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NOTES

WAGE GARNISHMENT UNDER THE CONSUMER CREDIT PROTECTION ACT: AN EXAMINATION OF THE EFFECTS ON EXISTING STATE LAW

On July 1, 1970, Title III of the Consumer Credit Protection Act¹ went into effect. This legislation is the first federal attempt to regulate wage garnishment, and it was enacted only after considerable debate in the House of Representatives² and further argument in the conference committee of the House and Senate.³ The principal purpose of this discussion is to examine the effects this act and its administration will have on existing state law and on federal-state relationships. This examination will necessarily involve an analysis of the problems inherent in wage garnishment, the manner in which Title III attempts to deal with these problems, and the relationship between Title III and the garnishment sections of the Uniform Commercial Credit Code.⁴

STATEMENT OF THE PROBLEM

Wage garnishment is best defined as "the process whereby an employee's salary in the possession of an employer is held and applied to the satisfaction of a debt to a third party judgment creditor."⁵ It represents a specific form of the proceeding known as garnishment by which a creditor obtains "satisfaction of the indebtedness out of property or credits of the debtor in the possession of, or owing by, a third person."⁶ The reason that it is distinguished from other forms of garnishment is that "[w]e deal here with wages—a specialized type of property presenting distinct problems in our economic system."⁷

1. 15 U.S.C. §§ 1671-77 (Supp. 1965-69).

2. 114 CONG. REC. 1422, 1427, 1439, 1445, 1451, 1455, 1459, 1589, 1590, 1594, 1612-14 (1968).

3. *Id.* at 14388-89, 14392-94.

4. UNIFORM CONSUMER CREDIT CODE §§ 5.104-5.106.

5. Comment, *Wage Garnishment in New York State: Practical Problems of the Employer*, 34 ALBANY L. REV. 395, 399 (1970).

6. 6 AM. JUR. 2d *Attachment and Garnishment* § 2 (1963). It is not the purpose of this paper to give a detailed account of the historical development of wage garnishment, but for concise summaries, see *Id.* §§ 9-12; Note, *Wage Garnishment in Kentucky*, 57 KY. L.J. 92, 92-95 (1968).

7. *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 340 (1968).

The practice of wage garnishment constitutes a significant factor in the arsenal of weapons which a creditor has at his disposal to obtain satisfaction of his claim. Since persons who conduct high-risk credit operations are usually extending credit to individuals whose only asset is their periodic earnings, it is a logical conclusion that the availability of wage garnishment as a collection device is a major reason for their willingness to extend credit to these individuals.

The phenomenal growth of consumer credit in recent years⁸ has been a significant factor in the continued expansion of the American economy.⁹ However, the rapid leaps in the volume of consumer credit from 5.665 billion dollars in 1945 to 56.028 billion in 1960 and to 121.346 billion as of May, 1970,¹⁰ have not been an unqualified blessing, for there has been an equally rapid growth in the number of defaults on consumer obligations and of non-business bankruptcies.¹¹

Many writers¹² have argued that the liberal use of wage garnishment is one of the most significant causes of the problems which have accompanied the expansion of consumer credit. According to their argument, the knowledge by creditors that wage garnishment is available is a factor in the extension of credit to individuals who are clearly not good credit risks. Since a substantially larger percentage of these poor credit risks ultimately default, reliance on wage garnishment has contributed to a credit practice which inevitably leads to an increase in defaults.

These writers connect wage garnishment even more intimately with the increase in non-business bankruptcies. When the creditor garnishes the debtor's wages after default, the debtor's decision to declare bankruptcy can result from various causes. The most direct cause is that the income the debtor has left after garnishment may not be sufficient to meet the needs of his daily existence. A more subtle inducement results when the debtor's employer threatens to discharge him as a result

8. 51 FED. RESERVE BULL. 304 (Feb. 1965); 50 SURVEY OF CURRENT BUSINESS S-17, S-18 (July 1970).

9. PETERSON, *ECONOMICS* 395-402 (1949).

10. 50 SURVEY OF CURRENT BUSINESS S-17, S-18 (July 1970).

11. H. R. REP. NO. 1040, 90th Cong., 1st Sess. 20 (1968).

12. Brunn, *Wage Garnishment in California: A Study and Recommendations*, 53 CALIF. L. REV. 1214 (1965); Johnson, *The Uniform Commercial Credit Code and the Credit Problems of Low-Income Consumers*, 37 GEO. WASH. L. REV. 1117 (1969); Comment, *supra* note 5; Note, 57 KY. L. J. 92 *supra* note 6; Note, *Wage Garnishment as a Collection Device*, 1967 WISC. L. REV. 759.

of the garnishment; he turns to bankruptcy as the only means of avoiding the threat of garnishment and of preserving his employment. Finally, the same result is reached by an actual discharge from employment. The debtor who has lost his job because of a wage garnishment is likely to experience considerable difficulty in finding new employment. Thus, he will be left not only without income to satisfy the obligation for which his wages were garnished, but also without income to pay his rent or for food.

Clearly there is a measure of social cost inherent in the use of wage garnishment which must be balanced against the benefits derived from any additional extension of credit permitted by its use. An understanding of the social consequences of wage garnishment is essential to an analysis of any attempt to regulate the practice. These are the consequences which give society a stake in acting to insure that this collection process is conducted in a manner designed to achieve an equitable balance between the competing interests involved.

By far the most serious effect garnishment of his wages can have on the debtor is the loss of his job. It is his employer who must appear in court as the defendant in a wage garnishment proceeding, and who must bear the paperwork expenses involved in complying with the garnishment order. Often the employer simply eliminates these problems by discharging the debtor from employment. He is more likely to take this action when it involves an unskilled, or semi-skilled worker, for there is much less expense involved in finding a replacement. Unfortunately, these are the workers who are most likely to have their wages garnished. If the debtor is unable to find new employment, the result is likely to be a financial crisis having widespread effect, "effects on the creditors, effects on the legal machinery of society, effects often enough in terms of unemployment insurance, welfare payments, personal tensions and even family break-up."¹³

Many writers who have considered the question¹⁴ have concluded that there is a relationship between the use of wage garnishment and the number of non-business bankruptcies within a given jurisdiction. The data is not conclusive, but it has been demonstrated that states with low wage exemptions have significantly higher rates of non-business bankruptcies than those having high exemptions.¹⁵ There is agreement among

13. Brunn, *supra* note 12, at 1233.

14. *Supra* note 12.

15. Brunn, *supra* note 12, at 1234-38.

referees and students of bankruptcy that this correlation is one of cause and effect.¹⁶

Much has been written of the "bankruptcy crisis" which is currently raging in the United States.¹⁷ Non-business bankruptcies are now costing creditors over one billion dollars annually.¹⁸ Wage garnishment is not the only factor contributing to the existence of this crisis, but the evidence indicates it is of sufficient importance to justify regulation.¹⁹

Even if a debtor of moderate income is not burdened with additional credit obligations, statistics indicate that he is likely to be spending between eighty-five and ninety percent of his income on meeting the current needs of everyday living.²⁰ Therefore, garnishment of more than ten to fifteen percent of his take-home earnings necessarily forces him to do without some of these "necessaries," or to obtain them on credit and start the debt-garnishment cycle again.

The argument most frequently advanced on behalf of creditors who favor the liberal use of wage garnishment is that any severe restriction would ultimately result in a restriction on credit extension and, therefore, on economic expansion. A study conducted in California²¹ indicates, however, that there is no significant difference in the volume or rate of consumer credit extended in California which had a low exemption at that time²² and in New York which had a high one.²³ Conversely, all of the problems connected with wage garnishment, except loss of employment, are directly connected with the percentage of the debtor's earnings which are exempt from garnishment. It is this factor which will determine whether his reduced paycheck will be sufficient to meet his everyday living expenses and other obligations, or whether he will ultimately be driven into bankruptcy and possibly become a ward of the state. Even the loss of his job is indirectly related to the size of the exemption, for a creditor is more likely to resort to wage garnishment in a state having a low exemption.

16. *Id.* at 1236.

17. See, e.g., Countryman, *The Bankruptcy Boom*, 77 HARV. L. REV. 1452 (1964).

18. Myers, *Non-Business Bankruptcies*, in PROCEEDINGS OF TENTH ANNUAL CONFERENCE, COUNCIL ON CONSUMER INFORMATION 9-10.

19. H. R. REP. NO. 1040, *supra* note 11, at 20-21. "Testimony and evidence received by your committee clearly established a casual connection between harsh garnishment laws and high levels of personal bankruptcies."

