

## Memorandum 74-61

Subject: Study 39.30 - Wage Garnishment

You will recall that recommendations of the Law Revision Commission for a comprehensive revision of the law relating to wage garnishment have twice been defeated in the Legislature. The first bill was killed by the Senate Committee on Judiciary--the first committee that considered the bill--in 1972. The second bill--AB 101 of the 1973-74 session--passed the Assembly, was approved by the Senate Judiciary Committee, but died in the Senate Finance Committee in the closing days of the session.

The opposition to AB 101 came primarily from the California Association of Collectors, the Municipal Court Clerks Association, and representatives of the sheriffs, marshals, and constables. The bill was complex and enough concern was created--primarily I believe by the court clerks--that members of the Senate Finance Committee were unwilling to approve the bill.

The staff has given considerable thought to what recommendation, if any, should be submitted to the 1975 Legislature. We recommend that the Commission submit a recommendation that will put some sense into the exemptions now provided in Code of Civil Procedure Section 690.6 for earnings. We have drafted the attached recommendation which revises the Section 690.6 exemptions. We further recommend that within the next several years the Commission review the comprehensive wage garnishment statute with the view of possibly submitting a revised recommendation for a comprehensive statute to a future session of the Legislature.

In drafting the attached recommendation, the staff has taken a most conservative view in devising the formula that determines the amount of the automatic exemption. You will recall that the recommendation to the 1973-74 session provided that, if the amount that would otherwise be withheld would be less than \$10, nothing should be withheld. We have lowered this amount to \$5 in the attached draft. Moreover, we have devised a formula that will yield slightly more for the creditor so that the amount withheld under the formula is approximately the same amount that would be withheld under the federal rule on a single person under the state public retirement system.

Reference to Table 3 set out in the attached recommendation will demonstrate that the automatic exemption provided in the recommended statute will allow a low income wage earner with many dependents less than the minimum amount needed to support life. This is true even though such a debtor will have substantially more than under existing law. Nevertheless, the staff recommends approval of the recommendation as drafted because we think it is important to improve two features of the federal law:

(1) The federal law takes 100 percent of disposable earnings between \$69 and \$92. The recommended legislation never takes more than 50 percent of earnings and raises the amount of gross earnings totally exempt from approximately \$95 to \$105 in the case of a single person under the public retirement system and from approximately \$78 to \$105 for a married person with six children. This is a significant improvement in existing law.

(2) The federal law permits withholding substantially more from the earnings of a person with a large family than it does from the earnings of a single person where both have the same gross earnings. For example, under existing law, on gross earnings of \$95, the amount withheld for the

single person under public retirement is eight cents, and the amount withheld from the earnings of the married person with six children is more than \$16. Under the attached recommendation, nothing would be withheld on gross earnings of \$95. Where the gross earnings are \$106, under the recommendation \$5 would be withheld as compared to the following amounts under existing law: \$6.88 for the single person under state public retirement system; \$23.75 for the married person with six children. This again is a significant improvement in existing law. (These examples assume a federal minimum wage of \$2.30. The federal minimum wage becomes \$2.30 on January 1, 1976.)

In view of the high rate of ~~i~~inflation the staff believes that the exemptions for wage garnishment must be corrected as soon as possible. We believe it would be unwise to cloud this issue with collateral issues such as mail service, elimination of the role of the sheriff, and other issues that would be presented if a comprehensive revision were proposed.

The staff believes that the attached recommendation would have an excellent chance for enactment. As the amount of the exemption is increased--if the Commission wishes to increase it--the chance for enactment decreases.

Accordingly, the staff recommends that the attached recommendation (prepared jointly by Mr. Ulrich and Mr. DeMouilly) be approved at the November 1974 meeting for printing and submission to the 1975 Legislature. Two copies are attached. Please mark your editorial revisions on one copy.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

STATE OF CALIFORNIA

STAFF DRAFT

# CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

*relating to*

WAGE GARNISMENT EXEMPTIONS

NOVEMBER 1974

CALIFORNIA LAW REVISION COMMISSION

Stanford Law School

Stanford, California 94305

## LETTER OF TRANSMITTAL

The California Law Revision Commission was directed by Resolution Chapter 202 of the Statutes to make a study to determine whether the law relating to attachment, garnishment, and property exempt from execution should be revised. The scope of this study was expanded by Resolution Chapter 45 of the Statutes of 1974 to include all aspects of the law relating to creditors' remedies. This recommendation deals with one aspect of the creditors' remedies study--wage garnishment exemptions.

