Memorandum 77-81

Subject: Study 39.33 - Wage Garnishment (Assembly Bill 393)

Assembly Bill 393, which would implement the Commission's wage garnishment recommendation, was pending in a conference committee when the 1977 session of the Legislature ended. In its current form, AB 393 would rely on the federal standard for determining the amount to be withheld and would continue the common necessaries exception to the hardship exemption. For further discussion of existing law and the changes recommended by the Commission, see the attached Commission recommendation relating to wage garnishment exemptions.

By incorporating the scheme provided by the federal Consumer Credit Protection Act, AB 393 would permit greater amounts to be withheld from the wages of a debtor with more dependents than a debtor with fewer dependents at the same level of gross earnings. One of the major purposes of the Commission's recommendations on the subject of wage garnishment has been to increase the protection of debtors with dependents, particularly debtors at lower income levels. However, the withholding table proposed in the Commission's original recommendation, which would has the effect of granting higher exemptions to judgment debtors with more dependents, have been deleted from AB 393 in the Senate.

We believe it may still be legislatively feasible to achieve some greater protection for debtors with dependents by modifying the federal standard in certain respects. The objective is to permit debtors with more dependents to keep the portion of their disposable earnings which results from a lower rate of income tax withholding. Under the federal standard, it is this factor which results in the wages of debtors with more dependents being subject to higher levels of withholding at the same gross income level. The standard for withholding provided by Section 303 of the Consumer Credit Protection Act, 15 U.S.C. § 1673(a) (1970), is as follows:

> (a) [T]he maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed
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> (1) 25 per centum of his disposable earnings for that week, or

(2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 in effect at the time the earnings are payable,

whichever is less.

The federal law defines "disposable earnings" as those earnings remaining "after the deduction . . . of any amounts required by law to be withheld." Section 302(b), 15 U.S.C. § 1672(a) (1970). Such amounts include amounts withheld for federal and state income taxes, federal social security, and state unemployment disability insurance deductions. Apparently, contributions to public retirement funds are also to be deducted,

Beginning in 1979, when the minimum wage will be $2.90 per hour, the federal act will exempt at least $87 of disposable earnings per week. Hence, if an individual's earnings are $87 or less, nothing may be withheld. If disposable earnings are between $87 and $116, the entire amount over $87 may be withheld. At $116 and above, the 25-percent rule applies. For a single person claiming no tax dependency allowances, gross earnings of $110 per week will result in $87.05 disposable earnings, resulting in a garnishment of five cents. However, at the same level of gross earnings, a single person claiming five tax dependency allowances will have $100.45 in disposable earnings, resulting in a garnishment of $13.45. A married person at that level of gross earnings claiming five tax dependency allowances will have $102.25 in disposable earnings, resulting in a garnishment of $15.25. Note that these different amounts are withheld on the same gross earnings. It is this inequitable result we seek to remedy.

In order to provide greater protection to debtors with more dependents, and at the same time to recognize the practical political problem reflected in the amendments that have so far been made in AB 393, we propose to adopt the federal scheme for debtors who claim zero or one tax withholding allowance for federal personal income tax purposes. If the debtor claims two tax withholding allowances, however, the amount that would be withheld under the federal statute would, under the proposed statute, be reduced by $5. Where three tax withholding allowances are claimed, $10 would be subtracted. Amounts to be subtracted would increase by $5 for each additional tax withholding allowance claimed up to six, at which level $25 would be subtracted. No further reductions would be provided for additional tax withholding allowances. In addition, as has been proposed in previous Commission recommendations on wage garnishment, no amount less than $10 in any workweek would be withheld. This feature would provide additional protection for low income debtors at the threshold of garnishment and would eliminate the inefficiency (expense to employer and others) of permitting garnishment of very small sums. The result of this proposal in comparison with federal law are illustrated for selected gross earnings levels in the tables attached hereto.

This proposal would be implemented by the following provision:

§ 723.051. Standard exemption

723.051. (a) As used in this section, "tax withholding allowances" means the sum of the withholding allowance for the debtor, the spouse of the debtor, and each dependent of the debtor which is claimed by the debtor in a document filed with the debtor's employer for the purpose of federal personal income tax withholding.

(b) Except as otherwise provided in this chapter, the amount of the earnings of a debtor in any workweek required to be withheld pursuant to this chapter is the amount computed pursuant to Section 303 of the federal Consumer Credit Protection Act.

(c) In the cases described in this subdivision, the amount of the earnings of a debtor in any workweek which would be withheld pursuant to subdivision (b) shall be reduced by the following amounts:

(1) Where the debtor claims two tax withholding allowances, by five dollars ($5).

