

Memorandum 71-1

Subject: Study 39 - Attachment, Garnishment, Execution (Exemptions for Earnings and Bank Accounts)

Attached to this memorandum are two staff draft tentative recommendations. Both recommendations cover both earnings and bank accounts. However, the first of these recommendations (blue cover) attempts to deal with bank accounts in the manner proposed by the Commission at the December meeting; the second recommendation (buff cover) provides a simple, fixed exemption for all accounts held by a bank, savings and loan association, or credit union. The staff much prefers the latter approach and believes that it does satisfy existing constitutional and statutory requirements. After the January meeting, we hope that one or both of these recommendations can be distributed for comment in anticipation of presentation at the 1971 legislative session.

Both recommendations contain virtually identical amendments to Section 690.6. Subdivision (a) is added to define "earnings." This permits us to shorten subsequent references to the term and provides a reference point for indicating the relationship to pension and retirement benefits and welfare and unemployment payments. Subdivisions (b) and (c) deal with exemptions from attachment. Subdivisions (d) and (e) deal with exemptions from execution.

Subdivision (b) exempts from attachment all earnings "due and owing" to the debtor and, in addition, earnings paid to the debtor and identifiable as "earnings" by the levying officer. The exemption of all earnings, we are told, is dictated by Sniadach, at least in the absence of a procedure for prior notice and hearing. Moreover, with respect to unpaid earnings, this

works no change in existing law. Subdivision (b) also exempts earnings, identifiable as such in the possession of the debtor. What we have in mind here is the paycheck or pay envelope. It should be a rare case where such an asset is levied upon, but the statute should at least cover this eventuality.

Similarly, subdivision (c) provides the same complete exemption for earnings not identified as earnings by the levying officer. Here, however, the debtor must make a claim of exemption and, of course, show that earnings were in fact attached. We try to make clear in the Comment that earnings, once converted to another form, are not protected by Section 690.6. After conversion, to obtain an exemption, the debtor must look to other sections in the 690 series or elsewhere. We would expect little difficulty where earnings have been converted by purchase of real or personal property--e.g., house payments, car payments, appliances. More problems will probably be encountered with respect to deposits in bank accounts. Here, about all that we can do is state that the bank account exemption is intended to be exclusive. We have done this in so many words in the Comment; we wonder if we should also attempt to state this in the statute, either here in Section 690.6 or in Section 690.7.

Subdivisions (d) and (e) are similar in form to subdivisions (b) and (c) except here we provide an exemption from execution, and the exemption is fixed according to the federal wage garnishment standard. Again, the only significant change from existing California law is the somewhat broadened scope of the section inasmuch as it now covers in part paid earnings.

Subdivisions (f), (g), and (h) are unchanged. We think you should, however, consider amending the "necessity" exemption in the manner

tentatively planned for the comprehensive statute. There is little reason to delay this improvement and, if the change is controversial, it might be well to smoke out the opposition as soon as possible.

Section 690.7 (under the blue cover) is a somewhat involved provision dealing solely with "personal checking accounts." We define that term in subdivision (a) by reference to commercial bank accounts. We believe that such reference is accurate but, if this version of the recommendation is approved, we will solicit comments from the banks as to whether we have properly identified the asset we are trying to protect.

The first paragraph of subdivision (b) provides an automatic exemption fixed according to a formula (presently \$208) for all personal checking accounts from attachment. This provision does permit a debtor to protect an unlimited number of accounts to the extent of 208 dollars. However, this does not strike us as a serious practical problem. The second paragraph of subdivision (b) permits a debtor to claim a greater exemption for deposited earnings by filing a claim pursuant to Section 690.50. This exemption is, however, also limited; the earnings must have been deposited within 30 days of the levy and must not exceed an amount equal to an average month's earnings.

Subdivision (c) permits a debtor to obtain a semi-automatic, limited (\$208) exemption from execution. The debtor does have to file an affidavit, but there is no provision for a counteraffidavit or hearing. If the debtor's affidavit appears proper, the bank will simply release the amount claimed (up to \$208). We provided for filing of the affidavit with the bank. This assumes that the bank, in all cases, continues to hold the account for a period of time after levy of execution. (We know this is the case where there is a possibility of third-party claims to the account. See

Section 682a.) Our initial thought was that filing with the bank would be the most expeditious means of obtaining the exemption. Upon reflection, we think it might be best to have the affidavit filed with the sheriff as are other similar claims. His official notification to the bank would relieve the bank of any burden of being certain the affidavit was in proper form, and timely filed, and so on. Moreover, the sheriff should possess all the expertness necessary to deal with any problems. The extra step involved of notifying the bank to release the account (or a portion of it) should not cause any serious delay.