20. BUREAU OF LABOR STATISTICS REP. NO. 237-93, *Consumer Expenditures and Income* 1 (1965).

21. Brunn, *supra* note 12, at 1239-42.

22. CAL. CIV. PRO. CODE § 690.11 (West 1955).

23. N.Y. CIV. PRAC. LAW § 5231(b) (McKinney 1963).

LEGISLATIVE HISTORY OF TITLE III

The recognition by Congress of these inherent social costs and of the need to strike a balance between the needs of creditors and debtors ultimately resulted in the enactment of Title III of the Consumer Credit Protection Act. H. R. 11601 as originally presented to the Consumer Affairs Subcommittee of the House Banking Committee would have abolished wage garnishment completely.²⁴ An amendment was adopted in committee, however, as a result of testimony showing "that a total prohibition would unduly restrict honest and ethical creditors, while permitting those fully capable of paying just debts to escape such responsibilities."²⁵ In this amended form the bill provided for the limitation of wage garnishment to ten percent of gross earnings above thirty dollars per week, and prohibited the discharge of any employee for a single garnishment of his wages.²⁶

There was considerable debate on the floor of the House as to whether wage garnishment was a proper subject for federal regulation. The constitutionality of this action was strongly challenged,²⁷ and an amendment was proposed which would have eliminated the garnishment provisions altogether.²⁸ The principal argument advanced in favor of this amendment, however, was not a constitutional one, but that the proposed federal law would supersede a majority of existing state statutes.²⁹

The constitutional challenge was never answered in detail in the House, but Congress invoked both the commerce and bankruptcy clauses as authority for Title III.³⁰ The concern of some members over the supersession of state law was outweighed, the majority believed, by the anticipated benefits that would result from the proposed legislation. The prevailing spirit of the House was aptly summarized by Congressman J. B. Bingham of New York:

24. H. R. REP. NO. 1040, *supra* note 11.

25. *Id.*

26. *Id.*

27. 114 CONG. REC. 1612 (1968) (remarks of Congressman Wyman): "Forty or more States have State laws on this subject. Are we to say that these laws are impotent by congressional fiat? If so, on what authority? This is not for Congress to do. This is not interstate commerce. Surely it cannot be said to be authorized under the welfare clause."

28. *Id.* at 1613 (remarks of Congressman Montgomery).

29. *Id.*

30. For a detailed analysis supporting the constitutionality of Title III, see Note, *Federal Restriction of Wage Garnishment: Title III of the Consumer Credit Protection Act*, 44 IND. L. J. 267, 269-76 (1969).

I was deeply impressed by the evidence of personal hardship and distress suffered by many low-income wage earners, enticed into buying goods they could not afford by unscrupulous merchants who knew they always had recourse to attaching a man's salary and cared little whether anything remained to support that man's wife and children. Moreover, we heard extremely useful testimony from several referees in bankruptcy which pointed up the correlation between harsh garnishment laws and high levels of personal bankruptcies.³¹

Thus, the House accepted the argument that there was a direct causal relationship between the liberal use of wage garnishment and the sharp increase in personal bankruptcies.³² The House also recognized that some creditors rely on their right to employ wage garnishment in their extensions of credit to high-risk individuals, and indicated a desire to curtail this practice.³³

It is doubtful that total abolishment of wage garnishment would have passed the House, but adoption of the amendment did not insure the proposal's enactment, for the subject was not dealt with at all in the original draft of the corresponding Senate Bill, S. 5.³⁴ As a result of this and other differences a conference committee was formed to draft a compromise bill satisfactory to both houses. This conference lasted six weeks and was described by one House member as "about the hardest I ever was in in my life We tried out best but we could not get everything."³⁵

"By far, the biggest controversy in the whole bill . . . involved the subject of garnishment."³⁶ The Senate conferees refused to accept the provision adopted by the House exempting the first thirty dollars of gross weekly earnings and ninety percent of all in excess of that amount. Agreement was eventually reached on the exemption provision which was ultimately enacted into law.³⁷ This provision contains an exemption

31. 114 CONG. REC. 1451 (1968).

32. *Id.* at 1427 (remarks by Congressman Patman).

33. *Id.* at 1459 (remarks by Congressman Ryan). "The restriction of garnishment properly places a part of the burden for the responsible management of credit on those who extend it. If wages can no longer be garnished, the merchant and the finance company will be wary of overburdening consumers already heavily in debt."

34. *Id.* at 1451 (remarks by Congressman Bingham).

35. *Id.* at 14389 (remarks by Congressman Patman).

36. *Id.* at 14388 (remarks by Congresswoman Sullivan).

37. 15 U.S.C. § 1673 (Supp. 1965-69).

of the larger amount: either seventy-five percent of the worker's pay after deductions required by law, or thirty times the federal minimum hourly wage per week. The House conferees were able to retain the provision prohibiting discharge for garnishment on a single indebtedness.

The compromise was reported out of committee to both houses on May 22, 1968.³⁸ There was some expression in the House of continuing sentiment for complete abolishment,³⁹ but members were, generally satisfied with the bill⁴⁰ and adopted it by an overwhelming majority. Despite the fact that "a serious doubt existed in the minds of some of the Senate conferees concerning the desirability of federal legislation in this area,"⁴¹ there was little debate over the garnishment provisions on the Senate floor, and the compromise bill was adopted rather easily. Thus on May 22, 1968, Congress enacted the first federal wage garnishment law.

MEANING AND EFFECT OF TITLE III

What exactly did this act do?⁴² Its provisions represent a modicum of statutory conciseness and clarity. There are only three basic terms which must be defined: earnings, disposable earnings, and garnishment.

The statutory meaning of earnings includes "compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program."⁴³

Disposable earnings is a more limited term, denoting "that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld."⁴⁴ The deductions included are those for federal, state, or city income taxes, and for federal social security (F.I.C.A.) taxes.⁴⁵ Thus money withheld by the employer for application toward such items as union dues, group insurance programs, and charitable contributions must be considered a part of disposable earnings.

38. H. R. REP. No. 1397, 90th Cong., 2d Sess. (1968) (conference report).

39. 114 CONG. REC. 14394 (1968) (remarks by Congressman Minish).

40. *Id.* at 14392 (remarks by Congressman Halpern).

41. *Id.* at 14488 (remarks by Senator Proxmire).

42. For a detailed analysis of possible subtleties of statutory interpretation see Note, *Garnishment Under the Consumer Credit Protection Act and the Uniform Consumer Credit Code*, 38 U. CIN. L. REV. 338 (1969); Note, 44 IND. L. J., *supra* note 30.

43. 15 U.S.C. § 1672 (Supp. 1965-69).

44. *Id.*

45. WAGE AND HOUR AND PUB. CONTRACTS DIV. PUBLICATION 1279 (Jan. 1970).

Garnishment is defined as "any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt."⁴⁶

The amount of an individual's earnings subject to garnishment is limited to the lesser of twenty-five percent of his disposable earnings, or the amount by which his weekly disposable earnings exceed thirty times the federal minimum hourly wage (\$48 under the current minimum of \$1.60 per hour).⁴⁷ Under this formula disposable earnings of \$48 per week or less would not be subject to garnishment. Weekly disposable earnings between \$48 and \$64 could be garnished for the amount in excess of \$48, for that amount would always be less than twenty-five percent of the disposable earnings.⁴⁸ For disposable earnings above \$64 per week, the amount subject to garnishment will be computed by taking twenty-five percent since that sum will be less than the excess over \$48.

The above exemptions apply automatically: there is no requirement that the debtor take any affirmative action. The statute expressly provides that "[n]o court of the United States or any State may make, execute, or enforce any order or process in violation of this section."⁴⁹ The restrictions do not apply, however, to "(1) any order of any court for the support of any person; (2) any order of any court of bankruptcy under Chapter XIII of the Bankruptcy Act; (3) any debt due for any state or federal tax."⁵⁰

The final section of the statute provides that an employer cannot discharge an employee for having his wages garnished for a single indebtedness. For *willful* violations it establishes a penalty of a \$1000 fine, or imprisonment for not more than one year, or both.⁵¹ A single indebtedness has been interpreted to mean "a single debt regardless of the number of garnishment proceedings brought to collect it."⁵² This interpretation eliminates the problem which would have existed in states which require

46. 15 U.S.C. § 1672 (Supp. 1965-69).

47. *Id.* § 1673. A calendar month is considered to consist of $4 \frac{1}{3}$ workweeks; therefore the minimum exemption for a month is computed by the formula $4 \frac{1}{3} \times 30 \times \$1.60 = \$208$. The exemption for a semi-monthly period is equal to $2 \frac{1}{6} \times 30 \times \1.60 , or \$104.

