

Memorandum 72-55

Subject: Study 39.30 - Attachment, Garnishment, Execution (Wage Garnishment and Related Matters)

BACKGROUND

You will recall that the Commission approved a revised bill on wage garnishment and related matters (and the Official Comments to each section) for submission to the 1973 legislative session. We sent this material to the printer right after the July meeting and have just received the revised bill from the printer. We had planned to present the preliminary portion--containing the summary of our recommendations--for approval for printing at the September meeting.

We are instead presenting the previously approved draft statute for reconsideration by the Commission in light of a letter we have received from the U.S. Department of Labor concerning our revised proposal. The letter lists a number of circumstances where the department believes that the proposal would not provide the same or greater protection to individuals as does the federal law. The letter is attached as Exhibit I (pink) and is summarized below.

ANALYSIS OF DEPARTMENT OF LABOR LETTER

The Department of Labor letter specifies the following as instances where our proposal would not satisfy federal requirements.

Section 690.6--independent contractors. The department takes the view that the federal law applies to independent contractors and states that the bill "would manifestly provide less protection than the federal law" to independent contractors.

Sections 690.7-690.7-1/2--bank accounts. The department takes the view that the federal restrictions on garnishment apply to garnishment of earnings (and retirement payments) deposited in bank accounts and concludes that our proposed bank account exemptions do not satisfy federal requirements.

Treatment of deductions pursuant to a withholding order for support. The department is firmly of the view that, if a garnishment pursuant to a support order exhausts the allowable amount of disposable earnings under the federal law (25 percent), no more of the employee's earnings may be withheld pursuant to another garnishment against the same earnings. Our proposal, on the other hand, treats deductions pursuant to a withholding order for support as a deduction required by law. Our proposal thus directly conflicts with a firm federal position.

Earnings from more than one source. The department states it has taken the position that the federal restrictions are to be considered to be separately applicable to each employer (garnishee). The department also takes the position that tips may not be included in determining the amount subject to garnishment. Accordingly, Section 723.106 (dealing with earnings from more than one source) is disapproved.

Conclusion. The Commission's proposal would not qualify for a federal exemption in its present form.

SUGGESTED APPROACH IN REVISING RECOMMENDED LEGISLATION

The federal statute deals only with restrictions on the amount of earnings that may be garnished. Our proposal does much more than that. In fact, my recollection is that our consultant's original proposal did not contemplate an attempt to impose any greater restrictions than the federal law on wage garnishment but instead was directed toward wage garnishment procedure.

The staff believes that some of the interpretations of the federal administrator are unsound and others are unworkable. For example, we believe that tips properly should be included as income. We do not believe that the extension of the federal restrictions to bank accounts in which earnings are deposited by the judgment debtor will prove workable and, so far as we know, we do not believe that the federal restrictions are now being applied in California to void executions levied against bank and checking accounts. The federal restrictions will not work when money owed to an independent contractor is garnished. Because we believe that these interpretations are unsound or unworkable or both, we would recommend against proposing a statute that would expressly codify these interpretations.

It would appear that the problems created by the federal restrictions and their uncertain scope of application could be avoided by writing into our statute the precise language of the federal statute. The staff believes that it is essential that we add to our statute a section that uses the same definitions and language as is used in the federal act. This would provide protection comparable to the federal act insofar as earnings are concerned. We can then go ahead and write our own bank account exemptions, such exemptions to apply whether or not "earnings" are involved. To the extent that the federal act is ultimately determined to provide greater restrictions, the federal law would preempt the state law (as is presently the situation in California). (See last paragraph of Department of Labor letter.) If this approach were to be adopted, we would insert the federal restriction into our statute, and we could abandon the attempt to develop the alternative gross income-withholding table system and could retain the substance of the existing hardship exemption without adding the restrictive language we had recommended but would eliminate the exception for common necessities. On

the other hand, we could retain our withholding table system with the restricted hardship exemption. The formula in the revised version of Senate Bill 88 as set out in Section 723.050 (printed version attached) is based on the assumption that a \$2-minimum wage will be in effect when the bill becomes operative. The Withholding Comparison Table (attached) shows how much would be withheld under the staff proposal ("Existing Law" columns on table), how much would be withheld under the formula contained in Senate Bill 88 as introduced at the 1972 session ("Present Formula" column), and how much would be retained under the formula in Senate Bill 88 as attached before the substitution of the staff proposal ("Revised Formula" column).

There are two additional revisions we will have to make to avoid conflict with the federal law. We should treat support garnishments like they are treated under the federal law. We should eliminate the multiple employment provision.

We believe that the scheme suggested above will avoid all conflict with the federal statute and, at the same time, will accomplish much of what the Commission has sought to accomplish. We believe that proposed legislation drafted along the lines suggested above would have a reasonable chance for legislative approval. As an examination of the attached revised draft will indicate, the adoption of this approach will require only a few revisions of our proposed legislation.

Many of the revisions are technical conforming changes that are needed because the revised draft abandons the effort to impose a gross earnings-withholding table system of withholding. If the Commission decides to retain the former scheme, these conforming revisions become unnecessary. If we drop the gross earnings-withholding table system, there should be significant savings

in state costs since the federal authorities--rather than the state--will be responsible for enforcement of the federal restrictions on garnishment of earnings.

REVISED DRAFT OF PROPOSED LEGISLATION

Attached are two copies of a revised draft of the proposed legislation. The following is a detailed discussion of the revised draft. There are a number of minor typographical errors in the revised draft. We have not marked these in the revised draft--we note only significant revisions--but we will correct these typographical errors before we print our report.

Section 4701. Technical revision.

Section 682. Technical revision.

Section 690.6. This revision incorporates into our statute precisely the same restrictions on garnishment of earnings as are specified in Sections 302 and 303 of the Consumer Credit Protection Act. These sections of the CCPA are set out in Exhibit I (pink) attached. The disposition of the existing provisions of Section 690.6 is noted in the Comment following the text of the amended section in the revised draft.

Section 690.7-1/2. The revision of subdivision (c) recognizes that greater protection may be afforded under federal law.

Section 690.50. Technical revision in subdivision (i) to conform to revision of Section 690.6.

Section 723.02⁴. This section is revised to provide that the \$1 is to be retained from the amount required to be withheld pursuant to the order. Since the federal restrictions on garnishment are adopted, it would violate those restrictions to deduct an additional dollar.

In connection with this section, consideration should be given to requiring the employer to provide the creditor with a statement showing

the employee's gross earnings and deductions made in computing the "disposable earnings," and, if such change were made, to increasing the amount the employer can retain from \$1 to \$2.50. The staff suspects that, under existing practice, the employer applies the 25 percent deduction to the employee's net pay even though such computation gives the employee the benefit of deductions not recognizable under the federal law. We would make the change suggested only if creditors are willing to increase the payment to the employer to \$2.50.

Section 723.030. This section as revised retains the priority given to a withholding order for support but adopts the federal rule that the amount withheld pursuant to a withholding order for support is considered in determining whether the 25 percent limit on garnishment has been exceeded.

Sections 723.050 and 723.051. The revised sections abandon the gross income-withholding table approach and, instead, retain the substance of existing law (except that the common necessities exception to the hardship exemption is not continued). (The "hardship" exemption for tax orders is dealt with elsewhere.)

Section 723.074. Adoption of the federal restrictions permits a substantial amount to be obtained from earnings of low income persons. Accordingly, the staff believes that it is sufficient to permit the state tax agency to itself issue withholding orders for taxes in amounts not in excess of the amount any other creditor could obtain pursuant to an ordinary earnings withholding order. If more is to be withheld than the 25 percent, we believe that the taxing agency should be required to go to court under Section 723.076. This revision will greatly simplify the statute and will not, we believe, be of any great detriment to the taxing authorities.

Section 723.075. The revisions of Section 723.074 make subdivisions (c) and (d) of Section 723.075 unnecessary.

Section 723.076. This section is revised to retain the substance of the section before the revision of Section 723.051.

Section 723.077. Technical revision.

Section 723.083. Technical revision.

Section 723.103. Technical revision, recognizing that there will not be any employer's instructions as such or any withholding tables.

Section 723.106. Eliminated because federal administrator has taken position this section would violate federal restrictions.

Article 6 (page 42)--Forms. Revised to eliminate references to instructions and withholding tables and to conform to language used in revised Sections 723.050 and 723.051.

With respect to the deletion of Section 723.127, we see no useful purpose in the Judicial Council attempting to promulgate regulations or instructions as to the meaning of the federal restrictions since the enforcement of those restrictions will be a matter for the federal administrator.

Section 723.150. Technical conforming revision.

Section 24 (last page). In view of the elimination of most of the administrative duties contemplated for the Judicial Council, we see no need to retain the deleted phrase in Section 24.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WASHINGTON, D.C. 20210



2 AUG 1972

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

Dear Mr. DeMouilly:

This is in reply to your inquiry as to whether the legislation proposed in California Senate Bill No. 88 would provide restrictions on garnishment substantially similar to those of section 303(a) of Title III of the Consumer Credit Protection Act.

As indicated in 29 CFR 870.51, it is the policy of the Secretary to permit exemption from section 303(a) if the laws of a State cover every case of garnishment covered by the Act, and if those laws provide the same or greater restriction on garnishment of individuals' earnings. We have reviewed Senate Bill No. 88 (as amended April 25, 1972) to ascertain whether it would provide the requisite restriction on garnishment. The following discussion of some of the provisions of Senate Bill No. 88 denotes a number of circumstances where it would not provide the same or greater protection to individuals as does the Federal law.

Section 690.6 of the bill, which applies to earnings of individuals who are not employees, exempts the earnings of the debtor received for his personal services. It does not appear that there is any restriction on a levy of attachment directed to payable earnings of individuals within the purview of §690.6. The restrictions of Title III are stated in terms of "earnings" or "compensation paid or payable" and are applicable to individuals, whether an employee or otherwise. Thus, in cases within the purview of §690.6, the bill by definition would manifestly provide less protection than the Federal law.

It is noted that §690.6 exempts from attachment of earnings received by the debtor either: (a) one-half of such earnings, or (b) such greater portion as allowed by Title III, but the exemption is limited to earnings received within 30 days next preceding the levy of execution. As noted in our letter to you on November 22, 1971, Title III does not contain any time limitation for its restrictions to be effective.

Sections 690.7 through 690.7 $\frac{1}{2}$ pertain to levies of execution against bank accounts. The restrictions on garnishment provided in Title III apply to the garnishment of earnings deposited in bank accounts. Therefore, the above sections of State law should operate in such a way as to provide garnishment restrictions for earnings deposited in bank accounts which would be substantially similar to Title III. This aspect of Federal law is discussed in opinion letter WH-146, published October 26, 1971, which was sent to you as an enclosure with our letter of November 22, 1971.

Section 690.7 provides a maximum exemption from execution of \$100. This maximum would apply even though an account subjected to execution under this section may contain earnings which are entitled to the Title III percentage restriction on garnishment. Thus, this section is clearly less restrictive than Federal law in that Title III sets no dollar limit on the maximum amount of earnings which is protected from garnishment. Also, the exemption provided by §690.7 is not self executing. See §690(a) of the existing law; §§690.7(f) and 690.50 in Senate Bill No. 88; and 29 CFR 870.51(c).

Section 690.7 $\frac{1}{2}$ provides an exemption in the case of earnings deposited by an employer with a bank which acts as his "payroll agent". The term "employer's payroll agent" is defined in §690.7 $\frac{1}{2}$ to mean "a financial institution that computes for an employer the net amount payable to an employee after making all required and authorized deductions from his gross earnings and credits the net amount to the employee's deposit account in that financial institution". Under this section the "account of the debtor is exempt from levy of execution to the extent of the amount of the debtor's earnings that the agent has credited to that account for the last pay period prior to the levy, less all amounts debited to the account after the time the earnings for that pay period were credited to the account".

Section 690.7 $\frac{1}{2}$ would not provide restrictions on garnishment equal to Title III for several reasons. If the employee does not perform the affirmative act of withdrawing all of the earnings subjected to a levy of attachment before the next payday, the levy may take all of such earnings because they are not protected beyond this length of time. Thus, the exemption would not be self-executing. (See 29 CFR 870.51(c).) Additionally, this section prescribes a time limit, the span of one pay period, during which its protection would be effective. There is no such time limitation for the restrictions in Title III.

In situations within the purview of §690.7 $\frac{1}{2}$, the bank has the payroll records and, therefore, is fully aware of the amount of disposable earnings credited to the account. This section could thus be amended to provide garnishment restrictions substantially similar to Title III as well as such additional protection as the State wishes to add.

Sections 690.18 and 690.18 $\frac{1}{2}$ deal with restrictions on levies of execution against retirement payments. In the case of such payments which are within the purview of §§690.18(b), 690.18(c) and 690.18 $\frac{1}{2}$, it appears that if they are deposited in a bank account, they would be treated under §§690.7 and 690.7 $\frac{1}{4}$ which are considered to provide less protection than the Federal law.

The Employee's Earnings Protection Law in Chapter 2.5 of the bill deals with the most typical type of garnishment situation in which the garnishee and the defendant have an employer-employee relationship and only payable earnings are involved. A garnishment is titled an "earnings withholding order" under this chapter. In certain instances this chapter provides less protection than the Federal law.

It should be pointed out that section 723.02 $\frac{1}{4}$ permits the employer to deduct a one dollar service fee each time he makes a deduction pursuant to a garnishment. To the extent that the total deduction -- the amount for the garnishment plus the service fee -- does not exceed the garnishment limitations of the Federal law this would not violate Title III. However, where such allowances are permitted by State law, any deductions from wages may not reduce the employee's earnings below the statutory minimum wage or overtime compensation which may be required under the Fair Labor Standards Act. Such deductions would not be considered as deductions "required by law to be withheld" for the purpose of determining the employee's "disposable earnings" within the meaning of section 302(b) of Title III. The basic garnishment restriction in the case of employees' earnings in the proposed bill, as indicated on the submitted "Withholding Comparison Table" would prohibit any withholding pursuant to a garnishment where the employee's gross earnings are less than \$98 for one week. With the current minimum wage at \$1.60, the addition of the one dollar service charge would not appear to raise a question of minimum wage and overtime compensation violation under the Fair Labor Standards Act in this proposed bill.

Section 723.030 of Chapter 2.5 delineates the treatment of deductions pursuant to a withholdings order for support. The treatment under Title III of court orders for support is explained in the enclosed opinion letters WH-100, WH-10 $\frac{1}{4}$, and WH-112. As indicated therein a court order for support is a "garnishment" and, therefore, deductions pursuant to a support order may not be treated as deductions required by law to be withheld. The opinions state that if a support order exhausts the allowable amount of disposable earnings under Federal law, no more of the employee's earnings may be withheld pursuant to another garnishment against the same earnings.

Section 723.030(b)(4) treats deductions pursuant to a withholdings order for support as a deduction required by law. Thus, simultaneous deductions may be made for both a withholdings order for support and another withholding order. The amount deducted for support is subtracted first from the employee's earnings and then the employer computes the amount to be withheld pursuant to the second withholdings order based on the remaining earnings pursuant to §723.050. In the case of an employee subjected to a withholding order for support at the same time that another earnings withholding order is received, it is clear that State law is less restrictive of garnishment than Title III.

Under §723.050, which specifies the exemption for most earnings withholding orders and levies of execution, the State Judicial Council would be required to establish multiples for pay periods other than a week and withholding tables for representative pay periods. Any determination as to whether this section adequately restricts garnishment would necessarily depend on the multiples and tables which would be promulgated pursuant to this section.

Withholding orders for State taxes, within the purview of Article 4, are treated in a manner which is more restrictive than under Title III. However, the bill is silent on the handling of Federal tax levies and it is not clear that the State would follow the position that if a Federal tax levy exceeded the amount subject to garnishment under §303(a) of Title III that no further garnishment could be made against the same earnings. (cf. opinion WH-111).

