

AMENDED IN SENATE MAY 27, 2011
AMENDED IN SENATE MAY 17, 2011
AMENDED IN SENATE MARCH 24, 2011

SENATE BILL

No. 890

Introduced by Senator Leno

February 18, 2011

An act to add Title 1.6C.5 (commencing with Section 1788.50) to Part 4 of Division 3 of the Civil Code, and to amend Sections 700.010, 706.103, 706.104, 706.108, and 706.122 of, and to add Sections 581.5 to, the Code of Civil Procedure, relating to debt buyers.

LEGISLATIVE COUNSEL'S DIGEST

SB 890, as amended, Leno. Debt buyers.

(1) Existing state and federal law regulate the practice of debt collection. Existing state law prohibits a debt collector from engaging in specified conduct, including the use of threats or causing a telephone to ring repeatedly to annoy the person called. Existing law prohibits a debt collector from obtaining an affirmation from a debtor of a consumer debt that has been discharged in bankruptcy, without clearly and conspicuously disclosing to the debtor, in writing, the fact that the debtor is not legally obligated to make such affirmation.

This bill would enact the Fair Debt Buyers Practices Act, which would regulate the activities of a person ~~who~~ *or entity that* has bought consumer debt and the circumstances in which the person may bring suit. The bill would prohibit a debt buyer, as defined, from making any written statement in an attempt to collect a consumer debt, ~~including bringing suit~~, unless the debt buyer has valid ~~documentation~~ *evidence in the form of business records* that the debt buyer is the sole owner of the specific

debt at issue ~~and reasonable verification of the amount of the debt allegedly owed, the amount of the debt, and the name of the creditor at the time the debt was charged off, among other things.~~ The bill would require the debt buyer to make this ~~documentation~~ *evidence* available to the debtor, without charge, upon receipt of a request, within ~~5~~ 15 days. *The bill would prohibit a debt buyer from communicating with a debtor in writing without providing a specified notice.* The bill would require *all settlement agreements between a debt buyer and a debtor to be in writing and would require a debt buyer who receives a payment on a debt to provide* ~~an original~~ *a receipt or statement* containing ~~specified~~ *certain* information. The bill would prohibit a debt buyer from initiating a suit to collect a debt if the statute of limitations on the cause of action has expired. The bill would prescribe penalties for a violation of the act and would provide that its provisions may not be waived. *The bill would require a debt buyer bringing an action on consumer debt to include certain information in his or her complaint.* The bill would prohibit an entry of judgment in favor of a plaintiff debt buyer unless properly authenticated business records relating to the debt and ownership of it, among other things, are properly in evidence, and would ~~require permit~~ *permit* a court to ~~enter a judgment against the plaintiff debt buyer dismiss a debt buyer's action to collect with prejudice~~ if this information is not provided or if ~~he or she~~ *the debt buyer* fails to appear or is not prepared on the date scheduled for trial.

(2) Existing law establishes a process for the enforcement of money judgments and requires a levying officer to provide certain documents and information to a judgment debtor and to a designated employer in connection with wage garnishment. Existing law permits a process server also to serve an earnings withholding order on an employer and requires that the process server also serve certain documents at this time. Existing law requires an employer who is served with an earnings withholding order to provide certain documents to an employee who is a judgment debtor.

This bill would require, in the circumstances described above, that a copy of the form that the judgment debtor may use to make a claim of exemption and a copy of the form used to provide a financial statement also be provided.

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. Title 1.6C.5 (commencing with Section 1788.50)
2 is added to Part 4 of Division 3 of the Civil Code, to read:

3
4 TITLE 1.6C.5. FAIR DEBT BUYERS PRACTICES ACT
5

6 1788.50. (a) As used in this title, “debt buyer” means a person
7 who, in the ordinary course of business, regularly engages in
8 purchasing delinquent, charged-off consumer loans, or consumer
9 credit accounts, or other delinquent consumer debt. “Debt buyer”
10 or entity that regularly purchases charged-off consumer loans or
11 consumer credit accounts, or other delinquent consumer debt.
12 “Debt buyer” includes a person acting on behalf of a debt buyer.

