

#39.30

11/16/72

Memorandum 72-77

Subject: Study 39.30 - Wage Garnishment and Related Matters

The Chairman of the State Bar Committee on Attachment and Related Matters has indicated that the committee is in opposition to one provision of the wage garnishment recommendation.

The committee objects to subdivisions (c) and (d) of Section 723.101. Section 723.101 deals with the manner of service under the Employees' Earnings Protection Law, recovery of costs of service, and priorities in the event an employer refuses to accept mail service.

The approved text of Section 723.101 and Comment thereto is set out as Exhibit I attached. The State Bar Committee views are set out as Exhibit II attached. You will need to read Exhibit II with some care to determine what action, if any, you believe should be taken with respect to Section 723.101.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT I

§ 723.101. Service; recovery of costs

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

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

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

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

Comment. Subdivision (a) of Section 723.101 specifies the means by which service must be accomplished under this chapter. Although personal service is authorized, it is anticipated that the convenience and economy of service by mail will result in the general use of this method. In any event, subdivisions (b) and (c) make clear that, regardless of which means is actually used, the recovery of the costs of service is limited to the cost of service by certified mail with return receipt requested unless this form of service is first refused by the person being served. Only in such circumstances may the cost of personal delivery be recovered. See subdivision (c).

Subdivision (d) provides certain special rules for problems which can arise where mail service has been refused. For example, suppose creditor A mails an earnings withholding order to his debtor's employer and the employer refuses to accept such mail. Creditor A then serves his order by personal delivery but, in the meantime, creditor B has served an order

requiring the withholding of the wages of the same debtor and *B*'s order has gone into effect. It would be unfair to *A* to deny him his priority because of the employer's refusal. Accordingly, subdivision (d) permits *A* to apply to the court which issued *A*'s original earnings withholding order for an order to the employer directing him to stop withholding pursuant to *B*'s order and to give effect to *A*'s earnings withholding order. So that *A* may have the benefit of a full 120-day withholding, *A*'s earnings withholding order is deemed to have been served on the date of service of the special court order made pursuant to subdivision (d). It should be noted that subdivision (d) only preserves the priority which *A* would have had if the employer had accepted the mail service. Thus, where the intervening order is a withholding order for taxes, *A* is not entitled to displace the taxing agency. See Section 723.077. The remedy provided by subdivision (d) is exclusive. *A* is not entitled to recover amounts previously paid to *B* from either *B* or the employer, and *A*'s order is not given retroactive effect.

Special provisions as to when service is complete for particular purposes are found in Sections 723.022(e) (withholding period) and 723.023(b) (priority of orders). As to service of withholding orders for taxes, see Section 723.080.

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November 7, 1972

Mr. John H. DeMouilly, Executive Secretary
California Law Revision Commission
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Dear Mr. DeMouilly:

Thank you for your letter of November 1, 1972. I am writing with particular reference to the second paragraph of that letter.

Our thoughts regarding 723.101 were set forth in our report to the Board of Governors dated March 15, 1972. I am enclosing pages 5, 6 and 7 of that report, for convenience of reference.

I have not had an opportunity to poll the Committee for suggestions beyond those set forth in the enclosed pages.

However, I personally believe that the greatest difficulty cropped-up in Section 723.101(d). I expect that the difficulty the Committee has pointed out could be eliminated by simply striking that subsection in its entirety. The remedy of the judgment creditor could then be tied in to 723.101(c), which we feel should be amended to provide rights against the employer, rather than the debtor. If rights are granted against the employer, that will tend to prevent collusion between the employee and the employer, and will also remove the unfairness of charging the employee with what might well be the employer's own wrongdoing.

However, if the Commission still wishes to keep a procedure similar to that set forth in (d), the point being made by our Committee is not that the law is too complex in that

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regard, but rather that it is too simple. We feel that it is not proper to completely ignore the intervening creditor's rights when you go about putting together protection for the purported first creditor. For example, when does the intervening creditor's order "expire" for purposes of this section (See §723.107)? Also, who notifies the intervening creditor?

I hope this will clear up the Ad Hoc Committee's thoughts to some extent.

Sincerely,



Ferdinand P. Fernandez
Chairman,
Ad Hoc Committee on Attachments

FFF:mgc
Encl.

D. Service by Mail.- The November Report approved the suggested form of service by mail (p. 11 of November Report), which was set forth in §723.101. That method contemplated service by first class mail, air mail, registered mail and certified mail.

Since the Report, the LRC has amended this proposal to eliminate the possibility of service by first class or air mail. Upon making the change it became necessary to create rather complicated provisions regarding what will happen if the employer refuses the certified or registered mail. [See, 723.101(d).] Unfortunately the complication goes much beyond the changes which were made, and points up the fact that elimination of other types of mail was unfortunate. The following items are noted:

(1) After commencement of litigation, most papers are now served by ordinary mail and that seems satisfactory in the vast majority of instances. It should be permitted here.

(2) In deciding what will happen if the employer rejects service by the certified or registered mail method, it is provided that the cost of personal service will be borne by the "judgment debtor." [§723.101(c).] But he is, or may be, the least able to do so. It seems most unfair to charge him when his employer is guilty of the wrongdoing. In some cases there may well be collusion between the employee and the employer; but that is not necessarily true. The employer himself might be having legal problems, and might reject all such mail on that ground. It would be more appropriate to charge the employer and to have him incur liability and become subject to the court's jurisdiction in a manner similar to §§544 and 545.

(3) In §723.101(d) the creditor whose certified or registered mail is refused is given the right to obtain a court order. The order will give him priority over a creditor whose order is served before the first creditor obtains personal service. The suggested procedure, however, does not:

(a) Provide for any notice to the intervening creditor;

(b) Indicate when the intervening creditor can obtain a new order;

(c) Indicate when, if ever, withholding under the intervening creditor's old order can start; or

(d) Give the intervening creditor any right to appear at the first creditor's hearing so that he can protect his rights.

Therefore, it is recommended that the State Bar oppose the enactment of §723.101 in its present form and suggest that changes be made to resurrect the possibility of ordinary and air mail, which should allow elimination of §721.101(c) and (d); and if that is not done to amend §723.101(c) to charge the employer and §723.101(d) to protect intervening creditors.

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RECOMMENDATION OF THE CALIFORNIA LAW REVISION COMMISSION

relating to

WAGE GARNISHMENT AND RELATED MATTERS

The past several years have witnessed increasingly critical review of the process of wage garnishment¹ leading to significant judicial² and legislative³ activity—both federal and state—in this area. The primary objective of the measures recently enacted at the state and federal levels has been to secure adequate protection for the wage earner's day-to-day income through restrictions on the amount of earnings that can be withheld pursuant to a wage garnishment. In addition, California has enacted legislation modifying its archaic multiple levy wage garnishment procedure.

However, both the rapid pace of recent events and the involvement of different branches and levels of government have produced conflict and uncertainty. In addition, serious defects remain in the California wage garnishment procedure, and the restrictions on the amounts that may be garnished do not adequately protect low income wage earners.

This recommendation reviews the area of wage garnishment and related matters and proposes solutions to the problems revealed.⁴

¹ In California alone, see, e.g., Bruna, *Wage Garnishment in California—A Study and Recommendations*, 53 CAL. L. REV. 1214 (1968); Western Center on Law and Poverty, *Wage Garnishment—Impact and Extent in Los Angeles County* (1968).

² See, e.g., *Briedach v. Family Finance Corp.*, 306 U.S. 337 (1960); *McCallop v. Carberry*, 1 Cal3d 903, 484 P.2d 122, 83 Cal. Rptr. 686 (1970).

³ See, e.g., Consumer Credit Protection Act of 1968 (§§ 301-307), 15 U.S.C. §§ 1671-1677; Cal. Stats. 1970, Ch. 1523; Cal. Stats. 1971, Chs. 1607, 1694; Cal. Stats. 1972, Chs. 43, 649.

4. The California Law Revision Commission is actively engaged in a general review of the California statutes relating to the entire field of creditors' remedies. This recommendation deals with only one aspect of the overall study.

The Commission submitted a recommendation on wage garnishment and related matters to the 1972 Legislature. See Recommendation Relating to Attachment, Garnishment, and Exemptions From Execution: Employees' Earnings Protection Law, 10 Cal. L. Revision Comm'n Reports 701 (1971). Senate Bill 88 was introduced at the 1972 Regular Session to effectuate this recommendation. The bill was not enacted. Upon recommendation of the Senate Judiciary Committee, the bill was referred to the Senate Committee on Rules to be assigned to a proper committee for interim study.

MODERNIZATION OF CALIFORNIA WAGE
GARNISHMENT PROCEDURE

Uniform Wage Garnishment Procedure

Under existing law, there are four different procedures whereby the earnings of an employee may be garnished:

(1) In the ordinary case, the judgment creditor obtains a writ of execution and a public officer executes the levy by personal service on the employer.⁵

(2) Numerous statutory provisions permit mail service of orders to withhold an employee's earnings to secure payment of a delinquent state tax liability.⁶

(3) An order for support of a minor child may be enforced by a court order which, when served on the employer, operates as a continuing assignment of future wages.⁷

(4) The earnings of a public employee may be garnished by filing an abstract or transcript of judgment with the employing public entity.⁸

For these four procedures, the Commission recommends the substitution of one uniform procedure enabling the judgment creditor to obtain and serve upon the employer an earnings withholding order. The details of this uniform scheme are described below.

5. Code Civ. Proc. § 681 et seq.

6. For a listing, see notes 39-41 infra.

7. Civil Code § 4701 (order that employer pay withheld earnings to county clerk, probation officer, or other court or county officer). See also Penal Code § 270h (order issued in connection with criminal nonsupport proceeding).

8. Code Civ. Proc. § 710.

Continuing Levy

Code of Civil Procedure Section 682.3 provides that the levy of a writ of execution upon the earnings of a debtor imposes a continuing duty on the debtor's employer for a specified period to withhold and pay over the required amounts to the levying officer. This continuing levy procedure, as presently enacted, has significant problems.

The major drawback of the continuing levy is that it gives a preferred position to the creditor who first resorts to legal process to enforce his claim.⁹ If the levy is given effect indefinitely, the debt is large, and the debtor's earnings modest, subsequent creditors may be postponed for substantial periods of time. Some compromise between multiple levies and an unlimited continuing levy is necessary. Section 682.3 provides a basic 90-day period; however, subsequent creditors are given no priority when a prior levy expires. The prior creditor knows precisely when his prior levy will expire and accordingly when the next levy must be served to renew his priority. Thus, Section 682.3 may, in practice, be used to secure an unlimited preference.

A significant oversight in the legislation providing for the continuing levy was its failure to make the procedure applicable to garnishment of earnings of public employees. In the case of a public employee, the creditor can garnish only amounts owing to the employee at the time the abstract or transcript of judgment is served on the public entity.¹⁰ Typically, therefore, to satisfy his judgment, the creditor is required to levy on wages a number

⁹ The statement in the text assumes that the first creditor to levy thereby achieves a priority over other creditors. Section 682.3 fails to deal with the question of priority of creditors. Subdivision (d) of Section 690.6, however, provides that "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." This latter provision may be interpreted to simply mean "first in time, first in right." On the other hand, if subdivision (d) requires apportionment between each of several creditors who have served a continuing levy, it could impose intolerable administrative burdens on both the judicial system and employers subject to levy. The Commission recommends that the statute make clear that an earnings withholding order in effect precludes subsequent garnishments during its term of effectiveness except in the case of support or tax orders. See discussion in the text, *infra*, under "Orders for Support or for the Collection of State Taxes."

10. Code Civ. Proc. § 710. Section 710 makes clear that the public employee is entitled to the benefit of state and federal restrictions on the amount of earnings that can be garnished.

of times. Such multiple levies impose an unreasonable cost and nuisance burden on debtors, creditors, public entities, and the courts.

Hardships on employers are also caused by the existing continuing levy scheme. The employer must withhold on earnings due at the time of service of the order. In the case of a large business, this can create serious problems of compliance. Moreover, the employer must pay amounts withheld over to the levying officer each time earnings are withheld, requiring numerous bookkeeping transactions for what are frequently small amounts.

The Commission recommends that a levy on the earnings of any employee, public or private, be made pursuant to an earnings withholding order and that an order generally be in effect for no longer than 120 days,¹¹ at the end of which time the creditor who secured the order would be precluded for a short period (10 days) from serving on the same employer another order based on the same debt. This moratorium period would permit another creditor to intervene with an order based on his debt, which order would then continue in effect for a 120-day period. Likewise, the employer should not be required to withhold earnings for any pay period that ends before the expiration of five days from the date of service of the order, thus easing the problems of compliance and computation. The Commission also recommends that the employer be permitted to pay over monthly any amounts withheld rather than at the time of each withholding. Written instructions and forms should be provided to the employer so that the operation of the continuing levy procedure will be clear.

11. The period of 120 days was selected because the Commission was advised it would be adequate to permit complete satisfaction of the majority of consumer debts. The 120-day rule should not apply to orders for support or for the collection of taxes. Such orders should, until satisfied, have a continuing priority over all other obligations. See discussion in the text, *infra*, under "Orders for Support or for the Collection of State Taxes."

Service by Mail

California law presently requires that writs of execution be levied by a sheriff, constable, or marshal.¹² However, the use of the sheriff or marshal as a high-priced messenger when a creditor is attempting to reach an asset like earnings is generally an extravagant waste of time and money.¹³ The United States Postal Service can perform the same task for a very modest cost. It is in the interest of creditors (who must advance the costs of personal service), debtors (who must ultimately bear the costs of personal service), and the public generally¹⁴ that the function of service be performed in the most efficient and economical manner.

Experience demonstrates that personal service is not a necessary element in wage garnishment procedure. Representatives of the Franchise Tax Board report that no significant problems have resulted from the use of mail service for orders to withhold earnings for delinquent state taxes. Furthermore, the procedure that permits a creditor to garnish earnings of a public employee by filing an abstract or transcript of the judgment with the public entity appears to have worked well even though the filing is by the creditor as distinguished from personal service by a sheriff, marshal, or constable. The law provides adequate remedies--such as citation for contempt and liability for abuse of process--to protect against any possible abuse of the mail levy procedure.

For these reasons, the Commission recommends that service by mail of the various applications, notices, and orders required under the wage garnishment statute be authorized and that recovery of the cost of personal service be permitted only where mail service has been refused.

Employer's Service Charge

The continuing levy procedure should substantially reduce the collection burdens imposed on employers.¹⁵ To alleviate these burdens further, the Commission recommends that an employer be authorized to deduct a one-dollar service charge from the debtor's earnings each time that the employer is required to withhold on behalf of the creditor pursuant to a withholding order.

¹² CODE CIV. PROC. §§ 682, 687.

¹³ The fees charged by the levying officer may include a fee (\$5) for service of the writ (GOVT. CODE § 26722), an additional collection fee (not less than \$1) (GOVT. CODE § 26739), and charges for mileage one-way at 70 cents a mile (GOVT. CODE § 26746).

¹⁴ Despite the fact that the sheriffs and marshals charge a fee for each levy made, it has been estimated that the county--its taxpayers--pays 30 to 50 percent of the expenses of collection. Brunn, *supra* note 1, at 1222.

¹⁵ It has been estimated that, in 1968, employers in Los Angeles County alone expended nearly two million dollars to process wage garnishments--or almost \$20 per paycheck garnished. See Western Center on Law & Poverty, *supra* note 1, at 7. Present law provides virtually no relief to the employer from this burden. See CIVIL CODE § 4701 (employer authorized to deduct the one-dollar service charge for each payment made pursuant to child support order); CODE CIV. PROC. § 710 (authorizes public employer to deduct \$2.50 service charge where required to comply with levy made pursuant to that section).

Ex Parte Application; Judicial Review

Assuming that adequate limitations on the amount which may be garnished are provided automatically,¹⁶ the Commission recommends that the levy procedure continue to be initiated by the creditor upon ex parte application. Provisions for notice and a preliminary judicial hearing in all cases would make the procedure unnecessarily complicated and expensive for all parties. Although the order requiring withholding of earnings should be issued ex parte, provision should be made for an expeditious judicial hearing as to whether the debtor is entitled to an exemption of all or a portion of his earnings on the grounds of hardship¹⁷ or whether the order should be modified or terminated for some other reason. The debtor should be given adequate notice of his right to such a hearing.

