



CCPA-56

May 25, 1971

This is in reply to your letter received on January 19, 1971, applying for an exemption for garnishments issued under the laws of your State under the provisions of section 305 of Title III of the Consumer Credit Protection Act.

The procedures for submitting an application are prescribed in Subpart C of 29 CFR 870. Your application does not fully meet the requirements of 29 CFR 870.52. This section requires that any application for exemption must be accompanied by two copies of all the provisions of the State laws relating to the garnishment of earnings, certified to be true and correct by the Attorney General of the State. There is also the further requirement that the application be accompanied by a statement signed by the Attorney General of the state showing how the State laws satisfy the policy expressed in 29 CFR 870.51.

Certain substantive and procedural sections of Louisiana law which may bear on the garnishment of earnings and the application of section 13:3881 were not submitted with the application and, therefore, were not discussed in the Attorney General's statement. The laws not submitted includes such material as the following sections of the Louisiana Revised Statutes (RS): 13:3471, 13:3913, 13:3914, 13:3921 through 13:3928, 13:4732, 17:573, 17:772, 17:883, 17:1013, 20:32, 23:1205; and the following articles of the Louisiana Code of Civil Procedures (C.C.P.): 2411 through 2417, 3507, 3508 and Forms No. 381 and No. 385.

Apart from the failure of the application to fully meet the requirements in 29 CFR 870.52, it appears that LSA-RS § 13.3881 does not, in all circumstances, provide the same or greater protection to individuals as does section 303(a), Title III of the Consumer Credit Protection Act. Although there may exist other deficiencies in the present LSA-RS § 13:3881, an analysis has developed the following discrepancies.

One. Neither LSA-RS § 13.3881 nor any other applicable section of the Louisiana Revised Statutes, so far as we are aware, contains a definition of "earnings", necessary in that this definition forms the basis for ascertaining "disposable earnings" - the essential criteria for both statutes. Thus, there is no reasonable certainty that Louisiana would adhere to the same definition of earnings or disposable earnings as prescribed by section 300 and 303 of Title III, Consumer Credit Protection Act.

Two. LSA-RS § 13.3881 provides that "seventy-five per centum of his disposable earnings for any week or the amount by which his disposable earnings for that week exceed thirty times the Federal Minimum Wage . . ." shall be exempt from seizure. A literal reading of the second proviso of the statute would appear to prescribe that only thirty times the Federal minimum wage may be garnished rather than that sum itself being exempt. In view of the rather clear wording of the statute and the absence of any Louisiana adjudication on this particular clause, we are unable to find any assurance in the State law that the restrictions provided by section 303(a) would be maintained in Louisiana. This difficulty is further compounded by this fact that LSA-RS

§ 13:3881 does not require that the greater of the two restrictions be utilized in determining the exact amount of the debtor's exempt earnings, utilizing either the greater or lesser sum. And, if the second proviso of LSA-RS § 13:3881 were to be interpreted as exempting only the excess of thirty times the Federal minimum wage, then the disposable earnings of the debtor up to thirty times the Federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 could be garnished - the exact converse of the protection afforded by section 303(a).

The Louisiana statute does provide that "in no case shall this exemption be less than at the rate of seventy dollars per week of disposable income." It is required, however, that "a multiple or fraction thereof according to whether the employee's pay period is greater or lesser than one week" be utilized. Conversely, section 303(a) does not prorate the exempted earnings when the pay period is less than one week, thereby providing an absolute base exemption from garnishment of thirty times the Federal minimum wage. In the event the pay period is substantially less than one week, the Louisiana statute would require such a reduction of its seventy dollar exemption that the thirty times the Federal minimum wage base exemption provided by section 303(a) would not be afforded to the debtor. Moreover, LSA-RS § 13:3881 requires a multiple of the seventy-dollar limitation to be applied when the pay period is greater than one week but less than two weeks while section 303(a) deems that any workdays in excess of one workweek constitute a subsequent workweek, treated as a separate entity and having its own above-mentioned absolute base limitation. Therefore, at the present minimum hourly wage of one dollar and sixty cents, LSA-RS § 13:3881 is more restrictive of garnishments in pay periods of exactly one week, but less restrictive in situations involving fractions of workweeks.

Three. Section 303(c), in conjunction with section 303(a), interpreted in 29 CFR 870.51(c), prescribes that the garnishment restrictions of section 303(a) are self-executing and do not require the raising of an affirmative defense. Under Title III, a garnishment may never cause withholding of any earnings in excess of that subjected to garnishment under section 303(a). Special Counsel *** opinion, however, states that the garnishment deductions withheld by the employer under the prior law would continue "until such time as that judgment is amended by the court upon application of an interested party." As may be readily seen, this represents a deviation from the mandate of Title III, and, absent any other Louisiana law clearly holding otherwise, remains a fatal disparity.

Four. Section 303(a) requires that no withholding of exempt income may be made at any time. Louisiana, however, upon service of interrogatories, requires the garnishee pursuant to LSA-RS 13:3921 through 13:3927 and Louisiana Code of Civil Procedure article 2411 through 2417 to withhold an uncertain amount of the debtor's earnings pending a court determination of exactly what portion of these earnings are exempt. A further difficulty is presented when the garnishee fails to answer the interrogatories. In that event, the court is permitted to enter a writ of garnishment for the total indebtedness without any perceptible procedures for ascertaining the debtor's earnings and what portion of these earnings are exempt.

Sincerely,

Horace E. Menasco
Administrator