

## Memorandum 77-22

Subject: Study 39.32 - Wage Garnishment (AB 393)

## BACKGROUND

The Assembly Judiciary Committee has considered AB 393 which was introduced to effectuate the recommendation of the Law Revision Commission relating to wage garnishment. A copy of the bill and the two relevant Commission recommendations are attached. The committee approved the bill with a technical nonsubstantive amendment and the bill will be rereferred to the Assembly Ways and Means Committee.

You will recall that this is the fourth attempt to improve the law relating to wage garnishment. The last two bills were defeated in the Senate because of the objections of the California Association of Collectors. This organization opposes AB 393. See Exhibit 2 attached. This exhibit is discussed later in this memorandum.

The day prior to the hearing, a letter from Robert E. Leidigh, Directing Attorney, California Rural Legal Assistance, raised various problems with respect to AB 393. Mr. Leidigh agreed not to raise these problems at the hearing of the Assembly Judiciary Committee with the understanding that the problems would be presented to the Commission for consideration and possible amendments to AB 393. The staff analysis of the matters raised by Mr. Leidigh is presented below. In reacting to his suggestions, the staff is somewhat influenced by the fact that this is the fourth attempt to improve the California law relating to wage garnishment.

Points Raised by Mr. Leidigh

The points raised by Mr. Leidigh (Exhibit 1) are discussed (out of the order presented in his letter) as follows:

Points 3 and 5: Mr. Leidigh suggests that we provide for more than five days' notice to the judgment debtor of the judgment creditor's notice of opposition to a claim of exemption as is now provided in proposed Section 723.105(e) of the Code of Civil Procedure. He also suggests that service of the notice be made both on the judgment debtor and

on his attorney of record. These suggestions appear reasonable, and could be adopted by making the following changes to AB 393:

723.105.

\* \* \* \* \*

(e) If a notice of opposition to the claim of exemption is filed with the levying officer within the 10-day period, the judgment creditor is entitled to a hearing on the claim of exemption. If the judgment creditor desires a hearing on the claim of exemption, the judgment creditor shall file a notice of motion for an order determining the claim of exemption with the court within 10 days after the date the levying officer mailed the notice of claim of exemption. If the notice of motion is so filed, the hearing on the motion shall be held not later than ~~15~~ 20 days from the date the notice of motion was filed unless continued by the court for good cause. ~~The judgment creditor shall give not less than five days' Not less than 10 days prior to the hearing, the judgment creditor shall give written notice of the hearing to the levying officer and shall serve on the judgment debtor a notice of the hearing and a copy of the notice of opposition.~~ opposition on the judgment debtor and, if the claim of exemption so requested, on the attorney for the judgment debtor. Service of the notice of the hearing and the copy of the notice of opposition to the claim of exemption ~~on the judgment debtor~~ shall be made by first-class mail, postage prepaid, on the judgment debtor sent to the address of the judgment debtor stated in the claim of exemption, ~~and and, if the claim of exemption so requested, on the attorney for the judgment debtor sent to the address of the attorney stated in the claim of exemption.~~ Service is deemed made when deposited in the mail. The judgment creditor shall file proof of such service ~~on the judgment debtor of the notice of the hearing and the copy of the notice of opposition to the claim of exemption.~~ with the court. After receiving the notice of the hearing and before the date set for the hearing, the levying officer shall file the claim of exemption and the notice of opposition to the claim of exemption with the court.

(f) If the levying officer does not receive a notice of opposition to the claim of exemption within the 10-day period after the date of mailing of the notice of claim of exemption and a notice of the hearing not later than ~~10~~ 15 days after the filing of the notice of opposition to the claim of exemption, 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 were 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.