PREJUDGMENT RESTRICTIONS ON WAGE GARNISHMENT

In June 1969, the United States Supreme Court in *Sniadach v. Family Finance Corp.*¹⁸ held that the prejudgment garnishment of wages under a Wisconsin statute constituted a taking of property in violation of the due process requirements of the Fourteenth Amendment to the United States Constitution. Six months later, the California Supreme Court, relying on *Sniadach*, held in *McCallop v. Carberry*¹⁹ that California's then existing prejudgment wage garnishment procedure also constituted a taking of property in violation of procedural due process. In an attempt to conform to the relatively narrow holdings in these cases, Section 690.6 of the California Code of Civil Procedure was amended in 1970 to exempt from levy of attachment "all earnings" of the debtor derived from his personal services.²⁰ More recent decisions of the California Supreme Court have placed substantial constitutional limitations on prejudgment attachment procedures generally.²¹ Regardless of what revisions in these procedures are made to satisfy these limitations, the Commission recommends that the complete and automatic exemption of earnings from garnishment pursuant to prejudgment attachment procedures be retained.

¹⁶ See the text, *infra*, under "Postjudgment Restrictions on Wage Garnishment."

¹⁷ See the text, *infra*, under "Hardship Exemption."

¹⁸ 395 U.S. 337 (1969).

¹⁹ 1 Cal.3d 903, 484 P.2d 122, 83 Cal. Rptr. 666 (1970).

²⁰ Cal. Stats. 1970, Ch. 1523, § 19 (emphasis added).

²¹ See, e.g., *Randone v. Appellate Department*, 5 Cal.3d 536, 488 P.2d 13, 96 Cal. Rptr. 708 (1971).

POSTJUDGMENT RESTRICTIONS ON WAGE GARNISHMENT

Introduction

At the same time that prejudgment garnishment of wages received the scrutiny of the courts, wage garnishment generally—including garnishment under postjudgment levy of execution—was the subject of Congressional action. Title III²² was incorporated into the federal Consumer Credit Protection Act of 1968 restricting the "garnishment"²³ of "earnings"²⁴ of a debtor to certain limited amounts²⁵—basically 25 percent of "disposable earnings."²⁶ These restrictions were made applicable nationwide, effective July 1, 1970.²⁷

Subdivision (a) of Section 303 of the federal act provides, in part:²⁸

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

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

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

This means that, if an individual's disposable earnings for a workweek are \$48 or less, his earnings may not be garnished in any amount. If his earnings are between \$48 and \$64, the entire amount above \$48 may be garnished. Above \$64, the 25-percent rule applies. Where debtors in low income brackets are

²² 15 U.S.C. §§ 1671-1677.

²³ Subdivision (c) of Section 302 of the act (15 U.S.C. § 1672(c)) provides:

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

²⁴ Subdivision (a) of Section 302 of the act (15 U.S.C. § 1672(a)) provides:

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

²⁵ See Consumer Credit Protection Act of 1968 (§ 303(a), 15 U.S.C. § 1673(a)).

²⁶ Subdivision (b) of Section 302 of the act (15 U.S.C. § 1672(b)) provides:

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

²⁷ The federal act specifically provides that "no court of . . . any State may make, execute or enforce any order or process in violation of this section." 15 U.S.C. § 1673(c). Hence, the conformity of a state law may be challenged in either a state or a federal court if the state enforces a garnishment statute that fails to conform to the federal minimum requirements. To provide some measure of uniformity, the California Legislature amended subdivision (b) of Section 690.6 of the Code of Civil Procedure to exempt from levy of execution such portion of a debtor's earnings "as is allowed by statute of the United States." Cal. Stats. 1970, Ch. 1523, § 19.

²⁸ 15 U.S.C. § 1673(a).

concerned, the protection afforded by the federal law seems inadequate to permit even a subsistence level of existence for a debtor and his family faced with the high living costs prevailing in California.

To this deficiency in the federal law must be added the difficulty of determining what constitutes "disposable earnings." The federal law defines "disposable earnings" as those earnings remaining "after the deduction . . . of any amounts required by law to be withheld."²⁹ The latter amounts include amounts withheld for federal and state income taxes, federal social security, state disability insurance, and contributions to public retirement funds. Less clear is the treatment of wage assignments. Amounts apparently not deductible include deductions for union dues and for private health and retirement plans. The ambiguities that exist can impose a difficult burden on the employer who must determine what part of his employee's earnings are subject to garnishment.

Even where the disposable earnings test can be clearly applied, the results achieved can be disturbing. For example, amounts withheld for income tax purposes are clearly deductible in determining "disposable earnings." Presumably, this would permit a debtor who does not choose to claim all his exemptions to shield a certain amount of his earnings from his creditors. On the other hand, a debtor claiming a greater number of exemptions will have less withheld and, therefore, more subject to garnishment. Thus, a debtor with a large family and greater needs may have more earnings garnished than a single debtor with the same gross income but with more limited needs.

Recommendations

To alleviate the problems outlined above, the Commission makes the following recommendations.

Basic Restrictions; Withholding Tables

The amount of a debtor's earnings subject to withholding by the employer under a wage garnishment should be limited by statute. The statute should prescribe a formula under which definite amounts would be deducted for federal and state income taxes, social security, and state disability insurance. Similar deductions are made under federal

²⁹ 15 U.S.C. § 1672(b).

law; however, these deductions are based on the actual deductions taken from the wages of the particular debtor. Under the formula proposed, the deductions for would federal and state income taxes be based on the amount that would be withheld from the gross earnings of a single person who claims one tax exemption.

In addition to the deductions listed above, an additional deduction—based on the federal minimum hourly wage— allowed in determining the should be amount of a debtor's earnings which are subject to garnishment. This additional deduction for any workweek would equal 30 times the federal minimum hourly wage. After making these deductions, 25 percent of the earnings remaining (i.e., the debtor's "nonexempt earnings") should be subject to withholding under an earnings withholding order.³⁰

Fixing the deductions in the manner stated permits the preparation of withholding tables prescribing the maximum amount of earnings that may be withheld from a given amount of gross earnings. An employer would not need to make computations but would merely refer to the tables to determine the amount he is required to withhold under an earnings withholding order. For further assist-

ance to the employer, the Judicial Council should be required to prepare withholding tables for weekly, monthly, and other common pay periods. A creditor serving an earnings withholding order should be required to accompany the order with a copy of these tables.³¹

Table 1 indicates the approximate amount that would be withheld under the proposed statute as compared to the approximate amounts that would be withheld under existing California law (and the federal Consumer Credit Protection Act (CCPA)).

30. In order that the employer will not be required to withhold less than \$10, the 25-percent rule should be qualified as follows: Where the nonexempt earnings for any workweek are less than \$20, nothing should be withheld; if the nonexempt earnings for the workweek are \$20 or more, \$10 plus 25 percent of the nonexempt earnings in excess of \$20 should be withheld.

31. The Judicial Council should be authorized to dispense with this requirement in cases where the employer already has this information.

Table 1. Withholding Comparison Table

Deductions have been made for federal and state income tax withholding, social security, and state disability insurance. No deduction has been made for contributions to public retirement systems. The state income tax deduction is based on withholding tables for 1972. The federal social security tax rate is 5.5% on the first \$10,500 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 amounts to be withheld are computed using a \$1.60 minimum wage. 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. ("CCPA" = Consumers Credit Protection Act of 1968.)

GROSS EARNINGS (weekly/annual)	EXISTING LAW						PROPOSED STATUTE
	SINGLE PERSON (claiming 0 exemptions)		MARRIED + 2 CHILDREN (claiming 4 exemptions)		MARRIED + 6 CHILDREN (claiming 8 exemptions)		Amount withheld
	Disposable earnings	Amount withheld (CCPA)	Disposable earnings	Amount withheld (CCPA)	Disposable earnings	Amount withheld (CCPA)	
\$60/3,120	\$47.50	-0-	\$56.10	\$8.10	\$56.10	\$8.10	-0-
70/3,640	54.85	\$6.85	65.05	16.26	65.45	16.36	-0-
80/4,160	61.90	13.90	73.00	18.25	74.80	18.70	-0-
83/4,316	64.31	16.08	75.51	18.88	77.61	19.40	-0-
84/4,368	64.84	16.21	76.24	19.06	78.54	19.64	\$10.00
90/4,680	68.95	17.24	80.95	20.24	84.15	21.04	11.00
100/5,200	75.60	18.90	88.60	22.15	93.50	23.38	13.00
110/5,720	82.55	20.64	96.35	24.09	102.85	25.71	15.00
120/6,240	89.40	22.35	104.10	26.03	112.20	28.05	16.00
135/7,020	99.73	24.93	115.73	28.93	124.63	31.16	19.00
150/7,800	109.35	27.34	126.75	31.69	136.15	34.04	21.00
170/8,840	122.85	30.71	141.85	35.46	151.65	37.91	25.00
200/10,400	142.50	35.63	164.10	41.03	173.90	43.48	30.00
250/13,000	173.15	43.29	199.85	49.96	210.95	52.74	37.00
300/15,600	200.80	50.20	232.90	58.23	246.60	61.65	44.00
400/20,800	250.50	62.63	295.40	73.85	310.80	77.70	57.00
600/31,200	349.20	87.30	402.70	100.68	424.10	106.03	82.00

Table 2 demonstrates that a major benefit of the Commission's proposals is to permit a low income debtor to retain a greater portion of his earnings than is permitted under existing law, thereby virtually eliminating his need to claim an exemption based on hardship for a greater amount of his earnings. This will not only protect an unsophisticated debtor unable to follow the procedures necessary to exempt additional earnings, but it will also avoid burdening the courts with claims of exemption. Because the amount of earnings withheld for the creditor is the same for all debtors with the same gross income, regardless of family size, the debtor who has claimed more than one dependent for tax purposes will have an actual take-home pay greater than that of a single debtor with the same gross earnings. The recommendation, in this way, recognizes and accommodates the greater need of the debtor with dependents.

Table 2. Disposable Earnings After Garnishment

Table assumes that employee is under social security and state disability insurance. If he is not, disposable earnings after garnishment would increase by about 5% for social security and 1% for state disability insurance. Source: Table 1.

GROSS EARNINGS (weekly/annual)	SINGLE PERSON (claiming 0 exemptions)		MARRIED + 2 CHILDREN (claiming 4 exemptions)		MARRIED + 6 CHILDREN (claiming 8 exemptions)	
	Existing law	Proposed statute	Existing law	Proposed statute	Existing law	Proposed statute
\$60/3,120	\$47.50	\$47.50	\$48.00	\$56.10	\$48.00	\$56.10
70/3,640	48.00	<u>54.85</u>	48.79	<u>65.05</u>	49.09	<u>65.45</u>
80/4,160	48.00	<u>61.90</u>	54.75	<u>73.00</u>	56.10	<u>74.80</u>
83/4,316	48.23	<u>64.31</u>	56.63	<u>75.51</u>	58.21	<u>77.61</u>
84/4,368	48.63	<u>54.84</u>	57.18	<u>66.24</u>	58.90	<u>68.54</u>
90/4,680	51.71	<u>57.95</u>	60.71	<u>69.95</u>	63.11	<u>73.15</u>
100/5,200	56.70	<u>62.60</u>	66.45	<u>75.60</u>	70.12	<u>80.50</u>
110/5,720	61.91	<u>67.55</u>	72.26	<u>81.35</u>	77.14	<u>87.85</u>
120/6,240	67.05	<u>73.40</u>	78.07	<u>88.10</u>	84.15	<u>96.20</u>
135/7,020	74.80	<u>80.73</u>	86.80	<u>96.73</u>	93.47	<u>105.63</u>
150/7,800	82.01	<u>88.35</u>	95.06	<u>105.75</u>	102.11	<u>115.15</u>
170/8,840	92.14	<u>97.85</u>	106.39	<u>116.85</u>	113.74	<u>126.65</u>
200/10,400	106.87	<u>112.50</u>	123.07	<u>134.10</u>	130.42	<u>143.90</u>
250/13,000	129.86	<u>136.15</u>	149.89	<u>162.85</u>	158.21	<u>173.95</u>
300/15,600	150.60	<u>156.80</u>	174.67	<u>188.90</u>	184.95	<u>202.60</u>
400/20,800	187.87	<u>193.50</u>	221.55	<u>238.40</u>	233.10	<u>253.80</u>
600/31,200	261.90	<u>267.20</u>	302.02	<u>320.70</u>	318.07	<u>342.10</u>

Hardship Exemption

In the past, California has theoretically taken a more flexible approach to the protection of earnings than that evidenced by the federal law. Under subdivision (c) of Section 690.6 of the Code of Civil Procedure, a debtor may protect from execution

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.

* * * * *

In actual practice, the exemption provided for earnings necessary for the use of a debtor's family has proved to be of little value to the debtor. In order to obtain the exemption, the debtor must follow the procedure outlined in Section 690.50. If the creditor alleges that the debt was incurred for "common necessities," there follows a process of affidavit, counteraffidavit, hearing, and possible appeal; all of which takes time, effort, and some sophistication, and still may end with the debtor denied money currently necessary for his family's support. Perhaps, as a result, comparatively few debtors have availed themselves of the exemption although many more appear to be eligible for it.²²

The Commission recommends that the "common necessary" exception be eliminated, that the procedure for claiming an exemption of an additional amount essential for support of the debtor's family be simplified, and that the availability of this right be made clear to the debtor. However, in recognition of the greater liberality provided in the basic exemption, a stricter standard—"essential for support"—should be provided to make clear that the exemption is only intended for use in extraordinary circumstances and is not intended to shield a debtor from his judgment creditors while maintaining other than an austere life style. Only such additional amount as is required for the maintenance of a basic standard of living should be exempt. These matters should be determined by reference to a full financial statement supplied by the debtor seeking the exemption, and the creditor should be supplied with a copy of the financial statement before the time of the hearing.

²² See Western Center on Law & Poverty, *supra* note 1, at 6, 122-123. See also Brunn, *supra* note 1, at 1219.

ORDERS FOR SUPPORT OR FOR THE COLLECTION OF STATE TAXES

Introduction

Subdivision (b) of Section 303 of the federal Consumer Credit Protection Act specifically exempts (1) "any order of any court for the support of any person" and (2) "any debt due for any State or Federal tax" from the restrictions imposed on the amounts permitted to be withheld from earnings in the collection of all other types of debts.³³ The legislation recommended by the Commission recognizes the special nature of these two types of debts.

Orders for Support

Enforcement of orders for support is accomplished in a variety of ways under existing law.³⁴ Perhaps most commonly, compliance is achieved under the threat of the exercise of the court's contempt power; however, execution may be levied for unpaid, accrued amounts.³⁵ In addition, a court may enforce an order for child support by ordering a parent to assign future wages, which order operates as an assignment and binds the employer.³⁶ Such order remains in effect until modified or revoked by the court. Regardless of the enforcement procedure followed, orders for support are not generally subject to any fixed limitations³⁷ and obligations for support are often accorded some measure of priority over other types of debts.³⁸

33. See 15 U.S.C. § 1673(b) (1), (3).

34. See, e.g., CIVIL CODE § 4701; WELF. & INST. CODE § 11489.

35. See, e.g., *Rankins v. Rankins*, 52 Cal. App.2d 231, 126 P.2d 125 (1942).

36. Civil Code § 4701. See also Penal Code § 270h (assignment order for support issued in connection with criminal proceeding for failure to support spouse or minor children).

37. See Civil Code § 4701 (exemption for 50% of person's earnings not available against execution issued upon a judgment for support). But see WELF. & INST. CODE § 11489 (exemption for 50% of earnings on execution issued upon judgment in action for aid to dependent child).

38. See, e.g., Civil Code § 4701 (court ordered wage assignment has priority as against any garnishment or other assignment unless otherwise ordered by court); Code Civ. Proc. § 690.6 (earnings necessary for support of family exempt from execution).

In place of the procedures for reaching earnings through execution or involuntary assignment, the Commission recommends a general procedure for continuous withholding by employers for support. Specifically, the court

should be authorized to issue an earnings withholding order to enforce a prior order or judgment for the support of any person, including a former spouse of the debtor. The order should continue in effect until terminated by the court; it should be unrestricted in amount (although the debtor should be permitted to have the order reduced by the amount he proves is essential for the support of himself or his present family); and the order should be given priority over all other earnings withholding orders. An order for support should not, however, preclude simultaneous withholding under another order if the debtor's income is sufficiently large to enable withholding under both.

The recommended procedure would provide an efficient and economical method to compel persons who have support obligations to keep those obligations current. At the same time, the support obligor would be given adequate protection against wage garnishment on an ordinary judgment. The Commission anticipates that lawyers and the courts will recognize the benefits of the procedure and that its use in marriage dissolution cases where appropriate will make judgments for delinquent support payments relatively rare. Dependents are often required to seek welfare benefits because support payments are not made when due; and, when such payments are not kept current, it is often impossible to recover the past due payments from the support obligor.

Tax Orders

Under existing law, there are a number of procedures for the collection of unpaid, delinquent state taxes:

(1) The tax liability can be reduced to *judgment*; and, subject to the various exemptions from execution, the judgment can be collected in the same way any other judgment is collected.

