#39.30 11/12/73

Memorandum 73-96

Subject: Study 39.30 - Wage Garnishment and Related Matters (AB 101)

AB 101 (wage garnishment procedure) will be heard in the Senate in January. This memorandum reports on various matters in connection with AB 101.

Exemption from federal statute. Attached as Exhibit I is a letter from the U.S. Department of Labor concerning my letter requesting that California be granted a limited exemption from the wage garnishment provisions of the Consumer Credit Protection Act. The letter states that such an exemption cannot be granted but that the Commission's objective of protecting the California employer who complies with the California statute will be accomplished by the federal agency giving "an assurance in the form of an opinion that nothing in Title III [of the federal statute] would impose any restrictions on earnings withholding orders executed pursuant to the tables promulgated under Chapter 2.5 [of the California statute]." Such an opinion letter would be provided only if the table promulgated under the act in fact provides greater protection than the federal law.

Opposition of California Association of Collectors. The California Association of Collectors opposes AB 101. See Exhibit II for material published in their official publication concerning AB 101. See Exhibit III for a summary of the provisions of the bill that appear to be the major areas of controversy. These have been previously discussed by the Commission.

Respectfully submitted,

John H. DeMoully
Executive Secretary

Memo 73-96

EXHIBIT I

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

OCT 1 1973

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

Dear Mr. DeMoully:

This is in reply to your letter of February 6, 1973, concerning proposed garnishment legislation in the State of California.

You request that we reconsider our position on granting an exemption from the provisions of section 303(a) of the Consumer Credit Protection Act subject to the following condition: "Wherever the earnings of any individual are subject to garnishment under any provision of California law other than 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), section 303(a) of the CCPA shall apply to the withholding of such earnings under such other statute." You feel that such a conditional exemption could be granted in the same manner in which the State of Virginia was granted an exemption under 29 CFR 870.57(b)(2).

The situation in the Virginia exemption was not similar to California's, as 29 CFR 870.57(b)(2) concerned an obscure and seldom used procedure. As stated in our letter of February 1, 1973, if California garnishment law is amended by the proposed bill (now titled Assembly Bill No. 101), the resulting body of law would clearly provide less protection than the Federal law in certain significant areas. These areas where less protection would be provided by the State concern types of garnishments that are common occurrences. Under the standard prescribed in 29 CFR 870.51, we continue to be unable to approve the conditional exemption you suggest.

You also ask that we consider revising 29 CFR 870.51 to permit granting an exemption subject to the condition you suggest, which is given in the second paragraph of this letter, and state that unless this can be done there appears to be little chance of securing enactment of the legislation. Such a revision of the regulation would not serve the purpose of Title III as indicated in section 301 and explained in

paragraph four of our letter to you of February 1, 1973. If the policy of the Secretary were changed as you suggest, the regulations would in any case have to require that the garnishment laws of a State "provide restrictions on garnishment which are substantially similar to those provided in section 303(a)." As we have indicated previously, the proposed bill as presently drafted provides substantially less protection than Title III. Thus, it could not meet a necessary standard for any regulation written pursuant to section 305.

We are pleased that your proposed legislation would provide protection to debtors which, in many situations, would appear to exceed that prescribed by Federal law, and continue to regard your proposed legislation as a desirable step towards eventually conforming State law to Federal law. We have therefore considered what steps it would be proper for us to take to aid your State in securing enactment of Assembly Bill No. 101.

We believe that the discussion in the last four paragraphs of our February 1st letter would be helpful in this respect and continue to hold this view. As stated there in more detail, if all of the provisions of Chapter 2.5, including the withholding tables to be promulgated pursuant to it, in fact provide for smaller garnishments than Title III with respect to every case of garnishment within the purview of Chapter 2.5, this chapter of State law may be followed with respect to earnings withholdings orders executed pursuant to it. Thus, with respect to Chapter 2.5, which contains the most important legislative changes, we do not understand your concern that "absent an exemption . . . employers would be forced to compute the exempt amount under both State and Federal law if they want to be absolutely safe."

Any further action on our part would necessarily depend on the nature of the legislation finally enacted by the State Legislature. It seems probable that if Chapter 2.5 is enacted as drafted it and the tables promulgated under it would provide more restrictive garnishments than Title III in every case of garnishment within its purview. As we have pointed out to you in previous correspondence, under the provisions of section 307(1) such a provision of State law will be applicable, even though, in the absence of an exemption under section 305, because other sections of the State law result in larger garnishments than permitted under Title III, both the State law and Title III would apply concurrently. It is emphasized that section 307(1) operates independently of section 305, in that it continues in effect those provisions of State law which place a greater restriction on garnishments than do the provisions of the Federal law.

