

#39.30

4/16/71

Memorandum 71-23

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

Attached to this memorandum are two copies of a tentative recommendation including a preliminary portion covering the Earnings Protection Law and certain related matters. Please mark any suggested editorial changes on one copy to turn in to the staff at the next meeting. The staff hopes at this meeting that we will be able to iron out any **remaining problems** in order that the tentative recommendation can be sent out for comment early in May.

For the most part, the statute portion of the recommendation is believed to reflect accurately the decisions made at the last meeting. We have, however, taken the liberty of making changes in certain sections which we thought were appropriate, and which we hope will meet with your approval. At the next meeting, we expect to go through the statute portion of the recommendation section by section, and the remainder of this memorandum is organized accordingly.

Civil Code Section 4701. This section has been conformed in a manner consistent with the Earnings Protection Law. The Commission has previously approved this section in the form in which it appears here.

Code of Civil Procedure Section 690.6. Subdivision (a) defining "earnings" has been revised to provide a definition which conforms precisely to the definition of "earnings" contained in the Earnings Protection Law. Compare Section 723.11(a). It should be noted that this definition of earnings is more restrictive than that contained in Title 3 of the federal Consumer Credit Protection Act. Whether this alone will preclude exemption from federal enforcement of the wage garnishment restrictions is uncertain. This is, however, a

distinct possibility. The remaining subdivisions of Section 690.6 have been revised in conformity with decisions previously made by the Commission.

Sections 690.7; 690.75. These two sections deal with the exemption of bank accounts generally. Section 690.7 deals with exemption from levy of attachment. Section 690.75 deals with exemption from levy of execution. Both sections treat accounts alike whether held in a bank, savings and loan association, or credit union. Both sections generally permit the claimant to exempt only that amount which, when added to all amounts held in similar accounts on the date of the levy, do not exceed the fixed exemption. Section 690.7 exempts fifteen hundred dollars (\$1,500) from levy of attachment. Section 690.75 exempts one thousand dollars (\$1,000) from levy of execution.

Both sections provide two special exceptions which permit a debtor to protect such greater amount as he can show is "essential for the support of himself or his family," or is "required for the payment of wages or salary earned by an employee of the debtor prior to the date of the levy." The first exception seems self-explanatory. The second exception provides relief which should be particularly helpful to the small businessman and is consistent with a general policy to protect a wage-earner from the interruption of his day-to-day flow of earnings.

Subdivision (b) of both sections makes clear that the basic exemption is established per person or holder. Thus, if a husband and wife are jointly sued or jointly liable, they will each be entitled to claim a full exemption from levy on a joint account. Where only one is liable, he may claim his exemption pursuant to these sections; the other joint holder(s) may make his third-party claim pursuant to Section 689. The latter claims would not, of course, be limited to a maximum amount.

The staff has some concern regarding the adequacy of the present procedures for third-party claims. However, we believe that problems under Section 689 concerning third-party claims to property should be handled generally. We do not think it would be desirable to include special procedures for joint holders of bank accounts. Perhaps one exception to this would be a provision for notice to joint holders. The staff believes that it is unnecessary to clutter up these sections with special notice provisions dealing with the problems of who gives notice, when, how, and to whom. However, we raise the issue for your consideration. Compare Section 689b (sheriff required to give notice to legal owner on record with D.M.V. of automobile levied upon).

We have stated in the Comment to Section 690.7 that these sections in no way affect rights granted by Civil Code Section 3054 (banker's lien). The banker's priority over garnishment is well-established. See Smith v. Crocker First Nat'l Bank, 152 Cal. App.2d 832, 314 P.2d 237 (1957). However, this does not answer the question whether the exemptions provided also protect the depositor from exercise of a banker's lien. Because this is a newly created exemption, there is no prior authority. Nevertheless, it would seem that, as a matter of statutory construction, since the exemptions provided are solely exemptions from levy of attachment and execution, they have no effect on the statutory lien created by Section 3054 (a lien which has been stated to be merely the statutory enactment of a basic common law lien). We do, however, note the newspaper reports of a recent California decision apparently striking down an analogous landlord's lien--a decision which points to the anomaly that the property sought to be seized without notice or hearing would be generally exempt from postjudgment levy of execution. The decision, we understand, is based on constitutional grounds. We do not believe that the exemptions we

have provided would be considered to affect the banker's lien, and we think the Comment to Section 690.7 is both accurate and sufficient.

Section 690.18. The staff took a fresh look at the problem of garnishment of retirement and disability benefits and has revised Section 690.18 in the light of this examination. Basically, we have defined "retirement plan" to include any private or public retirement or disability plan. Generally speaking, we have provided a complete exemption from garnishment for all assets held or controlled by any such retirement or disability plan. In order to prevent abuses of such an exemption, we have provided protection only for annual contributions not exceeding five thousand dollars (\$5,000). Where contributions in excess of this amount have been made, a debtor may protect only a pro rata portion of the resulting fund. This is the same approach currently employed by Sections 690.9 and 690.11, relating to life insurance and health insurance respectively. (These latter sections limit the amount of insurance which can be exempted through limitations on the premiums paid for such insurance.)

When benefits are being distributed to a retired or disabled person (or such person has the right to require such distribution), these payments, the staff believes, should be treated as "earnings." They should be protected to the same extent as earnings are protected under the Earnings Protection Law, but they should also be subject to garnishment in the same manner as earnings generally.

Section 690.50. The conforming changes made in this section have been previously approved by the Commission.

Section 710. The conforming changes made in this section have been previously approved by the Commission.

EARNINGS PROTECTION LAW

Section 723.10. No change.

Section 723.11. Subdivision (a) has been revised to limit the definition of "earnings" to compensation payable by employer to an employee for services performed by such employee for such employer. This definition excludes compensation paid by a third person, such as tips. Such amounts are, however, picked up in Section 723.106.

We have also added subdivisions (b) and (c) defining "employee" and "employer" respectively. The definitions are based simply on the common law requirements for an employer-employee relationship.

Section 723.20. The Comment to this section was revised to refer to the provisions relating to voluntary wage assignments, bank accounts, and retirement funds.

Section 723.21. At the direction of the Commission, the word "shall" in the first line was changed from "may."

Section 723.22. At the request of Professor Riesenfeld, the phrase "such lien to continue for a period of one year from the date the earnings became payable" was added to subdivision (a).

It should be noted that the term "earnings" used here is restricted by the revised definition of earnings to those earnings payable by the employer affected.

Section 723.23. This section and the Comment thereto were revised in accordance with the directions of the Commission at the last meeting.

Section 723.24. A subdivision referring to the effect of orders in bankruptcy was deleted at the direction of the Commission. We have, however, added a brief paragraph to the Comment referring to the effect of federal bankruptcy proceedings.

Section 723.25. Subdivision (a) was added to this section in conformity with the directions of the Commission at the last meeting regarding the general rules of priority governing earnings withholding orders.

Section 723.26. The last paragraph of the Comment was added to explain the effect of paragraph (2) of subdivision (b). As indicated in that Comment, we do not feel that paragraph (2) makes any significant change in existing law.

Section 723.27. At the March meeting, the staff was directed to determine to what extent Section 723.27 would change existing law as to state taxes. At least two questions are raised: (1) Does the requirement of a judgment for the collection of taxes change existing law? (2) Does the preference granted for the collection of state taxes over other debts change existing law?

(1) Subdivision (d) of Section 690.6 provides that all earnings due and owing to a debtor shall be exempt from "levy of execution" and that such earnings may only be garnished pursuant to an earnings withholding order. Subdivision (a) of Section 723.27 implies that an earnings withholding order may only be issued for the collection of a judgment for taxes. However, under existing law, a number of statutes authorize various taxing agencies to issue a warrant for the collection of taxes, such warrant being given the same force and effect as a writ of execution. See, e.g., Rev. & Tax. Code §§ 18906, 18907 (Franchise Tax Board may issue warrant for collection of personal income tax). The staff believes that some accommodation should be made in the Earnings Protection Law for the issuance of an earnings withholding order pursuant to a warrant. However, we also believe that the procedures for hearing and rights to relief should be preserved. To accomplish these ends, we suggest that subdivision (a) be revised and subdivision (b) (new) be added to Section 723.27 as follows:

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

(b) In cases in which a warrant is issued by the State of California, or a department or agency thereof, pursuant to Section 1785 of the Unemployment Insurance Code, or Section 6776, 7881, 9001, 10111, 18906, 26191, 30341, or 32365 of the Revenue and Taxation Code, for the collection of tax liability owed to the state, a department, or agency thereof, such warrant shall be deemed to be a judgment for the purposes of issuance of an earnings withholding order pursuant to this chapter. An application for the issuance of a withholding order for taxes based on such a warrant shall be made to a court of record with jurisdiction to render a judgment in the amount of the warrant in the county where the taxpayer was last known to reside. Such application shall be accompanied by a certified copy of the warrant.

(2) As for priorities, the rule appears to be that, in the absence of a special statutory preference, the state has no priority for the collection of taxes over a prior attachment or execution. See People v. Biscailuz, 95 Cal. App.2d 635, 213 P.2d 753 (1950). The only such statutory preference we have been able to discover is Section 1701(d) of the Unemployment Insurance Code. It would appear, therefore, that the preference granted by Section 723.27 as to earnings is a change in the law which may be of substantial benefit to the state.

The staff was also directed to determine whether local taxes are presently collected in the same manner as an ordinary debt, i.e., execution follows only upon a judgment. It is our preliminary conclusion that, at least so far as garnishment of earnings is concerned, execution is now based only upon a judgment.

Section 723.28. No change.

Section 723.29. The Commission directed the staff to make clear that agreements made pursuant to this section should be in writing and that such agreements do not affect the expiration date of the earnings withholding order. We have done this, and we have also added two new sentences to the end of

subdivision (b). If the judgment debtor fails to make payments in accordance with the voluntary payment plan, this new provision permits the judgment creditor to serve a written notice upon the debtor's employer, directing him to commence withholding pursuant to the prior earnings withholding order. Under this provision, the creditor is merely permitted to restore to effect a prior earnings withholding order; the debtor is therefore in no worse position than he was prior to the voluntary agreement with the creditor being made.

Section 723.30. No change.

Section 723.31. No change.

Section 723.32. At the direction of the Commission, this section was revised to require a creditor to file a satisfaction of judgment and send a certified copy of such satisfaction to the judgment debtor's employer where an earnings withholding order is satisfied prior to the time the order expires.

Section 723.50. At the last meeting, the staff was directed to clarify the term "gross earnings" by reference to those earnings which the specific employer is required to report for federal income tax purposes. Upon investigation, the staff determined that such a reference would not always pick up earnings payable by an employer to an employee which should be subject to garnishment under this statute. For example, curiously the employer of farm laborers is not required to report compensation payable to such laborers for field work. We feel, however, that the new definition of earnings provided in Section 723.11 satisfies the former objections to the discarded phrase "gross earnings."

The staff was also directed to prepare a table comparing the amounts which would be withheld pursuant to this scheme with amounts withheld pursuant

to existing law. This table is being prepared and will be sent to you prior to the meeting or distributed at the meeting.

Section 723.51. We have amended both the section and the Comment to the section in an attempt to make clear that "essential for support" means what it says.

Section 723.100. This is a new section which has been added to make clear that service under the Earnings Protection Law may be made by first class mail and that, whether mail service is used or not, a judgment creditor is not entitled to recover more than one dollar (\$1) for the cost of service.

Section 723.101. This section was merely renumbered without further change.

Section 723.102. This section was revised in conformity with the directions of the Commission at the last meeting. You should note that subdivision (c) has been added to make clear that, even though a judgment debtor does not receive a copy of the application for an earnings withholding order and the notice which should be sent therewith, an earnings withholding order may still properly be issued.

Section 723.103. Subdivision (b) has been added to this section to make clear that an order obtained pursuant to stipulation is subject to challenge on the grounds that the order was not based on a bona fide debt or was not made in consideration of the debtor's needs or operates to defraud other creditors. These are the same standards applied to a voluntary agreement modifying a previously issued order. Compare Section 723.29. Subdivision (b) makes clear that the court may terminate or modify the previously issued order. Where the judgment creditor who obtained the prior order had simply been too generous in allowing the debtor to satisfy his obligation during the four-month period, it seems it would generally be more appropriate for the court to modify the order and increase the amounts withheld than it would be to punish the creditor by terminating the order altogether.

