1.60 minimum wage is just laughable nowadays," says a Senate Labor Committee staffer. "It puts people below the poverty level."

EARNINGS PROTECTION LAW

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

CHAPTER 2.5. EARNINGS PROTECTION LAW

Article 1. Short Title; Definitions

§ 723.10. Short title

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

§ 723.11. Definitions

723.11. As used in this chapter:

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

(b) "Judgment" includes a support order.

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

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

(e) "State Administrator" means the Department of Industrial Relations.

Comment. Subdivision (a) of Section 723.11 is based on subdivision (b) of Section 302 of the federal Consumer Credit Protection Act of 1968. However, "earnings," as defined in subdivision (a), is limited to compensation payable for personal services performed by an employee, thus limiting the earnings withholding procedure under this chapter to earnings for services rendered in an employer-employee relationship; the federal act is not specifically limited to compensation payable to "an employee." Also, the federal phrase referring to compensation "paid or payable" is omitted in the definition of "earnings" in Section 723.11.

§ 723.11

"Earnings" is defined in subdivision (a) to include "periodic payments pursuant to a pension or retirement program." However, moneys held in both public and private pension and retirement funds are completely and automatically exempt from execution under Section 690.18 as amended. Moreover, moneys received from a pension or retirement fund are also completely exempt under Section 690.18 as amended, but that exemption must be claimed under Section 690.50. The classification of periodic payments pursuant to a pension or retirement program as "earnings" for the purposes of the Earnings Protection Law does not affect the exemptions provided by Section 690.18. Exempt pension or retirement funds cannot be reached under this chapter. But, where the judgment debtor has income from salary or wages and also receives retirement payments, in applying the restrictions on the amount of earnings that can be withheld (Section 723.50), the amount of periodic payments pursuant to a pension or retirement program must be included in "gross earnings." See the Comment to Section 723.50.

Article 2. General

§ 723.20. Chapter exclusive procedure for withholding earnings

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

Comment. Section 723.20 makes the Earnings Protection Law the exclusive judicial method of compelling an employer to withhold earnings. Attachment of earnings before judgment is abolished by subdivision (a) of Section 690.6. Nothing in the Earnings Protection Law affects wage assignments by contract between creditor and debtor, but only a wage assignment of earned wages has priority over a subsequent levy on the earnings of a judgment debtor; an assignment of wages to be earned is revocable at any time. See Labor Code § 300. See also Civil Code § 4701. This chapter has no effect on judgment collection procedures that do not involve the withholding of an employee's earnings.

Of course, the Earnings Protection Law has no effect on matters that are preempted by the federal law, such as federal bankruptcy proceedings and federal tax collection procedures. E.g., Int. Rev. Code of 1954, § 6334(c).

§ 723.21. Levy made by earnings withholding order

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

§ 723.22. Continuing withholding order

723.22. Except as otherwise provided in this chapter, receipt by an employer of an earnings withholding order:

(a) Constitutes a lien upon unpaid earnings of the employee and upon his future earnings as earned; and

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

§ 723.23. Period covered by withholding order

723.23. Except as otherwise provided by statute, an earnings withholding order is effective for a period of 120 days beginning on the date of the end of the first pay period which ends after the employer receives the order or until it terminates, whichever first occurs.

Comment. Section 723.23 provides that an earnings withholding order is effective for a 120-day period and expires at the end of that time. However, in some cases, the earnings withholding order is not limited to the 120-day period. See Sections 723.26 (support); 723.27 (state taxes). See also Civil Code Section 4701 (child support). Moreover, the earnings withholding order may terminate before the end of the 120-day period for any of the reasons listed in Section 723.24.

The employer is required to withhold earnings pursuant to the order from each paycheck paid to the employee during the effective period of the order. The employer is not required to attempt to prorate the employee's earnings actually earned during such period. Thus, assume an employee's pay period ends, and he is paid, on the first and fifteenth of each month and an earnings withholding order is received on July twenty-sixth. The order will be effective starting August first; and, if not terminated earlier, it will expire upon November twenty-eighth. The employer is required to withhold a full share from the August first paycheck, even though this paycheck includes amounts earned before receipt of the order. On the other hand, the employer will withhold nothing from the December first paycheck (pursuant to this order) because the order expires before that date.

§ 723.24. When earnings withholding order terminates

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

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

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

(c) The employer receives a certified copy of a satisfaction of the judgment or written notice from the judgment creditor that the judgment has been satisfied.

(d) The employer has withheld the full amount specified in the order from the employee's earnings.

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

Subdivision (a) recognizes the federal preemption of the bankruptcy field. The earnings withholding order would, of course, also be subordinate to a restraining order issued in federal bankruptcy proceedings.

Subdivision (b) reflects the fact that a court may modify or even terminate a prior withholding order. See Sections 723.29(c) (improper voluntary agreement); 723.110 (court modification due to substantial change in the debtor's position--significant alterations in earnings, hardship occurrences, and the like).