(2) A *warrant*,³⁹ which has the same effect as a writ of execution, can be issued by the taxing agency. Collection under such a warrant also is subject to the same exemptions as a levy of execution.⁴⁰

³⁹ Provisions that authorize issuance of such warrants are: UNEMP. INS. CODE § 1785 (unemployment compensation contributions); REV. & TAX. CODE §§ 6776 (sales and use taxes), 7881 (vehicle fuel license tax), 9001 (use fuel tax), 10111 (motor transportation tax), 16071 (gift tax), 18906 (personal income tax), 26191 (bank and corporation taxes), 30341 (cigarette tax), 32365 (alcoholic beverage tax). See also REV. & TAX. CODE § 14321 (inheritance tax).

⁴⁰ See CODE CIV. PROC. § 690.51.

(3) A *notice or order to withhold*⁴¹ may be given by mail to any person who has in his possession or control any credit or other personal property or thing of value belonging to the person alleged to be liable for the tax, and such person may not dispose of the property without the consent of the taxing agency unless the tax is paid in full. This is a type of attachment procedure. The person notified is required to make a report to the taxing agency of the credit or other personal property being withheld within a few days after receipt of the notice. The personal income tax law and bank and corporation tax law contain a significant additional feature: They require the person holding the property to deliver it to the Franchise Tax Board up to the amount of the delinquent taxes. In contrast with the warrant procedure, there are no exemptions applicable to property required to be withheld and delivered to the Franchise Tax Board pursuant to these two provisions. Accordingly, the board is encouraged to use this third alternative whenever it is available. The Commission has been advised that, in some cases, an employee's entire paycheck has been withheld and paid over to the Franchise Tax Board for delinquent personal income taxes, leaving the employee with nothing from his current earnings to cover the basic needs of his family.

These tax collection procedures should be integrated with the procedures provided generally for levy upon an employee's earnings. While the protection of the public fisc justifies the preferential treatment of tax orders, it does not justify summarily depriving a tax debtor of the means for the current support of his family. The Commission recommends that taxing agencies which are authorized to issue warrants or notices to withhold be authorized to issue directly (without application to the court) withholding orders for the collection of state tax liabilities. The amount withheld under such orders should be limited generally to not more than twice the amount that would be withheld under an ordinary earnings withholding order. In addition, the tax debtor should be permitted to claim an additional amount as "essential for the support of himself or his family." The taxing agency should also be authorized as an alternative to apply to the court for an order requiring the debtor's employer to pay all earnings other than that amount which the taxpayer proves is essential for the support of himself or his family. Orders issued under either procedure should have priority over all other earnings withholding orders except orders for support. However, regardless which procedure is followed, the tax liability should be required either to be shown on the face of the debtor's tax return or to have been determined in an administrative or judicial proceeding at which the tax debtor had notice and an opportunity to be heard.

41 Provisions that authorize the giving of a notice to withhold are: UNEMP. INS. CODE § 1755 (unemployment compensation contributions); REV. & TAX. CODE §§ 6702 (sales and use taxes), 7851 (vehicle fuel license tax), 8852 (use fuel tax), 10051 (motor transportation tax), 11451 (private car tax), 16101 (gift tax), 18907 (personal income tax), 26132 (bank and corporation taxes), 30311 (cigarette tax), 32381 (alcoholic beverage tax).

42. Green v. Franchise Tax Board, 27 Cal. App.3d 38, ___ Cal. Rptr. ___ (1972).

STATE EXEMPTION FROM FEDERAL LAW; STATE ADMINISTRATION

The federal Consumer Credit Protection Act invites each state to enact its own restrictions on the garnishment of earnings and to undertake its own enforcement of these provisions.⁴³ The advantages of exemption seem apparent. Nothing is gained by having two separate garnishment restriction laws, one state and one federal. An exemption from the federal restrictions would permit California debtors, creditors, and employers to refer to only one body of law to determine the extent to which earnings are subject to garnishment. To gain exemption, a state must enact a law with provisions at least as protective to the individual as the federal law.⁴⁴ To obtain the exemption, a representative authorized to act on behalf of the state as a liaison with the federal administrator must be designated. The designated official should also be given the duties of rule making and similar administrative tasks. The Commission recommends that the Judicial Council be given these responsibilities.

To achieve uniformity, the Judicial Council should also be authorized to prescribe forms necessary to carry out the prescribed procedures.

⁴³ Section 305 of the act (15 U.S.C. § 1675) provides:

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

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

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

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

RELATED PROBLEMS

Paid Earnings

Code of Civil Procedure Section 690.6 protects earnings "received" by the debtor.⁴⁵ However, this exemption is combined with the levy procedure provided by Section 682.3 in a way which may make the exemption of "paid" earnings unworkable. To exempt earnings payable by an employer but to permit those same earnings to be taken on levy of execution as soon as they pass into the hands of the employee-debtor would be poor public policy. Accordingly, the Commission recommends that earnings of the debtor which have been paid to him and are retained in the form in which paid or as cash⁴⁶ be exempt from levy of execution to the extent they are essential for the support of the debtor or his family.

⁴⁵ Between 1937 and 1970, California granted a wage exemption to earnings "received."

Cal. Stats. 1937, Ch. 578, § 1, at 1623. Prior to 1937, the exemption was accorded to earnings without reference to their status as "owing" or paid over. The word "received" was construed early as including accrued but unpaid wages. See *Medical Finance Ass'n v. Rambo*, 33 Cal. App.2d Supp. 756, 757, 86 P.2d 159, 160 (Sup. Ct. L.A., App. Dep't 1938) ("We are not to be understood as saying that the exemption would not also attach to the proceeds of his earnings in the judgment debtor's hands, so long as they could be identified as such. That question is not before us and we express no opinion on it."). In subsequent cases, the California courts at least sub silentio applied the wage exemption to a paycheck in the hands of the employee or deposited by him in a bank account. See *Medical Finance Ass'n v. Short*, 36 Cal. App.2d Supp. 743, 92 P.2d 961 (Sup. Ct. L.A., App. Dep't 1939) (W.P.A. worker's paycheck); *Le Font v. Rankin*, 167 Cal. App.2d 433, 334 P.2d 808 (1959) (bank account); *Carter v. Carter*, 53 Cal. App.2d 13, 130 P.2d 186 (1942) (bank accounts).

The elimination of the word "received" by Cal. Stats. 1970, Ch. 1523, § 19, probably destroyed the ability of a debtor to continue such tracing. See *Randone v. Appellate Department*, 5 Cal.3d 536, 559 n.22, 488 P.2d 13, 28 n.22, 96 Cal. Rptr. 709, 724 n.22 (1971). However, the word "received" was restored by Cal. Stats. 1971, Ch. 1684, § 4.

⁴⁶ This recommendation does not deal with whether a special exemption should be provided for various types of savings and checking accounts. In its prior recommendation, the Commission recommended that a uniform system of exemptions be provided for various types of savings and checking accounts. See Recommendation Relating to Attachment, Garnishment, and Exemptions From Execution: Employees' Earnings Protection Law, 10 Cal. L. Revision Comm'n Reports 701, 723-725, 739-743 (1971). However, the Commission has been advised that its proposed uniform exemption for savings and checking accounts would not satisfy federal requirements under the Consumer Credit Protection Act of 1968. Letter from Ben P. Robertson, Deputy Administrator, Employment Standards Administration, U.S. Department of Labor, dated August 2, 1972, on file in office of California Law Revision Commission. For this reason, the Commission has withdrawn its recommendation proposing a uniform exemption for various types of savings and checking accounts.

Retirement Funds

The federal restrictions on garnishment imposed by Title III apply to "periodic payments pursuant to a pension or retirement program."⁴⁷ California law regarding such payments is less clear. As for payments held or in the process of distribution from public pension and retirement plans, subdivision (b) of Section 690.18 of the Code of Civil Procedure provides a complete and automatic exemption. Other statutes provide for exemptions for specific public retirement plans⁴⁸ and certain private plans.⁴⁹ The Commission recommends that periodic payments payable by a pension or retirement plan that are not otherwise exempt be made exempt from execution to the same extent that wages are exempt.

The Commission also recommends that subdivision (c) of Section 690.18 be repealed. This subdivision appears to have been intended to provide an exemption for certain private retirement plans "in any bankruptcy proceeding." However, federal law preempts state statutes that conflict with the national bankruptcy laws.⁵⁰ And the policy of the national bankruptcy law is to allow a debtor only those exemptions against the claims of creditors that he would be allowed outside bankruptcy.⁵¹ Accordingly, subdivision (c) appears to be unconstitutional as an attempt to provide an exemption that

47. 15 U.S.C. § 1672(a), quoted in note 24 supra.

48. See, e.g., Educ. Code § 13808 (State Teachers' Retirement System); Govt. Code §§ 21201 (Public Employees' Retirement Law), 31452 (County Employees Retirement Law of 1937).

49. Corp. Code §§ 28002, 28005.

50. Cf. International Shoe Co. v. Pinkus, 278 U.S. 261 (1929).

51. See D. Cowans, Bankruptcy Law and Practice § 589 (1963).

applies only in a bankruptcy proceeding.⁵² Moreover, the second sentence of subdivision (c), purporting to deny an exemption to Keogh Act plans, conflicts with the exemption provided such plans by other statutes.⁵³

Wage Assignments

Section 300 of the Labor Code presently grants a valid prior voluntary wage assignment preference over subsequent assignments and levies of execution. Continuation of such a preference would permit a judgment debtor to give preference to one creditor and to defeat the claims of other creditors who seek to collect on their judgments under the proposed earnings withholding procedure. To integrate wage assignments with the operation of the latter procedure, the Commission recommends that a prior wage assignment be granted priority only until the end of the pay period during which an earnings withholding order is served. The operation of the earnings withholding order should be suspended during this period, thus permitting the debtor an opportunity to put his affairs in order. Such action may include revocation of the prior assignment. In this regard, wage assignments should be made revocable at will as to unearned wages. Thus, where an assignment becomes too onerous --for example, after service of an earnings withholding order--such an assignment may be revoked.

52. Cf. Opinion of James E. Moriarty, Referee in Bankruptcy, in In re Kanter, U.S. District Court, Los Angeles (February 18, 1972), published in Los Daily Journal Report Section at 14 (July 14, 1972), holding unconstitutional subdivision (b) of Section 688.1 of the Code of Civil Procedure on the ground that it is an attempt to provide a restriction that applies only in a bankruptcy proceeding ("It is apparent that CCP 688.1 as amended stands as an obstacle to the rights of a trustee under Sections 70a(5) and 70c of the Bankruptcy Act while other judgment creditors not so restricted may pursue their rights. Accordingly, this Court must hold that CCP 688.1(b) is in conflict with Sections 70a(5) and 70c of the Bankruptcy Act and under the Supremacy Clause of the Constitution said subsection (b) of CCP 688.1 is unconstitutional.").

53. Protection for private pension and retirement plans that meet certain requirements is provided by Sections 28002 and 28005 of the Corporations Code.

Discharge From Employment

Section 2929 was added to the Labor Code in 1971 upon Commission recommendation⁵⁴ to provide protection to the employee against discharge for threat of garnishment or for garnishment for the payment of one judgment. The Commission recommends that Section 2929 be amended 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. The Commission also recommends that Section 2929 be amended to prohibit the discharge of an employee because his wages have been subjected to garnishment pursuant to an order for support and to make clear that such a garnishment, even though made pursuant to a judgment, is not to be counted in computing the number of garnishments for the purpose of Section 2929.

54. Recommendation Relating to Attachment, Garnishment, and Exemptions From Execution: Discharge From Employment, 10 Cal. L. Revision Comm'n Reports 1147 (1971).

BENEFICIAL IMPACT OF RECOMMENDATIONS

The changes in California wage garnishment procedure and related matters recommended by the Commission would result in significant improvements in debtor-creditor relations. Some of the beneficial effects the recommended changes would have on the most directly affected groups--employers, employees, creditors, and the public--are summarized below.

Employers

A primary objective of the Commission's recommendations is to provide a wage garnishment procedure that minimizes the burden that such garnishments impose on employers.

Comprehensive statute. The four different procedures now used in California for wage garnishment will be superseded by one comprehensive statute. An employer will be able to refer to one statute that comprehensively covers wage garnishment, thus avoiding the need for concern with several different types of procedures.

Forms and instructions. Instructions prepared by the Judicial Council will explain the employer's duties under a wage garnishment order. Forms adopted by the Judicial Council will minimize the employer's burden in complying with the order. Court clerks will provide a ready source of reliable information concerning wage garnishment procedure.

Mail service. Mail service of earnings withholding orders will enable the employer to process garnishment orders to the appropriate department or person for action without disruption of normal business procedures.

Service charge. The one-dollar service charge the employer will be permitted to make each time he withholds earnings will lessen the employer's economic burden.

Withholding table. The withholding table supplied to the employer will make it relatively simple to determine the amount to be withheld. Withholding will be on the basis of the employee's gross earnings, and the need to compute "disposable earnings" will be eliminated.

Delay in effective date of order. The five-day delay in the effective date of a withholding order will avoid the need to compute the amount to be withheld for only part of a pay period and will permit the employer to process the order in a businesslike way rather than having to withhold on earnings due on the date the order is received.

Reduction in number of wage garnishments. The protection afforded the earnings of low income employees will reduce the number of cases where deductions are required, and the \$10 minimum on the amount to be withheld will avoid the need to deduct small amounts where the cost to the employer may exceed the amount received by the creditor.

Monthly payment. The provision for monthly payment of withheld earnings will avoid the necessity of preparing and sending a check for the withheld earnings after each payday.

Protection from liability for good faith errors. Provisions are included that will protect the employer from civil or criminal liability for good faith errors.

Employees

The Commission's recommendations also provide significant benefits to employees.

Greater protection for low-income employees. Substantial reductions will be made in the amount to be withheld from earnings of employees in the low income brackets.

Greater need of employee with dependents recognized. The greater needs of a married person with dependents will be recognized under the recommended withholding system.

Withholding table. The use of a withholding table will greatly simplify the computation of the proper amount to be withheld and will make it easier for the employee to discover any errors made by the employer in computing the amount to be withheld.

Avoidance of need to claim exemption. The adequacy of the protection afforded by the withholding table system will reduce the need to claim a hardship exemption.

Hardship exemption. A sensible "hardship exemption" will be provided for extraordinary cases. This exemption will be one that cannot be defeated on the ground that the underlying debt was incurred for a "common necessary." Where it is necessary for the employee to claim the hardship exemption, the streamlined procedure and information provided the employee will assist him in making his claim.

Mail service. The authorization to use mail service in the ordinary case will substantially reduce the cost of wage garnishment, a cost that ultimately is paid by the employee.

Tax delinquency withholding orders. The harsh effects of a withholding order for delinquent state taxes will be mitigated.

Wage assignments. The employee will be permitted to revoke a wage assignment insofar as it relates to wages unearned at the time he revokes the assignment.

Discharge from employment. Greater protection will be given employees against discharge from employment because of wage garnishment.

Paid earnings. The employee's paid earnings will be protected to the extent they are essential for the support of the employee and his family.

Creditors

The establishment of a simple, businesslike procedure for the collection of judgments through wage garnishment is the primary benefit creditors would receive under the recommended legislation. Clear answers to a large number of procedural questions will be provided. A series of forms will be available to permit easy compliance with statutory requirements. The Judicial Council and court clerks will be a ready source of reliable information concerning wage garnishment procedure. Other benefits to creditors are listed below.

Mail service. Use of mail service will be authorized. Not only will this reduce the cost of wage garnishments but it will also significantly reduce the fees that a creditor now has to advance to the levying officer.

Earnings withholding tables. The earnings withholding tables will enable the creditor more easily to determine whether the correct amount has been withheld from the employee's earnings. Disputes between creditors and employers will be minimized by using gross income as the basis for withholding since this will avoid the possibility of the subtraction of improper items in computing the amount of "disposable earnings." Also, since the employer will pay the withheld amounts directly to the creditor, no reduction will be made from the withheld earnings for the fees of a public officer for handling and disbursing the amounts withheld.

Minimizing hardship exemption hearings. Protecting more adequate amounts of a debtor's earnings without the requirement that he claim a hardship exemption and limiting the hardship exemption to amounts "essential" for support should significantly reduce the number of cases where a hardship exemption

will be claimed, thus reducing the creditor's burden in attending court hearings. The requirement that the debtor submit a complete financial statement with his claim for the hardship exemption and that the creditor be provided a copy of the statement prior to the hearing on the claim should assist the creditor in determining which claims he will resist (thus avoiding his attending court hearings where the exemption is clearly justified) and also will assist the creditor in recovering the full amount he is allowed by law.

Garnishment of earnings of public employees. The uniform procedure will make the continuing levy and mail service procedure available for the garnishment of earnings of public employees, thus avoiding the need to resort to multiple levies.

Goodwill of employers; protection against discharge of employees. The recommended legislation is carefully designed to make compliance with wage garnishment orders as easy as possible for employers. Greater protection will be afforded employees against discharge for wage garnishment, and the improved procedures should do much to minimize employer ill will created by wage garnishments and to combat the possible tendency of some employers to avoid the problems created by a wage garnishment by discharging the employee.