48. If an individual had weekly disposable earnings of \$60, the excess over \$48 would be \$12, but twenty-five percent of the total would be \$15.

49. 15 U.S.C. § 1673(c) (Supp. 1965-69).

50. *Id.* § 1673(b).

51. *Id.* § 1674.

52. Note 45 *supra*.

the creditor to seek a new garnishment order each payday until the obligation is satisfied.

Enforcement of Title III was placed under "[t]he Secretary of Labor, acting through the Wage and Hour Division of the Department of Labor" ⁵³

The remaining sections of the statute reflect the concern manifested in both the House and Senate as to whether federal regulation of wage garnishment constituted a usurpation of a power rightfully belonging to the states, and the effect the federal law would have on existing state law. The results of this concern were twofold. First, sections were added empowering the Secretary of Labor to exempt by regulation "garnishments issued under the laws of any State if he determines that the laws of that State provide restrictions on garnishment which are substantially similar to those provided in section [1673(a)]," ⁵⁴ and providing that Title III did not affect the obligation to comply with any state law which was stricter in the limitations it imposed on either garnishment or discharge.⁵⁵ Secondly, the effective date of Title III was delayed more than two years from the date of enactment, until July 1, 1970, in order "to give the States time to modernize their generally obsolete and extremely harsh garnishment laws . . ." ⁵⁶ and thereby qualify for such an exemption.

It can be seen that the question of whether regulation of wage garnishment should be left to the states was answered with a compromise.⁵⁷ Congress, in effect, told the state governments that it was enacting a minimum wage exemption from garnishment, but that it was giving them two years to avoid federal regulation by enacting "substantially similar" restriction and qualifying for an exemption from the federal law.

ADVANTAGES OF STATE EXEMPTION

State governments might well ask why they should want an exemption. Once the exemption was obtained, the state would handle the ad-

53. 15 U.S.C. § 1676 (Supp. 1965-69).

54. *Id.* § 1675.

55. *Id.* § 1677.

56. 114 CONG. REC. 14388 (1968) (remarks by Congresswoman Sullivan).

57. *Id.* at 14488 (remarks by Senator Proxmire). "In effect the Federal Government has set minimum standards. The provision has not automatically preempted the State's authority to legislate on the subject. I believe the compromise is in the best traditions of American federalism and will lead to more effective Federal-State relationships."

ministration of all claims for which an exempt portion of disposable earnings had been garnished. State administration should result in more efficient regulation because virtually all wage garnishments take place in state courts; the machinery for state supervision of the courts handling garnishment cases already exists. The state governments should also be in a better position to conduct the educational program necessary to familiarize employers, employees, and creditors with the computation of allowable wage garnishments.

As the debate in Congress indicated, many state governments resent federal regulation of matters they consider a part of their internal affairs. The exemption provision eliminates the possibility of a charge that Title III is an invasion of states' rights by providing a means of avoiding federal administration. From a purely practical standpoint, there is no reason why a state would choose not to enact a restriction at least as stringent as that of Title III. If it does not, confusion will inevitably result when a creditor seeks a garnishment permitted by the old state law, but not by the new federal statute.

Once an exemption has been granted, the regional and area offices of the Wage and Hour Division will refer all claims of excess garnishment to the appropriate state administrative agency. The problem remains, however, where a state restriction is as great or greater than that of Title III, but an exemption has not yet been obtained. The section providing that the federal law does not supersede any state statute which is more restrictive would answer the question presented by a garnishment which violated the state restriction, but not the federal one.

A more difficult problem exists when the garnishment violates both federal and state law. The only conclusion appears to be that there is an overlapping jurisdiction between the state and federal administrative agencies. The agency first approached would be free to investigate the alleged violation and take whatever action it deemed necessary. Furthermore, the claimant would be free to turn to the other agency if he did not obtain satisfaction in his first attempt, or he might even file his complaint simultaneously with both agencies.

The potential inefficiency and unnecessary duplication of effort in such a system is obvious. The only way these undesirable results could be avoided in a state which had not been granted an exemption would be an effective working relationship between the federal and state officials involved. Since the degree of cooperation is likely to vary from state to state, it is to a state's advantage to take the necessary steps to

secure an exemption, and avoid this overlap by placing the administration unequivocally in its own agency.

PROCEDURE FOR OBTAINING AN EXEMPTION

The steps leading to exemption from federal control were promulgated by regulation in May, 1970.⁵⁸ Application must be made in duplicate by an authorized representative to the Administrator of the Wage and Hour Division, and "must be accompanied by two copies of all the provisions of the State laws relating to the garnishment of earnings" and "a statement, in duplicate, signed by the Attorney General of the State, showing how the laws of the State satisfy the policy expressed in Section 870.51(a). . . ." ⁵⁹ This policy provides that the state laws taken as a whole must "cover every case of garnishment covered by the Act," and must "provide the same or greater protection to individuals." ⁶⁰ Textual differences will not in themselves constitute a bar to an exemption if the formula used to compute exempt wages is "substantially similar" in that it produces in every case an exemption at least as large as that which would be obtained under Title III.⁶¹ The application of the state formula must include all persons and transactions covered by the federal law. Finally, the state law must not place any procedural burdens on the obtaining of the exemption by the debtor; *e.g.*, requiring him to appear in court and plead the exemption as an affirmative defense.⁶²

The Administrator is charged with ruling "within a reasonable time" ⁶³ on all applications for exemption and with notifying the state representative of his ruling in writing. What constitutes a reasonable time will almost certainly decrease as precedents are established as to what will and will not constitute "substantially similar" legislation. Notice of all exemptions granted will be published in the *Federal Register*. If the application is denied, the state representative may file a written request for reconsideration, and submit any additional evidence tending to show why the Administrator's ruling was erroneous.

Exemptions are not granted unconditionally. In all cases the state representative must have the power and duties:

58. 29 C.F.R. § 870 (1970).

59. *Id.* § 870.52.

60. *Id.* § 870.51(a).

61. *Id.*

62. *Id.* § 870.51(b)(c).

63. *Id.* § 870.53.

(1) to represent, and act on behalf of, the State in relation to the Administrator and his representatives, with regard to any matter relating to, or arising out of, the application, interpretation, and enforcement of State laws regulating garnishment of earnings; (2) to submit to the Administrator in duplicate and on a current basis, a certified copy of every enactment by the State legislature affecting any of those laws, and a certified copy of any decision in any case involving any of those laws, made by the highest court of the State which has jurisdiction to decide or review cases of its kind, if properly presented to the court; and (3) to submit to the Administrator any information relating to the enforcement of those laws, which the Administrator may request.⁶⁴

In addition, the Administrator may impose any other conditions he deems necessary to insure that the purposes of the Act are carried out.⁶⁵

Provision is also made for the Administrator to terminate any exemption upon a finding that the state garnishment laws have been amended and no longer qualify, or that any of the terms or conditions on which the exemption was granted have been violated. Notice of all terminations will also be published in the *Federal Register*.⁶⁶

In September, 1970, this regulation was amended by the addition of a new section providing that the notice of all applications for exemption shall be published in the *Federal Register*, and that interested persons shall be afforded an opportunity to study an application, and to "submit written comments concerning the application of the State within a period of time to be specified in the notice."⁶⁷ The first notice issued pursuant to this amendment was published on September 11, 1970.⁶⁸ As of that date Virginia, Kentucky, Kansas, Ohio, North Carolina, South Carolina, and New Hampshire had applied for exemptions. Interested persons were given thirty days to comment in writing concerning these applications; thus the first rulings on state exemptions will be handed down sometime after October 11, 1970.

NO EXEMPTION FROM DISCHARGE PROVISION

It must not be overlooked, however, that there is no provision for a state to obtain an exemption from coverage of section 1674 prohibiting

64. *Id.* § 870.55(a).

65. *Id.* § 870.55(b).

66. *Id.* § 870.56.

67. *Id.* § 870.52 (c) (1970).

68. 35 FED. REG. 14368 (1970).

discharge for a garnishment arising out of a single indebtedness. This decision presents a problem analogous to that of a state which has not obtained an exemption from the section on garnishment restriction. Most states have no prohibition against discharge; therefore, all alleged violations would be investigated by a field office of the Wage and Hour Division. In states where the law is the same as the federal law, cases would probably be referred to the state, but the claimant would remain free to resubmit his complaint to the federal office if he did not receive satisfaction. There are a few states which have a stricter discharge law. These states would handle most violations, but the claimant would still be free to submit his complaint to the Wage and Hour Division if both state and federal law were violated.