Subdivision (d) permits the debtor to obtain an exemption equal to the federal garnishment exemption by filing a 690.50 claim. As indicated in the Comment, what is intended here is that the creditors should be able to get a full 25% of the debtor's monthly earnings--whether or not all his earnings are deposited in the account. The other alternative--which would be more consistent with prior law--is to permit only 25% from each account to be levied upon. Both approaches can be supported; the choice is a decision that should be made by the Commission.

Perhaps the major problem with this scheme is the tracing problem. To aid in the solution of these problems, subdivision (e) provides a "last-in, first-out" rule. The operation of the rule is explained in the Comment. We chose this rule because it seemed ~~most~~ likely to conform to the average person's practice of living on current earnings; it is not, however, based on any prior law. Somewhat surprisingly, we were in fact unable to find any relevant rules which would be helpful to us here. We are hopeful that, perhaps, our commentators can provide some enlightenment on current practice.

The scheme provided in this first version of Section 690.7 would, we think, work. However, because of the tracing problems, we suspect that many debtors would be forced through hearings under subdivisions (b) and (d). Moreover, the entire procedure seems needlessly complex. The staff believes that Sniadach either requires a prior notice and hearing before any asset may be taken through resident debtor's attachment or permits attachment subject to reasonable limitations. We believe that a 1,000-dollar per person aggregate bank account exemption is a reasonable limitation and would pass constitutional muster. In order to limit this exemption to an aggregate exemption, it seems essential that the exemption be claimed. This will necessarily cause some delay. However, such a procedure still appears reasonable. The delay should seldom be great since the issue is clear cut. In view of the interests of both parties, we think the courts would receive a fixed exemption favorably. With respect to the Consumer Credit Protection Act, the staff believes that the act simply does not cover earnings deposited in bank accounts. It seems inconceivable that an act intended to cover bank accounts would not provide time limits, answer problems of deposits and withdrawals, provide for hearings, or would not even once refer to bank accounts. If we are wrong in this assessment, both versions of Section 690.7 would seem to fail to satisfy the C.C.P.A. if for no other reason than the fact that the exemption is not automatic; the regulations seem to suggest that the exemption must be automatic to conform to the federal requirements.

At the January meeting, a basic decision will have to be made regarding our future legislative schedule. If "stopgap" legislation is needed for

1971, the staff proposes that something along the lines of one of these two recommendations be approved for distribution for comment.

Respectfully submitted,

Jack I. Horton
Associate Counsel

December 28, 1970

STATE OF CALIFORNIA
CALIFORNIA LAW
REVISION COMMISSION

TENTATIVE RECOMMENDATION

relating to

ATTACHMENT, GARNISHMENT, EXEMPTIONS FROM EXECUTION

Earnings Exemptions, Including Earnings Deposited in Commercial Bank Accounts

PRELIMINARY STAFF DRAFT

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

WARNING: This tentative recommendation has been prepared by the staff of the Law Revision Commission to effectuate the Commission's tentative decision to revise the statutes relating to attachment, garnishment, and exemptions from execution. The draft has not been considered by the Commission and therefore may not reflect the views of the Commission.

December 30, 1970

TENTATIVE RECOMMENDATION OF THE CALIFORNIA

LAW REVISION COMMISSION

relating to

ATTACHMENT, GARNISHMENT, EXEMPTIONS FROM EXECUTION

Earnings Exemptions

Recent judicial decisions and federal legislation demand a critical reexamination of the exemption of earnings from both prejudgment levy of attachment and postjudgment levy of execution. In June 1969, the United States Supreme Court 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.¹ The rationale of the court was sufficiently broad that, in January 1970, the California Supreme Court in turn held that California's then existing prejudgment wage garnishment procedure also constituted a taking of property in violation of procedural due process.² On July 1, 1970, Title III of the federal Consumer Credit Protection Act of 1968³ went into effect throughout the United States, imposing restrictions on the amounts creditors could garnish from debtor's earnings. In response to these events, legislation was enacted in California at the 1970 legislative session⁴ which attempts to satisfy both the constitutional requirements and the federal legislative restrictions. It would appear, however, that this legislation falls somewhat short of its goal.