Avoidance of debtor's bankruptcy. The more adequate protection given the earnings of the debtor should be sufficient to encourage the debtor who is pushed by a number of creditors to discharge the judgments against him over a period of time rather than resorting to bankruptcy.

Priorities among creditors. A fair and equitable system for dealing with priorities among creditors will be provided. In addition, the judgment debtor will be prevented from giving one creditor preference over others by a wage assignment.

Enforcing employer compliance. Although the recommended statute would protect the employer from liability for good faith errors, it includes provisions that will preclude the employer and employee from deferring or accelerating the payment of earnings to defeat the creditor's rights and will authorize civil actions by creditors to obtain the amounts that employers are required to withhold but fail to withhold and pay over to the creditor.

Elimination of confusing retirement plan exemption. The elimination of subdivision (c) of Section 690.18, which provides an exemption for money held by a private retirement plan "in any bankruptcy proceeding," may be of great significance to creditors because deleting this subdivision will preclude court interpretations of the subdivision that could greatly expand the exemption provided by other statutes for private retirement plans.

Public

The establishment of a fair and businesslike system for wage garnishment would be one step in meeting complaints as to the lack of justice and the procedural inadequacies of the judicial system. In addition, there are a number of specific benefits to the public as a whole under the recommended legislation.

The increase in the amount the employee may retain when his earnings are garnished and the provision of a hardship exemption that will be allowed only in rare and unusual cases should reduce to a minimum the need for court hearings in garnishment cases. The protection from wage garnishment of amounts essential for support should provide the judgment debtor with incentive to retain his job and pay judgments against him rather than quitting his job and forcing his dependents to rely on welfare assistance.

The provisions for enforcement of support obligations by directing an earnings withholding order to the support obligor's employer offer the

possibility of significantly increasing the number of cases where support obligations will be kept current. This in turn may reduce the number of cases where a spouse or children will require welfare assistance.

Finally, the establishment of the simple, economical, and businesslike system proposed will minimize the involvement of public employees in the collection process.

OPERATIVE DATE

In order to allow sufficient time for state and local public officials and the public to become familiar with the new law and to develop the necessary forms and procedures, the Commission recommends that the new statute become operative on July 1, 1974.

I. Wage Garnishment and Related Provisions

An act to amend Section 4701 of the Civil Code, to amend Sections 682, 688, 690.6, 690.18, 690.50, and 710 of, to add Sections 690.5½ 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 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:

Civil Code

§ 4701 (amended). Continuing withholding order for support

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

4701. In any proceeding where the court has ordered 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 assignment made pursuant to court order shall have priority as against any attachment, execution, or other assignment, unless otherwise ordered by the court.

Comment. Section 4701 is amended to reflect the enactment of the comprehensive procedure for earnings withholding set forth in the Employees' Earnings Protection Law. See CODE CIV. PROC. § 723.010 *et seq.*

While the wage assignment procedure formerly used under Section 4701 is not continued, the substantive effect of the prior law is continued. Thus, the order for support continues to have priority over other withholding orders and assignments and is binding until modified or terminated by the court. See CODE CIV. PROC. § 723.030; LABOR CODE § 300. As under prior law, the court may require withholding from the earnings of either or both parents. Authorization for the employer to deduct a one-dollar fee also is continued under Code of Civil Procedure Section 723.024. Section 4701 applies to orders directed to both public and private employers. See CODE CIV. PROC. § 723.011 (c), (g), and Comment thereto.

Code of Civil Procedure

§ 682 (technical amendment)

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

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

1. If it be against the property of the judgment debtor, it must require such officer to satisfy the judgment, with interest, out of the personal property of such debtor, ~~or if it is against the earnings of such debtor, such levy shall be made in accordance with Section 682.3,~~ and if sufficient

personal property cannot be found, then out of his real property; or if the judgment be a lien upon real property, then out of the real property belonging to him on the day when the abstract of judgment was filed as provided in Section 674 of this code, or at any time thereafter.

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

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

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

5. If it be for the delivery of the possession of real or personal property, it must require such officer to deliver the possession of the same, describing it, to the party entitled thereto, and may at the same time require such officer to satisfy any costs, damages, rents, or profits recovered by the same judgment, out of the personal property of the person against whom it was rendered, and the value of the property for which the judgment was rendered to be specified therein if a delivery thereof cannot be had; and if sufficient personal property cannot be found, then out of the real property, as provided in the

first subdivision of this section.

Comment. Section 682 is amended to reflect the fact that earnings of an employee which are due or owing are not subject to levy of execution but may only be levied upon in the amounts and in the manner provided by the Employees' Earnings Protection Law. See Sections 723.020, 723.021. See also Section 723.011(a), (b). See generally Chapter 2.5 (commencing with Section 723.010). *Cf.* Sections 690.5½, 690.6.

§ 682.3 (repealed)

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

682.3. (a) Whenever the levy of execution is against the earnings of a judgment debtor, the employer served with the writ of execution shall withhold the amount specified in the writ from earnings then or thereafter due to the judgment debtor and not exempt under Section 690.6; and shall pay such amount, each time it is withheld, to the sheriff, constable or marshal who served the writ. If such person shall fail to pay each amount to the sheriff, constable or marshal, the judgment creditor may commence a proceeding against him for the amounts not paid. The execution shall terminate and the person served with the writ shall cease withholding sums thereunder when any one of the following events takes place:

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

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

(b) Upon receipt of an order of the court in which the action is pending, or a certified copy of such order, discharging or recalling the execution or releasing the property. This subdivision shall apply only if no appeal is perfected and undertaking executed and filed as provided in Section 917.2 or a certificate to that effect has been issued by the clerk of the court.

(c) In all other cases provided by law.

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

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

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

(b) At any time after a levy on his earnings the judgment debtor may proceed to claim a full exemption of his earnings in accordance with the provisions of Sections 600.6 and 600.50. The exemption so claimed shall extend to any wages withheld pursuant to the levy of execution whether or not withheld after the claim of exemption is filed:

(c) Subject to the provisions of Section 600.50, the sheriff, constable or marshal who serves the writ of execution and receives the amounts withheld from the judgment debtor's earnings, shall account for and pay to the person entitled thereto, all sums collected under the writ, less his lawful fees and expenses at least once every 30 days, and make return on collection thereof to the court:

Comment. Section 682.3 is superseded by Chapter 2.5 (commencing with Section 723.010).

§ 688 (technical amendment)

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

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

(a) All goods, chattels, moneys or other property, both real and personal, or any interest therein, of the judgment debtor, not exempt by law, except as provided for in Section 600.6, and all property and rights of property seized and held under attachment in the action, are *liable subject* to execution.

(b) Shares and interests in any corporation or company, and debts and credits, and all other property, both real and personal, or any interest in either real or personal property, and all other property not capable of manual delivery, may be levied upon or released from levy in like

manner as like property may be attached or released from attachment, except that a copy of the complaint in the action from which the writ issued need not accompany the writ; provided, that no cause of action nor judgment as such, nor license issued by this state to engage in any business, profession, or activity shall be subject to levy or sale on execution. ~~Gold dust must be returned by the officer as so much money collected at its current value, without exposing the same to sale.~~

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

Comment. Section 688 is amended to make clear that, although earnings of an employee-debtor are "not exempt by law" from all collection procedures, they are exempt from levy of execution and are subject to levy only under the Employees' Earnings Protection Law. See the Comment to Section 682. See generally Chapter 2.5 (commencing with Section 723.010). The phrase "except as provided for in Section 690.6" is deleted as unnecessary. The sentence relating to gold dust is deleted as obsolete.

§ 690.5½ (added). Exemptions; paid earnings

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

690.5½. Earnings of the debtor which have been paid to him and are retained in the form in which paid or as cash are exempt from levy of execution to the extent they are essential for the support of the debtor or his family.

Comment. Section 690.5½ provides an exemption from levy of execution for paid earnings comparable to that provided by Section 723.051 for earnings payable by an employer. See the Comment to Section 723.051.

§ 690.6 (amended). Exemption of earnings from attachment

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

690.6. (a) Except as provided in Section 11489 of the Welfare and Institutions Code, all ~~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.

Comment. Subdivision (a) of Section 690.6 is amended to delete the reference to Welfare and Institutions Code Section 11489 because that section does not permit levy of attachment on earnings. The remainder of Section 690.6 is superseded by

the Employees' Earnings Protection Law. Subdivision (b) is superseded by Section 723.050. Subdivision (c) is superseded by Section 723.051. Subdivisions (d) and (e) are superseded by various other provisions. 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).

§ 690.18 (amended). Exemptions; public and private pension, retirement, disability, or death benefits; vacation credits

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

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

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

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

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

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

Comment. Section 690.18 is amended to delete subdivision (c). Subdivision (c) appears to have been intended to provide an exemption "in any bankruptcy proceeding." However, federal law preempts state statutes that conflict with the national bankruptcy laws. *Cf. International Shoe Co. v. Pinkus*, 278 U.S. 261 (1929). And the policy of the national bankruptcy law is to allow a debtor only those exemptions against the claims of creditors that he would be allowed outside bankruptcy. See D. COWANS, *BANKRUPTCY LAW AND PRACTICE* § 589 (1963). *Cf. Opinion of James E. Moriarty, Referee in Bankruptcy, In re Kanter*, U.S. District Court, Los Angeles (February 18, 1972),

published in Los Angeles Daily Journal Report Section at 14 (July 14, 1972), holding unconstitutional subdivision (b) of Section 688.1 of the Code of Civil Procedure on the ground that it is an attempt to provide a restriction that applies only in a bankruptcy proceeding ("It is apparent that CCP 688.1 as amended stands as an obstacle to the rights of a trustee under Sections 70a(5) and 70c of the Bankruptcy Act while other judgment creditors not so restricted may pursue their rights. Accordingly, this Court must hold that CCP 688.1(b) is in conflict with Sections 70a(5) and 70c of the Bankruptcy Act and under the Supremacy Clause of the Constitution said subsection (b) of CCP 688.1 is unconstitutional.").

The second sentence of subdivision (c), purporting to deny an exemption to Keogh Act plans, conflicted with the exemption provided such plans under Sections 28002 and 28005 of the Corporations Code. Protection for private pension and retirement plans that meet certain requirements is provided by Sections 28002 and 28005 of the Corporations Code. See also Section 690.18½ (periodic payments from pension or retirement fund).

A new subdivision (c) has been added to Section 690.18 to make clear that this section is not the exclusive source of exemptions for retirement funds. See the Comment to Section 690.18½.

§ 690.18½ (added). Exemptions; payments by pension or retirement plans

¶ SEC. 8. Section 690.18½ is added to the Code of Civil Procedure, to read:

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

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

Comment. Section 690.18½ has been added to satisfy federal restrictions on garnishment of "periodic payments pursuant to a pension or retirement program" provided by Title III of the Consumer Credit Protection Act of 1968. See 15 U.S.C. §§ 1672, 1673. Subdivision (b) makes clear that Section 690.18½ is not the exclusive source of exemptions for payments from retirement

funds. See, e.g., CODE CIV. PROC. § 690.18 (public employees); CORP. CODE § 28003 (plans complying with federal Internal Revenue Code requirements); EDUC. CODE § 13808 (State Teachers' Retirement System); GOVT. CODE §§ 21201 (Public Employees' Retirement Law), 31452 (County Employees Retirement Law of 1937).

§ 690.50 (technical amendment)

SEC. 9. Section 690.50 of the Code of Civil Procedure is amended to read:

690.50. (a) If the property mentioned in Sections 690.1 to 690.29, inclusive, shall be levied upon under writ of attachment or execution, the defendant or judgment debtor (herein referred to as "the debtor"), in order to avail himself of his exemption rights as to such property, shall within 10 days from the date such property was levied upon deliver to the levying officer an affidavit of himself or his agent, together with a copy thereof, alleging that the property levied upon, identifying it, is exempt, specifying the section or sections of this code on which he relies for his claim to exemption, and all facts necessary to support his claim, and also stating therein his address within this state for the purpose of permitting service by mail upon him of the counteraffidavit and any notice of the motion herein provided. For purposes of this section, if the property levied upon consists of the earnings of a judgment debtor, each date that earnings are withheld from the judgment debtor shall be deemed to be the date such earnings were levied upon. A judgment debtor shall have the right to file a separate claim of exemption each time that a withholding of earnings occurs; provided, that if a prior claim of exemption has been adjudicated under the same levy, that each separate claim of exemption thereafter be supported by a statement under oath alleging the changed circumstances which support the new claim of exemption. If a claim of exemption be allowed, the judgment creditor shall have the right, at any time during the effective period of the claim of exemption, to move the court for consideration of the claim previously granted on the grounds of a material change of circumstances affecting the debtor's exemption rights. If

the judgment creditor does make such a motion, he must support his motion by a statement under oath alleging the changed circumstances which support his motion for consideration.

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

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

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

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

notice in writing of such hearing to the levying officer and to the other party, and specify therein that the hearing is for the purpose of determining the claim to exemption. The notice may be of motion or of hearing and upon the filing of the notice with the clerk of court, the motion is deemed made.

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

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

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

(i) At such hearing, the party claiming the exemption shall have the burden of proof. The affidavits and counteraffidavits shall be filed by the levying officer with the court and shall constitute the pleadings, subject to the power of the court to permit an amendment in the interests of justice. The affidavit of exemption shall be deemed controverted by the counteraffidavit and both shall be received in evidence. Nothing herein shall be construed to deprive anyone of the right to a jury trial in any case where, by the Constitution, such right is given, but a jury trial may be waived in any such case in like

manner as in the trial of an action. No findings shall be required in a proceeding under this section. When the hearing is before the court sitting without a jury, and no evidence other than the affidavit and counteraffidavit is offered, the court, if satisfied that sufficient facts are shown thereby, may make its determination thereon. Otherwise, it shall order the hearing continued for the production of other evidence, oral or documentary, or the filing of other affidavits and counteraffidavits. At the conclusion of the hearing, the court shall give judgment determining whether the claim to exemption shall be allowed or not, in whole or in part, and may give judgment determining the priority or division of payment between one or more creditors from nonexempt earnings under the provisions of Section 690.6, which judgment shall be determinative as to the right of the creditor to have the property taken and held by the officer or to subject the property to payment or other satisfaction of his judgment. In such judgment the court shall make all proper orders for the disposition of such property or the proceeds thereof.

(j) A copy of any judgment entered in the trial court shall be forthwith transmitted by the clerk to the levying officer in order to permit such officer to either release the property attached or to continue to hold it to sell it, in accordance with the provisions of the writ previously delivered to him. Such officer, unless an appeal from the judgment is waived, or the judgment has otherwise become final, shall continue to hold such property under attachment or execution, continuing the sale of any property held under execution until such judgment becomes final. However, if a claim to exemption under Section 690.5½ 690.6 is allowed by such judgment, the debtor shall be entitled to a release of the earnings so exempted at the expiration of three days, unless otherwise ordered by the court, or unless the levying officer shall have been served with a copy of a notice of appeal from the judgment.

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

(l) Whenever the time allowed for an act to be done

hereunder is extended by the court, written notice thereof shall be given promptly to the opposing party, unless such notice be waived, and to the levying officer.

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

Comment. Section 690.50 is revised to include appropriate references to Sections 690.5½ and 690.18½. The last portion of subdivision (a) is deleted as unnecessary because it is superseded by provisions of the Employees' Earnings Protection Law. See Chapter 2.5 (commencing with Section 723.010). The reference to Section 690.6 and the references to division of earnings between creditors under Section 690.6 have been deleted to conform to the amendment of Section 690.6.

§ 710 (technical amendment)

SEC. 10. Section 710 of the Code of Civil Procedure is amended to read:

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

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

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

2. If such money ; wages or salary is owing and unpaid to such judgment debtor by any county, city and county, city or municipality, quasi-municipality, district or public corporation, said judgment creditor shall file said abstract or transcript and affidavit with the auditor of such county, city and county, city or municipality, quasi-municipality, district or public corporation (and in case there be no auditor then with the official whose duty corresponds to that of auditor). Thereupon said auditor (or other official) to discharge such claim of such judgment debtor shall pay into the court which issued such abstract or transcript by his warrant or check payable to said court the whole or such portion of the amount due on such claim of such judgment debtor ; less an amount equal to one-half or such greater portion as is allowed by statute of the United States, of the earnings of the debtor owing by the county, city and county, city, municipality, quasi/municipality, district or public corporation to the judgment debtor for his personal services to such public body rendered at any time within 30 days next preceeding the filing of such

~~abstract or transcript~~, as will satisfy in full or to the greatest extent the amount unpaid on said judgment and the balance thereof, if any, to the judgment debtor.

