

Memorandum 71-32

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

Attached to this memorandum is a draft statute dealing with the Earnings Protection Law and conforming changes in certain related provisions. However, not included here are:

- (1) Collection of state taxes (First Supplement to Memorandum 71-32);
- (2) Bank accounts (Second Supplement to Memorandum 71-32);
- (3) Retirement funds (Third Supplement to Memorandum 71-32).

Provisions dealing with these topics must eventually be incorporated into a recommendation dealing with the Earnings Protection Law generally. However, for this meeting, the topics covered by these separate memoranda seemed to require more detailed, individual treatment, and we did not want to delay sending you the attached statutory provisions. The staff's further work on this statute also raised some concern in our minds regarding the fundamental approach of the Earnings Protection Law. These concerns and possible ways to alleviate them are treated in Memorandum 71-37.

This memorandum then deals only with the draft statute as revised in conformity with the decisions of the Commission at the last meeting. A section by section analysis of these revisions follows.

Civil Code Section 4701. This section has been entirely redrafted and a Comment added to explain its effect. The section as revised now simply provides that a court may issue an earnings withholding order to enforce a parent's obligation to support his minor child. It might be noted that Section 4701 now refers to "a parent" in the singular only. However, Civil Code Section 14 specifically provides that, as to words used in this code, the

singular number includes the plural. And the Comment to Section 4701 states that the court may issue orders to withhold from the earnings of either or both parents.

Code of Civil Procedure Section 690.6. At the direction of the Commission, we have restored the substance of existing law as to earnings that are not covered under the Earnings Protection Law. The one exception to this is the amendment of subdivision (d) incorporating the "essential for support" standard exempting amounts necessary to support the debtor and his family.

Section 690.6a. Section 690.6a has been previously approved in substance by the Commission. The section has been redrafted so that its provisions are stated in the form of complete sentences.

Sections 690.7 (repealed), 690.7 (added), 690.7a(added). (See Second Supplement to Memorandum 71-32).

Section 690.18. (See Third Supplement to Memorandum 71-32.)

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. The staff has added a Comment to this section to explain its effect.

Earnings Protection Law

Section 723.10. No change.

Section 723.11. There is no change in the section itself. The Comment has been revised to make clear that the term "employee" includes both private and public employees and a reference to vacation credits has been added.

Section 723.20. This section has been previously approved by the Commission; however, either the section or Comment or both will have to be revised to reflect whatever decisions are made concerning the collection of state taxes.

Section 723.21. No change.

Section 723.22. The substance of subdivision (a) has been previously approved by the Commission.

We expect Professor Riesenfeld to attend the next meeting where he can explain the purpose of and necessity for subdivision (b).

Section 723.23. No change.

Section 723.24. At the direction of the Commission, this section was rephrased to refer to the termination of the employer's duty to withhold rather than to termination of the order itself.

Section 723.25. The substance of this section has been previously approved by the Commission. The staff has redrafted the section in an attempt to make its operation more clear. Subdivision (c) has been added to deal with the problem of multiple offices.

Section 723.26. Paragraph (2) of subdivision (b) has been revised to delete the reference to Section 723.51. Thus, a debtor may ask that an earnings withholding order for support be limited to enable him to retain amounts essential for his support. The staff believes that this provision most closely approximates existing law, which we describe in the last paragraph of the Comment to this section (page 29).

Section 723.27. (See First Supplement to Memorandum 71-32.)

Section 723.28. No change.

Section 723.29. The last sentence of subdivision (b) has been added to make clear that the judgment debtor may only reinstate an earnings withholding order once where an order has been suspended pursuant to a voluntary agreement between the creditor and debtor. The Comment has also been revised to explain the procedure provided by this section.

Section 723.30. Minor drafting changes were made in this section at the direction of the Commission, and a Comment to this section has been added.

Section 723.31. No change.

Section 723.32. There is no change in the section itself; however, the last paragraph of the Comment to this section is new.

Section 723.33. This section is new. The section reflects the decision of the Commission at the last meeting to authorize an employer to collect a one-dollar charge or service fee from the employee's earnings each time the employer is required to make a deduction for the creditor pursuant to an earnings withholding order.

Section 723.34. This section (formerly numbered Section 723.133) has been redrafted in conformity with the Commission's decisions at the last meeting.