13 (b) Terms defined in Title 1.6C (commencing with Section
14 1788) shall apply to this title.

15 1788.51. The requirements and remedies of this title are
16 cumulative to those in Title 1.6C (commencing with Section 1788)
17 as well as any other law.

18 ~~1788.52. A debt buyer shall not make any written statement~~
19 ~~in an attempt to collect a consumer debt, including bringing suit~~
20 ~~or initiating another type of proceeding, unless the debt buyer has~~
21 ~~in his or her possession valid documentation that the debt buyer~~
22 ~~is the sole owner of the specific debt or account at issue and~~
23 ~~reasonable verification of the amount of the debt allegedly owed~~
24 ~~by the debtor. Reasonable verification shall include documentation~~
25 ~~of the name of the original creditor, the name and address of the~~
26 ~~debtor as it appeared on the original creditor’s records, the original~~
27 ~~creditor’s account number associated with the debt, a copy of the~~
28 ~~contract or other document evidencing the debtor’s agreement to~~
29 ~~the debt, and an itemized accounting of the amount claimed to be~~
30 ~~owed, including all fees and charges. Upon receipt of a request~~
31 ~~from the debtor to whom the debt purportedly applies, the debt~~
32 ~~buyer shall make this information available, without charge, to the~~
33 ~~debtor within five business days.~~

34 ~~1788.54. A debt buyer who receives payment on a debt shall~~
35 ~~provide an original receipt or an exact copy of the receipt to the~~
36 ~~individual from whom payment is received within 10 days of~~
37 ~~payment. A receipt provided in this regard shall:~~

1 ~~(a) Show the amount and date paid, the name of the entity paid,~~
2 ~~the current account number, the name of the original creditor, and~~
3 ~~the account number issued by the original creditor. If the debt~~
4 ~~buyer is in possession of the names of any prior purchasers of the~~
5 ~~debt and the account numbers issued by those purchasers, this~~
6 ~~information shall also be included.~~

7 ~~(b) State clearly and conspicuously if the payment is accepted~~
8 ~~as payment in full or as a full and final compromise of the debt.~~
9 ~~If any part of the debt will be owing after the payment is made,~~
10 ~~the receipt shall state clearly and conspicuously the balance due~~
11 ~~after payment is credited.~~

12 ~~1788.56.— A debt buyer shall not bring suit, initiate another~~
13 ~~proceeding, or take any other action to collect a consumer debt if~~
14 ~~the applicable statute of limitations on the cause of action has~~
15 ~~expired.~~

16 ~~1788.58.— In an action brought by a debt buyer on a consumer~~
17 ~~debt:~~

18 ~~(a) The plaintiff shall disclose clearly and conspicuously on the~~
19 ~~face of the complaint that he or she is a debt buyer.~~

20 ~~(b) All of the following shall be attached to the complaint:~~

21 ~~(1) A copy of the contract or other writing evidencing the~~
22 ~~original debt and agreement of the debtor to be responsible for that~~
23 ~~debt, and establishing that each defendant debtor is, in fact,~~
24 ~~responsible for the original account.~~

25 ~~(2) A copy of the writing establishing that the debt buyer is the~~
26 ~~sole current owner of the debt. If the debt has been sold more than~~
27 ~~once, admissible written evidence shall be provided to establish~~
28 ~~an unbroken chain of ownership interests. Each writing shall~~
29 ~~contain the original account number of the debt sold or purchased,~~
30 ~~which shall be redacted for security purposes to show only the last~~
31 ~~four digits, and shall clearly show the debtor's correct name~~
32 ~~associated with the original account number.~~

33 ~~(3) A statement of calculation of liability that separately states~~
34 ~~the amount of the original debt, each fee and charge added to the~~
35 ~~debt, and each payment credited to the debt after the earliest of~~
36 ~~charge off or the delinquency closest in time to the sale of the debt.~~