No reason was assigned for not eliminating this potential for the inefficiency of overlapping jurisdiction. The only apparent answer lies in the difficulty of enforcement. A decision must be made as to whether garnishment was the principal reason for the employee's discharge, or whether there were valid additional causes. The National Labor Relations Board and the United States Courts of Appeals have gained considerable expertise in answering the analogous question of whether an employee was discharged because of union membership or activities, an action barred by the Labor-Management Relations Act.⁶⁹ This expertise might well have been the reason behind the decision not to create the possibility of discharge violations coming under exclusive state Administration.

Enforcement of the penalty provisions for a discharge poses a more difficult problem because of the requirement that the wrongful discharge must be "willful."⁷⁰ This fact involves an extremely onerous burden of proof, particularly if the complaint is the first against that employer. Precedents will be established, however, and in the meantime knowledge of the law alone should act as a deterrent to such violations.

Thus a state can apply for an exemption from the restrictions on garnishment imposed by section 1673(a), but not from the partial prohibition on discharge established in section 1674. It would be of little avail for a state to apply for this exemption until it had analyzed its existing law and concluded that its restrictions were substantially similar to those of Title III. The remainder of this discussion will be directed toward examining the law of each state in comparison with Title III to determine the state's qualification for an exemption.

69. 29 U.S.C. § 158(a)(3) (1964).

70. 15 U.S.C. § 1674(b) (Supp. 1965-69).

GENERAL CHARACTERISTICS OF EXISTING STATE LAW

Existing state wage garnishment statutes follow a wide variety of patterns. Some have abolished garnishment altogether, and others have restricted it so severely that it is probably of minor practical value to creditors. Some states have exemptions offering virtually no protection to the debtor, while many make distinctions in the application of their exemption formulas between heads of families and non-heads, or between residents and non-residents. Still others distinguish between debts which are incurred for necessities and those which are not. Some states provide that their exemption applies automatically, but the rest require the debtor to establish his right by affirmative action, usually by the submission of an affidavit.

In order to determine whether a state should qualify for an exemption, it must be ascertained exactly what the statute provides. These provisions must then be compared to those of Title III to determine what, if any, modifications need to be made in order to insure that the state statute is "substantially similar."

As has been noted, textual differences are not a bar to an exemption if the state "laws considered together cover every case of garnishment covered by the Act, and if those laws provide the same or greater protection to individuals."⁷¹ Thus, the wording of the state formula for computing the exemption might be totally dissimilar to that of Title III, if the amount exempted were *always* as great or greater than that under the federal formula.

As will be demonstrated in the ANALYSES OF INDIVIDUAL STATE GARNISHMENT STATUTES, *infra*, however, there are certain practices which will by their very nature prevent a "substantially similar" result in "every case of garnishment covered by the Act." These practices include any restriction on "the classes of persons and of transactions to which they [the state statutes] may apply,"⁷² an exemption formula based on a fixed amount rather than a percentage of disposable earnings with a minimum exemption, imposition of a maximum exemption, and any procedural burdens which require the debtor to raise his right to an exemption as an affirmative defense.

One of the most difficult problems to analyze is presented when the state statute does not define earnings, or does not expressly restrict garnishment to disposable earnings. The probable interpretation of such

71. 29 C.F.R. § 870.51(a).

72. *Id.* § 870.51(b) (1970).

a statute is that it applies to gross earnings, and a restriction to seventy-five percent of gross earnings affords less protection than a restriction to the same percentage of disposable earnings. A more difficult question of analysis will be presented when a greater percentage of gross earnings is exempted. It would appear that detailed comparison would have to be made at varying levels of income to determine if equal or greater protection were afforded in all cases.

The possibility also exists that statutes which are silent on this question may have been interpreted in prevailing case law to apply to disposable earnings, or even to "take-home" pay regardless of the nature of the deductions. If this is the case, it would seem that the statutory variance would not bar an exemption. States should include any such case law interpretations in their application for an exemption. States drafting new legislation, however, should include the federal concepts of earnings and disposable earnings in their statute.

Another pitfall to a state's qualification for an exemption is a procedural burden not contained in the garnishment statute itself. Any such burden, regardless of its origin, could provide sufficient basis for denial of an exemption. The September amendment to the exemption regulation was designed in part to aid in discovering problems of this type.

There is one other relatively common state provision which constitutes a variance from Title III which may be sufficient to result in denial of an exemption. This provision is one which limits application of the garnishment statute to wages earned in a specified time period, usually thirty or sixty days. There are two possible interpretations of this language: that no garnishment of wages earned other than during the period is permitted, or that no protection is afforded to those wages. If the latter interpretation prevailed in a jurisdiction, its statute would offer less protection than Title III, which applies to all earnings, regardless of when earned. This distinction would probably have only a limited practical significance, for persons whose wages are garnished are not likely to be paid less often than once a month; therefore, they would not have any wages due other than from the specified period. A state having such a provision could avoid even the theoretical possibility of lower exemption by amending its garnishment statute.

Several states have taken advantage of the period between the adoption of Title III in May, 1968, and its effective date of July 1, 1970, to replace their existing statutes with legislation which is virtually identical to Title III. Such an approach will have to be interpreted in the context

of other relevant state statutes, but it appears to offer one of the most certain methods of obtaining an exemption.

SUMMARY

The use of wage garnishment as a collection device has been associated with many problems in the field of consumer credit, among them unscrupulous extensions of credit and the rise in personal bankruptcies. Congress was made aware of these and other problems in hearings on the Consumer Credit Protection Act and responded with Title III of that legislation. It established a national minimum for wages which could not be reached by garnishment, and provided limited protection from a loss of employment as a result of garnishment.

Regardless of the action taken by any state, protection equal to that of Title III is now available in every jurisdiction. If it is not provided by state law, it is created by Title III itself. Thus, the question is not whether a state will provide this minimum protection, but whether it will assume administration of the restriction by enacting "substantially similar" legislation which qualifies for an exemption, or abandon the area to the federal government. Many of the alleged federal encroachments into areas traditionally regulated by the states have occurred because the states have refused to accept the responsibility of taking necessary action. The need for action in the area of wage garnishment has been made clear, and the federal government has given the states the choice of doing the job themselves or having it done for them. The advantages of a state's obtaining such an exemption have already been discussed, and it appears that there are no valid reasons why state enactments to qualify for an exemption will not be made, for the federal government has not expressed a desire to supersede all existing state law; it has merely adopted a minimum acceptable standard. Failure of the states to incorporate this minimum into their codes, and to assume administration of the system is a clear refusal to accept the responsibilities of government.

For a state whose law is clearly less restrictive than Title III, the simplest method by which to qualify for an exemption is to replace its existing law with an enactment of Title III. If the state is in doubt, it should apply for an exemption and then enact the necessary amendments if the application is denied.

Once a state has established this minimum protection for all persons in all transactions without any procedural conditions precedent, it can

exercise all the individuality it wishes in providing for even greater protection. Title III in effect is a warning to the states that many of them have not exhibited sufficient responsibility in the area of wage garnishment. Responsible state governments should accept the challenge and act to keep their regulations under state control. If they do not, they must assume responsibility for allowing another area of their internal affairs to move under federal control.

ANALYSES OF INDIVIDUAL STATE GARNISHMENT STATUTES

The following sections consist of analyses of the garnishment statutes of each state to determine if they appear to qualify the state for an exemption from coverage of Title III. These analyses are restricted to the garnishment statutes themselves, and no attempt was made to research each state's code of civil procedure for burdens independent of the garnishment statute which might bar an exemption.

It must be remembered that the final determination for each state can be made only by the Administrator of the Wage and Hour Division, and only after the state has made application for an exemption. The study made in connection with each application will obviously be far more exhaustive than is possible within the scope of this discussion. This series of analyses will provide a basic tool for those who wish to measure their state's law against Title III and to ascertain what amendments, if any, are needed to qualify for an exemption.

ALABAMA⁷³ exempts seventy-five percent of the gross income from "wages, salaries, or other compensation of laborers or employees . . . for personal services." No action is required by the debtor to obtain this exemption because all levies on exempt wages are void as a matter of law. The exemption is available, however, only to state residents.

The Alabama law, therefore, conflicts with Title III in several respects. Its provision for a fixed percentage regardless of the size of the income, and for an exemption based on gross earnings will give the debtor less take-home pay than one based on the same percentage of disposable earnings. Also, the limitation of the exemption to residents is an unacceptable restriction on the "classes of persons" to which it applies.

In order to obtain a "substantially similar" garnishment law, the Alabama legislature would therefore have to bring the amount of exempt wages into accord with Title III, and to provide for its application to non-residents as well as residents.