Subdivision (c) provides for termination whenever the employer receives a certified copy of a satisfaction of judgment or written notice from the creditor that the underlying debt has been satisfied. The judgment creditor has an affirmative duty to inform the employer of the satisfaction. See Section 723.32.

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

It should be noted that only in the circumstances listed above is the order terminated. Thus, an order is not terminated by the discharge or suspension of an employee and, if the employee is rehired or returns to work during the order's effective period, the employer must resume payment pursuant to the order. An earnings withholding order is suspended, rather than terminated, by the receipt of a tax collection withholding order. See Section 723.27 and Comment thereto. Similarly, although the creditor may agree to terminate his order, an earnings withholding order is generally suspended, rather than terminated, by agreement of the parties. See Section 723.29 and Comment thereto.

§ 723.25. Priority of orders generally

723.25. Except as otherwise provided in this chapter:

(a) An employer shall withhold and pay over earnings of a judgment debtor pursuant to the first withholding order which the employer receives.

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

Comment. Section 723.25 establishes the rules governing priority of earnings withholding orders. Generally, the first order received is given priority. For exceptions to this rule, see Sections 723.26 (support orders) and 723.27 (state taxes). See the Comments to Sections 723.26 and 723.27.

Unless the subsequent earnings withholding order is for state taxes or for support, it is void. Hence, with these exceptions, an order to withhold for a second indebtedness received while the first order is in effect does not offer a basis for discharge of the employee. See Labor Code Section 2929 and Comment thereto.

It should be noted that an earnings withholding order remains "in effect" for 120 days or until "terminated." See Sections 723.23 and 723.24. In some circumstances, the operation of an order may be suspended, but the order itself is not terminated; hence, an employer must comply with subdivision (b) of this section. See, e.g., Section 723.29 (voluntary agreement suspending operation of order).

§ 723.26. Orders for support

723.26. (a) As used in this section, "withholding order for support" means an earnings withholding order to enforce a court order for the support of any person.

(b) Notwithstanding any other provision of this chapter:

(1) A withholding order for support shall be denoted as such on its face.

(2) The restrictions on earnings withholding contained in Sections 723.50 and 723.51 do not apply to a withholding order for support.

(3) A withholding order for support remains in effect as a continuous withholding order until the court orders its modification or termination.

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

(5) An employer shall withhold earnings of an employee pursuant to both a withholding order for support and another earnings withholding order simultaneously, but the amount withheld pursuant to the withholding order for support shall be deducted from the gross earnings of the employee in computing the amount to be withheld under the other order.

Comment. Section 723.26 provides special rules for an earnings withholding order to enforce a court order for the support of any person, including a former spouse of the judgment debtor. An earnings withholding order for support is given a different effect than other withholding orders: it is effective until modified or terminated by the issuing court; it is unrestricted

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in amount; even when in effect, it does not necessarily preclude withholding on either a prior or subsequent order.

The amount specified in the earnings withholding order for support is always withheld first from the support obligor's earnings and paid over to the person specified in that order. However, a prior order remains in effect, and a judgment creditor may still obtain an earnings withholding order even where there is already in effect a prior earnings withholding order for support. Where there are, thus, two orders--one for support and one for other obligations--in effect, the amount withheld for support is deducted from the employee's gross earnings in determining the amount to be withheld pursuant to the other order. See Section 723.50 and the Comment thereto.

§ 723.27. Orders for state taxes

723.27. (a) As used in this section, "withholding order for taxes" means an earnings withholding order for the collection of a judgment for any state tax, including penalties and interest.

(b) Notwithstanding any other provision of this chapter:

(1) A withholding order for taxes shall be denoted as such on its face.

(2) Subject to Sections 723.50 and 723.51, a withholding order for taxes shall remain in effect as a continuous withholding order until the amount specified in the order has been paid in full.

(3) Subject to paragraph (4), an employer who receives a withholding order for taxes shall withhold and pay over earnings of the employee pursuant to such order and shall cease to withhold earnings pursuant to any prior order except a withholding order for support under Section 723.26.

(4) The employer shall not withhold earnings of the employee pursuant to a withholding order for taxes if a prior withholding order for taxes is in effect; and, in such case, the subsequent withholding order for taxes is subject to subdivision (b) of Section 723.25.

(5) When an employer ceases to withhold earnings of the employee pursuant to paragraph (3), he shall notify the judgment creditor who obtained the prior order that a supervening withholding order for taxes is in effect.

(6) When the withholding order for taxes has been satisfied, the employer shall withhold and pay over earnings on the prior order referred to in paragraph (3) if it is still in effect.