Section 723.104. We have revised subdivision (b) of this section in conformity with the directions of the Commission at the last meeting. We have also added an entirely new Comment to explain the operation of this section.

Section 723.105. This section was revised in conformity with the directions of the Commission at the last meeting. The staff was also directed to consider whether a creditor should be entitled to further hearings within the four-month period. The staff has given further thought to this problem and has concluded that the creditor should not be permitted to reapply for an order directed to the same employer with respect to the same judgment debtor for a period of four months unless the initial order of the court otherwise provides. The first phrase in the second sentence of subdivision (a)--"except as provided in Section 723.106,"--should be deleted. This is a reference to an exception that was deleted several versions ago. It seems unlikely

that there will ever be a significant increase in a debtor's earnings over a four-month period without a change of employers. If the possibility does exist, the order can always provide for a subsequent hearing. It might be noted that a similar four-month limitation on the taking of a creditor examination is provided in Section 714.

Section 723.106. Subdivision (a) of this section has been added to make clear that the term "earnings" as used in this section includes tips.

Since the drafting of this section, it has come to the attention of the staff that an employer may be subject to sanctions for violation of the federal Labor Standards Act where he withholds too much from an employee's wages. Section 531.39(b) in 29 Code of Federal Regulations provides that the amount of an individual's earnings withheld in excess of the amounts allowed by Title III of the Consumer Credit Protection Act will not be considered to be the equivalent of payment of wages to the employee for the purpose of the Fair Labor Standards Act. Professor Warren has expressed the fear that, even in a state that has been exempted by the Secretary of Labor from enforcement of federal restrictions on garnishment, an employer withholding too much from the debtor's pay could find himself in violation of the Fair Labor Standards Act and subject to federal prosecution. We believe that, although Section 723.106 permits the withholding of a greater amount by one employer than he would otherwise be able to withhold, the impact on the employee is the same. The employee's total earnings are still protected by the earnings protection law. Accordingly, we do not believe that the employer would ever be required to withhold amounts in excess of that permitted by Title III and would not be subject therefore to federal prosecution. We note the problem, however, for your consideration.

Section 723.107. We have added an entirely new Comment to this section.

Section 723.108. This section was simply revised in conformity with directions of the Commission at the last meeting.

Section 723.109. No change.

Section 723.110. No substantive change.

Section 723.111. This section has been revised to provide a 10-day waiting period after the expiration of an earnings withholding order.

Section 723.120. Paragraph (4) of subdivision (a) has been revised to refer to bankruptcy proceedings in the manner suggested by Professor Riesenfeld.

Section 723.121. This section has been rephrased and also revised to refer to bankruptcy proceedings in the manner suggested by Professor Riesenfeld.

Section 723.122. No change.

Section 723.123. Paragraphs (2) and (3) of subdivision (b) have been revised to refer to "earnings and other income" at the direction of the Commission.

Section 723.124. No substantive change.

Section 723.125. No substantive change.

Section 723.126. Subdivision (a) was revised in conformity with the directions of the Commission at the last meeting.

Section 723.130. This section is new and simply implements the direction by the Commission to the staff to draft a section making clear that failure to comply with orders of the court may subject the person failing to comply to sanctions for contempt of court.

Section 723.131. No substantive change.

Section 723.132. No change except for renumbering.

Section 723.133. This section is new and makes clear that an employer is protected from liability where he complies with an order or notice which appears proper on its face. The substance of this section was suggested by the Commission at the last meeting.

Section 723.150. No substantive change.

Section 723.151. No change.

Section 723.152. No substantive change.

Section 723.153. No substantive change.

Section 723.154. The authorization to secure injunctive relief provided by this section is limited to those cases where a violator has failed to comply with a cease and desist order.

Section 723.155. This section is entirely new. It provides authority to the State Administrator to seek judicial injunctive relief in circumstances where normal administrative procedures would be inadequate to prevent substantial and irreparable injury.

Section 723.156. No change.

Section 723.157. No change.

Section 723.158. No change.

Section 723.159. No change.

Labor Code Section 300. Subdivision (a) has been added to make clear that the phrase "assignment of wages" includes the sale or assignment of, or the giving of, any order for wages or salary. Subdivision (c) has been revised to make clear that, after a brief moratorium, an earnings withholding order has priority over a wage assignment. The purpose of the moratorium period is to prevent any overlap between the assignment and the earnings withholding order and to relieve the employer from having to prorate the amounts that he is required to withhold under the prior assignment and subsequent earnings withholding order.

We have substantially revised the Comment to Section 300 in an attempt to make its operation more clear.

The staff was also asked to determine whether this statute applies to all employees--public as well as private. The statute does apply to all

public employees. However, for reasons of public policy, case law prohibits a "holder of a public office" from assigning future wages. Generally speaking, "holders of a public office" can be equated with elected officials.

Financial Code Section 15406. No change.

Unemployment Insurance Code Section 1342. This is merely a conforming change required by the amendment of Section 690.18.

Respectfully submitted,

Jack I. Horton
Assistant Executive Secretary

STATE OF CALIFORNIA
CALIFORNIA LAW
REVISION COMMISSION

TENTATIVE RECOMMENDATION

relating to

ATTACHMENT, GARNISHMENT, AND EXEMPTIONS FROM EXECUTION

Earnings Protection Law

April 1971

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford University
Stanford, California 94305

NOTE: This is a tentative recommendation and is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be considered when the Commission determines what recommendation it will make to the Legislature.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

This tentative recommendation includes an explanatory Comment to each section of the recommended legislation. For the most part, the Comments are written as if the legislation were enacted. They are cast in this form because their primary purpose is to undertake to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

CONTENTS

<u>RECOMMENDATION</u>	(yellow pages)
INTRODUCTION _____	1
PREJUDGMENT ATTACHMENT OF EARNINGS AND BANK ACCOUNTS _____	2
Earnings--Payable and Paid _____	2
Bank Accounts _____	3
POSTJUDGMENT EXECUTION UPON EARNINGS _____	5
Introduction _____	5
State Exemption From Federal Law _____	7
Restrictions on Withholding From a Debtor's Earnings (Basic Protection) _____	7
Restrictions on Withholdings From a Debtor's Earnings (Supplementary Relief) _____	10
Continuing Levy Procedure; Service by Mail _____	12
Hearings; Extrajudicial Agreements _____	15
Enforcement _____	16
State Administrator _____	16
WAGE ASSIGNMENTS _____	16
POSTJUDGMENT EXECUTION UPON BANK ACCOUNTS AND RETIREMENT FUNDS _____	17
Bank Accounts _____	17
Retirement Funds _____	18
 <u>PROPOSED LEGISLATION</u>	 (white pages)
CIVIL CODE	
§ 4701 (amended) _____	1
CODE OF CIVIL PROCEDURE	
§ 690.6 (amended) _____	3
§ 690.7 (repealed) _____	9

§ 690.7. Bank accounts; exemption from levy of attachment _____	10
§ 690.18 (amended) _____	14
§ 690.50 (amended) _____	19
§ 690.75. Bank accounts; exemption from levy of execution _____	22
§ 710 (amended) _____	24
CHAPTER 2.5. EARNINGS PROTECTION LAW _____	27
Article 1. Short Title; Definitions _____	27
§ 723.10. Short title _____	27
§ 723.11. Definitions _____	28
Article 2. General _____	30
§ 723.20. Chapter exclusive procedure for withholding earnings _____	30
§ 723.21. Levy made by earnings withholding order _____	31
§ 723.22. Continuing withholding order _____	32
§ 723.23. Expiration date of withholding order _____	33
§ 723.24. When earnings withholding order terminates _____	34
§ 723.25. Priority of orders generally _____	36
§ 723.26. Orders for support _____	38
§ 723.27. Orders for state taxes _____	40
§ 723.28. Withholding order for costs and interest _____	42
§ 723.29. Agreement between debtor and creditor _____	43
§ 723.30. Payment to judgment creditor _____	46
§ 723.31. Judgment creditor to furnish receipt for payment _____	47
§ 723.32. Creditor required to notify employer when judgment satisfied _____	48

Article 3. Restrictions on Earnings Withholding _____ 49

 § 723.50. Maximum amount of earnings that may be withheld_ 49

 § 723.51. Amounts essential for family support exempt_ __ 54

Article 4. Procedure for Issuance of Earnings Withholding
 Orders _____ 55

 § 723.100. Service; recovery of costs_ _____ 55

 § 723.101. Application for issuance of earnings with-
 holding order _____ 56

 § 723.102. Notice and forms to be sent to judgment debtor_ 57

 § 723.103. Judgment creditor's acceptance of debtor's
 plan _____ 59

 § 723.104. Hearing on application of judgment debtor _____ 61

 § 723.105. Court order after hearing; effect of order_ __ 63

 § 723.106. Multiple sources of earnings _____ 64

 § 723.107. Issuance of earnings withholding order_ _____ 67

 § 723.108. Transmittal of order and information to
 employer _____ 69

 § 723.109. Employer's return _____ 70

 § 723.110. Hearing on judgment debtor's application
 after issuance of order _____ 71

 § 723.111. Limitation on obtaining additional earnings
 withholding orders _____ 72

Article 5. Forms; Informational Pamphlet; Withholding Table __ 73

 § 723.120. Form for application for earnings withholding
 order _____ 73

 § 723.121. Form of notice to judgment debtor _____ 75

 § 723.122. Form for application of judgment debtor for
 hearing _____ 77

 § 723.123. Form for judgment debtor's financial statement 78

 § 723.124. Form of earnings withholding order_ _____ 79

 § 723.125. Form for employer's return _____ 82

 § 723.126. Informational pamphlet and withholding tables _ 83

Article 6. Remedies _____	84
§ 723.130. Enforcement of orders _____	85
§ 723.131. Remedies of judgment creditor _____	86
§ 723.132. Fraudulent withholding by employer _____	87
§ 723.133. Employer may rely on orders and notices proper on their face _____	88
Article 7. Administration and Enforcement _____	89
§ 723.150. State Administrator _____	89
§ 723.151. Warning to innocent violator _____	90
§ 723.152. Conference with suspected violator _____	91
§ 723.153. Cease and desist order _____	92
§ 723.154. Injunctive relief; failure to comply with cease and desist order _____	93
§ 723.155. Injunctive relief pending administrative adjudication _____	94
§ 723.156. Rules and regulations _____	95
§ 723.157. Investigatory powers _____	96
§ 723.158. Liaison with federal administrator _____	97
§ 723.159. Fees of clerk _____	99
FINANCIAL CODE	
§ 15406 (repealed) _____	100
LABOR CODE	
§ 300 (amended) _____	101
UNEMPLOYMENT INSURANCE CODE	
§ 1342 (amended) _____	107
OPERATIVE DATE _____	108

TENTATIVE RECOMMENDATION OF THE CALIFORNIA

LAW REVISION COMMISSION

relating to

ATTACHMENT, GARNISHMENT, AND EXEMPTIONS FROM EXECUTION

Earnings Protection Law

INTRODUCTION

The past several years have witnessed increasingly critical scholarly review of the process of wage garnishment¹ accompanied by a virtual explosion of judicial² and legislative³ activity--both federal and state--in this area. The rapid pace of events and involvement of different branches and levels of government have produced, almost inevitably, conflict and uncertainty and have also resulted in certain areas which are in need of reform being overlooked or bypassed in the rush to achieve certain goals. This recommendation reviews the area of wage garnishment and certain related matters⁴ and proposes solutions to the problems revealed.