1. Sniadach v. Family Finance Corp., 395 U.S. 337 (1969).

2. McCallop v. Carberry, 1 Cal.3d 903, 464 P.2d 122, 83 Cal. Rptr. 666 (1970).
See Cline v. Credit Bureau of Santa Clara Valley, 1 Cal.3d 908, 464 P.2d 125, 83 Cal. Rptr. 669 (1970).

3. 15 U.S.C. §§ 1671-1677.

4. Cal. Stats. 1970, Ch. 1523.

With regard to the exemption of earnings from both attachment and execution, Section 690.6 was added to the Code of Civil Procedure to provide:⁵

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.

* * * * *

A simple reading of the statute shows that it exempts only earnings or portions of earnings that are "due or owing" and does not exempt earnings that have been paid. This constitutes both a change from the former California law which referred to earnings "received" by the debtor⁶ and, more importantly, appears to conflict with both the federal legislation and the rationale of the decisions referred to above.

5. Cal. Stats. 1970, Ch. 1523, § 19.

6. Between 1937 and 1970, California granted a wage exemption to earnings "received." Cal. Stats. 1937, Ch. 578, § 1, at 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).

The federal Consumer Credit Protection Act restricts the "garnishment" of "earnings" of a debtor to certain limited amounts.⁷ "Earnings" are defined as "compensation paid or payable for personal services."⁸ However, "garnishment" is defined as "any legal or equitable proceedings through which the earnings of any individual are required to be withheld for payment of any debt."⁹ Thus, on the one hand, the statute defines earnings as compensation paid or payable, thereby including earnings that are paid over to the employee and perhaps paid into an account. On the other hand, the statute restricts only garnishments--defined as proceedings requiring the withholding of earnings for the payment of debts--thereby excluding the case where there is a levy on a paycheck in the hands of a debtor but perhaps still retaining the case where earnings are deposited in a bank account. No authoritative judicial or administrative interpretation of the federal act is yet available. It would appear that the draftsmen of the act were concerned primarily with the garnishment of earnings still in the hands of the employer.¹⁰ Nevertheless, the obvious purpose of the act was to protect the wage earner's ability to carry on his day-to-day life. This same motivation was apparent in the decisions of the United States and California Supreme Courts. Both decisions 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

7. 15 U.S.C. § 1673(a).

8. 15 U.S.C. § 1672(a). (Emphasis added.)

9. 15 U.S.C. § 1672(c). (Emphasis added.)

10. See Statement by Senator Sparkman, 114 Cong. Rec. Part 11488 (May 22, 1968).

wages can give a creditor "enormous leverage."¹¹ Obviously, the very same hardship can occur and leverage be obtained where earnings deposited in a bank account are levied upon.¹² Accordingly, the California limitation to wages "due and owing" is, at the very least, logically inconsistent with these decisions and legislation if not actually rendered invalid by them.¹³

The Commission recommends that comprehensive treatment be accorded earnings in whatever form they may appear. With regard to prejudgment levy of attachment--because of the absence of prior notice and a hearing--, earnings should be entirely exempt. This is the law now with respect to earnings "due and owing." It is simply nonsensical not to extend the same protection to earnings paid to the defendant. The exemption may be granted automatically where the earnings are readily identifiable as such. Where this is not the case, e.g., where earnings have been deposited in a checking account, the defendant should be required to claim and show that he is entitled to an exemption. However, a basic minimum exemption should be applied automatically to all checking accounts. This will help insure that a defendant

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.").

12. This same point was made by the Supreme Court of Wisconsin in holding that the Sniadach rule applied to the garnishment of property other than wages, especially bank deposits. See *Larson v. Fetherstone*, 44 Wis.2d 712, 172 N.W.2d 20 (1969). The lower courts in California have reached conflicting results as to the applicability of the Sniadach rule to property other than wages. Compare *Western Bd. of Adjusters, Inc. v. Covina Publishing Co.*, 9 Cal. App.3d 659, 88 Cal. Rptr. 293 (1970) (rule rejected) with *Leary v. Heard*, 2 Pov. L. Rptr. ¶ 11, 199 (Mun. Ct. Alameda County 1969) (rule applied).