The Commission has submitted recommendations relating to wage garnishment procedure and related matters to prior sessions of the Legislature. See Recommendation Relating to Attachment, Garnishment, and Exemptions From Execution: Employees' Earnings Protection Law, 10 Cal. L. Revision Comm'n Reports 701 (1971). (The recommended legislation--Senate Bill 88 of the 1972 Regular Session--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 property committee for interim study.) See also Recommendation Relating to Wage Garnishment and Related Matters, 11 Cal. L. Revision Comm'n Reports 101 (1973). (The recommended legislation--Assembly Bill 101 of the 1973-74 session--was not enacted; the bill passed the Assembly, was reported favorably by the Senate Judiciary Committee, but died in the Senate Finance Committee during the final days of the 1974 session.)

In preparing this new recommendation, the Commission has considered objections made to its earlier recommendations. This recommendation deals only with exemptions from wage garnishment. The Commission plans to give further consideration to wage garnishment procedure and may submit a recommendation on that subject to a future session.

Respectfully submitted,

Marc Sandstrom  
Chairman

## RECOMMENDATION

relating to

## WAGE GARNISHMENT EXEMPTIONS

### INTRODUCTION

Judgment creditors<sup>1</sup> favor wage garnishment because it reaches the judgment debtor's earnings in the hands of his employer and because the threat of a wage garnishment often compels the debtor to make payments on the judgment.<sup>2</sup> Code of Civil Procedure Section 682.3 provides the procedure for a wage garnishment.<sup>3</sup> This section imposes a continuing

1. Before judgment, all earnings are exempt from attachment. See Code Civ. Proc. § 690.6(a)(existing law) and § 487.020(c)(Cal. Stats. 1974, Ch. 1516, § 49, effective January 1, 1976).
2. See, e.g., E. Jackson, California Debt Collection Practice § 9.73 at 186 (Cal. Cont. Ed. Bar 1968).
3. Section 682.3 provides:

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.

(3) 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 690.6 and 690.50. The exemption so claimed shall extend to any wages withheld pursuant to the levy of

duty on the debtor's employer for a 90-day period to withhold and pay over the required amounts to the levying officer and deals with other aspects of wage garnishment. The amount to be withheld by the employer<sup>4</sup>

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execution whether or not withheld after the claim of exemption is filed.

(c) Subject to the provisions of Section 690.50, 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.

4. Section 690.6 apparently protects not only earnings in the hands of the employer but also earnings that have been paid to the employee. 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. 745, 92 P.2d 961 (Sup. Ct. L.A., App. Dep't 1939) (W.P.A. worker's paycheck); *Le Font v. Rankin*, 167 Cal. App.2d 433, 334 P.2d 608 (1959) (bank account); *Carter v. Carter*, 55 Cal. App.2d 13, 130 P.2d 186 (1942) (bank 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. Federal law also protects both paid and unpaid earnings. Consumer Credit Protection Act § 302(b), 15 U.S.C. § 1672(b) (1970).

pursuant to a wage garnishment is determined by Section 690.6<sup>5</sup> which provides:

690.6. (a) 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 690.59.

(b) 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.

(c) 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.

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

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5. Section 690.6, as amended by Cal. Stats. 1974, Ch. 1516, § 17, is set out in the text. Chapter 1516 becomes operative on January 1, 1976.



## AMOUNT AUTOMATICALLY EXEMPT FROM WAGE GARNISHMENT

### Background

The maximum amount that may be withheld by the employer on a wage garnishment is determined by subdivision (a) of Section 690.6, which exempts--without the need to file a claim for the exemption--"[o]ne-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."

The California exemption of one-half of the debtor's earnings is superseded by the "greater portion" allowed by "statute of the United States"; the federal Consumer Credit Protection Act<sup>6</sup> restricts "garnishment"<sup>7</sup> of "earnings"<sup>8</sup> to certain amounts--basically 25 percent of "disposable earnings." Subdivision (a) of Section 303 of the federal act provides, in part:<sup>9</sup>

(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,

whichever is less.

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6. 15 U.S.C. § 1601 et seq. (1970). Title III, 15 U.S.C. §§ 1671-1677 (1970), enacting restrictions on wage garnishment, became effective on July 1, 1970.

7. Subdivision (c) of Section 302 of the act, 15 U.S.C. § 1672(c) (1970), 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.

8. Subdivision (a) of Section 302 of the act, 15 U.S.C. § 1672(a) (1970), 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.

9. 15 U.S.C. § 1673(a) (1970).

The federal law defines "disposable earnings" as those earnings remaining "after the deduction . . . of any amounts required by law to be withheld."<sup>10</sup> The latter amounts include amounts withheld for federal and state income taxes, federal social security, and state unemployment disability insurance deductions. Apparently, contributions to public retirement funds also are to be deducted. 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.

During 1975, when the minimum wage is \$2.10,<sup>11</sup> the federal act exempts at least \$63 of disposable earnings per week. Hence, if an individual's disposable earnings for a workweek are \$63 or less, none of his earnings may be withheld under a garnishment. If his disposable earnings are between \$63 and \$84, the entire amount over \$63 may be withheld. At \$84 and above, 25 percent of disposable earnings may be withheld.

