CCPA

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

RD

AUG 02 1972

This is in reply to your inquiry as to whether the legislation proposed in California Senate Bill No. 88 would provide restrictions on garnishment substantially similar to those of section 303(a) of Title III of the Consumer Credit Protection Act.

As indicated in 29 CFR 870.51, it is the policy of the Secretary to permit exemption from section 303(a) if the laws of a State cover every case of garnishment covered by the Act, and if those laws provide the same or greater restriction on garnishment of individuals' earnings. We have reviewed Senate Bill No. 88 (as amended April 25, 1972) to ascertain whether it would provide the requisite restriction on garnishment. The following discussion of some of the provisions of Senate Bill No. 88 denotes a number of circumstances where it would not provide the same or greater protection to individuals as does the Federal law.

Section 690.6 of the bill, which applies to earnings of individuals who are not employees, exempts the earnings of the debtor received for his personal services. It does not appear that there is any restriction on a levy of attachment directed to payable earnings of individuals within the purview of §690.6. The restrictions of Title III are stated in terms of "earnings" or "compensation paid or payable" and are applicable to individuals, whether an employee or otherwise. Thus, in cases within the purview of §690.6, the bill by definition would manifestly provide less protection than the Federal law.

It is noted that §690.6 exempts from attachment of earnings received by the debtor either: (a) one-half of such earnings, or (b) such greater portion as allowed by Title III, but the exemption is limited to earnings received within 30 days next preceding the levy of execution. As noted in our letter to you on November 22, 1971, Title III does not contain any time limitation for its restrictions to be effective.

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Sections 690.7 through 690.7½ pertain to levies of execution against bank accounts. The restrictions on garnishment provided in Title III apply to the garnishment of earnings deposited in bank accounts. Therefore, the above sections of State law should operate in such a way as to provide garnishment restrictions for earnings deposited in bank accounts which would be substantially similar to Title III. This aspect of Federal law is discussed in opinion letter WH-146, published October 26, 1971, which was sent to you as an enclosure with our letter of November 22, 1971.

Section 690.7 provides a maximum exemption from execution of $100. This maximum would apply even though an account subjected to execution under this section may contain earnings which are entitled to the Title III percentage restriction on garnishment. Thus, this section is clearly less restrictive than Federal law in that Title III sets no dollar limit on the maximum amount of earnings which is protected from garnishment. Also, the exemption provided by §690.7 is not self executing. See §690(a) of the existing law; §§690.7(f) and 690.50 in Senate Bill No. 88; and 29 CFR 870.51(c).

Section 690.7½ provides an exemption in the case of earnings deposited by an employer with a bank which acts as his "payroll agent". The term "employer's payroll agent" is defined in §690.7½ to mean "a financial institution that computes for an employer the net amount payable to an employee after making all required and authorized deductions from his gross earnings and credits the net amount to the employees deposit account in that financial institution". Under this section the "account of the debtor is exempt from levy of execution to the extent of the amount of the debtor's earnings that the agent has credited to that account for the last pay period prior to the levy, less all amounts debited to the account after the time the earnings for that pay period were credited to the account".

Section 690.7½ would not provide restrictions on garnishment equal to Title III for several reasons. If the employee does not perform the affirmative act of withdrawing all of the earnings subjected to a levy of attachment before the next payday, the levy may take all of such earnings because they are not protected beyond this length of time. Thus, the exemption would not be self-executing. (See 29 CFR 870.51(c).) Additionally, this section prescribes a time limit, the span of one pay period, during which its protection would be effective. There is no such time limitation for the restrictions in Title III.

In situations within the purview of §690.7½, the bank has the payroll records and, therefore, is fully aware of the amount of disposable earnings credited to the account. This section could thus be amended to provide garnishment restrictions substantially similar to Title III as well as such additional protection as the State wishes to add.

Sections 690.1[illegible] and 690.1[illegible] deal with restrictions on levies of execution against retirement payments. In the case of such payments which are within the purview of §§690.18(b), 690.18(c) and 690.1[illegible], it appears that if they are deposited in a bank account, they would be treated under §§690.7 and 690.7[illegible] which are considered to provide less protection than the Federal law.

The Employee's Earnings Protection Law in Chapter 2.5 of the bill deals with the most typical type of garnishment situation in which the garnishee and the defendant have an employer-employee relationship and only payable earnings are involved. A garnishment is titled an "earnings withholding order" under this chapter. In certain instances this chapter provides less protection than the Federal law.