Section 723.50. Subdivision (b) has been revised to provide that the basic minimum exemption is to be the greater of fifty dollars (as adjusted by the administrator) or thirty times the federal minimum hourly wage. The percentage of nonexempt earnings which may be taken has been changed to 25%. A comparison table showing the amounts which may be withheld pursuant to this standard, as well as those amounts which may be withheld under existing law, is attached to Memorandum 71-37.

Section 723.51. There is no change in the substance of this section. The Comment to Section 723.51 has been substantially revised to include a discussion concerning the elimination of the exception to the exemption presently provided for earnings necessary for support.

Section 723.100. A reference to registered mail has been added at the direction of the Commission.

Section 723.101. Subdivision (c) has been added to simply refer to a court of record rather than a court of similar or higher jurisdiction. No attempt has been made here to resolve the problem of the proper court for the issuance of tax orders.

Section 723.102. No substantive change.

Section 723.103. No substantive change.

Section 723.104. No substantive change.

Section 723.105. No change.

Section 723.106. The staff has added the last paragraph to the Comment to this section in an attempt to make clear that generally a creditor has a right to only one hearing with regard to a given set of facts in a multiple employment situation.

A question was raised at the last meeting as to what will happen in a multiple employment situation where only one employer is withholding pursuant to an order based on the combined earnings of a debtor and the second employer then receives an order from another creditor--both of the latter being unaware of the prior order. It would seem that, under the procedure presently provided by the Earnings Protection Law, the situation described is very unlikely to occur. The procedure requires that the debtor be served with a notice of application for an earnings withholding order. When served with such an order, the debtor would certainly be expected to advise the second creditor that his combined earnings are already subject to an earnings withholding order.

Section 723.107. No change.

Section 723.108. No substantive change has been made in this section; however, a Comment has been added.

Section 723.109. No substantive change. A Comment has been added.

Section 723.110. No substantive change.

Section 723.111. No change.

Article 5 (Sections 723.120-723.128). These sections have been completely redrafted to eliminate the actual setting forth of any forms. Section 723.120

now requires the Judicial Council to prescribe by rule the form of the applications, notices, orders, and other documents required in the operation of the Earnings Protection Law. The remaining sections indicate the basic substance of these forms.

Article 6. New Article 6 combines the substance of former Articles 6 and 7. With minor technical corrections, these sections have been previously approved by the Commission.

Financial Code Section 15406. No change.

Labor Code Section 300. No change.

Unemployment Insurance Code Section 1342. No change.

Operative Date

The last two sentences have been added to Section 14 of the act, making clear the duties of the Department of Industrial Relations and the Judicial Council to take actions required for the operation of this statute prior to its operative date.

Respectfully submitted,

Jack I. Horton
Assistant Executive Secretary

EARNINGS PROTECTION LAW--DRAFT STATUTE

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CIVIL CODE

§ 4701 (amended). Continuing withholding order for support

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.~~ In any proceeding where the court has ordered a parent to pay any amount for the support, maintenance, or education of a minor child, the court may issue an earnings withholding order under Section 723.26 of the Code of Civil Procedure for the amount so ordered. The withholding order may require the parent's employer to pay the withheld earnings to the county clerk, probation officer, or other officer of the court, to a county officer, to the person having custody of the child, or to such other person as is specified in the order to receive such payment.

Civil Code § 4701

Comment. Section 4701 is amended to reflect the enactment of the comprehensive procedure for earnings withholding set forth in the Earnings Protection Law. See Code of Civil Procedure Sections 723.10 et seq.

While the wage assignment procedure formerly used under Section 4701 is not continued, the substantive effect of the prior law is continued. Thus, the order for support continues to have priority over other withholding orders and assignments. See Code of Civil Procedure Section 723.26; Labor Code Section 300. As under prior law, the court may issue earnings withholding orders to withhold from the earnings of either or both parents. Authorization for the employer to deduct a one-dollar fee also is continued under Section 723.33. Under prior law, withheld earnings were required to be paid to a court officer or county officer specified by the court; this authority is continued in the amended section and expanded to permit the court to order the employer to pay the withheld earnings directly to the person having custody of the child or to such other person as the court specifies in the order.

CODE OF CIVIL PROCEDURE

§ 690.6 (amended). Earnings of persons other than employees

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

690.6. (a) As used in this section, "earnings" means those earnings not included within the definition of "earnings" stated in subdivision (a) of Section 723.11.

~~(a)~~ (b) 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.

~~(a)~~ (c) 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.

