U.S. Department of Labor

Wage and Hour Division
Washington, D.C. 20210

CCPA-55

April 8, 1971

This is in response to the questions raised during your recent visit to Washington concerning legislation you are preparing in order to apply for an exemption from the provisions of section 303(a) of Title III of the Consumer Credit Protection Act for garnishments issued under the laws of the State of Illinois. This letter also replies to general remarks on this matter in a recent letter from Mrs. *** of your office.

The comments in our letter of December 11, 1970, to Attorney General Scott concerned only some evident aspects of the current State garnishment laws. In this connection you may wish to examine the enclosed opinion letters, which indicate generally some of the reasons other State laws have been found not to be substantially similar.

As indicated in 29 CFR 870.51, differences in text between the restrictions of State law and those in section 303(a) are not material so long as the State laws provide the same or greater restrictions on the garnishment of individuals' earnings. The achievement of such restrictions has been found to be best accomplished by amending State law so that its protection is predicated upon the same factors as the Federal law. This would include, for example, the incorporation of similar definitions of the terms "earnings", "disposable earnings", and "garnishment" and a formula based upon these terms which provides restrictions on garnishment which are the same or greater than section 303(a).

As we understand your fourth alternative, which is the one you prefer, there would be subject to garnishment, (a) an amount by which gross earnings for the week exceed 38 times the Federal minimum hourly wage prescribed by section 206(a)(1) of Title 29 in effect at the time the earnings are payable (i.e. presently $60.80) for an employee who is not the head of a family, or the amount by which gross earnings exceed that amount plus $5.00 (i.e. presently $65.80) in the case of an employee who is the head of a family and contributes substantially to its support or, (b) 15% of gross earnings, whichever results in a lesser garnishment deduction from the employee's wages. The $200 maximum exemption presently provided in the Illinois law would be abolished.

The garnishment restrictions in your fourth alternative, as well as in your other alternatives, are not predicated on the same principles as the Federal law in that they are based upon gross earnings. Any plan which has gross earnings as its basis does not manifestly provide substantially similar protection. In order to determine how such a plan would operate at various income levels for varying withholding exemptions, an analysis has to be made taking into account Federal income and social security taxes as well as State income taxes.

We have briefly analyzed your fourth alternative with respect to its effect on a single individual who is not the head of a family and who also claims no withholding exemptions. It should be noted that the Internal Revenue Code merely prescribes the withholding exemptions to which an individual is entitled. Generally, lesser withholding exemptions are taken by single persons having income other than earnings or those desiring a form of forced savings. The zero exemptions classification is fairly commonly used and is prescribed in the Federal and State withholding tables. The analysis based on current State and Federal tax withholding and Social Security tables, disclosed that in the range between $65 and $75 of gross earnings at zero withholdings exemptions, the Federal law would result in a smaller garnishment amount than the proposed State law, assuming the individual was not head of a family under State law.

Moreover, the proposed State garnishment law would not be self-adjusting if withholdings required for State Income Tax or Federal Income Tax or Social Security were to increase. Thus, any such State law would need to be reexamined whenever any one of these factors were changed.

Title III defines "earnings" as compensation paid or payable for personal services whether denominated as wages, salary, commission, bonuses, or otherwise, including periodic payments pursuant to a pension or retirement system. Both current and proposed Illinois law exempt from garnishment only prescribed amounts of wages, salary, commissions, bonuses, and periodic payments pursuant to a pension or retirement plan. While the State law protects the same specific forms of remuneration as does Title III, it does not include within its protection any forms of compensation paid or payable for personal services which are not specifically named. Thus, it is not clear that the State law protects from garnishment all forms of compensation for personal services as does Title III.

The current and the proposed Illinois law both state the garnishment exemption in terms of remuneration for a week. Presumably under State law the exemptions are applied only on the basis of pay earned on a week-by-week basis. If this is true, the State law may provide substantially less protection against garnishment than Title III in the case of an employee receiving remuneration which compensates for personal services rendered in a pay period longer than one week. This could occur in situations where there are differences in earnings from week to week within the pay period. The treatment of earnings for pay periods other than a week is prescribed in section 303(a) of Title III and in 29 CFR 870.10 and is further discussed in the enclosed opinions WH-110 and WH-94. The protection of section 303(a) is predicated on the basis of the particular pay period and any week-by-week treatment of earnings within the pay period would be inconsistent with Title III.

Certain factors discussed above are common to each of the alternatives for proposed legislation. It is our conclusion that each of these alternatives, as presently formulated, would not provide restrictions on garnishment which are substantially similar to those provided in section 303(a) of Title III of the Consumer Credit Protection Act.

It may be possible to develop State legislation substantially similar to section 303(a) while retaining an exemption based upon gross earnings rather than disposable earnings. However, there is some question whether the retention of a gross earnings exemption would be worthwhile in view of the technical difficulties inherent in comparing permissible garnishment amounts under various combinations of State and Federal income tax and other required deductions from earnings.

The memorandum which you left with us during your recent visit indicates that adoption of the section 303(a) exemption formula by your State would eliminate the distinction between heads of families and others and also that the State law gives more favorable treatment to heads of families at all income levels up to $249. It is true that the simple adoption of the Federal formula would eliminate such more favorable treatment. This difficulty could be overcome, however, by adopting legislation incorporating the essential features discussed on the first page of this letter and a garnishment formula based on disposable earnings. The law could provide the desired levels of protection for different categories of debtors so long as none of the levels of protection is lower than in Title III.

We would be pleased to have further consultations with you in the preparation of your proposed legislation.

Sincerely,

Robert D. Moran
Administrator