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

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

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

(e) The judgment creditor may state in the affidavit any fact or facts tending to establish the identity of the judgment debtor. No public officer or employee shall be liable for failure to perform any duty imposed by this

section unless sufficient information is furnished by the abstract or transcript together with the affidavit to enable him in the exercise of reasonable diligence to ascertain such identity therefrom and from the papers and records on file in the office in which he works. The word "office" as used herein does not include any branch or subordinate office located in a different city.

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

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

~~(h) (1) In the event the moneys owing to a judgment debtor by any governmental agency mentioned in this section are for wages or salary, the judgment creditor shall mail under a separate cover at the time of filing the affidavit with the governmental agency, in an envelope marked "Personal and Confidential", a copy of the affidavit and a Notice to Judgment Debtor as provided in paragraph (2) of this subdivision, addressed to the judgment debtor at his place of employment.~~

~~(2) The Notice to Judgment Debtor shall be in 10/point bold type, and in substantially the following form:~~

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

Procedure:

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

Comment. Section 710 is amended to eliminate the use of the abstract of judgment procedure as a means of garnishing the wages or salary of a public officer or employee. The earnings of public officers and employees may be withheld pursuant to the Employees' Earnings Protection Law only. See Chapter 2.5 (commencing with Section 723.010).

CHAPTER 2.5. EMPLOYEES' EARNINGS PROTECTION LAW

SEC. 11. Chapter 2.5 (commencing with Section 723.010) is added to Title 9 of Part 2 of the Code of Civil Procedure, to read:

CHAPTER 2.5. EMPLOYEES' EARNINGS PROTECTION LAW

Article 1. Definitions

Article 1. Definitions

§ 723.010. Short title

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

§ 723.011. Definitions

723.011. As used in this chapter:

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

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

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

(d) "Judgment" includes a support order.

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

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

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

Comment. Section 723.011 states definitions used in applying this chapter. This chapter deals only with the garnishment or withholding of earnings for services rendered in an employer-employee relationship. See Section 723.020. Subdivisions (b) and (c) are based on the common law requirements for such relationship. It should be noted that an employee may be given considerable discretion and still be an employee as long as his employer has the legal right to control both method and result. However, no attempt is made here to incorporate specific case law arising out of situations involving problems and issues unrelated to the purposes and procedures relevant in applying this chapter. "Employee" includes both private and public employees. See subdivisions (b), (c), and (g). See also Section 710.

"Earnings" embraces all remuneration "whether denominated as wages, salary, commission, bonus, or otherwise." The infinite variety of forms which such compensation can take precludes a more precise statutory definition. Accordingly, the Judicial Council will be required in some circumstances to provide by rule, consistent with the statutory definition, whether certain items are an employee's earnings and, if so, the earnings period to which such earnings are attributable. See Section 723.150. One such item will probably be vacation credits or pay. Different employers will treat this form of compensation differently. Generally speaking, however, vacation pay should be subject to withholding only when paid, i.e., when the employee goes on vacation or terminates his employment in circumstances where he has the right to be paid his accrued benefits.

Unlike the definition of "earnings" used in Title III of the federal Consumer Credit Protection Act of 1968, the term used here does not include "periodic payments pursuant to a pension or retirement program." Separate treatment is accorded such payments under Section 690.18½.

Article 2. General Provisions

Article 2. General Provisions

§ 723.020. Exclusive procedure for withholding earnings

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

Comment. Section 723.020 makes the Employees' Earnings Protection Law the exclusive judicial method of compelling an employer to withhold earnings. Attachment of earnings before judgment is abolished by Section 690.6. For provisions relating to voluntary wage assignments, see Labor Code Section 300. For issuance of an earnings withholding order to enforce an order for support, see Section 723.030, Civil Code Section 4701, Penal Code Section 270h, and Welfare and Institutions Code Section 11489. This chapter has no effect on judgment collection procedures that do not involve the withholding of an employee's *earnings*. See, e.g., Section 690.18 (retirement funds). See also Sections 690.5¼ (paid earnings) and 690.18½ (payments from retirement plan). However, where an employee's earnings are sought to be garnished, the creditor must comply with the provisions of this chapter. This rule applies to public entities as well as private persons. This chapter, for example, imposes limitations on the state's ability to garnish wages for tax delinquencies pursuant to its warrant and notice procedures. See Article 4 (commencing with Section 723.070).

The Employees' Earnings Protection Law has no effect on matters that are preempted by the federal law, such as federal bankruptcy proceedings—including proceedings under Chapter XIII of the Bankruptcy Act—and federal tax collection procedures. *E.g.*, INT. REV. CODE of 1954, § 6334(c). Nor does this chapter apply to deductions which an employer is authorized by statute to make for such items as insurance premiums and payments to health, welfare, or pension plans. See, e.g., GOVT. CODE §§ 1158, 12420; LABOR CODE §§ 224, 300.

Finally, this chapter does not affect the procedures for the examination of a debtor of the judgment debtor provided in Chapter 2 (Sections 717-723) of this part. See Comment to Section 723.154.

§ 723.021. Levy made by earnings withholding order

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

§ 723.022. Employer's duty to withhold; withholding period

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

- (1) The 125th day after the order was served.
- (2) The date of termination requested by the creditor or ordered by the court.
- (3) The date the employer has withheld the full amount specified in the order.

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

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

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

(e) For the purposes of this section, service shall be deemed complete on the date the paper served is actually first received at either the branch or office where the

employee works or the office from which he is paid.

Comment. Section 723.022 states the basic rules governing the employer's duty to withhold pursuant to an earnings withholding order.

Subdivision (b) requires the employer to withhold from all earnings of an employee payable for any pay period of such employee which *ends* during the "withholding period." See Section 723.150 (Judicial Council authorized to adopt rules regarding the pay period to which commissions, bonuses, and the like are attributable). The "withholding period" is described in subdivision (a). It should be noted that *only* earnings for a pay period ending during the withholding period are subject to levy. Earnings for prior periods, even though still in the possession of the employer, are not subject to the order. An employer may not, however, defer or accelerate any payment of earnings to an employee with the intent to defeat or diminish the satisfaction of a judgment pursuant to this chapter. See Section 723.153.

The withholding period generally commences five calendar days (not working or business days) after service of an earnings withholding order is completed. Subdivision (e) makes clear that, for the purposes of this section, service is completed when the particular paper is actually received at the proper office. Compare Section 723.101. For example, if an order is served on Friday, the withholding period would commence on the following Wednesday. See CODE CIV. PROC. § 12. The five-day delay affords the employer time to process the order within his organization, *i.e.*, deliver the order to the employer's bookkeeper, make bookkeeping adjustments, and so on. The introductory clause to subdivision (b) recognizes certain exceptions to this general rule. An employer is not generally required to withhold pursuant to two orders at the same time; thus, a subsequent order will not be given effect. See Section 723.023 (priority of orders) and Comment thereto. Moreover, withholding may be delayed beyond the normal five-day period where a prior assignment of wages is in effect. However, this delay does not affect the date the withholding period terminates under subdivision (a) (1). See LABOR CODE § 300 and Comment thereto.

The withholding period does not end until the first of the events described in paragraphs (1) through (3) of subdivision (a) occurs; thus, the employer has a *continuing* duty to withhold.

Paragraph (1) provides a general expiration date 125 days

after the date of service—thus, the employer will usually be required to withhold for 120 days.

Paragraph (2) reflects the fact that a creditor may voluntarily terminate an order or the court may order termination. See Section 723.105. Of course, in some situations, the court will only modify the prior order, and the employer then must comply with the order as modified.

Paragraph (3) requires the employer to stop withholding when he has withheld the full amount specified in the order.

Again, it should be noted that there are certain exceptions to these rules. One of these is stated in subdivision (c) which requires the employer to stop withholding after he has been served with a certified copy of a satisfaction of the judgment upon which the order is based. See Section 723.101 (manner of service). The judgment creditor has an affirmative duty to so inform the employer of the satisfaction. See Section 723.027. Service of an order for the collection of state taxes suspends the duty of an employer to withhold pursuant to a prior order (other than an order for support). See Section 723.077 (tax orders). However, this is only a suspension. After the tax order is satisfied, if the withholding period for the prior order has not ended and the duty to withhold has not ended under subdivision (c), the employer must again withhold pursuant to the prior order. Similarly, the duty to withhold is not terminated by the layoff, discharge, or suspension of an employee and, if the employee is rehired or returns to work during the withholding period, the employer must resume withholding pursuant to the order. Finally, the termination of certain types of orders—orders for the collection of state taxes and support orders—are governed by separate rules. See Sections 723.030 (support orders); 723.078 (tax orders).

Sometimes an order will be terminated or the judgment upon which it is based will be satisfied without the employer's prior knowledge. Subdivision (d) makes clear that an employer will not be subject to liability for having withheld and paid over amounts pursuant to an order prior to service of a written termination of the order or a certified copy of a satisfaction of judgment. *Cf.* Section 723.078 (tax orders). The employee must look to the creditor for the recovery of amounts previously paid out. See Section 723.154 (employer entitled to rely on documents actually served). See also Section 723.105 (recovery from creditor of amounts received after order terminated).

An earnings withholding order may also be affected by federal bankruptcy proceedings.

§ 723.023. Priority of orders generally

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

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

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

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

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

Comment. Section 723.023 establishes the general rules governing priority of earnings withholding orders. Generally speaking, the first order served is given priority. Occasionally, two or more orders will be served on the same day. In this situation, the employer must comply with the order which was issued pursuant to the judgment first entered. The date of entry of judgment will be indicated on the face of the order. See Section 723.125. In rare instances, orders served the same day will also be based on judgments entered the same day. In this situation, the employer has complete discretion to choose the order with which he will comply. He must, of course, comply with one of these orders. For exceptions to these basic priority rules, see Sections 723.030 (support orders) and 723.077 (state taxes) and the Comments thereto. Unless the subsequent earnings withholding order is for state taxes or for support, an order is ineffective if the employer receives the order while he is required to comply with another. In such a case, the employer does *not* hold such an order and give it effect when the prior order expires but returns it. See Section 723.104. However, the creditor may serve the same order within 45 days after its

issuance. See Section 723.103(c).

It should be noted that, in some circumstances, the operation of an order may be suspended, but the duty to withhold is not terminated. See, e.g., Section 723.077 (tax order suspends operation of prior order); Labor Code Section 300 (suspension where prior assignment in effect). See also Comment to Section 723.022. In such cases, as well as in cases where the subsequent order is not given effect, the employer is required to advise the creditor who has served the order that is suspended or not given effect of the reason for the employer's action. See Sections 723.077 and 723.104.

An employer is generally entitled to rely upon what is served upon him. See Section 723.154 and Comment thereto. He is not required to inquire as to whether or not a creditor has either obtained or served an order improperly.

An earnings withholding order may be served either personally or by certified or registered mail. See Section 723.101. In the latter case, should the employer refuse service (thus forcing the creditor to serve personally), Section 723.101 makes clear that this action does not cause the creditor to lose his priority and outlines the rights of the various parties in such circumstances.

§ 723.024. Employer's service charge for withholding

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

Comment. Section 723.024 authorizes, but does not require, an employer to deduct an additional dollar as a service charge each time he is required to withhold a portion of his employee's earnings pursuant to an earnings withholding order. For example, if the employee is paid weekly and an amount is withheld each week pursuant to the earnings withholding order, the employer may deduct an additional service charge of one dollar each week. A similar one-dollar charge was formerly authorized under Civil Code Section 4701. A charge of \$2.50 was authorized under Code of Civil Procedure Section 710 when earnings of a public employee were levied on under that section. However, there was no provision authorizing an employer to make a service charge in connection with wage garnishments generally.

§ 723.025. Payment to judgment creditor

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

Comment. Section 723.025 specifies when the amounts withheld pursuant to an order must be paid over to the creditor. Generally, this must be done within 15 days after the employee is paid the amount remaining after withholding, but the employer may elect to make monthly remittances.

Regardless of when, or if, payment is required, the employer is required to send an employer's return to the judgment creditor. See Sections 723.104 and 723.126.

§ 723.026. Judgment creditor to furnish receipt for payment

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

Comment. The receipt required by Section 723.026 not only provides the judgment debtor with a record of payments made on the judgment but also enables the judgment debtor to

determine whether his employer has paid the amount withheld from his earnings to the judgment creditor.

§ 723.027. Creditor required to notify employer when judgment satisfied

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

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

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

Comment. Section 723.027 requires the filing of a satisfaction of judgment and service of a copy thereof on the employer if the judgment is satisfied "prior to the end of the withholding period." In some cases, the employer will be aware of the satisfaction by virtue of having himself withheld the amount necessary to satisfy the judgment. See Section 723.022(a)(3). In this case, Section 723.027 does not apply. However, the judgment may be satisfied by additional payments from the debtor or through other debt collection procedures instituted by the creditor. If this is the case, Section 723.027 applies, and the creditor has the duty to notify the employer promptly of the satisfaction by serving on him a certified copy of such satisfaction. As to the general duty of a creditor to furnish a debtor a satisfaction of judgment, see Section 675. As to manner of service, see Section 723.101.

§ 723.028. Withholding order for costs and interest

723.028. Subject to Section 723.107, after the amount stated as owing in the earnings withholding order is paid, the judgment creditor may apply for issuance of another earnings withholding order covering costs and interest that may have accrued since application for the prior order.

Comment. Section 723.028 makes clear that a judgment creditor must apply for another earnings withholding order to recover costs and interest that accrue following the application for a prior order. To illustrate: A creditor obtains a judgment

which his debtor does not pay. The creditor applies for and secures an earnings withholding order directed to the debtor's employer. The application and order require payment of only those amounts owing at the time of the application for this order. See Sections 723.121 (application for issuance of earnings withholding order) and 723.125 (content of earnings withholding order). After the application for this order, further costs may, and interest on the judgment will, accrue. If the creditor wishes to recover these amounts by wage garnishment, he must apply for another earnings withholding order, following the same procedure as before. This application and order is subject to the same general requirements as any other withholding order. It is not entitled to any priority over the orders of other creditors, and the creditor is required to comply with the waiting period prescribed by Section 723.107.

§ 723.029. Lien created by service of earnings withholding order

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

Comment. Section 723.029 is the counterpart of subdivision (c) of Section 688. Section 688(c) provides that the levy under a writ of execution creates a lien on the property levied upon for a period of one year from the date of the issuance of the execution. Service of an earnings withholding order also constitutes a levy (see Section 723.021), but it is not a levy of a writ of execution. Therefore, a separate provision is required to regulate the existence, commencement, and duration of the lien.

The purpose of Section 723.029 is to protect the employer against stale claims and to give the levying creditor priority over competing claims by third parties where the priority questions are not already regulated by other provisions of this chapter. See Section 723.023; see also Labor Code Section 300. For example, if installments are not promptly paid, competing claims may arise under conflict-of-laws rules (see *Sanders v. Armour Fertilizer Works*, 292 U.S. 190 (1934)) or in supervening proceedings under the Bankruptcy Act (§ 67(a)).

Since the lien is created upon periodic payments, the one-year period is measured from the date when each installment required to be withheld becomes payable. This rule

is comparable to that provided for judgment liens for alimony and child support payments by Section 674.5 of the Code of Civil Procedure.

Although the lien is limited to one year, it will not expire if, before the end of the one-year period, the levying creditor brings suit against the employer for the payment of the sums the creditor claims should have been paid to him. See *Boyle v. Hawkins*, 71 Cal.2d 229, 455 P.2d 97, 78 Cal. Rptr. 161 (1969).

§ 723.030. Orders for support

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

(b) Notwithstanding any other provision of this chapter:

(1) The restrictions on earnings withholding contained in Section 723.050 do not apply to a withholding order for support. The amount to be withheld pursuant to a withholding order for support shall be limited to the amount of the continuing periodic payments ordered by the court in a prior judgment except that, upon motion of the judgment creditor, after notice and hearing and upon good cause shown, the court may order that the amount to be withheld pursuant to a withholding order for support be increased to include payment, in whole or in part, of delinquent amounts owing on the prior judgment. In no case shall the amount an employer withholds pursuant to a withholding order for support exceed the amount of earnings payable to the judgment debtor by the employer after deducting all amounts required to be withheld by law or by any contract which is not revocable by the employee or at his instance.

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

(3) A withholding order for support shall be given priority over any other earnings withholding order. An

employer upon whom a withholding order for support is served shall withhold and pay over earnings of the employee pursuant to such order even though he is already required to comply with another earnings withholding order.

(4) Subject to paragraph (3) and to Article 3 (commencing with Section 723.050), an employer shall withhold earnings of an employee pursuant to both a withholding order for support and another earnings withholding order simultaneously.