Section 723.106(b), on procedure, provides that 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 one employer". This is contrary to opinion letter WH-110 (January 7, 1971) which states that the restrictions of Title III "are considered to be separately applicable to each employer (garnishee)". Different employers would generally have different payroll periods and, thus, it would be impossible to combine earnings from two employments to ascertain the exempt amount under either the State bill or the Federal law - both of which apply garnishment restrictions on a pay period basis.

In addition, §723.106(a) defines earnings to include all tips, whether or not the tips pass through the employer's hands, in determining the amount which may be deducted under an earnings withholding order. Opinion letter WH-95 (December 9, 1970) states that under Title III tips do not constitute earnings when they do not pass through the hands of the employer and such tips may not be included in determining the amount subject to garnishment. Thus §723.106 would not be as restrictive as Federal law in

the case of employees receiving tips or earnings from more than one source. Also, the bill does not indicate the treatment to be given employees receiving board and lodging as part of their earnings. (cf. opinion WH-95).

Due to the manner in which Senate Bill No. 88 is structured, with different types of earnings under different provisions of law, it cannot be positively ascertained that the State law would provide the requisite level of protection in every case of garnishment covered by Federal law. Unlike Title III, the bill provides a complicated system of exemptions rather than a general restriction on garnishment. The analysis given above, therefore, does not cover all instances where there may be a discrepancy between Federal and State law.

We recognize and commend the important work the California Law Revision Commission has done in the area of providing protection to debtors, some of which go beyond the benefits provided by Federal law. Although Senate Bill No. 88 would not qualify for exemption in its present form under the provisions of 29 CFR 870, it represents a desirable step towards eventually conforming State law to Federal law.

Under the provisions of section 307 of Title III, those features of the bill prohibiting garnishment or providing for a smaller garnishment than Federal law in a particular case would be applied rather than Title III. On the other hand, the State law is preempted where it results in a larger garnishment amount than permitted under section 303. Thus, we feel it beneficial that the State continues its efforts in achieving a body of garnishment law compatible with Federal law. Our continued assistance will be available to you in this effort.

Sincerely,

Horace E. Menasco
Deputy Assistant Secretary

Enclosures 8



BEN P. ROBERTSON
DEPUTY ADMINISTRATOR
WAGE & COMPENSATION PROGRAMS



Public Law 90-321
90th Congress, S. 5
May 29, 1968

An Act

To safeguard the consumer in connection with the utilization of credit by requiring full disclosure of the terms and conditions of finance charges in credit transactions or in offers to extend credit; by restricting the garnishment of wages; and by creating the National Commission on Consumer Finance to study and make recommendations on the need for further regulation of the consumer finance industry; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Consumer Credit
Protection Act.

§ 1. Short title of entire Act

This Act may be cited as the Consumer Credit Protection Act.

(This reprints only that portion of the Consumer Credit Protection Act contained in Title III - Restriction on Garnishment - effective July 1, 1970.)

TITLE III—RESTRICTION ON GARNISHMENT

Sec.

82 STAT. 162

- 301. Findings and purpose.
- 302. Definitions.
- 303. Restriction on garnishment.
- 304. Restriction on discharge from employment by reason of garnishment.
- 305. Exemption for State-regulated garnishments.
- 306. Enforcement by Secretary of Labor.
- 307. Effect on State laws.

82 STAT. 163

§ 301. Findings and purpose

(a) The Congress finds:

(1) The unrestricted garnishment of compensation due for personal services encourages the making of predatory extensions of credit. Such extensions of credit divert money into excessive credit payments and thereby hinder the production and flow of goods in interstate commerce.

(2) The application of garnishment as a creditors' remedy frequently results in loss of employment by the debtor, and the resulting disruption of employment, production, and consumption constitutes a substantial burden on interstate commerce.

(3) The great disparities among the laws of the several States relating to garnishment have, in effect, destroyed the uniformity of the bankruptcy laws and frustrated the purposes thereof in many areas of the country.

(b) On the basis of the findings stated in subsection (a) of this section, the Congress determines that the provisions of this title are necessary and proper for the purpose of carrying into execution the powers of the Congress to regulate commerce and to establish uniform bankruptcy laws.

§ 302. Definitions

For the purposes of this title:

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

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

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

§ 303. Restriction on garnishment

(a) Except as provided in subsection (b) and in section 305, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed

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

(2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed

80 Stat. 838.
29 USC 206.

by section 6(a)(1) of the Fair Labor Standards Act of 1938 in effect at the time the earnings are payable, whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

(b) The restrictions of subsection (a) do not apply in the case of

(1) any order of any court for the support of any person.

(2) any order of any court of bankruptcy under chapter XIII

of the Bankruptcy Act.

(3) any debt due for any State or Federal tax.

52 Stat. 930.
11 USC 1001-
1066.

(c) No court of the United States or any State may make, execute, or enforce any order or process in violation of this section.

§ 304. Restriction on discharge from employment by reason of garnishment

(a) No employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness.

82 STAT. 164
Penalties.

(b) Whoever willfully violates subsection (a) of this section shall be fined not more than \$1,000, or imprisoned not more than one year, or both.

§ 305. Exemption for State-regulated garnishments

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

§ 306. Enforcement by Secretary of Labor

The Secretary of Labor, acting through the Wage and Hour Division of the Department of Labor, shall enforce the provisions of this title.

§ 307. Effect on State laws

This title does not annul, alter, or affect, or exempt any person from complying with, the laws of any State

(1) prohibiting garnishments or providing for more limited garnishments than are allowed under this title, or

(2) prohibiting the discharge of any employee by reason of the fact that his earnings have been subjected to garnishment for more than one indebtedness.

U.S. DEPARTMENT OF LABOR
WORKPLACE STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION

PART 870 (29 CFR) - REGULATIONS

Title 29—LABOR

**Chapter V—Wage and Hour Division,
Department of Labor**

**PART 870—RESTRICTION ON
GARNISHMENT**

Subpart A—General

- Sec.
870.1 Purpose and scope.
870.2 Amendments to this part.

Subpart B—Determinations and Interpretations

- 870.10 Maximum part of aggregate disposable earnings subject to garnishment.

**Subpart C—Exemption for State-Regulated
Garnishments**

- 870.50 General provision.
870.51 Exemption policy.
870.52 Application for exemption of State-regulated garnishments.
870.53 Action upon an application for exemption.
870.54 Standards governing the granting of an application for exemption.
870.55 Terms and conditions of every exemption.
870.56 Termination of exemption.
870.57 Exemptions.

AUTHORITY: The provisions of this Part 870 issued under secs. 303, 305, 306, 82 Stat. 163, 164; 15 U.S.C. 1673, 1675, 1676.

SOURCE: The provisions of this Part 870 appear at 36 F.R. 4279, May 22, 1970, unless otherwise noted.

Subpart A—General

- § 870.1 Purpose and scope.

(a) This part sets forth the procedures and any policies, determinations, and interpretations of general application whereby the Secretary of Labor carries out his duties under section 303 of the CCPA dealing with "multiples" of weekly restrictions on garnishment of earnings, and section 305 permitting exemptions for State-regulated garnishments in certain situations.

(b) Functions of the Secretary under the CCPA to be performed as provided in this part are assigned to the Administrator of the Wage and Hour Division (hereinafter referred to as the Administrator) who, under the general direction and control of the Assistant Secretary, Wage and Labor Standards Administration, shall be empowered to take final and binding actions in administering the provisions of this part. The Administrator is empowered to sub-delegate any of his duties under this part. Any legal advice and assistance required for administration of this part shall be provided by the Solicitor of Labor.

- § 870.2 Amendments to this part.

The Administrator may, at any time upon his own motion or upon written request of any interested person setting forth reasonable grounds therefor, amend any rules in this part.

Subpart B—Determinations and Interpretations

- § 870.10 Maximum part of aggregate disposable earnings subject to garnishment.

(a) *Statutory provision.* Section 303 (a) of the CCPA provides that, with some exceptions,

the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed

- (1) 25 per centum of his disposable earnings for that week, or
(2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938, in effect at the time the earnings are payable,

whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall be regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

(b) *Weekly pay period.* The statutory exemption formula applies directly to the aggregate disposable earnings for 1 workweek, or a lesser period. Its intent is to protect from garnishment, and save to an individual earner, the specified amount of compensation for his personal services rendered in the workweek, or lesser period. Thus, so long as the Federal minimum wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 is \$1.60 an hour—

(1) If an individual's disposable earnings for a workweek or lesser period are \$48 (30 x \$1.60) or less, his earnings may not be garnished in any amount.

(2) If an individual's disposable earnings for a workweek or lesser period are more than \$48, but less than \$64, only the amount above \$48 is subject to garnishment.

(3) If an individual's disposable earnings for a workweek or lesser period are \$64 or more, 25 percent of his disposable earnings is subject to garnishment.

(c) *Pay for a period longer than 1 week.* In the case of disposable earnings which compensate for personal services rendered in more than 1 workweek, the weekly statutory exemption formula must be transformed to a formula applicable to such earnings providing equivalent restrictions on wage garnishment.

(1) The 25 percent part of the formula would apply to the aggregate disposable earnings for all the workweeks compensated.

(2) The "multiple" of the Federal minimum hourly wage equivalent to that applicable to the disposable earnings for 1 week is represented by the following formula: The number of workweeks, or fractions thereof (x) x 30 x the applicable Federal minimum wage (\$1.60). For the purpose of this formula, a calendar month is considered to consist of 4½ workweeks. Thus, so long as the Federal minimum hourly wage is \$1.60 an hour, the "multiple" applicable to the disposable earnings for a 2-week period is \$96 (2 x 30 x \$1.60); for a monthly period, \$208 (4½ x 30 x \$1.60); and for a semi-monthly period, \$104 (2½ x 30 x \$1.60). The "multiple" for any other pay period longer than 1 week shall be computed in a manner consistent with section 303(a) of the Act and with this paragraph.

Subpart C—Exemption for State-Regulated Garnishments

- § 870.50 General provision.

Section 305 of the CCPA authorizes the Secretary to "exempt from the provisions of section 303(a) garnishments issued under the laws of any State if he determines that the laws of that State provide restrictions on garnishment which are substantially similar to those provided in section 303(a)."

- § 870.51 Exemption policy.

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

(b) In determining whether State-regulated garnishments should be exempted from section 303(a) of the CCPA, or whether such an exemption should be terminated, the laws of the State shall be examined with particular regard to the classes of persons and of transactions to which they may apply; the formulas provided for determining the maximum part of an individual's earnings which may be subject to garnishment; restrictions on the application of the formulas; and with regard to procedural burdens placed on the individual whose earnings are subject to garnishment.

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

§ 870.52 Application for exemption of State-regulated garnishments.

(a) An application for the exemption of garnishments issued under the laws of a State may be made in duplicate by a duly authorized representative of the State. The application shall be filed with the Administrator of the Wage and Hour Division, Department of Labor, Washington, D.C. 20210.

(b) Any application for exemption must be accompanied by two copies of all the provisions of the State laws relating to the garnishment of earnings, certified to be true and complete copies by the Attorney General of the State. In addition, the application must be accompanied by a statement, in duplicate, signed by the Attorney General of the State, showing how the laws of the State satisfy the policy expressed in § 870.51(a) and setting forth any other matters which the Attorney General may wish to state concerning the application.

(c) Notice of the filing of an application for exemption shall be published in the *Federal Register*. Copies of the application shall be available for public inspection and copying during business hours at the national office of the Wage and Hour Division and in the regional office of the Wage and Hour Division in which the particular State is located. Interested persons shall be afforded an opportunity to submit written comments concerning the application of the State within a period of time to be specified in the notice.

[38 F.R. 1434, Sept. 11, 1973]

§ 870.53 Action upon an application for exemption.

(a) The Administrator shall grant or deny within a reasonable time any application for the exemption of State-regulated garnishments. The State representative shall be notified in writing of the decision. In the event of denial, a statement of the grounds for the denial shall be made. To the extent feasible and appropriate, the Administrator may afford to the State representative and to any other interested persons an opportunity to submit orally or in writing data, views, and arguments on the issue of whether or not an exemption should be granted and on any subsidiary issues.

(b) If an application is denied, the State representative shall have an opportunity to request reconsideration by the Administrator. The request shall be made in writing. The Administrator shall permit argument whenever the opportunity to do so has not been afforded under paragraph (a) of this section, and may permit argument in any other case.

(c) General notice of every exemption of State-regulated garnishments and of its terms and conditions shall be given by publication in the *Federal Register*.

§ 870.54 Standards governing the granting of an application for exemption.

The Administrator may grant any application for the exemption of State-regulated garnishments whenever he finds that the laws of the State satisfy the policy expressed in § 870.51(a).

§ 870.55 Terms and conditions of every exemption.

(a) It shall be a condition of every exemption of State-regulated garnishments that the State representative have the powers and duties (1) to represent, and act on behalf of, the State in relation to the Administrator and his representatives, with regard to any matter relating to, or arising out of, the application, interpretation, and enforcement of State laws regulating garnishment of earnings; (2) to submit to the Administrator in duplicate and on a current basis, a certified copy of every enactment by the State legislature affecting any of those laws, and a certified copy of any decision in any case involving any of those laws, made by the highest court of the State which has jurisdiction to decide or review cases of its kind, if properly presented to the court; and (3) to submit to the Administrator any information relating to the enforcement of those laws, which the Administrator may request.

(b) The Administrator may make any exemption subject to additional terms and conditions which he may find appropriate to carry out the purposes of section 303(a) of the Act.

§ 870.56 Termination of exemption.

(a) After notice and opportunity to be heard, the Administrator shall terminate any exemption of State-regulated garnishments when he finds that the laws of the State no longer satisfy the purpose of section 303(a) of the Act or the policy expressed in § 870.51(a). Also, after notice and opportunity to be heard, the Administrator may terminate any exemption if he finds that any of its terms or conditions have been violated.

(b) General notice of the termination of every exemption of State-regulated garnishments shall be given by publication in the *Federal Register*.

§ 870.57 Exemptions.

Pursuant to section 305 of the CCPA (62 Stat. 164) and in accordance with the provisions of this part, it has been determined that the laws of the following States provide restrictions on garnishment which are substantially similar to those provided in section 303(a) of the CCPA (62 Stat. 163), and that, therefore, garnishments issued under those laws should be, and they hereby are, exempted from the provisions of section 303(a) subject to the terms and conditions of §§ 870.55(a) and 870.56:

(a) *State of Kentucky.* Effective December 5, 1970, garnishments issued under the laws of the State of Kentucky are exempt from the provisions of section 303(a) of the CCPA: *Provided, That* garnishments served in the State of Kentucky which, by virtue of section 427.060 of the Kentucky Revised Statutes, as amended, are governed by the exemption

laws of another State shall not be deemed, for the purposes of this exemption, to be issued under the laws of the State of Kentucky, and section 303(a) of the CCPA shall apply to such garnishments according to the provisions thereof.

[38 F.R. 1528, Dec. 5, 1973]

(b) *State of Virginia.* Effective January 12, 1971, garnishments issued under the laws of the State of Virginia are exempt from the provisions of section 303(a) of the CCPA under the following additional conditions: (1) Whenever garnishments are ordered in the State of Virginia which are not deemed to be governed by section 34-29 of the Code of Virginia, as amended, and the laws of another State are applied, section 303(a) of the CCPA shall apply to such garnishments according to the provisions thereof; and (2) whenever the earnings of any individual subject to garnishment are withheld and a suspending or superseding bond is undertaken in the course of an appeal from a lower court decision, section 303(a) of the CCPA shall apply to the withholding of such earnings under this procedure according to the provisions thereof.

[38 F.R. 347, January 12, 1971]

U. S. DEPARTMENT OF LABOR
Workplace Standards Administration
Washington, D. C. 20210

December 9, 1970

CCPA

In your letter you ask whether proper credits for tips, meals and lodging are included in the computation of an employee's earnings under the Federal Wage Garnishment Law.