Thus, if Chapter 2.5 is enacted to provide for smaller garnishments than Title III in every case of garnishment within its purview, we could give an assurance in the form of an opinion that nothing in Title III would impose any restrictions on earnings withholding orders executed pursuant to the tables promulgated under Chapter 2.5 or relieve any person from compliance therewith.

Such an opinion would be consistent with the standard expressed in section 307(1) of Title III and, would give the assurance you seek that garnishments executed pursuant to this chapter of State law would preempt Federal law. If yourState wishes such an opinion letter after the bill is enacted, we would need comprehensive information indicating that earnings withholdings orders under this chapter would result in smaller garnishments in every case of garnishment within the purview of such chapter than under Title III.

Sincerely,

Ben P. Robertson
Acting Administrator
Wage and Hour Division

Memo 73-96 EXHIBIT II

"Every man should give a part of his time and money to the profession in which he is engaged." — THEODORE ROOSEVELT

Collector's Ink

OFFICIAL MONTHLY PUBLICATION OF THE CALIFORNIA ASSOCIATION OF COLLECTORS, INC.

LEGISLATIVE PAGE —

COMMENTS BY M. F.

AB 101 (Warren) —

Revises law relating to attachment, garnishment and execution, and adds new chapter to Code of Civil Procedure regarding the protection of empolyees' earnings in specified situations.

The Federal law provides that a delinquent-debtor is given a deduction of $48 a week on his salary, and then an exemption of 75% of the remaining salary.

AB 101 increases the 75% exemption. This is based on a recommendation of the California Law Revision Commission based at Stanford University.

This bill affects not only Collection Agencies but any creditor, whether bank, finance company, department store, insurance company — anyone who has to enforce the collection of a delinquent account. IF THE BILL PASSES, THERE WILL BE SITUATIONS IN WHICH IT WILL BE IMPRACTICAL TO FILE SUIT, AND THE ONLY ALTERNATIVE WILL BE FOR THE CREDITOR TO THROW UP HIS HANDS AND MAKE A GIFT OF THE ACCOUNT TO THE DELINQUENT-DEBTOR. How far can the business community and the consumer-public go in being forced to make such gratuitous donations.

If the delinquent-debtor is asking for charity, then why should not the government supply it through welfare, by giving him money to pay his bills. We all believe in human treatment of individuals, but there is also the moral responsibility to demand that a delinquent-debtor shall be expected to make a substantial effort to meet the commitments to which he voluntarily obligated himself.

The plaintiff in an action, by the fact that the court has awarded him a judgment, proves that the account he holds is a just and legal one. Why should he then be penalized by wiping out the asset that is available to him. The Federal Government has set a standard. It seems fair enough and should not be further eroded.

At the time of writing, the bill has passed out of the Assembly Revenue and Taxation Committee and has gone to the Assembly floor "without recommendation". It is waiting on the floor for an Assembly vote. *Anyone interested, wherever he is, should write his Assemblyman, if he has any feeling in the matter.*

PUBLIC RELATIONS

MAX FERBER
Chairman of the Committee

LEGISLATIVE AB 101

(Editor's Note — The Bill, dated January 18, 1973, Amended April 25, May 22, June 18, August 13, is 47 pages in length. It is sponsored by the California Law Revision Commission which spent several years in its formulation. Presumably, because of its length, those persons or areas which one might have expected to have been interested took for granted that so long and complicated would be referred to Interim Hearings for study and examination in public debate.

Therefore, when the Bill appeared before the Assembly Judiciary Committee, with only the California Association of Collectors in opposition, it was given a do-pass — WITH ONLY FIVE MINUTES OF DEBATE. That averages out to eight pages a minute.

The Bill is now before the Senate Judiciary Committee. The following letter was addressed to the Committee by the firm of Weiss, Bergman & Lipton).

* * *

I appear today for the purpose of objecting to AB 101 and asking that this Honorable Body refer this Bill for further interim study.

I realize that the California Law Revision Commission has been, since 1957, engaged in the study of laws relating to attachments, garnishments, and property exempt from execution, and since the passage of the Federal Consumer Protection Act of 1968, the Commission has had for one of its purposes, if not its main purpose, an attempt to come up with a law that would exempt the State of California from the provisions of the Federal Act. The Commission has failed in this endeavor and the current Act which is before this Body will not further the creation of any such exemption.

This office has unofficially met with the Law Revision Commission to contribute to work out an Act which would be fair to both creditor and debtor.

There are a great number of provisions of AB 101 which this office has supported quite strongly. There are, however, several basic problems in AB 101 which I feel are not fair to either the creditor or the debtor, and for this reason I feel further study is necessary. These objections are set forth as follows, not necessarily in the order in which they appear in the Act.

On of the first points on which I have serious reservations involves Sections 723.022, 723.025, 723.030 (b) (5) and 723.101.

