

Introduced by Senator WieckowskiFebruary 26, 2015

An act to amend Sections 706.050 and 706.121 of, and to add Sections 706.053 and 706.130 to, the Code of Civil Procedure, relating to wage garnishment.

LEGISLATIVE COUNSEL'S DIGEST

SB 501, as introduced, Wieckowski. Wage garnishment restrictions: student loans.

The Wage Garnishment Law prescribes the procedure for withholding an employee's earnings for purposes of paying a debt. The law requires that a levy of execution upon the earnings of an employee be made by service of an earnings withholding order upon the employer. An earnings withholding order is issued by a levying officer upon receiving an application submitted by a judgment creditor, as specified. Existing law prohibits the amount of an individual judgment debtor's weekly disposable earnings subject to levy under an earnings withholding order from exceeding the lesser of 25% of the individual's weekly disposable earnings or the amount by which the individual's disposable earnings for the week exceed 40 times the state minimum hourly wage in effect at the time the earnings are payable, unless an exception applies. An employer is required, except as otherwise provided by statute, to withhold the amounts required by an earnings withholding order from all earnings of the employee payable for any pay period of the employee which ends during the withholding period.

This bill would provide that an earnings withholding order shall not be used for purposes of enforcing a judgment for the collection of debt that is from a student loan that is not made, insured, or guaranteed by the United States government pursuant to the Federal Family Education

Loan Program or the William D. Ford Federal Direct Loan Program. The bill would also reduce the prohibited amount of an individual judgment debtor's weekly disposable earnings subject to levy under an earnings withholding order from exceeding the lesser of 10% of the individual's weekly disposable earnings or $\frac{1}{3}$ of the amount by which the individual's disposable earnings for the week exceed 40 times the state minimum hourly wage in effect at the time the earnings are payable. The bill would further require a court to terminate or modify an earnings withholding order issued on or after July 1, 2016, if the court determines, upon a request by the judgment debtor pursuant to specified requirements and procedures, that the withholding order enforces a judgment in violation of these provisions. The bill would provide that a judgment creditor is liable to the judgment debtor for all amounts collected by the judgment creditor in violation of these provisions. The bill also would make conforming changes.

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 706.050 of the Code of Civil Procedure
- 2 is amended to read:
- 3 706.050. (a) Except as otherwise provided in this chapter, the
- 4 maximum amount of disposable earnings of an individual judgment
- 5 debtor for any workweek that is subject to levy under an earnings
- 6 withholding order shall not exceed the lesser of the following:
- 7 (1) ~~Twenty-five~~ Ten percent of the individual's disposable
- 8 earnings for that week.
- 9 (2) ~~The~~ One-third of the amount by which the individual's
- 10 disposable earnings for that week exceed 40 times the state
- 11 minimum hourly wage in effect at the time the earnings are
- 12 payable.
- 13 (b) For any pay period other than weekly, the following
- 14 multipliers shall be used to determine the maximum amount of
- 15 disposable earnings subject to levy under an earnings withholding
- 16 order that is proportional in effect to the calculation described in
- 17 paragraph (2) of subdivision (a), except as specified in paragraph
- 18 (1):
- 19 (1) For a daily pay period, the amounts shall be identical to the
- 20 amounts described in subdivision (a).

1 (2) For a biweekly pay period, multiply the state hourly
2 minimum wage by 80 work hours.

3 (3) For a semimonthly pay period, multiply the state hourly
4 minimum wage by $86\frac{2}{3}$ work hours.

5 (4) For a monthly pay period, multiply the state hourly minimum
6 wage by $173\frac{1}{3}$ work hours.

7 SEC. 2. Section 706.053 is added to the Code of Civil
8 Procedure, to read:

9 706.053. (a) An earnings withholding order shall not be used
10 for purposes of enforcing a judgment for the collection of debt that
11 the judgment debtor proves is from a student loan that is not made,
12 insured, or guaranteed by the United States government pursuant
13 to the Federal Family Education Loan Program (20 U.S.C. Sec.
14 1071 et seq.) or the William D. Ford Federal Direct Loan Program
15 (34 C.F.R. 685.100).