Comment. Section 723.27 provides an exception to the general rule governing priority of earnings withholding orders. An order based on a judgment for unpaid state taxes, including penalties and interest, takes priority over any prior order except one for state taxes or for support. As indicated in the Comment to Section 723.26, a support order always takes priority over any other order. Thus, where a support order is in effect and a subsequent tax order is received, the employer will continue to withhold for support, and the amount withheld pursuant to the tax order will be dependent upon the gross income after subtracting the amount withheld pursuant to the support order. See the Comment to Section 723.50. However, where the prior order is for the collection of a debt other than for taxes or support, a tax order displaces the prior order, and the employer must withhold pursuant to the tax order until the tax debt is completely paid. If the earnings withholding order for taxes is satisfied before the expiration of the prior order (120 days--Section 723.23), the employer must then again withhold pursuant to the prior order. Where there is a prior tax order in effect, the second tax order is void, and the employer must comply with subdivision (b) of Section 723.25. That is, he may not withhold pursuant to the second order, and he must properly notify the agency which obtained the second order.

Section 723.27 deals only with orders for the collection of state taxes. The collection of federal taxes is accomplished pursuant to federal law and cannot be limited by state law. See Int. Rev. Code of 1954, § 6334(c).

§ 723.28. Withholding order for costs and interest

723.28. Subject to Section 723.111, after the amount stated as owing in the earnings withholding order is paid, the judgment creditor may apply for issuance of another earnings withholding order covering costs and interest that may have accrued since application for the prior order.

Comment. Section 723.28 makes clear that a judgment creditor must apply for another earnings withholding order to recover costs and interest that accrue following the application for a prior order. To illustrate: A creditor obtains a judgment which his debtor does not pay. The creditor applies for and secures an earnings withholding order directed to the debtor's employer. The application and order require payment of only those amounts owing at the time of the application for this order. See Sections 723.120 (application for issuance of earnings withholding order); 723.124 (form of earnings withholding order). After the application for this order, further costs may, and interest on the judgment will, accrue. If the creditor wishes to recover these amounts by wage garnishment, he must apply for another earnings withholding order, following the same procedure as before. This application and order is subject to the same general requirements as any other order. It is not entitled to any priority over the orders of other creditors, and the creditor is required to comply with the waiting period prescribed by Section 723.111.

§ 723.29. Agreement between debtor and creditor

723.29. (a) The judgment debtor and the judgment creditor may at any time agree that the amounts to be withheld pursuant to an earnings withholding order are to be lesser amounts than the amounts specified by the order or the amounts that would be permitted to be withheld pursuant to Section 723.50. Upon receipt of written notification from the judgment creditor of such agreement and of the amounts to be withheld pursuant to such agreement, the employer of the judgment debtor shall withhold such amounts and pay them over to the judgment creditor as provided in this chapter.

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

(c) An agreement made pursuant to this section suspends the operation of the order superseded by the agreement. An employer shall not withhold earnings pursuant to any other earnings withholding order (except one issued under Section 723.26 or 723.27) during this suspension period unless a court, at a hearing held at the request of the person seeking the other order, finds that the agreement was not

based on a bona fide debt or was not made in consideration of the debtor's needs for himself or his family and on that ground terminates the order superseded by the agreement. The burden of proof on the issue whether the order superseded by the agreement should be terminated is on the parties to the agreement.

Comment. Section 723.29 is included to permit the judgment debtor and judgment creditor to work out a payment plan and avoid the need for a court determination whether the judgment debtor is entitled to have a portion of his earnings exempt under Section 723.51 ("essential for the support of himself or his family"). Subdivision (a) of Section 723.29 recognizes an agreement that reduces the amount an employer is to withhold; subdivision (b) recognizes an agreement where the withholding by the employer is to be discontinued and the employee is to pay a specified amount to the judgment creditor pursuant to the agreement.

Subdivision (c) makes clear that an agreement merely suspends the operation of the order which it supersedes. The order is not terminated (see Section 723.24) and remains "in effect" for priority purposes. See Section 723.25. It is necessary to give the agreement this effect; otherwise, the judgment creditor would never be willing to dispense with the court determination on the extent to which the earnings are exempt under Section 723.51 because to do so would cause him to lose his priority over other creditors. However, to avoid collusion between the debtor and a friend, subdivision (c) imposes upon the parties to the agreement the burden of proving that there is a bona fide underlying debt and that the agreement was made in view of the debtor's needs if and when another creditor applies for an earnings withholding order and requests a hearing on this issue.

§ 723.30. Payment to judgment creditor

723.30. (a) The amount required to be withheld pursuant to an earnings withholding order shall be paid to the person specified in the order within 15 days after each payment of earnings is made to the employee.

(b) Notwithstanding subdivision (a), the employer may elect to send the money withheld pursuant to an earnings withholding order to the person specified in the order in regular monthly payments made not later than the fifteenth day of each month. The initial monthly payment shall include all amounts required to be withheld from the earnings of the employee during the preceding calendar month up to the close of the employee's payroll period ending closest to the last day of that month, and thereafter each monthly payment shall include amounts withheld from the employee's earnings for services rendered in the interim up to the close of the employee's payroll period ending closest to the last day of the preceding calendar month.

