U.S. DEPARTMENT OF LABOR
WORKPLACE STANDARDS ADMINISTRATION
WASHINGTON, D.C. 20210

OFFICE OF THE ADMINISTRATOR

MAY 11 1971

CCPA

This is in reply to your letter of April 7, 1971, addressed to Mr. Harold Nystrom, Associate Solicitor, concerning legislation you have submitted to the legislature to amend Illinois garnishment laws. We are sorry that our letter of April 8, 1971, on this subject did not reach you in time to assist you in this matter.

As you know, our letter of April 8, 1971, commented primarily on the fourth alternative discussed in a memorandum dated January 26, 1971, prepared by your staff. The copy of the proposed act currently before the legislature differs from the proposal on which we previously commented. Hence, we believe some comments on the current proposed legislation may be helpful as we understand it may be possible to amend it to satisfy the "substantially similar" criterion of section 305 of Title III of the Consumer Credit Protection Act.

As we understand the bill before the legislature, there would be exempt from garnishment an amount (a) by which gross earnings for the week exceed 40 times the Federal minimum hourly wage prescribed by section 206(a)(1) of Title 29, U. S. C., in effect at the time the earnings are payable (currently $64) plus $25 for the first dependent other than the employee (i.e. a total of $89 in such case) and $10 for each additional dependant thereafter (i.e. for example, $99 in the case of an employee claiming himself, his wife and one child) or (b) 85% of gross earnings, whichever is greater. The $200 maximum exemption presently provided in Illinois law would be abolished. All compensation above the exempt amount is subject to garnishment and all payroll deductions required by law to be withheld are taken from the exempt amount.

The garnishment restrictions in the proposed act are predicated on gross earnings rather than disposable earnings as in the Federal law. As we

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indicated previously, any law which uses a different basis does not manifestly provide substantially similar restrictions.

We have briefly analyzed the proposed act, taking into account present Federal and State income and social security taxes, and have concluded that in all perceptible situations where the employee's pay period is a week the proposed State law would result in a smaller garnishment amount than the Federal law. However, the proposed State law would not be self-adjusting if withholdings required for State Income Tax or Federal Income Tax or Social Security were to increase. Thus, whenever any one of these factors is changed, it would be necessary to reexamine the State law to ascertain whether it would continue to provide "substantially similar" restrictions on garnishment. It was for this reason that in our letter of April 8, 1971, we recommended the adoption of legislation providing garnishment restrictions based upon disposable earnings. Refer especially to the penultimate paragraph of that letter which suggested that a disposable earnings formula could be designed to provide the desired levels of protection for debtors having family responsibilities. Although not based on disposable earnings the proposed bill does provide such protection, which we find heartening. In any case, however, the gross wage garnishment restriction formula in the proposed act would not necessarily preclude its consideration under section 305 of Title III. However, if the presently proposed Illinois formula is not changed, any exemption granted pursuant to section 305 would necessarily incorporate a condition requiring reexamination if present Federal or State taxes or Social Security deductions are increased.

The proposed law states its garnishment restrictions only in terms of remuneration for a week and presumably such restrictions would only be applied on the basis of pay earned in each separate week in the case of an employee having a pay period longer than a workweek. As explained in more detail in the eighth paragraph of our prior letter, which continues to be pertinent, there are fairly common situations where such treatment under State law would result in the employee receiving substantially less protection against garnishment than is provided in Title III. The following tabular summary gives the treatment required under Title III in the case of pay periods longer than a week.

MAXIMUM PART OF DISPOSABLE EARNINGS SUBJECT TO GARNISHMENT

Biweekly	Semimonthly	Monthly
$96 or less: NONE	$104 or less: NONE	$208 or less: NONE
More than $96 but less than $128: AMOUNT ABOVE $96	More than $104 but less than $138.67: AMOUNT ABOVE $104	More than $208 but less than $277.33: AMOUNT ABOVE $208
$128 or more: MAXIMUM 25%	$138.67 or more: MAXIMUM 25%	$277.33 or more: MAXIMUM 25%

The following example illustrates one of many possible situations where the State law gives less protection than Title III. An employee is paid on a biweekly basis and has a biweekly salary of $210, is single and claims one exemption (for himself), and works only five days in the first workweek of the pay period before being laid off until the following pay period due to the employer not having any work available for him. He is paid $105 gross wages for the workweek and receives no salary for the layoff time. After legal deductions ($6.10 Federal Income Tax, $5.46 Social Security and $1.72 State Income Tax), the net pay or disposable earnings are $91.72. Under Federal law no garnishment would be permitted because disposable earnings for the pay period are less than $96.00. Yet under State law $15.75 would be garnished.

Failure to provide any pay period garnishment restrictions in the proposed act for pay periods longer than a week, incorporating proper multiples of its weekly restriction as provided in section 303(a) of Title III and 29 CFR 870.10(c), would effectively bar any consideration of the bill under section 305 of Title III. Also, the seventh paragraph of our letter of April 8, which indicates that it is not clear that the State would protect from garnishment all forms of compensation for personal services as does Title III is equally pertinent to the present proposed bill.

If the recommendations discussed above are implemented, your State would have a basis for applying for an exemption pursuant to Subpart C of Part 870. We would be pleased to have further consultations with you in the preparation of this legislation. Our final decision would be predicated on the merits of such a formal application and the written comments of interested persons as provided in our regulations.

Sincerely,

Horace E. Menasco
Administrator