Beginning in 1976, when the minimum wage will be \$2.30 per hour,<sup>12</sup> the federal act will exempt at least \$69 of disposable earnings per week. Hence, if an individual's disposable earnings for a workweek are \$69 or less, none of his earnings may be withheld. If his disposable earnings are between \$69 and \$92, the entire amount over \$69 may be withheld. At \$92 and above, the 25-percent rule applies.

The federal rule operates most harshly on the very low income wage earner--one whose disposable earnings are no more than \$92 per week. As indicated above, beginning in 1976, if the employee's disposable earnings do not exceed \$92 per week, 100 percent of his disposable earnings

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10. Consumer Credit Protection Act § 302(b), 15 U.S.C. § 1672(b)(1970). In addition, Consumer Credit Protection Act Section 303(c) specifically provides that "no court of . . . any State may make, execute, or enforce any order or process in violation of this section" providing restrictions on garnishment. 15 U.S.C. § 1673(c)(1970).

11. Fair Labor Standards Act of 1938 § 6(a)(1), 29 U.S.C. § 206(a)(1) (1970), as amended, Pub. L. No. 93-259, § 2 (April 8, 1974).

12. Id.

over \$69 will be withheld. Thus, an employee who has disposable earnings of \$69 one week will have nothing withheld; but, if his disposable earnings for the next week are \$92, he finds that \$23 is withheld and he receives no more take home pay than he received the prior week.

The Federal rule has even worse consequences for a low income debtor with a large family. Under the federal rule, the low income debtor with a large family--and, consequently, greater needs--has more earnings withheld than a single debtor with the same gross earnings but with more limited needs. This result is demonstrated by the examples set out in Table 1.<sup>13</sup>

TABLE 1. EXAMPLES OF AMOUNTS WITHHELD UNDER EXISTING LAW BEGINNING IN 1976

GROSS EARNINGS (Weekly)	AMOUNT WITHHELD		
	Single Person	Married & 2 children	Married & 6 children
\$90	-0-	\$8.64	\$11.84
95	\$3.29	12.58	16.28
100	6.25	15.79	20.69
105	9.71	19.40	23.53

The strange results under the federal rule occur because the same amount is withheld on a given amount of "disposable earnings" without regard to the number of persons dependent on the debtor's earnings. If a debtor has a greater number of dependents and claims tax exemptions for them, less federal and state income tax is withheld from the debtor's earnings. As a consequence, the debtor's "disposable earnings" subject to garnishment are greater.

#### Recommendations

The Commission has concluded that the federal law restricting wage garnishments provides inadequate protection for low income debtors, especially those with families. For example, if the employee whose wages are garnished has gross earnings of \$100 per week, his take-home

13. These examples are taken from Table 2 infra.

pay after garnishment will be \$69 per week, whether he is single, has two children, or has six children.<sup>14</sup> This is the result under the federal law because on gross earnings of \$100 the employer will withhold pursuant to the garnishment less than \$3 if the employee is single, approximately \$16 if the employee is married and has two children, and more than \$20 if the employee is married and has six children.<sup>15</sup>

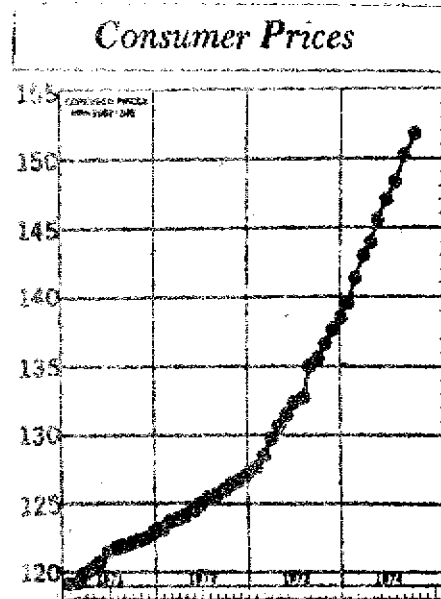
It is unrealistic to expect that a family of four can live on a take home pay of \$69 per week and even less realistic to expect that a family of eight can live on this amount. Yet the adoption of the federal rules as the standard for the California basic exemption is based on these expectations--expectations which are especially unrealistic when the rapidly increasing cost of living resulting from inflation is taken into account.<sup>16</sup> In fact, at low income levels, a California

