

Memorandum 76-65

Subject: Study 39.33 - Wage Garnishment

The materials attached to this memorandum implement the decisions made at the September meeting relating to wage garnishment.

Form of Presenting Recommendation to Legislature

The proposed legislation is substantially the same as that recommended in the Commission's Recommendation Relating to Wage Garnishment Procedure (April 1975). The staff recommends against reprinting the entire wage garnishment recommendation again in revised form because of the expense and delay in doing so. Instead, the staff recommends that a brief recommendation be prepared for inclusion in our Annual Report (staff draft attached). This draft contains a brief discussion of the important differences between the April 1975 recommendation (which was never followed up by introduction of a bill) and the revised proposal. The new recommendation also contains revised tables comparing the amounts that would be withheld and remaining disposable earnings under existing law with such amounts under the revised proposal. The exhibit to the recommendation sets out the Comments which have to be added or revised because of changes in the recommended legislation and to make other improvements in the Comments. We would not set out in the new recommendation the revised legislation (to avoid the expense of printing it in our report). Please mark your suggested editorial changes on the recommendation to turn in to the staff after the meeting.

The recommended legislation, revised to reflect the decisions made at the September meeting, is attached to this memorandum (yellow pages). We are hopeful that the Commission will review and approve both the recommendation and the revised legislation at the October meeting. Thereafter, we anticipate review by the State Bar Committee on Relations of Debtor and Creditor. Hopefully, agreement on the recommended legislation can be reached by the Commission and the State Bar committee. (If such agreement can be obtained, we are hopeful that the State Bar would support the bill in the Legislature.) We hope to be able to review the reaction of the State Bar committee at our November meeting, make our final decisions, and have the recommended legislation ready for introduction when the Legislature meets early in December 1976.

Specific Matters Noted for Further Consideration

In the process of revising the bill, we encountered several points that we believe merit further consideration:

§ 723.024. Employer's service charge for withholding

At the urging of the State Bar committee, the Commission revised this section to limit the employer's service charge for withholding to five dollars. However, it is not clear from the tape of the meeting whether this limitation is five dollars per employee per indebtedness per month or five dollars per employee per month. The first alternative would permit the employer to take out more than five dollars where, for example, the employee is subject to a withholding order for support and a withholding order for taxes. Under the second alternative, the employer would never be able to deduct more than five dollars from the wages of an employee in a given month. The section as drafted reflects the second alternative; this second alternative is probably what the State Bar committee favors. The illustration given in the Comment (that the limitation would apply where the employee is paid more frequently than weekly) could be interpreted to reflect the first alternative. Which alternative should be adopted?

§ 723.027. Creditor required to notify levying officer when judgment satisfied; notice of termination

We have added a short statement to the Comment concerning abuse of process for failure to notify the levying officer when the judgment is satisfied so that he can serve a notice of termination of the earnings withholding order on the employer. Further thought on this problem has not revealed any better mechanism to enforce the judgment creditor's duty.

§ 723.028. Withholding order for costs and interest

At the urging of the State Bar Committee on Relations of Debtor and Creditor, a sentence was added to this section to the effect that a supplemental withholding order for costs and interest was a garnishment under the same indebtedness. This sentence is unnecessary, and the staff is concerned that the addition of the sentence might cause some employers to infer that a second garnishment on the principle amount of

the same judgment is a ground for discharge. We would prefer to put this sentence in the Comment and also to make clear in the Comment that a second garnishment on the same judgment likewise does not permit the discharge of an employee under Labor Code Section 2929.

§ 723.079. Receipt required

The Commission approved the State Bar committee's proposal to require the state to send the taxpayer a receipt for amounts withheld unless the taxpayer requests that a receipt not be sent. The staff thinks that this provision should be deleted in its entirety. An earlier Commission recommendation would have required all judgment creditors to give receipts for amounts received. This proposal was dropped because of strong opposition based on the expense involved and problems that might result from incidental failure to comply. The Commission's decision was influenced by the fact that the employer is required to provide the employee with a statement of deductions every time the employee is paid. Labor Code § 226. The staff thinks that this notice of deduction is more important to the employee and that there is not a sufficient reason to require the state to give receipts when general judgment creditors are not. The levying officer has a record of amounts received from the employer. Moreover, receipts are not provided under existing law, and there has been no showing that they are needed. The Commission's decision to drop the receipt requirement generally was made after a full discussion at which interested groups were represented.

§ 723.129. Availability of forms

We have added this section to continue the substantive provision formerly contained in subdivision (d) of Section 723.122.

Operative Date

Anticipating enactment during 1977, we propose that the operative date be delayed for one year (until January 1, 1979) to enable the Judicial Council and the state to develop forms and rules and to permit other persons to become familiar with the new law.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

October 4, 1976

Staff Draft

RECOMMENDATION

relating to

WAGE GARNISHMENT

INTRODUCTION

In 1975, the Law Revision Commission published a Recommendation Relating to Wage Garnishment Procedure, 13 Cal. L. Revision Comm'n Reports 601 (1976). The Commission decided to defer the introduction of the proposed legislation included in the 1975 recommendation until after the Commission had reviewed the comments of the State Bar Committee on Relations of Debtor and Creditor and the comments of other interested persons.

The Commission has reviewed these comments and plans to request that a bill relating to wage garnishment procedure be introduced at the 1977-78 legislative session. Except for a few changes, the bill will be the same in substance as the proposed legislation in the Commission's 1975 recommendation; reference should be made to that recommendation for a discussion of the bill. The significant changes the bill makes in the legislation set out in the 1975 recommendation are discussed below.

The Comments to a number of sections require revision to reflect the changes made in the legislation contained in the 1975 recommendation. The revised Comments and one new Comment are set out as an exhibit to this recommendation. The remaining Comments set out in the 1975 recommendation need no revision and continue to apply to the bill that will be introduced at the 1977-78 legislative session.

FEE FOR SERVICES OF LEVYING OFFICER

In the prior recommendation, the Commission proposed that service of an earnings withholding order should generally be by mail. The Commission stated that the savings that would result from this scheme would permit authorization of a flat fee of \$6.50 for the duties of the levying officer in place of the mileage fee prescribed by former law. Since that recommendation was made, legislation has been passed that provides generally for a flat fee of \$8.50 for service of various process.¹ The

1. See Govt. Code §§ 26721-26748, as amended Cal. Stats. 1975, Ch. 368.

Commission recommends that a flat fee of \$8.50 be provided to cover all the duties of a levying officer under a wage garnishment.

CONTINUING LEVY PROCEDURE

The prior recommendation noted that a judgment creditor seeking to collect his judgment from the wages of a public employee was required to use the abstract of judgment procedure which did not provide for a continuing levy. Accordingly, the Commission recommended that the wages of public employees be subject to garnishment in the same manner as private employees. A bill was enacted at the 1976 session of the Legislature to accomplish this proposal.²

TIME FOR PAYMENT BY EMPLOYER

The prior recommendation would have required employers to pay the amounts withheld from the judgment debtor's earnings over to the levying officer once a month. The Commission has modified this proposal to permit the employer to pay over to the levying officer more frequently than once a month if the employer elects to do so. If the employer elects to pay more frequently than once a month, the proposed section would require the employer to make such payment not later than 10 days after the close of the pay period from which the earnings are withheld. The employer would have 15 days within which to pay over if he elects to pay over monthly.

