CCPA

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

P.D.

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This is in reply to your letter of September 20, 1972, concerning proposed garnishment legislation in the State of California.

You ask whether the draft statute you enclosed would appear to qualify the State of California for an exemption from the provisions of section 303(a) of the Consumer Credit Protection Act under the following condition: "Wherever the earnings of any individual are subject to garnishment under any provision of California law other than the Employees' Earnings Protection Law (Chapter 2.5 (commencing with section 723.010) of Title 9 of Part 2 of the Code of Civil Procedure), section 303(a) of the CCPA shall apply to the withholding of such earnings under such other statute." You state that such a "conditional exemption" would preserve the CCPA restrictions on garnishment as they may apply to such matters, for example, as checking accounts and independent contractors.

As indicated in 29 CFR 870.51, it is the policy of the Secretary to permit exemption from section 303(a) of Title III of the Consumer Credit Protection Act if the laws of a State cover <u>every case</u> of garnishment covered by the Act, and if those laws provide <u>the same or greater restriction on garnishment</u> of individuals' earnings. Under this standard, which has been in effect from the time Title III became effective, we are unable to approve the conditional exemption you suggest.

We recognize that Title III preempts any provision of State law which is not as restrictive as the Federal garnishment limitations. However, such preemption may not be considered as qualifying State laws for exemption under section 305. If this could be done every State would qualify for an exemption regardless of its laws, and section 305 would be a nullity. As indicated in section 301 of Title III, the purpose of this Title is to "regulate commerce and to establish uniform bankruptcy laws" based upon

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a Congressional finding that the "great disparities among the laws of the several States relating to garnishment have, in effect, destroyed the uniformity of the bankruptcy laws and frustrated the purposes thereof in many areas of the country". See the seventh paragraph of opinion letter WH-121 (February 5, 1971) wherein this same matter is discussed.

In view of the fact that we cannot proceed towards the conditional exemption you suggest, we have not made a detailed examination of the latest version of California Senate Bill No. 88 (page proofs dated July 28, 1972) which you enclosed with your letter. However, we agree with your conclusion that if California garnishment law is amended by Senate Bill No. 88, the resulting body of law would clearly provide less protection than the Federal law in certain significant areas. For example, as explained in paragraph 3 of our letter to you of August 2, 1972, (opinion letter WH-177), §690.6 of the bill does not appear to provide any restriction on a levy of attachment directed to payable earnings of individuals who are not employees.

Also, we note that §690.7 of the current Code of Civil Procedure would not be amended by the bill. Section 690.7 provides a maximum exemption from execution of $1,000, which would apply even though an account subject to execution under this section may contain earnings which are entitled to the Title III percentage restriction on garnishment. Thus, this section of the existing law, which would not be affected by Senate Bill No. 88, is potentially 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 and §690.50 in Senate Bill No. 88, and 29 CFR 870.51(c). Please also refer to page 2 of opinion letter WH-177 wherein analogous matters pertaining to an earlier version of Senate Bill No. 88 (as amended April 25, 1972) are discussed. In addition to our opinion letter WH-146 (October 26, 1971) which we previously sent to you, you may also be interested in opinion letter WH-171 (August 3, 1972) which further discusses the Department's views on the application of Title III to the garnishment of earnings in a bank account.

We noted in the tenth paragraph of opinion letter WH-177 that if certain types of retirement payments were deposited in a bank account, they would be treated under proposed sections of State law pertaining to levies of execution against bank accounts which we considered to provide less protection than the Federal law. This observation also applies to Senate Bill No. 88 as it is now written. Thus, if retirement payments of the

types which are within the purview of §§690.18(b) and 690.18½ are deposited in a bank account, such earnings would be treated under §690.7 of existing law. We consider §690.7 of existing law as providing less restriction on garnishment than the Federal law as discussed in the preceding paragraph.

We have not attempted to analyze every aspect of your proposal. If enacted, however, Senate Bill No. 88 would provide protection to debtors which, in many situations, would appear to exceed that prescribed by the Federal law. Thus, while the bill would not qualify for exemption in its present form, it represents a desirable step towards eventually conforming State law to Federal law.

Your main concern appears to be that unless you can point out to employers the benefits of your proposed bill, especially Chapter 2.5, you believe that representatives of creditors may secure defeat of the bill. However, the benefits of your proposed bill should not be diminished in any way by our withholding approval of the conditional exemption you seek.

If all of the provisions of Chapter 2.5, including the withholding tables for representative pay periods and multiples for pay periods longer than a week, which would be promulgated by the State Judicial Council pursuant to §723.050, in fact, provide for smaller garnishments than Title III with respect to every case of garnishment within the purview of Chapter 2.5, this chapter of State law may be followed with respect to earnings withholding orders executed pursuant to it. (See the 15th paragraph of opinion letter WH-177). As you know, any section or provision of any State law which prohibits garnishments or provides for a smaller garnishment amount than does Title III in a particular case will be applied, as provided under the provisions of section 307. Where a State has not received an exemption but some portions of its laws impose stricter standards restricting garnishments, both State law and Title III would apply concurrently. The Wage and Hour Division would continue to enforce Title III under section 306 and delegations of authority from the Secretary of Labor and State courts would continue to be subject to the proscription contained in section 303(c) against the making, executing, or enforcing of any order or process in violation of that section. (See opinion letter WH-76 dated September 14, 1970).

The extent and nature of our enforcement of section 303 in your State, therefore, would depend upon State substantive and procedural law and

the manner in which the State enforces its own laws. It would be clearly beneficial for your State to continue its efforts in achieving a body of garnishment law compatible with Federal law. Our assistance will continue to be available in this effort.

Sincerely,

/s/ Ben P. Robertson

Ben P. Robertson
Acting Administrator
Wage and Hour Division

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