

CCPA Sec 303

U.S. DEPARTMENT OF LABOR  
EMPLOYMENT STANDARDS ADMINISTRATION  
WASHINGTON, D.C. 20230



SEP 20 1973

PD

WH-239

This is in reply to your letter of November 28, 1972, concerning the laws of the State of Minnesota pertaining to the garnishment of earnings. You indicate that an amendment to Minnesota garnishment law is required to ensure that garnishments executed pursuant to §§571.47 and 571.48 of Chapter 571 of the Minnesota Code do not exceed the amount permitted by Title III of the Consumer Credit Protection Act. You have enclosed a copy of the kind of change you hope to make in appropriate sections of Chapter 571 and solicit our comments.

We agree, as noted in the fifth paragraph of opinion letter WH-172 (reference copy enclosed), that the problems discussed in that letter may ultimately be resolved by remedial State legislation. However, in the interim, while the details of such proposed legislation are being considered and until such changes in State law become effective, there remains the matter of insuring compliance with Title III. We continue to believe that an opinion by the State Attorney General would aid in incorporating the Federal restrictions on garnishment into the present State garnishment summons forms. The enclosed Important Notice, Federal Wage Garnishment Law, (for attachment to garnishment order), could also be attached to every garnishment summons executed pursuant to §§571.47 or 571.48. Your opinion directing that such action be taken in cases of garnishments made pursuant to §§571.47 and 571.48 would immediately assist in obtaining compliance with the Federal law.

We have examined your proposed amendment which prescribes a garnishment summons form and note that it does not specifically indicate what sections of State law it is intended to modify. We have predicated our comments on the assumption that it is intended to conform §§571.47 and 571.48 to the requirements of Title III.

The Important Notice referred to above gives the garnishment restrictions under Title III for pay periods of a week and the multiples applicable to biweekly, semi-monthly, and monthly pay periods. These four bases of payment will cover practically every situation involving the garnishment of earnings. The principles which govern the application of section 303 of Title III to pay periods are found, in part, in 29 CFR 870.10, opinion letters WH-24 and WH-25, and WH Publication No. 1324. As noted in these sources, the restriction for a workweek may not be prorated or reduced in the case of a partial week's earnings or of pay periods of less than a week. Therefore, to ensure compliance with Title III, we recommend that multiples for pay periods shorter than a week be deleted from the garnishment summons form. Also, there is no 10-day pay period in common use and references to such a period would best be deleted to avoid confusion with biweekly pay periods. The reference to a "bi-monthly" period will probably cause confusion and should be changed to "semi-monthly". Under Title III, where the disposable earnings of a worker paid on a semi-monthly basis are garnished, up to 25% of such disposable earnings may be subjected to garnishment if the semi-monthly disposable earnings are in excess of \$135.37 and not \$140.30 as indicated on the form. Similarly, the correct multiple for the application of the percentage formula in the case of an individual paid monthly is \$277.33 of disposable earnings and not \$281.30 as you indicate. Furthermore, the use of the nearest multiple for other unspecified pay periods than those listed on the form is contrary to the last sentence of 29 CFR 870.10(c)(2).

There are decisions which were rendered subsequent to the case you cited which construe section 303 of Title III. See Hodgson v. Hamilton Municipal Court et. al., 342 P. Supp. 1125 and First National Bank of Denver v. Columbia Credit Corporation, 499 P. 2d 1103. We believe the recommendations given above are consonant with these decisions.

Under the provisions of section 303(a) of Title III, if the weekly disposable earnings of an individual are \$64 or more, up to 25% of the disposable earnings may be garnished. Where weekly disposable earnings are less than \$64, only the disposable earnings above \$45 may be garnished and no garnishment may be made where weekly disposable earnings are \$45 or less. However, if the applicable multiples of \$64 are used as we suggest, the proposed amendment would appear to permit garnishment only where weekly disposable earnings are more than \$64. When your proposed formula is applied to employees having biweekly, semi-monthly, or monthly pay periods, it appears that garnishment would be permitted only where the disposable earnings are in excess of the applicable multiple of \$64. Thus, if the amendment incorporates the mathematically correct multiples, the amended sections of law apparently would provide for smaller garnishment amounts than the Federal law.

Any section or provision of any State law which 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.

The proposed amendment to §571.55 incorporates a definition of "earnings" into this section which is compatible with that found in section 302(a) of Title III. The garnishment restrictions provided in §571.55 would apply by definition to the same "earnings" which are protected by Federal law in the case of garnishments which are within the purview of this section of State law. We believe this to be a beneficial change but are puzzled as to why a similar amendment is not being made to §550.37 Subd. 13 which contains parallel provisions of law.

Also, the definition of "earnings" which you propose to add to §571.55 and the definition of "disposable earnings" which is found in that section are stated to be "for purposes of" §571.55 and it appears that these definitions would not apply to garnishments executed under §§571.47 and 571.48. It would seem that appropriate definitions of "earnings" and "disposable earnings" should be made applicable to these latter sections.

We trust that you will assist us in insuring that individuals garnished under §§571.47 and 571.48 receive the protection to which they are entitled under the Federal law. We continue our offer of every possible assistance to that end.

Sincerely,

Ben P. Robertson  
Acting Administrator  
Wage and Hour Division

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