(c) Notwithstanding subdivisions (a) and (b), an employer is not required to pay over an amount withheld that is less than \$10 until the accumulated amount that has been withheld and not paid over reaches \$10. This subdivision does not apply where it appears that no additional money will be withheld from the employee's earnings pursuant to the particular earnings withholding order.

§ 723.31. Judgment creditor to furnish receipt for payment

723.31. Within 10 days after he receives any payment pursuant to an earnings withholding order, the judgment creditor shall send the judgment debtor a receipt for such payment by first class mail.

Comment. The receipt required by Section 723.31 not only provides the judgment debtor with a record of payments made on the judgment but also enables the judgment debtor to determine whether his employer has paid the amount withheld from his earnings to the judgment creditor.

§ 723.32. Creditor required to notify employer when judgment satisfied

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

Comment. Section 723.32 insures that an employer withholding earnings pursuant to an order will be promptly notified when the judgment pursuant to which the order was issued is satisfied. In many cases, the employer will be aware of the satisfaction by virtue of having himself withheld the amount necessary to satisfy the judgment. See Section 723.24(d). However, often the judgment will be satisfied by additional payments from the debtor or through other debt collection procedures instituted by the creditor. In the latter situations, the creditor has the duty to promptly notify the employer of the satisfaction. For the creditor's duty to furnish the debtor a satisfaction of judgment, see Section 675.

Article 3. Restrictions on Earnings Withholding

§ 723.50. Maximum amount of earnings that may be withheld

723.50. (a) As used in this section, "nonexempt earnings" for any workweek means the gross earnings of the judgment debtor for that workweek less the sum of the following:

(1) An amount equal to the amount that would be withheld for federal income tax purposes from the same amount of gross earnings of a single person who claims one exemption.

(2) An amount equal to the amount that would be withheld for federal social security tax purposes from such amount of gross earnings.

(3) An amount equal to the amount that would be withheld for state unemployment insurance taxes from such amount of gross earnings.

(4) An amount equal to the amount that would be withheld for state income tax purposes\* from the same amount of gross earnings of a single person who claims one exemption.

(5) The basic minimum exemption.

(b) The basic minimum exemption is eighty dollars (\$80) on July 1, 1972. On July 1 of each year thereafter, this exemption shall be increased or decreased by that amount which is produced by multiplying the then current exemption by the percentage by which the figure representing the California consumer price index as compiled and reported by the California Department of Industrial Relations has

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\*This is drafted in anticipation of the adoption of a state system for withholding of personal income taxes.

increased or decreased from January 1 of the last calendar year in which a recomputation was made to January 1 of the current year. Such recomputation shall be made by the State Administrator but shall be made only if the cumulative percentage of change from the last year in which a recomputation was made to the current year is equal to or greater than five percent (5%).

(c) Except as otherwise provided in Section 723.26, the maximum amount of the earnings of a judgment debtor in any workweek which can be withheld pursuant to this chapter is twenty percent (20%) of his nonexempt earnings. If the amount withheld is not a multiple of one dollar (\$1), it shall be rounded upward to the next higher multiple of one dollar (\$1).

(d) The State Administrator shall prescribe by regulation the method of computing the amount to be withheld in the case of earnings for any pay period other than a week, which method shall be substantially equivalent in effect to that prescribed in subdivision (c).

(e) The State Administrator shall prepare withholding tables for determining the amount to be withheld from the gross earnings of employees paid once a week, every two weeks, or 12 times a year. The tables need not indicate the amount to be withheld where gross earnings exceed seven hundred and fifty dollars (\$750) a week. The tables may prescribe the amounts to be withheld according to reasonable gross earnings brackets, which amounts shall be within one percent of the amounts computed under subdivision (c) or (d). The tables prepared by the State Administrator pursuant to this subdivision shall be used to

determine the amount to be withheld in all cases where the tables permit computation of the amount to be withheld.

Comment. Section 723.50 provides the standard exemption applicable to all earnings withholding orders other than orders for support. Compare Sections 723.26 (support) and 723.27 (state taxes). See also Section 723.51 (exemption obtained by special hardship showing).