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1. In California alone, see, e.g., Brunn, Wage Garnishment in California-- A Study and Recommendations, 53 Cal. L. Rev. 1214 (1965); Western Center on Law and Poverty, Impact and Extent of Wage Garnishment in Los Angeles County (1968).
 2. See, e.g., Sniadach v. Family Finance Corp., 395 U.S. 337 (1969); McCallop v. Carberry, 1 Cal.3d 903, 464 P.2d 122, 83 Cal. Rptr. 666 (1970).
 3. See, e.g., Consumer Credit Protection Act of 1968 (§§ 301-307), 15 U.S.C. §§ 1671-1677; Cal. Stats. 1970, Ch. 1523.
 4. The Commission is actively engaged in a general review of the California statutes relating to the entire field of attachment, garnishment, and exemptions from execution with a view to recommending the enactment of a comprehensive revision of this body of law at a future session of the Legislature. This recommendation deals with one aspect of that general subject.

PREJUDGMENT ATTACHMENT OF EARNINGS AND BANK ACCOUNTS

Earnings--Payable and Paid

In June 1969, the United States Supreme Court in Sniadach v. Family Finance Corp.⁵ held that the prejudgment garnishment of wages under a Wisconsin statute constituted a taking of property in violation of the due process requirements of the Fourteenth Amendment to the United States Constitution. Six months later, the California Supreme Court in McCallop v. Carberry⁶ held, relying on Sniadach, that California's then existing prejudgment wage garnishment procedure also constituted a taking of property in violation of procedural due process. In an attempt to conform to the relatively narrow holdings in these cases, subdivision (a) of Section 690.6 of the Code of Civil Procedure was amended at the 1970 legislative session to exempt from levy of attachment "all earnings of the debtor due or owing for his personal services" ⁷ This amendment constituted a change from the former California law which protected earnings "received" by the debtor. ⁸ Moreover, it

5. 395 U.S. 337 (1969).
6. 1 Cal.3d 903, 464 P.2d 122, 83 Cal. Rptr. 666 (1970).
7. Cal. Stats. 1970, Ch. 1523, § 19 (emphasis added).
8. Between 1937 and 1970, California granted a wage exemption to earnings "received." Cal. Stats. 1937, Ch. 578, § 1, p. 1623. Prior to 1937, the exemption was accorded to earnings without reference to their status as "owing" or paid over. The word "received" was construed early as including accrued but unpaid wages. See Medical Finance Ass'n v. Rambo, 33 Cal. App.2d Supp. 756, 757, 86 P.2d 159, _____ (Sup. Ct. L.A., App. Dep't 1938) ("We are not to be understood as saying that the exemption would not also attach to the proceeds of his earnings in the judgment debtor's hands, so long as they could be identified as such. That question is not before us and we express no opinion on it."). In subsequent cases, the California courts have at least sub silentio applied the wage exemption to a paycheck in the hands of the employee or deposited by him in a bank account. See Medical Finance Ass'n v. Short, 36 Cal. App.2d Supp. 745, 92 P.2d 961 (Sup. Ct. L.A., App. Dep't 1939)(W.P.A. worker's paycheck); Le Font v. Rankin, 167 Cal. App.2d 433, 334 P.2d 608 (1959)(bank account); Carter v. Carter, 55 Cal. App.2d 13, 130 P.2d 186 (1942)(bank account).

seems completely inconsistent with, if not contrary to, the rationale of Sniadach and McCallop to exempt earnings payable ("due and owing") by an employer but to permit these same earnings to be subject to attachment as soon as they pass into the hands of the employee-debtor. To avoid the inconsistency and to partially restore prior law, the Commission recommends that earnings in the possession of the debtor be afforded statutory protection comparable to that given wages earned but unpaid. The exemption may be granted automatically where the earnings are readily identifiable as such. Where this is not the case, the debtor should be required to claim and show that he is entitled to an exemption.

Bank Accounts

Both Sniadach and McCallop left major problems largely unresolved; not the least of these is the extent to which the Sniadach rationale will be extended to assets other than wages.⁹ Treatment of all but one of these types of assets must be deferred;¹⁰ bank accounts, however, demand immediate consideration. In view of the almost universal use of personal checking accounts as at least the temporary depository of earnings and the increasingly common practice of employers to deposit earnings of an employee directly into the employee's account, the failure to provide any protection from attachment for such accounts results in the same anomalous situation noted above. Unpaid earnings are protected; paid earnings deposited in a bank account are not. Yet, the impact upon the wage earner and his family of an interruption of his flow of earnings--whether before or after they are received--is identical.

9. Compare Gray v. Whitmore, 14 Cal. App.3d 784, 92 Cal. Rptr. 505 (1971), and Klim v. Jones, 315 F. Supp. 109 (N.D. Cal. 1970), with Western Bd. of Adjusters, Inc. v. Covina Publishing Co., 9 Cal. App.3d 659, 88 Cal. Rptr. 293 (1970).

10. See note 4 supra.

The decisions of the United States and California Supreme Courts both emphasized that wages are a special type of property, that the attachment of wages "may impose tremendous hardship on wage earners with families to support," and that the taking of wages under a prejudgment levy of attachment can give a creditor "enormous leverage."¹¹ Obviously, the very same hardship can occur and leverage be obtained whether wages are in the possession of the debtor or whether they are deposited by or for him in a checking account and are attached. To limit protection from attachment merely to wages "due and owing" could simply serve to shift the focus from garnishment of employers to garnishment of bank accounts--a change which would only minimally benefit the average wage earner and his family and would hardly achieve the results contemplated by the courts.

While the foregoing strongly suggests that the protection of earnings should be extended to whatever form they may take, there are problems inherent in the exemption of bank accounts that do not arise upon levy against an employer or even against the wage earner himself. To attempt to exempt all or a specified percentage of earnings deposited in an account necessarily involves issues of tracing and identifying funds deposited at different times, allocating withdrawals to respective deposits, claims of third persons to joint accounts, and so on. These problems are not perhaps insurmountable, but a much simpler, and equally satisfactory, approach is already suggested in Section 690.7 of the Code of Civil Procedure and Section 15406 of the Financial Code. These sections provide fixed exemptions for savings accounts in savings and loan associations (\$1,000) and credit unions (\$1,500), respectively. Extension

11. See *McCallop v. Carberry*, 1 Cal.3d 903, 906, 464 P.2d 122, _____, 83 Cal. Rptr. 666, _____ (1970), quoting extensively from *Sniadach v. Family Finance Corp.*, 395 U.S. 337, _____ (1969) ("The result is that prejudgment garnishment . . . may as a practical matter drive a wage earning family to the wall.").

of similar protection to all bank accounts would insure that a wage earner would never be left destitute and still provide a simple procedure for levy upon an account or accounts larger than the basic exemption. Although the exemption would not be integrated directly with the protection for earnings, its impact should satisfy constitutional requirements.

The Commission accordingly recommends that Section 690.7 be amended to provide a uniform 1,500-dollar aggregate exemption from attachment for accounts of every kind held by any financial institution. This basic exemption should prove adequate in the overwhelming majority of cases. However, two special cases seem to also merit protection. A debtor should be permitted to protect such greater amount as he can show (1) is essential for the support of himself or his family or (2) is required for the payment of wages or salary earned by an employee of the debtor prior to the date of the levy. The first exception is a very limited one and would only be applicable where the debtor has, for example, extraordinary medical expenses. The second exception should be particularly helpful to the small businessman and is consistent with the general policy of protection of wage earners from the interruption of their day-to-day flow of earnings. It should be emphasized, however, that these further exemptions would apply only where the debtor can prove that the basic exemption is inadequate to provide for these contingencies.

POSTJUDGMENT EXECUTION UPON EARNINGS

Introduction

At the same time attachment procedures received the scrutiny of the courts, wage garnishment generally, including garnishment under postjudgment levy of execution, was the subject of Congressional action. Title III was

12. 15 U.S.C. §§ 1671-1677.

incorporated into the federal Consumer Credit Protection Act of 1968 restricting the "garnishment" of "earnings" of a debtor to certain limited amounts -- basically 25 percent of "disposable earnings." These restrictions were made applicable nationwide, effective July 1, 1970. To provide some measure of uniformity, the California Legislature amended subdivision (b) of Section 690.6 of the Code of Civil Procedure to exempt from levy of execution such portion of a debtor's earnings "as is allowed by statute of the United States." However, it does not appear that the federal requirements were met completely--which means that California citizens are subject to two sets of garnishment laws, one state and one federal--and, equally important, no steps were taken towards a general overhaul of California's archaic wage garnishment machinery. These matters are dealt with here.

13. Subdivision (c) of Section 302 of the Act (15 U.S.C. § 1672(c)) provides:

(c) The term "garnishment" means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt.

14. Subdivision (a) of Section 302 of the Act (15 U.S.C. § 1672(a)) provides:

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

15. See Consumer Credit Protection Act of 1968 (§ 303(a), 15 U.S.C. § 1673(a)).

16. Subdivision (b) of Section 302 of the Act (15 U.S.C. § 1672(b)) provides:

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

17. The federal act specifically provides that "no court of . . . any State may make, execute or enforce any order or process in violation of this section." 15 U.S.C. § 1673(c). Hence, the conformity of a state law may be challenged in either a state or a federal court if the state enforces a garnishment statute that fails to conform to the federal minimum requirements.

18. Cal. Stats. 1970, Ch. 1523, § 19.

State Exemption From Federal Law

The federal Consumer Credit Protection Act invites each state to enact its own restrictions on the garnishment of earnings and to undertake its own enforcement of these provisions. ¹⁹ The advantages of exemption seem apparent. Nothing is gained by having two separate garnishment restriction laws, one state and one federal. An exemption from the federal restrictions would permit California debtors, creditors, and employers to refer to only one body of law to determine the extent to which earnings are subject to garnishment. Accordingly, the Commission recommends that an exemption from federal control in this area be sought and believes that the proposals it suggests here would permit an exemption to be obtained.

Restrictions on Withholding From a Debtor's Earnings (Basic Protection)

It is clear that, to gain exemption, a state must enact a law with provisions at least as protective to the individual as the federal law. ²⁰

19. Section 305 of the Act (15 U.S.C. § 1675) provides:

305. The Secretary of Labor may by regulation exempt from the provisions of Section 303(a) garnishments issued under the laws of any State if he determines that the laws of that State provide restrictions on garnishment which are substantially similar to those provided in Section 303(a).

20. 29 C.F.R. § 870.51 (1970) provides:

870.51. (a) It is the policy of the Secretary of Labor to permit exemption from section 303(a) of the CCPA garnishments issued under the laws of a State if those laws considered together cover every case of garnishment covered by the Act, and if those laws provide the same or greater protection to individuals. Differences in text between the restrictions of State laws and those in section 303(a) of the Act are not material so long as the State laws provide the same or greater restrictions on the garnishment of individuals' earnings.

(b) In determining whether State-regulated garnishments should be exempted from section 303(a) of the CCPA, or whether such an exemption should be terminated, the laws of the State shall be examined

Subdivision (a) of Section 303 of the federal act provides, in part:

(a) . . . [T]he maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed

(1) 25 per centum of his disposable earnings for that week, or

(2) The amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 in effect at the time the earnings are payable [currently \$1.60]

whichever is less.

In short, this means that, if an individual's disposable earnings for a workweek are \$48 or less, his earnings may not be garnished in any amount. If his earnings are between \$48 and \$64, the entire amount above \$48 may be garnished. Above \$64, the 25 percent rule applies. Thus, federal law merely provides a \$48 a week floor on earnings subject to garnishment. This amount is not excluded from every debtor's earnings. Moreover, the figure itself is suspect as a standard adequate to permit even a subsistence level of existence for a debtor and his family faced with the high cost of living prevailing in California. Finally, the federal minimum wage, in the past, has moved upward spasmodically and is only a rough barometer at best of inflationary trends.

with particular regard to the classes of persons and of transactions to which they may apply; the formulas provided for determining the maximum part of an individual's earnings which may be subject to garnishment; restrictions on the application of the formulas; and with regard to procedural burdens placed on the individual whose earnings are subject to garnishment.

(c) Particular attention is directed to the fact that subsection (a) of section 303, when considered with subsection (c) of that section, is read as not requiring the raising of the subsection (a) restrictions as affirmative defenses in garnishment proceedings.

21. 15 U.S.C. § 1673(a).