EXEMPTIONS

The Commission recommends the same formula as proposed in its prior recommendation for determining the amount of an employee's earnings that are exempt. However, since the prior recommendation was made, there have been changes in the federal income tax withholding tables and in the amount of the social security tax.³ Accordingly, new illustrative tables comparing (1) the amounts that would be withheld on a wage gar-

2. Cal. Stats. 1976, Ch. ____ [A.B. 3520], amending Code Civ. Proc. § 710.

3. It is assumed for the purpose of computing the illustrative tables that the bill raising the social security tax rate beginning in 1977 will pass. See H. 13770, 94th Cong., 2d Sess. (1976).

nishment under the proposed statute and under existing law and (2) the net disposable earnings after garnishment under the two schemes have been prepared and are printed at the end of this text.

EMPLOYER'S SERVICE CHARGE

The Commission has recommended that the employer be permitted to withhold an additional dollar as a service charge each time the employer is required to withhold pursuant to an earnings withholding order. The Commission has modified this proposal to add the limitation that such service charges may not exceed five dollars per month for any employee. This limitation would have effect where the employee is paid more frequently than weekly or, in some cases, where the employee's earnings are subject to two withholding orders.

WITHHOLDING ORDERS FOR SUPPORT

Withholding orders for support should be given priority over other earnings withholding orders as proposed in the prior recommendation. However, the Commission has deleted the provision of the prior recommendation that required that attorney's fees incurred in attempting to collect delinquent amounts payable under a judgment for support for a child or spouse be given the same priority as the delinquent support payments.

WITHHOLDING ORDERS FOR TAXES

The Commission recognized in its prior recommendation that protection of the public fisc justifies the preferential treatment of withholding orders for taxes, but also noted that this principle does not justify summarily depriving a tax debtor of the means for support of the debtor's family. In accordance with this policy, the Commission recommends that, where the state itself issues a withholding order for taxes, the order should be limited to the amount that would be withheld under an earnings withholding order issued to enforce a money judgment, rather than twice such amount, as was earlier recommended. If the state desires to withhold a greater amount of the tax debtor's earnings, it may seek a withholding order for taxes from a court.

The Commission previously recommended that, when a state issued withholding order for taxes has been levied, the tax debtor should be permitted to claim an exemption for amounts necessary for the support of the debtor's family. The determination of such claims by the state agency should be final because under existing law the tax debtor is not entitled to any such exemption and because the amount that may be withheld under a state issued withholding order will be significantly reduced.

The state should be required to send a receipt to the tax debtor for amounts paid to the state under a withholding order for taxes. The prior recommendation had proposed that receipts be sent only if the tax debtor requests them. Where a withholding order for taxes has been issued erroneously, the state should be required to refund to the employee any service charges deducted by the employer.

NOTICE WHERE WITHHOLDING ORDER SUPERSEDED

In any situation where an earnings withholding order having priority or a wage assignment for support issued under Civil Code Section 4701 is served on the employer and the employer is required to cease withholding pursuant to an earnings withholding order served earlier, the employer should be required to send notice to the levying officer who served the earlier order or to the state in the case of a superseded withholding order for taxes. This notice will advise the levying officer or other person who received the payments under the earlier earnings withholding order why no further payments will be sent and will avoid the need for such person to contact the employer to determine why the employer has stopped sending the payments.

ADMINISTRATION AND ENFORCEMENT

The Judicial Council should be authorized in the statute to prescribe forms in languages other than English. The general authority to adopt rules would enable the Judicial Council to prescribe rules concerning the circumstances under which such forms should be used.

**TABLE 1. COMPARISON OF AMOUNTS
WITHHELD UNDER WAGE GARNISHMENT**

GROSS EARNINGS (weekly/ annual)	PROPOSED STATUTE	AMOUNTS WITHHELD			
		EXISTING LAW - CONSUMER CREDIT PROTECTION ACT			
		Single Person (claiming 0 tax exemptions)		Married & 2 children	Married & 5 children
		Under Public Retirement	No Public Retirement	(4 tax exemptions)	(8 tax exemptions)
\$75/3900	-0-	-0-	-0-	\$0.71	\$0.71
80/4160	-0-	-0-	-0-	5.36	5.36
90/4680	-0-	-0-	\$2.06	14.66	14.66
95/4940	-0-	\$2.15	5.70	19.30	19.30
100/5200	-0-	4.91	8.75	23.23	23.23
102/5304	5	6.87	10.61	23.70	23.70
105/5460	6	8.06	12.20	24.32	24.40
110/5720	8	11.31	15.75	25.28	25.56
120/6240	11	17.40	22.44	27.18	27.88
135/7020	16	23.83	25.32	30.02	31.37
150/7800	21	25.92	27.63	32.75	34.85
175/9100	26	29.88	31.96	37.36	40.11
200/10400	30	33.26	35.72	41.47	44.45
250/13000	38	40.41	43.62	50.32	53.19
300/15600	45	46.62	50.58	59.28	61.88
400/20800	57	57.36	62.82	75.12	78.87
500/26000	68	67.35	74.31	89.33	93.68

Note. Deductions have been made for federal and state income tax withholding, social security contributions, and state disability insurance (except for employees under public retirement). 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 local government employees who are miscellaneous members of the Public Employees' Retirement System. See Govt. Code § 20603(a). The income tax deductions are based on withholding tables for 1976. The federal social security tax effective in 1977 is 6.05% on the first \$15,300 of annual gross earnings. The state disability insurance contribution rate currently 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 2. COMPARISON OF NET DISPOSABLE EARNINGS AFTER CASHIERMENT

GROSS EARNINGS (weekly/annually)	NET DISPOSABLE EARNINGS					
	SINGLE PERSON (1 tax exemption)		MARRIED & 2 CHILDREN		MARRIED & 6 CHILDREN	
	Public Retirement	Public Retirement	Public Retirement	Public Retirement	Public Retirement	Public Retirement
	Existing Law	Proposed Statute	Existing Law	Proposed Statute	Existing Law	Proposed Statute
\$75/3900	57.26	57.26	57.26	57.26	57.26	57.26
80/4160	61.23	61.23	61.23	61.23	61.23	61.23
90/4600	67.74	67.74	67.74	67.74	67.74	67.74
95/4940	68.80	71.13	68.80	74.70	68.80	68.80
100/5200	69.00	73.91	69.00	77.75	69.00	69.00
102/5304	69.00	70.87	69.00	74.61	69.00	69.00
105/5460	69.00	71.06	69.00	75.49	69.00	69.00
110/5720	69.00	72.31	69.00	76.75	69.00	69.00
120/6200	69.00	75.40	69.00	80.46	69.00	69.00
135/7020	71.31	79.34	71.31	85.38	71.31	71.31
150/7800	77.77	84.49	77.77	89.33	77.77	77.77
175/9100	89.04	93.52	89.04	103.80	89.04	89.04
200/10400	99.30	103.06	99.30	112.90	99.30	99.30
250/13000	121.23	123.44	121.23	136.44	121.23	121.23
300/15600	139.00	141.51	139.00	157.35	139.00	139.00
400/20000	172.10	172.46	172.10	194.30	172.10	172.10
500/26000	202.06	201.44	202.06	239.25	202.06	202.06

Note: This table represents the net disposable earnings after cashierment and after deducting the social security tax. Disposable earnings after cashierment would increase by about 4% for single persons and 1% for dual family members. Except where indicated, no deduction has been made for contributions to public unemployment and medical systems. Table 2 is derived from Table 1.

EXHIBIT
NEW AND REVISED COMMENTS

§ 710 (technical amendment)

Comment. Section 710 is amended to refer to Chapter 2.5 (commencing with Section 723.010) which supersedes former Section 682.3.

§ 723.024. Employer's service charge for withholding

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 is authorized under Civil Code Section 4701 (wage assignment for support). However, under prior law, there was no provision authorizing an employer to make a service charge in connection with wage garnishments generally. The second sentence, which limits the total of service charges against one employee to five dollars per month, would apply where the employee is paid more frequently than weekly.