14. See Table 3. The actual take-home pay will be less if amounts are deducted by the employer for union dues, medical insurance, or private retirement plans. It should also be noted that, prior to 1976, the employee's take-home pay will be less than the amounts stated in the text since the amount exempt under federal law is increased beginning in 1976. See discussion on p. supra.
15. See Table 2. Again, it should be noted that, prior to 1976, a greater amount is withheld because a greater amount will be exempt under the federal law beginning in 1976. See discussion on p. supra.
16. In July 1973, the Consumer Price Index (1967 dollars=100) stood at 132.7; in July 1974, only one year later, it stood at 148.3--an increase of almost 12% in the cost of living in one year, 48% since 1967. Spendable average weekly earnings (gross earnings less social security and income tax deductions) for private nonagricultural workers with no dependents rose from \$118.43 in July 1973 to \$125.44 in July 1974--an increase of only 6%. Hence, in terms of 1967 dollars, the spendable average weekly earnings of such workers declined from \$89.25 in July 1973 to \$84.59 in July 1974. Spendable average weekly earnings for private nonagricultural workers with three dependents rose from \$128.34 in July 1973 to \$135.79 in July 1974--an increase of less than 6%, compared with a 12% inflation rate during the same period. Hence, in terms of 1967 dollars, the spendable average weekly earnings of such workers declined from \$96.71 in July 1973 to \$91.56 in July 1974. See Bureau of Labor Statistics, Monthly Labor Review, Tables 23 and 25 at 94-95 (September 1974).

The average low income level (based on the poverty index adopted by a Federal Interagency Committee in 1969 as adjusted for changes in the Consumer Price Index to July 1974) for all families is approximately \$4550 per year. For a family of four, the low income level is \$5050 per year or approximately \$97 per week. At this income level, the federal Consumer Credit Protection Act in effect in 1974 (\$2 minimum wage) allows the garnishment of

debtor with dependents whose earnings are garnished may have significantly less spendable income than he would have were his family on welfare.<sup>17</sup>

The Commission recommends that the California law be revised to provide greater protection for low income debtors, especially those with



approximately \$1120 per year or \$21.59 per week. The Commission's proposed statute, at a \$2 minimum wage, would allow the garnishment of only \$364 per year or \$7 per week. For a family of eight, the low income level is approximately \$8250 per year or \$159 per week. At this income level, federal law allows the garnishment of approximately \$1870 per year or \$35.95 per week. The Commission's proposed statute would allow the garnishment of \$1196 per year or \$23 per week. From these figures, it is clear that the Commission's proposed statute would treat families below the poverty index more fairly. See Bureau of Census, Statistical Abstract of the United States, Table 547 at 335 (197\_).

17. A comparison of the maximum benefit payments for fiscal year 1974-75 under AFDC (California Department of Benefit Payments, Eligibility and Assistance Standards Manual § 44-315.411) to net disposable earnings after garnishment under the Consumer Credit Protection Act and the Commission's proposed statute computed with the \$2.30 per hour minimum wage (effective January 1, 1976) reveals the following: A debtor with three dependents earning \$105 per week (\$460 per month) would have \$19.40 per week (\$84 per month) garnished under federal law leaving \$69 per week (\$300 per month) net disposable earnings. The AFDC maximum benefit for a family with four persons is over \$72 per week (\$311 per month), all of which is exempt from execution under Code of Civil Procedure Section 690.19. The Commission's proposed statute would take nothing out of the debtor's wages at the \$105 per week level; hence, net disposable earnings would be approximately \$94 per week (\$408 per month). Under federal law, the wage earner is left with \$11 less than welfare might pay him whereas, under the Commission's proposal, he would have \$97 more than the welfare benefit level.

Similarly, a debtor with seven dependents earning \$170 per week (\$736 per month) would have \$36.03 per week (\$156 per month) garnished under federal law, leaving \$108.07 per week (\$470 per month) net disposable earnings. The AFDC maximum benefit for a family of eight persons would be over \$110 per week (\$477 per month). The Commission's proposed statute would take out \$25 per week (\$108 per month), leaving \$119.10 per week (\$517 per month) net disposable earnings. Under federal law, the wage earner with seven dependents would have \$7 less per month than AFDC might pay

a number of dependents.<sup>18</sup> Specifically, the Commission recommends:

whereas, under the Commission's proposal, he would have \$40 per month more than the welfare benefit level. (Note that the AFDC maximum aid levels will be even higher during fiscal year 1975-76 since adjustment is made for the increase or decrease in the cost of living pursuant to Welfare and Institutions Code Sections 11450 and 11453. As discussed in note 16, the cost of living is currently rising at a rate of over 10% per year.)