These Sections provide that after issuance of a "withholding order" the judgment creditor may cause the same to be served by mail upon the employer and that the employer shall make all payments directly to the judgment creditor; and further, that this order shall exist for 125 days unless terminated prior thereto by applicable provisions in the Code. The dangers inherent in these Sections are as follows:

We are turning aside the time honored and value-tested procedure of having a levying officer make the service and having payments made to the levying officer with appropriate entries being entered upon the register of the Court wherein the judgment was entered.

The fact that the current 90 days continuing levy is being extended for an additional 35 days is creating a burden that is obviously unfair.

But to return to the main argument, this Act eliminates the levying officer as a safeguard against the acts of a minority of creditors who have proven to be unscrupulous in the past. There is no provision for the creditor to report to the Court and/or properly account to anyone on the amount of monies collected or paid over. Enough just cannot be said as to the inherent dangers of this particular activity.

It is our opinion that, despite the purported safeguards, i.e., 723.101 (b) (c) and (d), anytime an Act takes away the personal property of another by the use of the United States Mail (whose inefficiency at the present time is well known) is a situation fraught with danger. The rights of the debtor, as well as the creditor, should not be lightly thrown aside under the guise of economy. The lack of Court supervision, whether directly or indirectly through a levying officer, is something that should not be taken lightly.

Under the present law, CCP 682.3 (Continuing Levy Act) the costs to the creditor and the debtor have been cut to the extent that executions are being efficiently run for very little more than is contemplated by this Act.

The next problem that has not been resolved is found in Sections 723.051 and 723.122 (d).

This deals with exemptions from levy under the Code. 723.051 does away with the large body of law that has grown up under Section 690.6 CCP and its predecessors. In addition to eliminating the debts known as "common necessities of life" it has now substituted a doctrine known as "essential for the support of himself or his family." There is no longer a requirement that a family live in California.

What is meant by essential for support is described only in the negative in that it is neither the debtor's customary standards of living, or a standard of living appropriate to his station, but further than that the Law Revision Commission has given no definitive guidelines.

It may be essential for a debtor to pay his current landlord but that is no reason to say that he need not pay his former landlord. With the elimination of the debtors formerly known as the "common necessaries of life," the doctor, the hospital, the landlord and the corner grocer who extended credit are now to be punished because their debtor needs his earnings because they are "essential" to pay his current doctor, hospital, landlord and corner grocer.

Without reducing a debtor to abject poverty, both the State of California and the Federal Government had in the past worked out a formula for a fair minimum of monies to be exempt from execution. This formula is currently pegged at 25% of all monies over $56.10 net disposal earnings. The 25% which is subject to execution is further subject, under current law, to total exemption if the debt is not for the common necessaries of life and the monies are necessary for the support of the debtor's family living in the State of California.

This surely should be a sufficient safeguard to the vast majority of debtors and at the same time protect the rights of those basic creditors without whom no one can exist. To substitute a new and untried doctrine is to create havoc in place of proven order.

The statement by the Law Revision Commission that "essential for support" is much stronger than the current law is not based upon any known fact. Again, it is not difficult for a liberal Court to disregard the needs of the creditor and hold

that all of a man's earnings are essential for his support.

While we are discussing formula, the proposed scale set forth in 723.050 is far more liberal to the debtor than that worked out by the Congress of the United States when the Consumer Protection Act of 1968 was passed. There is no showing by the Law Revision Commission, their recommendations of October, 1972 notwithstanding.

Another point which I am in disagreement with, or perhaps it is better to say, have some reservations about, is with the findings of the Law Revision Commission and more explicitly described by proposed Sections 723.030 and 723.030 (b) (3).

The two above Sections deal with withholding orders for support. These orders for support are for the support of *any person*. Further, this particular withholding order has priority over any other earnings withholding order.

The Law Revision Commission, in bringing forth these Sections, has for a laudible purpose, keeping people, and I guess primarily women, off the welfare rolls. One of the Commission's findings assumes that the vast majority of women receiving welfare, for either their own support or that of their minor children, are receiving welfare because their "ex?" spouses and/or the fathers of their children are gainfully employed and refuse to pay any sum for the support of their former spouses and/or children.

The legislative history cites this, but this Section finds its Genesis in CCP 4701 which gives the Court the power to order a father, for the support of his children, to make an irrevocable assignment of his wages or a portion thereof, to an appropriate county official to be used for the support of his children. The danger in the type of thinking presented by Section 723.030 and its subdivisions is twofold.

(a) It has increased existing law from the support of a child to the support of *any person*, and

(b) That the person against whom the order is made is gainfully employed and that the welfare rolls will be reduced accordingly.

Nothing could be further from fact. What this Section does, in fact, is to give rise to two abuses which far outweigh any benefits.