\* \* \* \* \*

Point 1: Mr. Leidigh points out that the last sentence of subdivision (e) of proposed Section 723.105 (set forth above) provides that the claim of exemption and notice of opposition are filed with "the court," but that it is not clear whether this means the court where judgment was entered or a court in the county where the earnings withholding order is delivered to the employee. Mr. Leidigh requests an amendment to provide specifically that the hearing on the claim of exemption be conducted in the county where the earnings withholding order was delivered. This poses a number of problems. First, "the court" appears to mean the court where judgment was entered, particularly since that is the law with respect to a hearing on a claim of exemption under a writ of execution. See Code Civ. Proc. § 690.50(e). Second, although there is an existing provision analogous to that which Mr. Leidigh requests for hearing a claim of exemption under a warrant or notice of levy for taxes (see Code Civ. Proc. § 690.51 (hearing in county where property levied upon is located)), there are unresolved procedural questions: How is the proceeding in the new county commenced? How does the court of the new county obtain personal jurisdiction over the judgment debtor? Is a filing fee for "a complaint or other first paper" (Code Civ. Proc. § 411.20) required? In view of these problems, and the fact that the proposed change would be a departure from existing law, the staff has considerable concern about attempting to make the proposed change in AB 393. If the Commission desires, however, the proposal could be accomplished by adopting the language set out in Exhibit 3.

The suggested change presents difficult policy questions. A judgment debtor who claims the hardship exemption is hardly in a position to travel to a distant point in the state to attend a court hearing on the issue of whether he is entitled to the exemption. The judgment debtor is, however, required to provide a detailed financial statement and justification for the exemption in his claim of exemption and the court could determine the judgment debtor's right to the exemption on the basis of those documents. It should also be recognized that the judgment creditor has obtained a judgment which the judgment debtor has refused to pay and it will be a burden and expense to the judgment creditor to go to another county to attend a hearing on a hardship exemption claim. A final consideration is that in its present form AB 393 continues existing law.

Point 2: Mr. Leidigh objects to the provision in subdivision (a) of proposed Section 723.104 which exempts the employer from "any civil liability for failure to" deliver to the judgment debtor a copy of the earnings withholding order and the notice thereof. The Commission adopted this provision advisedly, and the staff recommends against change. The provision is new to the law, and most employers may be expected to comply. The contempt sanction is available for noncompliance, and, as noted in the Comment to the section, the Labor Commissioner may take action against a habitually noncomplying employer. To amend the statute to expose employers to potential civil liability may arouse their opposition to the bill. There is now no opposition of which we are aware to the new requirement imposed by AB 393 that the employer provide the employee with a statement of the effect of the wage garnishment and the procedure for claiming an exemption. We are reluctant to jeopardize the existing provision of AB 393 by adding a civil liability provision.

Point 4: Mr. Leidigh thinks the information required by proposed Section 723.124 to be included in the judgment debtor's financial statement is too broad and goes beyond the issues to be determined at the hearing on the claim of exemption. Mr. Leidigh's point has some merit and poses a policy question for Commission determination. The section requires the judgment debtor to disclose, among other things, the income and assets of the persons dependent on him for support. The scope of the section could be narrowed by amending subdivision (d) to delete the requirement of disclosure of dependents' assets:

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

The deleted language was included in subdivision (d) because the financial statement provided by the judgment debtor listed the dependent as one to be considered in determining the need of the judgment debtor to have a greater portion of his earnings exempted under the hardship exemption. The thinking of the Commission was that the assets of the dependent were relevant to the issue of whether more earnings of the judgment debtor were required to be exempted in order to support that dependent.

Letter From California Association of Collectors

A letter from the California Association of Collectors is attached as Exhibit 2. The following are the staff comments on this letter.

Point 1. The letter objects to mail service. As one member of the Assembly Judiciary Committee pointed out at the hearing, it is quite detrimental to the employee to have a sheriff in uniform with a weapon appear at the employer's office to serve a wage garnishment. The instructional pamphlet will provide instructions on how to comply with the order in writing and should make it easier for the fiscal officer of the employer to comply than verbal instructions that might be provided by the levying officer. The withholding tables will be very simple and similar to the tax withholding tables which employers use to determine the amount of taxes to withhold. The table will show the amount of earnings to be withheld on given amounts of gross earnings. This is much simpler than the rather complex computations required under existing law.