18. Twenty states restrict wage garnishment (particularly in the cases of low income wage earners or heads of families, or in consumer transactions) beyond the requirements of federal law or eliminate wage garnishment entirely. Florida, Pennsylvania, and Texas do not allow wage garnishment. Fla. Stat. Ann. § 222.11 (Supp. 1974) (resident heads of families); Pa. Stat. Ann., Tit. 42, § 886 (1966) and McCloskey v. Northdale Woolen Mills, 296 Pa. 265, 145 A. 846 (1929); Texas Const., Art. 16, § 28 (1955). Alabama restricts garnishment in consumer cases to 20% of weekly disposable earnings or weekly disposable earnings exceeding 50 times the minimum wage--\$115 in 1976--whichever is less. Ala. Code, Tit. 5, § 326 (Cum. Supp. 1974). Eight states restrict garnishment (in consumer cases where noted) to 25% of weekly disposable earnings or weekly disposable earnings exceeding 40 times the minimum wage--\$92 in 1976--whichever is less. Conn. Gen. Stat. Rev. § 52-361 (Supp. 1974) (consumer cases); Idaho Code Ann. § 28-35-105 (Supp. 1973) (Uniform Consumer Credit Code); Maine Rev. Stat. Ann., Tit. 9A, § 5.105 (Supp. 1974) (Uniform Consumer Credit Code); Minn. Stat. Ann. § 550.37(13) (Supp. 1974); N.M. Stat. Ann. § 36-14-7 (Supp. 1973); N.D. Cent. Code § 32-09-02 (Supp. 1973); Utah Code Ann. § 70B-5-105 (Supp. 1973) (Uniform Consumer Credit Code); Wash. Rev. Code Ann. § 7.33.280 (Supp. 1974). New Hampshire allows garnishment of weekly wages exceeding 50 times the minimum wage--\$115 in 1976. N.H. Rev. Stat. Ann. § 512:21 (Supp. 1973). New York permits garnishment of 10% of wages exceeding \$85 per week. N.Y. Civ. Prac. §§ 5205(e) (1963) and 5231(b) (McKinney Supp. 1974). New Jersey permits garnishment of 10% of weekly wages over \$48 (30 times the minimum wage of \$1.60 when the provision was enacted) on incomes not exceeding \$7500 per year (approximately \$144 per week); on larger incomes, the court may order a greater percentage. N.J. Stat. Ann. § 2A:17-57 (Supp. 1974). Nebraska restricts garnishment of earnings of heads of families to 15% of weekly disposable earnings or weekly disposable earnings exceeding 30 times the minimum wage--\$69 in 1976--whichever is less. Neb. Rev. Stat. § 25-1558 (Cum. Supp. 1972). Missouri restricts garnishment of the earnings of resident heads of families to 10% of weekly disposable earnings or weekly disposable earnings exceeding 30 times the minimum wage--\$69 in 1976--whichever is less. Mo. Ann. Stat. § 525.030 (Supp. 1974). Iowa restricts amounts which may be garnished under the federal Consumer Credit Protection Act to a maximum of \$250 per year. Iowa Code § 642.21 (Supp. 1974). Maryland restricts garnishment to 25% of weekly wages or wages exceeding \$120 per week, whichever is less, except for four counties where the federal law is applied. Md. Ann. Code, Art. 9, § 31 (Supp. 1973). Massachusetts allows garnishment of wages exceeding \$125 per week. Mass. Ann. Laws., Ch. 246 § 28 (Supp. 1974).

(1) The maximum amount to be withheld on a wage garnishment should be determined from a table (see discussion infra) provided to the employer which shows the amount to be withheld determined by the gross earnings of the employee, without regard to the number of persons dependent on the earnings. Because the amount of earnings withheld will be the same for all debtors with the same gross earnings--regardless of family size--the debtor who has claimed more than one dependent for income tax purposes will have more actual take-home pay than an unmarried debtor with the same gross earnings. The recommendation, in this way, recognizes and accommodates the greater need of the debtor with a family. Table 3 infra shows the significant benefit this recommendation gives the debtor with dependents, especially the low income debtor with many dependents.

(2) The maximum amount to be withheld on a given amount of gross earnings should be determined by a statutory formula<sup>19</sup> which computes the approximate amount that would be withheld under the federal law for an unmarried employee with that amount of gross earnings.<sup>20</sup> This recommendation reflects the Commission's decision not to provide an employee without dependents any significantly greater protection than is afforded

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19. The statute should prescribe a formula under which definite amounts would be deducted for federal and state income taxes, social security, and state unemployment disability insurance deductions. Similar deductions are made under federal 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 federal and state income taxes would be based on the amount that would be withheld from the gross earnings of a single person who claims no tax exemptions.

In addition to the deductions listed above, an additional deduction--based on the federal minimum hourly wage--should be allowed in determining the 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, if the earnings remaining (i.e., the debtor's "available earnings") are less than \$10, nothing should be withheld. If the available earnings are at least \$10 but not more than \$45, 50% of the available earnings should be withheld. If the available earnings are more than \$45, \$2.3 plus 25% of the available earnings over \$45 should be withheld. See Table 2 infra showing approximate amounts that would be withheld under this formula as compared to the federal law.