37 ~~1788.60.— (a) In an action initiated by a debt buyer prior to the~~
38 ~~entry of a judgment, including a default judgment, against a debtor,~~
39 ~~the plaintiff shall clearly and conspicuously disclose to the court~~
40 ~~that he or she is a debt buyer and shall provide admissible evidence~~

1 to establish the amount and nature of the debt and the identity of
2 the debtor, including all of the information described in subdivision
3 (b):

4 ~~(b) For the purpose of this section, the only evidence sufficient~~
5 ~~to establish the amount and nature of the debt shall be properly~~
6 ~~authenticated business records that satisfy the requirements of~~
7 ~~Sections 1271 and 1272 of the Evidence Code. The authenticated~~
8 ~~business records shall include the following items:~~

9 ~~(1) A copy of the contract or other writing evidencing the~~
10 ~~original debt and agreement of the debtor to be responsible for that~~
11 ~~debt.~~

12 ~~(2) The original account number.~~

13 ~~(3) The name of the original creditor.~~

14 ~~(4) The original charge-off balance.~~

15 ~~(5) An itemization of charges and fees claimed to be owed.~~

16 ~~(6) An itemization of post charge-off additions, if applicable.~~

17 ~~(7) The date of last payment.~~

18 ~~(8) The amount of interest claimed and the basis for the interest~~
19 ~~charged.~~

20 ~~(c) If a plaintiff who is a debt buyer seeks a default judgment~~
21 ~~and has not complied with the requirements of this section, the~~
22 ~~court shall not enter a default judgment for the plaintiff and shall~~
23 ~~instead dismiss the action with prejudice.~~

24 *1788.52. (a) A debt buyer shall not make any written statement*
25 *in an attempt to collect a consumer debt unless the debt buyer has*
26 *in its possession evidence, in the form of business records, all of*
27 *the following:*

28 *(1) That the debt buyer is the sole owner of the specific debt or*
29 *account at issue.*

30 *(2) The amount of the debt allegedly owed by the debtor,*
31 *including an itemized accounting of all post-charge-off fees and*
32 *charges.*

33 *(3) The name of the creditor at the time of charge-off.*

34 *(4) The name and address of the debtor as it appeared on the*
35 *charge-off creditor's records.*

36 *(5) The charge-off creditor's account number associated with*
37 *the debt.*

38 *(6) If the debt is purchased on or after January 1, 2012, a copy*
39 *of the contract or other document evidencing the debtor's*
40 *agreement to the debt or, if the claim is based on debt for which*

1 no such signed writing evidencing the original agreement exists,
2 then copies of documents demonstrating that the debt was incurred
3 by the person receiving the written statement.

4 (b) A debt buyer shall provide a copy of the evidence described
5 in subdivision (a) to the debtor, without charge, within 15 calendar
6 days of receipt of a debtor's request for the evidence. A debt buyer
7 shall also provide a copy of the materials described in paragraph
8 (1) or (2) of subdivision (b) of Section 1788.60 to the debtor,
9 without charge, within 10 business days of receipt of the debtor's
10 request for the materials.

11 (c) A debt buyer shall not communicate with a debtor in writing
12 in an attempt to collect a time-barred debt without clearly and
13 conspicuously providing the following written notice in at least
14 12-point boldface type on the first page of the debt buyer's first
15 communication with the debtor:

16
17 "BECAUSE OF THE PASSAGE OF TIME, WE MAY NOT SUE
18 IN COURT, OR COMMENCE AN ARBITRATION OR OTHER
19 PROCEEDING, ON DEBT THAT IS BARRED BY A STATUTE
20 OF LIMITATIONS. YOU SHOULD CONSULT AN ATTORNEY,
21 VISIT A LOCAL SELF-HELP CENTER, OR VISIT
22 WWW.COURTINFO.COM/SELFHELP FOR MORE
23 INFORMATION."
24

25 1788.54. (a) All settlement agreements between a debt buyer
26 and a debtor shall be in writing. A debt buyer that receives payment
27 on a debt shall provide a receipt or monthly statement to the
28 individual from whom payment is received within 15 calendar days
29 of payment. The receipt or statement shall clearly and
30 conspicuously show the amount and date paid, the name of the
31 entity paid, the current account number, the name of the charge-off
32 creditor, and the account number issued by the charge-off creditor,
33 and the remaining balance owing, if any.