Point 2. The letter states that AB 393 will increase the costs of a wage garnishment. The following is a comparison of the costs of a 100-day garnishment where the employee is paid weekly (this produces less disparity in cost than a 150-day garnishment):

	<u>AB 393</u>	<u>Present Law</u>
Writ of execution (municipal court)	\$ 1.50	\$ 1.50
Withholding order	no charge	not required
Levy officer fee	8.50	8.50
91st day - New Writ of Execution	not required	1.50
Levying officer fee	not required	8.50
Subtotal	<hr/> \$10.00	<hr/> \$20.00
Additional charge employer may make for withholding (\$1 each withholding)	\$15.00	not authorized

The staff advised the Assembly Judiciary Committee that it was a policy question whether the employer should be permitted to charge \$1.00 for withholding the employee's earnings. No member of the Committee had any objection to the provision and it was approved by the Committee. It is apparent, however, that the increased cost under AB 393 is a result of the employer's withholding fee.

Point 3. The letter claims that the federal wage garnishment provisions as applied in California strike a fair balance between the interests of the creditor and the interests of the debtor. The staff is of the view that the scheme proposed by AB 393 strikes a fairer balance, as is illustrated by Table 2 in the recommendation.

Respectfully submitted,

Robert J. Murphy III  
Staff Counsel

EXHIBIT 1  
LAW OFFICES OF  
CALIFORNIA RURAL LEGAL ASSISTANCE

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RALPH LIGHTSTONE  
ATTORNEY  
EMMA S. GUNTERMAN  
SENIOR CITIZENS ADVOCATE  
442-7984

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SAN FRANCISCO, CALIFORNIA 94104  
TELEPHONE (415) 421-2405  
ALBERTO SALDAMANDO  
DIRECTOR

March 16, 1977

Honorable Alister McAlister  
Member of the Assembly  
State Capitol, Room 3112  
Sacramento, California 95814

Re: AB 393 - Wage Garnishment

Dear Assemblyman McAlister:

On behalf of our clients, we have reviewed your AB 393, which would substantially revise and reform current wage garnishment law. On behalf of our clients, we would like to actively support this bill, but find there are a few technical flaws which should be cleared up by amendment before we can give such support.

First, we have not been able to determine from the bill which court will determine claims of exemption - i.e., where does venue lie, in the county of issuance of the withholding order or in the county where it is served? We would like to see an amendment to AB 393 which would specify that venue lies with the appropriate court in the county where the order is served.

Second, the provision on page 31 at lines 14-16, which eliminates any civil liability of the employer to serve the papers on the judgment debtor is objectionable if the employer is the one charged with the responsibility for doing this.

Third, the provisions on page 32, lines 31-40 and page 33, lines 1-7, are very objectionable. The judgment debtor would receive little or no advance notice of the hearing since the notice period is only five days and the notice may be given by mail. This is even more true if the court where the hearing is to be held is in San Diego and the judgment debtor lives and works in Chico.

Fourth, the provisions detailing the requirements of the "judgment debtor's financial statement" appearing on page 37, particularly Section 723.124(d) seem overly broad and far overreaching for the issues to be determined at a claim of exemption hearing.


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Fifth, the service of the judgment creditor's opposition to the claim of exemption should be on the judgment debtor and on his attorney, if he has one and this has been clearly indicated when he filed his claim of exemption.

I look forward to an opportunity to discuss these matters with you or John DeMouilly prior to the hearing on March 17th.

Sincerely,

  
ROBERT E. HEIDIGH  
Directing Attorney

REL/f

cc: John DeMouilly, Esq., Executive Secretary,  
California Law Revision Commission

Mr. Larry Kurbatoff, California Teamsters Public Affairs Council

Terrence Terauchi, Esq.

Western Center on Law & Poverty

Ms. Roberta Ranstrom, Esq.