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

Comment. Section 723.030 provides special rules for an earnings withholding order to enforce a court order for the support of any person, including a former spouse of the judgment debtor. An earnings withholding order for support is given a different effect than other withholding orders: It is effective until terminated by the issuing court (it may, of course, be modified); it is unrestricted in amount; even when in effect, it does not necessarily preclude withholding on either a prior or subsequent order. If not earlier terminated by the court, the order automatically terminates one year after the employee is no longer employed by the employer. Thus, for example, if the employee is laid off but returns to work for the same employer within one year from the date of the layoff, the employer must withhold pursuant to the support order. On the other hand, if the employee does not return to work until more than one year from the date he was laid off, the order expires at the end of the year, and nothing is withheld pursuant to the order when the employee returns to work.

The amount specified in the earnings withholding order for support is always withheld first from the support obligor's earnings and paid over to the person specified in that order. However, a prior order remains in effect, and a judgment

creditor may still obtain an earnings withholding order even where there is already in effect a prior earnings withholding order for support. Thus, where there are two orders in effect—one for support and one for another obligation—the amount withheld for support is deducted from the employee's earnings first. The amount, if any, that may be withheld pursuant to the other order is determined by subtracting the amount withheld pursuant to the withholding order for support from the amount that otherwise could be withheld pursuant to the other order. See Sections 723.077 and 723.050 and the Comments thereto.

Paragraph (1) of subdivision (b) is consistent with prior law. Under prior law, the exemption for 50 percent of a person's earnings did not apply to a judgment based on a support obligation. *E.g., Bruton v. Tearle*, 7 Cal.2d 48, 57, 59 P.2d 953, 957 (1936) (dictum); *Rankins v. Rankins*, 52 Cal. App.2d 231, 126 P.2d 125 (1942). Compare WELF. & INST. CODE § 11489. Also, under prior law, the court had the power to make an equitable division of the debtor's earnings between, for example, his first wife and children and himself and his second family. See *Rankins v. Rankins*, *supra*. Paragraph (1) makes the exemption provided by Section 723.050 inapplicable. However, the exemption provided by Section 723.051 is applicable to an earnings withholding order for support. Paragraph (1) thus continues the substance of the prior case law. A determination that the exemption provided by Section 723.051 applies has no effect on the support order upon which the earnings withholding order is based; application for modification of the original order for support must be made separately. See CIVIL CODE § 4801. See also *Thomas v. Thomas*, 14 Cal.2d 355, 94 P.2d 810 (1939). Accordingly, the obligation imposed by the original support order will continue and amounts required to be paid under that order will accumulate until such amounts are paid or the order is modified.

Article 3. Restrictions on Earnings Withholding

Article 3. Restrictions on Earnings Withholding

§ 723.050. Maximum amount of earnings that may be withheld

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

(1) The amount that would be withheld for federal

personal income taxes from the same amount of earnings of a single person who claims one exemption.

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

(3) The amount that would be withheld for state disability insurance contributions under Sections 984 and 985 of the Unemployment Insurance Code from the same amount of earnings if earned during the first week of a calendar year by a person subject to withholding for that purpose.

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

(5) An amount equal to 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.

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

(c) The Judicial Council shall prescribe by rule the method of computing the amount to be withheld in the case of earnings for any pay period other than a week, which method shall be substantially equivalent in effect to

that prescribed in subdivision (b).

(d) The Judicial Council shall prepare withholding tables for determining the amount to be withheld from the earnings of employees for representative pay periods. The tables may prescribe the amounts to be withheld according to reasonable earnings brackets. The tables prepared by the Judicial Council pursuant to this subdivision shall be used to determine the amount to be withheld in all cases where the tables permit computation of the amount to be withheld.

Comment. Section 723.050 provides the standard exemption applicable to all earnings withholding orders other than orders for support and certain orders for taxes. See Sections 723.030 (support); 723.074 and 723.076 (taxes). See also Section 723.051 (exemption obtained by special hardship showing).

Section 723.050 reflects policies similar to those underlying Sections 302 and 303 of the federal Consumer Credit Protection Act. Thus, in determining the amount of the debtor's earnings subject to garnishment, under both this section and the federal law, certain basic amounts withheld pursuant to law are first deducted. However, federal law requires the deduction of all amounts actually "required by law to be withheld." For example, the amount actually withheld for federal income tax purposes from the debtor's earnings is deducted in determining his earnings subject to garnishment ("disposable earnings"). Thus, a debtor claiming a greater number of exemptions will have less withheld and therefore more subject to garnishment. This produces the anomalous situation that a debtor with a large family and greater needs may have more earnings garnished than a single debtor with the same gross income and with more limited needs. Moreover, the federal statute does not elaborate upon what are considered to be "amounts required by law to be withheld." To alleviate these problems, Section 723.050 specifies the amounts to be deducted in determining the portion of the debtor's earnings which are subject to garnishment ("nonexempt earnings"). These items are related to the types of deductions made under federal law; *i.e.*, they are based on the amounts withheld for federal and state income taxes, social security, and state disability insurance. See paragraphs (1)-(4) of subdivision (a). However, the amount deducted to determine nonexempt earnings is fixed according to a formula and is not necessarily the amount actually deducted from the debtor's earnings. One of the major benefits of this scheme is

that it permits tables to be prepared which indicate the exact amount to be withheld from any given amount of earnings. Subdivision (d) directs the Judicial Council to prepare tables which will be distributed to employers required to withhold earnings. See Section 723.103(b). An employer therefore generally need not make any computations but will simply withhold pursuant to an earnings withholding order the amount listed in the tables provided him.

Both the federal scheme and Section 723.050 make some provisions for the effect of inflation. The federal statute, however, merely provides a floor based on the federal minimum wage. That is, the federal statute does not permit the creditor to reduce the debtor's weekly disposable earnings below an amount equal to 30 times the federal minimum wage. As the federal minimum wage is increased, this floor is increased accordingly. (Under the federal law in effect on January 1, 1972, if a debtor's disposable earnings are less than \$48 per week, no garnishment is permitted; if his disposable earnings are between \$48 and \$64, all his disposable earnings above \$48 are subject to garnishment; if his disposable earnings are more than \$64 a week, 25 percent of his disposable earnings are subject to garnishment.) This floor is not an exemption excluded from every debtor's earnings. In contrast, paragraph (5) of subdivision (a) provides a basic minimum exemption that is always deducted in determining nonexempt earnings. Moreover, subdivision (b) provides a formula that precludes withholding of less than \$10, thus providing additional protection to low income wage earners and saving employers the expense of withholding an amount less than \$10. *Cf.* Section 723.074 (state taxes).

Where an earnings withholding order for support is in effect, the amount withheld pursuant to such order is deducted from the amount that otherwise would be withheld pursuant to any other order. See Sections 723.030 and 723.077 and Comments thereto. Suppose, for example, that an employee's earnings are \$400 and a withholding order for support is in effect which requires \$40 to be withheld. Assume that the table prepared pursuant to Section 723.050 limits the amount that may be withheld on \$400 earnings to \$54. To determine the maximum amount which may be withheld pursuant to another earnings withholding order, the \$40 withheld pursuant to the support order is subtracted from \$54, leaving \$14 as the maximum amount that may be withheld pursuant to the other order. The amount that could be withheld pursuant to an earnings

withholding order for taxes would be computed in the same manner using the table prepared pursuant to Section 723.074.

§ 723.051. Amounts essential for family support exempt

(a) 723.051. The portion of his earnings which a judgment debtor proves is essential for the support of himself or his family is exempt from levy under this chapter unless the debt is incurred for personal services rendered by any employee or former employee of the judgment debtor. This standard recognizes that the exemption provided by Section 723.050 should be adequate, except in rare and unusual cases, to provide the amount essential for the support of the judgment debtor or his family. This standard also recognizes that the exemption provided by Section 723.050 may not be adequate, for example, in cases where there are a large number of members of the judgment debtor's family who are dependent upon his earnings for their support. Neither the judgment debtor's accustomed standard of living nor a standard of living "appropriate to his station in life" is the criterion for measuring the debtor's claim for exemption under this section.

(b) If the earnings withholding order is one described in Section 723.030 and the judgment debtor claims the exemption provided by subdivision (a), the court shall make an equitable division of the judgment debtor's earnings and shall make an appropriate order on the claim of exemption.

Comment. Section 723.051 is based on the exemption formerly provided by subdivision (c) of Section 690.6. However, the standard for the exemption provided here is more restrictive than former subdivision (c) of Section 690.6 ("essential for support" as compared to "necessary for the use"). This strict standard recognizes that the liberal exemption provided by Section 723.050 should be adequate except in a small percentage of cases such as, for example, where the debtor has five or six children who are dependent on his earnings for their support or has large medical expenses. See also Section 723.124 (content of judgment debtor's financial statement). Section 723.051 is not intended to be used for the maintenance of a life style

appropriate to the debtor's station in life or an accustomed standard while the debtor owes money on unsatisfied judgments against him. The last sentence of Section 723.051 retains existing law. See the Comment to Section 723.030.

Former subdivision (c) of Section 690.6 prevented the debtor from claiming the support exemption if the debt sought to be collected was incurred "by the debtor, his wife, or his family for the common necessities of life." In actual operation, the effect of the "common necessities" rule in California was to decide the question whether competing creditors could reach a debtor's earnings neither from the debtor's point of view (the needs of the debtor's dependents were ignored) nor from the creditor's viewpoint (no consideration was given to whether the creditor was careful to advance credit to the debtor only after ascertaining that his credit worthiness showed an ability to pay or whether the creditor provided the debtor with quality goods or services). Rather, the claims of competing creditors for earnings could be decided on the technical, and usually irrelevant, issue of what was a "common necessary of life." See, e.g., *Los Angeles Finance Co. v. Flores*, 110 Cal. App.2d Supp. 850, 243 P.2d 139 (Sup. Ct. L.A., App. Dep't 1952). The "common necessary" exception has accordingly been eliminated.

Article 4. Earnings Withholding Orders for Taxes

Article 4. Earnings Withholding Orders for Taxes

§ 723.070. Definitions

723.070. As used in this article:

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

(b) "State tax liability" means a liability, including any penalties and accrued interest and costs, for which the state would be authorized to issue (1) a warrant pursuant to Section 1785 of the Unemployment Insurance Code or Section 6776, 7881, 9001, 10111, 16071, 18906, 26191, 30341, or 32365 of the Revenue and Taxation Code or (2) a notice of levy pursuant to Section 1755 of the Unemployment Insurance Code or (3) a notice or order to withhold pursuant to Section 6702, 7851, 8952, 10051, 11451, 16101, 18817, 26132, 30311, or 32381 of the Revenue and Taxation

Code.

Comment. Section 723.070 provides definitions for terms used in this article.

"State" means the state or any agency thereof. Where the term "state" is used in this article, it refers to the particular state agency that administers the particular tax law under which recovery of the delinquent tax is sought. See Section 723.011 (e).

The definition of "state tax liability" makes this article apply to those tax liabilities for which a warrant may be issued pursuant to Section 1785 of the Unemployment Insurance Code (unemployment compensation contribution) or Section 6776 (sales and use taxes), 7881 (vehicle fuel license tax), 9001 (use fuel tax), 10111 (motor transportation tax), 16071 (gift tax), 18906 (personal income tax), 26191 (bank and corporation taxes), 30341 (cigarette tax), or 32365 (alcoholic beverage tax) of the Revenue and Taxation Code or for which a notice of levy may be given pursuant to Section 1755 of the Unemployment Insurance Code (unemployment compensation contributions) or for which a notice or order to withhold may be given pursuant to Section 6702 (sales and use tax), 7851 (vehicle fuel license tax), 8952 (use fuel tax), 10051 (motor transportation tax), 11451 (private car tax), 16101 (gift tax), 18817 (personal income tax), 26132 (bank and corporation taxes), 30311 (cigarette tax), or 32381 (alcoholic beverage tax) of the Revenue and Taxation Code.

§ 723.071. Exclusive procedure for withholding earnings for state tax liability

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

Comment. Section 723.071 makes clear that the levy procedure for withholding *earnings* of an employee for the collection of state tax liability provided in the "Employees' Earnings Protection Law" is exclusive. The authorization, for example, to direct orders to third persons who owe the taxpayer money found in Section 18817 (personal income tax) and

Section 26132 (bank and corporation tax) of the Revenue and Taxation Code is limited by Section 723.071. This article deals, however, only with levy on earnings to collect certain state taxes. The collection of federal taxes is accomplished pursuant to federal law and cannot be limited by state law. See INT. REV. CODE of 1954, § 6334(c). As to other taxes not within the scope of this article, the tax obligation must be reduced to judgment, and the taxing authority may then obtain an earnings withholding order like any other creditor; such order is treated the same as any other earnings withholding order, and this article does not apply.

§ 723.072. Withholding order for taxes; notice and opportunity for review of liability before order issued

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

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

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

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

(c) In any case where a state tax liability has been assessed or determined prior to January 1, 1974, and the state determines that the requirements of subdivision (b) may not have been satisfied, the state may send a "Notice of Proposed Issuance of Withholding Order for Taxes" to the taxpayer at his last-known address by first-class mail, postage prepaid. The notice shall advise the taxpayer that he may have the assessment or determination reviewed by

appropriate administrative procedures and how he may obtain such a review. If the taxpayer is sent such a notice and requests such a review within 30 days from the date the notice was mailed to him, the state shall provide appropriate administrative procedures for review of the assessment or determination and shall not issue the withholding order for taxes until the administrative review procedure is completed. If the taxpayer is sent such a notice and does not request such a review within 30 days from the date the notice was mailed to him, the state may issue the withholding order for taxes.

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

Comment. Section 723.072 provides that no withholding order for taxes may be issued unless the state tax liability either appears on the face of the taxpayer's tax return or has been determined in an administrative proceeding in which the taxpayer had notice and an opportunity for administrative review. See *Greene v. Franchise Tax Board*, 27 Cal. App.3d 38, 103 Cal. Rptr. 483 (1972). However, no review of the taxpayer's tax liability is permitted in court proceedings under this chapter. See Section 723.082.

Few state tax liabilities are reduced to judgment. Subdivision (d) recognizes this.

§ 723.073. Provisions governing tax withholding orders

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

Comment. Section 723.073 makes clear that the provisions of this chapter governing earnings withholding orders are applicable to withholding orders for taxes except to the extent that this article contains special provisions applicable to such orders.

§ 723.074. Agency issued withholding order for taxes

723.074. (a) The state may itself issue a withholding order for taxes under this section to collect a state tax liability. The order shall specify the maximum amount that

may be withheld pursuant to the order (unpaid tax liability including any penalties, accrued interest, and costs).

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

(c) Unless a lesser amount is specified in the order, the amount to be withheld pursuant to an order issued under this section is two times the maximum amount that may be withheld under Section 723.050, except that the state may require that ten dollars (\$10) be withheld if (1) the taxpayer's nonexempt earnings (as defined in Section 723.050) are twenty dollars (\$20) or more but less than thirty dollars (\$30) or (2) the amount of the taxpayer's earnings is sufficient that a portion of his earnings would be withheld pursuant to Section 18806 of the Revenue and Taxation Code if such earnings were subject to withholding under that section but the amount of his earnings is not sufficient to permit withholding under Section 723.050. In determining whether the earnings are sufficient so that a portion of the earnings would be withheld pursuant to Section 18806 of the Revenue and Taxation Code, the table issued under that section applicable to a single person without allowance for additional exemptions shall be used. The state shall prepare withholding tables for determining the amount to be withheld from the earnings of employees for representative pay periods pursuant to orders issued under this section. The tables may prescribe the amounts to be withheld according to reasonable earnings brackets. The tables shall be used to determine the amount to be withheld in all cases where the tables permit computation of the amount to be withheld.

Comment. Section 723.074 specifies the procedure to be followed when the state taxing agency itself issues the withholding order for taxes. In such case, no application to a court for the order is required. Under an order issued pursuant to Section 723.074, the employer may be required to withhold not more than twice the amount permitted to be withheld pursuant to Section 723.050 (except that \$10 is required to be

withheld in certain instances where the amount of earnings would not be sufficient to require withholding under Section 723.050). The state taxing agency provides the employer with withholding tables prescribing the amount to be withheld pursuant to orders issued under this section. The amount determined according to the applicable table must be withheld by the employer unless the order itself specifies a lesser amount or the amount to be withheld is reduced pursuant to subdivision (c) or (d) of Section 723.075.

§ 723.075. Notice to taxpayer; reduction in amount withheld

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

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

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

(d) After the state has made its determination under subdivision (c), the taxpayer may file a claim of exemption to claim the exemption provided by Section 723.051, in the manner provided in Section 723.105, with a court of record in his county of residence. No fee shall be charged for filing such claim of exemption. After hearing, the court may modify the withholding order for taxes previously issued, but in no event shall the amount required to be withheld

be less than that permitted to be withheld under Section 723.050.