34 (b) If a debt buyer accepts a payment as payment in full or as
35 a full and final compromise of the debt, a final statement that
36 complies with subdivision (a) shall be provided to the debtor within
37 15 calendar days.

38 1788.56. A debt buyer shall not bring suit, or initiate an
39 arbitration or other legal proceeding, to collect a consumer debt

1 *if the applicable statute of limitations on the debt buyer's claim*
2 *has expired.*

3 *1788.58. In an action brought by a debt buyer on a consumer*
4 *debt:*

5 *(a) The plaintiff shall disclose clearly and conspicuously on the*
6 *face of the complaint that the plaintiff is a debt buyer.*

7 *(b) The complaint shall include all of the following:*

8 *(1) A short statement, written in simple language, describing*
9 *the nature of the underlying debt and the consumer transaction*
10 *from which it is derived.*

11 *(2) All of the information set forth in paragraphs (2) to (5),*
12 *inclusive of subdivision (a) of Section 1788.52.*

13 *(3) An allegation that the debt buyer is the sole current owner*
14 *of the debt, and setting forth the names of any and all previous*
15 *owners of the debt.*

16 *(4) An allegation that the debt is not barred by the applicable*
17 *statute of limitations.*

18 *(c) In an action on a consumer debt, a debt buyer shall attach*
19 *to the complaint a copy of the contract or other writing evidencing*
20 *the original debt, signed by the defendant, unless the debt buyer*
21 *provides a sworn declaration that the documents could not be*
22 *obtained prior to the time of filing suit. If a claim is based on credit*
23 *card debt and a signed writing evidencing the original debt does*
24 *not exist, then copies of any documents generated when the credit*
25 *card was actually used shall be attached.*

26 *1788.60. (a) In an action initiated by a debt buyer, prior to*
27 *the entry of a judgment against a debtor, including a default*
28 *judgment, the plaintiff shall clearly and conspicuously disclose to*
29 *the court that it is a debt buyer and shall provide admissible*
30 *evidence satisfactory to the court to establish the amount and*
31 *nature of the debt and the identity of the debtor, including all of*
32 *the information described in subdivision (b).*

33 *(b) For the purpose of this section, the only evidence sufficient*
34 *to establish the amount and nature of the debt shall be properly*
35 *authenticated business records that the court determines are*
36 *sufficient to satisfy the requirements of Sections 1271 and 1272*
37 *of the Evidence Code. The authenticated business records shall*
38 *include the following items:*

39 *(1) A copy of the contract or other writing evidencing the*
40 *original debt, signed by the defendant. If a claim is based on debt*

1 *for which a signed writing evidencing the original debt does not*
 2 *exist, then copies of documents demonstrating that the debt was*
 3 *incurred by the defendant.*

4 (2) *A copy of a writing, including, but not limited to, the bill of*
 5 *sale, establishing that the debt buyer is the sole current owner of*
 6 *the debt and showing from which entity the debt was acquired. If*
 7 *the debt has been sold more than once after being charged off,*
 8 *admissible written evidence shall be provided to establish an*
 9 *unbroken chain of ownership interests. Each writing shall contain*
 10 *the original account number of the debt sold or purchased, which*
 11 *shall be redacted for security purposes in accordance with Rule*
 12 *1.20 of the California Rules of Court.*

13 (3) *The account number at time of charge-off.*

14 (4) *The name of the charge-off creditor.*

15 (5) *The account balance at the time of charge-off.*

16 (6) *An itemization of post-charge-off fees and charges claimed*
 17 *to be owed.*