20. The statutory formula yields an amount slightly less than the approximate amount that would be withheld on the earnings of an unmarried person who claims no income tax exemptions and is covered by the public employees retirement system. See Table 2 infra.

under federal law. This decision is strongly influenced by the fact that recommendations of the Commission to provide greater protection than the federal law have twice been defeated in the Legislature.

(3) Where the amount that otherwise would be withheld on earnings for one week under the formula proposed by the Commission would be less than \$5, nothing should be withheld. This recommendation not only provides some additional protection to very low income debtors but also avoids the need to deduct small amounts where the cost to the employer may exceed the amount received by the creditor.

(4) The form approved by the Judicial Council for levy of execution on earnings of an employee should include tables showing the amount to be withheld on gross earnings for weekly, monthly, and other common pay periods. The tables, which would be prepared in conformance with the formula provided in the statute, will make it simple for the employer 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" and then to compute the amount to be deducted from "disposable earnings" will be eliminated.<sup>21</sup> The tables will make it easier for the employee to discover any errors made by the employer in computing the amount to be withheld. Disputes between creditors and employers will also be minimized by using gross earnings as the basis for withholding since this avoids the possibility of subtraction of improper items in computing the amount of "disposable earnings."

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21. Since the amounts to be withheld under the Commission's recommendations will be less than the amounts withheld under federal law (see n.20 supra), the employer will not have to compute the amounts withholdable under the federal law.



TABLE 2. COMPARISON OF AMOUNTS WITHHELD

GROSS EARNINGS  (weekly/annual)	AMOUNTS WITHHELD				
	PROPOSED STATUTE	EXISTING LAW - CONSUMER CREDIT PROTECTION ACT			
		Single Person (claiming 0 exemptions)		Married & 2 children	Married & 6 children
		Under Public Retirement	No Public Retirement	(4 exemptions)	(8 exemptions)
\$90/4680	-0-	-0-	-0-	\$8.64	\$11.84
95/4940	-0-	\$0.00	\$3.29	12.58	16.28
100/5200	-0-	2.79	6.25	15.79	20.69
105/5460	-0-	6.00	9.71	19.40	23.53
106/5512	\$5.00	6.88	10.64	20.28	23.75
110/5720	7.00	9.21	13.17	23.00	24.63
120/6240	10.00	15.52	19.98	24.81	26.83
135/7020	15.00	23.51	24.81	27.51	29.74
150/7800	20.00	25.72	27.21	30.12	32.42
170/8840	25.00	28.83	30.57	33.58	36.03
200/10400	29.00	33.34	35.45	38.74	41.19
250/13000	37.00	40.33	43.07	47.01	49.78
300/15600	44.00	46.45	49.81	54.60	58.02
400/20800	56.00	57.44	62.05	68.89	72.74
500/26000	68.00	68.40	74.26	81.67	86.27

Note. Deductions have been made for federal and state income tax withholding, social security contributions, and state disability insurance. Except where specifically indicated in the table, no deduction has been made for contributions to public retirement systems. Where taken into account, the retirement deductions are based on the rate for state employees who are miscellaneous members of the Public Employees' Retirement System. The income tax deductions are based on withholding tables for 1974. The federal social security tax is 5.85% on the first \$13,200 of annual gross earnings. The state disability insurance contribution rate is 1% on the first \$9,000 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 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 \$2.30 minimum wage, effective January 1, 1976.

TABLE 3. COMPARISON OF NET DISPOSABLE EARNINGS AFTER GARNISHMENT

GROSS EARNINGS  (Weekly/ annual)	SINGLE PERSON (0 exemptions)				MARRIED & 2 CHILDREN (4 exemptions)		MARRIED & 6 CHILDREN (8 exemptions)	
	Under Public Retirement		No Public Retirement					
	Existing	Proposed	Existing	Proposed	Existing	Proposed	Existing	Proposed
	Law	Statute	Law	Statute	Law	Statute	Law	Statute
\$90/4680	\$65.64	\$65.64	\$68.64	\$68.64	\$69.00	\$77.64	\$69.00	\$80.84
95/4940	69.00	69.08	69.00	72.29	69.00	81.58	69.00	85.28
100/5200	69.00	71.79	69.00	75.25	69.00	84.79	69.00	89.69
105/5460	69.00	75.00	69.00	78.71	69.00	88.40	70.57	94.10
106/5512	69.00	70.88	69.00	74.64	69.00	84.28	71.23	89.96
110/5720	69.00	71.21	69.00	75.17	69.01	85.01	73.88	91.51
120/6240	69.00	74.52	69.00	78.98	74.41	89.22	80.49	97.32
135/7020	70.53	79.04	74.44	84.25	82.53	95.04	89.20	103.94
150/7800	77.15	82.87	81.62	88.83	90.35	100.47	97.25	109.67
170/8540	86.47	90.30	91.69	97.26	100.72	109.30	108.07	119.10
200/10400	100.00	104.34	106.35	112.80	116.20	125.94	123.55	135.74
250/13000	120.99	124.32	129.21	135.28	141.01	151.02	149.34	162.12
300/15600	139.34	141.79	149.44	155.25	163.79	174.39	174.07	188.09
400/20800	172.30	173.74	186.15	192.20	206.65	219.54	218.20	234.94
500/26000	205.19	205.59	222.79	229.05	245.02	258.69	258.82	277.09