~~(e)~~ (d) Such additional portion of his earnings which a debtor proves is essential for the support of himself or his family shall be exempt from levy of execution. 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.~~

~~(a)~~ (e) 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)~~ (f) 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 limit its application to those persons and earnings not protected under the Earnings Protection Law. See Chapter 2.5 (commencing with Section 723.10). The Earnings Protection Law is applicable only to "employees." See, e.g., Sections 723.11, 723.106. Section 690.6 accordingly applies to persons who can be categorized generally as independent contractors. As to these persons, Section 690.6 continues prior law with one exception. Subdivision (d) has been revised in conformity with Section 723.51 to provide an exemption for those earnings which the debtor proves are essential for support. The standard provided is stricter than the standard under former law; however, the former exceptions to the exemption have been eliminated. See Comment to Section 723.51. See also Recommendation Relating to Attachment, Garnishment, Exemptions From Execution: Earnings Protection Law (1971).

§ 690.6a (added). Earnings of employees

Sec. 3. Section 690.6a is added to the Code of Civil Procedure, to read:

690.6a. (a) As used in this section, "earnings" has the meaning given that term in subdivision (a) of Section 723.11.

(b) 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, are exempt from levy of attachment without filing a claim for exemption as provided in Section 690.50.

(c) 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 are exempt from levy of attachment.

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

(e) 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 are exempt from levy of execution 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) 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 are exempt from levy of execution in the amount that is exempted from garnishment by Section 723.50.

(g) Such additional portion of his earnings which a debtor proves is essential for the support of himself or his family are exempt from levy of execution.

Comment. Section 690.6a is added to make clear the relationship between new Chapter 2.5 (commencing with Section 723.10) and the existing attachment and execution procedures and to satisfy the restrictions upon the attachment of and execution upon earnings imposed by recent judicial decisions and federal legislation. 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); Consumer Credit Protection Act of 1968 (§§ 301-307), 15 U.S.C. §§ 1671-1677. See also Recommendation Relating to Attachment, Garnishment, Exemptions From Execution: Earnings Protection Law (1971).

Section 690.6a states the exemptions from prejudgment levy of attachment for all earnings of an employee, both paid and payable. This section is also the source of exemption from postjudgment levy of execution for paid earnings of an employee. The exemptions for unpaid earnings, i.e., earnings "due and owing," are provided in Chapter 2.5 (commencing with Section 723.10).

Subdivision (a) adopts the definition of "earnings" stated in Section 723.11. Section 690.6a is applicable therefore only to persons ("employees") protected under the Earnings Protection Law. Compare Section 690.6. See also 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 in Section 723.11 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 any debtor; this aspect of the former law is carried forward without change in subdivision (b) of Section 690.6 and subdivision (b) of this section. 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 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 identified 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) covers the logical hiatus left by subdivision (b)--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); 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, 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 690.7a (money deposited in bank, credit union, or savings and loan association).

Subdivision (g) provides an exemption for amounts essential for support comparable to that provided by subdivision (d) of Section 690.6 and Section 723.51. See Comments to Sections 690.6 and 723.51.

§ 690.7 (Repealed)

Sec. 4. 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 690.7a.

§ 690.7 (added). Bank accounts; exemption from levy of attachment

(See Second Supplement to Memorandum 71-32)

§ 690.7a (added). Bank accounts; exemption from levy of execution

(See Second Supplement to Memorandum 71-32)

§ 690.18 (amended). Retirement funds

(See Third Supplement to Memorandum 71-32)

Sec. 8. 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.

(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.

(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.

690.6a,
690.7,
690.7a,
690.18,

§ 690.50

(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 nonexempt 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.

or 690.6a

(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.

Comment. Section 690.50 is revised to include appropriate references to Sections 690.6a, 690.7, 690.7a, and 690.18.

Sec. 9. Section 710 of the Code of Civil Procedure is amended

to read:

710.

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

1. If such money, ~~wages or salary~~ is owing and unpaid by this state to such judgment debtor, said judgment creditor shall file said abstract or transcript and affidavit with the state department, board, office or commission owing such money, ~~wages or salary~~ to said judgment debtor prior to the time such state department, board, office or commission presents the claim of such judgment debtor therefor to the State Controller ~~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~~

§ 710

~~greater portion as is allowed by statute of the United States, of the earnings of the debtor owing by the county, city and county, city, municipality, quasi-municipality, district or public corporation to the judgment debtor for his personal services to such public body rendered at any time within 30 days next preceding the filing of such abstract or transcript, as will satisfy in full or to the greatest extent the amount unpaid on said judgment and the balance thereof, if any, to the judgment debtor.~~

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

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

H (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).