18 (7) *The date of last payment, if any.*

19 (8) *The amount of interest claimed and the basis for the interest*
 20 *charged.*

21 (9) *The alleged date of default.*

22 (c) *In any action on a consumer debt, if the plaintiff who is a*
 23 *debt buyer seeks a default judgment and has not complied with*
 24 *the requirements of this section, the court shall not enter a default*
 25 *judgment for the plaintiff and may, in its discretion, dismiss the*
 26 *action with or without prejudice.*

27 (d) *In any action on a consumer debt, a debt buyer shall have*
 28 *the burden of pleading and of proving that the applicable statute*
 29 *of limitations has not expired. Before entering a judgment in the*
 30 *action, the court shall determine on the record that the applicable*
 31 *statute of limitations has not expired.*

32 1788.62. (a) Except as otherwise provided by this section, a
 33 debt buyer who violates any provision of this title ~~with respect to~~
 34 ~~any person~~ is liable to the person *who suffers the violation* in an
 35 amount equal to the sum of the following:

36 (1) Any actual damage sustained by the person.

37 (2) The amount established pursuant to either subparagraph (A)
 38 or (B):

39 (A) The case of any action by an individual, such additional
 40 ~~damages as the court may allow, but not less than five hundred~~

1 dollars (\$500) per violation and not more than five thousand dollars
2 (\$5,000) per violation.

3 ~~(B) In the case of a class action, the amount for each named~~
4 ~~plaintiff as could be recovered under subparagraph (A), and an~~
5 ~~amount as the court may determine for each other class member,~~
6 ~~not exceeding the amount per person that could be recovered under~~
7 ~~subparagraph (A).~~

8 ~~(3) In the case of any successful action to enforce the foregoing~~
9 ~~liability, the costs of the action, together with a reasonable~~
10 ~~attorney's fee as determined by the court. damages as the court~~
11 ~~may allow, but not more than two thousand dollars (\$2,000) per~~
12 ~~action.~~

13 ~~(B) In the case of a class action, the amount for each named~~
14 ~~plaintiff that could be recovered under subparagraph (A) and an~~
15 ~~amount that the court may determine for the class, not to exceed~~
16 ~~the lesser of five hundred thousand dollars (\$500,000) or 1 percent~~
17 ~~of the fair market value of the debt buyer.~~

18 ~~(3) In the case of any successful action to enforce the foregoing~~
19 ~~liability, the costs of the action, together with reasonable attorneys'~~
20 ~~fees as determined by the court. Reasonable attorneys' fees may~~
21 ~~be awarded to a prevailing debt buyer upon a finding by the court~~
22 ~~that the action was brought in bad faith and for the purpose of~~
23 ~~harassment.~~

24 (b) In determining the amount of liability under paragraph (2)
25 of subdivision (a), the court shall consider, among other relevant
26 factors, the following:

27 (1) In any individual action under subparagraph (A) of paragraph
28 (2) of subdivision (a), the frequency and persistence of
29 noncompliance by the debt buyer, and the nature of the
30 noncompliance.

31 (2) In any class action under subparagraph (A) of paragraph (2)
32 of subdivision (a), the frequency and persistence of noncompliance
33 by the debt buyer, the nature of the noncompliance, the resources
34 of the debt buyer, and the number of persons adversely affected.

35 (c) A debt buyer shall not be held liable in any action brought
36 under this title if the debt buyer shows by a preponderance of
37 evidence that the violation was not intentional and resulted from
38 a bona fide error notwithstanding the maintenance of procedures
39 reasonably adapted to avoid any such error.

1 (d) An action to enforce any liability created by this title may
2 be brought within two years from the ~~date of discovery of the~~
3 ~~violation occurs~~ *last violation*.

4 1788.64. Any waiver of the provisions of this title is contrary
5 to public policy, and is void and unenforceable.