The statutory definition of the term "earnings" embraces generally compensation for personal services. When the contract of employment provides for the employer to provide meals and lodging, the dollar value of the meals and lodging would be considered to be encompassed by the term "earnings". Thus, in applying the restrictions of section 303(a) to an individual's earnings, equal treatment is afforded to individuals having such an arrangement with individuals who provide for their own meals and lodging from compensation which is otherwise payable to them.

On the other hand, tips are generally not considered within the meaning of the term "earnings" because garnishment is inherently a procedural device to reach assets in the hands of the garnishee, here the employer. Typically, tips are paid by a third person to an employee, and do not pass through the hands of the employer.

There may be so-called tipping situations where customer payments would constitute "earnings" under the Title III definition. For example, where in lieu of tipping, a customer in a restaurant is charged ten percent of the check and this amount is in turn paid to the waiter, there is no gift by the customer, and there is compensation flowing from the garnishee to the waiter. Similarly, where the employment agreement is such that amounts presented by customers as tips belong to the employer and must be credited or turned over to him, the employee is not receiving tips and his earnings would be measured by the compensation payable to the employee under the employment agreement.

Sincerely,

Robert D. Moran
Administrator

U.S. DEPARTMENT OF LABOR
WORKPLACE STANDARDS ADMINISTRATION
WASHINGTON, D.C. 20210



OFFICE OF THE ADMINISTRATOR

OCT 26 1971

This is in reply to your letter of June 11, 1971, which was referred to this office for a reply concerning Title III of the Consumer Credit Protection Act.

As explained in your letter and in a conversation with Mr. Hoffman of my staff, the corporation pays 800 of its employees by depositing the total amount due these employees with a local bank. A checking account has been set up for each employee to facilitate this payroll system, and each pay day the net pay due each employee after Federal and State taxes and usually insurance is credited to his account. The bank sends a voucher to that effect to each employee, and the employees draw against their account. They are not required to maintain a balance in their accounts, and it is believed that employees generally withdraw all of the funds before the next pay day.

Certain creditors of various employees have discovered this payroll system and now attach the employee's bank account by having garnishment summons served upon the bank. The bank freezes the account and pays the bank balance to the creditor. It is possible that an account will contain some monies that are not wages, but as a practical matter this is not expected to occur often. You believe that the effect of this procedure is a violation of the Act where more of the employees' disposable earnings are garnished than is permitted under Title III.

Under these circumstances it seems clear that the bank is acting as the agent of the employer in the performance of the payroll functions. This being so, the bank stands in the shoes of the employer, and may be garnished for wages to the same extent, and subject to the same restrictions on garnishment as the employer. The question thus arises as to whether the earnings once they are credited to the employee's bank account retain their identity as earnings and are within the protection of section 303(a).

In this connection it is clear that Congress intended to establish a guaranteed floor below which garnishment is prohibited thereby assuring to the employee that "a garnishment cannot leave him less than \$48" each workweek or the

appropriate multiple equivalent for the pay period "to live on" (114 Cong. Rec. 4222). As you know, the problem is one of major proportions in view of the increasing number of employers who are using banks to perform their payroll services for them and the correspondingly increasing number of creditors who are seizing upon this method of payment as a means of attaching wages in supplementary proceedings without regard to the restrictions contained in section 303(a) of the Act. To hold that an employee loses the protection of the Act merely because his wages are paid by the bank deposit method of payment would completely frustrate the purposes of the Act. The credit in the bank is simply a convenient method which the employer has devised for his own convenience to facilitate payment of the wages and it should not be used to deprive the employee of his right to receive that portion of his earnings guaranteed to be exempt from garnishment under the Act. The garnishment restrictions were designed to "relieve countless debtors driven by economic depression from plunging into bankruptcy and insure a continued means of support for themselves and their families", (H. Rept. No. 1040, p. 211) and they should be construed to carry out the intent and purpose of Congress.

In numerous cases adjudicated under other State and Federal statutes, the courts, in order to effectuate the purposes of a statute, have held that exempt earnings of a debtor or other exempt funds do not lose their exempt character by being deposited in a bank account. Moreover, these cases we have found so far involve situations where the exempt funds have been voluntarily placed in a bank account by the debtor. This principle would apply a fortiori to situations where, as here, the crediting of the account is the method chosen by the employer to effectuate the payment of wages and acceptance of the plan is a condition precedent to employment. Nor do we believe that the restrictions contained in section 303(a) of the Act are limited to situations where the exempt wages are still in the hands of the employer. The restrictions apply to earnings paid or payable, and the maximum amount which may be subjected to garnishment, defined as any procedure through which the earnings are required to be withheld in payment of any debt, "may not exceed" the amounts prescribed in the Act. Certainly we should not impose upon the statute restrictions or limitations which would tend to defeat or restrict the manifest purposes of the Act.

In conclusion, we are of the opinion that the garnishment of earnings in a bank account under the circumstances of this case is an unrestricted garnishment of earnings prohibited by section 303(a) of the Act. Further, if the earnings are subjected to garnishment while in the hands of the employer or its agent, the bank, before they are credited to the employee's account the earnings are not subject to further attachment after the transfer is made.

In order to effect a remedy for this problem, we shall have one of our compliance officers contact you to investigate this matter.

Sincerely,

Horace E. Menasco

Horace E. Menasco
Administrator

WH - 146

U. S. DEPARTMENT OF LABOR
Workplace Standards Administration
Wage and Hour Division
Washington, D. C. 20210

December 16, 1970

CCPA

This is in response to your letter of June 22, 1970, concerning the application of Title III of the Consumer Credit Protection Act.

You cite a situation where an employee who has disposable earnings of \$80 a week is under court order to pay child support of \$30 a week. Another garnishment order is issued under State law requiring 10 percent of his wages to be withheld. You ask how the Federal law applies.

Title III sets restrictions on the amount of an individual's disposable earnings that may be garnished in any one week. The restrictions on garnishment provided by this law, however, do not apply to court orders for the support of any person. This exemption is provided under section 303(b)(1) of the Act. The employee in your example has disposable earnings of \$80. Ordinarily, under the two-part formula under section 303(a), only \$20 could be withheld under Federal law toward garnishment. (25% of \$80). But inasmuch as the restrictions of section 303(a) do not apply in the case of any order of any court for the support of any person, the \$30 may be legally withheld. The \$30 garnishment would have priority and, because this is more than the amount that could have been garnished in one week under section 303(a), no additional withholding may be made.

Sincerely,

/s/ Robert D. Moran

Robert D. Moran
Administrator

PD

Workplace Standards Administration
U.S. DEPARTMENT OF LABOR
WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS
WASHINGTON, D.C. 20210

DEC 18 1970

CCPA

This is in response to your letter of November 9, 1970, concerning the application of Title III of the Consumer Credit Protection Act.

You ask whether the amounts deducted pursuant to a court order for the support of an employee's family are to be considered as "amounts required by law to be withheld" within the meaning of section 302(b).

We regard a court order for the support of an employee's family in the same light as an ordinary creditor-debtor garnishment. Accordingly, we do not consider a support order as an amount "required by law to be withheld".

In the situation you cite, the disposable earnings would be \$100 (gross weekly wages less taxes). Ordinarily, under the formula in section 303(a), \$25 could be withheld under this Act. However, since the restrictions of the section do not apply to court orders for the support of any person, \$30 may legally be withheld in this case. This is more than the amount that may be garnished in one week under section 303(a), and no additional withholding may be made for a garnishment order issued by another court.

Sincerely,

Robert . . Moran
Administrator

U.S. DEPARTMENT OF LABOR
WORKPLACE STANDARDS ADMINISTRATION
WASHINGTON, D.C. 20510

OFFICE OF THE ADMINISTRATOR

JAN 6 1971

CCPA

This is in response to your letter of October 2, 1970, concerning Title III of the Consumer Credit Protection Act.

Those deductions which are required by law to be withheld in determining an employee's disposable earnings for purposes of Title III are listed on page 2 of the garnishment pamphlet. They include Federal income tax withholding and social security tax deductions, State and City tax withholding deductions, and State unemployment insurance taxes.

After an individual's disposable earnings are determined, section 303(a) of the Act sets restrictions on that amount that may be garnished. As provided in section 303(b), the restrictions do not apply in the case of (1) any order of any court for the support of any person, (2) any order of any court of bankruptcy under chapter XIII of the Bankruptcy Act, and (3) any debt due for any State or Federal tax.

Payments pursuant to section 303(b) may not be deducted for purposes of determining an individual's disposable earnings. Rather, such payments are considered part of the disposable earnings and are counted toward the amount that can be withheld under section 303(a).

Sincerely,

Robert D. Moran
Administrator

2 Enclosures

U. S. DEPARTMENT OF LABOR
Workplace Standards Administration
Washington, D. C. 20210

January 20, 1971

CCPA

In your letter of December 29, 1970, you ask for clarification of our letter of December 18, 1970, (letter WH-104) and further state your view that Section 303(a) of the Consumer Credit Protection Act "permits up to 25% of . . . disposable earnings to be deducted for any garnishment subject to the Act." (emphasis supplied)

The wording of the statute makes it clear that the sum of all garnishments may not exceed the restrictions of Section 303(a) in a workweek. (" . . . the maximum part of the aggregate disposable earnings . . . which is subjected to garnishment may not exceed . . .). (emphasis supplied)

In the example you cite, given \$100 a week in disposable earnings, if the employer is under a court order to withhold \$30.00 a week from an employee's wages for child support payments, such amount is removed by Section 303(b) from the restrictions of Section 303(a). But it is nevertheless a "garnishment" as defined in Section 302(c), and since the allowable 25% of the disposable earnings has already been subjected to garnishment, no additional amount of the employee's earnings may be withheld pursuant to another garnishment.

Sincerely,

/s/ Robert D. Moran

Robert D. Moran
Administrator

Withholding Comparison Table

(Assumes \$2.00 minimum wage)

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

GROSS EARNINGS (weekly/annual)	EXISTING LAW						SENATE BILL 88	
	SINGLE PERSON (claiming 0 exemptions)		MARRIED + 2 CHILDREN (claiming 4 exemptions)		MARRIED + 6 CHILDREN (claiming 8 exemptions)		Present Formula	Revised Formula
	Disposable earnings	Amount withheld (CCPA)	Disposable earnings	Amount withheld (CCPA)	Disposable earnings	Amount withheld (CCPA)	Amount withheld	Amount withheld
\$60/3,120	\$47.68	-0-	\$56.28	-0-	\$56.28	-0-	-0-	-0-
70/3,640	55.06	-0-	65.26	\$5.26	65.66	\$5.66	-0-	-0-
80/4,160	62.14	\$2.14	73.24	13.24	75.04	15.04	-0-	-0-
90/4,680	69.22	9.22	81.22	20.31	84.42	21.11	-0-	-0-
100/5,200	75.90	15.90	88.90	22.23	93.80	23.45	-0-	-0-
101/5,252	76.84	16.84	89.84	22.46	94.74	23.69	-0-	\$10.00
110/5,720	82.88	20.72	96.68	24.17	103.18	25.80	-0-	12.00
115/5,980	86.37	21.59	100.57	25.14	107.87	26.97	-0-	12.00
116/6,032	87.31	21.83	101.51	25.38	108.81	27.20	\$10.00	13.00
120/6,240	89.76	22.44	104.46	26.12	112.56	28.14	11.00	13.00
135/7,020	100.13	25.03	116.13	29.03	125.03	31.26	13.00	16.00
150/7,800	109.80	27.45	127.20	31.80	136.60	34.15	16.00	18.00
170/8,840	123.36	30.84	142.36	35.59	152.16	38.04	19.00	22.00
200/10,400	143.10	35.78	164.70	41.18	174.50	43.63	24.00	27.00
250/13,000	173.90	43.48	200.60	50.15	211.70	52.93	32.00	35.00
300/15,600	201.70	50.43	233.80	58.45	247.50	61.88	39.00	42.00
400/20,800	251.70	62.93	296.60	74.15	312.00	78.00	52.00	54.00
600/31,200	351.00	87.75	404.50	101.13	425.90	106.48	77.00	79.00

An act to amend Section 4701 of the Civil Code, to amend Sections 682, 688, 690.6, 690.18, 690.19, 690.50, and 710 of, to add Sections 690.5'S, 690.7, 690.7½, 690.7½, and 690.18½ to, to add Chapter 2.5 (commencing with Section 723.010) to Title 9 of Part 2 of, and to repeal Sections 682.3 and 690.7 of, the Code of Civil Procedure, to amend Section 15406 of the Financial Code, to amend Sections 300 and 2929 of the Labor Code, to amend Sections 270h and 1208 of the Penal Code, and to amend Section 11489 of the Welfare and Institutions Code, relating to attachment, garnishment, and execution.

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

1 SECTION 1. Section 4701 of the Civil Code is
2 amended to read:
3 4701. In any proceeding where the court has ordered
4 either or both parents to pay any amount for the support
5 of a minor child; the court may order either parent or
6 both parents to assign to the county clerk, probation
7 officer, or other officer of the court or county officer
8 designated by the court to receive such payment, that
9 portion of salary or wages of either parent due or to be
10 due in the future as will be sufficient to pay the amount
11 ordered by the court for the support, maintenance and
12 education of the minor child. Such order shall operate as
13 an assignment and be binding upon an employer upon
14 the service of a copy of such order upon such employer
15 and until further order of the court. The employer may
16 deduct the sum of one dollar (\$1) for each payment made
17 pursuant to such order. Any such order may be modified
18 or revoked at any time by the court. Any such assignment
19 made pursuant to court order shall have priority as
20 against any attachment, execution, or other assignment;
21 unless otherwise ordered by the court. ~~a parent to pay~~
22 ~~any amount for the support, maintenance, or education~~
23 ~~of a minor child, the court may issue an earnings~~
24 ~~withholding order under Section 723.030 of the Code of~~
25 ~~Civil Procedure for the amount so ordered. The~~
26 ~~withholding order may require the parent's employer to~~
27 ~~pay the withheld earnings to the county clerk, probation~~
28 ~~officer, or other officer of the court, to a county officer,~~

delete

~~either-or-both-parents~~ a parent to pay any amount for the support, maintenance, or education of a minor child; the court may ~~order-either~~ parent-or-parents-to-assign issue an earnings withholding order under Section 723.030 of the Code of Civil Procedure to require the employer of such parent to withhold and pay 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-paid-in-the-future~~ the earnings of such parent 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-operate-as-an-assignment-and-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.~~

delete

1 to the person having custody of the child, or to such other
2 person as is specified in the order to receive such
3 payment.

4 SEC. 2. Section 682 of the Code of Civil Procedure is
5 amended to read:

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

19 1. If it be against the property of the judgment debtor,
20 it must require such officer to satisfy the judgment, with
21 interest, out of the personal property of such debtor, or
22 if it is against the earnings of such debtor, such levy shall
23 be made in accordance with Section 689.2, out of the
24 earnings subject to execution under subdivision (e) of
25 Section 690.5, and subdivision (c) of Section 690.6, and
26 if sufficient personal property cannot be found, then out
27 of his real property; or if the judgment be a lien upon real
28 property, then out of the real property belonging to him
29 on the day when the abstract of judgment was filed as
30 provided in Section 674 of this code, or at any time
31 thereafter.

32 2. If it be against real or personal property in the hands
33 of the personal representatives, heirs, devisees, legatees,
34 tenants, or trustees, it must require such officer to satisfy
35 the judgment, with interest, out of such property.

36 3. If it be against the person of the judgment debtor,
37 it must require such officer to arrest such debtor and
38 commit him to the jail of the county until he pay the
39 judgment, with interest, or be discharged according to
40 law.

delete

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

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

30 SEC. 3. Section 682.3 of the Code of Civil Procedure
31 is repealed.

32 ~~682.3. (a) Whenever the levy of execution is against~~
33 ~~the earnings of a judgment debtor, the employer served~~
34 ~~with the writ of execution shall withhold the amount~~
35 ~~specified in the writ from earnings then or thereafter due~~
36 ~~to the judgment debtor and not exempt under Section~~
37 ~~690.6, and shall pay such amount, each time it is withheld,~~
38 ~~to the sheriff, constable or marshal who served the writ.~~
39 ~~If such person shall fail to pay each amount to the sheriff,~~
40 ~~constable or marshal, the judgment creditor may~~

1 commence a proceeding against him for the amounts not
2 paid. The execution shall terminate and the person
3 served with the writ shall cease withholding sums
4 thereunder when any one of the following events takes
5 place.