Comment. Section 710 is amended to eliminate the use of the abstract procedure as a means of garnishing the wages or salary of a public employee. The earnings of such employees may be withheld pursuant to the Earnings Protection Law only. See Chapter 2.5 (commencing with Section 723.10).

Sec. 10. 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 "employee" includes both private and public employees. See Section 710.

"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 723.151. One such item will probably be vacation credits or pay. Different employers will treat this form of compensation differently. Generally speaking, however, vacation pay should be subject to withholding only when paid, i.e., when the employee goes on vacation or terminates his employment in circumstances where he has the right to be paid his accrued benefits.

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.

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 subdivisions (b) and (c) of Section 690.6a. 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, 690.7a (bank accounts), and Section 690.18 (retirement funds). However, where "earnings" are sought to be garnished, the creditor must comply with the provisions of this chapter. This rule applies to public entities as well as private persons. This chapter, for example, imposes limitations on the state's ability to garnish wages for tax delinquencies pursuant to its warrant and notice procedures. See Section 723.27.

Of course, the Earnings Protection Law has no effect on matters that are preempted by the federal law, such as federal bankruptcy proceedings--including proceedings under Chapter 13 of the National Bankruptcy Act--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. (a) Except as otherwise provided in this chapter, receipt by an employer of an earnings withholding order 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.

(b) Service of an earnings withholding order creates a lien upon the earnings of the employee required to be withheld pursuant to such order. Such lien shall continue for a period of three years from the date such earnings became payable.

Comment. Subdivision (a) of Section 723.22 provides a simple statement of the general principle that service of an earnings withholding order imposes a continuing duty to withhold. The "one shot" effect of service of a writ of execution does not apply here. See Recommendation Relating to Attachment, Garnishment, Exemptions From Execution: Earnings Protection Law (1971). For expiration of the order, see Section 723.23. For termination of the duty to withhold, see Section 723.24. For suspension of the duty to withhold, see Sections 723.27, 723.29, and Labor Code Section 300.

§ 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 duty to withhold terminates

723.24. An employer shall cease withholding pursuant to an earnings withholding order when any of the following occurs:

(a) The employer receives written notice of termination of the order from the judgment creditor or the court.

(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 the duty of the employer to withhold pursuant to an earnings withholding order despite a later expiration date for the order as provided in Section 723.23.

Subdivision (a) reflects the fact that a court may terminate a prior withholding order. See Sections 723.29(c)(improper voluntary agreement), 723.103(b)(fraudulent consent order), 723.110 (court termination due to substantial change in the debtor's position--significant alterations in earnings, hardship occurrences, and the like). Of course, in some situations, the court will only modify the prior order and the employer then must comply with the order as modified. The responsibility for serving many of the orders and notices provided in this chapter is placed on the parties. The employer, however, is entitled generally to rely on just what he has actually received. See Section 723.34.

Subdivision (b) provides for termination whenever the employer receives a certified copy of a satisfaction of judgment thus notifying him that the

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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 duty imposed by 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 itself terminated--hence, no longer "in effect." 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. (a) Except as otherwise provided in this chapter:

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

(2) 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.

(3) 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) The employer shall notify any judgment creditor who served an order that is not given effect that another order is in effect by noting this fact on his Employer's Return.

(c) For the purposes of this section, an employer may elect to treat an earnings withholding order as received on either the day it is first received by any branch or office of such employer or the day it is received by the office which prepares the judgment debtor's paycheck.

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 723.125. 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

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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 is "in effect" until it expires or the duty to withhold which it imposes is "terminated." See Sections 723.23 (expiration) and 723.24 (termination). In some circumstances, the operation of an order may be suspended, but the duty to withhold 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 Section 723.50 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 termination.

(4) An employer who receives a withholding order for support shall withhold and pay over earnings of the employee pursuant to such order even though another earnings withholding order is already in effect.