ALASKA's⁷⁴ exemption formula is more restrictive in that it applies to the income remaining after deductions required both by law, and by court order. The amount of exempt wages is then computed "so as to assure the judgment debtor the receipt of the first \$350 per month

73. ALA. CODE tit. 7, § 630 (1960).

74. ALASKA STAT. § 09.35.080 (1962).

if he is the head of a family or \$200 if he is not . . .", if it is shown "by the debtor's affidavit or otherwise that the income is necessary for his use or for the use of his family."

The Alaska exemption formula illustrates the inherent problem in an exemption based on a fixed dollar amount rather than a percentage figure. In this case, the exemption under the state formula would be smaller whenever the disposable earnings of the head of a family exceeded \$467 per month and that of a non-family head, \$267 per month. No matter how high the fixed exemption, a point will be reached where it is exceeded by seventy-five per cent of disposable earnings. Another inherent problem with this type of exemption is that it must periodically be revised upward if it is to remain realistic. The Alaska statute also fails to meet the federal standard for an exemption because it requires the debtor to establish his right to a wage exemption by "affidavit or otherwise."

Nevertheless, the Alaska legislature would not have to make major amendments in its existing law. The distinction of minimum dollar exemption for heads of families and non-heads could be retained if an additional exemption were provided for seventy-five per cent of the excess. The only other action required would be the elimination of the stipulation that a debtor must take affirmative action to obtain his exemption.

ARIZONA⁷⁵ has a statute which is far less restrictive than Title III: it exempts only fifty percent of the debtor's gross earnings, and only "when it appears by the affidavit of the debtor or otherwise that such earnings are necessary for the use of the debtor's family residing in this state supported wholly or in part by him." Arizona is also one of the states which limits the exemption to earnings due for personal services within the thirty days preceding the garnishment order.

Even the maximum Arizona exemption is far below that of the federal law: the debtor can retain only fifty percent of his gross earnings regardless of the amount of his wages. The statute severely restricts the class of persons to which this limited exemption applies, while it requires affirmative action to obtain the exemption, and provides none for those who do not qualify.

In order to qualify for an exemption from Title III, the Arizona legislature would have to rewrite completely its present statute. It

75. ARIZ. REV. STAT. ANN. § 12-1594 (1956).

must significantly increase the percentage of exempt wages, provide a minimum weekly floor equal to thirty times the federal minimum hourly wage, and make the new exemption applicable to all persons without any requirement of affirmative action. It should also eliminate the restriction to earnings within the preceding thirty days.

ARKANSAS⁷⁶ has a rather complicated exemption law which is less restrictive than Title III. The basic exemption is for "[t]he wages of all laborers and mechanics, not exceeding their wages for sixty (60) days." This exemption appears quite liberal on its face, but it is greatly qualified by the limitation that the total exemption claimed must be "less than the amount exempt to him under the Constitution of the State, and that he [the debtor] does not own sufficient other personal property, which, together with the said sixty (60) days' wages would exceed in amount the limits of said constitutional exception." This constitutional exception is five hundred dollars for residents who are heads of families and two hundred for those who are not.⁷⁷ Additionally, the debtor must file a sworn statement that he is entitled to a wage exemption.

The 1967 session of the legislature did provide for an absolute minimum exemption of the "first Twenty-Five Dollars (\$25.00) per week of the net wages of all laborers and mechanics."⁷⁸ No affirmative action on the part of the debtor is necessary to obtain this exemption, and it is not limited to residents. "Net wages" is made a more restrictive term than disposable earnings because it does not include group retirement, hospitalization, or life insurance payments.

The combined effect of the Arkansas statute and constitution is that this twenty-five dollar per week exemption is all that will be available to non-residents and to residents having "sufficient other personal property." Even if the dollar exemption applied to wages regardless of additional personal property, it would present the problem inherent in all dollar exemptions.

Arkansas needs a major revision of its law before it could qualify for an exemption. The absolute minimum of twenty-five dollars per week would have to be raised to thirty times the federal minimum wage, and an additional exemption provided for seventy-five percent of disposable earnings (or net wages) above that sum. Further, this exemption would have to apply to both heads of families and non-heads, resi-

76. ARK. STAT. ANN. § 30-207 (Supp. 1969).

77. ARK. CONST. art. 9, §§ 1-2.

78. ARK. STAT. ANN. § 30-207 (Supp. 1969).

dents and non-residents, and apply without any requirement of affirmative action, and irrespective of other personal property.

The CALIFORNIA⁷⁹ wage garnishment statute is a prototype of many of the conflicts between state law and Title III. It provides for an automatic exemption of fifty percent of the debtor's gross earnings during the thirty days preceding the order. The debtor can obtain an exemption for part or all of the remaining fifty percent by submission of an affidavit subject to challenge.⁸⁰ In this affidavit he must establish that the additional money is necessary for the support of his resident family, and that the debts for which his wages are being garnished were not incurred for "the common necessities of life," or "personal services rendered by any employee, or former employee."⁸¹

There is a bill⁸² currently pending before the California legislature "which is designed in part to conform to Federal standards."⁸³ This bill provides for the repeal of the existing California wage garnishment law,⁸⁴ and for its replacement with provisions which appear to afford protection which is in all cases equal to, or greater than that of Title III.⁸⁵ It provides for the total exemption of all earnings beyond the preceding thirty days, and for exemption on earnings within thirty days of "[o]ne-half or such greater portion as is allowed by statute of the United States." Both of these exemptions apply "without filing a claim for exemption" and there are no restrictions on persons or transactions. The bill also retains the previous provision that the debtor can obtain a complete exemption for all his earnings if they are necessary for the support of his family, and the debts do not fall within specified categories.⁸⁶ Since protection equal to Title III is afforded in all cases, the imposition of these restrictions on the obtaining of greater protection will not affect entitlement to an exemption.

California is taking a circuitous approach, but its new legislation appears to qualify for an exemption. If this bill should be defeated, how-

79. CAL. CIV. PRO. CODE § 690.11 (West Supp. 1970).

80. *Id.* § 690.26.

81. *Id.* § 690.11.

82. ASSEMBLY BILL No. 2240, as amended, Cal. Leg., 1970 Reg. Sess.

83. Letter from Walter E. White, Deputy Attorney General of California, to Douglas S. Wood, July 29, 1970, on file in office of the *William and Mary Law Review*.

84. ASSEMBLY BILL No. 2240, as amended, Cal. Leg., 1970 Reg. Sess.

85. *Id.* § 19.

86. See text accompanying note 81 *supra*.

ever, the existing law will not qualify. It provides for only a fifty percent exemption applying without any restrictions on persons or transactions, and also imposes a procedural burden.

COLORADO⁸⁷ has a very straightforward statute which clearly does not qualify for an exemption. It exempts seventy percent of gross earnings for heads of families, and thirty-five percent for single persons. Even if the percentage were seventy percent for both classes, it would be below that required by Title III.

Because of its simplicity, however, the Colorado legislature will have little difficulty amending its statute to make it conform to the federal law. It must provide for the required minimum exemption, and for the additional exemption of seventy-five per cent of *disposable* earnings for both family heads and single persons. Since there are no procedural burdens, these changes are all that would be required.

CONNECTICUT⁸⁸ no longer permits wage garnishment per se but has an analogous procedure by which the court can order the debtor to make specified payments from his wages. In determining the amount of such payments, the court is permitted to consider "the circumstances of the defendant, including any other actions pending or judgments outstanding against him, the amount of the defendant's income and the amount of the claim or demand." If the action is "to enforce payment of a judgment arising from a consumer credit sale, consumer lease or consumer loan"⁸⁹ an exemption is provided similar to that of Title III except that it establishes a minimum exemption of forty times the federal minimum wage.

There are no requirements of affirmative action by the debtor to obtain this exemption, and it applies to all persons. The only problem is the limitation imposed on the "transaction" to which it applies. While it is true that most transactions for which wage payment orders are sought arise out of consumer credit sales, leases, or loans, doctors' bills are an example of an obligation which is not covered by the Connecticut statute. This loophole must be closed before the statute will cover "every case of garnishment" covered by Title III and be entitled to an exemption.

87. COLO. REV. STAT. ANN. § 77-2-4 (1963).

88. CONN. GEN. STAT. ANN. § 52-361 (1960).

89. *Id.* § 52-361(b) (Supp. 1969).