13. 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 such as, perhaps, garnishment of a bank account including deposited wages.

and his family will not be placed in the dire predicament envisioned by the courts¹⁴ where they are stripped of their ability to maintain even their daily lives.

A similar approach should be taken to the exemption of earnings from postjudgment levy of execution. The amount of the exemption should be limited in conformity with federal standards; however, the exemption should be extended to all earnings--in whatever form they may appear. Again, checking accounts pose special problems. To prevent undue hardship, the debtor should be able to claim expeditiously a very limited exemption based solely on his sworn affidavit. However, to avoid such accounts becoming sanctuaries from execution, limitations of both time and amount should be established so that only that portion of a debtor's earnings necessary to carry on an adequate existence are protected.

14. See note 11 supra. The granting of a fixed exemption to commercial bank accounts is analogous to the exemption accorded savings deposits in a savings and loan association. See Code of Civil Procedure Section 690.7.

PROPOSED LEGISLATION

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

An act to amend Section 690.6 of, to amend and renumber Section 690.7 of, and to add Section 690.7 to, the Code of Civil Procedure, relating to exemption from the levy of attachment and the levy of execution.

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

Code of Civil Procedure § 690.6 (amended)

Section 1. 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,~~

(a) As used in this section and Section 690.7, "earnings" means compensation for personal services, whether denominated as wages, salary, commission, bonus or otherwise, and includes periodic payments pursuant to a pension or retirement program.

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

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

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

(e) 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 identifiable by the levying officer as earnings, in the amount that is exempted from garnishment by the laws of the United States.

(f) From levy of execution, all earnings of the debtor 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)~~ (g) 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)~~ (h) 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 or Section 690.7 .

Comment. Section 690.6 is amended to satisfy the restrictions upon the attachment of and execution upon earnings imposed by recent judicial decisions and federal legislation. See, e.g., Consumer Credit Protection Act of 1968, 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 ().

Subdivision (a) defines "earnings" in accordance with Section 302(a) of the Consumer Credit Protection Act. 15 U.S.C. § 1672(a). The federal reference to compensation "paid or payable" is omitted in the definition set forth here but forms the basis for the categories of exempt assets protected under subdivisions (b) through (e) of this section and Section

§ 690.6

690.7. That is, earnings which are "payable" are those which are referred to as "due and owing" under this section. "Paid" earnings are covered here and under Section 690.7 by reference to earnings which have been paid to the debtor--whether or not they are still in a form identifiable as "earnings"--including those which have been deposited by him or for him in a checking account. It should be noted that certain analogous types of periodic payments--for example, welfare assistance and unemployment benefits--are not covered here but by other provisions of the 690 series. See, e.g., Sections 690.175 (unemployment compensation), 690.19 (public assistance). On the other hand, payments pursuant to a pension or retirement program receive overlapping treatment and a debtor or defendant is entitled to the most favorable exemption available to him under the law. Compare Sections 690.6 and 690.7 with Section 690.18.

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, e.g., deposits in a savings account and purchases of real or personal property. 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);

§ 690.6

690.2 (motor vehicles); 690.7 (savings deposited in savings and loan association); Financial Code Section 15406 (members' shares in credit union). Finally, earnings deposited in a personal checking account are covered under subdivision (b) of Section 690.7. See Section 690.7 and Comment thereto.

Subdivision (d) incorporates by reference the federal standard for exemption from postjudgment levy of execution of earnings "due and owing" and those paid to a debtor and in his possession in a form identifiable as earnings. With respect to earnings "due and owing," subdivision (d) merely continues the substance of the automatic exemption provided by subdivision (b) of former Section 690.6. See Cal. Stats. 1970, Ch. 1523, § 19. Subdivision (d) is broadened, however, to also include certain paid earnings to comply with the apparent requirements of the federal Consumer Credit Protection Act of 1968. See 15 U.S.C. §§ 1672, 1673. The former reference to a 50-percent exemption is deleted because the federal exemption exceeds this limitation in every case.

Subdivision (e) is similar in nature to subdivision (c), discussed above, except that it provides an exemption from execution rather than from attachment.