These drawbacks in the federal scheme must be added to the difficulty inherent in determining what constitutes "disposable earnings." Federal law describes "disposable earnings" as that amount remaining "after the deduction . . . of any amounts required by law to be withheld." ²² The latter amounts apparently include amounts withheld for federal and state income taxes, federal social security, and state unemployment insurance. Less clear is the treatment of wage assignments and contributions to public retirement funds. These ambiguities obviously impose a difficult burden on the employer who must determine what part of his employee's earnings are subject to garnishment. Even where the rule can be clearly applied, the results achieved can be disturbing. Thus, amounts withheld for federal income tax purposes are clearly deductible in determining "disposable earnings." Presumably, this would permit a debtor who does not choose to claim all his exemptions to shield a certain amount of his earnings from his creditors. On the other hand, 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 but with more limited needs.

To alleviate these problems, the Commission recommends that the amounts to be deducted in determining the portion of the debtor's earnings which are subject to garnishment be specified by statute. All but one of these items would be related to the types of deductions made under federal law; i.e. they would be based on the amounts withheld for federal and state income taxes, social security, and unemployment insurance. However, the amount to be deducted would be fixed according to a formula (based on the amount which

22. 15 U.S.C. § 1672(b).

would be withheld from the same amount of gross earnings of a single person who claims one exemption). In addition, a basic minimum exemption (initially \$80) would also be deducted in every case. This minimum exemption would be subject to revision both upwards and downwards at regular intervals by the State Administrator in conformity with changes in the California consumer price index. After subtracting these deductions and the basic exemption, 20 percent of the amount of earnings remaining would then be subject to garnishment. One of the major benefits of this scheme would be that it permits a table to be prepared which would indicate the exact amount to be withheld from any given amount of gross earnings. An employer would, therefore, not have to make any computations but would simply withhold the amount listed in the table provided him. The scheme would also provide more flexible and meaningful adjustments to economic trends. These restrictions on garnishment would be provided automatically.

Restrictions on Withholdings From a Debtor's Earnings (Supplementary Relief)

California has, in the past, theoretically taken a more flexible approach concerning the protection of earnings than that evidenced by the federal Consumer Credit Protection Act. Under subdivision (c) of Section 690.6 of the Code of Civil Procedure, a debtor may protect from execution all earnings

necessary for the use of the debtor's family residing in this state and supported in whole or in part by the debtor, unless the debts are:

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

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

Unfortunately, in actual operation, the effect of the "common necessities" exception appears to have been to eliminate in all but a small number of cases

the exemption provided for earnings necessary to support the debtor's family. In order to obtain an exemption pursuant to Section 690.6, a debtor must follow the procedure outlined in Section 690.50. If the creditor alleges that his debt is for "common necessities," there follows a process of affidavit, counteraffidavit, hearing, and so on; all of which takes time, effort, and some sophistication. Whether or not this is the reason, the fact is that few debtors avail themselves of this exemption although presumably many more are eligible for it.

Moreover, it is fair to say that there is no evidence that the "common necessities" rule has had any effect on credit granting patterns in California. There is not the slightest reason to believe that credit grantors in California act any differently from those in the great majority of states that do not have the "common necessities" rule. In truth, the result of the "common necessities" rule in California has been to decide the question whether competing creditors can reach a debtor's earnings neither from the debtor's point of view--the needs of the debtor's dependents--nor from the creditor's viewpoint--whether the creditor was careful to advance credit to the debtor only after ascertaining that his credit worthiness showed an ability to pay or whether the creditor provided the debtor with quality goods or services. Rather, the claims of competing creditors for earnings may be decided in California on the technical, and usually irrelevant, issue of what is a "common necessary of life."²⁴ Hence, a reputable creditor who has rationed credit prudently to a debtor and has provided high quality goods and services

23. See Western Center on Law and Poverty, Impact and Extent of Wage Garnishment in Los Angeles County 6, 122-123 (1968); Brunn, Wage Garnishment in California--A Study and Recommendations, 53 Cal. L. Rev. 1214, 1219 (1965).

24. See, e.g., Los Angeles Finance Co. v. Flores, 110 Cal. App.2d Supp. 850, 243 P.2d 139 (1952).

to him may be barred from reaching wages while another creditor whose grant of credit was made in reckless disregard of the debtor's ability to pay and who sold the debtor low quality products may be allowed to garnish wages.

The Commission accordingly recommends that the "common necessary" excep-
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tion be eliminated, that the procedure for claiming an exemption of an additional amount essential for support of the debtor's family be simplified, and that the availability of this right be made clear to the debtor. However, in recognition of the greater liberality provided in the basic exemption, a stricter standard--"essential for support"--should be provided to make clear that the exemption provided here is only intended for use in extraordinary circumstances and is not intended to shield a debtor from his judgment creditors while maintaining a lavish life style. Only such additional amount as is required for the maintenance of a basic subsistence standard of living should be exempt.

Continuing Levy Procedure; Service by Mail

The primary concern of Title III of the federal Consumer Credit Protection Act is to secure--through restrictions on the amounts which can be withheld--adequate protection for the wage earner's day-to-day income. In the context of California's wage garnishment procedure, this is only one aspect in need of revision.

California law requires that writs of execution be levied by a sheriff, constable, or marshal and permits only amounts owing to the debtor at the time of service of the writ to be reached by his creditor through wage garnishment. A fee is charged for each writ of execution issued and a writ is

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25. The Commission also recommends that the exception be eliminated which permits a creditor who is a former employee of the debtor to take a portion of the debtor's wages even though the debtor can show the money is necessary for the support of his family. This exception is largely irrelevant to the low income debtor, for such a debtor has no employees, and there is no indication that this provision has ever actually been invoked by creditors.

good for a maximum of only 60 days. Thus, for example, if a creditor has a debt of \$250 and is entitled to levy on \$25 of the debtor's earnings at each weekly pay period, ten separate levies by the sheriff or marshal are required. This entails ten separate trips to the debtor's place of employment by this officer and ten bookkeeping computations by the employer. In addition, it requires at least two applications to the court clerk because the period of garnishment will extend for more than 60 days. Moreover, the example assumes that the entire \$25 goes towards satisfying the obligation. In fact, because of fees charged by the sheriff or marshal for service, the fee for issuance of the writ, and interest on the obligation are deducted first from the amount collected, probably less than half of this amount will be applied to reduce the amount owing and the number of levies will accordingly be doubled. It seems

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26. It has been estimated that, in 1968, employers in Los Angeles County alone expended nearly two million dollars to process wage garnishments--or almost \$20 per paycheck garnished. See Western Center on Law and Poverty, supra note 23, at 7.
 27. See, e.g., Govt. Code §§ 26722 (fee for service of writ of execution is \$5); 26739 (collection fee of not less than \$1); 26746 (mileage-- one way at 70 cents a mile).
 28. Not to belabor the point, but the following examples indicating the results which can be and are reached daily in California were cited to the Commission by Mr. Gordon H. Bishop, representing the California Department of Consumer Affairs:

A typical wage-earner making \$4.00 per hour, \$160.00 per week. His "disposable income" is \$120.00, of which 25%, or \$30.00 is subject to garnishment. From that \$30.00 is deducted \$1.50 for the writ, \$10.00 sheriff's charges for service, and \$.70 interest, leaving \$17.80 for reduction of the judgment principal. If the debtor were to discharge a \$500 judgment through a series of such executions, he will have paid out in excess of \$800.

So much for the \$4.00 per hour man. Perhaps he can afford the premium. But consider the case of the "poor" whom the law is designed to give major relief.

A wage-earner makes \$2.00 per hour, \$80.00 per week. If his disposable income" is \$64.00, the \$16.00 required levy would leave just \$3.80 to reduce the judgment principal, assuming the costs in the

obvious that this system of multiple levies is both timewasting and expensive for all concerned--public officials, creditors, debtors, employers, and the public generally.²⁹ To eliminate these problems, the Commission recommends that a continuing levy system be provided which permits service by mail.

In New York and other states, a court order to an employer to pay over the debtor's earnings constitutes a continuing levy and is effective until the debt is paid or the debtor is no longer employed by the employer.³⁰ Such a system is clearly more convenient and less expensive than the present California multiple levy system. Perhaps, the only drawbacks of the continuing levy lies in its tendency towards exclusion of all but one creditor. Thus, if the initial order is given effect indefinitely, the debt is large, and the debtor's earnings modest, subsequent creditors may be postponed for substantial periods of time. Some compromise between the two extremes is necessary. The Commission accordingly recommends that an order generally³¹ be permitted to be in effect for no longer than four months,³² at the end of which time, the

above example. If the executions were to run for the next 2-1/2 years, the \$500 judgment would be paid off at a cost to the debtor in excess of \$2000.

See Minutes, California Law Revision Commission, Meeting of January 15-16, 1971, on file at the Commission's offices, School of Law, Stanford, California.

29. Despite the fact that the sheriffs and marshals charge a fee for each levy made, it has been estimated that the county--its taxpayers--pays 30 to 50 percent of the expenses of collection. Brunn, supra note 23, at 1222.
30. See [citations to statutes of New York and other states providing continuing levy].
31. This rule should not apply to orders for support or for the collection of taxes. Such orders should have a continuing priority over all other obligations.
32. A period of four months has been selected on the belief that such period would be adequate to permit complete satisfaction of the majority of consumer debts from the majority of wage earners.

debtor who secured such order would be precluded for a short period (ten days) from serving another order based on the same debt against the same employer. This moratorium period would permit another creditor to intervene and make collection.

It appears to the Commission that the use of sheriffs and marshals as high-priced messengers when a creditor is attempting to reach a relatively static and visible asset like earnings is a grossly extravagant waste of time and money. The United States Post Office can complete the same task for a few cents. It is to the interest of debtors, creditors, and taxpayers generally that the function of service be performed in a businesslike manner. The Commission accordingly recommends that service by mail of the various applications, notices, and orders required for this process be authorized.

Hearings; Extrajudicial Agreements

It is unrealistic to hope that any statutory procedures governing this area of the law can be made entirely self-executing. Some provision must be made for judicial review concerning both the issuance and modification of orders requiring the withholding of earnings. The right to review should be made clearly known to the debtor, and the procedure for invoking such review should be as simple as possible. To accomplish these objectives, the Commission recommends that these procedures be carefully outlined and that forms be statutorily described--subject to revision by the Judicial Council--which make clear the rights and obligations of both creditors and debtors.

Despite the necessity of ultimate judicial review, it is obviously highly desirable to avoid where possible burdening the courts with these matters. The Commission accordingly recommends that creditors and debtors be encouraged to enter into voluntary agreements leading to both the issuance of orders and the effective modification of such orders. This can be accomplished by giving

these agreements the same effect as judicial orders where the agreement is entered into in good faith and without substantial prejudice to the rights of other creditors.

Enforcement

The first step towards effective enforcement is taken by providing procedures that are relatively easy to comply with. Beyond this, the statute should make clear the remedies of the creditor when too little is withheld and of the debtor when too much is withheld. The power of the court to compel obedience to its orders should be underscored. Finally, administrative enforcement procedures--through warnings, cease and desist orders, or injunctive relief, together with adequate investigatory powers--should be provided.

State Administrator

As indicated above, the Commission recommends that California seek exemption from federal control over its wage garnishment procedures. To obtain such an exemption, a representative authorized to act on behalf of the state as a liaison with the federal administrator must be designated. It seems desirable that the designated official also be granted the responsibilities of enforcement suggested above as well as duties of rule making and similar administrative tasks. The Commission recommends that the Department of Industrial Relations be selected as the state administrator to administer and enforce these procedures.

WAGE ASSIGNMENTS

Section 300 of the Labor Code presently grants a preference to a valid prior voluntary wage assignment over subsequent assignments and levies on execution. Continuation of such a preference would permit a judgment debtor

to give preference to one creditor and to defeat the claims of other creditors who seek to collect on their judgments under the earnings withholding procedure. To integrate wage assignments with the operation of the latter procedure, the Commission recommends that a prior wage assignment be granted priority only until after the end of the pay period during which an earnings withholding order is served. The operation of the earnings garnishment order should be suspended during this period, thus permitting the debtor an opportunity to put his affairs in order. Such action may include revocation of the prior assignment. In this regard, wage assignments should be made revocable at will as to unearned wages. Thus, where an assignment becomes too onerous--for example, after service of an earnings garnishment order--, such assignment may be revoked.