§ 723.027. Creditor required to notify levying officer when judgment satisfied; notice of termination

Comment. Section 723.027 requires the judgment creditor to give notice of satisfaction of the judgment to the levying officer if the earnings withholding order has not yet terminated. See Section 723.022. In some cases, the employer will be aware of the satisfaction by virtue of the employer's having withheld the amount necessary to satisfy the judgment. See Section 723.023(a)(2). 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 judgment creditor. If this is the case, Section 723.027 applies, and the judgment creditor has the duty to notify the levying officer promptly of the satisfaction so that the levying officer may serve a notice of termination on the employer. Service of the notice of termination is to be made on the person, and at the address, indicated in the employer's return. See Sections 723.101(c) and 723.126(b)(6). As to the general duty of a creditor to furnish a debtor a satisfaction of judgment, see Section 675. Failure to perform the duty imposed by this section may make the judgment creditor liable in an action for abuse of process. See White Lighting Co. v. Wolfson, 68 Cal.2d 336, 438 P.2d 345, 66 Cal. Rptr. 697 (1968).

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§ 723.031. Effect of wage assignment for support

Comment. Section 723.031 states the effect of a wage assignment for support made pursuant to Section 4701 of the Civil Code on an earnings withholding order.

Subdivision (a) makes clear that nothing in this chapter affects the wage assignment for support, and subdivision (b) makes clear that the wage assignment has priority (as provided in Section 4701) over any earnings withholding order, including a withholding order for support under Section 723.030.

Under subdivision (b), the employer is required to notify the levying officer who earlier served an earnings withholding order if that order is completely superseded by the wage assignment. It should be noted that "levying officer" means the state agency where a withholding order for taxes is superseded. See Section 723.073.

Subdivisions (b) and (d) of Section 723.031 make clear that, where a wage assignment for support under Section 4701 of the Civil Code is in effect, the amount withheld from the debtor's earnings pursuant to such wage assignment is deducted from the amount that otherwise would be withheld pursuant to the withholding table prepared by the Judicial Council on an earnings withholding order to enforce an ordinary money judgment or that otherwise would be withheld where a portion of the debtor's earnings have been determined to be exempt under Section 723.051. Suppose, for example, that a wage assignment for support under Section 4701 is in effect which requires that \$40 per week be withheld. Assume that the table prepared pursuant to Section 723.050 limits the amount that may be withheld

to \$56. To determine the maximum amount that may be withheld pursuant to the earnings withholding order (absent any exemption allowed under Section 723.051), the \$40 withheld pursuant to the wage assignment for support is subtracted from the \$56, leaving \$16 as the maximum amount that may be withheld pursuant to the earnings withholding order. For a special rule applicable when the earnings withholding order is on a judgment for delinquent amounts payable for child or spousal support, see Sections 723.030 and 723.052. The rule stated in subdivision (d) of Section 723.031 is required to avoid conflict with the federal Consumer Credit Protection Act. That act requires that the amount withheld pursuant to a wage assignment under Section 4701 of the Civil Code be included in determining whether any amount may be withheld pursuant to an earnings withholding order on an ordinary judgment. See subdivision (c) of Section 302 of the act (15 U.S.C. § 1672).

("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."). See Letter from Ben P. Robertson, Deputy Administrator, U.S. Department of Labor, dated August 2, 1972, on file in office of California Law

Revision Commission, and Wage and Hour Division opinion letters WH-100, WH-104, and WH-112.

Under subdivision (e), the amount that could be withheld pursuant to a withholding order for taxes would be computed in the same manner as for an ordinary earnings withholding order using the withholding tables prepared by the Judicial Council pursuant to Section 723.050 unless the withholding order for taxes is obtained under Section 723.076.

§ 723.050. Standard exemption

Comment. Section 723.050 provides the standard exemption applicable to all earnings withholding orders other than earnings withholding orders on writs issued for the collection of delinquent amounts payable on a judgment for child or spousal support (Sections

723.030 and 723.032) or certain withholding orders for taxes (Section 723.076). See also Sections 723.031 (wage assignments for support), 723.051 (exemption obtained by special hardship showing), 723.074(b) (agency issued withholding order for taxes in lesser amount), 723.075(c) (exemption obtained by special hardship showing to agency which issued withholding order for taxes), 723.105(e) (modification or termination of earnings withholding order where exemption claims are unopposed).

Section 723.050 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 ("available earnings"). Thus, a debtor claiming a greater number of exemptions will have less income 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 ("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 (a). Currently, the social security tax rate is 6.05 percent (Int. Rev. Code of 1954, § 3101); the state disability insurance rate is one percent (Unemp. Ins. Code § 984). 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 (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.

Subdivision (b) directs the Judicial Council to formulate rules for computing the amount to be withheld for pay periods other than a week. Such rules regarding pay periods of less than a week must be consistent with federal requirements under the Consumer Credit Protection Act.

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 December 31, 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 (a) provides a basic minimum exemption that is always deducted in determining available earnings. Moreover, subdivision (b) 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.

Where a wage assignment for support under Section 4701 of the Civil Code is in effect, the amount withheld from the debtor's earnings pursuant to such wage assignment is deducted from the amount that otherwise would be withheld pursuant to the withholding table prepared by the Judicial Council on an earnings withholding order on an ordinary money judgment. See Section 723.031 and Comment thereto. The amount that may be withheld pursuant to an administratively issued earnings withholding order for taxes when a wage assignment under Section 4701 of the Civil Code is in effect is computed in the same manner using the same withholding table prepared by the Judicial Council pursuant to Section 723.050. See Section 723.031 and the Comment thereto.

**§ 723.051. Additional amounts necessary for support
exempt**

Comment. Section 723.051 is based on the hardship exemption formerly provided by subdivision (b) of former Section 690.6. However, Section 723.051 makes clear that this exemption is not intended to be used for the maintenance of a life style appropriate to the judgment debtor's station in life or for an accustomed standard of living while the judgment debtor owes money on unsatisfied judgments. Both the judgment debtor with a family and one without a family may claim the exemption under Section 723.051. For a special provision applicable where the earnings withholding order is on a writ issued for the collection of delinquent support payments, see Section 723.052.

Subdivision (b) of former Section 690.6 prevented the judgment debtor from claiming the hardship exemption if the debt sought to be collected was incurred "by the debtor, his or her spouse, or his or her family for the common necessities of life." This exception to the hardship exemption has been eliminated. Likewise, the limitation of the hardship exemption under former Section 690.6 to earnings received "within 30 days next preceding the date of a withholding by the employer under Section 682.3" has been eliminated. Section 723.051 continues the former exception to the hardship exemption under Section 690.6 where the garnishment is on a judgment for a debt incurred for personal services rendered by any employee or former employee of the judgment debtor.

**§ 723.052. Exemption when order is earnings withholding
order for support**

Comment. Section 723.052 retains the substance of the former law applicable to a wage garnishment for the collection of delinquent amounts payable for child or spousal support. Since the federal limitations do not apply to such a garnishment (subdivision (b) of Section 303 of the federal Consumer Credit Protection Act), this case was covered by the exemption of one-half of the judgment debtor's earnings provided by subdivision (a) of former Section 690.6. Section 723.052 makes clear that, in applying the 50-percent-of-earnings exemption, the amount withheld from the earnings of the judgment debtor pursuant to a wage assignment for support under Section 4701 of the Civil Code is included in computing the 50 percent of the judgment debtor's earnings that may be withheld. For example, if 30 percent of the judgment debtor's earnings are withheld pursuant to a wage assignment for support, an additional 20 percent may be withheld pursuant to the earnings withholding order on the writ issued for the collection of delinquent amounts payable for child or spousal support.