Subdivisions (f), (g), and (h) continue without substantive change former subdivisions (c), (d), and (e) of Section 690.6. Subdivision (f), however, does enable a debtor to obtain the described exemption for all earnings, whether paid or payable, including earnings deposited in a personal checking account. This is a point that was not entirely clear under former law. Subdivision (f) permits a court to provide a complete exemption from execution of a debtor's earnings where the circumstances dictate such action; the court may, of course, provide something less than a complete exemption, subject only to the federal minimums.

§ 690.7 (old; renumbered
to § 690.8)

Code of Civil Procedure § 690.7 (renumbered)

Sec. 2. Section 690.7 of the Code of Civil Procedure is amended and renumbered to read:

~~690.7.~~ 690.8. (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 690.8 merely reenacts without change former Section 690.7 of the Code of Civil Procedure.

Code of Civil Procedure § 690.7 (new)

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

690.7. (a) As used in this section, "personal checking account" means a commercial bank account held in the individual name of the debtor, whether as sole or joint holder.

(b) From levy of attachment, any personal checking account, in an amount equal to $4\frac{1}{3}$ times 30 times the federal minimum hourly wage, shall be deemed to be earnings and shall be exempt without filing a claim for exemption as provided in Section 690.50.

A debtor may claim a greater amount of any such 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 earnings which were deposited within 30 days next preceding the date of the levy [and does not exceed an amount equal to the adjusted gross income reported for federal income tax purposes by the debtor for the previous tax year divided by 12].

(c) From levy of execution, any personal checking account in an amount not to exceed $4\frac{1}{3}$ times 30 times the federal minimum hourly wage. To claim this exemption, the debtor shall, within 10 days from the date the account was levied upon, deliver to the manager or other officer of the bank at the office or branch at which the account is carried an affidavit which states that the amount claimed as exempt is earnings which were deposited within 30 days next preceding the date of the levy and that the debtor's total exemptions

for such period on this or any other account do not exceed $4\frac{1}{3}$ times 30 times the federal minimum hourly wage.

(d) From levy of execution, all earnings of the debtor deposited within 30 days next preceding the date of the levy, in a personal checking account, in an amount which does not exceed the amount exempted by the laws of the United States from garnishment for the pay period for which such earnings were received.

(e) In tracing earnings pursuant to this section, it shall be conclusively presumed that deposits last made are withdrawn first.

Comment. Section 690.7 sets forth the exemptions applicable to personal checking accounts, i.e., commercial bank accounts held in the individual name of a debtor. Subdivision (b) applies to a prejudgment levy of attachment; subdivisions (c) and (d) apply to a postjudgment levy of execution.

Under the first paragraph of subdivision (b), an amount fixed according to formula is exempted automatically from levy of attachment from every personal checking account. In an attempt to satisfy both the judicial and the federal legislative restrictions upon attachment of earnings, the amount exempted is deemed to be earnings. See Comment to Section 690.6. However, the exemption applies regardless of whether earnings have or have not been deposited in the account. This basic exemption should insure that no debtor will be seriously burdened by an attachment of his checking account, especially in view of the greater relief available under

the second paragraph. The same fixed amount is exempt regardless of whether the account is a sole or joint account. Third-party claims to a joint account must be made pursuant to Section 689.

Under the second paragraph of subdivision (b), a debtor may, by filing a claim pursuant to Section 690.50, obtain a complete exemption from attachment of any amount shown to be earnings deposited within ~~30 days~~ next preceding the date of levy. The ~~30-day limitation~~ is intended to prevent such accounts from becoming a sanctuary from attachment. Earnings accrued beyond such period would not appear to be necessary for a debtor to carry on his day-to-day life; hence, their protection would not seem to be required by either the rationale of the judicial decisions referred to or the apparent intent of the federal legislation. [For the same reason, the amount of the exemption is limited to the approximate amount that the debtor earns in a one-month period.] The exemption here must be claimed and may require a hearing. However, this can be expeditiously obtained and the encumbrance of the account during the intervening period should be no more than an inconvenience to the debtor.