(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 terminated by the issuing court (it may, of course, be modified); 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) is consistent with prior law. Under prior law, the exemption for 50 percent of earnings did not apply to a judgment based on a support obligation. E.g., Burton v. Tearle, 7 Cal.2d 48, 57, 59 P.2d 953, (1936)(dictum); Rankins v. Rankins, 52 Cal. App.2d 231, 126 P.2d 125 (1942). Also, under prior law the court had the power to make an equitable division of the debtor's earnings between, for example, his first wife and children and himself and his second family. See Rankins v. Rankins, supra. Paragraph (2) makes the exemption provided by Section 723.50 not applicable and the exemption provided by Section 723.51 applicable to an earnings withholding order for support, thus continuing the substance of the prior case law. A determination that the exemption provided by Section 723.51 applies has no effect on the support order upon which the earnings withholding order is based; only the court that made the original order for support may modify that order. See Civil Code Section 4801. See also Thomas v. Thomas, 14 Cal.2d 355, 94 P.2d 810 (1939). Accordingly, the obligation imposed by the original support order will continue and amounts required to be paid under that order will accumulate until such amounts are paid or the order is modified.

§ 723.27. Orders for state taxes

Note: Earnings withholding orders for state taxes are discussed in the First Supplement to Memorandum 71-32.

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 723.121 (application of issuance of earnings withholding order), 723.125, and 723.126 (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. The right of the judgment creditor to reinstate an earnings withholding order may only be exercised once as to any one order.

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(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 to prove that the order superseded by the agreement should not 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. The creditor may only use his power to reinstate the order once. The employer is not required to make constant changes at the whims

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of the debtor and creditor. This section provides no remedy where the creditor, in reinstating the prior order, violates the parties' agreement. For such breaches, the debtor must rely on general provisions of law.

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 pay 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 pay 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 until the accumulated amount that has been withheld and not paid over reaches ten dollars (\$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.

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Comment. Section 723.30 specifies when the amounts withheld pursuant to an order must be paid over to the creditor. Generally this must be done within 15 days after the employee is paid the amount remaining after withholding. See subdivision (a). Subdivision (b), however, permits the employer to make monthly remittances and subdivision (c) permits him to forward payments even less frequently where only small amounts are being withheld.

§ 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.

Section 723.32 merely requires the creditor to file a satisfaction of judgment with the court which issued an earnings withholding order. This will not always be the court which rendered the original judgment. As to the general duty of a creditor to furnish a debtor a satisfaction of judgment, including filing in the court which rendered such judgment, see Section 675.

§ 723.33. Employer's service charge for withholding

723.33. Each time an employer makes a deduction from an employee's earnings pursuant to an earnings withholding order, he may make an additional deduction of one dollar (\$1) and retain it as a charge for his services in complying with the earnings withholding order.

Comment. Section 723.33 authorizes, but does not require, an employer to deduct an additional dollar as a service charge each time he is required to withhold a portion of his employee's earnings pursuant to an earnings withholding order. For example, if the employee is paid weekly and an amount is withheld each week pursuant to the earnings withholding order, the employer may deduct an additional service charge of one dollar each week. A similar one-dollar charge was formerly authorized under Civil Code Section 4701. A charge of \$2.50 was authorized under Code of Civil Procedure Section 710 when earnings of a public employee were levied on under that section. However, there was no provision authorizing an employer to make a service charge in connection with wage garnishments generally.

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

723.34. Notwithstanding any other provisions of this chapter, an employer who complies with any court order or written notice which purports to be given in accordance with the provisions of this chapter shall not be subject to any civil or criminal liability for such compliance unless he is actively participating in a fraud.

Comment. Section 723.34 makes clear that an employer is protected from liability where he complies with an order or written notice which appears proper on its face. Occasionally, through mistake, inadvertence, or even deliberate misconduct, an employer may 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 with its directions and is not actively participating in a fraud. The remedy of the injured party in such a case is to proceed against the person who sent the improperly obtained or falsified document.

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 the greater of:

(1) Fifty dollars (\$50) or such amount as may be computed pursuant to subdivision (c); or

(2) Thirty (30) 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.

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

(c) The basic minimum exemption prescribed by paragraph (1) of subdivision (b) shall be fifty dollars (\$50) 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 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%).

(d) 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-five percent (25%) 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 whole dollar.

(e) 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 (d).

(f) 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 two percent of the amounts computed under subdivision (d) or (e). 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 (f) 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, subdivisions (b) and (c) of Section 723.50 provide a basic minimum exemption

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

Where an earnings withholding order for support is in effect, the amount withheld pursuant to such order is subtracted from the gross income before computing the amount to be withheld pursuant to any other order. See Section 723.26 and Comment thereto.

§ 723.51. Amounts essential for family support exempt

723.51. The 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, the standard for 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 and makes clear that 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.

Former subdivision (c) of Section 690.6 prevented the debtor from claiming the support exemption if the debt sought to be collected was:

(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.