POSTJUDGMENT EXECUTION UPON BANK ACCOUNTS AND RETIREMENT FUNDS

Bank Accounts

In the opinion of the federal administrator, the restrictions on garnishment provided in Title III of the Consumer Credit Protection Act do not apply to earnings deposited in the debtor's bank account. ³³ While this opinion may remove the federal compulsion to protect such assets, it in no way alleviates the obvious need to grant some protection to bank accounts if any realistic measure of relief is to be provided for earnings. What was said above concerning relief from the attachment of bank accounts could be repeated verbatim here. The Commission accordingly recommends that limited protection comparable to that described above in connection with bank accounts also be provided to give relief from execution.

33. See Letter From Robert D. Moran, Administrator of the Wage and Hour Division of the Department of Labor, to Mr. Richard Allan Weiss, February 26, 1971 (copy on file at the office of the California Law Revision Commission, School of Law, Stanford, California).

Retirement Funds

Title III does, however, specifically include "periodic payments pursuant to a pension or retirement program"³⁴ within the definition of earnings. Accordingly, the federal restrictions on garnishment imposed by that title apply to such payments. California law regarding such payments is less clear. As for payments held or in the process of distribution from public pension and retirement plans, subdivision (b) of Section 690.18 of the Code of Civil Procedure provides a complete and automatic exemption. As for similar payments held or in the process of distribution from certain private plans, subdivision (c) of that section seems to provide an exemption only from garnishment "in any bankruptcy proceeding." Moreover, the exemption must be claimed, and no exemption at all applies to moneys held under a Keogh Act plan. There is no apparent justification for the disparity in treatment between public and private plans, nor does it seem desirable to perpetuate the total exemption now provided public plans.

The Commission accordingly recommends that Section 690.18 be revised to provide exemptions for retirement benefits consistent with the purpose of providing adequate relief for retired persons generally as well as procedures for collection which are integrated with the general procedure for withholding earnings. These provisions should apply equally to both public and private retirement plans. Generally speaking, assets held or controlled by any retirement or disability plan should be completely exempt from garnishment. However, the inclusion of all private plans under this exemption requires that certain safeguards from abuse also be provided. If a person could protect all contributions to a plan, the plan could serve as a sanctuary from creditors for a debtor's funds. Accordingly, protection should be provided only for annual contributions not exceeding a fixed amount. Where contributions

34. 15 U.S.C. § 1672(a), quoted in note 14 supra.

in excess of this amount have been made, a debtor may protect only a pro rata portion of the resulting fund. This same approach is currently employed by Sections 690.9 and 690.11 relating to life insurance and health and disability insurance, respectively.

When benefits are being distributed to a retired or disabled person (or such person has the right to require such distribution), these payments should be treated as "earnings." They should be protected to the same extent but should also be subject to garnishment in the same manner as earnings generally.

PROPOSED LEGISLATION

The Commission's recommendations would be effectuated by the enactment of the following measure:

An act to amend Section 4701 of the Civil Code, to amend Sections 690.6, 690.18, 690.50, and 710 of, to add Sections 690.7 and 690.75 to, to add Chapter 2.5 (commencing with Section 723.10) to Title 9 of Part 2 of, and to repeal Section 690.7 of, the Code of Civil Procedure, to repeal Section 15406 of the Financial Code, to amend Section 300 of the Labor Code, and to amend Section 1342 of the Unemployment Insurance Code, relating to attachment, garnishment, and exemptions from execution.

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

Civil Code § 4701 (amended)

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

~~4701. In any proceeding where the court has ordered either or both parents to pay any amount for the support of a minor child, the court may order either parent or both parents to assign to the county clerk, probation officer, or other officer of the court or county officer designated by the court to receive such payment, that portion of salary or wages of either parent due or to be due in the future as will be sufficient to pay the amount ordered by the court for the support, maintenance and education of the minor child. Such order shall be binding upon an employer upon the service of a copy of such order upon such employer and until further order of the court. The employer may deduct the sum of one dollar (\$1) for each payment made pursuant to such order. Any such order may be modified or revoked at any time by the court. Any such assignment made pursuant to court order shall have priority as against any attachment, execution, or other assignment, unless otherwise ordered by the court.~~

(a) In any proceeding where the court has ordered either or both parents to pay any amount for the support of a minor child, the court may issue an earnings withholding order for any amounts designated by the court sufficient to pay for the support, maintenance, and education of the minor child. The earnings withholding order shall clearly indicate that it is an order for support.

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

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

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

Code of Civil Procedure § 690.6 (amended)

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

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

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

(c) All of such earnings, if necessary for the use of the debtor's family residing in this state and supported in whole or in part by the debtor, unless the debts are:

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

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

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

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

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

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

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

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

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

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

(g) From levy of execution, that portion of his earnings which the judgment debtor establishes is essential for the support of his family.

Comment. Section 690.6 is amended and integrated with new Chapter 2.5 (commencing with Section 723.10) to satisfy the restrictions upon the attachment of and execution upon earnings imposed by recent judicial decisions and federal legislation. See Chapter 2.5 (commencing with Section 723.10) and Comments thereto. See also Recommendation Relating to Attachment, Garnishment, Exemptions From Execution: Earnings Protection Law (1971). It should be emphasized that Section 690.6 states the exemptions from prejudgment levy of attachment for all earnings, both paid and payable. This section is also the source of exemption from postjudgment levy of execution for paid earnings. Unpaid earnings, i.e., earnings "due and owing," are provided for by Chapter 2.5 (commencing with Section 723.10).

Subdivision (a) defines "earnings" in conformity with Section 723.11. See discussion in Comment to Section 723.11. The reference in Section 302(a) of the federal Consumer Credit Protection Act of 1968 to compensation "paid or payable" is omitted in the definition set forth here but forms the basis for the categories of exempt assets protected under Chapter 2.5 (commencing with Section 723.10)(earnings owed to judgment debtor) and subdivisions (b) through (f) of this section. That is, earnings which are "payable" are essentially those which are referred to as "due and owing" under this section. "Paid" earnings are covered here by reference to earnings which have been paid to the debtor--whether or not they are still in a form identifiable as "earnings." It should be noted that certain analogous types of periodic payments--for example,

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

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

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

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

Subdivision (d) makes clear that the levy of execution may no longer be used to garnish the wages of an employee while they are still in the hands of his employer. A judgment creditor now may only reach this asset of a debtor pursuant to Chapter 2.5 (commencing with Section 723.10). However, Chapter 2.5 deals primarily with unpaid earnings, i.e., earnings which are "due and owing." For a very limited exception to this rule with regard to tips, see Section 723.106 and Comment thereto. Earnings, once paid, are subject to levy of execution. Subdivisions (e) and (f), therefore,

Code Civ. Proc. § 690.6

provide exemptions for paid earnings comparable to the exemptions provided for unpaid earnings by Sections 723.50 and 723.51. It should be emphasized, however, that, as noted above, these subdivisions do not protect earnings after they have been converted into another form. Compare Section 690.75 (money deposited in bank, credit union, or savings and loan association).

§ 690.7 (Repealed)

Sec. 3. Section 690.7 of the Code of Civil Procedure is repealed.

~~690.7. (a) To the maximum aggregate value of one thousand dollars (\$1,000), 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; "savings deposits" shall include "investment certificates" and "withdrawable shares" as defined in Section 5061 and 5067 of the Financial Code, respectively.~~

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

Comment. Section 690.7 is superseded by new Sections 690.7 and 690.75.

§ 690.7. Bank accounts; exemption from levy of attachment

Sec. 4. Section 690.7 is added to the Code of Civil Procedure, to read:

690.7. (a) From levy of attachment, to the maximum aggregate value of fifteen hundred dollars (\$1500), any combination of the following:

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

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

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

(b) The exemption set forth in subdivision (a) shall be a maximum of fifteen hundred dollars (\$1500) per person.

(c) To claim the exemption provided in this section, the debtor shall file a claim of exemption as provided in Section 690.50. The debtor's claim shall include an affidavit which states that the sum of the amount claimed as exempt and all amounts held by him in all other accounts of the type described in subdivision (a) on the date of the levy does not exceed fifteen hundred dollars (\$1500).

(d) A debtor may claim a greater amount of any account as exempt from levy of attachment by filing a claim of exemption as provided in Section 690.50, and by showing that such amount is:

- (1) Essential for the support of himself or his family; or
- (2) Required for the payment of wages or salary earned by an employee of the debtor prior to the date of the levy.

Comment. Section 690.7 is revised to provide the same exemptions from levy of attachment for all types of savings or commercial accounts whether in a bank (paragraph (3)), savings and loan association (paragraph (1)), or credit union (paragraph (2)). For similar exemptions from levy of execution, see Section 690.75 and Comment thereto. The basic exemption is an aggregate one; that is, up to fifteen hundred dollars may be exempted hereunder from one or any combination of accounts. However, the total amount exempted by any one person from all accounts is limited to fifteen hundred dollars. Moreover, a debtor may claim as exempt only that portion of an account levied upon which, when added to all other amounts held by the debtor in other accounts on the date of the levy, equals fifteen hundred dollars. See subdivision (c). See also Section 690(c) ("debtor" defined to include defendant).

Subdivision (d) provides two exceptions which permit a debtor to protect such greater amount as he can show is "essential for the support of himself or family" (compare Section 723.51), or is "required for the payment of wages or salary earned by an employee of the debtor prior to the date of the levy." See Section 723.11 ("employee" defined). The latter preference should be particularly helpful to the small businessman and is consistent with a general policy to protect a wage earner from the interruption of his day-to-day flow of earnings.

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

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

Paragraph (1) of subdivision (a) continues the substance of subdivision (a) of former Section 690.7 except the amount of the exemption is increased to \$1500 to conform with the exemption provided for credit union accounts. Paragraph (2) incorporates the substance of former Section 15406 of the Financial Code. Paragraph (3) is added to afford bank accounts--both savings and checking accounts--the protection granted similar assets. Their omission was logically inconsistent with the former exemptions. More importantly, the failure to provide any exemption for personal checking accounts--the usual depository for current earnings--violated the spirit if not the letter of both recent federal legislation and and judicial decisions. See 15 U.S.C. §§ 1671-1677; Sniadach v. Family Finance Corp., 395 U.S. 337 (1969); McCallop v. Carberry, 1 Cal.3d 903, 464 P.2d 122, 83 Cal. Rptr. 666 (1970). See also Recommendation Relating to Attachment, Garnishment, Exemptions From Execution: Earnings Protection Law (1971). It should, however, be noted that the exemptions provided here are exclusive. They are in no way dependent upon a showing by the debtor that the amount claimed as exempt represents his earnings.

Code Civ. Proc. § 690.7

Nor may the debtor claim a greater amount as exempt by showing that amounts deposited were derived from his earnings.

In the event of a levy upon a joint account, each debtor is entitled to claim a fifteen hundred dollar exemption pursuant to this section. Where only one joint holder is a debtor, the other holders may, of course, make their third-party claims pursuant to Section 689.

The exemptions provided by Sections 690.7 and 690.75 are limitations on garnishment procedures only. They do not affect in any way the exercise of rights pursuant to Civil Code Section 3054 (banker's lien).

Code of Civil Procedure § 690.18 (amended)

Sec. 5. Section 690.18 of the Code of Civil Procedure is amended to read:

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

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

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

(c) All money held, controlled, or in process of distribution by any private retirement plan, including, but not limited to, union retirement plans, or any profit-sharing plan designed and used for retirement purposes, or the payment of benefits as an annuity, pension, retirement allowance, disability payment or death benefit from such retirement or profit-sharing plans, and all contributions and interest thereon returned to any member of any such retirement or profit-sharing plan, are exempt from execution, attachment, or garnishment in any bankruptcy proceeding. -- This subdivision shall not apply to any moneys held in any retirement program established pursuant to the federal "Self-Employed Individuals Tax Retirement Act of 1962" (P.L. 87-792; 76 Stat. 809), nor to any moneys received in any manner by persons from any such retirement program so established.