Subdivision (b) makes the 50-percent-of-earnings standard provided by subdivision (a) subject to the power of the court to

make an order that more or less of the earnings of the judgment debtor be withheld where the earnings withholding order is on a writ issued for the collection of delinquent amounts payable for child or spousal support. Upon the motion of any interested party, the court shall make an equitable division of the judgment debtor's earnings between, for example, his first wife and children and himself and his second family. This continues the substance of prior law. See *Rankins v. Rankins*, 52 Cal. App.2d 231, 126 P.2d 125 (1942).

For rules relating to the priority to be given a withholding order for support, see Section 723.030.

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

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. Under subdivision (b)(2), the time for making a request for review of an assessment or determination depends on the appropriate procedures applicable to a particular agency.

Subdivision (d) recognizes that few state tax liabilities are reduced to judgment.

§ 723.074. Agency issued withholding order for taxes

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 the same amount as if the earnings withholding order were issued at the behest of a judgment creditor. See 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 tables are the ones prepared by the Judicial Council pursuant to Section 723.050. 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) of Section 723.075. As to the effect of a wage assignment for support under Section 4701 of the Civil Code, see subdivision (e) of Section 723.031 and the Comment thereto.

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§ 723.073. Notice to taxpayer; reduction in amount withheld

Comment. Section 723.073 requires service of a copy of the order and a notice informing the employee of the effect of the order and the employee's right to hearings and other remedies. See Section 723.080 (manner of service).

These papers

are served on the employer who is required to deliver them to the employee. Cf. Section 723.104 (ordinary earnings withholding orders).

The state's determination of an exemption claim is made final under subdivision (c) because (1) under certain collection procedures of former law the taxpayer was not entitled to any exemption and (2) the amount that may be withheld under a state issued withholding order for taxes has been significantly reduced.

Subdivision (d) is the same in substance as the last sentence of subdivision (a) of Section 723.104. See the Comment to that section for a discussion of the comparable provision.

§ 723.076. Court issued withholding order for taxes

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 necessary for the support of the taxpayer or 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.

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. The temporary order prevents the employer from paying to the employee all or a specified portion of the employee's earnings for a limited period in order to permit the court to act on the state's application for an earnings withholding order for taxes.

§ 723.083. Refund of employer's service charge

Comment. Section 723.083 requires 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

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. The contents of the forms (except for a court issued withholding order for taxes) are prescribed by the state. See Section 723.081. The form for the court issued withholding order for taxes is prescribed by the Judicial Council. See Section 723.120.

§ 723.100. Judicial Council authorized to prescribe practice and procedure

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). The Judicial Council also prescribes the forms to be used under this chapter. See Section 723.120. But see Section 723.081 (forms used in connection with withholding orders for taxes--other than the form of a court issued order--are prescribed by state).

§ 723.102. Application for issuance of earnings withholding order

Comment. Subdivision (a) of Section 723.102 requires a judgment creditor to apply for an earnings withholding order to the levying officer in the county where the order is to be served. The form prescribed by the Judicial Council must be used for the application. See Section 723.120. See also Section 723.121 (contents of application).

As a prerequisite to applying for the earnings withholding order, the judgment creditor must have obtained the issuance of a writ of execution to the county where the order is to be served. See Section 723.101 (place where service may be made). An earnings withholding order shall be promptly issued on the ex parte application of a judgment creditor. The debtor may claim an exemption as provided in 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. The earnings withholding order will be effective only if served before the time

for the return of the writ under subdivision (a) of Section 683 has expired. See Section 723.103(c).

For special provisions regarding the issuance of a withholding order for taxes, see Article 4 (commencing with Section 723.070).

§ 723.104. Delivery of papers to employee; 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 the employee's rights. This section applies to all earnings withholding orders, including those for support and taxes. But see Section 723.075 for a special provision concerning the notice to the employee in case of a withholding order for taxes and Section 723.076(f) (temporary earnings holding order).

Section 723.104 also requires the employer to fill out and mail an employer's return to the levying officer who served the earnings withholding order. (In the case of a withholding order for taxes, the return is made to the state. See Section 723.073.) Such a return must be made even though the order is not given effect. See Comment to Section 723.083. If the order is not given effect, the employer must indicate the reason and return the order. The form of the return is prescribed by the Judicial Council. See Section 723.120. See also Section 723.126 (contents of return) and Section 723.081 (form of return for withholding order for taxes is prescribed by state).

The last two sentences of subdivision (a) make clear that an employer is not liable for civil damages for failure to give the employee the notice concerning the employee's rights. The section does not preclude the Labor Commissioner from taking action under the Labor Code if the employer consistently fails to give employees the notice required under subdivision (a). Moreover, although the employer is not civilly liable, the employer may be subject to punishment for contempt. This would be appropriate where the employer fails to give the employee notice out of malice or willful neglect but would not be appropriate where the employer merely inadvertently fails to give the notice.

§ 723.105. Judgment debtor's claim of exemption

Comment. Section 723.105 outlines generally the procedure for the hearing of a judgment debtor's claims for the exemption under Section 723.051. Section 690.50 is not applicable.

A judgment debtor is not limited as to the time within which a claim of exemption must be made. However, unless there has been a material change in the debtor's income or needs, an exemption may be claimed 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 130 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 the claim of exemption and a financial statement. Subdivision (b). The form of these documents is prescribed by the Judicial Council. See Section 723.120. See also Sections 723.123 and 723.124 (contents of documents). Upon receipt of these documents, the levying officer 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 10 days. Subdivision (d). If no notice of opposition is filed, the levying officer serves on 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), the levying officer serves on the employer a modified order in the amount indicated in the claim of exemption. Subdivision (e). Service of the notice of termination or modified order is to be made on the person, and at the address, indicated in the employer's return. See Sections 723.101(c) and 723.126(b)(6). If the judgment creditor's notice of opposition is filed within 10 days, the levying officer files the documents with the court clerk who sets the matter for hearing and notifies both parties. Subdivision (f). The form of the notice of opposition is prescribed by the Judicial Council. See Section 723.120. See also Section 723.128 (contents of notice).

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). The court may order that amounts withheld in excess of the amount determined to be proper be paid to the judgment debtor. 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 (c) of Section 723.022 makes clear that the employer is not liable to the debtor for such amounts, and subdivision (i) of Section 723.103 authorizes the debtor to recover such amounts from the levying officer or, if paid to the creditor, from the creditor. Where amounts have been withheld but not yet paid over to the levying officer, the employer is required to pay those amounts to the employee-judgment debtor. See subdivision (i).

Subdivision (j) continues the rule that an appeal may be taken from the court's order allowing or denying the claim of exemption in whole or in part. See Section 690.50(m). However, the rule formerly provided by the last sentence of subdivision (j) of Section 690.50 that an appeal by the judgment creditor

prevented the release of the withheld earnings of the judgment debtor is not continued. Under subdivision (j) of Section 723.105, until such time as the order modifying or terminating the earnings withholding order is set aside or modified, the order allowing the claim of exemption in whole or in part is given the same effect as if the appeal had not been taken.

Subdivision (h) makes clear that this section does not apply to exemption claims made where a withholding order for taxes has been served pursuant to Article 4 (commencing with Section 723.070). See Section 723.075. Nor does this section apply to a withholding order for support. The exemption in the case of such an order is determined under Section 723.052 which specifies the procedure for claiming the exemption.