Comment. Section 723.075 requires service of a copy of the order and a notice informing the employee of the effect of the order and his right to hearings and other remedies. These papers are served on the employer who is required to deliver them to the employee. *CF* Section 723.104 (ordinary withholding orders). See also Section 723.155 (employer not subject to civil liability). Section 723.075 requires that the taxpayer first seek administrative relief before he can claim the exemption provided by Section 723.051 (hardship exemption) in a court proceeding. Notwithstanding the hardship exemption provided by Section 723.051, the state taxing agency is entitled to a withholding order in an amount not less than the amount permitted to be withheld under Section 723.050 even though there is a court hearing on the employee's claim that his earnings are essential for support.

§ 723.076. Court issued withholding order for taxes

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

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

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

- (1)** A copy of the application.
- (2)** A notice informing the taxpayer of the purpose of the application and his right to appear in regard to the application.

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

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

(f) The state may issue a temporary earnings holding order, which shall be denoted as such on its face, in any case where the state intends to apply for withholding order for taxes under this section and has determined that the collection of the state tax liability will be jeopardized in whole or in part if the temporary earnings holding order is not issued. The temporary earnings holding order shall be directed to the taxpayer's employer and shall require him to retain in his possession or under his control all or such portion of the earnings of the taxpayer then or thereafter due as is specified in the order. Together with the temporary earnings holding order, the state shall serve upon the employer an additional copy of the order and a notice informing the taxpayer of the effect of the order and of his right to remedies provided in this chapter. Upon receipt of the order, the employer shall deliver to the taxpayer a copy of the order and notice. If the taxpayer is no longer employed by the employer and the employer does not owe him any earnings, the employer is not required to make such delivery. The temporary earnings holding order expires 15 days from the date it is served on the employer unless it is extended by the court on ex parte application for good cause shown. If a temporary earnings holding order is served on an employer, the state may not thereafter, for a period of six months, serve on the same employer another temporary earnings holding order for the same employee unless the court for good cause shown otherwise orders. Sections 723.153 and 723.154 apply to temporary earnings holding orders issued under this section.

Comment. Section 723.076 provides a procedure whereby the taxing agency can obtain an order, after court hearing, that requires the employer to withhold all of the employee's earnings in excess of the amount essential for the support of the

taxpayer and his family. An order may be obtained under Section 723.076 that requires the withholding of more than the amount that the state taxing agency could require the employer to withhold pursuant to an order issued by the agency itself under Section 723.074. This grant of authority is not intended as a directive that such authority be used generally. This extreme remedy could be harsh in its application and should be used sparingly. The state taxing agency is always entitled to a withholding order in an amount not less than the amount permitted to be withheld under Section 723.050 even though there is a court hearing on the employee's claim that all of his earnings are essential for the support of the taxpayer and his family. Provision is made in subdivision (f) of Section 723.076 for a temporary order directing the employer to hold any earnings of the employee then or thereafter due. Such orders should be used only in rare and unusual cases.

§ 723.077. Priority of orders

723.077. (a) Subject to subdivision (b), an employer upon whom a withholding order for taxes is served shall withhold and pay over earnings of the employee pursuant to such order and shall cease to withhold earnings pursuant to any prior order except that a withholding order for support shall be given priority as provided in Section 723.030. When an employer is required to cease withholding earnings pursuant to a prior order, he shall notify the judgment creditor who obtained the prior order that a supervening withholding order for taxes is in effect.

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

Comment. Section 723.077 deals with the priority a tax withholding order is to be given with respect to other earnings withholding orders. A withholding order for taxes takes priority over any prior order except one for support or another withholding order for taxes. As indicated in the Comment to Section 723.030, a support order always takes priority over any other order. Thus, where a support order is in effect and a

subsequent tax order is received, the employer will continue to withhold for support, and the amount withheld pursuant to the tax order will be reduced by the amount withheld pursuant to the withholding order for support. Similarly, where a tax order is in effect and a support order is served, the support order again takes priority. See the Comments to Sections 723.030 and 723.050. However, where the prior order is for the collection of a debt other than for taxes or support, the tax order displaces the prior order, and the employer must withhold only pursuant to the tax order until the tax debt is completely paid. If the earnings withholding order for taxes is satisfied during the withholding period of the prior order (Section 723.022), the employer must then again withhold pursuant to the prior order. Where there is a prior tax order in effect, the second tax order is ineffective; the employer may not withhold pursuant to the second order and must promptly notify the agency which issued or obtained the second order of the reason for his action. See Section 723.104(b).

§ 723.078. Withholding period; notice terminating order

723.078. (a) Except as provided in subdivision (b), the employer shall not withhold pursuant to a withholding order for taxes from earnings of the employee payable for any pay period of such employee that ends prior to the fifth day after service of the order.

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

(c) An employer shall continue to withhold pursuant to a withholding order for taxes until the amount specified in the order has been paid in full or the order is withdrawn, except that the order shall automatically terminate one year after the employee is no longer employed by the employer. The state shall promptly serve on the employer a notice terminating the withholding order for taxes if the

state tax liability for which the withholding order for taxes was issued is satisfied before the employer has withheld the full amount specified in the order, and the employer shall discontinue withholding in compliance with such notice.

Comment. Subdivision (a) of Section 723.078 requires the employer to withhold commencing at the same time as with any other order. *Cf.* Section 723.022. Subdivision (b) provides for a jeopardy withholding order that requires immediate withholding. Such an order should be used only in rare and unusual cases. Subdivision (c) requires the employer to withhold earnings pursuant to a withholding order for taxes until the amount specified in the order has been paid in full and provides for a notice if the tax liability is satisfied before the full amount specified in the order has been withheld. The notice required by Section 723.078 is in lieu of the notice provided by Section 723.027. As to the automatic termination of the order one year after the employee is no longer employed by the employer, see the discussion of the comparable requirement in the Comment to Section 723.030.

§ 723.079. When receipt required

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

Comment. Section 723.079 provides an exception to the requirement of Section 723.026.

§ 723.080. Service

723.080. Service of a withholding order for taxes or of any other notice or document required under this chapter in connection with a withholding order for taxes may be made by first-class mail, postage prepaid, or by any authorized state employee. Service of a withholding order for taxes is complete when it is received by the employer. Service of, or the providing of, any other notice or document required to be served or provided under this chapter in connection with a withholding order for taxes is complete when the notice or document is deposited in the mail addressed to the last known address of the person

on whom it is served or to whom it is to be provided.

Comment. Section 723.080 provides special provisions for service of notices, documents, and orders under this article. This special service provision is in lieu of the one prescribed by Section 723.101.

§ 723.081. Forms

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

Comment. Section 723.081 requires that forms used in connection with this article be prescribed by the state taxing agency administering the particular tax law except that the Judicial Council prescribes the forms used in connection with court issued orders under Section 723.076.

§ 723.082. Review of tax liability

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

Comment. Section 723.082 makes clear that the court, in a proceeding to determine whether a withholding order for taxes should be modified or terminated because of hardship, may not review the taxpayer's tax liability.

§ 723.083. Refund of employer's service charge

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

Comment. Section 723.083 authorizes the state to refund the employer's service charge to the employee if the withholding order for taxes is issued in error or there is no tax liability.

§ 723.084. Warrant or notice deemed withholding order for taxes

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

Comment. Section 723.084 deals with the situation where it is not clear whether an employer-employee relationship exists. The warrant, notice of levy, or notice or order to withhold may be issued on the assumption the taxpayer is an independent contractor. However, so that the taxpayer cannot avoid the withholding by claiming that he is an employee and that his earnings may be withheld only pursuant to an earnings withholding order, Section 723.084 provides that the warrant, notice, or order may require that it be treated as an earnings withholding order if the taxpayer is an employee.

Article 5. Procedure for Issuance of Earnings Withholding Orders

Article 5. Procedure for Issuance of Earnings Withholding Orders

§ 723.100. Judicial Council authorized to prescribe practice and procedure

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

Comment. Article 5 outlines generally the procedure for issuance and review of an earnings withholding order; however, Section 723.100 authorizes the Judicial Council to provide by rule for the practice and procedure in proceedings under this chapter. The state tax agency prescribes the rules of procedure for administrative hearings under Article 4 (withholding orders for taxes).

§ 723.101. Service; recovery of costs

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

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

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

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

Comment. Subdivision (a) of Section 723.101 specifies the means by which service must be accomplished under this chapter. Although personal service is authorized, it is anticipated that the convenience and economy of service by mail will result in the general use of this method. In any event, subdivisions (b) and (c) make clear that, regardless of which means is actually used, the recovery of the costs of service is limited to the cost of service by certified mail with return receipt requested unless this form of service is first refused by the person being served. Only in such circumstances may the

cost of personal delivery be recovered. See subdivision (c).

Subdivision (d) provides certain special rules for problems which can arise where mail service has been refused. For example, suppose creditor *A* mails an earnings withholding order to his debtor's employer and the employer refuses to accept such mail. Creditor *A* then serves his order by personal delivery but, in the meantime, creditor *B* has served an order requiring the withholding of the wages of the same debtor and *B*'s order has gone into effect. It would be unfair to *A* to deny him his priority because of the employer's refusal. Accordingly, subdivision (d) permits *A* to apply to the court which issued *A*'s original earnings withholding order for an order to the employer directing him to stop withholding pursuant to *B*'s order and to give effect to *A*'s earnings withholding order. So that *A* may have the benefit of a full 120-day withholding, *A*'s earnings withholding order is deemed to have been served on the date of service of the special court order made pursuant to subdivision (d). It should be noted that subdivision (d) only preserves the priority which *A* would have had if the employer had accepted the mail service. Thus, where the intervening order is a withholding order for taxes, *A* is not entitled to displace the taxing agency. See Section 723.077. The remedy provided by subdivision (d) is exclusive. *A* is not entitled to recover amounts previously paid to *B* from either *B* or the employer, and *A*'s order is not given retroactive effect.

Special provisions as to when service is complete for particular purposes are found in Sections 723.022(e) (withholding period) and 723.023(b) (priority of orders). As to service of withholding orders for taxes, see Section 723.080.

§ 723.102. Application for issuance of earnings withholding order

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

Comment. Section 723.102 requires a judgment creditor to apply for an earnings withholding order to the court which granted him the judgment. For the required content of the

application, see Section 723.121. For special provisions regarding the issuance of a withholding order for taxes, see Article 4 (commencing with Section 723.070). The last sentence of Section 723.102 makes clear that an earnings withholding order shall be promptly issued on the ex parte application of a judgment creditor. The debtor may claim an exemption pursuant to Section 723.105, have such order modified or terminated, and even recover from the creditor amounts withheld and paid over pursuant to such order; but this does not affect the initial issuance of the order.

§ 723.103. Transmittal of order and information to employer

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

- (1) Two copies of the earnings withholding order.
- (2) The form for the employer's return.
- (3) Notice to employee of earnings withholding order in the form prescribed pursuant to Sections 723.120 and 723.122.

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

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

Comment. Section 723.103 prescribes what must be served upon the employer by the judgment creditor and when such service must be accomplished to be effective (order must be served within 45 days of its issuance). Section 723.103 requires that the creditor serve on the employer an extra copy of the order and a notice advising the employee of the effect of the order and his rights with respect to the order. The employer is required to deliver these papers to the employee within five days of service. See Section 723.104.

§ 723.104. Delivery of papers to employee; employer's return

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

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

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

Comment. Section 723.104 requires the employer to deliver to the employee a copy of the order and a notice advising the employee of his rights. See Section 723.155 (employer not subject to civil liability).

Section 723.104 also requires the employer to fill out and mail an employer's return to every judgment creditor who serves an earnings withholding order. Such a return must be made even though the order is not given effect. See Comment to Section 723.023. If the order is not given effect, the employer must indicate the reason and return the order. For the form of the return, see Section 723.126.

§ 723.105. Judgment debtor's claim of exemption

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

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

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

(b) A claim of exemption shall be made by filing with the court clerk an original and one copy of (1) the

judgment debtor's claim of exemption and (2) if he claims the exemption provided by Section 723.051, his financial statement.

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

- (1) A copy of the claim of exemption.
- (2) A copy of the financial statement if there is one.
- (3) A notice of claim of exemption, stating that the claim of exemption has been filed and that the earnings withholding order will be terminated, or modified to reflect the amount of earnings claimed to be exempt in the claim of exemption, unless a notice of opposition to the claim of exemption is filed with the court clerk by the judgment creditor within five days (Saturday, Sunday, and holidays excepted) after the date of the mailing of the notice of claim of exemption.

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

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

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

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

(f) If a notice of opposition to the claim of exemption is filed with the court clerk within the five-day period, the court clerk shall set the matter for hearing, which hearing shall be held within 15 days after the date the notice of opposition is filed. The court clerk shall send a notice of the time and place of the hearing to the judgment debtor and judgment creditor by first-class mail, postage prepaid. The notice shall be deposited in the mail at least 10 days before

the day set for hearing.

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

(h) If the earnings withholding order is terminated by the court, unless the court otherwise orders or unless there is a material change of circumstances since the time of the last prior hearing on the earnings withholding order, the judgment creditor may not apply for another earnings withholding order directed to the same employer with respect to the same judgment debtor for a period of 125 days following the date of service of the earnings withholding order or 60 days after the date of the termination of the order, whichever is later.

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

Comment. Section 723.105 outlines generally the procedure for the hearing of a debtor's claims in opposition to withholding his earnings pursuant to an earnings withholding order. Section 690.50 is not applicable.

A debtor is not limited as to the time within which he must claim an exemption. However, unless there has been a material change in either his income or his needs, he may claim an exemption only once during the period the order is in effect. See subdivision (a). A similar limitation applies to a judgment creditor; if a withholding order is terminated by the court, the judgment creditor may not apply for the issuance of an earnings

withholding order directed to the same employer for the same debtor for 125 days following the date of service of a prior terminated order or 60 days after the date of termination, whichever is later, unless the court orders otherwise or there is a material change in circumstances. See subdivision (h).

A claim of exemption is made by the debtor by filing an original and one copy of his claim of exemption and, if necessary, his financial statement. Subdivision (b). For the form of these documents, see Sections 723.123 and 723.124. Upon receipt of these documents, the clerk is required to send the copies of the application and financial statement to the creditor, together with a notice of the claim of exemption which advises the creditor of the effect of the claim. See subdivision (c).

The judgment creditor who contests the claim of exemption must file a notice of opposition within five days. Subdivision (d). If no notice of opposition is filed, the court clerk sends the employer a notice terminating the order or, if the claim of exemption lists an amount the judgment debtor believes should be withheld pursuant to the order (see Section 723.123), a modified order in the amount indicated in the claim of exemption. Subdivision (e). If a notice of opposition is filed, the court clerk sets the matter for hearing and notifies both parties. Subdivision (f).

After hearing, the court may order that the earnings withholding order be modified or even terminated. The date fixed for termination of the order may precede the date of the hearing. See subdivision (g). Where the date of termination is made retroactive, an employer may have already withheld and paid over pursuant to the earnings withholding order prior to receipt of notice of termination. Subdivision (d) of Section 723.022 makes clear that the employer is not liable to the debtor for such amounts, and subdivision (i) of Section 723.105 authorizes the debtor to recover such amounts from his creditor. Where amounts have been withheld but not yet paid over to the creditor, the employer is required to pay those amounts to the employee-judgment debtor. See subdivision (i).

§ 723.106. Findings not required

723.106. No findings shall be required in court proceedings under this chapter.

Comment. Section 723.106 is comparable to a provision found in subdivision (i) of Section 690.50 (claims for exemption).

§ 723.107. Limitation on obtaining additional earnings withholding orders

723.107. If an employer withholds earnings pursuant to an earnings withholding order, the judgment creditor who obtained such withholding order may not serve another withholding order on the same employer requiring him to withhold earnings of the same employee during the 10 days following the expiration of the prior earnings withholding order.

Comment. Section 723.107 precludes a creditor who has obtained an earnings withholding order which has gone into effect from serving another order during the 10-day period following the expiration of his prior order. The purpose of this limitation is to give other creditors a 10-day period during which they can serve their earnings withholding orders while the original creditor is precluded from competing with them. The original creditor may apply for the second earnings withholding order either before or after his prior order expires. But service of the second order on the same employer while the original order is in effect will be ineffective under Section 723.023, and service during the 10-day period following expiration of the original order is prohibited by Section 723.107. Even though a creditor violates the 10-day moratorium period, the employer may act pursuant to what has been served upon him. See Section 723.154. Of course, after the expiration of the 10-day period, the original creditor is treated like any other creditor.

It should be noted that each agency of the state is considered a separate entity for the purposes of this chapter. See Section 723.011(e). Hence, even though one agency has been making collection, a second agency may serve an earnings withholding order within the 10-day period provided in this section.

Article 6. Forms; Employer's Instructions; Withholding Tables

Article 6. Forms; Employer's Instructions; Withholding Tables

§ 723.120. Judicial Council to prescribe forms

723.120. The Judicial Council shall prescribe the form of the applications, notices, claims of exemption, orders, and other documents required by this chapter and only

such forms may be used to implement this chapter. Any such form prescribed by the Judicial Council is deemed to comply with this chapter.