6 (1) Such person receives a direction to release from
7 the levying officer. Such release shall be issued by the
8 levying officer in any of the following cases:

9 (a) Upon receipt of a written direction from the
10 judgment creditor.

11 (b) Upon receipt of an order of the court in which the
12 action is pending, or a certified copy of such order,
13 discharging or recalling the execution or releasing the
14 property. This subdivision shall apply only if no appeal is
15 perfected and undertaking executed and filed as
16 provided in Section 917.3 or a certificate to that effect has
17 been issued by the clerk of the court.

18 (c) In all other cases provided by law.

19 (2) Such person has withheld the full amount specified
20 in the writ of execution from the judgment debtor's
21 earnings.

22 (3) The judgment debtor's employment is terminated
23 by a resignation or dismissal at any time after service of
24 the execution and he is not reinstated or reemployed
25 within 90 days after such termination.

26 (4) A period of 90 days has passed since the time such
27 person was served with the writ of execution.

28 (b) At any time after a levy on his earnings the
29 judgment debtor may proceed to claim a full exemption
30 of his earnings in accordance with the provisions of
31 Sections 690.6 and 690.50. The exemption so claimed shall
32 extend to any wages withheld pursuant to the levy of
33 execution whether or not withheld after the claim of
34 exemption is filed.

35 (c) Subject to the provisions of Section 690.50, the
36 sheriff, constable or marshal who serves the writ of
37 execution and receives the amounts withheld from the
38 judgment debtor's earnings, shall account for and pay the
39 person entitled thereto, all sums collected under the writ,
40 less his lawful fees and expenses at least once every 30

1 days; and make return on collection thereof to the court.

2 SEC. 4. Section 688 of the Code of Civil Procedure is
3 amended to read:

4 688. *Except as provided in Chapter 2.5 (commencing*
5 *with Section 723.010):*

6 (a) All goods, chattels, moneys or other property, both
7 real and personal, or any interest therein, of the
8 judgment debtor, not exempt by law, ~~except as provided~~
9 ~~for in Section 690.6;~~ and all property and rights of
10 property seized and held under attachment in the action,
11 are ~~liable~~ *subject* to execution.

12 (b) Shares and interests in any corporation or
13 company, and debts and credits, and all other property,
14 both real and personal, or any interest in either real or
15 personal property, and all other property not capable of
16 manual delivery, may be levied upon or released from
17 levy in like manner as like property may be attached or
18 released from attachment, except that a copy of the
19 complaint in the action from which the writ issued need
20 not accompany the writ; provided, that no cause of action
21 nor judgment as such, nor license issued by this state to
22 engage in any business, profession, or activity shall be
23 subject to levy or sale on execution. ~~Gold dust must be~~
24 ~~returned by the officer as so much money collected at its~~
25 ~~current value; without exposing the same to sale.~~

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

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

37 690.5½. (a) As used in this section, "earnings" means
38 compensation paid or payable by an employer to an
39 employee for personal services performed by such
40 employee whether denominated as wages, salary,

1 commission, bonus, or otherwise.

2 (b) All earnings of the debtor which are due or owing
3 to him are exempt from levy of attachment and execution
4 without filing a claim for exemption as provided in
5 Section 690.50 and are subject to levy only by means of an
6 earnings withholding order in the manner and to the
7 extent provided in Chapter 2.5 (commencing with
8 Section 723.010).

9 (c) All earnings of the debtor which have been paid to
10 him and are in his possession in a form identified by the
11 levying officer as earnings are exempt from levy of
12 attachment without filing a claim for exemption as
13 provided in Section 690.50.

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

18 (e) The earnings of the debtor for his pay period
19 immediately preceding the levy which have been paid to
20 him and are retained in the form in which paid or as cash
21 are subject to levy of execution only in an amount not to
22 exceed the maximum amount that could be withheld by
23 his employer under Section 723.050 less any amounts
24 withheld by the debtor's employer pursuant to any
25 earnings withholding order.

26 (f) Such additional portion of the earnings described
27 in subdivision (e) which a debtor proves is essential for
28 the support of himself or his family is exempt from levy
29 of execution.

30 (g) A levying officer is not liable for any injury
31 resulting from any identification or misidentification of
32 assets made pursuant to this section, whether or not such
33 identification or misidentification be negligent, unless he
34 is guilty of actual fraud, corruption, or actual malice.

35 SEC. 6. Section 690.6 of the Code of Civil Procedure,
36 as amended by Chapter 43 of the Statutes of 1972, is
37 amended to read:

38 690.6. (a) ~~Except as provided in Section 11480 of the~~
39 ~~Welfare and Institutions Code, all of As used in this~~
40 ~~section, "earnings" means those earnings not included~~

Delete

690.6. ~~(a) Except as provided in Section 11480 of the Welfare and Institutions Code, all of the earnings of the debtor received for his personal services shall be exempt from levy of attachment without filing a claim for exemption as provided in Section 690.50.~~

(b) One-half or such greater portion as is allowed by statute of the United States, of the earnings of the debtor received for his personal services rendered at any time within 30 days next preceding the date of a withholding by the employer under Section 682.3, shall be exempt from execution without filing a claim for exemption as provided in Section 690.50.

(c) All earnings of the debtor received for his personal services rendered at any time within 30 days next preceding the date of a withholding by the employer under Section 682.3, if necessary for the use of the debtor's family residing in this state and supported in whole or in part by the debtor, unless the debts are:

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

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

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

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

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(a) For the purposes of this section:

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

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

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

(b) Except as provided in subdivision (d), the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed whichever of the following is less:

(1) Twenty-five per centum of his disposable earnings for that week.

(2) The amount by which his disposable earnings for that week exceed 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.

(c) In the case of earnings for any pay period other than a week, the multiple of the federal minimum hourly wage equivalent in effect to that set forth in paragraph (2) of subdivision (b) determined by regulation of the Secretary of Labor pursuant to Section 303 of the Consumer Credit Protection Act shall be used.

§ 690.6

(d) The restrictions of this section do not apply in any of the following cases:

- (1) Any order of any court for the support of any person.
- (2) Any order of any court of bankruptcy under Chapter XIII of the Bankruptcy Act.
- (3) Any debt due for any state or federal tax.

Comment. Section 690.6 is amended to adopt precisely the same restrictions on garnishment of earnings as are specified in Sections 302 and 303 of the Consumer Credit Protection Act.

The disposition of the provisions of Section 690.6 as it formerly read is as follows: Subdivision (a) is superseded by subdivisions (a), (b), and (c) of Section 690.5-1/2 insofar as that subdivision related to employees. Insofar as subdivision (a) related to persons other than employees, it is superseded by the provisions of law relating to attachment. Subdivision (b) is superseded by Section 690.6 as amended. Subdivision (c) is superseded by Section 723.051. Subdivisions (d) and (e) are superseded by various provisions of the Employees' Earnings Protection Law. See, e.g., Sections 723.030 (priority of earnings withholding order for support), 723.077 (priority of earnings withholding order for taxes), 723.107 (limitation on serving subsequent earnings withholding order on earnings of same employee by same judgment creditor).

1 within the definition of "earnings" stated in subdivision
2 (a) of Section 690.5½.

3 (b) All the earnings of the debtor received for his
4 personal services shall be exempt from levy of
5 attachment without filing a claim for exemption as
6 provided in Section 690.50.

7 ~~(b)~~ (c) One-half or such greater portion as is may be
8 allowed by statute of the United States the Consumer
9 Credit Protection Act of 1968 (15 U.S.C. Secs. 1671-1677) ,
10 of the earnings of the debtor received for his personal
11 services rendered at any time within 30 days next
12 preceding the date of a withholding by the employer
13 under Section 682.2, levy of execution shall be exempt
14 from execution without filing a claim for exemption as
15 provided in Section 690.50.

16 All earnings of the debtor received for his personal
17 services rendered at any time within 30 days next
18 preceding the date of a withholding by the employer
19 under Section 682.2, if necessary for the use of the
20 debtor's family residing in this state and supported in
21 whole or in part by the debtor, unless the debts are:

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

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

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

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

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

delete

1 section. *delete*

2 SEC. 7. Section 690.7 of the Code of Civil Procedure
3 is repealed.

4 690.7. (a) To the maximum aggregate value of one
5 thousand dollars (\$1,000), any combination of the
6 following: savings deposits in; shares or other accounts in;
7 or shares of stocks of; any state or federal savings and loan
8 association; "savings deposits" shall include "investment
9 certificates" and "withdrawable shared" as defined in
10 Section 5061 and 5067 of the Financial Code, respectively.

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

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

17 690.7. (a) As used in this section, "debtor" means an
18 individual and does not include a corporation,
19 partnership, or unincorporated association.

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

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

24 (2) A deposit or account in any state or federal savings
25 and loan association. As used in this paragraph, "deposit
26 or account" includes investment certificate, share
27 account, and withdrawable share.

28 (3) A share or certificate for funds received from a
29 member of a credit union and all the accumulation on
30 such share or certificate.

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

36 (d) For the purposes of this section, a deposit account
37 is owned by the debtor or his spouse if the account is
38 subject to withdrawal by the debtor or his spouse or both
39 for the use of the debtor or his spouse or both.

40 (e) There is exempt from execution an aggregate one

1 hundred dollars (\$100) in all deposit accounts owned by
2 the debtor or his spouse on the date of the first levy on
3 any of such accounts. The amount exempt in any deposit
4 account levied upon shall be computed by applying the
5 exemption first to amounts owned by the debtor or his
6 spouse in accounts not levied upon, and then to amounts
7 owned by the debtor or his spouse in accounts levied
8 upon in the reverse of the order in which they were
9 levied upon, first exempting amounts in the account last
10 levied upon, then progressing in like manner until the
11 exemption has been exhausted. The amount that is
12 exempt in an account owned by joint debtors is the
13 cumulative amount of the individual exemptions of each
14 debtor in that account, except that spouses who are joint
15 debtors are limited to one exemption between them.

16 (f) A debtor who claims an exemption under this
17 section shall list in his affidavit of exemption under
18 Section 690.50 all amounts held in all deposit accounts
19 owned by or standing in the name of the debtor or his
20 spouse, whether alone or with others, on the date of the
21 first levy on any of such accounts. For the purpose of this
22 section, it shall be presumed that all amounts in such
23 accounts were owned by the debtor or his spouse on the
24 date of the levy. The presumption established by this
25 subdivision is a presumption affecting the burden of
26 proof.

27 (g) The exemption provided by this section is not
28 applicable where the execution is sought to enforce a
29 court order for the support of any person or to collect a
30 state tax liability as that term is defined in subdivision (b)
31 of Section 723.070 or amounts due to the Department of
32 Human Resources Development under Sections 1375 to
33 1380, inclusive, Sections 2735 to 2741, inclusive, or Section
34 3751 of the Unemployment Insurance Code.

35 (h) Nothing in this section shall affect the rights of a
36 banker under Section 3054 of the Civil Code.

37 SEC. 9. Section 690.7 $\frac{1}{4}$ is added to the Code of Civil
38 Procedure, to read:

39 690.7 $\frac{1}{4}$. (a) As used in this section, "deposit account"
40 has the meaning given that term in subdivision (b) of

1 Section 690.7. For the purposes of this section, a deposit
2 account is "beneficially owned" by the debtor if the
3 account is one that may be used for the support of the
4 debtor or his family.

5 (b) A deposit account beneficially owned by the
6 debtor is exempt from execution in the amount essential
7 for the support of the debtor or his family. An exemption
8 shall be allowed under this section only to the extent that
9 the earnings and other current income of the debtor and
10 his spouse are not adequate to provide the amount
11 essential for the support of the debtor or his family.
12 Neither the judgment debtor's accustomed standard of
13 living nor a standard of living "appropriate to his station
14 in life" is the criterion for measuring the debtor's claim
15 for exemption under this section.

16 (c) A debtor who claims an exemption under this
17 section shall include a financial statement as a part of his
18 affidavit of exemption required by Section 690.50. The
19 financial statement shall be in the form prescribed by the
20 Judicial Council and shall include all of the following
21 information:

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

24 (2) All sources of the earnings and other income of the
25 debtor and of his spouse and the amounts of such earnings
26 and other income.

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

29 (4) All outstanding obligations of the debtor and of his
30 spouse.

31 (5) Any extraordinary prospective expenses of the
32 debtor or of his spouse.

33 (6) Any other information required by the Judicial
34 Council.

35 (d) The exemption provided by this section is not
36 applicable where the execution is sought to enforce a
37 court order for the support of any person or to collect a
38 state tax liability as that term is defined in subdivision (b)
39 of Section 723.070.

40 (e) Nothing in this section shall affect the rights of a

1 banker under Section 3054 of the Civil Code.

2 (f) Nothing in this section shall limit the protection
3 afforded debtors under the rules of law relating to
4 spendthrift trusts.

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

7 690.7½. (a) As used in this section:

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

10 (2) "Earnings" means compensation paid by an
11 employer to an employee for personal services
12 performed by such employee, whether denominated as
13 wages, salary, commission, bonus, or otherwise.

14 (3) "Employer's payroll agent" means a financial
15 institution that computes for an employer the net amount
16 payable to an employee after making all required and
17 authorized deductions from his gross earnings and credits
18 the net amount to the employee's deposit account in that
19 financial institution.

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

23 (b) Where a financial institution acts as the employer's
24 payroll agent for a debtor's employer, the deposit
25 account of the debtor is exempt from levy of execution to
26 the extent of the amount of the debtor's earnings that the
27 agent has credited to that account for the last pay period
28 prior to the levy, less all amounts debited to that account
29 after the time the earnings for that pay period were
30 credited to the account.

31 (c) The debtor is entitled to the exemption provided
32 by this section without filing a claim for exemption as
33 provided by Section 690.50, whether or not the debtor or
34 his spouse has any other deposit accounts. In lieu of the
35 exemption provided by this section, the debtor shall be
36 allowed the exemption provided by Section 690.7, if the
37 amount exempt under that section is greater than the
38 amount exempt under this section, but the amount in the
39 account described in this section shall be included in
40 computing the amount exempt under Section 690.7.

or the exemption, if any, provided by any
applicable statute of the United States

or under the statute of the United States

1 (d) Nothing in this section shall be construed to
2 authorize an employer to pay his employees through an
3 employer's payroll agent. Whether an employer is
4 authorized to pay his employees through such a payroll
5 agent is to be determined by the applicable provisions of
6 law other than this section.

7 SEC. 11. Section 690.18 of the Code of Civil Procedure
8 is amended to read:

9 690.18. (a) All money received by any person, a
10 resident of the state, as a pension, or as an annuity or
11 retirement or disability or death or other benefit, or as a
12 return of contributions and interest thereon, from the
13 United States government, or from the state, or any
14 county, city, or city and county, or other political
15 subdivision of the state, or any public trust, or public
16 corporation, or from the governing body of any of them,
17 or from any public board or boards, or from any
18 retirement, disability, or annuity system established by
19 any of them pursuant to statute, whether the same shall
20 be in the actual possession of such pensioner or
21 beneficiary, or deposited by him.