(a) As used in this section, the term "retirement plan" includes any private retirement or disability plan (including, but not limited to, any union or joint employer-employee retirement or disability plan), any private profit-sharing plan designed and used for retirement or disability purposes, and any public retirement or disability plan established

by the state, or any county, city, or city and county, or other political subdivision of the state, or any public trust, public corporation, or public board.

(b) For the purpose of applying Chapter 2.5 (commencing with Section 723.10) to the withholding of money from a retirement plan as provided in subdivision (a):

(1) The person to whom money, assets, and benefits are being distributed by such retirement plan or to whom such money, assets, or benefits are currently payable pursuant to such plan, shall be deemed an "employee" of the retirement plan;

(2) The retirement plan shall be deemed an "employer";

(3) The money, assets, or benefits being distributed or currently payable by such plan to a person shall be deemed his "earnings";

(4) The interval at which the money, assets, or benefits are being distributed or are payable shall be deemed a "pay period."

(c) All money, assets, and benefits held, controlled, or in process of distribution by any retirement plan shall be exempt from attachment or execution if the annual contributions, from whatever source, paid into such plan by or on behalf of any person do not exceed five thousand dollars (\$5,000) or, if they exceed that sum, a like exemption shall exist which shall bear the same proportion to the amounts held or controlled by such plan that such five thousand dollars (\$5,000) bear to the annual contributions made.

(d) All money, assets, and benefits in process of distribution by any retirement plan, or currently payable pursuant to such plan, to any person as a pension, or as an annuity or retirement or disability

or death or other benefit which are exempt from execution pursuant to subdivision (b) are subject to withholding in accordance with Chapter 2.5 (commencing with Section 723.10).

Comment. Section 690.18 is substantially revised to provide exemptions for retirement benefits consistent with the purpose of providing adequate relief for retired persons generally as well as providing procedures for collection which are integrated with the Earnings Protection Law (Chapter 2.5 of this Title). These provisions apply equally to both public and private retirement plans. See subdivision (a).

Generally speaking, money (and other assets) held or controlled by or under any retirement or disability plan are completely exempt from levy. See subdivision (c). This continues former law as to public plans and (at least as to an exemption from bankruptcy) as to many private plans. See Cal. Stats. 1970, Ch. 1523, § 44.5, p. . The failure to protect all plans and the persons covered thereby was unjustified, and Section 690.18 has therefore been revised to provide the same protection for all. However, the inclusion of all private plans requires that certain safeguards from abuse be also provided. If a person could protect all contributions to a plan, the plan could serve as a sanctuary from creditors for a debtor's funds. Accordingly, subdivision (c) provides protection only for annual contributions not exceeding five thousand dollars. Where contributions in excess of this amount have been made, a debtor may only protect a pro rata portion of the resulting fund. Such contributions include, of course, all contributions whether paid by the employee or the employer.

When money or other benefits are being distributed to a retired or disabled person (or such person has the right to require them to be paid pursuant to the plan), such money is treated as "earnings" and is subject

to garnishment by the person's creditors in accordance with Chapter 2.5. See subdivisions (b) and (d). Chapter 2.5 provides not only a procedure for collection (through service of a withholding order upon a person authorized to act on behalf of the retirement plan) but also substantial limitations on the amounts which can be withheld. See Sections 723.50 and 723.51. It should be noted, however, that these limitations apply only to amounts which would otherwise be exempt under subdivision (b). In other words, a creditor is always able under subdivision (b) to levy upon annual contributions (whether held or in the process of distribution) which exceed the five thousand-dollar limitation.

Subdivision (b) of former Section 690.18 also protected certain benefits provided public employees under the ~~Un~~employment Insurance Code and vacation credits of such employees. The protection of unemployment benefits was duplicated and is continued under Section 690.175. Vacation credits are properly treated as earnings under the Earnings Protection Law. See Section 723.11.

Sec. 6 . Section 690.50 of the Code of Civil Procedure is

amended to read:

690.50.

(a) If the property mentioned in Sections 690.1 to 690.29, inclusive, shall be levied upon under writ of attachment or execution, the defendant or judgment debtor (herein referred to as "the debtor") in order to avail himself of his exemption rights as to such property, shall within 10 days from the date such property was levied upon deliver to the levying officer an affidavit of himself or his agent, together with a copy thereof, alleging that the property levied upon, identifying it, is exempt, specifying the section or sections of this code on which he relies for his claim to exemption, and all facts necessary to support his claim, and also stating therein his address within this state for the purpose of permitting service by mail upon him of the counteraffidavit and any notice of the motion herein provided.

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

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

690.7,
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690.18

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

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

§ 690.50

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

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

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

(i) At such hearing, the party claiming the exemption shall have the burden of proof. The affidavits and counteraffidavits shall be filed by the levying officer with the court and shall constitute the pleadings, subject to the power of the court to permit an amendment in the interests of justice. The affidavit of exemption shall be deemed controverted by the counteraffidavit and both shall be received in evidence. Nothing herein shall be construed to deprive anyone of the right to a jury trial in any case where, by the Constitution, such right is given, but a jury trial may be waived in any such case in like manner as in the trial of an action. No findings shall be required in a proceeding under this section. When the hearing is before the court sitting without a jury, and no evidence other than the affidavit and counteraffidavit is offered, the court, if satisfied that sufficient facts are shown thereby, may make its determination thereon. Otherwise, it shall order the hearing continued for the production of other evidence, oral or documentary, or the filing of other affidavits and counteraffidavits. At the conclusion of the hearing, the court shall give judgment determining whether the claim to exemption shall be allowed or not, in whole or in part, ~~and may give judgment determining the priority or division of payment between one or more creditors from non-exempt earnings under the provisions of Section 690.6,~~ which judgment shall be determinative as to the right of the creditor to have the property taken and held by the officer or to subject the property to payment or other satisfaction of his judgment. In such judgment the court shall make all proper orders for the disposition of such property or the proceeds thereof.

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

§ 690.50

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

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

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

§ 690.75. Bank accounts; exemption from levy of execution

Sec. 7. Section 690.75 is added to the Code of Civil Procedure, to read:

690.75. (a) From levy of execution, to the maximum aggregate value of one thousand dollars (\$1000), any combination of the following:

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

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

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

(b) The exemption set forth in subdivision (a) shall be a maximum of one thousand dollars (\$1000) per person.

(c) To claim the exemption provided in this section, the debtor shall file a claim of exemption as provided in Section 690.50. The debtor's claim shall include an affidavit which states that the sum of the amount claimed as exempt and all amounts held by him in all other accounts of the type described in subdivision (a) on the date of the levy does not exceed one thousand dollars (\$1000).

(d) A debtor may claim a greater amount of any account as exempt from levy of execution by filing a claim of exemption as provided in Section 690.50 and by showing that such amount is:

- (1) Essential for the support of himself or his family; or
- (2) Required for the payment of wages or salary earned by an employee of the debtor prior to the date of the levy.

Comment. Section 690.75 is added to provide protection from levy of execution similar to that provided by Section 690.7 from levy of attachment. See Section 690.7 and Comment thereto. However, the basic exemption provided by Section 690.75 is limited in amount to one thousand dollars subject, of course, to the exceptions contained in subdivision (d).

Sec. 8 . Section 710 of the Code of Civil Procedure is amended

to read:

A 710.

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

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

2. If such money, ~~wages or salary~~ is owing and unpaid to such judgment debtor by any county, city and county, city or municipality, quasi-municipality, district or public corporation, said judgment creditor shall file said abstract or transcript and affidavit with the auditor of such county, city and county, city or municipality, quasi-municipality, district or public corporation (and in case there be no auditor then with the official whose duty corresponds to that of auditor). Thereupon said auditor (or other official) to discharge such claim of such judgment debtor shall pay into the court which issued such abstract or transcript by his warrant or check payable to said court the whole or such portion of the amount due on such claim of such judgment debtor, ~~less an amount equal to one-half or such~~

~~greater portion as is allowed by statute of the United States, of the earnings of the debtor owing by the county, city and county, city, municipality, quasi-municipality, district or public corporation to the judgment debtor for his personal services to such public body rendered at any time within 80 days next preceding the filing of such abstract or transcript, as will satisfy in full or to the greatest extent the amount unpaid on said judgment and the balance thereof, if any, to the judgment debtor.~~

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

(c) Whenever a court receives any money hereunder, it shall pay as much thereof as is not exempt from execution under this code to the judgment creditor and the balance thereof, if any, to the judgment debtor. The procedure for determining the claim of exemption shall be governed by the procedure set forth in ~~§ 690.26 of this code.~~ Section 690.50.

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

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

~~(f) Nothing in this section shall authorize the filing of any abstract or transcript and affidavit against any wages, or salary owing to the Governor, Lieutenant Governor, Secretary of State, Controller, Treasurer, and Attorney General.~~

A (g) (f)

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

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

Sec. 9. 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 by an employer to an employee for services performed by such employee for such employer whether denominated as wages, salary, commission, bonus, or otherwise.

(b) "Employee" means an individual who performs services subject to the control of an employer as to both what shall be done and how it shall be done.

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

(d) "Judgment" includes a support order.

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

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

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

Comment. Section 723.11 states **definitions** used in applying this chapter. Subdivisions (a), (b), and (c) make clear that this chapter deals only with the garnishment or withholding of earnings for services rendered in an employer-employee relationship. Subdivisions (b) and (c) are based on the common law requirements for such relationship. It should be noted that an employee may be given considerable discretion and still be an employee so long as his employer has the legal right to control both method and result. However, no attempt is made here to incorporate specific case

law arising out of situations involving problems and issues unrelated to the purposes and procedures relevant in applying this chapter.

The term "earnings" embraces all remuneration "whether denominated as wages, salary, commission, bonus, or otherwise." The infinite variety of forms which such compensation can take precludes a more precise statutory definition. Accordingly, the State Administrator, who is authorized and directed to adopt "such rules and regulations as are reasonably necessary for the purpose of administering . . . this chapter," will be required in some circumstances to provide rulings consistent with the statutory definition as to whether certain items are "earnings." See Section 723.156.

Unlike the definition of "earnings" used in Title III of the federal Consumer Credit Protection Act of 1968, the term used here does not include "periodic payments pursuant to a pension or retirement program." Separate treatment is accorded such payments under Section 690.18.

It might be noted, however, that money held in both public and private pension and retirement funds is generally exempt from execution. See Section 690.18. Moreover, the term "earnings" is restricted to compensation payable to an employee. Contributions by an employer to such pension and retirement funds, where the employee has no right to immediate withdrawal, would therefore not be considered payable to the employee and would not be subject to the earnings withholding procedure.

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 (b) of Section 690.6. For provisions relating to voluntary wage assignments, 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. See, e.g., Sections 690.7; 690.75 (bank accounts); Section 690.18 (retirement funds).

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 shall 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, such lien to continue for a period of one year from the date the earnings became payable; 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. Expiration date of withholding order

723.23. Except as otherwise provided by statute, an earnings withholding order expires four months after the last day of the pay period during which the employer receives the order.

Comment. Section 723.23 provides the general rule for expiration of an earnings withholding order. In some cases, the earnings withholding order is not limited to the four-month 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 four-month period for any of the reasons listed in Section 723.24 or its operation may be suspended for a period. See, e.g., Section 723.29; Labor Code Section 300. However, generally speaking, the employer is required to withhold earnings pursuant to the order from each paycheck paid to the employee during the described period. The employer is not required to attempt to, or permitted 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 is effective when received; and, if not terminated earlier, it will expire upon December second. Thus, 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. The employer will continue to withhold pursuant to this order until after the December first paycheck.

§ 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 modified order, or a notice of termination of the order, from the judgment creditor or the court clerk.

(b) The employer receives a certified copy of a satisfaction of judgment.

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

Comment. The events listed in subdivisions (a) through (c) 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) reflects the fact that a court may modify or even terminate a prior withholding order. See Sections 723.29(c)(improper voluntary agreement); 723.103(b)(fraudulent consent order); 723.110 (court modification due to substantial change in the debtor's position--significant alterations in earnings, hardship occurrences, and the like).