DELAWARE⁹⁰ has differing exemptions for different counties. In New Castle County ninety percent of gross wages are exempt, and the remaining ten percent can be garnished only for debts incurred for necessities or past due state taxes. In Kent and Sussex counties the exemption is only sixty percent, and there is no limitation on the debts for which the nonexempt portion can be garnished. Neither of these exemptions is applicable to obligations for room or board which do not exceed fifty dollars.

Despite the fact that there are no procedural burdens, even the New Castle exemption would not be as large in every case as that of Title III. Ten percent of an individual's wages could be garnished to satisfy a debt incurred for necessities even if his weekly salary were less than thirty times the federal minimum wage. Further, he would not be entitled to any exemption if the debt were for room or board less than fifty dollars. The sixty percent exemption in the other counties is clearly below the Title III standards in all cases.

The New Castle exemption is more restrictive than Title III if the debt is not for necessities, or room or board less than fifty dollars, for it allows no garnishment at all. If the legislature wished to retain these more restrictive features and still qualify for an exemption, it would have to provide for the required minimum exemption in all cases, make the entire exemption applicable to debts for room or board, and extend the coverage of this modified formula into Kent and Sussex Counties.

The DISTRICT OF COLUMBIA⁹¹ has an interesting formula which applies to all persons and transactions, and does not impose any procedural burdens. It exempts ninety percent of the first \$200 of gross earnings per month, eighty percent of the next \$300, and fifty percent of all excess over \$500.

The immediate difficulty with this formula is that it does not exempt all of the first \$208 of disposable monthly earnings as provided in Title III. Thus, the exemption for these lower incomes would always be less under the D. C. formula than under Title III. Even disregarding the difference between gross and disposable earnings, a lower result would also be reached whenever an individual's monthly earnings exceeds \$680.

Such a sliding scale is not inherently barred from an exemption as is the flat dollar wage exemption, but the D. C. percentages are too low to produce as great an exemption in every case. Assuming that it makes a

90. DEL. CODE ANN. tit. 10, § 4913 (1953).

91. D. C. CODE ENCYCL. ANN. §§ 16-571, -572 (1966).

difference whether the District obtains an exemption, the scale would have to be revised to exempt one hundred percent of the monthly multiple of thirty times the federal minimum wage, and a range of percentages on the excess disposable (rather than gross) earnings which at no time went below seventy-five.

FLORIDA⁹² has established a one hundred percent exemption, but only for an individual "who is the head of a family residing in this state, when the money or other thing is due for the personal labor or services of such persons." It further requires that the debtor "make an oath before the officer who issued the process" that he satisfies the criteria for this exemption. Apparently there is no exemption for a debtor who does not qualify or take the required affirmative action.

The Florida exemption formula is more restrictive than that of Title III, but it is severely limited in the class of persons to whom it applies, and affirmative action is required to obtain it. Both of these conflicts must be eliminated before the Administrator can exempt the Florida statute.

GEORGIA⁹³ is one of the states which has enacted new legislation in an attempt to conform to the standards of Title III. In 1970 it adopted an exemption formula identical to that of the federal law and provided for its application without restriction. There is one potential problem in the new Georgia statute, however. It defines disposable earnings, and provides that the exemption is based on that amount, but it does not define earnings. As a result the possibility exists that the form of income entitled to an exemption under the federal law would not qualify under the Georgia statute. This potential conflict must be resolved before it can be determined whether Georgia qualifies for an exemption.

HAWAII⁹⁴ employs a sliding scale type of exemption which is considerably more restrictive than that of the District of Columbia. It exempts ninety-five percent of the first \$100 of gross earnings per month, ninety percent of the next \$100, and eighty percent of all excess. Despite the fact that it provides for a larger exemption than the District's scale, the Hawaii law still is not as restrictive on the garnishment of lower incomes as is Title III. The federal law exempts all of the first \$208

92. FLA. STAT. ANN. §§ 222.11, 222.12 (1961).

93. GA. CODE ANN. § 46-208 (Supp. 1970).

94. HAWAII REV. STAT. §§ 652-1, -3 (1968).

per month of *disposable* earnings, while the Hawaii law would permit a garnishment on \$16.60 of the first \$208 of *gross* earnings. It is also probable that larger exemptions would be obtained under Title III at higher incomes because eighty percent of gross earnings would not provide as much protection as seventy-five percent of disposable earnings.

In all other respects the Hawaii statute could qualify for an exemption. It contains no restrictions on persons or transactions to which it applies, and places no procedural burden on the individual whose wages are being garnished. It would appear that the simplest way for the legislature to amend the law so as to qualify would be to make the exemption rates applicable to disposable earnings, and to exempt one hundred percent of a sum computed by the federal minimum wage formula. It could then retain the eighty percent exemption on all excess, or even lower it to seventy-five percent.

IDAHO⁹⁵ is another state which has adopted legislation virtually identical to Title III. It establishes the same definitions of earnings, disposable earnings, and garnishment, and provides for the same exemption rate. Thus the Idaho law apparently offers the same protection in all cases.

ILLINOIS⁹⁶ has an exemption formula which is more restrictive in some areas than Title III. It provides for an exemption of the larger of \$65 per week for the head of a household who contributes substantially to its support (\$50 per week for all others), or eighty-five percent of all gross earnings. The maximum exemption, however, cannot exceed \$200 per week.

There are no procedural burdens in the Illinois statute, and there are no restrictions on the transactions or persons to which it applies, but the minimum exemption is smaller for those who are not heads of families. Nevertheless, it fails to qualify for an exemption because it is based on gross rather than disposable earnings, and because of the statutory maximum of \$200 per week. Therefore, smaller exemptions than those provided by Title III would be obtained in a number of cases.

The legislature could retain the statute in nearly the same form by amending section 62-73(d) so that the formula would apply to disposable earnings, and repealing section 62-73(c) limiting the maximum exemption. There would be no problem in having a minimum different

95. Ch. 11 [1970] IDAHO SESS. LAWS 18.

96. ILL. ANN. STAT. ch. 62, § 73 (Smith-Hurd Supp. 1970).

for family heads and non-heads, as long as both were equal to or greater than the federal minimum. The legislature, however, would need to tie its minimum exemption to the federal minimum wage rather than establish a flat dollar amount.

INDIANA⁹⁷ has an exemption formula which is probably more restrictive than Title III for higher incomes but less restrictive for those below the minimum exemption. It exempts one hundred percent of the first fifteen dollars per week and ninety percent of all excess gross earnings. The difference between ninety and seventy-five percent may be great enough to make up for the fact that the Indiana formula is based on gross, rather than disposable earnings, but the provision should be eliminated because of the unnecessary confusion produced in comparing the two laws. The formula would permit, however, a garnishment of ten percent of the gross earnings over fifteen dollars per week even if the individual's take-home pay were less than the federal minimum.

There is another aspect of the Indiana law which disqualifies it for an exemption. Its formula is strictly limited in application, for the exemption is available only to a "resident householder of the State of Indiana." Apparently the only exemption for all other persons is a flat twenty-five dollars, regardless of the duration of the pay period for which the garnishment is sought.⁹⁸

Both of these conflicts with Title III must be corrected if Indiana wishes to obtain an exemption. The minimum weekly exemption must be raised to correspond with the federal standard of thirty times the federal minimum wage, and the exemption formula itself must be made to apply to all persons. For the sake of clarity, the exemption percentage should be made to apply to disposable, rather than gross earnings.

The IOWA⁹⁹ wage garnishment statute also fails to qualify for an exemption. The formula is based on disposable earnings and establishes a flat dollar exemption of \$35 per week and an additional \$3 per week for every dependent under eighteen years of age. This formula in itself is sufficient to disqualify Iowa from an exemption, even though the maximum amount which can be garnished is \$150 plus costs.

The statute goes further, however, and restricts its application to heads of families. It also requires the debtor to deliver an affidavit to his em-

97. IND. ANN. STAT. § 2-3501(d) (1968).

98. *Id.* § 3-505.

99. IOWA CODE ANN. § 627.10 (Supp. 1970).

ployer stating that he is the head of a family. The total exemption for unmarried persons and nonresidents is limited to "their own ordinary wearing apparel and trunk necessary to contain the same."¹⁰⁰

Iowa therefore must effect a major revision of its garnishment law if it wishes to qualify for an exemption. By far the simplest step would be for the legislature to follow the lead of Georgia and Idaho, and enact an equivalent of Title III into state law. In any event, it must establish a wage exemption formula which is at least as strict as Title III.