Note. This table assumes that the employee is under social security and state disability insurance; if he is not, disposable earnings after garnishment would increase by about 6% for social security and 1% for state disability insurance. Except where indicated, no deduction has been made for contributions to public employment retirement systems. Table 3 is derived from Table 2.

## ADDITIONAL HARDSHIP EXEMPTION FOR EXTRAORDINARY CASES

### Background

The maximum amount subject to garnishment under federal law may be reduced under subdivision (b) of Section 690.6, which provides:

(b) 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.

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.<sup>22</sup> In order to obtain the exemption, the debtor must follow the procedure outlined in Code of Civil Procedure 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 knowledge of the law and still may end up with the debtor denied money currently necessary for his family's support. Perhaps, as a result of this complex procedure, comparatively few debtors have availed themselves of the exemption although many more appear to be eligible for it.<sup>23</sup> Moreover, the hardship exemption provided by subdivision (b) is not available if the debt on which the creditor's judgment was based was incurred for the "common necessities of life."<sup>24</sup> In this case, only the automatic exemption provided by the federal law is available.

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22. It has been argued as well that, read literally, subdivision (b) cannot increase the exemption from wage garnishment provided by federal law although it is admitted that the Legislature probably did not intend such a result. M. McAndrews, California Debt Collection Practice Supplement § 17.74 (Cal. Cont. Ed. Bar 1972). The Consumer Credit Protection Act § 307, 15 U.S.C. § 1677 (1970), preserves state laws "providing for more limited garnishments than are allowed" by the federal act.
23. See Western Center on Law & Poverty, Wage Garnishment--Impact and Extent in Los Angeles County 5, 122-123 (1968); Brunn, Wage Garnishment in California--A Study and Recommendations, 53 Cal. L. Rev. 1214, 1219 (1965).
24. The hardship exemption provided by subdivision (b) also is not available where the debt on which the creditor's judgment was based was incurred for personal services rendered to the debtor by an employee.

### Recommendations

A major benefit of the recommended automatic exemption is to permit a low income debtor--especially one with a large family--to retain a greater portion of his earnings, thus virtually eliminating his need to claim a greater exemption based on hardship. This not only will protect a debtor who is unsophisticated regarding the legal procedures necessary to claim a hardship exemption but also will avoid burdening the courts with claims of exemption. For this reason, the Commission recommends that a stricter standard be adopted for the hardship exemption. In place of the present standard--"necessary for the use of the debtor's family residing in this state and supported in whole or in part by the debtor"--the Commission recommends that the exemption be allowed only for that portion of his earnings "which the debtor proves is essential to the support of the debtor and his family." Moreover, the statute should make clear that the basic exemption should be adequate, except in rare and unusual cases, to provide the amount essential for the support of the debtor and his family. Neither the debtor's accustomed standard of living nor a standard of living appropriate to his station in life should be a criterion for measuring the debtor's claim for the hardship exemption. Only such additional amount as is required for the maintenance of a minimum standard of living should be exempt. The hardship exemption is not intended to shield a debtor from his judgment creditors while maintaining other than an austere life style.

The Commission also recommends that the "common necessities" exception to the hardship exemption be eliminated. In actual operation, the effect of the "common necessities" exception has been to decide the question whether competing creditors could reach a debtor's earnings without regard for either the debtor's point of view (the needs of the debtor's dependents are ignored) or the creditor's viewpoint (no consideration is 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 are decided on the technical, and usually irrelevant, issue of what is a "common necessary of life."<sup>25</sup>

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25. 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).

PROPOSED LEGISLATION

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

An act to amend Section 690.6 of, and to add Section 690.6a to, the Code of Civil Procedure, relating to execution on earnings.

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

404-181

Section 1. Section 690.6 of the Code of Civil Procedure, as amended by Cal. Stats. 1974, Ch. 1516, § 17, is amended to read:

690.6. (a) ~~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 preceeding the date of a withholding by the employer under Section 682.3; shall be~~ Where the levy of execution is against the earnings of an employee pursuant to Section 682.3, any amount in excess of the amount specified in Section 690.6a to be withheld from his earnings is exempt from execution without filing a claim for exemption as provided in Section 690.50.