§ 723.120. Judicial Council to prescribe forms

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. See also Section 723.081 (forms in connection with withholding order for taxes). If the Judicial Council prescribes forms and other papers in languages other than English, the levying officer should use such forms where appropriate. See also the last sentence of the Comment to Section 723.150.

§ 723.121. Application for earnings withholding order

Comment.

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

§ 723.122. Notice to employee

Comment. The actual form for the notice to the employee is prescribed by the Judicial Council. See Section 723.120. For the notice to the employee in the case of a withholding order for taxes, see Section 723.075. See also Section 723.076(f) (temporary earnings holding order).

§ 723.123. Form of claim of exemption

Comment. The actual form for the claim of exemption is prescribed by the Judicial Council. See Section 723.120. The "present mailing address" may or may not be the judgment debtor's residence address.

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§ 723.124. Judgment debtor's financial statement

Comment.

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

§ 723.126. Employer's return

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. But see Section 723.081 (forms in connection with withholding orders for taxes prescribed by state).

§ 723.128. Judgment creditor's notice of opposition

Comment. Section 723.128 specifies the information to be included in the judgment creditor's notice of opposition to the claim of exemption. The form is prescribed by the Judicial Council. See Section 723.120.

§ 723.129. Availability of forms

Comment. Section 723.129 implements the last sentence of subdivision (d) of Section 723.122.

§ 723.150. Rules

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. Such rules should be consistent with federal requirements under the Consumer Credit Protection Act of 1968. See Section 723.151. The rules may also prescribe the circumstances under which forms in languages other than English may or must be used.

§ 26750 (added). Fee under Employees' Earnings Protection Law

Comment. Section 26750 provides for a one-time fee of \$8.50 for performance of the levying officer's duties under the Employees' Earnings Protection Law, Code of Civil Procedure Sections 723.010-723.154.

OPERATIVE DATE

Comment. The operative date of this act is delayed until January 1, 1979, 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.

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PROPOSED LEGISLATION

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

An act to amend Sections 682, 683, 690.50, and 710 of, to add Chapter 2.5 (commencing with Section 723.010) to Title 9 of Part 2 of, and to repeal Sections 682.3 and 690.6 of, the Code of Civil Procedure, to add Section 26750 to the Government Code, to amend Section 300 of the Labor Code, and to amend Section 11489 of the Welfare and Institutions Code, relating to wage garnishment.

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

CODE OF CIVIL PROCEDURE

§ 682 (technical amendment)

SECTION 1. 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 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.

4. 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 cost, 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.

§ 682.3 (repealed). Wage garnishment procedure

SEC. 2. 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 609.6, 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 917.5 or a certificate to that effect has been issued by the clerk of the court.

(c) In all other cases provided by law.

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

(e) 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.

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

(g) 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.

(h) 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 90 days, and make return on collection thereof to the court.

§ 683 (amended). Return of writ of execution

SEC. 3. Section 683 of the Code of Civil Procedure is amended to read:

683. (a) The execution may be made returnable, at any time not less than 10 nor more than 60 days after its receipt by the officer to whom it is directed, or, if the execution is upon the earnings of the judgment debtor, upon the termination of the levy of execution as provided in Section 682.3, to the court in which the judgment is entered. When the execution is returned, the clerk must attach it to the judgment roll, or the judge must make the proper entry in the docket.

(b) If an execution is returned unsatisfied, another may be afterward issued within the time specified in this code.

(c) If property either personal or real be levied upon under such writ of execution but the sale thereunder be postponed beyond or not held within the return date after it is received by the officer to whom it was delivered and which has been returned to the clerk of the court in which the judgment is entered, upon request of the person in whose favor the writ runs the court may direct the clerk to redeliver said execution to the officer to whom it was directed in order to permit the officer to make an alias return of the proceedings of the sale or levy thereon as in the case of an original return of execution.

(d) Whenever a writ of execution issued against real property containing a dwelling house has been returned, proof that notice required by Section 682b has been served shall be indicated on the writ, or separately and attached to the writ.

(e) If an earnings withholding order has been issued and served upon the employer as provided in Chapter 2.5 (commencing with Section 723.010) prior to the time the writ of execution is made returnable under subdivision (a), the execution is returnable as provided in Section 723.026.

§ 690.8 (repealed). Exemption of earnings

SEC. 4. Section 690.8 of the Code of Civil Procedure

is repealed.

~~690.8 (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 or her 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.

(b) All earnings of the debtor received for his or her 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 or 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 or her spouse, or his or her 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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§ 690.50 (technical amendment)

SEC. 5. Section 690.50 of the Code of Civil Procedure is amended to read:

690.50. (a) If the property mentioned in Section 690.1 to 690.29, inclusive, shall be levied upon under writ of execution, the judgment debtor (herein referred to as "the debtor"), in order to avail himself of his exemption rights as to such property, shall within 20 days, in the case of real property described in Section 690.235, and 10 days, in the case of all other property, 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 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 10 days after service of such writing, in the case of real property described in Section 690.235, and within five days after service of such writing, in all other cases.

(c) If the creditor desires to contest the claim to exemption, he shall, within such period of 10 days, in the case of real property described in Section 690.235, and five days, in all other cases, 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~~ Section 690.2, 690.3, or 690.4, ~~or 690.5,~~ 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 800.6 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 the 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 600.6, 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 600.6 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 shall be taken in the manner provided for appeals in the court in which the proceeding is had.

§ 710 (technical amendment)

SEC. 6. 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 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 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, 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 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 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 ~~six dollars (\$6)~~ 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 1268.010. Upon such payment into court and the filing with the county clerk of such abstract or transcript of judgment and affidavit, the county clerk shall notify by mail, through their attorneys, if any, all parties interested in said award of the time and place at which the court which tried the condemnation proceeding will determine the conflicting claims to said award. At said time and place the court shall make such determination and order the distribution of the money held by the county clerk in accordance therewith.

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

(f) Nothing in this section shall authorize the filing of any abstract or transcript and affidavit against any 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.

(h) This section shall not be construed to authorize the withholding of earnings of a public officer or employee. Except as otherwise expressly provided by law, the earnings of a public officer or employee may be withheld for payment of a judgment only pursuant to Section 682-3 Chapter 2.5 (commencing with Section 723.010) .

CHAPTER 2.5. EMPLOYEES' EARNINGS PROTECTION LAW

SEC. 7. 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. Short Title; 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 right of the employer to control 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 creditor," as applied to the state, means the specific state agency seeking to collect a judgment or tax liability.

(e) "Judgment debtor" includes a person from whom the state is seeking to collect a tax liability under Article 4 (commencing with Section 723.070), whether or not a judgment has been obtained on such tax liability.

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

Article 2. General Provisions

§ 723.020. Exclusive procedure for withholding earnings

723.020. Except as provided in Section 4701 of the Civil Code, the earnings of an employee shall not be required to be withheld by an employer for payment of a debt by means of any judicial procedure other than pursuant to this chapter.

§ 723.021. Levy made by earnings withholding order

723.021. Notwithstanding Section 688, a levy of execution upon the earnings of an employee shall be made by service of an earnings withholding order upon the 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 10th day after service of an earnings withholding order upon the employer and which continues until the earliest of the following dates:

- (1) The 130th day after the order was served.
- (2) The date the employer has withheld the full amount specified in the order.
- (3) The date of termination specified in a court order served on the employer.
- (4) The date of termination specified in a notice of termination served on the employer by the levying officer.

(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) An employer is not liable for any amounts withheld and paid over to the levying officer pursuant to an earnings withholding order prior to service upon the employer pursuant to paragraph (3) or (4) of subdivision (a).

§ 723.023. Priority of orders generally

723.023. Except as otherwise provided in this chapter:

(a) An employer shall comply with the first earnings withholding order served upon the employer.

