

AMENDED IN SENATE JUNE 10, 2011

AMENDED IN ASSEMBLY APRIL 26, 2011

AMENDED IN ASSEMBLY MARCH 14, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1388

Introduced by Assembly Member Wieckowski
(Coauthor: Assembly Member Lara)

February 18, 2011

An act to amend Section 706.051 of the Code of Civil Procedure, and to amend Section 68632 of the Government Code, relating to judgment debtors.

LEGISLATIVE COUNSEL'S DIGEST

AB 1388, as amended, Wieckowski. Earnings withholding orders.

Existing law requires an employer to withhold the amounts required by an earnings withholding order from all earnings of the employee payable for any pay period of the employee that ends during the withholding period. Under existing law, the portion of the judgment debtor's earnings that 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 the levy of an earnings withholding order. This exemption is not available if the debt was incurred for the common necessities of life furnished to the judgment debtor or the family of the judgment debtor.

This bill would ~~provide that "common necessities of life" does not include hospital services or medical care for purposes of that exception to the exemption from the levy of an earnings withholding order~~ *delete that exception for the common necessities of life. This bill would,*

instead, provide an exception for a debt incurred pursuant to an order or award for the payment of attorney’s fees in connection with certain family law proceedings. The bill would also make a conforming change.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 706.051 of the Code of Civil Procedure
2 is amended to read:

3 706.051. (a) For the purposes of this section, “family of the
4 judgment debtor” includes the spouse or former spouse of the
5 judgment debtor.

6 (b) Except as provided in subdivision (c), the portion of the
7 judgment debtor’s earnings ~~which~~ that the judgment debtor proves
8 is necessary for the support of the judgment debtor or the judgment
9 debtor’s family supported in whole or in part by the judgment
10 debtor is exempt from levy under this chapter.

11 (c) The exemption provided in subdivision (b) is not available
12 if any of the following exceptions applies:

13 (1) The debt was incurred ~~for the common necessities of life~~
14 ~~furnished to the judgment debtor or the family of the judgment~~
15 ~~debtor pursuant to an order or award for the payment of attorney’s~~
16 ~~fees under Section 2030, 3121, or 3557 of the Family Code.~~

17 (2) The debt was incurred for personal services rendered by an
18 employee or former employee of the judgment debtor.

19 (3) The order is a withholding order for support under Section
20 706.030.

21 (4) The order is one governed by Article 4 (commencing with
22 Section 706.070) (state tax order).

23 SEC. 2. Section 68632 of the Government Code is amended to
24 read:

25 68632. Permission to proceed without paying court fees and
26 costs because of an applicant’s financial condition shall be granted
27 initially to all of the following persons:

28 (a) A person who is receiving public benefits under one or more
29 of the following programs:

30 (1) Supplemental Security Income (SSI) and State
31 Supplementary Payment (SSP) (Article 5 (commencing with

1 Section 12200) of Chapter 3 of Part 3 of Division 9 of the Welfare
2 and Institutions Code).

3 (2) California Work Opportunity and Responsibility to Kids
4 Act (CalWORKs) (Chapter 2 (commencing with Section 11200)
5 of Part 3 of Division 9 of the Welfare and Institutions Code) or a
6 federal Tribal Temporary Assistance for Needy Families (Tribal
7 TANF) grant program (Section 10553.25 of the Welfare and
8 Institutions Code).

9 (3) Food Stamps (Chapter 51 (commencing with Section 2011)
10 of Title 7 of the United States Code) or the California Food
11 Assistance Program (Chapter 10.1 (commencing with Section
12 18930) of Part 6 of Division 9 of the Welfare and Institutions
13 Code).

14 (4) County Relief, General Relief (GR), or General Assistance
15 (GA) (Part 5 (commencing with Section 17000) of Division 9 of
16 the Welfare and Institutions Code).

17 (5) Cash Assistance Program for Aged, Blind, and Disabled
18 Legal Immigrants (CAPI) (Chapter 10.3 (commencing with Section
19 18937) of Part 6 of Division 9 of the Welfare and Institutions
20 Code).

21 (6) In-Home Supportive Services (IHSS) (Article 7
22 (commencing with Section 12300) of Chapter 3 of Part 3 of
23 Division 9 of the Welfare and Institutions Code).

24 (7) Medi-Cal (Chapter 7 (commencing with Section 14000) of
25 Part 3 of Division 9 of the Welfare and Institutions Code).

26 (b) A person whose monthly income is 125 percent or less of
27 the current poverty guidelines updated periodically in the Federal
28 Register by the United States Department of Health and Human
29 Services under the authority of paragraph (2) of Section 9902 of
30 Title 42 of the United States Code.

31 (c) A person who, as individually determined by the court,
32 cannot pay court fees without using moneys that normally would
33 pay for the common necessities of life for the applicant and the
34 applicant's family. Only if a trial court finds that an applicant under
35 this subdivision can pay a portion of court fees, or can pay court
36 fees over a period of time, or under some other equitable
37 arrangement, without using moneys that normally would pay for
38 the common necessities of life for the applicant and the applicant's
39 family, the court may grant a partial initial fee waiver using the
40 notice and hearing procedures set forth in paragraph (5) of

1 subdivision (e) of Section 68634. “Common necessities of life,”
2 as used in this article, shall be interpreted consistently with the use
3 of that term in paragraph (1) of subdivision (c) of Section 706.051
4 of the Code of Civil Procedure, *as that paragraph read prior to*
5 *January 1, 2012.*

6 ~~SECTION 1. Section 706.051 of the Code of Civil Procedure~~
7 ~~is amended to read:~~

8 ~~706.051. (a) For the purposes of this section, the following~~
9 ~~shall apply:~~

10 ~~(1) “Common necessities of life” does not include hospital~~
11 ~~services or medical care.~~

12 ~~(2) “Family of the judgment debtor” includes the spouse or~~
13 ~~former spouse of the judgment debtor.~~

14 ~~(b) Except as provided in subdivision (c), the portion of the~~
15 ~~judgment debtor’s earnings that the judgment debtor proves is~~
16 ~~necessary for the support of the judgment debtor or the judgment~~
17 ~~debtor’s family supported in whole or in part by the judgment~~
18 ~~debtor is exempt from levy under this chapter.~~

19 ~~(c) The exemption provided in subdivision (b) is not available~~
20 ~~if any of the following exceptions applies:~~

21 ~~(1) The debt was incurred for the common necessities of life~~
22 ~~furnished to the judgment debtor or the family of the judgment~~
23 ~~debtor.~~

24 ~~(2) The debt was incurred for personal services rendered by an~~
25 ~~employee or former employee of the judgment debtor.~~

26 ~~(3) The order is a withholding order for support under Section~~
27 ~~706.030.~~

28 ~~(4) The order is one governed by Article 4 (commencing with~~
29 ~~Section 706.070) (state tax order).~~