Legal Aid Society of Sacramento County

Honorable John J. Miller, Chairman

Assembly Judiciary Committee

Members of the Assembly Judiciary Committee

Memo 77-22

EXHIBIT 2

LAW OFFICES OF

DAHL, HEFNER, STARK & MAROIS

FOURTEENTH FLOOR PLAZA TOWERS

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TIMOTHY D. TAYLOR  
JUDITH CAMPOS

March 15, 1977

State Assembly Judiciary Committee  
State Capitol of California  
Sacramento, CA 95814

Re: AB 393

Gentlemen:

The California Association of Collectors wishes to express its strong opposition to AB 393. This bill was a predecessor to AB 101 which was introduced in 1974 but failed to pass the legislature. Several of our objections to former AB 101 in 1974 have been eliminated by different procedural provisions in AB 393. However, this present bill still continues to contain highly objectionable provisions. For the sake of brevity, we will confine our comments to the major problem areas in this proposed legislation.

1. Former AB 101 eliminated the use of the levying officer and thereby effectively eliminated any practical court control of the levy. AB 393 has returned the levying officer to his traditional role as in a present day wage garnishment with one exception. Under the proposed Section 723.100(b) (page 29), the initial levy may be made by registered or certified mail. Presumably, this method of serving the earnings withholding order and other required documents would most likely be frequently used by levying officers because of the cost savings to their office but not to the debtor who must still pay the statutory mandated \$8.50. Eliminating the levying officer from making the initial levy by personal service can only bring about total confusion among unsophisticated employers and resulting non-compliance with the law. Under the present law, the levying officer not only must make a personal service levy, but stands ready to explain to the employer the rules regarding compliance with the

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garnishment. Under AB 393, if mail service is utilized, which it most likely will, the employer, at his peril, must attempt to understand compliance with the garnishment from an "instructional pamphlet", and a most confusing withholding table.

2. Wage garnishment under AB 393 can in some instances result in increased costs to the judgment debtor. Prior to the enactment of the present CCP Section 682.3, the only method of wage garnishment was repeated executions by a levying officer. Assuming the levying officer had to go no more than one mile to make the levy, the court costs for a garnishment over a 90 day period totalled \$71.40. One of the main purposes behind the enactment of the present CCP Section 682.3 was to eliminate much of these court costs that must in turn be borne by the debtor. The same 90 day garnishment under the present law costs the debtor only \$10.00.

AB 393 provides one additional cost that in turn will be borne by the debtor. Namely this bill has provided for a fee of \$1.00 per day period that the employer may deduct from the earnings available for the levy as the employer's fee. The maximum that can be deducted for a period of one month is \$5.00. Attached is the chart which illustrates that the cost of a levy over a 150 day period (requiring two court orders under either AB 393 or present law) results in substantially higher costs to the debtor under this proposed legislation than under the existing law. Specifically, under existing law the cost to the debtor would be \$20.00, while under AB 393 the cost for the same garnishment would be \$41.00.

3. The present federal wage exemption provisions (applied in California) provide a fair balance between the right of the creditor to recover his judgment and the needs of the debtor. Without reducing a debtor to abject poverty, both the State of California and the federal government had in the past worked out a formula for a fair minimum of monies to be exempt from execution. This formula, under federal law, is currently pegged at 25% of the debtor's disposable earnings or the amount by which his disposable earnings for that week exceed thirty times the federal minimum hourly wage (or the sum of \$75.00) whichever sum is less. The amount that remains which is