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

(c) 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.

§ 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, the employer may make an additional deduction of one dollar (\$1) and retain it as a charge for the employer's services in complying with the earnings withholding order. The aggregate of such charges withheld from the wages of the employee shall not exceed five dollars (\$5) per month.

§ 723.025. Payment to levying officer

723.025. (a) Except as provided in subdivision (b), the amount required to be withheld pursuant to an earnings withholding order shall be paid monthly to the levying officer not later than the 15th day of each month. The initial monthly payment shall include all amounts required to be withheld from the earnings of the employee during the preceding calendar month up to the close of the employee's pay period ending closest to the last day of that month, and thereafter each monthly payment shall include amounts withheld from the employee's earnings for services rendered in the interim up to the close of the employee's pay period ending closest to the last day of the preceding calendar month.

(b) The employer may elect to pay the amounts withheld to the levying officer more frequently than monthly. If the employer so elects, payment of the amount withheld from the employee's earnings for each pay period shall be made not later than 10 days after the close of the pay period.

§ 723.026. Levying officer's duty to pay over amounts received and make return on writ

723.026. (a) The levying officer shall receive and account for all amounts received pursuant to Section 723.025 and shall pay each amount so received over to the person entitled thereto within 15 days after its receipt.

(b) Where an earnings withholding order has been served prior to the time the writ of execution is made returnable under subdivision (a) of Section 683, the levying officer may, in the levying officer's discretion, return the writ of execution at either of the following times:

(1) The writ of execution may be returned after the earnings withholding order terminates and the amount withheld by the employer has been paid over to the levying officer.

(2) The writ of execution may be returned at a time earlier than the time specified in paragraph (1). In such case, the issuance of the earnings withholding order and the date of its service on the employer shall be indicated on the writ, or separately and attached thereto, and a supplemental return on the earnings withholding order shall be made at the time provided in paragraph (1) in the same manner as the writ was returned.

(c) Nothing in subdivision (b) extends the time within which a levy may be made under the writ of execution pursuant to which the earnings withholding order was issued.

§ 723.027. Creditor required to notify levying officer when judgment satisfied; notice of termination

723.027. If the judgment pursuant to which the earnings withholding order is issued is satisfied before the order otherwise terminates pursuant to Section 723.022, the judgment creditor shall promptly notify the levying officer who shall promptly terminate the order by serving a notice of termination on the employer.

§ 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. An earnings withholding order for costs and interest shall be considered a garnishment for payment of the same judgment.

§ 723.029. Lien created by service of earnings withholding order

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

§ 723.030. Withholding order for support

723.030. (a) A "withholding order for support" is an earnings withholding order on a writ of execution issued to collect delinquent amounts payable under a judgment for the support of a child, or spouse or former spouse, of the judgment debtor. A withholding order for support shall be denoted as such on its face.

(b) Notwithstanding any other provision of this chapter:

(1) An employer shall continue to withhold pursuant to a withholding order for support until the earliest of the dates specified in paragraphs (2), (3), or (4) of subdivision (a) of Section 723.022, except that a withholding order for support shall automatically terminate one year after the employment of the employee by the employer terminates.

(2) A withholding order for support has 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 notwithstanding the requirements of another earnings withholding order.

(3) Subject to paragraph (2) and to Article 3 (commencing with Section 723.050), an employer shall withhold earnings pursuant to both a withholding order for support and another earnings withholding order simultaneously.

§ 723.031. Effect of wage assignment for support

723.031. (a) Nothing in this chapter affects an order made pursuant to Section 4701 of the Civil Code.

(b) An order made pursuant to Section 4701 of the Civil Code shall be given priority over any earnings withholding order as provided in that section. An employer upon whom an order made pursuant to Section 4701 is served shall withhold and pay over the earnings of the employee pursuant to such order notwithstanding the requirements of any earnings withholding order.

When an employer is required to cease withholding earnings pursuant to an earnings withholding order, the employer shall notify the levying officer who served the earnings withholding order that a supervening wage assignment for support is in effect.

(c) Subject to subdivisions (b), (d), and (e), an employer shall withhold earnings of an employee pursuant to both an order made under Section 4701 of the Civil Code and an earnings withholding order.

(d) The employer shall withhold pursuant to an earnings withholding order only to the extent that the sum of the amount withheld pursuant to the order made under Section 4701 of the Civil Code and the amount withheld pursuant to the earnings withholding order does not exceed the amount that may be withheld under Article 3 (commencing with Section 723.050).

(e) The employer shall withhold pursuant to an earnings withholding order for taxes only to the extent that the sum of the amount withheld pursuant to the order made under Section 4701 of the Civil Code and the amount withheld pursuant to the earnings withholding order for taxes does not exceed the amount that may be withheld under Article 4 (commencing with Section 723.070).

Article 3. Restrictions on Earnings Withholding

§ 723.050. Standard exemption

723.050. (a) As used in this section, "available 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 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.

(b) Except as otherwise provided in this chapter, the amount of the earnings of a judgment debtor in any workweek required to be withheld pursuant to this chapter shall be computed as provided in this subdivision. Where the available earnings of the judgment debtor for the workweek are less than ten dollars (\$10), nothing shall be withheld. If the available earnings of the judgment 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 judgment 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 forty-five dollars (\$45) shall be withheld. Where the available earnings of the judgment 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.

(c) The Judicial Council shall prescribe by rule the method of computing the amount to be withheld under this section : 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 amounts to be withheld under this section from the earnings of employees for representative pay periods, which amounts shall be substantially equivalent to those computed under subdivisions (b) and (c). The tables may prescribe the amounts to be withheld according to reasonable earnings brackets. Notwithstanding subdivisions (b) and (c), the tables prepared by the Judicial Council pursuant to this subdivision shall be used to determine the amount to be withheld under this section in all cases where the tables permit computation of the amount to be withheld.

§ 723.051. Additional amounts necessary for support exempt

723.051. Except as provided in Section 723.052 and in Article 4 (commencing with Section 723.070), the portion of the judgment debtor's earnings which the judgment debtor proves is necessary for the support of the judgment debtor or the judgment debtor's family supported in whole or in part by the judgment debtor 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. Neither the judgment debtor's accustomed standard of living nor a standard of living "appropriate to the judgment debtor's station in life" is a criterion for measuring the judgment debtor's claim for exemption under this section.

§ 723.052. Exemption when order is earnings withholding order for support

723.052. (a) Except as provided in subdivision (b), only one-half of the earnings of the judgment debtor plus any amount withheld from the judgment debtor's earnings pursuant to a wage assignment under Section 4701 of the Civil Code is exempt from levy under this chapter where the earnings withholding order is a withholding order for support under Section 723.030.

(b) Upon motion of any interested party, the court shall make an equitable division of the judgment debtor's earnings that takes into account the needs of all the persons the judgment debtor is required to support and shall effectuate such division by an order determining the amount to be withheld from the judgment debtor's earnings pursuant to the withholding order for support.

**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, 16071, 18906, 26191, 30341, or 32365 of the Revenue and Taxation Code or (2) a notice of levy pursuant to Section 1753 of the Unemployment Insurance Code or (3) a notice or order to withhold pursuant to Section 6702, 7851, 8952, 11451, 16101, 18817, 26132, 30311, or 32381 of the Revenue and Taxation Code.

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

723.071. This chapter does not limit the state's right to collect a state tax liability except that (a) no levy upon earnings of an employee held by an employer is effective unless such levy is made in accordance with the provisions of this chapter and (b) 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.

§ 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 under one of the following circumstances:

(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.