In actual operation, the "common necessities" exception made the exemption provided for earnings necessary to support the debtor's family unavailable in many cases. In order to obtain the exemption, the debtor was required to follow the procedure outlined in Section 690.50. If the creditor then alleged that his debt was for "common necessities," there followed a process of affidavit, counteraffidavit, hearing, and so on; all of which took time,

effort, and some sophistication. Whether or not this was the reason, the fact is that few debtors availed themselves of the support exemption although presumably many more were eligible for it.

It is fair to say that there is no evidence that the "common necessities" rule had any effect on credit granting patterns in California. It does not appear that credit grantors in California acted any differently from those in the great majority of states that do not have the "common necessities" rule. In truth, the effect of the "common necessities" rule in California was to decide the question whether competing creditors could 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 could be decided on the technical, and usually irrelevant, issue of what was a "common necessary of life." See, e.g., Los Angeles Finance Co. v. Flores, 110 Cal. App.2d Supp. 850, 243 P.2d 139 (1952). Hence, a reputable creditor who had rationed credit prudently to a debtor and had provided high quality goods and services to him could 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 could be allowed to garnish wages. The "common necessary" exception has accordingly been eliminated.

The exception which permitted a creditor who was a former employee of the debtor to take a portion of the debtor's wages even though the debtor could show the money was necessary for the support of his family has also been

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eliminated. This exception was largely irrelevant to the low income debtor, for such a debtor has no employees, and there is no indication that this provision was ever actually invoked by a creditor. See generally Recommendation Relating to Attachment, Garnishment, Exemptions From Execution: Earnings Protection Law (1971).

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, registered mail, 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 one dollar (\$.1).

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 one dollar.

§ 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 723.121.

(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 to a court of record in the county where the judgment debtor was last known to reside. 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.

(3) The form for application of judgment debtor for hearing and the form for the judgment debtor's financial statement. 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 assert 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 requirements for the application for an order and the notice of application, see Sections 723.121 and 723.122. 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

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earnings withholding order should be issued for an amount less than the maximum provided by law or should not be issued at all. See Sections 723.123 and 723.124.

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 to prove that the order should not 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 723.123 (form for application for hearing by judgment debtor). This limitation would not, of course, preclude a voluntary wage assignment in an amount greater than

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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 after 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.

Although subdivision (d) permits a creditor to request a hearing under this section "at any time," after the matter has been heard once, a second hearing should not be required unless and until there has been a change in circumstances that warrants reconsideration of the issues.

§ 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

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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 and the informational pamphlet and withholding table published by the State Administrator, shall be served upon the designated employer by the judgment creditor.

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

Comment. Section 723.108 prescribes what must be served upon the employer by the judgment creditor and when such service must be accomplished to be effective. The form for the employer's return is prescribed in Section 723.125.

Service under this section will generally be accomplished by mail. Failure of the employer to accept such service can be dealt with by both the court (see Section 723.159) and the State Administrator. See Sections 723.154-723.158..

§ 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.

Comment. Section 723.109 directs every employer to fill out and mail an Employer's Return to every judgment creditor who serves an earnings withholding order. Such a return must be made even though the order is not given effect. See Section 723.25. For the form of the return, see Section 723.127.

§ 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 in writing 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; Instructional Pamphlet; Withholding Table

§ 723.120. Judicial Council to prescribe forms

723.120. Subject to the requirements of this chapter, the Judicial Council shall prescribe by rule the form of the applications, notices, orders, and other documents required by this chapter.

Comment. Section 723.120 imposes on the Judicial Council the duty to prescribe the forms necessary for the purposes of this chapter. Various sections prescribe information to be contained in the forms; but, subject to these requirements, the Judicial Council has complete authority to adopt and revise the forms as necessary.

§ 723.121. Application for earnings withholding order

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

- (a) The name and address of the judgment creditor.
- (b) The date and place where the judgment is entered.
- (c) The amount sought to be collected, indicating the amount of the judgment, plus additional accrued items, less partial satisfactions, if any.
- (d) The name and address of the employer to whom the order will be directed.
- (e) The name and address of the person to whom the withheld money is to be paid.
- (f) The name and address of the person designated by the judgment creditor to receive notices.
- (g) A statement that the applicant has 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 the proceeding has been stayed in a proceeding under the National Bankruptcy Act.
- (h) A statement that the applicant has complied with the requirements of Section 723.102.