22 (b) All money held, controlled, or in process of
23 distribution by the state, or a city, city and county,
24 county, or other political subdivision of the state, or any
25 public trust or public corporation, or the governing body
26 of any of them, or by any public board or boards, derived
27 from the contributions by the state or such city, county,
28 city and county, or other political subdivision, or such
29 public trust, public corporation, governing body, or
30 public board or boards, or by any officer or employee
31 thereof, for retirement or pension purposes or the
32 payment of disability, death, or other benefits, or the
33 payment of benefits payable to, or the reimbursement of
34 benefits paid to, employees thereof under the provisions
35 of the Unemployment Insurance Code, and all rights and
36 benefits accrued or accruing to any person under any
37 system established pursuant to statute by the state, city,
38 city and county, county, or other political subdivision of
39 the state, or any public trust or public corporation for
40 retirement, annuity, or pension purposes or payment of

1 disability or death benefits, and all vacation credits
2 accumulated by a state employee pursuant to the
3 provisions of Section 18050 of the Government Code, or
4 any other public employee pursuant to any law for the
5 accumulation of vacation credits applicable to such
6 employee. Such moneys, benefits, and credits shall be
7 exempt without filing a claim of exemption as provided
8 in Section 690.50.

9 ~~(e) All money held, controlled, or in process of~~
10 ~~distribution by any private retirement plan, including,~~
11 ~~but not limited to, union retirement plans, or any~~
12 ~~profit/sharing plan designed and used for retirement~~
13 ~~purposes, or the payment of benefits as an annuity,~~
14 ~~pension, retirement allowance, disability payment or~~
15 ~~death benefit from such retirement or profit/sharing~~
16 ~~plans, and all contributions and interest thereon returned~~
17 ~~to any member of any such retirement or profit/sharing~~
18 ~~plan, are exempt from execution, attachment, or~~
19 ~~garnishment in any bankruptcy proceeding. This~~
20 ~~subdivision shall not apply to any moneys held in any~~
21 ~~retirement program established pursuant to the federal~~
22 ~~"Self-Employed Individuals Tax Retirement Act of 1962"~~
23 ~~(P.L. 87-702; 76 Stat. 809), nor to any moneys received in~~
24 ~~any manner by persons from any such retirement~~
25 ~~program so established.~~

26 *(c) Nothing in this section limits the applicability of*
27 *any exemption otherwise provided by statute.*

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

30 690.18½. (a) All periodic payments payable by a
31 pension or retirement plan that are not otherwise exempt
32 by law are exempt from levy of execution in the amount
33 that is exempted by Section 723.050 without filing a claim
34 for exemption as provided in Section 690.50.

35 (b) Periodic payments received by the debtor from a
36 pension or retirement plan during the 30 days
37 immediately preceding the levy of execution which have
38 been retained by him in the form in which received or
39 as cash and which are not otherwise exempt by law from
40 levy of execution are subject to levy of execution only in

1 an amount not to exceed the maximum amount of such
2 payments that could be withheld by the plan under
3 subdivision (a), less any amounts withheld from such
4 payments by the plan pursuant to a levy of execution.

5 (c) Nothing in this section limits the applicability of
6 any exemption otherwise provided by law.

7 SEC. 13. Section 690.19 of the Code of Civil Procedure
8 is amended to read:

9 690.19. All aid given under a public assistance
10 program to a debtor or for his benefit, whether it be in
11 the actual possession of the recipient or deposited by him.
12 However, as against the claim of the county, the real and
13 personal property of a debtor who has received support
14 from public moneys shall be exempt only to the extent
15 provided by and in accordance with the provisions of
16 Section 17409 of the Welfare and Institutions Code. Such
17 aid, prior to payment, shall be exempt without filing a
18 claim of exemption, as provided in Section 690.50.

19 SEC. 14. Section 690.50 of the Code of Civil Procedure
20 is amended to read:

21 690.50. (a) If the property mentioned in Sections
22 690.1 to 690.29, inclusive, shall be levied upon under writ
23 of attachment or execution, the defendant or judgment
24 debtor (herein referred to as "the debtor"), in order to
25 avail himself of his exemption rights as to such property,
26 shall within 10 days from the date such property was
27 levied upon deliver to the levying officer an affidavit of
28 himself or his agent, together with a copy thereof,
29 alleging that the property levied upon, identifying it, is
30 exempt, specifying the section or sections of this code on
31 which he relies for his claim to exemption, and all facts
32 necessary to support his claim, and also stating therein his
33 address within this state for the purpose of permitting
34 service by mail upon him of the counteraffidavit and any
35 notice of the motion herein provided. ~~For purposes of this~~
36 ~~section, if the property levied upon consists of the~~
37 ~~earnings of a judgment debtor, each date that earnings~~
38 ~~are withheld from the judgment debtor shall be deemed~~
39 ~~to be the date such earnings were levied upon. A~~
40 judgment debtor shall have the right to file a separate

1 claim of exemption each time that a withholding of
2 earnings occurs, provided, that if a prior claim of
3 exemption has been adjudicated under the same levy,
4 that each separate claim of exemption thereafter be
5 supported by a statement under oath alleging the
6 changed circumstances which support the new claim of
7 exemption. If a claim of exemption be allowed, the
8 judgment creditor shall have the right, at any time during
9 the effective period of the claim of exemption, to move
10 the court for consideration of the claim previously
11 granted on the grounds of a material change of
12 circumstances affecting the debtor's exemption rights. If
13 the judgment creditor does make such a motion, he must
14 support his motion by a statement under oath alleging
15 the changed circumstances which support his motion for
16 consideration.

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

27 (c) If the creditor desires to contest the claim to
28 exemption, he shall, within such period of five days, file
29 with the levying officer a counteraffidavit alleging that
30 the property is not exempt within the meaning of the
31 section or sections of this code relied upon, or if the claim
32 to exemption be based on Sections 690.2, 690.3, 690.4,
33 690.5½, 690.6, 690.7, 690.7½, 690.18½, alleging that the
34 value of the property claimed to be exempt is in excess
35 of the value stated in the applicable section or sections,
36 together with proof of service of a copy of such
37 counteraffidavit upon the debtor.

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

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

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

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

37 (h) The levying officer in all cases shall retain physical
38 possession of the property levied upon if it is capable of
39 physical possession, or in the case of property not capable
40 of physical possession, the levy shall remain in full force

1 and effect, pending the final determination of the claim
2 to exemption. However, no sale under execution shall be
3 had prior to such final determination unless an order of
4 the court hearing the claim for exemption shall so
5 provide.

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

38 (j) A copy of any judgment entered in the trial court
39 shall be forthwith transmitted by the clerk to the levying
40 officer in order to permit such officer to either release the

delete

1 property attached or to continue to hold it to sell it, in
2 accordance with the provisions of the writ previously
3 delivered to him. Such officer, unless an appeal from the
4 judgment is waived, or the judgment has otherwise
5 become final, shall continue to hold such property under
6 attachment or execution, continuing the sale of any
7 property held under execution until such judgment
8 becomes final. However, if a claim to exemption under
9 Section 690.5½ or 690.6 is allowed by such judgment, the
10 debtor shall be entitled to a release of the earnings so
11 exempted at the expiration of three days, unless
12 otherwise ordered by the court, or unless the levying
13 officer shall have been served with a copy of a notice of
14 appeal from the judgment.

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

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

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

25 SEC. 15. Section 710 of the Code of Civil Procedure is
26 amended to read:

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

38 1. If such money ; ~~wages or salary~~ is owing and unpaid
39 by this state to such judgment debtor, said judgment
40 creditor shall file said abstract or transcript and affidavit

1 with the state department, board, office or commission
2 owing such money; ~~wages or salary~~ to said judgment
3 debtor prior to the time such state department, board,
4 office or commission presents the claim of such judgment
5 debtor therefor to the State Controller. Said state
6 department, board, office or commission in presenting
7 such claim of such judgment debtor to said State
8 Controller shall note thereunder the fact of the filing of
9 such abstract or transcript and affidavit and state the
10 amount unpaid on said judgment as shown by said
11 affidavit and shall also note any amounts advanced to the
12 judgment debtor by, or which the judgment debtor owes
13 to, the State of California by reason of advances for
14 expenses or for any other purpose. Thereupon the State
15 Controller, to discharge such claim of such judgment
16 debtor, shall pay into the court which issued such abstract
17 or transcript by his warrant or check payable to said court
18 the whole or such portion of the amount due such
19 judgment debtor on such claim, after deducting from
20 such claim an amount sufficient to reimburse the state
21 department, board, office or commission for any amounts
22 advanced to said judgment debtor or by him owed to the
23 State of California, ~~and after deducting therefrom an~~
24 ~~amount equal to one-half or such greater portion as is~~
25 ~~allowed by statute of the United States, of the earnings~~
26 ~~owing to the judgment debtor for his personal services to~~
27 ~~the state rendered at any time within 30 days next~~
28 ~~preceding the filing of such abstract or transcript, as will~~
29 satisfy in full or to the greatest extent the amount unpaid
30 on said judgment and the balance thereof; , if any, to the
31 judgment debtor.

32 2. If such money; ~~wages or salary~~ is owing and unpaid
33 to such judgment debtor by any county, city and county,
34 city or municipality, quasi-municipality, district or public
35 corporation, said judgment creditor shall file said abstract
36 or transcript and affidavit with the auditor of such
37 county, city and county, city or municipality,
38 quasi-municipality, district or public corporation (and in
39 case there be no auditor then with the official whose duty
40 corresponds to that of auditor). Thereupon said auditor

1 (or other official) to discharge such claim of such
2 judgment debtor shall pay into the court which issued
3 such abstract or transcript by his warrant or check
4 payable to said court the whole or such portion of the
5 amount due on such claim of such judgment debtor ; less
6 ~~an amount equal to one-half or such greater portion as is~~
7 ~~allowed by statute of the United States, of the earnings of~~
8 ~~the debtor owing by the county, city and county, city,~~
9 ~~municipality, quasi/municipality, district or public~~
10 ~~corporation to the judgment debtor for his personal~~
11 ~~services to such public body rendered at any time within~~
12 ~~30 days next preceeding the filing of such abstract or~~
13 ~~transcript, as will satisfy in full or to the greatest extent~~
14 ~~the amount unpaid on said judgment and the balance~~
15 ~~thereof, if any, to the judgment debtor.~~

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

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

29 (d) In the event the moneys owing to a judgment
30 debtor by any governmental agency mentioned in this
31 section are owing by reason of an award made in a
32 condemnation proceeding brought by the governmental
33 agency, such governmental agency may pay the amount
34 of the award to the clerk of the court in which such
35 condemnation proceeding was tried, and shall file
36 therewith the abstract or transcript of judgment and the
37 affidavit filed with it by the judgment creditor. Such
38 payment into court shall constitute payment of the
39 condemnation award within the meaning of Section 1251
40 of this code. Upon such payment into court and the filing

1 with the county clerk of such abstract or transcript of
2 judgment and affidavit, the county clerk shall notify by
3 mail, through their attorneys, if any, all parties interested
4 in said award of the time and place at which the court
5 which tried the condemnation proceeding will
6 determine the conflicting claims to said award. At said
7 time and place the court shall make such determination
8 and order the distribution of the money held by the
9 county clerk in accordance therewith.

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

21 (f) Nothing in this section shall authorize the filing of
22 any abstract or transcript and affidavit against: ~~(1) any~~
23 ~~wages; or salary owing to the Governor, Lieutenant~~
24 ~~Governor, Secretary of State, Controller, Treasurer, and~~
25 ~~Attorney General; or (2) any overpayment of tax, penalty~~
26 ~~or interest, or interest allowable with respect to such~~
27 ~~overpayment, under Part 10 (commencing with Section~~
28 ~~17001) or Part 11 (commencing with Section 23001) of~~
29 ~~Division 2 of the Revenue and Taxation Code.~~

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

38 ~~(h) (1) in the event the moneys owing to a judgment~~
39 ~~debtor by any governmental agency mentioned in this~~
40 ~~section are for wages or salary; the judgment creditor~~

1 shall mail under a separate cover at the time of filing the
2 affidavit with the governmental agency, in an envelope
3 marked "Personal and Confidential"; a copy of the
4 affidavit and a Notice to Judgment Debtor as provided in
5 paragraph (2) of this subdivision, addressed to the
6 judgment debtor at his place of employment.

7 (2) The Notice to Judgment Debtor shall be in
8 10-point bold type, and in substantially the following
9 form:

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

17 (h) *This section does not authorize the withholding of*
18 *earnings of a public officer or employee. The earnings of*
19 *a public officer or employee may be withheld only*
20 *pursuant to Chapter 2.5 (commencing with Section*
21 *723.010).*

22 SEC. 16. Chapter 2.5 (commencing with Section
23 723.010) is added to Title 9 of Part 2 of the Code of Civil
24 Procedure, to read:

25
26 CHAPTER 2.5. EMPLOYEES' EARNINGS PROTECTION
27 LAW

28
29 Article 1. Definitions

30
31 723.010. This chapter shall be known and may be
32 cited as the "Employees' Earnings Protection Law."

33 723.011. As used in this chapter:

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

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

1 be done.

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

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

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

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

13 (g) "Person" includes an individual, a corporation, a
14 partnership or other unincorporated association, and a
15 public entity.

16
17 Article 2. General Provisions
18

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

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

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

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

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

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

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

1 (c) Notwithstanding subdivision (b), an employer
2 shall cease withholding pursuant to an earnings
3 withholding order whenever he is served with a certified
4 copy of a satisfaction of the judgment upon which the
5 order is based.

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

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

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

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

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

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

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

39 723.024. Each time an employer makes a deduction
40 from an employee's earnings pursuant to an earnings

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723.024. An employer who is required to comply with an earnings withholding order may retain from the amount required to be withheld pursuant to the order an amount equal to one dollar (\$1) for each time he makes a deduction from the employee's earnings pursuant to the order. The amount so retained is a charge for the employer's services in complying with the earnings withholding order. If he retains any amounts pursuant to this section, the employer shall provide, with each payment made pursuant to Section 723.025, an itemized statement showing the amounts retained pursuant to this section.

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1 withholding order, he may make an additional deduction
2 of one dollar (\$1) and retain it as a charge for his services
3 in complying with the earnings withholding order.

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

19 723.026. Within 10 days after he receives any payment
20 pursuant to an earnings withholding order, the judgment
21 creditor shall send the judgment debtor a receipt for such
22 payment by first-class mail, postage prepaid. The receipt
23 shall state the amount of the payment received, the
24 maximum amount that may be withheld pursuant to the
25 earnings withholding order, and the total amount
26 received by the creditor during the period the order has
27 been in effect. No receipt is required for payments
28 received pursuant to a withholding order for support.

29 723.027. If the judgment pursuant to which the
30 earnings withholding order is issued is satisfied prior to
31 the end of the withholding period provided in Section
32 723.022, the judgment creditor, within five days
33 (Saturday, Sunday, and holidays excepted) of such
34 satisfaction, shall:

35 (a) File a satisfaction of judgment in the court which
36 issued such order; and

37 (b) Serve a certified copy of such satisfaction on the
38 judgment debtor's employer.

39 723.028. Subject to Section 723.108 after the amount
40 stated as owing in the earnings withholding order is paid,

723.107

1 the judgment creditor may apply for issuance of another
2 earnings withholding order covering costs and interest
3 that may have accrued since application for the prior
4 order.

5 723.029. Service of an earnings withholding order
6 creates a lien upon the earnings required to be withheld
7 pursuant to such order. Such lien shall continue for a
8 period of one year from the date such earnings became
9 payable.

10 723.030. (a) A "withholding order for support" is an
11 earnings withholding order to enforce a court order for
12 the support of any person. A withholding order for
13 support shall be denoted as such on its face.

14 (b) Notwithstanding any other provision of this
15 chapter:

16 (1) The restrictions on earnings withholding
17 contained in Section 723.050 do not apply to a
18 withholding order for support. The amount to be
19 withheld pursuant to a withholding order for support
20 shall be limited to the amount of the continuing periodic
21 payments ordered by the court in a prior judgment
22 except that, upon motion of the judgment creditor, after
23 notice and hearing and upon good cause shown, the court
24 may order that the amount to be withheld pursuant to a
25 withholding order for support be increased to include
26 payment, in whole or in part, of delinquent amounts
27 owing on the prior judgment. The exemption provided

28 by Section 723.051 applies to a withholding order for
29 support. In no case shall the amount an employer
30 withholds pursuant to a withholding order for support
31 exceed the amount of earnings payable to the judgment
32 debtor by the employer after deducting all amounts
33 required to be withheld by law or by any contract which
34 is not revocable by the employee or at his instance.