(a) The law-abiding, debt-paying citizen, who, thank God, is in the vast majority, in the advent of a divorce, is not given the opportunity to prove his manhood but is now faced with the stigma of having an automatic payroll deduction which will continue as long as the Court order is in existence; and despite the fact that the employer is entitled to $1.00 costs of administration, will give his employer reason either to terminate the employee or pass him over for advancement.

AB 101 in clarifying Labor Code Sec. 2929 states quite emphatically that an earnings withholding order of Section 723.030 shall be considered as a garnishment for the payment of one judgment which one may not be discharged by reason thereof. However, this leaves the employee constantly under the sword for fear that another garnishment may be levied for which he would then be subject to loss of employment.

(b) And for the sophisticated debtor this is a means of having his cake and eating it too. All that he need do, in the event he is getting too much pressure from his creditors and cannot file either a straight bankruptcy or a Chapter XIII, is to divorce his wife, get a Court order for support issued against him, resume living with his wife and no other creditors may execute on his wages.

What this will do to our already troubled family structure is not difficult to imagine. In fact, the rapidly expanding "do it yourself" divorces that are taking place means that it will not be necessary to save to pay a lawyer to put the divorce through. With such an order issued, he can thereby avoid his just debts and obligations legally.

I submit one final thought to you, the Constitutionality of this Section. At first blush, and in closer inspection, this Section, 723.030 creates an arbitrary and unreasonable distinction between employed and self-employed people. By virtue of the mere fact of being employed, a vindictive ex-spouse may annoy, harass, and vex his or her "ex" by tying a millstone around the employer's neck.

Furthermore, this Section creates a legalized method for one to invade sanctity and privacy of another with legal sanction and impunity. A person may not, because of his employment or for his own personal reasons, want it known that he has previously been divorced or that he is paying child support or alimony. Again, assuming the vindictive or obnoxious ex-spouse, a withholding order for support pursuant to 723.030 must be issued thus giving notice to the world of the personal affairs of the employee, which he or she may wish to keep private.

In closing, gentlemen, it is my belief that with the limited time made available to me that I have demonstrated to you that there are several large areas within this Act that need further study and revision, and that this Bill should not be passed without that study and revision.

Very truly yours,

Weiss, Bregman & Lipton

Memorandum 73-96

EXHIBIT III

ASSEMBLY BILL 101 (WAGE GARNISHMENT)

Assembly Bill 101 is a comprehensive revision of the law relating to wage garnishment. The bill substitutes one uniform procedure for four different procedures provided by existing law.

The bill makes many improvements in existing law. Three major improvements are:

(1) The bill permits optional service by mail of garnishment orders. This will substantially reduce the cost of serving garnishment orders and will benefit both creditors and debtors. Creditors will not be required to advance service costs ($5 for service plus a charge for mileage one-way at 70 cents a mile), and debtors will not eventually have to pay those costs. Mail service is now used for service of some wage garnishment orders (Franchise Tax Board) and has worked well.

(2) The bill increases the amount of earnings that are exempt from garnishment, especially for low income wage earners and wage earners with dependents. The bill does not, however, significantly increase the exempt amount for wage earners without dependents except in the very low income brackets. At the same time, the bill restricts the availability of the existing hardship exemption to "rare and unusual cases" and eliminates the existing "common necessaries" exception to the exemption. The effect of the bill on the amount of earnings withheld can be illustrated by four examples:

A M O U N T W I T H H E L D

Gross Earnings (weekly)	AB 101	Existing Law			
		Single		Married	
		Under Public Retirement	No Public Retirement	2 children	6 children
$84	$10.00	$13.47	$16.14	$18.99	$19.56
$120	16.00	20.98	22.24	25.92	27.94
$250	37.00	39.86	43.07	49.74	52.52
$300	44.00	45.98	49.94	57.96	61.39

Orders for withholding for state tax liability or support are not subject to the above limitations.

(3) The bill provides a procedure whereby a support order can be enforced by a continuing garnishment on the support obligor's employer. This will provide a means for keeping support payments current and thereby avoid the need for the dependents to seek welfare assistance. A garnishment to secure payment of court-ordered support takes priority over a garnishment on an ordinary debt; the employer is required to withhold the amount for support and, if the debtor's earnings are sufficient, the employer also must withhold on the other garnishment order.

The primary object in drafting the bill has been to minimize the burden to the employer in complying with wage garnishment orders. For example, employers will be able to deduct according to a withholding table rather than having to compute the amount to be withheld in each case after making various deductions from gross earnings.

AB 101 will provide an efficient, economical, business-like procedure for handling wage garnishments. The Judicial Council will adopt forms and informational instructions to employers that should make compliance for employers as easy as possible. The increase in the amount of earnings exempt and the tightening up of the existing hardship exemption should reduce the number of court hearings in hardship cases.

AB 101 is the result of more than two years' study of wage garnishment by the California Law Revision Commission working in cooperation with a special committee appointed by the California State Bar.