(2) Where the debtor claims three tax withholding allowances, by ten dollars ($10).

(3) Where the debtor claims four tax withholding allowances, by fifteen dollars ($15).

(4) Where the debtor claims five tax withholding allowances, by twenty dollars ($20).

(5) Where the debtor claims six or more tax withholding allowances, by twenty-five dollars($25).

(d) Notwithstanding subdivisions (b) and (c), no amount less than ten dollars ($10) may be withheld in any workweek.

(e) The Judicial Council shall prescribe by rule the method of computing the amount to be withheld in the case of earnings for any pay period other than a week. The method of computation shall be substantially equivalent in effect to that prescribed by this section.

Respectfully submitted,
Stan G. Ulrich
Staff Counsel

COMPARISON OF AMOUNTS WITHHELD UNDER WAGE GARNISHMENT

TABLE 1

Married Debtor — Gross Earnings/Week

# of tax withholding allowances	$94 Fed	$94 LRC	$100 Fed	$100 LRC	$110 Fed	$110 LRC	$125 Fed	$125 LRC	$150 Fed	$150 LRC	$200 Fed	$200 LRC
1 or 0	0	0	0	0	6.15	0	17.09	17.09	30.46	30.46	39.43	39.43
2	0	0	3.95	0	11.75	0	21.69	16.69	32.23	27.23	41.13	36.13
3	.37	0	5.95	0	13.95	0	25.69	15.69	32.88	22.88	41.80	31.80
4	.37	0	5.95	0	15.25	0	27.79	12.79	33.48	18.48	42.50	27.50
5	.37	0	5.95	0	15.25	0	29.05	0	34.03	14.03	43.18	23.18
6	.37	0	5.95	0	15.25	0	29.05	0	34.56	9.56	43.88	18.88

Single Debtor — Gross Earnings/Week

# of tax withholding allowances	$94 Fed	$94 LRC	$100 Fed	$100 LRC	$110 Fed	$110 LRC	$125 Fed	$125 LRC	$150 Fed	$150 LRC	$200 Fed	$200 LRC
1 or 0	0	0	0	0	.05	0	10.69	10.69	27.43	27.43	36.60	36.60
2	0	0	0	0	5.85	0	16.49	11.49	30.16	25.16	38.48	33.48
3	0	0	1.05	0	8.45	0	19.29	0	30.86	20.86	39.30	29.30
4	0	0	3.55	0	10.95	0	21.89	0	31.53	16.53	40.15	25.15
5	.37	0	5.65	0	13.45	0	24.39	0	32.23	12.23	40.85	20.85
6	.37	0	5.75	0	14.75	0	26.79	0	32.91	7.91	41.25	16.25

Note. Deductions have been made for federal and state income tax withholding, social security contributions, and state disability insurance. No deduction has been made for contributions to public retirement systems. The income tax deductions are based on withholding tables currently effective (November 1977). The federal social security tax rate used is 6.05%, which would be the rate effective in 1979 if the administration's bill to increase the tax rate passes. The state disability insurance contribution rate currently is 1%. The amounts to be withheld are computed using a $2.90 minimun wage effective January 1, 1979.

COMPARISON OF NET DISPOSABLE EARNINGS AFTER GARNISHMENT

TABLE 2

# of tax withholding allowances

Married Debtor	Gross Earnings/Week $94 Fed	$94 LRC	$100 Fed	$100 LRC	$110 Fed	$110 LRC	$125 Fed	$125 LRC	$150 Fed	$150 LRC	$200 Fed	$200 LRC
1 or 0	82	82	85	85	87	93	87	87	91	91	118	118
2	87	87	87	91	87	99	87	97	97	102	123	128
3	87	87	87	95	87	101	87	97	99	109	125	135
4	87	87	87	97	87	102	87	102	100	115	128	143
5	87	87	87	93	87	102	87	116	102	122	130	150
6	87	87	87	93	87	102	87	116	104	129	132	157

Single Debtor	Gross Earnings/Week $94 Fed	$94 LRC	$100 Fed	$100 LRC	$110 Fed	$110 LRC	$125 Fed	$125 LRC	$150 Fed	$150 LRC	$200 Fed	$200 LRC
1 or 0	77	77	80	80	87	87	87	87	87	87	110	110
2	82	82	86	86	87	93	87	92	90	95	115	120
3	84	84	87	88	87	95	87	106	93	102	110	120
4	87	87	87	91	87	98	87	109	95	110	120	135
5	87	87	87	93	87	100	87	113	97	117	123	143
6	87	87	87	97	87	102	87	114	99	124	125	150

Note. See the note to Table 1. The amounts in this table have been rounded to the nearest dollar.