16 (b) An earnings withholding order issued on or after July 1,
17 2016, shall be terminated or modified if it enforces a judgment in
18 violation of this section.

19 (c) A judgment debtor may make a request to terminate an
20 earnings withholding order enforcing a judgment for student loan
21 debt pursuant to Section 706.130.

22 (d) A judgment creditor is liable to the judgment debtor for all
23 amounts collected by the judgment creditor in violation of this
24 section.

25 SEC. 3. Section 706.121 of the Code of Civil Procedure is
26 amended to read:

27 706.121. The “application for issuance of earnings withholding
28 order” shall be executed under oath and shall include all of the
29 following:

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

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

33 (c) The court where the judgment was entered and the date the
34 judgment was entered.

35 (d) Whether the judgment is based in whole or in part on a claim
36 for elder or dependent adult financial abuse and, if in part, how
37 much of the judgment arises from that claim.

38 (e) *Commencing July 1, 2016, whether the judgment is based*
39 *in whole or in part on a claim for debt from a student loan that is*
40 *not made, insured, or guaranteed by the United States government*

1 *pursuant to the Federal Family Education Loan Program (20*
 2 *U.S.C. Sec. 1071 et seq.) or the William D. Ford Federal Direct*
 3 *Loan Program (34 C.F.R. 685.100).*

4 ~~(e)~~

5 (f) The date of issuance of a writ of execution to the county
 6 where the earnings withholding order is sought.

7 ~~(f)~~

8 (g) The total amount required to satisfy the order on the date of
 9 issuance (which may not exceed the amount required to satisfy the
 10 writ of execution on the date of issuance of the order plus the
 11 levying officer’s statutory fee for service of the order).

12 ~~(g)~~

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

15 ~~(h)~~

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

18 SEC. 4. Section 706.130 is added to the Code of Civil
 19 Procedure, to read:

20 706.130. (a) The “request to terminate an earnings withholding
 21 order enforcing a judgment for student loan debt” shall include all
 22 of the following information, if known:

- 23 (1) The current mailing address of the judgment debtor.
- 24 (2) The name and address of the judgment creditor.
- 25 (3) The court in which the judgment was entered and the date
 26 the judgment was entered.
- 27 (4) A statement, under penalty of perjury, of whether the
 28 judgment is based in whole or in part on a claim for a student loan
 29 that is not made, insured, or guaranteed by the United States
 30 government pursuant to the Federal Family Education Loan
 31 Program (20 U.S.C. Sec. 1071 et seq.) or the William D. Ford
 32 Federal Direct Loan Program (34 C.F.R. 685.100). Documents
 33 supporting the existence of the student loan debt shall be attached
 34 to the request.
- 35 (5) Whether an earnings withholding order was issued in
 36 violation of Section 706.053. A copy of the order shall be attached
 37 to the request.
- 38 (6) The date of issuance of a writ of execution to the county
 39 where the earnings withholding order is sought.

1 (7) The total amount required to satisfy the earnings withholding
2 order on the date of issuance.

3 (8) The name and address of the employer to whom the earnings
4 withholding order was directed.

5 (9) The name and address of the person to whom the order
6 directs the levying officer to pay the money withheld.

7 (b) A request to terminate an earnings withholding order
8 enforcing a judgment for student loan debt shall be made by filing
9 with the levying officer an original and one copy of the request.

10 (c) Upon filing of a request, the levying officer shall promptly
11 send to the judgment creditor, at the address stated in the
12 application for the earnings withholding order, by first-class mail,
13 postage prepaid, both of the following:

14 (1) A copy of the request.

15 (2) A notice of the request. The notice shall state that the request
16 has been filed and that the earnings withholding order will be
17 terminated or modified to subtract from the amount to be withheld
18 the portion that is based on a judgment to collect a student loan
19 debt in violation of Section 706.053, unless a notice of opposition
20 to the request is filed with the levying officer by the judgment
21 creditor within 10 days after the date of the mailing of the notice
22 of the request.