It should be pointed out that section 723.024 permits the employer to deduct a one dollar service fee each time he makes a deduction pursuant to a garnishment. To the extent that the total deduction -- the amount for the garnishment plus the service fee -- does not exceed the garnishment limitations of the Federal law this would not violate Title III. However, where such allowances are permitted by State law, any deductions from wages may not reduce the employee's earnings below the statutory minimum wage or overtime compensation which may be required under the Fair Labor Standards Act. Such deductions would not be considered as deductions "required by law to be withheld" for the purpose of determining the employee's "disposable earnings" within the meaning of section 302(b) of Title III. The basic garnishment restriction in the case of employees' earnings in the proposed bill, as indicated on the submitted "Withholding Comparison Table" would prohibit any withholding pursuant to a garnishment where the employee's gross earnings are less than $98 for one week. With the current minimum wage at $1.60, the addition of the one dollar service charge would not appear to raise a question of minimum wage and overtime compensation violation under the Fair Labor Standards Act in this proposed bill.

Section 723.030 of Chapter 2.5 delineates the treatment of deductions pursuant to a withholdings order for support. The treatment under Title III of court orders for support is explained in the enclosed opinion letters WH-100, WH-104, and WH-112. As indicated therein a court order for support is a "garnishment" and, therefore, deductions pursuant to a support order may not be treated as deductions required by law to be withheld. The opinions state that if a support order exhausts the allowable amount of disposable earnings under Federal law, no more of the employee's earnings may be withheld pursuant to another garnishment against the same earnings.

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Section 723.030(b)(4) treats deductions pursuant to a withholdings order for support as a deduction required by law. Thus, simultaneous deductions may be made for both a withholdings order for support and another withholding order. The amount deducted for support is subtracted first from the employee's earnings and then the employer computes the amount to be withheld pursuant to the second withholdings order based on the remaining earnings pursuant to §723.050. In the case of an employee subjected to a withholding order for support at the same time that another earnings withholding order is received, it is clear that State law is less restrictive of garnishment than Title III.

Under §723.050, which specifies the exemption for most earnings withholding orders and levies of execution, the State Judicial Council would be required to establish multiples for pay periods other than a week and withholding tables for representative pay periods. Any determination as to whether this section adequately restricts garnishment would necessarily depend on the multiples and tables which would be promulgated pursuant to this section.

Withholding orders for State taxes, within the purview of Article [illegible], are treated in a manner which is more restrictive than under Title III. However, the bill is silent on the handling of Federal tax levies and it is not clear that the State would follow the position that if a Federal tax levy exceeded the amount subject to garnishment under §303(a) of Title III that no further garnishment could be made against the same earnings. (cf. opinion WH-111).

Section 723.1[illegible](b), on procedure, provides that where "a judgment debtor has earnings from more than one source, an earnings withholding order may be issued based on the debtor's total earnings but directed to one employer". This is contrary to opinion letter WH-113 (January 7, 1971) which states that the restrictions of Title III" are considered to be separately applicable to each employer (garnishee)". Different employers would generally have different payroll periods and, thus, it would be impossible to combine earnings from two employments to ascertain the exempt amount under either the State bill or the Federal law - both of which apply garnishment restrictions on a pay period basis.

In addition, §723.[illegible](a) defines earnings to include all tips, whether or not the tips pass through the employer's hands, in determining the amount which may be deducted under an earnings withholding order. Opinion letter WH-95 (December 9, 1970) states that under Title III tips do not constitute earnings when they do not pass through the hands of the employer and such tips may not be included in determining the amount subject to garnishment. Thus §723.10[illegible] would not be as restrictive as Federal law in the case of employees receiving tips or earnings from more than one source. Also, the bill does not indicate the treatment to be given employees receiving board and lodging as part of their earnings. (cf. opinion WH-35).

Due to the manner in which Senate Bill No. 88 is structured, with different types of earnings under different provisions of law, it cannot be positively ascertained that the State law would provide the requisite level of protection in every case of garnishment covered by Federal law. Unlike Title III, the bill provides a complicated system of exemptions rather than a general restriction on garnishment. The analysis given above, therefore, does not cover all instances where there may be a discrepancy between Federal and State law.

We recognize and commend the important work the California Law Revision Commission has done in the area of providing protection to debtors, some of which go beyond the benefits provided by Federal law. Although Senate Bill No. 88 would not qualify for exemption in its present form under the provisions of 29 CFR 870, it represents a desirable step towards eventually conforming State law to Federal law.

Under the provisions of section 307 of Title III, those features of the bill prohibiting garnishment or providing for a smaller garnishment than Federal law in a particular case would be applied rather than Title III. On the other hand, the State law is preempted where it results in a larger garnishment amount than permitted under section 303. Thus, we feel it beneficial that the State continues its efforts in achieving a body of garnishment law compatible with Federal law. Our continued assistance will be available to you in this effort.

Sincerely,

SIGNED

Horace E. Menasco
Deputy Assistant Secretary

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