Comment. Section 723.121 specifies information to be included in the Application for Issuance of Earnings Withholding Order. The form for the application is prescribed by the Judicial Council. See Section 723.120. The application may be executed under penalty of perjury. See Section 2015.5.

§ 723.122. Notice of application

723.122. In addition to other matters required by the State Administrator, the "Notice of the Application for Issuance of an Earnings Withholding Order" shall inform the judgment debtor of all of the following:

(a) 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.

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

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

(d) 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.

(e) If a judgment debtor wishes a court hearing to prove that amounts should not be withheld from his earnings because either subdivision (c) or (d) applies, he must file with the clerk of court two copies of the "Application of Judgment Debtor for Hearing," and, in addition, if he claims the exemption referred to in paragraph (d), he must also file with the clerk two copies of the "Judgment Debtor's Financial Statement."

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

Comment. Section 723.122 lists some of the information to be given to the judgment debtor in his notice of earnings withholding. Subdivisions (c) and (d) list the two most significant reasons for denial of a withholding order. The 15-day deadline for hearing application referred to in subdivision (f) 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.

§ 723.123. Form for application of judgment debtor for hearing

723.123. The "Application of Judgment Debtor for Hearing" shall be executed under oath. In addition to other matters required by the 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.

Comment. Section 723.123 specifies the information to be included in the Application of Judgment Debtor for Hearing. The form for the application^s is prescribed by the Judicial Council. See Section 723.120. The application may be executed under penalty of perjury. See Section 2015.5.

§ 723.124. Judgment debtor's financial statement

723.124. The "Judgment Debtor's 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:

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

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

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

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

(e) All outstanding obligations of the judgment debtor.

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

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

Comment. Section 723.124 specifies the information to be included in the Judgment Debtor's Financial Statement. The form for the statement is prescribed by the Judicial Council. See Section 723.120. The application may be executed under penalty of perjury. See Section 2015.5.

§ 723.125. Earnings withholding order

723.125. In addition to other matters required by the Judicial Council, the earnings withholding order shall include all of the following:

(a) The name and address of the employer to whom the order is directed.

(b) The date and place where the judgment was entered and the name of the judgment creditor and judgment debtor.

(c) The net balance owing on the judgment.

(d) An order to the employer to withhold from the earnings of the judgment debtor the amount required by law to be withheld or the amount specified in the order, as the case may be, until the happening of the first of the following events:

(1) The employer has withheld the full amount of the net balance on the judgment as specified in the order.

(2) The employer has received a modified order or a notice of termination of the order from the judgment creditor or the court.

(3) The employer has received a certified copy of a satisfaction of the judgment.

(4) The employer has 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) The employer has received written notice from the judgment creditor that the amount to be withheld is less than the amount specified in the order, in which case the employer is to withhold the lesser amount and pay such lesser amount to the judgment creditor as provided by law.

§ 723.125

(6) The employer has received written notice from the judgment creditor that he is to discontinue withholding on the earnings withholding order.

(e) If there is no court order specifying the amount to be withheld, a statement that 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.

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

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

(h) An order that the employer fill out the "Employer's Return" and return it by first-class mail to the judgment creditor or his representative at a specified address within 15 days after the employer receives the earnings withholding order.

Comment. Section 723.125 specifies the information to be included in the Earnings Withholding Order. The form of the order is prescribed by the Judicial Council. See Section 723.120. Special forms are prescribed for earnings withholding orders for support or taxes. See Section 723.126.

§ 723.126. Earnings withholding orders for support or taxes

723.126. The requirements of Section 723.125 do not apply to an earnings withholding order for taxes or for support. The Judicial Council shall prescribe by rule the form and contents of withholding orders for taxes or for support.

Comment. Although much of the information listed in Section 723.125 will be necessary in an earnings withholding order for support or taxes, such orders have special rules concerning priority, duration, and amounts that may be withheld. See Sections 723.26 and 723.27. Accordingly, the form and content of these special orders is left to determination by the Judicial Council.

§ 723.127. Employer's return

723.127. (a) 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.

(b) 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.

Comment. Section 723.127 specifies the information to be included in the Employer's Return. The form for the return is prescribed by the Judicial Council. See Section 723.120. The return may be executed under penalty of perjury. See Section 2015.5.

§ 723.128. Informational pamphlet and withholding tables

723.128. (a) The State Administrator shall prepare an informational pamphlet for employers and revise or supplement it to reflect changes in the law.

(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.