23 (d) A judgment creditor who desires to contest a request to
24 terminate an earnings withholding order enforcing a judgment for
25 student loan debt shall, within 10 days after the date of the mailing
26 of the notice of the request, file with the levying officer a notice
27 of opposition to the request.

28 (e) If a notice of opposition to a request is filed with the levying
29 officer within the 10-day period, the judgment creditor is entitled
30 to a hearing on the request. If the judgment creditor desires a
31 hearing on the request, the judgment creditor shall file a notice of
32 motion for an order determining the request with the court within
33 10 days after the date the levying officer mailed the notice of claim
34 of exemption. If the notice of motion is so filed, the hearing on
35 the motion shall be held not later than 30 days from the date the
36 notice of motion was filed unless the hearing is continued by the
37 court for good cause. At the time prescribed by subdivision (b) of
38 Section 1005, the judgment creditor shall give written notice of
39 the hearing to the levying officer and shall serve a notice of the
40 hearing and a copy of the notice of opposition to the request on

1 the judgment debtor and, if indicated in the request, on the attorney
2 for the judgment debtor. Service is deemed made when the notice
3 of the hearing and a copy of the notice of opposition to the request
4 are deposited in the mail, postage prepaid, addressed to the
5 judgment debtor at the address stated in the request and, if service
6 on the attorney for the judgment debtor was indicated in the
7 request, to the attorney at the address stated in the request. The
8 judgment creditor shall file proof of the service with the court.
9 After receiving the notice of the hearing and before the date set
10 for the hearing, the levying officer shall file the request and the
11 notice of opposition to the request with the court.

12 (f) If the levying officer does not receive a notice of opposition
13 to the request within the 10-day period after the date of mailing
14 of the notice of request and a notice of the hearing not later than
15 10 days after the filing of the notice of opposition to the request,
16 the levying officer shall serve on the employer one of the
17 following:

18 (1) A notice that the earnings withholding order has been
19 terminated if the entire amount to be withheld under the order is
20 based on a judgment to collect a student loan debt in violation of
21 Section 706.053.

22 (2) A modified earnings withholding order that reflects the
23 subtraction from the amount to be withheld of the portion that is
24 based on a judgment to collect a student loan debt in violation of
25 Section 706.053.

26 (g) If, after hearing, the court orders that the earnings
27 withholding order be terminated or modified, the clerk shall
28 promptly transmit a certified copy of the order to the levying officer
29 who shall promptly serve on the employer of the judgment debtor
30 (1) a notice that the earnings withholding order has been
31 terminated, or (2) a copy of the modified earnings withholding
32 order. The court may order that the earnings withholding order be
33 terminated as of a date that precedes the date of hearing. If the
34 court determines that an amount withheld pursuant to the earnings
35 withholding order should be paid to the judgment debtor, the court
36 shall make an order directing the person who holds that amount
37 to pay it promptly to the judgment debtor.

38 (h) If the earnings withholding order is terminated or modified,
39 the judgment creditor shall not apply for another earnings
40 withholding order to enforce the same judgment or the portion

1 thereof that was determined to be based on a student loan debt in
2 violation of Section 706.053.

3 (i) If an employer has withheld and paid over amounts pursuant
4 to an earnings withholding order after the date of termination of
5 the order but prior to the receipt of notice of its termination, the
6 judgment debtor may recover those amounts only from the levying
7 officer if the levying officer still holds those amounts or, if those
8 amounts have been paid over to the judgment creditor, from the
9 judgment creditor. If the employer has withheld amounts pursuant
10 to an earnings withholding order after termination of the order but
11 has not paid over those amounts to the levying officer, the employer
12 shall promptly pay those amounts to the judgment debtor.

13 (j) An appeal lies from any court order under this section
14 granting or denying a request to terminate an earnings withholding
15 order enforcing a judgment for student loan debt. An appeal by
16 the judgment creditor from an order modifying or terminating the
17 earnings withholding order shall not stay the order from which the
18 appeal is taken. Notwithstanding the appeal, until the order
19 modifying or terminating the earnings withholding order is set
20 aside or modified on appeal, the order modifying or terminating
21 the earnings withholding order shall be given the same effect as
22 if the appeal had not been taken.

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

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