Section 723.50 reflects policies similar to those underlying Sections 302 and 303 of the federal Consumer Credit Protection Act. In determining the amount of the debtor's earnings subject to garnishment, under both this section and the federal law, certain basic amounts withheld pursuant to law are first deducted. Federal law requires the deduction of all amounts actually "required by law to be withheld." For example, the amount actually withheld for federal income tax purposes from the debtor's earnings is deducted in determining his earnings subject to garnishment ("disposable earnings"). Thus, a debtor claiming a greater number of exemptions will have less withheld and therefore more subject to garnishment. This produces the anomalous situation that a debtor with a large family and greater needs may have more earnings garnished than a single debtor with the same gross income and with more limited needs. Moreover, the federal statute does not elaborate upon what are considered to be "amounts required by law to be withheld." To alleviate these problems, Section 723.50 specifies precisely the amounts to be deducted in determining the portion of the debtor's earnings which are subject to garnishment ("nonexempt earnings"). These amounts are related to the types of deductions made under federal law; i.e., they are based on the amounts withheld for federal and state income taxes, social

security, and unemployment insurance. See paragraphs (1)-(4) of subdivision (a). However, the amount deducted to determine nonexempt earnings is fixed according to a formula and is not necessarily the amount actually deducted from the debtor's earnings. One of the major benefits of this scheme is that it permits a table to be prepared which indicates the exact amount to be withheld from any given amount of gross earnings. Subdivision (e) directs the State Administrator to prepare such a table to be distributed to every employer required to withhold earnings. An employer therefore need not make any computations but will simply withhold pursuant to an earnings withholding order the amount listed in the table provided him.

Both the federal scheme and Section 723.50 make some provisions for the effect of inflation. The federal statute merely provides a floor based on the federal minimum wage. That is, the federal statute does not permit the creditor to reduce the debtor's weekly disposable earnings below an amount equal to thirty times the federal minimum wage. As the federal minimum wage is increased, this floor is increased accordingly. (Under the current federal law, if a debtor's disposable earnings are less than forty-eight dollars per week, no garnishment is permitted; if his disposable earnings are between forty-eight and sixty-four dollars, all his disposable earnings above forty-eight dollars are subject to garnishment; if his disposable earnings are more than sixty-four dollars a week, twenty-five percent of his disposable earnings are subject to garnishment.) This floor is not an exemption excluded from every debtor's earnings. Moreover, the federal minimum wage is only a rough barometer at best of inflationary trends and, in the past, has moved upward spasmodically. In contrast, Section 723.50 provides a basic minimum exemption (initially eighty

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dollars) that is always deducted in determining nonexempt earnings and which is revised both upwards and downwards at regular intervals by the State Administrator in conformity with changes in the California consumer price index. This scheme provides a more flexible and meaningful adjustment to economic trends.

§ 723.51. Amounts essential for family support exempt

723.51. That portion of his earnings which a judgment debtor establishes is essential for the support of himself or his family is exempt from levy under this chapter.

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

Article 4. Procedure for Issuance of

Earnings Withholding Orders

§ 723.100. Application for issuance of earnings withholding order

723.100. (a) A judgment creditor may apply for the issuance of an earnings withholding order by filing with the clerk of the court from which the order is sought an application in the form prescribed by Section 723.120.

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

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

Comment. Subdivisions (b) and (c) of Section 723.100 are based on Section 722 (proceedings supplemental to execution).

§ 723.101. Notice and forms to be sent to judgment debtor

723.101. (a) At the time of filing his application for issuance of an earnings withholding order, the judgment creditor shall mail to the judgment debtor all of the following:

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

(2) The notice of application for issuance of earnings withholding order in the form prescribed pursuant to Section 723.121.

(3) The form for application of judgment debtor for hearing prescribed pursuant to Section 723.122 and the form for the judgment debtor's financial statement prescribed pursuant to Section 723.123. Both of these forms shall be provided in triplicate.

(b) The documents and forms referred to in this section shall be mailed to the judgment debtor at his last known residence address or, if the judgment creditor has reason to believe that the judgment debtor no longer resides at his last known residence address, to the judgment debtor in an envelope marked "Personal--Important Legal Documents" addressed to the judgment debtor at his place of business.

Comment. Section 723.101 is designed to give the judgment debtor notice of the imminence of an earnings withholding order so that he will be able to ascertain any facts which may affect the amount of the order prior to its issuance or reach a voluntary agreement with the creditor pursuant to Section 723.29. The section also requires that the creditor provide the judgment debtor with the forms he needs to obtain a hearing on whether the earnings withholding order should be issued for an amount less than the maximum provided by law or should not be issued at all.

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If the judgment creditor fails to comply with this section, he may be subject to the ordinary sanctions for abuse of process and contempt, and any order issued may be subject to attack on grounds of intrinsic fraud. However, the fact that the judgment debtor fails to receive the notice and forms does not affect the validity of the earnings withholding order.

§ 723.102. Application and notice in default judgment cases

723.102. At the same time the plaintiff applies for entry of default in a case to which Section 587 applies, he may also apply for issuance of an earnings withholding order and send the documents and forms required by Section 723.101, together with the copy of the application for entry of default sent pursuant to Section 587, to the person designated in Section 587. This section does not authorize the issuance of an earnings withholding order prior to entry of judgment.

Comment. Section 723.102 permits a creditor to apply for an earnings withholding order in anticipation of a default judgment. Otherwise, the creditor would have to wait until his claim has been reduced to judgment before applying. See Section 723.100. An application made pursuant to this section may only be made at the same time as the application for entry of default; otherwise, the plaintiff must wait until he has obtained a judgment. Of course, if judgment is not entered in accordance with the facts stated in the withholding order application, a new application for a withholding order must be filed and notice sent.