6 SEC. 2. Section 581.5 is added to the Code of Civil Procedure,
7 to read:

8 581.5. In a case involving consumer debt, as defined in Section
9 1788.2 of the Civil Code, and as regulated under Title 1.6C.5
10 (commencing with Section 1788.50) of Part 4 of Division 3 of the
11 Civil Code, if the defendant debtor appears for trial on the
12 scheduled trial date, and the plaintiff debt buyer either fails to
13 appear or is not prepared to proceed to trial, and the court does not
14 find a good cause for continuance, ~~judgment shall be entered for~~
15 ~~the debtor~~ *the court may, in its discretion, dismiss the action with*
16 *or without prejudice*. Notwithstanding any other law, in this
17 instance, the court may award the defendant debtor's costs of
18 preparing for trial, including, but not limited to, lost wages and
19 transportation expenses.

20 SEC. 3. Section 700.010 of the Code of Civil Procedure is
21 amended to read:

22 700.010. (a) At the time of levy pursuant to this article or
23 promptly thereafter, the levying officer shall serve a copy of the
24 following on the judgment debtor:

25 (1) The writ of execution.

26 (2) A notice of levy.

27 (3) If the judgment debtor is a natural person, a copy of the form
28 listing exemptions prepared by the Judicial Council pursuant to
29 subdivision (c) of Section 681.030, the list of exemption amounts
30 published pursuant to subdivision (e) of Section 703.150, a copy
31 of the form that the judgment debtor may use to make a claim of
32 exemption pursuant to Section 703.520, and a copy of the form
33 the judgment debtor may use to provide a financial statement
34 pursuant to Section 703.530.

35 (4) Any affidavit of identity, as defined in Section 680.135, for
36 names of the debtor listed on the writ of execution.

37 (b) Service under this section shall be made personally or by
38 mail.

39 SEC. 4. Section 706.103 of the Code of Civil Procedure is
40 amended to read:

1 706.103. (a) The levying officer shall serve upon the
2 designated employer all of the following:

3 (1) The original and one copy of the earnings withholding order.

4 (2) The form for the employer's return.

5 (3) The notice to employee of earnings withholding order.

6 (4) A copy of the form that the judgment debtor may use to
7 make a claim of exemption.

8 (5) A copy of the form the judgment debtor may use to provide
9 a financial statement.

10 (b) At the time the levying officer makes service pursuant to
11 subdivision (a), the levying officer shall provide the employer with
12 a copy of the employer's instructions referred to in Section
13 706.127. The Judicial Council may adopt rules prescribing the
14 circumstances when compliance with this subdivision is not
15 required.

16 (c) No earnings withholding order shall be served upon the
17 employer after the time specified in subdivision (b) of Section
18 699.530.

19 SEC. 5. Section 706.104 of the Code of Civil Procedure is
20 amended to read:

21 706.104. Any employer who is served with an earnings
22 withholding order shall:

23 (a) Deliver to the judgment debtor a copy of the earnings
24 withholding order, the notice to employee of earnings withholding,
25 a copy of the form that the judgment debtor may use to make a
26 claim of exemption, and a copy of the form the judgment debtor
27 may use to provide a financial statement within 10 days from the
28 date of service. If the judgment debtor is no longer employed by
29 the employer and the employer does not owe the employee any
30 earnings, the employer is not required to make such delivery. The
31 employer is not subject to any civil liability for failure to comply
32 with this subdivision. Nothing in this subdivision limits the power
33 of a court to hold the employer in contempt of court for failure to
34 comply with this subdivision.

35 (b) Complete the employer's return on the form provided by
36 the levying officer and mail it by first-class mail, postage prepaid,
37 to the levying officer within 15 days from the date of service. If
38 the earnings withholding order is ineffective, the employer shall
39 state in the employer's return that the order will not be complied

1 with for this reason and shall return the order to the levying officer
2 with the employer’s return.

3 SEC. 6. Section 706.108 of the Code of Civil Procedure is
4 amended to read:

5 706.108. (a) If a writ of execution has been issued to the county
6 where the judgment debtor’s employer is to be served and the time
7 specified in subdivision (b) of Section 699.530 for levy on property
8 under the writ has not expired, a judgment creditor may deliver
9 an application for issuance of an earnings withholding order to a
10 registered process server who may then issue an earnings
11 withholding order.