Subdivisions (c) and (d) set forth the exemptions from execution available for earnings deposited in a personal checking account. Under subdivision (c), a debtor may claim as exempt from execution a very limited portion of his earnings by simply delivering the described affidavit to the designated bank official within the specified time period. The debtor will receive formal notice of a levy upon his account pursuant to Section 682.1. Within 10 days after the date of levy--not the date of notice--he must file his affidavit. The affidavit must state that the amount claimed as exempt is "earnings" and that these earnings were deposited in the account within

§ 690.7 (new)

30 days preceding the date of levy. The requirement of an "affidavit" permits, of course, the use of a declaration under penalty of perjury. See Section 2015.5. Only a limited exemption is permitted (under present law, a maximum of 208 dollars) and only a total exemption in such amount from all accounts is allowed within each 30-day period. Upon delivery of the affidavit, the amount claimed is released automatically from levy. No further claim or hearing is required; no counteraffidavit is permitted. The bank need only assure itself that the affidavit is timely filed and contains the necessary allegations. No special sanctions are set forth; however, the debtor is subject to prosecution for perjury for filing a false affidavit. See Penal Code Section 129.

Under subdivision (d), earnings deposited in a checking account are afforded the same protection from execution as earnings in other forms. Compare subdivisions (d) and (e) of Section 690.6. The debtor must file a claim for exemption pursuant to Section 690.50 and, of course, show that the amount sought to be exempted does, in fact, represent "earnings." The exemption must also be integrated with the other protections afforded earnings under this section and Section 690.6. Suppose, for example, that a judgment debtor has disposable earnings of 800 dollars per month. The maximum amount subject to garnishment is 200 dollars per month. 15 U.S.C. § 1673(a). If the entire 200-dollar amount is withheld from the wages of the debtor by his employer pursuant to levy, the remaining 600 dollars may be deposited in a commercial bank account and be protected for up to 30 days. Two hundred and eight dollars may be more expeditiously exempted pursuant to subdivision (c); the remainder must be claimed under subdivision (d). On the other hand, where there has been no prior garnishment,

a full 200 dollars is subject to levy; the federal percentage (25%) of wages subject to levy applies to all the wages earned during the 30-day period and not to the particular account levied upon. Thus, under the example given, where the debtor earns 800 dollars, 200 dollars are subject to levy. Even though the debtor deposits only 500 dollars, a creditor may still secure 200 dollars; he is not limited to 25 percent of the amount deposited. But cf. Medical Finance Ass'n v. Rambo, 33 Cal. App.2d Supp. 756, 86 P.2d 159 (1938). Finally, in certain circumstances, determinations concerning the ordering of deposits and withdrawals will be necessary. To aid in these determinations, subdivision (e) arbitrarily provides that deposits last made are conclusively presumed to be first withdrawn. For example, suppose a debtor has a personal checking account in which he tries to maintain a minimum 300-dollar balance. Thus, prior to the applicable 30-day period, 300 dollars are deposited in the account. Within such period, he deposits his entire 800 dollars of disposable monthly earnings and thereafter withdraws 350 dollars prior to levy by the judgment creditor, leaving a balance of 750 dollars at the time of levy. The creditor is entitled to reach 500 dollars, i.e., 300 dollars of "old" deposits and 200 dollars from the debtor's current earnings. The 350 dollars withdrawn during the 30-day period is presumed to have been withdrawn from the most recent deposit.

The examples given are obviously simplified. Quite complex situations can and will arise involving joint accounts, where both husband and wife are wage earners, and where either or both are debtors. However, the rules provided here, together with the existing framework for the liability of the husband and wife for debts, should suffice as adequate guides for resolution of these problems. See generally E. Jackson, California Debt Collection Practice, Appendix D (Cal. Cont. Ed. Bar 1968).

December 30, 1970

STATE OF CALIFORNIA
CALIFORNIA LAW
REVISION COMMISSION

TENTATIVE RECOMMENDATION

relating to

ATTACHMENT, GARNISHMENT, EXEMPTIONS FROM EXECUTION

Earnings Exemptions, Including Earnings Deposited in Commercial Bank Accounts

PRELIMINARY STAFF DRAFT

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

WARNING: This tentative recommendation has been prepared by the staff of the Law Revision Commission to effectuate the Commission's tentative decision to revise the statutes relating to attachment, garnishment, and exemptions from execution. The draft has not been considered by the Commission and therefore may not reflect the views of the Commission.