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

723.103. If the judgment debtor files an application for a hearing and includes in his application a statement of the amount he believes should be withheld from his earnings, the judgment creditor may agree to the issuance of an earnings withholding order in that amount and file his acceptance with the clerk of court prior to the hearing. If the judgment creditor files such an acceptance, no hearing shall be held.

Comment. The procedure provided by Section 723.103 operates as a consent by both creditor and debtor to a withholding order for a stipulated amount. When this occurs, the clerk of court issues the order without further proceedings. See Section 723.107(b). See also Section 723.122(b)(form for application for hearing by judgment debtor).

§ 723.104. Hearing on application of judgment debtor

723.104. (a) Upon the filing by the judgment debtor of an original and one copy of his application for hearing and, if he claims the exemption provided by Section 723.051, his financial statement, the court shall set the matter for hearing. The hearing shall be had within 15 days of the date the clerk receives the application unless the matter is continued by the court for good cause. The clerk shall notify the judgment debtor and the judgment creditor at least 10 days before the hearing of its time and place. The clerk shall promptly send to the judgment creditor a copy of the judgment debtor's application for hearing and financial statement, if any.

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

(c) If the clerk receives the judgment debtor's application for a hearing within 15 days after the date of the notice of application for the earnings withholding order, no earnings withholding order shall be issued prior to the hearing.

§ 723.105. Court order after hearing; effect of order

723.105. (a) If the court determines at the hearing that the judgment creditor is not entitled to have any amount withheld from the judgment debtor's earnings and paid over to him, the court shall so order and no earnings withholding order shall be issued. Except as provided in Section 723.110, for a period of 120 days from the date of the order, unless the order otherwise provides:

(1) The judgment creditor may not apply for another earnings withholding order directed to the same employer with respect to the same judgment debtor.

(2) As to the issues decided, the order is equally binding on all other creditors of the debtor.

(b) Subject to Section 723.50, if the court determines that the judgment creditor is entitled to have some amount withheld from the judgment debtor's earnings and paid over to him, the court shall make an appropriate order which states the amount or method of determining the amount of earnings to be withheld.

Comment. Subdivision (a) of Section 723.105 is designed to preclude both the debtor and his creditors from having a hearing more frequently than once every 120 days on the question whether all the debtor's earnings are essential to the support of himself or his family. Note that a determination made by the court on an application for an earnings withholding order by one creditor that all the debtor's earnings are essential for support is binding on all creditors for a period of 120 days. In some cases, however, the court may determine that it would be appropriate for the court

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to reconsider the matter at an earlier time and this subdivision permits the court to reserve the authority to revise its earlier determination within such time as the court orders. See also Section 723.110 (hearing after order issued where significant change in earnings).

§ 723.106. Multiple employment

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

(b) The court shall set the matter for hearing after receiving the written request together with an affidavit stating that the judgment creditor has mailed a copy of the request for hearing in the manner provided in subdivision (b) of Section 723.101. The clerk of court shall notify the judgment debtor and the judgment creditor at least 10 days before the hearing of its time and place.

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

(d) The hearing provided by this section may be combined with a hearing under Section 723.104. If an earnings withholding order has

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

Comment. Section 723.106 affords a creditor an opportunity to require an employer to withhold more than he would otherwise withhold by a showing that the debtor has a greater source of earnings than that one employer. This can occur both where the debtor has two or more employers or where he is receiving "retirement" benefits even though still gainfully employed. See Section 723.11 (retirement benefits considered "earnings"). Where there are two employers, the creditor may, of course, apply for separate withholding orders directed to each; however, there may be advantages for both the creditor and debtor in having only one employer withhold the full amount garnishable.

§ 723.107. Issuance of earnings withholding order

723.107. The clerk of court shall promptly issue an earnings withholding order in the form prescribed pursuant to Section 723.124 if:

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

(b) The judgment creditor has filed an acceptance as provided in Section 723.103, in which case the order shall be in the amount stated in the application for hearing, but in no event shall the amount be in excess of the maximum amount allowed by law to be withheld from the judgment debtor's earnings; or

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

§ 723.108. Transmittal of order and information to employer

723.108. (a) Not later than 45 days following the date of issuance of an earnings withholding order, the judgment creditor may deliver the order to the designated employer by mail or otherwise. An order not received by the employer within 45 days after its date of issuance is void.

(b) The order sent to the employer shall be accompanied by all of the following:

(1) The form for an employer's return prescribed pursuant to Section 723.125.

(2) The informational pamphlet and withholding table published by the State Administrator pursuant to Section 723.126.

§ 723.109. Employer's return

723.109. Any employer who receives an earnings withholding order shall complete the employer's return on the form provided by the judgment creditor and shall mail it to the judgment creditor within 15 days from the date he receives the earnings withholding order.