(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. If the taxpayer makes a timely request for review of the assessment or determination, the state shall not issue a withholding order for taxes until the administrative review procedure is completed. If the taxpayer is given notice of the proposed assessment or determination but does not make a timely request for review, the state may issue a withholding order for taxes.

(c) In any case where a state tax liability has been assessed or determined prior to January 1, 1979, 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 the taxpayer's last known address by first-class postage prepaid. The notice shall advise the taxpayer that

the taxpayer may have the assessment or determination reviewed by appropriate administrative procedures and state how such a review may be obtained. If the taxpayer is sent such a notice and requests such a review within 30 days from the date the notice was mailed to the taxpayer, 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 the taxpayer, 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.

§ 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. For the purposes of this article, a reference in this chapter to a "levying officer" shall be deemed to mean the specific state agency seeking to collect a state tax liability under this article.

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

(b) Unless a lesser amount is specified in the order, the amount to be withheld by the employer each pay period pursuant to an order issued under this section is the amount required be withheld under Section 723.080.

§ 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 10 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 the taxpayer 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. The determination of the state pursuant to this subdivision is final and is not subject to court review.

(d) The employer is not subject to any civil liability for failure to comply with subdivision (b). Nothing in this subdivision limits the power of a court to hold the employer in contempt of court for failure to comply with subdivision (b).

§ 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 the right of the taxpayer to appear at the court hearing on 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 a 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 the employer to retain in the employer's possession or under the employer's 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 the right to the 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 the taxpayer 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.

§ 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 earnings withholding 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 an earlier earnings withholding order, the employer shall notify the levying officer who served the earlier earnings withholding 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.

§ 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 10th 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 automatically terminates one year after the employment of the employee by the employer terminates. 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.

§ 723.079. When receipt required

723.079. The state shall send a receipt to the taxpayer for each payment made to the state pursuant to a withholding order for taxes unless the taxpayer has indicated in writing that a receipt need not be sent.

§ 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 the state 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 or a person described in paragraph (1) or (2) of subdivision (a) of Section 723.101. 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.

§ 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.

§ 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.

§ 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 shall refund to the employee any amounts deducted by the employer pursuant to Section 723.024.

§ 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 as to any earnings that are subject to the provisions of this chapter if both of the following requirements are satisfied:

(a) 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.

(b) The form provides all the information provided in a withholding order for taxes.

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).

§ 723.101. Service

723.101. (a) An earnings withholding order shall be served by the levying officer upon the employer by delivery of the order to any of the following:

(1) The managing agent or person in charge, at the time of service, of the branch or office where the employee works or the office from which the employee is paid.

(2) Any person to whom a copy of the summons and of the complaint may be delivered to make service on the employer under Article 4 (commencing with Section 416.10) of Chapter 4 of Title 5.

(b) Service of an earnings withholding order shall be made by personal delivery as provided in Section 415.10 or 415.20 or by delivery 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 or on behalf of the recipient. If the levying officer attempts service by mail under this subdivision and does not receive a return receipt within 15 days from the date of deposit in the mail of the earnings withholding order, the levying officer shall make as provided in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5.

(c) Service of any notice or document under this chapter may be made in the same manner as an earnings withholding order. If service is made on the employer after the employer's return has been received by the

levying officer, the service shall be made by registered or certified mail, postage prepaid, with return receipt requested, on the person designated in the employer's return to receive notices and at the address indicated in the employer's return, whether or not such address is within the county. Nothing in this subdivision precludes service by personal delivery on the person designated in the employer's return.

§ 723.102. Application for issuance of earnings withholding order

723.102. (a) If a writ of execution has been issued to the county where the judgment debtor's employer is to be served and the time for the return of the writ under subdivision (a) of Section 683 has not expired, 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 a levying officer in such county who shall promptly issue an earnings withholding order in the form prescribed pursuant to Sections 723.120 and 723.125.

(b) This section does not apply where the earnings withholding order is a withholding order for taxes.

§ 723.103. Service of order and information on employer

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

(1) The original and one copy of the earnings withholding order.

(2) The form for the employer's return.

(3) The notice to employee of earnings withholding order in the form prescribed pursuant to Sections 723.120 and 723.122.

(b) At the time the levying officer makes service pursuant to subdivision (a), the levying officer 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) No earnings withholding order shall be served upon the employer after the time specified in subdivision (a) of Section 683 for the return of the writ of execution under which the order was issued has expired.

§ 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 10 days from the date of service. If the judgment debtor is no longer employed by the employer and the employer does not owe the employee any earnings, the employer is not required to make such delivery. The employer is not subject to any civil liability for failure to comply with this subdivision. Nothing in this subdivision limits the power of a court to hold the employer in contempt of court for failure to comply with this subdivision.

(b) Complete the employer's return on the form provided by the levying officer and mail it by first-class mail, postage prepaid, to the levying officer within 15 days from the date of service. If the earnings withholding order is ineffective, the employer shall state in the employer's return that the order will not be complied with for this reason and shall return the order to the levying officer with the employer's return.

§ 723.105. Judgment debtor's claim of exemption

723.105. (a) A judgment debtor may claim an exemption under Section 723.051 under either of the following circumstances:

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

(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 levying officer an original and one copy of (1) the judgment debtor's claim of exemption and (2) the judgment debtor's financial statement.

(c) Upon the filing of the claim of exemption, the levying officer shall promptly 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.

(3) A notice of claim of exemption, in the form prescribed by the Judicial Council, 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 levying officer by the judgment creditor within 10 days 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 10 days after the date of the mailing of the notice of claim of exemption, file with the levying officer a notice of opposition to the claim of exemption.

(e) If the levying officer does not receive a notice of opposition within the 10-day period, the levying officer shall serve on the employer 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 levying officer within the 10-day period, the levying officer shall promptly file the judgment debtor's claim of exemption and financial statement and the notice of opposition to the claim of exemption with the court clerk and the court clerk shall set the matter for hearing, which hearing shall be held within 15 days after the date the documents are filed with the court clerk by the levying officer. 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 transmit a certified copy of the order to the levying officer who shall promptly serve on 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. If the court determines that any amount withheld pursuant to the earnings withholding order shall be paid to the judgment debtor, the court shall make an order directing the person who holds such amount to pay it promptly to the judgment debtor.

(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 130 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 levying officer if the levying officer still holds such amounts or, if such amounts have been paid over to the judgment creditor, 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 levying officer, the employer shall promptly pay over such amounts to the judgment debtor.

(j) An appeal lies from any court order under this section denying a claim of exemption or modifying or terminating an earnings withholding order. Such appeal shall be taken in the manner provided for appeals in the court in which the proceeding is had. An appeal by the judgment creditor from an order modifying or terminating the earnings withholding order does not stay the order from which the appeal is taken. Notwithstanding the appeal, until such time as the order modifying or terminating the earnings withholding order is set aside or modified, the order allowing the claim of exemption in whole or in part shall be given the same effect as if the appeal had not been taken.

(k) This section does not apply to a withholding order for support or a withholding order for taxes.

§ 723.106. Findings not required

723.106. No findings are required in court proceedings under this chapter.

§ 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 the order may not cause another earnings withholding order to be served on the same employer requiring the employer to withhold earnings of the same employee during the 10 days following the expiration of the prior earnings withholding order.

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

§ 723.120. Judicial Council to prescribe forms

723.120. Except as provided in Section 723.081, 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. The Judicial Council may prescribe forms in languages other than English. Any such form prescribed by the Judicial Council is deemed to comply with this chapter.

§ 723.121. Application for earnings withholding order

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

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

(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 date of issuance of a writ of execution to the county where the earnings withholding order is sought and the date the writ is returnable under subdivision (a) of Section 683.