December 30, 1970

TENTATIVE RECOMMENDATION OF THE CALIFORNIA

LAW REVISION COMMISSION

relating to

ATTACHMENT, GARNISHMENT, EXEMPTIONS FROM EXECUTION

Earnings Exemptions

Recent judicial decisions and federal legislation demand a critical reexamination of the exemption of earnings from both prejudgment levy of attachment and postjudgment levy of execution. In June 1969, the United States Supreme Court 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.¹ The rationale of the court was sufficiently broad that, in January 1970, the California Supreme Court in turn held that California's then existing prejudgment wage garnishment procedure also constituted a taking of property in violation of procedural due process.² On July 1, 1970, Title III of the federal Consumer Credit Protection Act of 1968³ went into effect throughout the United States, imposing restrictions on the amounts creditors could garnish from debtor's earnings. In response to these events, legislation was enacted in California at the 1970 legislative session⁴ which attempts to satisfy both the constitutional requirements and the federal legislative restrictions. It would appear, however, that this legislation falls somewhat short of its goal.

1. Sniadach v. Family Finance Corp., 395 U.S. 337 (1969).

2. McCallop v. Carberry, 1 Cal.3d 903, 464 P.2d 122, 83 Cal. Rptr. 666 (1970).
See Cline v. Credit Bureau of Santa Clara Valley, 1 Cal.3d 908, 464 P.2d 125, 83 Cal. Rptr. 669 (1970).

3. 15 U.S.C. §§ 1671-1677.

4. Cal. Stats. 1970, Ch. 1523.

Section 690.6 was added to the Code of Civil Procedure to provide:⁵

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.

* * * * *

A simple reading of the statute shows that it exempts only earnings or portions of earnings that are "due or owing" and does not exempt earnings that have been paid. This constitutes both a change from the former California law which referred to earnings "received" by the debtor⁶ and, more importantly, appears to conflict with both the rationale of the decisions referred to above and the intent of the federal legislation.

5. Cal. Stats. 1970, Ch. 1523, § 19.

6. Between 1937 and 1970, California granted a wage exemption to earnings "received." Cal. Stats. 1937, Ch. 578, § 1, at 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).

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."⁷ Obviously, the very same hardship can occur and leverage be obtained where wages in the possession of the defendant or deposited by or for him in a checking account 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.⁸

7. See *McCallup 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.").

8. The Supreme Court of Wisconsin has already refused to distinguish between different types of property. See *Larson v. Fetherstone*, 44 Wis.2d 712, 172 N.W.2d 20 (1969), stating:

Although the majority opinion in *Sniadach* makes considerable reference to the hardship of the unconstitutional procedure upon the wage-earner, we think that no valid distinction can be made between garnishment of wages and that of other property. Clearly, a due process violation should not depend upon the type of property being subjected to the procedure.

The decisions from other jurisdictions are more ambivalent. The lower courts in California, for example, have reached conflicting results as to the applicability of the *Sniadach* rule to property other than wages. Compare *Western Bd. of Adjusters, Inc. v. Covina Publishing Co.*, 9 Cal. App.3d 659, 88 Cal. Rptr. 293 (1970) with *Leary v. Heard*, 2 Pov. L. Rptr. ¶ 11, 199 (Mun. Ct. Alameda County 1969).

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. The federal Consumer Credit Protection Act restricts the "garnishment" of "earnings" of a debtor to certain limited amounts--basically twenty-five percent of "disposable earnings"⁹--and earnings are defined as "compensation paid or payable for personal services."¹⁰ The statute restricts, however, only garnishments--defined as proceedings requiring the withholding of earnings for the payment of debts.¹¹ It would appear therefore that the draftsmen of the act were concerned primarily with the garnishment of earnings still in the hands of the employer.¹² Nevertheless, the obvious purpose of the act was to protect the wage earner's ability to carry on his day-to-day life. Accordingly, the California limitation to wages "due and owing" is, at the very least, logically inconsistent with both the decisions relating to attachment and the federal legislation--if not actually rendered invalid by them.¹³

9. See 15 U.S.C. § 1673(a). If an individual's disposable earnings for a workweek are 48 dollars or less, his earnings may not be garnished in any amount. If his earnings are between 48 and 64 dollars, only the amount above 48 dollars may be garnished. Above 64 dollars, the 25 percent rule applies.

10. 15 U.S.C. § 1672(a). (Emphasis added.)