35 (2) An employer shall continue to withhold pursuant
36 to a withholding order for support until it expires by its
37 terms or the court orders its termination, except that an
38 order issued pursuant to Section 723.030 shall
39 automatically terminate one year after the employee is
40 no longer employed by the employer.

earnings withholding
order for support

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A withholding order for support shall be given priority over any other ~~withholding order~~ earnings withholding order.

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Subject to paragraph (3) and to Article 3 (commencing with Section 723.050), an

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1 (3) An employer upon whom a withholding order for
2 support is served shall withhold and pay over earnings of
3 the employee pursuant to such order even though he is
4 already required to comply with another earnings
5 withholding order.

6 (4) ~~An~~ employer shall withhold earnings of an
7 employee pursuant to both a withholding order for
8 support and another earnings withholding order
9 simultaneously. The amount to be withheld under the
10 withholding order for support shall be deducted first
11 from the earnings of the employee; the amount to be
12 withheld pursuant to the other withholding order shall
13 then be computed, based on the earnings remaining after
14 this deduction.

15 (5) An employer shall withhold the amount of the
16 periodic payments specified in the withholding order for
17 support. Where the period provided in the order is
18 different from the pay period of the employee, the
19 employer shall prorate the amounts withheld so that the
20 total amount withheld and paid over to the judgment
21 creditor for any given period equals the amount required
22 by the order to be withheld for the same period. The
23 amounts withheld shall be paid to the person specified in
24 the order in accordance with Section 723.025.

26 Article 3. Restrictions on Earnings Withholding

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28 723.050. (a) As used in this section, "nonexempt
29 earnings" for any workweek means the earnings of the
30 judgment debtor for that workweek less the sum of all the
31 following:

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

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

39 (3) The amount that would be withheld for state
40 disability insurance contributions under Sections 984 and

723.050. Except as provided in Sections 723.030 and 723.076, the maximum amount of the earnings of a judgment debtor which can be withheld pursuant to this chapter shall be the amount computed under Section 690.6. If the amount that may be withheld under Section 690.6 for a particular pay period is less than five dollars (\$5), nothing shall be withheld pursuant to this chapter from the earnings for that pay period.

723.051. (a) Subject to subdivision (b), the portion of his earnings which a judgment debtor proves is necessary for the use of himself or his family is exempt from levy under this chapter unless the debt is incurred for personal services rendered by any employee or former employee of the debtor.

(b) Where the judgment debtor claims the exemption provided by this section and the earnings withholding order is one described in Section 723.030, the court shall make an order that provides for an equitable division of the judgment debtor's earnings between the judgment debtor and his family and the persons entitled to support under the support order upon which the earnings withholding order is based.

(c) The exemption provided by this section does not apply to an earnings withholding order for taxes issued pursuant to Article 4 (commencing with Section 723.070).

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1 985 of the Unemployment Insurance Code from the same
2 amount of earnings if earned during the first week of a
3 calendar year by a person subject to withholding for that
4 purpose.

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

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

12 (b) Except as otherwise provided in Sections 723.030,
13 723.074, 723.075, 723.076, and 723.106, the maximum
14 amount of the earnings of a judgment debtor in any
15 workweek which can be withheld pursuant to this
16 chapter shall be computed as provided in this subdivision.
17 If the nonexempt earnings of the judgment debtor for the
18 workweek are less than twenty dollars (\$20), nothing
19 shall be withheld. If the nonexempt earnings of the
20 judgment debtor for the workweek are twenty dollars
21 (\$20) or more, ten dollars (\$10) plus 25 percent of the
22 nonexempt earnings in excess of twenty dollars (\$20)
23 shall be withheld. Where the nonexempt earnings of the
24 judgment debtor for the workweek are twenty dollars
25 (\$20) or more, if the amount computed under this
26 subdivision is not a multiple of one dollar (\$1), fractional
27 amounts less than one-half dollar (\$0.50) shall be
28 disregarded and fractional amounts of one-half dollar
29 (\$0.50) or more shall be rounded upward to the next
30 higher whole dollar.

31 (c) The Judicial Council shall prescribe by rule the
32 method of computing the amount to be withheld in the
33 case of earnings for any pay period other than a week,
34 which method shall be substantially equivalent in effect
35 to that prescribed in subdivision (b).

36 (d) The Judicial Council shall prepare withholding
37 tables for determining the amount to be withheld from
38 the earnings of employees for representative pay periods.
39 The tables may prescribe the amounts to be withheld
40 according to reasonable earnings brackets. The tables

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1 prepared by the Judicial Council pursuant to this
2 subdivision shall be used to determine the amount to be
3 withheld in all cases where the tables permit
4 computation of the amount to be withheld.

5 723.051. The portion of his earnings which a judgment
6 debtor proves is essential for the support of himself or his
7 family is exempt from levy under this chapter unless the
8 debt is incurred for personal services rendered by any
9 employee or former employee of the judgment debtor.
10 This standard recognizes that the exemption provided by
11 Section 723.050 should be adequate, except in rare and
12 unusual cases, to provide the amount essential for the
13 support of the judgment debtor or his family. This
14 standard also recognizes that the exemption provided by
15 Section 723.050 may not be adequate, for example, in
16 cases where there are a large number of members of the
17 judgment debtor's family who are dependent upon his
18 earnings for their support. Neither the judgment debtor's
19 accustomed standard of living nor a standard of living
20 "appropriate to his station in life" is the criterion for
21 measuring the debtor's claim for standard of living
22 "appropriate to his station in life" is the criterion for
23 measuring the debtor's claim for exemption under this
24 section.

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

29 723.070. As used in this article:

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

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

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

3 723.071. This chapter shall not limit the state's right to
4 collect a state tax liability except that no levy upon
5 earnings of an employee held by an employer shall be
6 effective unless such levy is made in accordance with the
7 provisions of this chapter and the methods of collection
8 referred to in subdivision (b) of Section 723.070 may not
9 be used to require an employer to withhold earnings of
10 an employee in payment of a state tax liability.

11 723.072. (a) A "withholding order for taxes" is an
12 earnings withholding order issued pursuant to this article
13 to collect a state tax liability and shall be denoted as a
14 withholding order for taxes on its face.

15 (b) A withholding order for taxes may only be issued
16 where:

17 (1) The existence of the state tax liability appears on
18 the face of the taxpayer's return, including a case where
19 such tax liability is disclosed from the taxpayer's return
20 after errors in mathematical computations in the return
21 have been corrected; or

22 (2) The state tax liability has been assessed or
23 determined, as provided in the Revenue and Taxation
24 Code or Unemployment Insurance Code, and the
25 taxpayer had notice of the proposed assessment or
26 determination and had available an opportunity to have
27 the proposed assessment or determination reviewed by
28 appropriate administrative procedures, whether or not
29 he took advantage of that opportunity.

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

1 date the notice was mailed to him, the state shall provide
2 appropriate administrative procedures for review of the
3 assessment or determination and shall not issue the
4 withholding order for taxes until the administrative
5 review procedure is completed. If the taxpayer is sent
6 such a notice and does not request such a review within
7 30 days from the date the notice was mailed to him, the
8 state may issue the withholding order for taxes.

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

12 723.073. Except as otherwise provided in this article,
13 the provisions of this chapter govern the procedures and
14 proceedings concerning a withholding order for taxes.

15 723.074. (a) The state may itself issue a withholding
16 order for taxes under this section to collect a state tax
17 liability. The order shall specify the maximum amount
18 that may be withheld pursuant to the order (unpaid tax
19 liability including any penalties, accrued interest, and
20 costs).

21 (b) The amount to be withheld by the employer
22 pursuant to an order issued under this section shall be the
23 amount required to be withheld pursuant to subdivision
24 (c) or such lesser amount as is specified in the order.

25 (c) Unless a lesser amount is specified in the order, the
26 amount to be withheld pursuant to an order issued under
27 this section is two times the maximum amount that may
28 be withheld under Section 723.050, except that the state
29 may require that ten dollars (\$10) be withheld if (1) the
30 taxpayer's nonexempt earnings (as defined in Section
31 723.050) are twenty dollars (\$20) or more but less than
32 thirty dollars (\$30) or (2) the amount of the taxpayer's
33 earnings is sufficient that a portion of his earnings would
34 be withheld pursuant to Section 18806 of the Revenue
35 and Taxation Code if such earnings were subject to
36 withholding under that section but the amount of his
37 earnings is not sufficient to permit withholding under
38 Section 723.050. In determining whether the earnings are
39 sufficient so that a portion of the earnings would be
40 withheld pursuant to Section 18806 of the Revenue and

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1 Taxation Code, the table issued under that section
2 applicable to a single person without allowance for
3 additional exemptions shall be used. The state shall
4 prepare withholding tables for determining the amount
5 to be withheld from the earnings of employees for
6 representative pay periods pursuant to orders issued
7 under this section. The tables may prescribe the amounts
8 to be withheld according to reasonable earnings brackets.
9 The tables shall be used to determine the amount to be
10 withheld in all cases where the tables permit
11 computation of the amount to be withheld.

12 723.075. (a) This section applies to any withholding
13 order for taxes issued under this acticle.

14 (b) Together with the withholding order for taxes, the
15 state shall serve upon the employer an additional copy of
16 the order and a notice informing the taxpayer of the
17 effect of the order and of his right to hearings and
18 remedies provided in this chapter. Within five days from
19 the date of service, the employer shall deliver to the
20 taxpayer a copy of the order and the notice, except that
21 immediate delivery shall be made where a jeopardy
22 withholding order for taxes has been served. If the
23 taxpayer is no longer employed by the employer and the
24 employer does not owe him any earnings, the employer
25 is not required to make such delivery.

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26 (c) The state shall provide for an administrative
27 hearing to reconsider or modify the amount to be
28 withheld pursuant to the withholding order for taxes, and
29 the taxpayer may request such a hearing at any time after
30 service of the order. If the taxpayer requests a hearing,
31 the hearing shall be provided, and the matter shall be
32 determined, within 15 days after the request is received
33 by the state.

34 (d) After the state has made its determination under
35 subdivision (c), the taxpayer may file a claim of
36 exemption to claim the exemption provided by Section
37 723.051, in the manner provided in Section 723.105, with
38 a court of record in his county of residence. No fee shall
39 be charged for filing such claim of exemption. After
40 hearing, the court may modify the withholding order for

Delete

1 taxes previously issued, but in no event shall the amount
2 required to be withheld be less than that permitted to be
3 withheld under Section 723.050.

4 723.076. (a) A withholding order for taxes may be
5 issued pursuant to this section requiring the employer of
6 the taxpayer to withhold an amount in excess of the
7 amount that may be required to be withheld pursuant to
8 an order issued under Section 723.074.

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

13 (c) The application for the order shall include an
14 affidavit stating that the state has served upon the
15 taxpayer both of the following:

16 (1) A copy of the application.

17 (2) A notice informing the taxpayer of the purpose of
18 the application and his right to appear in regard to the
19 application.

20 (d) Upon the filing of the application, the court shall
21 immediately set the matter for hearing and the court
22 clerk shall send a notice of the time and place of the
23 hearing by first-class mail, postage prepaid, to the state
24 and the taxpayer. The notice shall be deposited in the
25 mail at least 10 days before the day set for the hearing.

26 (e) After hearing, the court shall issue a withholding
27 order for taxes which shall require the taxpayer's
28 employer to withhold and pay over all earnings of the
29 taxpayer other than that amount which the taxpayer
30 proves is exempt under Section 723.051, but in no event
31 shall the amount to be withheld be less than that
32 permitted to be withheld under Section 723.050.

33 (f) The state may issue a temporary earnings holding
34 order, which shall be denoted as such on its face, in any
35 case where the state intends to apply for withholding
36 order for taxes under this section and has determined
37 that the collection of the state tax liability will be
38 jeopardized in whole or in part if the temporary earnings
39 holding order is not issued. The temporary earnings
40 holding order shall be directed to the taxpayer's

essential for the support
of himself or his family,

1 employer and shall require him to retain in his possession
2 or under his control all or such portion of the earnings of
3 the taxpayer then or thereafter due as is specified in the
4 order. Together with the temporary earnings holding
5 order, the state shall serve upon the employer an
6 additional copy of the order and a notice informing the
7 taxpayer of the effect of the order and of his right to
8 remedies provided in this chapter. Upon receipt of the
9 order, the employer shall deliver to the taxpayer a copy
10 of the order and notice. If the taxpayer is no longer
11 employed by the employer and the employer does not
12 owe him any earnings, the employer is not required to
13 make such delivery. The temporary earnings holding
14 order expires 15 days from the date it is served on the
15 employer unless it is extended by the court on ex parte
16 application for good cause shown. If a temporary earnings
17 holding order is served on an employer, the state may not
18 thereafter, for a period of six months, serve on the same
19 employer another temporary earnings holding order for
20 the same employee unless the court for good cause shown
21 otherwise orders. Sections 723.153 and 723.154 apply to
22 temporary earnings holding orders issued under this
23 section.

24 723.077. (a) Subject to subdivision (b), an employer
25 upon whom a withholding order for taxes is served shall
26 withhold and pay over earnings of the employee
27 pursuant to such order and shall cease to withhold
28 earnings pursuant to any prior order except a
29 withholding order for support. When an employer is
30 required to cease withholding earnings pursuant to a
31 prior order, he shall notify the judgment creditor who
32 obtained the prior order that a supervening withholding
33 order for taxes is in effect.

34 (b) An employer shall not withhold earnings of an
35 employee pursuant to a withholding order for taxes if a
36 prior withholding order for taxes is in effect, and, in such
37 case, the subsequent withholding order for taxes is
38 ineffective.

39
40 723.078. (a) Except as provided in subdivision (b),

a withholding order for taxes shall be given
priority over any other earnings withholding
order

1 the employer shall not withhold pursuant to a
2 withholding order for taxes from earnings of the
3 employee payable for any pay period of such employee
4 that ends prior to the fifth day after service of the order.

5 (b) A "jeopardy withholding order for taxes," which
6 shall be denoted as such on its face, is a withholding order
7 for taxes that requires that the employer withhold
8 pursuant to the order from earnings due to the employee
9 at the time of service of the order on the employer and
10 from earnings thereafter due. A jeopardy withholding
11 order for taxes may be issued only where the state has
12 determined that the collection of a state tax liability will
13 be jeopardized in whole or in part by delaying the time
14 when withholding from earnings commences.

15 (c) An employer shall continue to withhold pursuant
16 to a withholding order for taxes until the amount
17 specified in the order has been paid in full or the order
18 is withdrawn, except that the order shall automatically
19 terminate one year after the employee is no longer
20 employed by the employer. The state shall promptly
21 serve on the employer a notice terminating the
22 withholding order for taxes if the state tax liability for
23 which the withholding order for taxes was issued is
24 satisfied before the employer has withheld the full
25 amount specified in the order, and the employer shall
26 discontinue withholding in compliance with such notice.

27 723.079. No receipt need be sent to the taxpayer for
28 amounts paid over to the state pursuant to a withholding
29 order for taxes unless the taxpayer has requested in
30 writing that he be sent receipts for such amounts.

31 723.080. Service of a withholding order for taxes or of
32 any other notice or document required under this
33 chapter in connection with a withholding order for taxes
34 may be made by first-class mail, postage prepaid, or by
35 any authorized state employee. Service of a withholding
36 order for taxes is complete when it is received by the
37 employer. Service of, or the providing of, any other
38 notice or document required to be served or provided
39 under this chapter in connection with a withholding
40 order for taxes is complete when the notice or document

1 is deposited in the mail addressed to the last known
2 address of the person on whom it is served or to whom
3 it is to be provided.