Comment. Section 723.120 requires the Judicial Council to prescribe the forms necessary for the purposes of this chapter. Various sections prescribe information to be contained in the forms; but the Judicial Council has complete authority to adopt and revise the forms as necessary and may require additional information in the forms or may omit information from the forms that it determines is unnecessary.

§ 723.121. Application for earnings withholding order

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

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

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

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

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

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

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

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

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

Comment. Although Section 723.121 requires the application to be executed "under oath," this may generally be done by a statement signed under penalty of perjury. See Section 2015.5.

The actual form for the application is prescribed by the Judicial Council. See Section 723.120.

§ 723.122. Notice of application

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

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

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

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

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

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

Comment. The actual form for the notice of application is prescribed by the Judicial Council. See Section 723.120.

§ 723.123. Form of claim of exemption

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

Comment. Although Section 723.123 requires that the claim of exemption be executed "under oath," this may generally be done by a statement signed under penalty of perjury. See Section 2015.5. The actual form for the claim of exemption is prescribed by the Judicial Council. See Section 723.120.

§ 723.124. Judgment debtor's financial statement

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

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

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

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

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

(e) All outstanding obligations of the judgment debtor.

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

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

Comment. Although Section 723.124 requires the financial statement to be executed "under oath," this may generally be done by a statement signed under penalty of perjury. See Section 2015.5. The actual form for the financial statement is prescribed by the Judicial Council. See Section 723.120.

§ 723.125. Earnings withholding order

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

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

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

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

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

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

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

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

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

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

Comment. Section 723.125 specifies the information to be

included in the earnings withholding order. The form of the order is prescribed by the Judicial Council. See Section 723.120. Special forms are prescribed for earnings withholding orders for taxes. See Section 723.081. The Judicial Council may determine to adopt special forms for support orders, pursuant to its authority granted by Section 723.120, since these orders have special rules concerning priority, duration, and amounts that may be withheld. See Section 723.030.

§ 723.126. Employer's return

723.126. (a) The "employer's return" shall be executed under oath. The form for the return provided to the employer shall state all of the following information:

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

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

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

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

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

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

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

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

Comment. Section 723.126 specifies the information to be

included in the employer's return. The form for the return is prescribed by the Judicial Council. See Section 723.120. Although Section 723.126 requires the employer's return to be executed "under oath," this may generally be done by a statement signed under penalty of perjury. See Section 2015.5.

§ 723.127. Employer's instructions and withholding tables

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

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

Comment. Subdivision (a) of Section 723.127 requires the preparation of employer's instructions that provide the employer with the information he needs to comply with the law. The creditor provides the employer with a copy of the employer's instructions with the earnings withholding order. See Section 723.103.

Subdivision (b) authorizes, but does not require, the Judicial Council to recover the cost of printing the employer's instructions and withholding tables from persons required or desiring to obtain such materials.

Article 7. Administration and Enforcement

Article 7. Administration and Enforcement

§ 723.150. Rules

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

Comment. Section 723.150 requires that rules be adopted for

the administration of this chapter. Such rules include specific requirements regarding the treatment of various forms of prepaid and deferred earnings such as, but not limited to, commissions, bonuses, retroactive pay increases, vacation benefits, prepaid earnings, advances, and draw account payments.

§ 723.151. Liaison with federal administrator

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

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

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

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

Comment. Section 723.151 authorizes the Judicial Council to do whatever is required by the federal administrator to obtain and maintain a state exemption from the earnings garnishment provisions of the Consumer Credit Protection Act. A similarly broad grant of power as that contained in the first paragraph of Section 723.151 is found in Government Code Section 25210 (county participation in Economic Opportunity Act of 1964). Subdivisions (a), (b), and (c) are based on the language of 29 Code of Federal Regulations Section 870.55(a), requiring the state administrator to act as liaison with the federal

administrator.

§ 723.152. Fraudulent withholding by employer

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

Comment. Section 723.152 is based on Labor Code Section 227 (failure to make agreed payments to health, welfare, or similar fund).

§ 723.153. Employer not to defer or accelerate payment of earnings

723.153. (a) No employer shall defer or accelerate any payment of earnings to an employee with the intent to defeat or diminish the creditor's rights under an earnings withholding order issued pursuant to the procedures provided by this chapter.

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

Comment. Section 723.153 makes clear that an employer may neither defer nor accelerate payment of earnings to an employee in an attempt to avoid compliance with an earnings withholding order and specifies the measure of damages in case of a violation.

§ 723.154. Remedies of judgment creditor

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

(b) Notwithstanding subdivision (a), an employer who complies with any written order or written notice which

purports to be given or served in accordance with the provisions of this chapter is not subject to any civil or criminal liability for such compliance unless he has actively participated in a fraud.

Comment. Section 723.154 authorizes suit by a creditor against an employer both where the employer fails to withhold properly and where he fails to pay over amounts withheld. This remedy is independent of the procedure provided in Chapter 2 (Sections 717-723) of this part, and Section 723.154 makes clear that supplemental proceedings under Chapter 2 are not a prerequisite to suit by the creditor against the employer. Whether or not the court can order the employer to withhold and pay over in a Chapter 2 proceeding is a matter not dealt with in the Employees' Earnings Protection Law.

Subdivision (b), makes clear that an employer is protected from liability where he complies with an order or written notice which appears proper on its face. Occasionally, through mistake, inadvertence, or even deliberate misconduct, an employer may be sent an order or notice which appears valid but which has been improperly obtained or served. For example, a creditor may violate the 10-day moratorium on service of a second earnings withholding order. See Section 723.107 and Comment thereto. The employer is not required in such circumstances to go beyond the document itself and is not subject to liability where he complies with its directions and is not actively participating in a fraud. The remedy of the injured party in such a case is to proceed against the person who falsified the document or who improperly obtained or served the document.

This section also makes clear that, where an employer is complying with a prior order, he is not liable for failing to comply with a subsequent valid order—even though the prior order is in fact invalid—unless he is actively participating in a fraud.

§ 723.155. Failure of employer to give notice to employee

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

Comment. Section 723.155 makes clear that an employer is not liable for civil damages if he fails to give the employee the notice advising the employee of his rights. The section does not

preclude the Labor Commissioner from taking action under the Labor Code if an employer consistently fails to give his employees the notice he is required to deliver under Section 723.075(b) or Section 723.104(a).

§ 723.156. Fees of clerk

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

Labor Code

§ 300 (amended). Wage assignments

SEC. 12. Section 300 of the Labor Code is amended to read:

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

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

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

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

~~(c) (3) Where such the assignment or order for wages~~

or salary is made by a minor, the written consent of a parent or guardian of ~~such the~~ minor is attached to ~~such order or the~~ assignment; and.

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

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

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

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

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

(d) Under any assignment of; ~~or order for wages or~~

salary to be earned, a sum not to exceed 50 per centum of the assignor's wages or salary; and ~~not to exceed 25 per centum of the assignor's wages or salary;~~ upon the showing that such wages or salary are necessary for the support of his mother, father, spouse, children or other members of his family, residing in this State and supported in whole or in part by his labor, shall be *withheld by, and be* collectible from, the assignor's employer at the time of each payment of such wages or salary.

(e) The employer ~~shall be~~ *is* entitled to rely upon the statements of fact in the written statement provided for in ~~subdivisions (d) and (e) hereof paragraphs (2), (4), and (5) of subdivision (b)~~, without the necessity of inquiring into the truth thereof, and the employer shall incur no liability whatsoever by reason of any payments made by him to an assignee under any assignment ~~or order~~, in reliance upon the facts so stated.

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

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

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

Comment. Section 300 is amended to make the section consistent with the Employees' Earnings Protection Law (CODE CIV. PROC. § 723.010 *et seq.*).

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

Subdivision (b). Paragraphs (1) through (6) of subdivision (b) continue generally without substantive change provisions formerly contained in Section 300. A sentence has been added to paragraph (2) to provide a limited exception from the requirement of spousal consent. Paragraph (7) continues without substantive change a provision formerly contained in Section 300 except that the former reference to the attachment or levy on execution against wages or salary is replaced by a reference to an earnings withholding order to conform to the procedure provided by the Employees' Earnings Protection Law, and the former reference to priority of wage assignments has been superseded by paragraph (7) and subdivision (c).

Subdivision (c). Subdivision (c) clarifies the relationship between a valid wage assignment and a subsequently served earnings withholding order. Where a wage assignment is in effect and an earnings withholding order is served, the employer shall not withhold pursuant to the order until after the end of the pay period during which the order was served. Thus, the wage assignment is, in effect, given an exclusive preference for that pay period and the debtor is given an opportunity to put his affairs in order. Such action may include revoking the wage assignment as to unearned wages pursuant to subdivision (f). Even where the debtor revokes the wage assignment prior to the end of the pay period (but after receipt of an earnings withholding order), the operation of the order is suspended until after the current pay period. Hence, the debtor is afforded an opportunity to retain his unearned wages for the current pay period only. After such moratorium, the earnings withholding order has a priority over the assignment if the latter remains in effect. The unlimited preference formerly given to an assignment of unearned wages or salary is not continued because this preference would permit a judgment debtor to give preference to one creditor and to defeat the claims of other creditors who seek to collect on their judgments under the Employees' Earnings Protection Law.

Subdivision (d). See the Comment to subdivision (f).

Subdivision (e). Subdivision (e) continues the substance of a provision formerly found in Section 300 and extends the scope

of the former provision to cover the statement provided for in paragraph (2) of subdivision (b).

Subdivision (f). The first sentence of subdivision (f), which makes an assignment of unearned wages or salary revocable at any time by the maker thereof, replaces the former provision of Section 300 which invalidated an assignment of wages or salary unless such wages were earned or the assignment was for necessities or for support. The former provision also restricted the amount of unearned wages or salary that could be assigned. The former 50-percent limitation on the amount of wages or salary that can be assigned has been continued in subdivision (d). The former 25-percent "hardship" limitation has not been continued because subdivision (f) permits the person making the assignment of wages or salary to be earned to revoke the assignment at any time. Thus, where an assignment becomes too onerous, especially after service of an earnings withholding order, the assignment may be revoked. The delayed preference given the earnings withholding order under subdivision (c) will generally require persons having judgments, including support orders, to use the procedure provided in the Employees' Earnings Protection Law—rather than Section 300—to enforce their judgments; but it avoids conflict between wage assignments and orders issued pursuant to the Employees' Earnings Protection Law.

Subdivisions (g) and (h). Subdivisions (g) and (h) continue without substantive change provisions formerly contained in Section 300. It should be noted that the inapplicability of Section 300 to the deductions referred to in subdivision (h) means not only that compliance with the formalities and limitations provided in Section 300 is not required but also that Section 300 provides no special preferences for such deductions.

§ 2929 (amended). Discharge from employment because of wage garnishment

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

(e) A provision of a contract of employment that provides an employee with less protection than is provided by ~~this subdivision~~ subdivisions (b) and (c) 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. Sec. 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. The second sentence is added to subdivision (a) (1) of Section 2929 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. Subdivision (d) is added to Section 2929 to make clear that a continuing garnishment of wages pursuant to an earnings withholding order for support is considered as a "garnishment for the payment of one judgment" for the purposes of this section.

Penal Code

§ 270h (technical amendment)

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

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

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

(b) Require assignment of wages pursuant to Section

~~4701~~ of the Civil Code as a condition of probation. This remedy shall apply only when there is no existing civil order for support of the same person or persons included in the probation support order upon which an order of assignment has been entered pursuant to Section ~~4701~~. *Issue an earnings withholding order under Section 723.030 of the Code of Civil Procedure to enforce the order for support.*

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

Comment. Section 270h has been amended to conform to the changes made by Chapter 2.5 (commencing with Section 723.010) of the Code of Civil Procedure. Compare Civil Code Section 4701. See also Section 723.030 of the Code of Civil Procedure and the Comment to that section.

§ 1208 (technical amendment)

SEC. 15. Section 1208 of the Penal Code is amended to read:

1208. (a) The provisions of this section, insofar as they relate to employment, shall be operative in any county in which the board of supervisors by ordinance finds, on the basis of employment conditions, the state of the county jail facilities, and other pertinent circumstances, that the operation of this section, insofar as it relates to employment, in that county is feasible. The provisions of this section, insofar as they relate to education, shall be operative in any county in which the board of supervisors by ordinance finds, on the basis of education conditions, the state of the county jail facilities, and other pertinent circumstances, that the operation of this section, insofar as it relates to education, in that county is feasible. In any such ordinance the board shall prescribe whether the sheriff, the probation officer, or the superintendent of a county industrial farm or industrial road camp in the county shall perform the functions of the work furlough administrator. The board of supervisors may also terminate the operativeness of this section, either with respect to employment or education in the county if it finds by ordinance that, because of changed

circumstances, the operation of this section, either with respect to employment or education in that county is no longer feasible.

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

(c) If the work furlough administrator so directs that the prisoner be permitted to continue in his regular employment or educational program, the administrator shall arrange for a continuation of such employment or education, so far as possible without interruption. If the prisoner does not have regular employment or a regular educational program, and the administrator has authorized the prisoner to secure employment or education for himself, the prisoner may do so, and the administrator may assist him in doing so. Any employment or education so secured must be suitable for the prisoner. Such employment or educational program, if such educational program includes earnings by the prisoner, must be at a wage at least as high as the prevailing wage for similar work in the area where the work is performed and in accordance with the prevailing working conditions in such area. In no event may any such employment or

educational program involving earnings by the prisoner be permitted where there is a labor dispute in the establishment in which the prisoner is, or is to be, employed or educated.

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

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

(e) The earnings of the prisoner may be collected by the work furlough administrator, and it shall be the duty of the prisoner's employer to transmit such wages to the administrator at the latter's request. Earnings levied upon pursuant to writ of attachment or execution or in other lawful manner the *Employees' Earnings Protection Law, Chapter 2.5 (commencing with Section 723.010) of Title 9 of Part 2 of the Code of Civil Procedure*, shall not be transmitted to the administrator. If the administrator has requested transmittal of earnings prior to levy, such request shall have priority. *service of an earnings withholding order under the Employees' Earnings Protection Law, none of the earnings of the prisoner shall be withheld pursuant to such order unless and until the administrator terminates his request that the prisoner's employer transmit the prisoner's earnings to the administrator.* In a case in which the functions of the

administrator are performed by a sheriff, and such sheriff receives a writ of attachment or execution for the earnings of a prisoner subject to this section but has not yet requested transmittal of the prisoner's earnings pursuant to this section, he shall first levy on the earnings pursuant to the writ. When an employer or educator transmits such earnings to the administrator pursuant to this subdivision he shall have no liability to the prisoner for such earnings. From such earnings the administrator shall pay the prisoner's board and personal expenses, both inside and outside the jail, and shall deduct so much of the costs of administration of this section as is allocable to such prisoner, and, in an amount determined by the administrator, shall pay the support of the prisoner's dependents, if any. If sufficient funds are available after making the foregoing payments, the administrator may, with the consent of the prisoner, pay, in whole or in part, the preexisting debts of the prisoner. Any balance shall be retained until the prisoner's discharge and thereupon shall be paid to him.

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

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

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

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

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

Comment. Section 1208 has been amended to conform to the changes made by Chapter 2.5 (commencing with Section 723.010) of the Code of Civil Procedure.

Welfare and Institutions Code

§ 11489 (technical amendment)

SEC. 16. Section 11489 of the Welfare and Institutions Code is amended to read:

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

Comment. Section 11489 has been amended to conform to changes made by Chapter 2.5 (commencing with Section 723.010) of the Code of Civil Procedure. Compare Civil Code Section 4701. See also Section 723.030 of the Code of Civil Procedure and the Comment to that section.

Transitional Provisions

SEC. 17. (a) Any levy made pursuant to a writ of execution against the earnings of an employee that has been served on the employer prior to July 1, 1974, shall be given effect after the operative date of this act to the same extent as it would have been given effect had this act not been enacted, and the law in effect prior to the operative date of this act shall govern such levy. No earnings withholding order served pursuant to this act after July 1, 1974, shall be given any effect during the period that a levy made pursuant to a writ of execution against the earnings of an employee has been given effect, and any earnings withholding order served on an employer during the period such a levy is in effect shall be ineffective.

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

Section 723.030.**Operative Date**

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

Comment. The operative date of this act is delayed until July 1, 1974, to allow sufficient time for state and local public officials and the public to become familiar with the new law and to develop the necessary forms and procedures.

II. Discharge From Employment

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 20 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. Sec. 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.

SEC. 2. The amendment made by Section 1 of this act shall become operative only if Senate Bill No. ____ is enacted by the Legislature at its 1973 Regular Session.

SEC. 3. This act shall become operative on July 1, 1974.