(e) The amount sought to be collected, indicating the amount of the judgment, plus additional accrued items, less partial satisfactions, if any.

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

(g) The name and address of the person to whom the withheld money is to be paid by the levying officer.

§ 723.122. Notice to employee

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

(a) The named employer has been ordered to withhold from the earnings of the judgment debtor the amounts required to be withheld under Section 723.050, or such other amounts as are specified in the earnings withholding order, and to pay these amounts over to the levying officer for transmittal to the person specified in the order in payment of the judgment described in the order.

(b) The amounts required 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 which the judgment debtor proves is necessary for the support of the judgment debtor or the judgment debtor's family supported in whole or in part by the judgment debtor.

(d) If a judgment debtor wishes a court hearing to prove that amounts should not be withheld from the judgment debtor's earnings because they are necessary for the support of the judgment debtor or the judgment debtor's family supported in whole or in part by the judgment debtor, the judgment debtor shall file with the levying officer an original and one copy of the "judgment debtor's claim of exemption" and an original and one copy 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 without charge at the office of the levying officer.

(e) Under Section 300 of the Labor Code, the judgment debtor may revoke an assignment of wages or salary to be earned after the time of the revocation unless the assignment is made pursuant to Section 4701 of the Civil Code.

§ 723.123. Form of claim of exemption

723.123. The "judgment debtor's claim of exemption" shall be executed under oath or by declaration under penalty of perjury. The claim of exemption shall indicate how much the judgment debtor believes should be withheld from the judgment debtor's earnings each pay period by the employer pursuant to the earnings withholding order and shall state the judgment debtor's present mailing address.

§ 723.124. Judgment debtor's financial statement

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

(a) The name, age, and relationship of all persons dependent upon the judgment debtor for support.

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

(g) Whether any orders made under Section 4701 of the Civil Code are in effect for the judgment debtor or the persons listed in subdivision (a).

§ 723.125. Earnings withholding order

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

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

(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) The date of issuance of the writ of execution to the county where the earnings withholding order is sought and the date the writ is returnable under subdivision (a) of Section 683.

(e) The total amount that may be withheld pursuant to the order (the amount of the judgment, plus additional accrued items, less partial satisfactions, if any).

(f) A description of the withholding period and an order to the employer to withhold from the earnings of the judgment debtor for each pay period the amount required to be withheld under Section 723.050 or the amount specified in the order, as the case may be, for the pay periods ending during such withholding period.

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

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

(i) 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 10 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 the employee any earnings, the employer is not required to make such delivery.

(3) The name and address of the levying officer.

§ 723.126. Employer's return

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

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

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

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

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

(1) The date the earnings withholding order was served on the employer.

(2) Whether the judgment debtor is now employed by the employer or whether the employer otherwise owes earnings to the employee.

(3) If the judgment debtor is employed by the employer or the employer otherwise owes earnings to the employee, the amount of the employee's earnings for the last pay period and the length of this pay period.

(4) Whether the employer was required on the date of service to comply with an earlier earnings withholding order and, if so, the name of the judgment creditor who secured the earlier order, the levying officer who served such order, the date it was issued, the date it was served, the expiration date of such order, and which of the earnings withholding orders the employer is required to comply with under the applicable statutory rules concerning the priority of such orders.

(5) Whether the employer was required on the date of service to comply with an order made pursuant to Section 4701 of

the Civil Code and, if so, the court which issued such order and the date it was issued and any other

information the Judicial Council determines is needed to identify the order.

(6) The name and address of the person to whom notices to the employer are to be sent.

§ 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 levying officer, the Judicial Council shall publish and provide to the levying officers copies of the employer's instructions and the withholding tables adopted pursuant to Section 723.050.

§ 723.128. Judgment creditor's notice of opposition

723.128. The "judgment creditor's notice of opposition to the claim of exemption" shall be executed under oath or by declaration under penalty of perjury and shall include all of the following:

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

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

(c) The date of mailing of the notice of claim of exemption.

(d) The amount of the judgment debtor's claim of exemption which the judgment creditor claims is not exempt.

(e) The factual and legal grounds for the judgment creditor's opposition to the claim of exemption.

§ 723.129. Availability of forms

723.129. The levying officer shall have copies of the forms for the "judgment debtor's claim of exemption" and "judgment debtor's financial statement" available at the levying officer's office for distribution without charge to a person who desires to make a claim of exemption under Section 723.051.

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.

§ 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 the Administrator's 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 the Administrator may request.

§ 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 levying officer, the employer is guilty of a misdemeanor.

§ 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 judgment 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 withheld and paid over pursuant to this chapter had the employer not violated this section. The remedy provided by this subdivision is not exclusive.

§ 723.154. Remedies of judgment creditor; limitation of employer's liability

723.154. (a) If an employer fails to withhold or to pay over the amount the employer is required to withhold and pay over pursuant to this chapter, the judgment creditor may bring a civil action against the 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 the employer has actively participated in a fraud.

GOVERNMENT CODE

§ 26750 (added). Fee under Employees' Earnings Protection Law

SEC. 8. Section 26750 is added to the Government Code, to read:

26750. (a) The fee for serving an earnings withholding order under 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, including but not limited to the costs of postage or traveling, and for performing all other duties of the levying officer under that law with respect to such levy is eight dollars and fifty cents (\$8.50).

(b) No additional fees, costs, or expenses may be charged by the levying officer for performing the duties under 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.

LABOR CODE

§ 300 (amended). Wage assignments

SEC. 9. 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 but does not include an order or assignment made pursuant to Section 4701 of the Civil Code.*

(b) *No assignment of, or order for wages or salary, earned or to be earned, shall be 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 a legal separation from such person's spouse or (ii) if the married person and the spouse of the married person 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 levy on execution earnings withholding order against ~~said the~~ employee's 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 levy on execution. Any power of attorney to assign or collect wages or salary shall be revocable at any time by the maker thereof.

No assignment of, or order for wages or salary shall be valid unless at the time of the making thereof, such wages or salary have been earned, except for the necessities of life and then only to the person or persons furnishing such necessities of life directly and then only for the amount needed to furnish such necessities.

(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~~ the employer 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 the employer 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~~ the employee's family at the request of the employee, or for charitable, educational, patriotic or similar purposes.

(i) No assignment of wages or salary is valid unless at the time of the making thereof, such wages or salary have been earned, except for necessities of life and then only to the person or persons furnishing such necessities of life directly and then only for the amount needed to furnish such necessities.

WELFARE AND INSTITUTIONS CODE

§ 11489 (technical amendment)

SEC. 10. 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 order an assignment of wages pursuant to Section 4701 of the Civil Code.

TRANSITIONAL PROVISIONS

SEC. 11. Any levy of a writ of execution against the earnings of an employee pursuant to Section 682.3 of the Code of Civil Procedure that has been served on the employer prior to January 1, 1979, 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 on or after January 1, 1979, shall be given any effect during the period that a levy made pursuant to a writ of execution against the earnings of an employee pursuant to Section 682.3 of the Code of Civil Procedure 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.

OPERATIVE DATE

SEC. 12. This act shall become operative on January 1, 1979. The Judicial Council, the state agencies concerned with the implementation of 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 court clerks and levying officers shall, prior to that date, take all measures necessary in order that the provisions of this act may be implemented on January 1, 1979.

MANDATED LOCAL COSTS PROVISION

SEC. 13. Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to that section nor shall there be an appropriation made by this act because self-financing authority is provided in this act to cover such costs.

PARTIAL INVALIDITY

SEC. 14. If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act or the application of such provision to other persons or circumstances, shall not be affected thereby.