Subdivision (b) provides for termination whenever the employer receives a certified copy of a satisfaction of judgment thus notifying him that the underlying debt has been satisfied. The judgment creditor has an affirmative duty to so inform the employer of the satisfaction. See Section 723.32.

Subdivision (c) 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 (Section 723.24(a)), an earnings withholding order is generally suspended, rather than terminated, by agreement of the parties. See Section 723.29 and Comment thereto. An order may be suspended, i.e., withholding may be delayed for a short period where a prior assignment of wages is in effect. See Labor Code Section 300(c). Such suspensions of an order do not, however, extend the four-month expiration date of the order.

An earnings withholding order may also be affected by federal bankruptcy proceedings. The state garnishment procedure provided here is, of course, subordinate to the federal law governing bankruptcy proceedings.

§ 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. If the employer receives two or more orders on the same day, he shall comply with the order issued pursuant to the judgment first entered. If two or more orders received on the same day are also based on judgments entered upon the same day, the employer shall comply with whichever one of such orders he selects.

(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 who served the subsequent order that a prior order is in effect and shall accompany the notification with the form prescribed by Section 723.125.

Comment. Section 723.25 establishes the rules governing priority of earnings withholding orders. Generally speaking, the first order received is given priority. Occasionally, two or more orders will be received on the same day. In this situation, the employer must comply with the order which was issued pursuant to the judgment first entered. The date of entry of judgment will be indicated on the face of the order. See Section 723.124. In rare instances, orders received the same day will also be based on judgments entered the same day. In this situation, the employer has complete discretion to choose the order with which he will comply. He must, of course, comply with one of these orders. For exceptions to these basic priority

rules, see Sections 723.26 (support orders) and 723.27 (state taxes) and the Comments thereto.

Unless the subsequent earnings withholding order is for state taxes or for support, an order received while another is in effect is void. Hence, with the exceptions noted, 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" until it expires or is "terminated." See Sections 723.23 (expiration) and 723.24 (termination). 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); Labor Code Section 300 (suspension where prior assignment in effect).

§ 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 it expires by its terms or 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 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

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 earnings in determining the amount to be withheld pursuant to the other order. See Section 723.50 and the Comment thereto.

Paragraph (2) of subdivision (b) makes clear that the "hardship" exemption provided by Section 723.51 cannot be asserted to defeat an application for a support order. This continues prior law. See, e.g., Bruton v. Tearle, 7 Cal.2d 48, 57, 59 P.2d 953, (1936); Rankins v. Rankins, 52 Cal. App.2d 231, 126 P.2d 125 (1942). However, notwithstanding this rule, the court, upon proper application, has the power both to make an equitable division of the husband's earnings or to modify the order for support upon which the earnings withholding order is based. See Bruton v. Tearle, supra; Rankins v. Rankins, supra.

§ 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 amount of earnings left 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 (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 in writing 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 in writing 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. If the judgment debtor fails to make payments in accordance with the voluntary payment plan, the judgment creditor may serve a written notice upon the employer informing him of such fact, and directing him to commence withholding pursuant to the prior earnings withholding order. Upon receipt of such notification, the employer shall withhold earnings pursuant to the earnings withholding order as provided in this chapter for all pay periods ending after receipt of the notice from the judgment creditor until the order expires or terminates.

(c) An agreement made pursuant to this section suspends the operation of the order superseded by the agreement but does not affect the expiration date of such order. 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 or was made to defraud other creditors, 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. Where the debtor fails to comply with the agreement, a simple procedure is afforded the creditor to reinstate the prior order.

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. However, this period of suspension does not change the expiration date of the order fixed pursuant to Section 723.23. 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 file a satisfaction of judgment in the court which issued such order and shall send a certified copy of such satisfaction to the judgment debtor's employer.

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(c). However, often the judgment will be satisfied by additional payments from the debtor or through other debt collection procedures instituted by the creditor. Regardless of which situation occurs, the creditor has the duty to promptly notify the employer of the satisfaction by sending him a certified copy of such satisfaction. For the creditor's general 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 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 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 earnings.

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

(4) An amount equal to the amount that would be withheld for state income tax purposes* from the same amount of 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

*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 Sections 723.26 and 723.106 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 earnings of employees for representative pay periods. The tables may prescribe the amounts to be withheld according to reasonable 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 and orders based on multiple sources of earnings. See Sections 723.26 (support) and 723.106 (multiple sources of earnings). 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 ~~items~~ 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 tables to be prepared which indicate the exact amount to be withheld from any given amount of earnings. Subdivision (e) directs the State Administrator to prepare tables which will be distributed to every employer required to withhold earnings. See Section 723.108(b)(2). An employer therefore need not make any computations but will simply withhold pursuant to an earnings withholding order the amount listed in the tables 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

§ 723.50

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 proves is essential for the support of himself or his family is exempt from levy under this chapter. "Essential for support" means required for maintenance of a basic subsistence standard of living.

Comment. Section 723.51 is based on the exemption formerly provided by subdivision (c) of Section 690.6. However, this section omits the provision for the "common necessities of life," and the exemption provided here 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. This section is not intended to be used for the maintenance of a life style appropriate to the debtor's station in life or an accustomed standard while the debtor owes money on unsatisfied judgments against him.

Article 4. Procedure for Issuance of
Earnings Withholding Orders

§ 723.100. Service; recovery of costs

723.100. (a) Service under this article shall be by personal delivery or by first-class mail, airmail, or certified mail, postage prepaid.

(b) Notwithstanding Section 1032.6, a judgment creditor is not entitled to the costs of service under this chapter which exceed \$1 (one dollar).

Comment. Subdivision (a) of Section 723.100 specifies the means by which service must be accomplished under this chapter. Although personal service is authorized, it is anticipated that the convenience and economy of service by mail will result in the overwhelming use of this method. In any event, subdivision (b) makes clear that, regardless of which means is actually used, the recovery of the costs of service is limited to \$1.00.

§ 723.101. Application for issuance of earnings withholding order

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

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

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

(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 the number of copies required by the Judicial Council.

(b) The documents and forms referred to in this section shall be served upon the judgment debtor at his last known residence address or, if no such address is known, may be mailed to the judgment debtor in an envelope marked "Personal--Important Documents" addressed to the judgment debtor at the place where he is employed.

(c) The failure of the judgment debtor to receive the notice and forms required to be sent by this section does not affect the validity of a properly issued earnings withholding order.

Comment. Section 723.102 is designed to give the judgment debtor notice of the imminence of an earnings withholding order so that he will be able to 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. For methods of service, see Section 723.100. 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.

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, subdivision (c) makes clear that, even though the judgment debtor fails to receive the notice and forms, the validity of the earnings withholding order is not affected.

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

723.103. (a) 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 court clerk prior to the hearing. If the judgment creditor files such an acceptance, the earnings withholding order shall be issued without a hearing.

(b) Any other judgment creditor seeking an earnings withholding order during the effective period of an order issued pursuant to this section and subdivision (b) of Section 723.107, may apply for a hearing to determine whether the order should be modified or terminated. The court shall modify or terminate the order if it determines that the prior order was not based on a bona fide debt or was not made in consideration of the debtor's needs for himself or his family or operates to defraud other creditors. The burden of proof on the issue whether the order should be modified or terminated is on the judgment debtor.

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 court clerk issues the order in the stipulated amount without further hearing. However, in no event may an order be issued that requires the withholding of an amount in excess of the maximum amount allowed by law. See Section 723.107(b). See also Section 723.122(b)(form for application for hearing by judgment debtor). This limitation would not, of course, preclude a voluntary wage assignment in an amount greater than

§ 723.103

that permitted under the garnishment restrictions. See Labor Code Section 300. Nor does this limitation prevent the garnishment of a larger share from one employer in a multiple employment situation. See Section 723.106.

To protect the rights of other creditors, subdivision (b) provides a procedure by which the bona fides of an order issued pursuant to an acceptance may be examined and the order issued pursuant to this section may be examined and modified or terminated where necessary. The court would terminate the order if it found that it was not based on a bona fide debt and had been obtained to defraud other creditors. On the other hand, the court would generally modify the order to increase the amount to be withheld in a case where the amount withheld pursuant to the order is clearly too little and operates to unjustly defer the right of the other creditor to obtain an earnings withholding order because satisfaction of the judgment upon which the first order is based is unreasonably delayed. Compare Section 723.29(c).

§ 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 723.51, 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) The hearing shall proceed whether or not the judgment debtor or the judgment creditor or their representatives are present. The court shall require that the judgment debtor's claim be established by proof as required by law whether or not the judgment creditor or his representative is present at the hearing.

(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.

Comment. Section 723.104 sets forth certain rules relating to the hearing of a debtor's claims in opposition to the issuance of an earnings withholding order. It should be noted that a debtor is not generally limited as to when he may apply for a hearing. See Section 723.110(a). However, only if the application is received by the clerk within 15 days after the date of

notice of application for an order is the issuance of such order delayed. See subdivision (c). See also Section 723.107(a).

To avoid delay in the issuance of an order, subdivision (b) requires that the court proceed with a hearing whether or not the parties or their representatives are present. A debtor should not be permitted to stall the issuance of an order simply by nonappearance. This provision does not, however, of course, interfere with the court's control of its calendar and its power to continue matters where appropriate. In every case, the burden falls on the debtor to prove his claim, whether or not the creditor appears in opposition.

§ 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 723.106, unless the order otherwise provides, the judgment creditor may not apply for another earnings withholding order directed to the same employer with respect to the same judgment debtor for a period of four months following the date of the order.

(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 generally preclude both the debtor and his creditor from having a hearing more frequently than once every four months on the question whether all the debtor's earnings are essential to the support of himself or his family. In some cases, however, the court may determine that it would be appropriate for the court to reconsider the matter at an earlier time and 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 sources of earnings

723.106. (a) As used in this section, the term "earnings" includes all compensation, including tips, for services performed by an employee whether such compensation is received from an employer or from others.

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

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

(1) The amount of earnings otherwise payable by that employer to the judgment debtor; or

(2) An amount equal to that which would be permitted to be withheld if the total earnings of the debtor were used in computing non-exempt earnings under Section 723.50.

(d) A judgment creditor may, at any time, request a hearing to prove that the judgment debtor receives earnings from more than one source and that the judgment creditor should be granted an order requiring one employer to withhold a greater amount from the earnings payable by that employer than he would have to withhold were he the judgment debtor's only source of earnings. 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.

(e) The court shall set the matter for hearing after receiving the written request together with an affidavit stating that the judgment

creditor has served a copy of the request for hearing in the manner provided in Section 723.100. The court clerk shall notify the judgment debtor and the judgment creditor at least 10 days before the hearing of its time and place.

(f) The judgment creditor has the burden of proof on the issue of his right to have a greater amount withheld by one employer pursuant to this section. If the court finds that the judgment creditor is entitled to an order requiring an employer to 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 source of earnings, the court shall make an appropriate order.

(g) 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 and where he is receiving "earnings," such as tips which are included here as earnings for the purpose of computing the amount of earnings which may be garnished. It should be noted that the term "earnings" used here is still limited to compensation for services rendered by an employee, i.e., an employee-employer relationship

is involved, even though the compensation for the work performed may not come directly from the employer. 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 of these two employers withhold the total amount garnishable from the debtor's combined earnings from both employers.

§ 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.

Comment. Section 723.107 describes the circumstances under which an earnings withholding order may be issued. Subdivision (a) applies where the debtor has not applied for a hearing within 15 days from the date of the creditor's notice of application. See Section 723.104(c). It should be noted in this regard, that the order may properly issue even though the debtor never receives the notice provided. See Section 723.102(c) and Comment thereto.

Subdivision (b) provides for issuance of an order where there has been an acceptance by the creditor of a debtor's plan for withholding. See Section 723.103. In no event, however, may such order permit withholding in an amount

§ 723.107

greater than that authorized under Section 723.50. Of course, the creditor and debtor may avoid these limitations through a voluntary wage assignment. Compare Labor Code Section 300.

Subdivision (c) covers the last situation where a hearing has been requested and the court determines that an earnings withholding order should be issued.