11. See 15 U.S.C. § 1672(c).

12. See Statement by Senator Sparkman, 114 Cong. Rec. Part 11488 (May 22, 1968).

13. 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.

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 presented 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 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, 1000-dollar aggregate exemption for accounts of every kind held by any financial institution.

The Commission further recommends that Section 690.6 be broadened to cover earnings paid to the debtor as well as those "due and owing."

With regard to prejudgment levy of attachment--because of the absence of prior notice and a hearing--, earnings should be entirely exempt. This is the law now with respect to earnings "due and owing." It is simply

nonsensical not to extend the same protection to earnings paid to the defendant. The exemption may be granted automatically where the earnings are readily identifiable as such. Where this is not the case, the defendant should be required to claim and show that he is entitled to an exemption.

A similar approach should be taken to the exemption of earnings from postjudgment levy of execution. The amount of the exemption should be limited in conformity with federal standards;¹⁴ however, the exemption should be extended to all earnings--in whatever form they may appear.

14. See note 9 supra and accompanying text.

PROPOSED LEGISLATION

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

An act to amend Sections 690.6 and 690.7 of the Code of Civil Procedure, and to repeal Section 15406 of the Financial Code, relating to exemption from the levy of attachment and the levy of execution.

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

Code of Civil Procedure § 690.6 (amended)

Section 1. 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,

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

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

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

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

(e) 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 identifiable by the levying officer as earnings, in the amount that is exempted from garnishment by the laws of the United States.

(f) From levy of execution, all earnings of the debtor 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.

§ 690.6

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

~~(d)~~ (g) 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)~~ (h) 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.

Comment. Section 690.6 is amended to satisfy the restrictions upon the attachment of and execution upon earnings imposed by recent judicial decisions and federal legislation. See, e.g., Consumer Credit Protection Act of 1968, 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 ().

Subdivision (a) defines "earnings" in accordance with Section 302(a) of the Consumer Credit Protection Act. 15 U.S.C. § 1672(a). The federal reference to compensation "paid or payable" is omitted in the definition set forth here but forms the basis for the categories of exempt assets protected under subdivisions (b) through (e) of this section. That is, earnings which are

§ 690.6

"payable" are those which are referred to as "due and owing" under this section. "Paid" earnings are covered here by reference to earnings which have been paid to the debtor--whether or not they are still in a form identifiable as "earnings." It should be noted that certain analogous types of periodic payments--for example, welfare assistance and unemployment benefits--are not covered here but by other provisions of the 690 series. See, e.g., Sections 690.175 (unemployment compensation), 690.19 (public assistance). On the other hand, payments pursuant to a pension or retirement program receive overlapping treatment and a debtor or defendant is entitled to the most favorable exemption available to him under the law. Compare Section 690.6 with Section 690.18.

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

§ 690.6

vehicles); 690.7 (money deposited in bank, credit union, or savings and loan association).

Subdivision (d) incorporates by reference the federal standard for exemption from postjudgment levy of execution of earnings "due and owing" and those paid to a debtor and in his possession in a form identifiable as earnings. With respect to earnings "due and owing," subdivision (d) merely continues the substance of the automatic exemption provided by subdivision (b) of former Section 690.6. See Cal. Stats. 1970, Ch. 1523, § 19. Subdivision (d) is broadened, however, to also include certain paid earnings to carry out the apparent purpose of the federal Consumer Credit Protection Act of 1968. See 15 U.S.C. §§ 1672, 1673. The former reference to a 50-percent exemption is deleted because the federal exemption exceeds this limitation in every case.

Subdivision (e) is similar in nature to subdivision (c), discussed above, except that it provides an exemption from execution rather than from attachment.

Subdivisions (f), (g), and (h) continue without substantive change former subdivisions (c), (d), and (e) of Section 690.6. Subdivision (f), however, does enable a debtor to obtain the described exemption for all earnings, whether paid or payable. This is a point that was not entirely clear under former law. Subdivision (f) permits a court to provide a complete exemption from execution of a debtor's earnings where the circumstances dictate such action; the court may, of course, provide something less than a complete exemption, subject only to the federal minimums.

§ 690.7

Sec. 2. Section 690.7 of the Code of Civil Procedure is amended to read:

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

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

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

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

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

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

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

§ 690.7

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

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

§ 15406

Sec. 3. Section 15406 of the Financial Code is repealed.

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

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