KANSAS¹⁰¹ not only enacted new legislation during the grace period, but also became one of the seven states which have applied for an exemption. This new Kansas statute appears to offer protection identical to that of Title III in all cases. There is a collateral problem in Kansas law, however, for it is one of the states which imposes a procedural burden on the debtor in a statute independent of the one containing the exemption.¹⁰² This section provides that the effect of a garnishment order is to freeze all of the debtor's earnings in the hands of his employer pending the outcome of the proceeding. Title III on the other hand requires the automatic payment of all exempt wages. Resolution of this conflict will probably be determinative of the acceptance of Kansas' application for exemption.

KENTUCKY¹⁰³ has also adopted a wage garnishment law which is virtually the same as Title III. The only distinction appears to be that there is no equivalent in the Kentucky law to section 1673(c) of the federal law forbidding any court to "make, execute, or enforce any order or process in violation of this section." This omission is answered in Kentucky's application for exemption:

Insofar as that section forbids a judge from violating the law, we do not think it is necessary. Insofar as it is interpreted to require that exemptions do not have to be pleaded affirmatively, our law so provides, since our statute provides that the employer list and forward only the non-exempt portion of the earnings.¹⁰⁴

100. *Id.* § 627.14 (1950).

101. Ch. 238, [1970] KAN. SESS. LAWS.

102. KAN. STAT. ANN. § 60-717 (Supp. 1969).

103. KY. REV. STAT. § 427.010 (*as amended by* ch. 217, [1970] KY. SESS. LAWS).

104. Analysis of Kentucky wage garnishment prepared to accompany application for exemption submitted to the Director of the Wage and Hour Division in accordance with 29 C.F.R. § 870.52 (1970). A copy of this analysis is on file at the office of the *William and Mary Law Review*.

The Kentucky statute appears to have satisfied the requirement that its exemption be available without being pleaded as an affirmative defense. It is virtually identical in all other respects to Title III, and should qualify for an exemption.

LOUISIANA¹⁰⁵ imposes no restrictions on persons or transactions, or procedural burdens. It provides for a liberal wage exemption, but minor revisions are necessary before it can qualify for a Title III exemption. It provides for a minimum exemption of one hundred dollars per month and eighty percent of all excess gross earnings. The easiest way to comply with Title III would be to incorporate section 1673 into the state Code. In any event, both the minimum exemption and exemption of *disposable* earnings must be made to conform to the federal law.

MAINE has followed a unique course in dealing with the conflict between its law and Title III. The existing Maine law¹⁰⁶ provides only for a flat exemption of forty dollars per week. There are no procedural burdens or restrictions on persons or transactions, but the exemption itself is far below that of Title III. There has been no action by the legislature to amend this exemption, but the Supreme Judicial Court has amended the Maine Rules of Civil Procedure¹⁰⁷ to incorporate the provisions of Title III. The affect of this amendment is that despite the statute, an individual receives the same wage exemption in all cases under both Title III and the Maine rules. It is therefore possible that Maine could qualify for an exemption if it chooses to apply.

MARYLAND¹⁰⁸ amended its garnishment law in 1970 in an apparent effort to qualify for an exemption. It retained some features of the old law by establishing different wage exemptions for different counties, and by keeping the application of these exemptions free from any procedural burdens or restrictions on persons or transactions. The exemption applies to "the wages of hire of any laborer or employee . . . due at the date of attachment" regardless of when earned. The exemption in all but five counties is the greater of "the sum of one hundred dollars

105. LA. REV. STAT. §§ 13:3881, 13:3921 (1968).

106. ME. REV. STAT. ANN. tit. 14, § 2602(6) (1965).

107. ME. RULES OF CIV. P. § 4B (*as amended in 1970*).

108. MD. ANN. CODE art. 9, § 31 (*as amended by SENATE BILL No. 512 (1970)*).

multiplied by the number of weeks in which such wages due were earned or seventy-five percent (75%) of such wages of hire." The formula for the other five counties is the same as that in Title III.

The new Maryland exemption formula is as restrictive as Title III in five counties and more restrictive in the rest of the state. There are problems, however, in the fact that the statute does not define earnings, or make clear whether "salary or wages of the debtor . . . actually due at the date of attachment" refers to gross or net wages. If it were determined that "wages of hire" were not as inclusive as "earnings," or that the exemption applied only to gross wages, there would be cases in which the Maryland law offered less protection than Title III. The resolution of these problems is not likely to occur until Maryland applies for an exemption.

MASSACHUSETTS¹⁰⁹ is another example of the problems inherent in a flat dollar exemption, even though they apply without procedural burdens or restrictions on persons or transactions. Its statute exempts \$80 per week; thus a higher exemption would be provided by Title III whenever an individual's earnings exceeded \$90.67 per week. This deficiency could readily be corrected by providing for an additional exemption of seventy-five percent of all disposable earnings over \$80 per week. Massachusetts should then have no difficulty qualifying for an exemption.

MICHIGAN¹¹⁰ has an extremely complicated exemption formula which does not meet the standards of Title III:

	HOUSEHOLDERS			OTHERS		
	PERCENT EXEMPT	DOLLARS MAX.	DOLLARS MIN.	PERCENT EXEMPT	DOLLARS MAX.	DOLLARS MIN.
First garnishment:						
Wages for one week or less	60%	\$50	\$30	40%	\$50	\$20
Wages for more than one week	60	90	60	40	50	20
Subsequent garnishments:						
Wages for one week or less	60	30	12	30	20	10
Wages for one week to 16 days	60	60	24	30	20	10
Wages for more than 16 days	60	60	30	30	20	10

109. MASS. GEN. LAWS ANN. ch. 246, § 28 (Supp. 1970).

110. MICH. COMP. LAWS ANN. § 600.4031(2)(b) (1968).

All persons are thus entitled to some exemption, and there are no restrictions on transactions, or procedural burdens. Even the higher rate for householders is too low to qualify for an exemption; therefore, the legislature must adopt a formula providing at least as great an exemption as Title III for *all* persons. It can keep the distinction between householders and non-householders if it wishes, but the lower exemption must still meet the standards of the federal law to gain exemption from federal administration.

MINNESOTA¹¹¹ has enacted a statute which is more restrictive than Title III in that it establishes a higher minimum exemption of an amount up to forty times the federal minimum wage. In all other respects it is identical to the federal law and should, therefore, qualify for an exemption.

The MISSISSIPPI¹¹² wage garnishment statute offers less protection than Title III in two respects. Its basic formula exempts seventy-five percent of gross earnings regardless of the amount. The exemption afforded will, therefore, always be lower than that of the federal law, for there is no minimum exemption, and a seventy-five percent exemption based on gross earnings offers less protection than the same rate based on disposable earnings. The Mississippi exemption is also restricted to "laborers or employees residents of this state."

To qualify for an exemption, the Mississippi legislature must revise its exemption formula to provide the required minimum exemption of excess *disposable* earnings, and it must remove the restriction on persons to which it applies.

MISSOURI¹¹³ provides for a flat ninety percent exemption of gross earnings earned in the preceding thirty days. This formula results in a lower exemption than that of Title III in all cases where the individual's disposable earnings are less than the federal minimum, and where ninety percent of gross earnings yields a smaller exemption than seventy-five percent of disposable ones.

There are no procedural burdens or restrictions on transactions, but the exemption is made available only to persons who are "the head of a family and a resident of the state." Thus, Missouri must revise its basic

111. MINN. STAT. ANN. § 550.37(13) (Supp. 1970).

112. MISS. CODE ANN. § 307 (Supp. 1968).

113. MO. ANN. STAT. § 521.240 (1953).

exemption formula, remove restrictions on its application, and eliminate the restriction to earnings within the preceding thirty days if it wishes to qualify for an exemption.

MONTANA¹¹⁴ provides an exemption of one hundred percent, but places a number of restrictions on its application. It is limited to earnings within the preceding forty-five days, and is available only when it appears "by the debtor's affidavit or otherwise that such earnings are necessary for the use of his family, supported in whole or in part by his labor." A further restriction is that if the debts were incurred "for gasoline and for the common necessities of life," the exemption is only fifty percent.

Montana's one hundred percent exemption is obviously more restrictive than Title III, but it fails in every other respect to qualify for an exemption. It places restrictions on both the persons and transactions to which it applies, imposes a procedural burden on the debtor, and limits earnings protected to those earned within the preceding forty-five days. The legislature must remove all of these restrictions to qualify for an exemption.

NEBRASKA¹¹⁵ exempts ninety percent of gross earnings, but does not establish a minimum exemption. Application is limited to "persons who are heads of families." They are not protected, however, if the creditor can establish that they "have or are about to abscond or leave the state." It has also been established by case law that affirmative action must be taken to set up the facts establishing the debtor's right to an exemption.¹¹⁶

Nebraska must modify its basic formula to incorporate both the required minimum exemption and the difference between gross and disposable earnings, and it must remove all restrictions on its application. It would clearly not qualify for an exemption until these changes were effected.