4 723.081. Except for the forms referred to in Section
5 723.076, the state shall prescribe the form of any order,
6 notice, or other document required by this chapter in
7 connection with a withholding order for taxes
8 notwithstanding Sections 723.100 and 723.120, and any
9 form so prescribed is deemed to comply with this
10 chapter.

11 723.082. No review of the taxpayer's tax liability shall
12 be permitted in any court proceedings under this
13 chapter.

14 723.083. If the state determines that a withholding
15 order for taxes has been issued in error or that there is no
16 tax liability, the state may refund to the employee any
17 amounts deducted by his employer pursuant to Section
18 723.024.

retained

19 723.084. Where a warrant, notice of levy, or notice or
20 order to withhold (referred to in subdivision (b) of
21 Section 723.070) is served on the employer, it shall be
22 deemed to be a withholding order for taxes if the form
23 provides notice on its face that it is to be treated as a
24 withholding order for taxes as to any earnings that are
25 subject to the provisions of this chapter.

26

27 Article 5. Procedure for Issuance of
28 Earnings Withholding Orders
29

30 723.100. Notwithstanding any other provision of law,
31 the Judicial Council may provide by rule for the practice
32 and procedure in proceedings under this chapter except
33 for the state's administrative hearings provided by
34 Article 4 (commencing with Section 723.070).

35 723.101. (a) Service under this chapter shall be by
36 personal delivery or by registered or certified mail,
37 postage prepaid with return receipt requested. When
38 service is made by mail, service is completed at the time
39 the return receipt is executed by the recipient or his
40 representative.

1 (b) Notwithstanding Section 1032.6, except as
2 provided in subdivision (c), a judgment creditor is not
3 entitled to the costs of service under this chapter which
4 exceed the cost of service by certified mail with return
5 receipt requested.

6 (c) If the employer of the judgment debtor refuses to
7 accept service by registered or certified mail, the cost of
8 service by personal delivery may be recovered from the
9 judgment debtor.

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

25 723.102. A judgment creditor may apply for the
26 issuance of an earnings withholding order by filing an
27 application, in the form prescribed by the Judicial
28 Council, with the clerk of the court which entered the
29 judgment pursuant to which the earnings withholding
30 order is sought. Within five days (Saturday, Sunday, and
31 holidays excepted) after the filing of the application, the
32 court clerk shall issue an earnings withholding order in
33 the form prescribed pursuant to Sections 723.120 and
34 723.125.

35 723.103. (a) The judgment creditor shall serve upon
36 the designated employer all of the following:

- 37 (1) Two copies of the earnings withholding order.
38 (2) The form for the employer's return.
39 (3) Notice to employee of earnings withholding order
40 in the form prescribed pursuant to Sections 723.120 and

1 723.122.

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

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

12 723.104. Any employer who is served with an earnings
13 withholding order shall:

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

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

31 723.105. (a) A judgment debtor may claim an
32 exemption under this chapter if:

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

35 (2) There has been a material change in
36 circumstances since the time of the last prior hearing on
37 the earnings withholding order.

38 (b) A claim of exemption shall be made by filing with
39 the court clerk an original and one copy of (1) the
40 judgment debtor's claim of exemption and (2) if he

1 claims the exemption provided by Section 723.051, his
2 financial statement.

3 (c) Forthwith upon the filing of the claim of
4 exemption, the court clerk shall send to the judgment
5 creditor by first-class mail, postage prepaid, all of the
6 following:

7 (1) A copy of the claim of exemption.

8 (2) A copy of the financial statement if there is one.

9 (3) A notice of claim of exemption, stating that the
10 claim of exemption has been filed and that the earnings
11 withholding order will be terminated, or modified to
12 reflect the amount of earnings claimed to be exempt in
13 the claim of exemption, unless a notice of opposition to
14 the claim of exemption is filed with the court clerk by the
15 judgment creditor within five days (Saturday, Sunday,
16 and holidays excepted), after the date of the filing of the
17 notice of claim of exemption.

18 (d) A judgment creditor who desires to contest a claim
19 of exemption shall, within five days (Saturday, Sunday,
20 and holidays excepted) after the date of the mailing of
21 the notice of claim of exemption, file with the court clerk
22 a notice of opposition to the claim of exemption.

23 (e) If the court clerk does not receive a notice of
24 opposition within the five-day period, he shall send to the
25 employer by first-class mail, postage prepaid, one of the
26 following:

27 (1) A notice that the earnings withholding order has
28 been terminated if all of the judgment debtor's earnings
29 was claimed to be exempt.

30 (2) A modified earnings withholding order which
31 reflects the amount of earnings claimed to be exempt in
32 the claim of exemption if only a portion of the judgment
33 debtor's earnings was claimed to be exempt.

34 (f) If a notice of opposition to the claim of exemption
35 is filed with the court clerk within the five-day period, the
36 court clerk shall set the matter for hearing, which hearing
37 shall be held within 15 days after the date the notice of
38 opposition is filed. The court clerk shall send a notice of
39 the time and place of the hearing to the judgment debtor
40 and judgment creditor by first-class mail, postage

1 prepaid. The notice shall be deposited in the mail at least
2 10 days before the day set for hearing.

3 (g) If, after hearing, the court orders that the earnings
4 withholding order be modified or terminated, the clerk
5 shall promptly send by first-class mail, postage prepaid, to
6 the employer of the judgment debtor (1) a copy of the
7 modified earnings withholding order or (2) a notice that
8 the earnings withholding order has been terminated. The
9 court may order that the earnings withholding order be
10 terminated as of a date which precedes the date of
11 hearing.

12 (h) Except as provided in Section 723.106, if If the
13 earnings withholding order is terminated by the court,
14 unless the court otherwise orders or unless there is a
15 material change of circumstances since the time of the
16 last prior hearing on the earnings withholding order, the
17 judgment creditor may not apply for another earnings
18 withholding order directed to the same employer with
19 respect to the same judgment debtor for a period of 125
20 days following the date of service of the earnings
21 withholding order or 60 days after the date of the
22 termination of the order, whichever is later.

23 (i) If an employer has withheld and paid over amounts
24 pursuant to an earnings withholding order after the date
25 of termination of such order but prior to the receipt of
26 notice of its termination, the judgment debtor may
27 recover such amounts only from the judgment creditor.
28 If the employer has withheld amounts pursuant to an
29 earnings withholding order after termination of the order
30 but has not paid over such amounts to the judgment
31 creditor, the employer shall pay over such amounts to the
32 judgment debtor.

Delete 33 723.106. (a) As used in this section, "earnings"
34 includes all compensation (whether denominated as
35 wages, salary, commission, bonus, tips, or otherwise) for
36 personal services performed by an employee, whether
37 paid or payable by the employer or by any other person.
38 (b) Where a judgment debtor has earnings from more
39 than one source, an earnings withholding order may be
40 issued based on the debtor's total earnings but directed

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1 to one employer. An order may be issued under this
2 section only by a court in the manner prescribed in
3 subdivisions (d), (e), (f), and (g).

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

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

11 (2) An amount equal to that which would be
12 permitted to be withheld if the total earnings of the
13 debtor from all sources were used in computing the
14 amount that is permitted to be withheld under Section
15 723.050.

16 (d) A judgment creditor may, at any time, request a
17 hearing to prove that the judgment debtor receives
18 earnings from more than one source and that the
19 judgment creditor should be granted an order requiring
20 one employer to withhold a greater amount from the
21 earnings payable by that employer than he would have to
22 withhold were he the judgment debtor's only source of
23 earnings. The request shall set out the facts on which the
24 judgment creditor's claim is based. The request shall be
25 made to the court to which application is made for the
26 earnings withholding order.

27 (e) The court shall set the matter for hearing after
28 receiving the written request together with an affidavit
29 stating that the judgment creditor has served a copy of
30 the request for hearing in the manner provided in
31 Section 723.101. The court clerk shall send a notice of the
32 time and place of the hearing to the judgment debtor and
33 the judgment creditor by first-class mail, postage prepaid.
34 The notice shall be deposited in the mail at least 10 days
35 before the day set for the hearing.

36 (f) The judgment creditor has the burden of proof on
37 the issue of his right to have a greater amount withheld
38 by one employer pursuant to this section. Upon
39 determining that the judgment creditor is entitled to an
40 order requiring an employer to withhold a greater

1 amount from the judgment debtor's earnings than the
2 employer would have had to withhold were he the
3 judgment debtor's only source of earnings, the court shall
4 make an appropriate order.

5 (g) The hearing provided by this section may be
6 combined with a hearing under Section 723.105. If an
7 earnings withholding order has previously been issued
8 under this section, the court, after hearing held at the
9 request of either the judgment debtor or the judgment
10 creditor, may modify the prior order, and the clerk shall
11 promptly send a copy of the revised order to the
12 employer of the judgment debtor by first-class mail,
13 postage prepaid.

delete

723.106.

723.107.

14 ~~723.107.~~ No findings shall be required in court
15 proceedings under this chapter.

16 ~~723.108.~~ If an employer withholds earnings pursuant
17 to an earnings withholding order, the judgment creditor
18 who obtained such withholding order may not serve
19 another withholding order on the same employer
20 requiring him to withhold earnings of the same employee
21 during the 10 days following the expiration of the prior
22 earnings withholding order.

23
24 Article 6. Forms, Employer's Instructions;
25 Withholding Tables
26

delete

27 723.120. The Judicial Council shall prescribe the form
28 of the applications, notices, claims of exemption, orders,
29 and other documents required by this chapter and only
30 such forms may be used to implement this chapter. Any
31 such form prescribed by the Judicial Council is deemed
32 to comply with this chapter.

33 723.121. The "application for issuance of earnings
34 withholding order" shall be executed under oath and
35 shall include all of the following:

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

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

39 (c) The court where the judgment was entered and
40 the date the judgment was entered.

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

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

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

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

13 (h) A statement that the applicant has no information
14 or belief that the indebtedness for which the order is
15 sought has been discharged by a discharge granted to the
16 judgment debtor under the federal Bankruptcy Act or
17 that the prosecution of the proceeding has been stayed in
18 a proceeding under the federal Bankruptcy Act.

19 723.122. The "notice to employee of earnings
20 withholding order" shall inform the judgment debtor of
21 all of the following:

22 (a) The court has ordered the named employer to
23 withhold from the earnings of the judgment debtor the
24 maximum amounts allowed by law, or such other
25 amounts as are specified in the order, and to pay these
26 amounts over to the person specified in the order in
27 payment of the judgment described in the order.

28 (b) The maximum amounts allowed by law to be
29 withheld pursuant to Section 723.050 on illustrative
30 amounts of earnings.

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

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

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(d) 1 (a) If a judgment debtor wishes a court hearing to
2 prove that amounts should not be withheld from his
3 earnings, he shall file with the clerk of court two copies
4 of the "judgment debtor's claim of exemption," and, in
5 addition, if he claims the exemption referred to in
6 paragraph (a), he shall also file with the clerk two copies
7 of the "judgment debtor's financial statement." The
8 notice shall also advise the judgment debtor that the
9 claim of exemption form and the financial statement
10 form may be obtained at the office of any clerk of a trial
11 court. The clerk of each trial court shall have the forms
12 available at his office.

13 723.123. The "judgment debtor's claim of exemption"
14 shall be executed under oath. Where the judgment
15 debtor claims the exemption provided by Section 723.051,
16 his claim of exemption shall indicate how much he
17 believes should be withheld from his earnings each pay
18 period by his employer pursuant to the earnings
19 withholding order.

20 723.124. The "judgment debtor's financial statement"
21 shall be executed under oath and shall include all of the
22 following information:

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

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

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

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

33 (e) All outstanding obligations of the judgment
34 debtor.

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

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

1 723.125. The "earnings withholding order" shall
2 include all of the following:

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

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

7 (c) The court where the judgment was entered, the
8 date the judgment was entered, and the name of the
9 judgment creditor.

10 (d) Except for a withholding order for support, the
11 maximum amount that may be withheld pursuant to the
12 order (the amount of the judgment, plus additional
13 accrued items, less partial satisfactions, if any).

14 (e) A description of the withholding period and an
15 order to the employer to withhold from the earnings of
16 the judgment debtor the amount required by law to be
17 withheld or the amount specified in the order, as the case
18 may be, during such period.

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

24 (g) An order that the employer fill out the
25 "employer's return" and return it by first-class mail,
26 postage prepaid, to the judgment creditor or his
27 representative at a specified address within 15 days after
28 service of the earnings withholding order.

29 (h) An order that the employer deliver to the
30 judgment debtor a copy of the earnings withholding
31 order and the "notice to employee of earnings
32 withholding order" within five days after service of the
33 earnings withholding order; but, if the judgment debtor
34 is no longer employed by the employer and the employer
35 does not owe him any earnings, the employer is not
36 required to make such delivery.

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

39 723.126. (a) The "employer's return" shall be
40 executed under oath. The form for the return provided

1 to the employer shall state all of the following
2 information:

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

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

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

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

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

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

21 (3) Whether the employer is presently required to
22 comply with a prior earnings withholding order and, if so,
23 the name of the judgment creditor who secured the prior
24 order, the court which issued such order, the date it was
25 issued, the date it was served, and the expiration date of
26 such order.

27 (4) If the employer elects to make payments to the
28 judgment creditor monthly as authorized under Section
29 723.025, a statement that the employer has made such
30 election.

31 723.127. (a) The Judicial Council shall prepare
32 "employer's instructions" for employers and revise or
33 supplement these instructions to reflect changes in the
34 law or rules regulating the withholding of earnings.

35 (b) Except to the extent that they are included in the
36 forms required to be provided to the employer by the
37 judgment creditor, the Judicial Council shall publish the
38 employer's instructions and the withholding tables
39 adopted pursuant to Section 723.050. The Judicial Council
40 may impose a charge for copies sufficient to recover the

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delete
1 cost of printing.

2
3 Article 7. Administration and Enforcement
4

*such rules
as it
determines
are neces-
sary*

5 723.150. The Judicial Council shall adopt *delete* rules for the
6 administration of this chapter, including rules
7 prescribing the pay period or periods to which various
8 forms of prepaid or deferred earnings are to be allocated
9 and the method of computing the amount to be withheld
10 from such forms of earnings under Section 723.050.

11 723.151. The Judicial Council may perform all acts
12 required by the Administrator of the Wage and Hour
13 Division of the United States Department of Labor as
14 conditions to exemption of this state from the earnings
15 garnishment provisions of the Consumer Credit
16 Protection Act of 1968 (15 U.S.C. Secs. 1671-1677),
17 including, but not limited to:
18

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

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

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

35 723.152. If an employer withholds earnings pursuant
36 to this chapter and, with the intent to defraud either the
37 judgment creditor or the judgment debtor, fails to pay
38 such withheld earnings over to the judgment creditor,
39 the employer is guilty of a misdemeanor.

40 723.153. (a) No employer shall defer or accelerate

1 any payment of earnings to an employee with the intent
2 to defeat or diminish the creditor's rights under an
3 earnings withholding order issued pursuant to the
4 procedures provided by this chapter.

5 (b) If an employer violates this section, the judgment
6 creditor may bring a civil action against the employer to
7 recover the amount that would have been payable to the
8 judgment creditor pursuant to this chapter had the
9 employer not violated this section. The remedy provided
10 by this subdivision is not exclusive.

11 723.154. (a) If an employer fails to withhold or to pay
12 over the amount he is required to withhold and pay over
13 pursuant to this chapter, the judgment creditor may
14 bring a civil action against such employer to recover such
15 amount. The remedy provided by this subdivision is not
16 exclusive.

17 (b) Notwithstanding subdivision (a), an employer
18 who complies with any written order or written notice
19 which purports to be given or served in accordance with
20 the provisions of this chapter is not subject to any civil or
21 criminal liability for such compliance unless he has
22 actively participated in a fraud.

23 723.155. An employer is not subject to any civil
24 liability for failure to comply with subdivision (b) of
25 Section 723.075 or subdivision (a) of Section 723.104.