~~(b) All earnings of the debtor received for his personal services rendered at any time within 30 days next preceeding 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;~~

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

(c) 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.

(d) 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 provides the basic exemption of earnings from garnishment in the amounts provided by Section 690.6a. Formerly, subdivision (a) made exempt "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." The exemption of one-half of the debtor's earnings in all cases was superseded by the greater exemption provided by Section 303 of the federal Consumer Credit Protection Act, 15 U.S.C. § 1673 (1970). The reference to the federal statute has been discontinued because the exemptions provided by Sections 690.6 and 690.6a are greater than those provided by the federal statute. The 30-day limitation, which was superseded by the federal statute, has also been eliminated. Like the former version, the amended section protects both paid and unpaid wages where there has been a wage garnishment under Section 682.3. See Recommendation Relating to Wage Garnishment Exemptions, 12 Cal. L. Revision Comm'n Reports \_\_\_\_ n.4 (1974).

Subdivision (b) of Section 690.6 is based on the exemption provided by former subdivision (b). However, the standard for the exemption is more restrictive than former law--"essential for support" rather than "necessary for the use." This strict standard recognizes that the liberal exemption provided by subdivision (a) and Section 690.6a 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. Subdivision (b) is not intended to be used for the maintenance of a life style appropriate to the debtor's station in life or for an accustomed standard of living while the debtor owes money on unsatisfied judgments against him.

Formerly, subdivision (b) 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." This exception has been eliminated.

Subdivision (b) was formerly limited to earnings received "within 30 days next preceding the date of a withholding by the employer under Section 682.3." The 30-day limitation has been discontinued. Subdivision (b) is no longer tied to the service of a wage garnishment under Section 682.3. Hence, the exemption provided by subdivision (b) is available whether or not execution is under Section 682.3. This returns the law to its pre-1972 status. Cal. Stats. 1972, Ch. 43, § 1, replaced the words "levy of execution" with "date of a withholding by the employer under Section 682.3."

Subdivisions (c) and (d) remain substantively unchanged.

Sec. 2. Section 690.6a is added to the Code of Civil Procedure, to read:

690.6a. (a) The form approved by the Judicial Council for the writ of execution for a levy on the earnings of an employee shall include tables for determining the amount to be withheld from earnings of employees for representative pay periods. The tables shall be prepared in conformance with subdivision (c) but may prescribe the amounts to be withheld according to reasonable earnings brackets. Subject to the exemption provided by subdivision (b) of Section 690.6, if a table has been prepared by the Judicial Council for the employee's pay period, the table shall be used to determine the amount to be withheld under Section 682.3.

(b) As used in subdivision (c), "available earnings" for any workweek means the earnings of the debtor for that workweek less the sum of all of 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 no exemptions.

(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 worker contributions to the Unemployment Compensation Disability Fund 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 no exemptions.

(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.

(c) The maximum amount that may be withheld under Section 682.3 from the earnings of an employee in any workweek shall be computed as provided in this subdivision. Where the available earnings of the debtor for the workweek are less than ten dollars (\$10), nothing shall be withheld. Where the available earnings of the debtor for the workweek are at least ten dollars (\$10) but not more than forty-five dollars (\$45), 50 percent of the available earnings shall be withheld. Where the available earnings of the debtor for the workweek are greater than forty-five dollars (\$45), twenty-three dollars (\$23) plus 25 percent of the available earnings in excess of \$45 shall be withheld. Where the available earnings of the debtor for the workweek are ten dollars (\$10) 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.

(d) 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 (c).

Comment. Section 690.6a provides the manner of calculating the amount of the basic exemption provided by subdivision (a) of Section 690.6. Section 690.6a reflects policies similar to those underlying Sections 302 and 303 of the federal Consumer Credit Protection Act. 15 U.S.C. §§ 1672-1673 (1970). 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 690.6a specifies the amounts to be deducted in determining the portion of the debtor's earnings which are subject to garnishment ("available 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 (b). However, the amount deducted to determine available 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 gross earnings. Subdivision (a) directs the Judicial Council to prepare tables which will be a part of the writ of execution for levy on the earnings of employees. An employer therefore generally need not make any computations but will simply withhold pursuant to a writ of execution levied under Section 682.3 the amount listed in the tables.

Both the federal scheme and Section 690.6a 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, 1976, if a debtor's disposable earnings are less than \$69 per week, no garnishment is permitted; if his disposable earnings are between \$69 and \$92, all his disposable earnings above \$69 are subject to garnishment; if his disposable earnings are more than \$92 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 (b) provides a basic minimum exemption that is always deducted in determining available earnings. Moreover, subdivision (c) provides a formula that precludes withholding less than \$5. From \$10 to \$45 available earnings, a 50-percent rule is applicable and, above \$45 available earnings, 25 percent of the available earnings may be withheld.