

AMENDED IN SENATE JUNE 10, 2013

AMENDED IN ASSEMBLY APRIL 9, 2013

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 233

Introduced by Assembly Member Wieckowski

February 5, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

AB 233, as amended, 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. 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 State Government pursuant to the Federal Family Education

Loan Program or the William D. Ford Federal Direct Loan Program. The bill would require a court to terminate *or modify* an earnings withholding order issued on or after ~~January~~ July 1, 2014, ~~upon proof by a judgment debtor that it was issued in violation of these provisions 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 706.053 is added to the Code of Civil
2 Procedure, immediately after Section 706.052, to read:
3 706.053. (a) An earnings withholding order shall not be used
4 for purposes of enforcing a judgment for the collection of debt that
5 the judgment debtor proves is from a student loan that is not made,
6 insured, or guaranteed by the United States Government pursuant
7 to the Federal Family Education Loan Program (20 U.S.C. Sec.
8 1071 et seq.) or the William D. Ford Federal Direct Loan Program
9 (34 C.F.R. 685.100). ~~A court shall terminate an earnings~~
10 ~~withholding~~
11 (b) ~~An earnings withholding order issued on or after January~~
12 ~~July 1, 2014, upon proof by the judgment debtor that the earnings~~
13 ~~withholding order shall be terminated or modified if it enforces a~~
14 ~~judgment in violation of this section.~~
15 (c) *A judgment debtor may make a request to terminate an*
16 *earnings withholding order enforcing a judgment for student loan*
17 *debt pursuant to Section 706.130.*
18 (d) *A judgment creditor is liable to the judgment debtor for all*
19 *amounts collected by the judgment creditor in violation of this*
20 *section.*
21 SEC. 2. Section 706.121 of the Code of Civil Procedure is
22 amended to read:
23 706.121. The “application for issuance of earnings withholding
24 order” shall be executed under oath and shall include all of the
25 following:

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

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

4 (c) The court where the judgment was entered and the date the
5 judgment was entered.

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

9 (e) *Commencing July 1, 2014, whether the judgment is based*
10 *in whole or in part on a claim for debt from a student loan that is*
11 *not made, insured, or guaranteed by the United States Government*
12 *pursuant to the Federal Family Education Loan Program (20*
13 *U.S.C. Sec. 1071 et seq.) or the William D. Ford Federal Direct*
14 *Loan Program (34 C.F.R. 685.100).*

15 ~~(e)~~

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

18 ~~(f)~~

19 (g) The total amount required to satisfy the order on the date of
20 issuance (which may not exceed the amount required to satisfy the
21 writ of execution on the date of issuance of the order plus the
22 levying officer's statutory fee for service of the order).

23 ~~(g)~~

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

26 ~~(h)~~

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

29 *SEC. 3. Section 706.130 is added to the Code of Civil*
30 *Procedure, immediately after Section 706.129, to read:*

31 *706.130. (a) The "request to terminate an earnings*
32 *withholding order enforcing a judgment for student loan debt"*
33 *shall include all of the following information, if known:*

34 *(1) The current mailing address of the judgment debtor.*

35 *(2) The name and address of the judgment creditor.*

36 *(3) The court in which the judgment was entered and the date*
37 *the judgment was entered.*

38 *(4) A statement, under penalty of perjury, of whether the*
39 *judgment is based in whole or in part on a claim for a student loan*
40 *that is not made, insured, or guaranteed by the United States*

1 Government pursuant to the Federal Family Education Loan
2 Program (20 U.S.C. Sec. 1071 et seq.) or the William D. Ford
3 Federal Direct Loan Program (34 C.F.R. 685.100). Documents
4 supporting the existence of the student loan debt shall be attached
5 to the request.

6 (5) Whether an earnings withholding order was issued in
7 violation of Section 706.053. A copy of the order shall be attached
8 to the request.

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

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

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

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

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

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

24 (1) A copy of the request.

25 (2) A notice of the request. The notice shall state that the request
26 has been filed and that the earnings withholding order will be
27 terminated or modified to subtract from the amount to be withheld
28 the portion that is based on a judgment to collect a student loan
29 debt in violation of Section 706.053, unless a notice of opposition
30 to the request is filed with the levying officer by the judgment
31 creditor within 10 days after the date of the mailing of the notice
32 of the request.