§ 723.110. Hearing on judgment debtor's application after issuance of order

723.110. (a) A judgment debtor may, at any time, apply for a hearing to claim an exemption under this chapter in the same manner as an application is made for a hearing within the time specified in subdivision (c) of Section 723.104 if:

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

(2) His gross earnings are at least 20 percent less than they were at the time of a prior hearing on the earnings withholding order.

(b) When an application for a hearing is filed by the judgment debtor after the time specified in subdivision (c) of Section 723.104, the clerk shall notify the judgment creditor that the application has been received and shall send a copy of it and of the financial statement, if any, to the judgment creditor.

(c) The court shall set the matter for hearing not later than 15 days after the filing of the application. The clerk of court shall notify the judgment debtor and the judgment creditor at least 10 days before the hearing of its time and place. After hearing, the court may order that the earnings withholding order be modified or terminated, and the clerk shall promptly send a copy of the modified earnings withholding order to the employer of the judgment debtor or notify the employer that the prior order has been terminated in accordance with the court's order.

§ 723.111. Limitation on obtaining additional earnings withholding orders

723.111. If an employer withholds earnings pursuant to an earnings withholding order, the judgment creditor who obtained such withholding order may not apply for another withholding order directed to the same employer to withhold earnings of the same employee for a period of five months from the effective date of the prior earnings withholding order.

Comment. Section 723.111 precludes a creditor who has obtained an earnings withholding order which has gone into effect from obtaining another order during the one-month period following the expiration of his order. The purpose of this limitation is to give other creditors a one-month period during which they can attempt to have their earnings withholding orders go into effect while the original creditor is precluded from competing with them. Of course, after the expiration of the one-month period, the original creditor is treated like any other creditor.

Article 5. Forms; Informational Pamphlet;

Withholding Table

§ 723.120. Form for application for earnings withholding order

723.120. (a) The form for an application for the issuance of an earnings withholding order shall be executed under oath and be in substantially the following form:

(Title of Court)

(Abbreviated Title of Action)

(Number of Action)

APPLICATION FOR EARNINGS

WITHHOLDING ORDER

Issuance of an earnings withholding order is requested, as follows:

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

Amount of Judgment as Entered:

Principal - - - - -	\$
Attorney(s) fees- - - - -	\$
Interest- - - - -	\$
Costs - - - - -	\$
Total judgment as entered- - -	\$

Add:

Accrued interest to date of application - - - - -	\$
Accrued costs - - - - -	\$
Fee for filing this application - - -	\$
Total- - - - -	\$

Less payments and part satisfactions - - - \$

Total accrued interest, etc., less payments & partial satisfactions- - \$

Net Balance Due on date of application - - \$

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

3. All notices relating to this application and any order issued pursuant thereto should be sent to (name and address of appropriate person: creditor or creditor's representative, including his collection agency or attorney).

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

5. I have complied with the requirements of Section 723.101 of the Code of Civil Procedure by mailing the documents and forms referred to in that section to the judgment debtor on (date) at (indicate complete address to which mailed).

(Declaration under penalty of perjury; signature)

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

§ 723.121. Form of notice to judgment debtor

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

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

(1) The judgment creditor has asked the court to order a named employer to withhold from your earnings the maximum amounts allowed by law and to pay these amounts over to the person specified in the application for the order in payment of the judgment described in the application.

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

(3) No amount can be withheld from your earnings which you can prove is for a debt which has been discharged in bankruptcy.

(4) No amount can be withheld from your earnings which you can prove is essential for the support of you or your family.

(5) If you wish a court hearing to prove that amounts should not be withheld from your earnings because either paragraph (3) or (4) applies, you must file with the clerk of court two copies of the enclosed form entitled "Application of Judgment Debtor for Hearing," and, in addition, if you claim the exemption referred to in paragraph (4), you also must file with the clerk two copies of the enclosed form entitled "Judgment Debtor's Financial Statement."

(6) The clerk of court will issue the earnings withholding order unless your application for hearing and, if required, your financial statement is in the hands of the clerk of court not later than 15 days after the date of the notice.

(7) If you apply for a hearing and fail to appear at the hearing or to complete the required form or forms truthfully and completely, the court may draw inferences adverse to you.

Comment. Section 723.121 lists some of the information to be given to the judgment debtor in his notice of earnings withholding.

Paragraphs (3) and (4) of subdivision (b) list the two most significant reasons for denial of a withholding order.

The form for application for hearing and financial statement referred to in subdivision (b)(5) is prescribed by the Judicial Council. See Sections 723.122 and 723.123.

The 15-day deadline for hearing application referred to in subdivision (b)(6) is prescribed by subdivision (c) of Section 723.104. It should be noted that the judgment debtor may apply for a hearing after the 15-day deadline has passed, but such an application will not delay the issuance of the earnings withholding order. See Sections 723.104(c), 723.110.