§ 723.108. Transmittal of order and information to employer

723.108. (a) The earnings withholding order, together with the form for an employer's return prescribed pursuant to Section 723.125 and the informational pamphlet and withholding table published by the State Administrator pursuant to Section 723.126, shall be served upon the designated employer by the judgment creditor.

(b) An order not received by the employer within 45 days after its date of issuance is void.

§ 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 earnings are at least 20 percent less than they were at the time of the last 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 court clerk shall notify the judgment debtor and the judgment creditor at least 10 days before the hearing of its time and place. If, after hearing, the court orders that the earnings withholding order be modified or terminated, 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 serve another withholding order based on the same judgment on the same employer requiring him to withhold earnings of the same employee during the 10 days following the expiration 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 serving another order during the 10-day period following the expiration of his prior order. The purpose of this limitation is to give other creditors a 10-day period during which they can serve their earnings withholding orders while the original creditor is precluded from competing with them. The original creditor may apply for the second earnings withholding order either before or after his prior order expires. But service of the second order while the original order is in effect will be ineffective under Section 723.25(b), and service during the 10-day period following expiration of the original order is prohibited by Section 723.111. Of course, after the expiration of the 10-day 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 indebtedness for which the order is sought has been discharged by a discharge granted to the judgment debtor under the National Bankruptcy Act or that the prosecution of this proceeding has been stayed in a proceeding under the National Bankruptcy Act.

5. I have complied with the requirements of Section 723.102 of the Code of Civil Procedure by serving the documents and forms referred to in that section upon the judgment debtor on (date) at (indicate complete address at which served).

(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 the named employer to withhold from the earnings of the judgment debtor 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 the earnings of a judgment debtor (i) for a debt which he can prove has been discharged by a discharge granted to him under the National Bankruptcy Act or (ii) where he can prove that further proceedings for the collection of such debt have been stayed in a proceeding under the National Bankruptcy Act.

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

(5) If a judgment debtor wishes a court hearing to prove that amounts should not be withheld from his earnings because either paragraph (3) or (4) applies, he must file with the clerk of court two copies of the enclosed form entitled "Application of Judgment Debtor for Hearing," and, in addition, if he claims the exemption referred to in

paragraph (4), he must also file with the clerk two copies of the enclosed form entitled "Judgment Debtor's Financial Statement."

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

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.

§ 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 himself or 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 which may be required by the Judicial Council, shall include all of the following information:

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

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

(3) All sources and the amounts of earnings and other income 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 court clerk.

(3) You have received a certified copy of a satisfaction of the judgment.

(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.

You are ordered to fill out the accompanying form entitled "Employer's Return" and to return it by first-class mail 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, the form for the return provided to the employer shall state all of the following information:

(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 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 expiration date of such order.

§ 723.126. Informational pamphlet and withholding tables

723.126. (a) The State Administrator shall prepare an Informational Pamphlet for employers.

(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.

§ 723.130. Enforcement of orders

723.130. Any order of the court made pursuant to this chapter may be enforced by the court by contempt or by such other order as the court in its discretion may deem necessary.

Comment. Section 723.130 makes clear the power of the court to compel obedience to its orders. See Sections 128 and 1209(5). See generally Part 3, Title 5 (Sections 1209-1222).

§ 723.131. Remedies of judgment creditor

723.131. If an employer fails to withhold or to pay over the amount he is required to withhold and pay over pursuant to this chapter, the judgment creditor may bring a civil action against such employer to recover such amount.

Comment. Section 723.131 authorizes suit by a creditor against an employer both where the employer fails to withhold properly and where he fails to pay over amounts withheld. Where the employer has not withheld sufficient amounts from the debtor's earnings, he may have indemnity from the judgment debtor but, to satisfy any indemnity judgment, he may only execute on the debtor's earnings in accordance with the provisions of this chapter.

Of course, in addition to the remedy Section 723.131 provides to the judgment creditor, the court has the power to compel obedience to its orders through exercise of the contempt power. See Section 723.130 and Comment thereto.

§ 723.132. Fraudulent withholding by employer

723.132. 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 723.132 is based on Labor Code Section 227 (failure to make agreed payments to health, welfare, or similar fund).

§ 723.133. Employer may rely on orders and notices proper on their face

723.133. Notwithstanding any other provision of this chapter, an employer who acts in good faith in compliance with any order or notice which is proper on its face shall not be subject to liability for such action.

Comment. Section 723.133 makes clear that an employer is protected from liability where he complies with an order or notice which appears proper on its face. Occasionally, through mistake, inadvertence, or even deliberate misconduct, an employer will be sent an order or notice which appears valid but which has been improperly obtained or falsified. The employer is not required in such circumstances to go beyond the document itself and is not subject to liability where he complies in good faith with its directions.

Article 7. Administration and Enforcement

§ 723.150. State Administrator

723.150. (a) Except for those duties imposed on the Judicial Council, 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 ascertaining 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 chapter 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; failure to comply with cease and desist order

723.154. In case of any violation of this chapter, 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. Injunctive relief pending administrative adjudication

723.155. Whenever the State Administrator has reasonable cause to believe that there has been any violation of this chapter and that substantial and irreparable injury will be unavoidable if injunctive relief is not obtained pending final adjudication 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 such 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.

Comment. Section 723.155 is based in part on Section 12535 of the Government Code, which relates to powers of the Attorney General in connection with health care service plans. This section makes clear the power of the State Administrator to obtain judicial injunctive relief in circumstances where normal administrative procedures would be inadequate.

§ 723.156. Rules and regulations

723.156. 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.

§ 723.157. 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. Fees of clerk

723.159. (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.

Financial Code Section 15406 (repealed)

Sec. 10. Section 15406 of the Financial Code is repealed.

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

Comment. Section 15406 is superseded by paragraph (2) of subdivision (a) of Sections 690.7 and 690.75 of the Code of Civil Procedure. See Section 690.7 and Comment thereto.

Labor Code § 300 (amended)

Sec. 11. Section 300 of the Labor Code is amended to read:

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

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

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

(2) Where ~~such~~ the assignment ~~of,-er-order-for-wages-or-salary~~ is made by a married person, the written consent of the husband or wife of the person making ~~such~~ the assignment ~~er-order~~ is attached to ~~such~~ the assignment ~~er-order;-and~~ .

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

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

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

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

(7) ~~provided,-that-at-such-time~~ At the time the assignment is filed with the employer, no other assignment ~~or-order~~ for the payment of any wages ~~or-salary~~ of the employee is subject to payment , and no ~~attachment or-levy-on-execution~~ earnings withholding order against said his wages ~~or-salary~~ is in force.

~~Any-valid-assignment,-when-filed-in-accordance-with-the-provisions contained-herein,-shall-have-priority-with-respect-to-any-subsequently filed-assignment-or-order-or-subsequent-attachment-or-levy-on-execution. Any-power-of-attorney-to-assign-or-collect-wages-or-salary-shall-be revocable-at-any-time-by-the-maker-thereof.~~

(c) A valid assignment of wages suspends the operation of a subsequently served earnings withholding order until after the end of the pay period during which the earnings withholding order is served. Thereafter the earnings withholding order has priority over the assignment.

~~No-assignment-of,-or-order-for-wages-or-salary-shall-be-valid-unless-at-the-time-of-the-making-thereof,-such-wages-or-salary-have-been-earned, except-for-the-necessities-of-life-and-then-only-to-the-person-or-persons furnishing-such-necessities-of-life-directly-and-then-only-for-the-amount needed-to-furnish-such-necessities.--Under-any-assignment-of,-or-order for-wages-or-salary-to-be-earned,-a-sum-not-to-exceed-50-per-centum-of~~

~~the assigner's wages or salary, and not to exceed 25 per centum of the assigner's wages or salary, upon the showing that such wages or salary are necessary for the support of his mother, father, spouse, children or other members of his family, residing in this State and supported in whole or in part by his labor, shall be collectible from the assigner's employer at the time of each payment of such wages or salary.~~

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

(e) An assignment of wages to be earned is revocable at any time by the maker thereof. Any power of attorney to assign or collect wages or salary is revocable at any time by the maker thereof.

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

(g) This section ~~shall~~ does not apply to deductions which the employer may be requested by the employee to make for the payment of life, retirement, disability or unemployment insurance premiums, for the payment of taxes owing from the employee, for contribution to funds,

plans or systems providing for death, retirement, disability, unemployment, or other benefits, for the payment for goods or services furnished by the employer to the employee or his family at the request of the employee, or for charitable, educational, patriotic or similar purposes.

Comment. Section 300 is amended to make the section consistent with the Earnings Protection Law (Code Civ. Proc. §§ 723.10 et seq.).

Subdivision (a). Subdivision (a) simply makes clear that the shortened phrase "assignment of wages" continues prior law as to the kind of instrument dealt with in this section.

Subdivision (b). Paragraphs (1) through (6) of subdivision (b) continue without substantive change provisions formerly contained in Section 300. Paragraph (7) of subdivision (b) continues without substantive change a provision formerly contained in Section 300 except that the former reference to the attachment or levy on execution against wages or salary is replaced by a reference to an earnings withholding order to conform to the procedure provided by the Earnings Protection Law.

Subdivision (c). Subdivision (c) clarifies the relationship between a valid prior wage assignment and a subsequently served earnings withholding order. Where a wage assignment is in effect and an earnings withholding order is served, the employer shall not withhold pursuant to the order until after the end of the pay period during which the order was served. Thus the wage assignment is in effect given an exclusive preference for that pay period and the debtor is given an opportunity to put his affairs in order. Such action may include revoking the wage assignment as to unearned

Labor Code § 300

wages pursuant to subdivision (e). After such moratorium, the earnings withholding order has a priority over the assignment if the latter remains in effect. The unlimited preference formerly given to an assignment of unearned wages or salary is not continued because this preference would permit a judgment debtor to give preference to one creditor and to defeat the claims of other creditors who seek to collect on their judgments under the Earnings Protection Law. The partial preference given to assignments will permit such assignments to continue to be used to secure certain loans. See Financial Code Sections 18659, 22009, 22471, and 24472.

Subdivision (d). Subdivision (d) continues without substantive change a provision formerly found in Section 300.

Subdivision (e). The first sentence of subdivision (e) which makes an assignment of unearned wages or salary revocable at any time by the maker thereof, replaces the former provision of Section 300 which invalidated an assignment of wages or salary unless such wages were earned or the assignment was for necessities or for support. This provision also restricted the amount of unearned wages or salary that could be assigned. Although there are no limits on the amount of wages or salary that now can be assigned, subdivision (e) will permit the person making the assignment of wages or salary to be earned to revoke the assignment at any time. Thus, where an assignment becomes too onerous, especially after service of an earnings withholding order, such assignment may be revoked. The delayed preference given the earnings withholding order under subdivision (c) will generally require persons having judgments, including support orders, to use the procedure provided in the Earnings Protection Law--rather than Section 300--to enforce their judgments, but it avoids conflict between wage assignments and orders issued pursuant to the Earnings Protection Law.

Subdivisions (f) and (g). Subdivisions (f) and (g) continue without substantive change provisions formerly contained in Section 300. Other statutes may authorize deductions from employees' wages or salary without compliance with this section. E.g., Govt. Code §§ 1158, 12420, 13922, 20135. It should be noted that the inapplicability of Section 300 to the deductions referred to in subdivision (g) means not only that compliance with the formalities provided in Section 300 is not required but also that Section 300 provides no special preferences for such deductions.

Unemployment Insurance Code § 1342 (amended)

Sec. 12. Section 1342 of the Unemployment Insurance Code is amended to read:

1342. Any waiver by any person of any benefit or right under this code is invalid. Benefits under this code, incentive payments provided by Section 5401, payments to an individual under a plan or system established by an employer which makes provisions for his employees generally, or for a class or groups of his employees, for the purpose of supplementing unemployment compensation benefits, are not subject to assignment, release, or commutation, and are exempt from attachment and execution pursuant to ~~Sections~~ Section 690.175 and ~~690.18~~ of the Code of Civil Procedure. Any agreement by any individual in the employ of any person or concern to pay all or any portion of the contributions required of his employer under this division is void.

OPERATIVE DATE

Sec. 13. This act becomes operative on July 1, 1973, 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, 1973.