Comment. Subdivision (a) of Section 723.128 requires the preparation of an informational pamphlet that contains the information necessary so that an employer may comply with the law. The creditor mails the employer a copy of the pamphlet with the earnings withholding order. See Section 723.108.

Subdivision (b) permits the State Administrator to recover the cost of printing informational pamphlets and withholding tables.

Article 6. Administration and Enforcement

§ 723.150. State Administrator

723.150. Except for those duties imposed on the Judicial Council, the State Administrator shall administer and enforce this chapter.

Comment. The State Administrator is the Department of Industrial Relations. See Section 723.11 (defining "State Administrator").

§ 723.151. Rules and regulations

723.151. 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.

Comment. Section 723.151 requires that rules and regulations be adopted, amended, and repealed in accord with the Administrative Procedure Act.

§ 723.152. Investigations and enforcement powers generally

723.152. 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.

Comment. Section 723.152 makes clear that the State Administrator, in performing his duties under this chapter, has the general authority given the head of each state department to make investigations and prosecute actions.

§ 723.153: Liaison with federal administrator

723.153. The State Administrator may 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 723.153 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 723.153 is found in Government Code

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.

§ 723.154. Warning to violator

723.154. 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 a suitable written notice or warning.

Comment. Section 723.154 is based on Health and Safety Code Sections 26332 and 26555.

§ 723.155. Conference with suspected violator

723.155. If the State Administrator has reason to believe that any violation of this chapter has occurred or is threatened, he may hold an informal conference with the suspected violator or his 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, arriving at an adequate and effective means of correcting or preventing the violation.

Comment. Section 723.155 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.

§ 723.156. Cease and desist order

723.156. (a) The State Administrator, acting in the name of the people of the State of California, may issue an order directing any person to show cause why an order should not be issued directing such 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 to show cause, 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.

(c) If the person fails to show cause why the cease and desist order should not be issued, the State Administrator may issue the order.

Comment. Section 723.156 is based in part on Section 12534 of the Government Code, which relates to powers of the Attorney General in connection with health care service plans.

§ 723.157. Injunctive relief; failure to comply with cease and desist order

723.157. In case of any violation of this chapter, if the violator does not comply with a cease and desist order issued pursuant to Section 723.156, 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 723.157 is based on Section 12535 of the Government Code, which relates to powers of the Attorney General in connection with health care service plans.

§ 723.158. Injunctive relief pending administrative adjudication

723.158. 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 723.15⁶, 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 723.158 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 emergency circumstances where normal administrative procedures would be inadequate.

§ 723.159. Enforcement of orders

723.159. Any order of the court made pursuant to this chapter may be enforced by the court by contempt or other appropriate order.

Comment. Section 723.159 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).

§ 723.160. Fraudulent withholding by employer

723.160. If an employer withholds earnings pursuant to this chapter and, with the 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 723.160 is based on Labor Code Section 227 (failure to make agreed payments to health, welfare, or similar fund).

§ 723.161. Remedies of judgment creditor

723.161. 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 723.161 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 723.161 provides to the judgment creditor, the court has the power to compel obedience to its orders through exercise of the contempt power. See Section 723.159 and Comment thereto.

§ 723.162. Fees of clerk

723.162. (a) The fee for filing an application for an earnings withholding order under subdivision (a) of Section 723.101 is two dollars (\$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) Except as provided in Section 723.33, no other fees may be charged under this chapter.

FINANCIAL CODE

Financial Code Section 15406 (repealed)

Sec. 11. 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 the provisions of Sections 690.7 and 690.7a of the Code of Civil Procedure. See Section 690.7 and Comment thereto.

LABOR CODE

Labor Code § 300 (amended)

Sec. 12. 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 ~~er-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 ~~er-salary~~ have been earned or are to be earned, and identifying specifically the transaction to which the assignment relates ~~;-and~~ .

~~(b)~~ (2) Where ~~such~~ the assignment ~~of,-er-order-for-wages-er-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~~ .

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

~~(d)~~ (4) Where ~~such~~ the assignment ~~of-er-order-for-wages-er-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~~ .

~~(e)~~ (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.

(f) (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

Unemployment Insurance Code § 1342 (amended)

Sec. 13. 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. 14. 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. The Department of Industrial Relations shall publish the earnings withholding tables and informational pamphlets referred to in Section 723.128 before July 1, 1973. The Judicial Council shall prescribe by rule the necessary forms as required by Section 723.120 before July 1, 1973.