Subdivision (b)(7) includes the substance of Section 723.104(b) relating to court findings upon the debtor's failure to appear or to supply accurate information after applying for a hearing.

§ 723.122. Form for application of judgment debtor for hearing

723.122. (a) The Judicial Council shall prescribe by rule the form of the "Application of Judgment Debtor for Hearing."

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

§ 723.123. Form for judgment debtor's financial statement

723.123. (a) The Judicial Council shall prescribe by rule the form for the "Judgment Debtor's Financial Statement."

(b) The financial statement shall be executed under oath and, in addition to other information required by the Judicial Council, shall include all of the following information:

(1) Names, ages, and relationship of any persons dependent upon judgment debtor's income.

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

(3) All sources and the amounts of earnings of the persons listed in paragraph (1).

(4) A listing of all assets of the judgment debtor and of the persons listed in paragraph (1) and the value of such assets.

(5) All outstanding obligations of the judgment debtor.

(6) Any extraordinary prospective expenses that would justify a reduction in the amount of earnings that would otherwise be withheld pursuant to Section 723.50.

(7) Whether any earnings withholding orders are in effect for the judgment debtor or the persons listed in paragraph (1).

§ 723.124. Form of earnings withholding order

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

(Title of Court)

(Number and abbreviated title of action)

EARNINGS WITHHOLDING ORDER

To: (name and address of employer)

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

There is owing on the judgment on the date of application for the earnings withholding order a net balance of \$\_\_\_\_\_ (judgment as entered plus accrued interest, costs, or fees less payments and partial satisfactions, if any).

You are ordered to withhold from the earnings of the judgment debtor the amount required by law to be withheld or the amount specified in this order, as the case may be, until the happening of the first of the following events:

(1) You have withheld the full amount of the net balance on the judgment as specified in this order.

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

(3) You have received a certified copy of a satisfaction of the judgment or written notice from the judgment creditor that the judgment has been satisfied.

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

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

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

(If there is no court order specifying the amount to be withheld, the following shall appear on the order: "The amount to be withheld from the judgment debtor's earnings is the maximum amount permitted to be withheld pursuant to Code of Civil Procedure Section 723.50. See Informational Pamphlet and Withholding Table.")

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

You are ordered to pay over to (name of judgment creditor or his representative) at (his address) the amount required to be withheld pursuant to this order in the manner and within the times provided by law. See the Informational Pamphlet for instructions.

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You are ordered to fill out the accompanying form entitled "Employer's Return" and to return it to (name of judgment creditor or his representative) at (his address)

within 15 days after the date you receive the earnings withholding order.

For additional information, see the Informational Pamphlet.

(b) An earnings withholding order in form adopted by the Judicial Council is deemed to comply with this section. The Judicial Council may adopt special forms for the earnings withholding orders referred to in Sections 723.27 and 723.28.

§ 723.125. Form for employer's return

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

(b) The employer's return shall be executed under oath and, in addition to other matters required by the State Administrator, shall state all of the following:

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

(2) A direction that the form be mailed to such person no later than 15 days after the date the employer receives the earnings withholding order.

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

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

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

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

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

§ 723.126. Informational pamphlet and withholding tables

723.126. (a) The State Administrator shall prepare an Informational Pamphlet to be sent to employers with the earnings withholding order.

(b) The State Administrator shall publish the informational pamphlet and the withholding tables adopted by him pursuant to Section 723.50. He may impose a charge for copies sufficient to recover the cost of printing.

## Article 6. Remedies

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

### § 723.130. Remedies of judgment debtor

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

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

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

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

§ 723.131. Remedies of judgment creditor

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

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

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

§ 723.132. Civil penalty

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

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

§ 723.133. Fraudulent withholding by employer

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

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

§ 723.134. Costs and attorney's fees

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

Article 7. Administration and Enforcement

§ 723.150. State Administrator

723.150. (a) The Department of Industrial Relations, referred to in this chapter as the State Administrator, shall administer and enforce this chapter.

(b) The State Administrator shall receive and act on complaints and may, on his own initiative:

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

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

§ 723.151. Warning to innocent violator

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

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

§ 723.152. Conference with suspected violator

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

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

§ 723.153. Cease and desist order

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

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

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

§ 723.154. Injunctive relief

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

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

§ 723.155. Rules and regulations

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

§ 723.156. Studies and investigations

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

§ 723.157. Investigatory powers

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

§ 723.158. Liaison with federal administrator

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

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

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

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

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

Code Civ. Proc. § 723.158

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

§ 723.159. Public information; counseling

723.159. The State Administrator may:

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

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

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

§ 723.160. Fees of clerk

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

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

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

OPERATIVE DATE

Sec. 10. This act becomes operative on July 1, 1972, but the Department of Industrial Relations and the Judicial Council may, prior to that date, do whatever is necessary so that this act may go into effect on July 1, 1972.