33 (d) A judgment creditor who desires to contest a request to
34 terminate an earnings withholding order enforcing a judgment for
35 student loan debt shall, within 10 days after the date of the mailing
36 of the notice of the request, file with the levying officer a notice of
37 opposition to the request.

38 (e) If a notice of opposition to a request is filed with the levying
39 officer within the 10-day period, the judgment creditor is entitled
40 to a hearing on the request. If the judgment creditor desires a

1 *hearing on the request, the judgment creditor shall file a notice of*
2 *motion for an order determining the request with the court within*
3 *10 days after the date the levying officer mailed the notice of claim*
4 *of exemption. If the notice of motion is so filed, the hearing on the*
5 *motion shall be held not later than 30 days from the date the notice*
6 *of motion was filed unless the hearing is continued by the court*
7 *for good cause. At the time prescribed by subdivision (b) of Section*
8 *1005, the judgment creditor shall give written notice of the hearing*
9 *to the levying officer and shall serve a notice of the hearing and*
10 *a copy of the notice of opposition to the request on the judgment*
11 *debtor and, if indicated in the request, on the attorney for the*
12 *judgment debtor. Service is deemed made when the notice of the*
13 *hearing and a copy of the notice of opposition to the request are*
14 *deposited in the mail, postage prepaid, addressed to the judgment*
15 *debtor at the address stated in the request and, if service on the*
16 *attorney for the judgment debtor was indicated in the request, to*
17 *the attorney at the address stated in the request. The judgment*
18 *creditor shall file proof of the service with the court. After receiving*
19 *the notice of the hearing and before the date set for the hearing,*
20 *the levying officer shall file the request and the notice of opposition*
21 *to the request with the court.*

22 *(f) If the levying officer does not receive a notice of opposition*
23 *to the request within the 10-day period after the date of mailing*
24 *of the notice of request and a notice of the hearing not later than*
25 *10 days after the filing of the notice of opposition to the request,*
26 *the levying officer shall serve on the employer one of the following:*

27 *(1) A notice that the earnings withholding order has been*
28 *terminated if the entire amount to be withheld under the order is*
29 *based on a judgment to collect a student loan debt in violation of*
30 *Section 706.053.*

31 *(2) A modified earnings withholding order that reflects the*
32 *subtraction from the amount to be withheld of the portion that is*
33 *based on a judgment to collect a student loan debt in violation of*
34 *Section 706.053.*

35 *(g) If, after hearing, the court orders that the earnings*
36 *withholding order be terminated or modified, the clerk shall*
37 *promptly transmit a certified copy of the order to the levying officer*
38 *who shall promptly serve on the employer of the judgment debtor*
39 *(1) a notice that the earnings withholding order has been*
40 *terminated, or (2) a copy of the modified earnings withholding*

1 order. The court may order that the earnings withholding order
2 be terminated as of a date that precedes the date of hearing. If the
3 court determines that an amount withheld pursuant to the earnings
4 withholding order should be paid to the judgment debtor, the court
5 shall make an order directing the person who holds that amount
6 to pay it promptly to the judgment debtor.

7 (h) If the earnings withholding order is terminated or modified,
8 the judgment creditor shall not apply for another earnings
9 withholding order to enforce the same judgment or the portion
10 thereof that was determined to be based on a student loan debt in
11 violation of Section 706.053.

12 (i) If an employer has withheld and paid over amounts pursuant
13 to an earnings withholding order after the date of termination of
14 the order but prior to the receipt of notice of its termination, the
15 judgment debtor may recover those amounts only from the levying
16 officer if the levying officer still holds those amounts or, if those
17 amounts have been paid over to the judgment creditor, from the
18 judgment creditor. If the employer has withheld amounts pursuant
19 to an earnings withholding order after termination of the order
20 but has not paid over those amounts to the levying officer, the
21 employer shall promptly pay those amounts to the judgment debtor.

22 (j) An appeal lies from any court order under this section
23 granting or denying a request to terminate an earnings withholding
24 order enforcing a judgment for student loan debt. An appeal by
25 the judgment creditor from an order modifying or terminating the
26 earnings withholding order shall not stay the order from which
27 the appeal is taken. Notwithstanding the appeal, until the order
28 modifying or terminating the earnings withholding order is set
29 aside or modified on appeal, the order modifying or terminating
30 the earnings withholding order shall be given the same effect as
31 if the appeal had not been taken.

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

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