DAHL, HEFNER, STARK &amp; MAROIS

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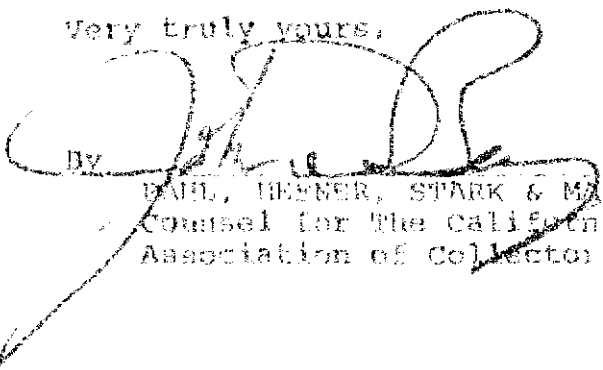
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subject to garnishment is further subject, under current law, to total exemption if the debt is not for the common necessities of life and the monies are necessary for the support of the debtor's family living in the State of California. This surely would be sufficient as a safeguard to the vast majority of debtors and at the same time protect the rights of those basic creditors without whom no one can exist. To substitute a new, untried and quite complicated formula for this exemption is to create havoc in the place of proved order. Indeed, the exemption allowed under AB 393 is even more liberal than that allowed under the former AB 101. However, under either bill, the proposed scale set forth in Section 723.050 is far more liberal to the debtor than that worked out by the Congress of the United States when the Consumer Protection Act of 1968 was passed. There has been no showing by the Law Revision Commission of which we are aware, that there is any need for such a greater exemption of wages. Indeed, allowing a smaller portion of the debtor's wages to be applied towards the creditor's judgment only subjects the debtor to a longer garnishment and, as we have illustrated, additional costs. Acknowledging that the judgment debtor needs a sufficient amount of his earnings to sustain himself and his family, nevertheless the judgment creditor at the same time has a right to recover the debt owed to him. The present law, which will be abrogated by AB 393, strikes a fair balance between these two competing interests.

It is hoped that the above comments illustrate the serious problem areas that exist in this proposed legislation. We therefore urge you to vote "no" on its passage.

Very truly yours,

By

  
DAHL, HEFNER, STARK & MAROIS  
Counsel for The California  
Association of CollectorsJDB:kin  
Enclosure

150-DAY WAGE EXECUTION  
UNDER AB393  
PAID EACH FRIDAY

1st Friday  
Fee for With'Order (Est.) \$2.00  
Levy Officer Fee 8.50  
Employers Fee 1.00=\$11.50

2nd Friday  
Employers Fee 1.00

3rd Friday  
Employers Fee 1.00

4th Friday  
Employers Fee 1.00

5th Friday thru 8th Friday  
Employers Fee 4.00

9th Friday thru 12th Friday  
Employers Fees 4.00

NEW WITHDRAWAL AFTER 10 DAY  
LAPSE

13th Friday thru 16th Friday  
Fee for NEW With'Order 2.00  
Levy Officer Fee 8.50  
Employers Fee 4.00= 14.50

17th Friday thru 20th Friday  
Employers Fees 4.00

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TOTAL COST TO DEFENDANT  
UNDER AB393 FOR 150-DAY  
EXECUTION \$ 41.00

150-DAY WAGE EXECUTION  
UNDER PRESENT LAW  
PAID EACH FRIDAY

1st Friday  
Issue Writ of Exec. \$1.50  
Levy Officers Fee 8.50  
for levy \$10.00

2nd Friday thru 12th  
Friday No Fee

13th Friday thru 20th  
Friday  
Issue Writ of Exec. 1.50  
Levy Officers Fee 8.50  
for levy \$10.00

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TOTAL COST TO DEFENDANT  
UNDER PRESENT LAW  
150-DAY EXECUTION \$ 20.00

NO ADDITIONAL COSTS

EXHIBIT 3

723.105.

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(e) If a notice of opposition to the claim of exemption is filed with the levying officer within the 10-day period, the judgment creditor is entitled to a hearing on the claim of exemption. If the earnings withholding order was served on the employer in the county in which the judgment was entered, the hearing shall be by the court where the judgment was entered. If the earnings withholding order was served on the employer in a county other than the county in which the judgment was entered, the hearing shall be held by the municipal court or justice court serving the area where the employer was served. If the judgment creditor desires a hearing . . . . After receiving the notice of the hearing and before the date set for the hearing, the levying officer shall file the claim of exemption and the notice of opposition to the claim of exemption with the ~~court~~ court where the hearing is to be held. No fee may be charged for filing the claim of exemption, the notice of opposition, or other papers under this subdivision.

(f) . . . .