12 (b) If the registered process server has issued the earnings
13 withholding order, the registered process server, before serving
14 the earnings withholding order, shall deposit with the levying
15 officer a copy of the writ of execution, the application for issuance
16 of an earnings withholding order, and a copy of the earnings
17 withholding order, and shall pay the fee provided by Section 26750
18 of the Government Code.

19 (c) A registered process server may serve an earnings
20 withholding order on an employer whether the earnings
21 withholding order was issued by a levying officer or by a registered
22 process server, but no earnings withholding order may be served
23 after the time specified in subdivision (b) of Section 699.530. In
24 performing this function, the registered process server shall serve
25 upon the designated employer all of the following:

26 (1) The original and one copy of the earnings withholding order.

27 (2) The form for the employer’s return.

28 (3) The notice to the employee of the earnings withholding
29 order.

30 (4) A copy of the form that the judgment debtor may use to
31 make a claim of exemption.

32 (5) A copy of the form the judgment debtor may use to provide
33 a financial statement.

34 (6) A copy of the employer’s instructions referred to in Section
35 706.127, except as otherwise prescribed in rules adopted by the
36 Judicial Council.

37 (d) Within five court days after service under this section, all
38 of the following shall be filed with the levying officer:

39 (1) The writ of execution, if it is not already in the hands of the
40 levying officer.

1 (2) Proof of service on the employer of the papers listed in
2 subdivision (c).

3 (3) Instructions in writing, as required by the provisions of
4 Section 687.010.

5 (e) If the fee provided by Section 26750 of the Government
6 Code has been paid, the levying officer shall perform all other
7 duties required by this chapter as if the levying officer had served
8 the earnings withholding order. If the registered process server
9 does not comply with subdivisions (b), where applicable, and (d),
10 the service of the earnings withholding order is ineffective and the
11 levying officer is not required to perform any duties under the
12 order and may terminate the order and may release any withheld
13 earnings to the judgment debtor.

14 (f) The fee for services of a registered process server under this
15 section shall be allowed as a recoverable cost pursuant to Section
16 1033.5.

17 SEC. 7. Section 706.122 of the Code of Civil Procedure is
18 amended to read:

19 706.122. The “notice to employee of earnings withholding
20 order” shall contain a statement that informs the employee in
21 simple terms of the nature of a wage garnishment, the right to an
22 exemption, the procedure for claiming an exemption, and any other
23 information the Judicial Council determines would be useful to
24 the employee and appropriate for inclusion in the notice, including
25 all of the following:

26 (a) The named employer has been ordered to withhold from the
27 earnings of the judgment debtor the amounts required to be
28 withheld under Section 706.050, or such other amounts as are
29 specified in the earnings withholding order, and to pay these
30 amounts over to the levying officer for transmittal to the person
31 specified in the order in payment of the judgment described in the
32 order.

33 (b) The manner of computing the amounts required to be
34 withheld pursuant to Section 706.050.

35 (c) The judgment debtor may be able to keep more or all of the
36 judgment debtor’s earnings if the judgment debtor proves that the
37 additional earnings are necessary for the support of the judgment
38 debtor or the judgment debtor’s family supported in whole or in
39 part by the judgment debtor.

1 (d) If the judgment debtor wishes a court hearing to prove that
2 amounts should not be withheld from the judgment debtor's
3 earnings because they are necessary for the support of the judgment
4 debtor or the judgment debtor's family supported in whole or in
5 part by the judgment debtor, the judgment debtor shall file with
6 the levying officer an original and one copy of the "judgment
7 debtor's claim of exemption" and an original and one copy of the
8 "judgment debtor's financial statement."
9 SEC. 8. The provisions of this act are severable. If any
10 provision of this section or its application is held invalid, that
11 invalidity shall not affect other provisions or applications that can
12 be given effect without the invalid provision or application.