26 723.156. The fee for filing an application for an
27 earnings withholding order under Section 723.102 is two
28 dollars (\$2). No other filing fees may be charged under
29 this chapter.

30 SEC. 17. Section 15406 of the Financial Code is
31 amended to read:

32 15406. The shares and certificates for funds received
33 of members of any credit union and all the accumulation
34 on such shares and certificates are exempt from sale on
35 execution and proceedings supplementary thereto, to the
36 amount of one thousand five hundred dollars (\$1,500) to
37 the extent provided under Sections 690.7 and 690.7½ of
38 the Code of Civil Procedure.

39 SEC. 18. Section 300 of the Labor Code is amended to
40 read:

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

4 (b) *No assignment of, or order for wages or salary,*
5 *earned or to be earned, shall be is valid unless all of the*
6 *following conditions are satisfied:*

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

12 ~~(b)~~ *(2) Where such the assignment of, or order for*
13 *wages or salary is made by a married person, the written*
14 *consent of the husband or wife spouse of the person*
15 *making such the assignment or order is attached to such*
16 *the assignment or order; and. No such consent is*
17 *required of any married person (i) after entry of a*
18 *judgment decreeing his legal separation from his spouse*
19 *or (ii) if the married person and his spouse are living*
20 *separate and apart after entry of an interlocutory*
21 *judgment of dissolution of their marriage, if a written*
22 *statement by the person making the assignment, setting*
23 *forth such facts, is attached to or included in the*
24 *assignment.*

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

29 ~~(d)~~ *(4) Where such the assignment of or order for*
30 *wages or salary is made by a person who is unmarried or*
31 *who is an adult or who is both unmarried and adult, a*
32 *written statement by the person making such the*
33 *assignment or order, setting forth such facts, is attached*
34 *to or included in such the assignment or order;.*

35 ~~(e)~~ *(5) No other assignment or order exists in*
36 *connection with the same transaction or series of*
37 *transactions and a written statement by the person*
38 *making such the assignment or order to that effect; is*
39 *attached thereto to or included therein; and in the*
40 *assignment.*

1 ~~(f)~~ (6) A copy of such ~~an~~ *the* assignment ~~or order~~ and
2 of the written statement provided for in subdivision ~~(d)~~
3 *hereof paragraphs (2), (4), and (5)*, authenticated by a
4 notary public, ~~shall have been~~ *is* filed with the employer,
5 accompanied by an itemized statement of the amount
6 then due to the assignee ; .

7 (7) ~~provided, that at such time~~ *At the time the*
8 *assignment is filed with the employer*, no other
9 assignment ~~or order~~ for the payment of any wages ~~or~~
10 *salary of the employee* is subject to payment ; and no
11 ~~attachment or levy on execution earnings withholding~~
12 *order* against said ~~his~~ wages or salary is in force. Any valid
13 assignment, when filed in accordance with the provisions
14 contained herein, shall have priority with respect to any
15 subsequently filed assignment ~~or order~~ or subsequent
16 attachment or levy on execution. Any power of attorney
17 to assign or collect wages or salary shall be revocable at
18 any time by the maker thereof.

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

27 (d) Under any assignment of ; ~~or order~~ for wages ~~or~~
28 *salary to be earned*, a sum not to exceed 50 per centum
29 of the assignor's wages or salary ; and not to exceed 25 per
30 centum of the assignor's wages or salary, upon the
31 showing that such wages or salary are necessary for the
32 support of his mother, father, spouse, children or other
33 members of his family, residing in this State and
34 supported in whole or in part by his labor, shall be
35 withheld by, and be collectible from, the assignor's
36 employer at the time of each payment of such wages or
37 salary.

38 (e) The employer shall ~~be~~ *is* entitled to rely upon the
39 statements of fact in the written statement provided for
40 in subdivisions ~~(d)~~ and ~~(e)~~ *hereof paragraphs (2), (4),*

1 and (5) of subdivision (b), without the necessity of
2 inquiring into the truth thereof, and the employer shall
3 incur no liability whatsoever by reason of any payments
4 made by him to an assignee under any assignment or
5 order, in reliance upon the facts so stated.

6 (f) *An assignment of wages to be earned is revocable*
7 *at any time by the maker thereof. Any power of attorney*
8 *to assign or collect wages or salary is revocable at any*
9 *time by the maker thereof. No revocation of such an*
10 *assignment or power of attorney is effective as to the*
11 *employer until he receives written notice of revocation*
12 *from the maker.*

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

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

30 SEC. 19. Section 2929 of the Labor Code is amended
31 to read:

32 2929. (a) As used in this section:

33 (1) "Garnishment" means any judicial procedure
34 through which the wages of an employee are required to
35 be withheld for the payment of any debt. *For the*
36 *purposes of this section, "garnishment" includes the*
37 *withholding of the wages of an employee pursuant to an*
38 *earnings withholding order for taxes issued pursuant to*
39 *Article 4 (commencing with Section 723.070) of Chapter*
40 *2.5 of Title 9 of Part 2 of the Code of Civil Procedure, and*

1 *the withholding of wages pursuant to such an order shall*
2 *be deemed to be a garnishment for the payment of a*
3 *judgment for the purposes of subdivision (c).*

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

6 (b) No employer may discharge any employee by
7 reason of the fact that the garnishment of his wages has
8 been threatened.

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

12 (d) *An earnings withholding order issued pursuant to*
13 *Section 723.030 of the Code of Civil Procedure (support*
14 *order) shall be considered a garnishment for the*
15 *payment of one judgment for the purposes of this section.*

16 (e) A provision of a contract of employment that
17 provides an employee with less protection than is
18 provided by ~~this subdivision~~ subdivisions (b) and (c) is
19 against public policy and void.

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

1 Section 304 of the Consumer Credit Protection Act of
2 1968 (15 U.S.C. Sec. 1674).

3 ~~(d)~~ (g) Nothing in this section affects any other rights
4 the employee may have against his employer.

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

12 SEC. 20. Section 270h of the Penal Code, as amended
13 by Chapter 1587 of the Statutes of 1971, is amended to
14 read:

15 270h. In any case where there is a conviction under
16 the provisions of either Section 270 or 270a and there is
17 an order granting probation which includes an order for
18 support, the court may:

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

27 (b) ~~Require assignment of wages pursuant to Section~~
28 ~~4701 of the Civil Code as a condition of probation. This~~
29 ~~remedy shall apply only when there is no existing civil~~
30 ~~order for support of the same person or persons included~~
31 ~~in the probation support order upon which an order of~~
32 ~~assignment has been entered pursuant to Section 4701.~~
33 *Issue an earnings withholding order under Section*
34 *723.030 of the Code of Civil Procedure to enforce the*
35 *order for support.*

36 These remedies are in addition to any other remedies
37 available to the court.

38 SEC. 21. Section 1208 of the Penal Code, as amended
39 by Chapter 1313 of the Statutes of 1971, is amended to
40 read:

1 1208. (a) The provisions of this section, insofar as
2 they relate to employment, shall be operative in any
3 county in which the board of supervisors by ordinance
4 finds, on the basis of employment conditions, the state of
5 the county jail facilities, and other pertinent
6 circumstances, that the operation of this section, insofar
7 as it relates to employment, in that county is feasible. The
8 provisions of this section, insofar as they relate to
9 education, shall be operative in any county in which the
10 board of supervisors by ordinance finds, on the basis of
11 education conditions, the state of the county jail facilities,
12 and other pertinent circumstances, that the operation of
13 this section, insofar as it relates to education, in that
14 county is feasible. In any such ordinance the board shall
15 prescribe whether the sheriff, the probation officer, or
16 the superintendent of a county industrial farm or
17 industrial road camp in the county shall perform the
18 functions of the work furlough administrator. The board
19 of supervisors may also terminate the operativeness of
20 this section, either with respect to employment or
21 education in the county if it finds by ordinance that,
22 because of changed circumstances, the operation of this
23 section, either with respect to employment or education
24 in that county is no longer feasible.

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

1 to continue in his regular educational program, if that is
2 compatible with the requirements of subdivision (d), or
3 may authorize the person to secure education for himself,
4 unless the court at the time of sentencing has ordered
5 that such person not be granted work furloughs.

6 (c) If the work furlough administrator so directs that
7 the prisoner be permitted to continue in his regular
8 employment or educational program, the administrator
9 shall arrange for a continuation of such employment or
10 education, so far as possible without interruption. If the
11 prisoner does not have regular employment or a regular
12 educational program, and the administrator has
13 authorized the prisoner to secure employment or
14 education for himself, the prisoner may do so, and the
15 administrator may assist him in doing so. Any
16 employment or education so secured must be suitable for
17 the prisoner. Such employment or educational program,
18 if such educational program includes earnings by the
19 prisoner, must be at a wage at least as high as the
20 prevailing wage for similar work in the area where the
21 work is performed and in accordance with the prevailing
22 working conditions in such area. In no event may any
23 such employment or educational program involving
24 earnings by the prisoner be permitted where there is a
25 labor dispute in the establishment in which the prisoner
26 is, or is to be, employed or educated.

27 (d) Whenever the prisoner is not employed or being
28 educated and between the hours or periods of
29 employment or education, he shall be confined in the
30 facility designated by the board of supervisors for work
31 furlough confinement unless the work furlough
32 administrator directs otherwise. If the prisoner is injured
33 during a period of employment or education, the work
34 furlough administrator shall have the authority to release
35 him from the facility for continued medical treatment by
36 private physicians or at medical facilities at the expense
37 of the employer, workman's compensation insurer, or the
38 prisoner. Such release shall not be construed as
39 assumption of liability by the county or work furlough
40 administrator for medical treatment obtained.

1 The work furlough administrator may release any
2 prisoner classified for the work furlough program for a
3 period not to exceed 72 hours for medical, dental, or
4 psychiatric care, and for family emergencies or pressing
5 business which would result in severe hardship if the
6 release were not granted.

7 (e) The earnings of the prisoner may be collected by
8 the work furlough administrator, and it shall be the duty
9 of the prisoner's employer to transmit such wages to the
10 administrator at the latter's request. Earnings levied
11 upon pursuant to ~~writ of attachment or execution or in~~
12 ~~other lawful manner~~ *the Employees' Earnings Protection*
13 *Law, Chapter 2.5 (commencing with Section 723.010) of*
14 *Title 9 of Part 2 of the Code of Civil Procedure*, shall not
15 be transmitted to the administrator. If the administrator
16 has requested transmittal of earnings prior to ~~levy, such~~
17 ~~request shall have priority.~~ *service of an earnings*
18 *withholding order under the Employees' Earnings*
19 *Protection Law, none of the earnings of the prisoner shall*
20 *be withheld pursuant to such order unless and until the*
21 *administrator terminates his request that the prisoner's*
22 *employer transmit the prisoner's earnings to the*
23 *administrator.* In a case in which the functions of the
24 administrator are performed by a sheriff, and such sheriff
25 receives a writ of attachment or execution for the
26 earnings of a prisoner subject to this section but has not
27 yet requested transmittal of the prisoner's earnings
28 pursuant to this section, he shall first levy on the earnings
29 pursuant to the writ. When an employer or educator
30 transmits such earnings to the administrator pursuant to
31 this subdivision he shall have no liability to the prisoner
32 for such earnings. From such earnings the administrator
33 shall pay the prisoner's board and personal expenses, both
34 inside and outside the jail, and shall deduct so much of the
35 costs of administration of this section as is allocable to
36 such prisoner, and, in an amount determined by the
37 administrator, shall pay the support of the prisoner's
38 dependents, if any. If sufficient funds are available after
39 making the foregoing payments, the administrator may,
40 with the consent of the prisoner, pay, in whole or in part,

1 the preexisting debts of the prisoner. Any balance shall be
2 retained until the prisoner's discharge and thereupon
3 shall be paid to him.

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

6 (g) In the event the prisoner violates the conditions
7 laid down for his conduct, custody, education, or
8 employment, the work furlough administrator may order
9 the balance of the prisoner's sentence to be spent in
10 actual confinement.

11 (h) Willful failure of the prisoner to return to the place
12 of confinement not later than the expiration of any period
13 during which he is authorized to be away from the place
14 of confinement pursuant to this section is punishable as
15 provided in Section 4532 of the Penal Code.

16 (i) As used in this section, "education" includes
17 vocational training, and "educator" includes a person or
18 institution providing vocational training.

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

21 SEC. 22. Section 11489 of the Welfare and Institutions
22 Code is amended to read:

23 11489. After judgment in any court action brought to
24 enforce the support obligation of an absent parent
25 pursuant to the provisions of this chapter, a writ of
26 execution may be issued against one-half of the earnings
27 of the absent parent due or owing for his personal
28 services and no claim for exemption shall be effective
29 against the enforcement of such writ of execution. the
30 court may issue an earnings withholding order under
31 Section 723.030 of the Code of Civil Procedure to enforce
32 such obligation.

33 SEC. 23. (a) Any levy made pursuant to a writ of
34 execution against the earnings of an employee that has
35 been served on the employer prior to July 1, 1974, shall
36 be given effect after the operative date of this act to the
37 same extent as it would have been given effect had this
38 act not been enacted, and the law in effect prior to the
39 operative date of this act shall govern such levy. No
40 earnings withholding order served pursuant to this act

1 after July 1, 1974, shall be given any effect during the
2 period that a levy made pursuant to a writ of execution
3 against the earnings of an employee has been given
4 effect, and any earnings withholding order served on an
5 employer during the period such a levy is in effect shall
6 be ineffective.

7 (b) Except as otherwise prescribed by rules adopted
8 by the Judicial Council, any order made pursuant to
9 Section 4701 of the Civil Code or Section 270h of the
10 Penal Code prior to the operative date of this act shall
11 remain in effect after the operative date of this act and
12 shall be deemed to be a withholding order for support
13 issued pursuant to Section 723.030.

14 SEC. 24. This act shall become operative on July 1,
15 1974, but the Judicial Council, sufficient funds being
16 available to the Judicial Council, the state agencies
17 concerned with Article 4 (commencing with Section
18 723.070) of the Employees' Earnings Protection Law, and
19 the court clerks shall, prior to that date, do whatever is
20 necessary so that this act may go into effect on July 1,
21 1974.

delete

*An act to amend Section 2929 of the Labor Code,
relating to discharge from employment.*

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

Labor Code § 2929 (amended)

Section 1. Section 2929 of the Labor Code is amended to read:

2929. (a) As used in this section:

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

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

(b) No employer may discharge any employee by reason of the fact that the garnishment of his wages has been threatened.

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

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

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

~~(e)~~ (f) Unless the employee has greater rights under

the contract of employment, the wages of an employee who is discharged in violation of this section shall continue until reinstatement notwithstanding such discharge, but such wages shall not continue for more than 30 days and shall not exceed the amount of wages earned during the 30 calendar days immediately preceding the date of the levy of execution upon the employee's wages which resulted in his discharge. The employee shall give notice to his employer of his intention to make a wage claim under this subdivision within 30 days after being discharged; and, if he desires to have the Labor Commissioner take an assignment of his wage claim, the employee shall file a wage claim with the Labor Commissioner within 60 days after being discharged. The Labor Commissioner may, in his discretion, take assignment of wage claims under this subdivision as provided for in Section 96. A discharged employee shall not be permitted to recover wages under this subdivision if a criminal prosecution based on the same discharge has been commenced for violation of Section 304 of the Consumer Credit Protection Act of 1968 (15 U.S.C. Sect. 1674).

~~(d)~~ (g) Nothing in this section affects any other rights the employee may have against his employer.

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

Comment. Subdivision (d) is added to Section 2929 to prohibit discharge of an employee because his wages have been subjected to garnishment pursuant to an order for support. This subdivision also makes clear that such a garnishment, even though made pursuant to a judgment, is not to be considered under subdivision (c).

The second sentence is added to subdivision (a) (1) to make clear that an employee is given the protection afforded by the section when a withholding order for taxes is issued even though such an order may not involve a judicial procedure and even though the tax liability may not have been reduced to judgment.