NEVADA¹¹⁷ is another state which took action to amend its wage garnishment law during the grace period so that the protection afforded

114. MONT. REV. CODES ANN. § 93-5816 (1964).

115. NEB. REV. STAT. § 25-1558 (1964).

116. *Turner v. Sioux City & P. R. R.*, 19 Neb. 241, 27 N.W. 103 (1886).

117. NEV. REV. STAT. § 21.090 (*as amended by* ch. 474, [1969] NEV. LAWS).

is identical to that of Title III in all cases. It should therefore qualify for an exemption.

NEW HAMPSHIRE¹¹⁸ has a unique weekly exemption of fifty times the minimum hourly wage as established by the Fair Labor Standards Act. Since the current minimum is \$1.60 per hour, this formula produces an exemption of \$80 per week, and will automatically be revised with each change in the federal minimum wage. There are no restrictions on persons or transactions, or procedural burdens, thus the only bar to New Hampshire's obtaining an exemption is the formula itself.

Its formula is more restrictive than Title III in that it allows no garnishment until disposable earnings exceed fifty times the federal minimum wage rather than thirty times. It does allow garnishment of one hundred percent of all excess, however, and would thus result in a lower exemption whenever disposable earnings exceed \$107 per week. Until the necessary exemption is provided for this excess, the New Hampshire statute does not provide equal protection in all cases and should not qualify for an exemption.

NEW JERSEY attempted to qualify for an exemption during the two year grace period. Its law¹¹⁹ was one which exempted ninety percent of all gross earnings, and contained no restrictions on persons or transactions, nor procedural burdens. It provided, however, that if the debtor's annual income exceeded \$2500, the court could allow garnishment of a larger percentage at its discretion. In 1969 the legislature established a minimum exemption of \$48 per week not subject to this discretion.¹²⁰

Despite this modification there are still three areas of conflict between the New Jersey law and Title III. First, the state statute deals with gross earnings rather than disposable earnings. Second, the exemption is subject to the court's discretion whenever the debtor's annual income exceeds \$2500. Third, the minimum exemption is a fixed amount of \$48, rather than one obtained by the product of thirty times the federal minimum wage (an amount subject to change). It would appear that these three conflicts need to be resolved before New Jersey can qualify for an exemption.

118. N. H. REV. STAT. ANN. § 512.21 (Supp. 1969).

119. N. J. STAT. ANN. § 2A:17-56 (1952).

120. *Id.* § 2A:17-57 (Supp. 1969-1970).

NEW MEXICO¹²¹ acted during the grace period to adopt legislation which is virtually identical to Title III, except that it provides for a more restrictive minimum exemption of forty times the federal minimum wage. It therefore appears that it will qualify for an exemption when application is made.

NEW YORK has a wage exemption formula which was amended in 1970¹²² and should meet the "substantially similar" test to qualify for an exemption. The previous law provided for a minimum exemption of thirty dollars per week and a ninety percent exemption of all excess gross earnings.¹²³ It was this formula which provided the basis for the amendment adopted by the House subcommittee in proceedings which culminated in Title III.¹²⁴ The 1970 legislature raised the minimum exemption to eighty-five dollars per week.

The New York statute places no restrictions on persons or transactions, and imposes no procedural burdens. The only possible bar to an exemption is the conflict between ninety percent of gross earnings and seventy-five percent of disposable earnings. If an application for exemption were denied on this basis, the only remedial action necessary would be to substitute the disposable earnings exemption for that of gross earnings.

NORTH CAROLINA¹²⁵ provides for the exemption of one hundred percent of the debtor's earnings within the preceding sixty days, but only when it appears, "by the debtor's affidavit or otherwise, that the earnings are necessary for the use of a family supported wholly or partly by his labor." This formula is more restrictive than Title III but only with regard to persons who qualify; no exemption is provided for those who do not. It also requires the exemption to be raised as an affirmative defense.

Both the restrictions on persons and the procedural burden must be eliminated before the North Carolina statute will provide protection equal to or greater than Title III in all cases and thereby qualify for an exemption. Although of little practical significance, the limitation to earnings within the preceding sixty days should also be eliminated.

121. N. M. STAT. ANN. §§ 36-14-7, -7.1 (Supp. 1969).

122. N. Y. CIV. PRAC. LAW § 5231(b) (McKinney Sess. Laws 1970).

123. N. Y. CIV. PRAC. LAW § 5231(b) (1963).

124. 114 CONG. REC. 1427 (remarks of Congressman Patman).

125. N. C. GEN. STAT. § 1-362 (1969).

NORTH DAKOTA¹²⁶ has a flat dollar wage exemption, which automatically fails to qualify for an exemption. It protects only thirty-five dollars per week for a resident who is not the head of a family, and fifty dollars per week, plus five dollars for each dependent (to a maximum of twenty-five dollars), for one who is. No exemption is provided for nonresidents, and debtors are required to submit an affidavit to their employer to obtain their exemption.

The North Dakota law fails to meet any of the criteria for an exemption: its basic formula produces a smaller exemption; it contains a restriction on persons; and it requires an affidavit. A complete revision would be necessary to qualify.

The OHIO¹²⁷ garnishment law appears to afford protection equal to, or greater than, Title III in all cases. There is a distinguishing feature, however, in that the Ohio law is based on a monthly exemption formula rather than a weekly one. It exempts the greater of one hundred seventy-five times the federal minimum wage, and eighty-two and one-half per cent of disposable earnings.

The minimum monthly exemption would be \$280, as compared with \$208 under Title III. The percentage of disposable earnings exempted under Ohio law is greater than under the federal statute; therefore, the only problems appear in cases where the debtor has not worked for a full month. If his disposable earnings are greater than \$280, he is still afforded greater protection. If they are less, it should be no more difficult to pro rate the Ohio minimum exemption to a shorter period of time than to do the same with the federal minimum for a longer period.

Ohio law imposes no restrictions on persons or transactions, or procedural burdens, and appears to offer *greater* protection in all cases. Whether this is in fact the case will probably be controlling in the ruling on Ohio's application for an exemption.

OKLAHOMA¹²⁸ is one of the states which has followed the Uniform Consumer Credit Code approach. This code¹²⁹ places exactly the same restrictions on garnishment as Title III, except that it raises the minimum weekly exemption from thirty to forty times the federal minimum wage. Oklahoma chose not to make this increase, however, and kept the mini-

126. N.D. CENT. CODE § 32-09-02 (Supp. 1969).

127. OHIO REV. CODE §§ 2329.62(C), 2329.621, 3115.23 (1970).

128. OKLA. STAT. ANN. tit. 14A, § 5-105 (Supp. 1969-70).

129. UNIFORM CONSUMER CREDIT CODE § 5.105.

mun exemption of Title III. Its version provides precisely the same protection as Title III, but applies only to judgments "arising from a consumer credit sale, consumer lease, or consumer loan."

The exemption for all other transactions¹³⁰ is limited to "[s]eventy-five . . . per cent of all current wages or earnings for personal or professional services earned during the last ninety days." Hence, Oklahoma does not qualify for an exemption because it does not afford equal or greater protection in *all* cases covered by Title III. To correct this deficiency, the legislature need only extend coverage of the restriction contained in its consumer credit code to all transactions.

OREGON¹³¹ has enacted legislation which is virtually identical to Title III and should qualify for an exemption.

PENNSYLVANIA¹³² has not allowed garnishment of "the wages of any laborers, or the salary of any person in public or private employment" since 1845. This total exemption does not apply, however, to an action to enforce execution on a judgment "to recover pay for boarding or lodging."¹³³ This exception is a relatively minor one, but is sufficient to prevent the Pennsylvania law from affording equal or greater protection than Title III in all cases, and must be repealed if the state is to obtain an exemption.

RHODE ISLAND¹³⁴ provides for a flat exemption of fifty dollars, regardless of the period for which the wages are due. Nothing is said about restrictions on persons or transactions, or procedural burden. Rhode Island's basic formula is so inadequate that the best means of obtaining an exemption would be to adopt legislation identical to Title III.

SOUTH CAROLINA¹³⁵ takes an approach similar to that of Montana: it begins with a total restriction on wage garnishments but then limits its application. This law applies only to earnings within the preceding sixty days, and is available only when it is shown "by the debtor's affidavit or otherwise that such earnings are necessary for the use of a family supported wholly or partly by his labor." Even if this

130. OKLA. STAT. ANN. tit. 31, § 1(16), § 4 (Supp. 1969-70).

131. ORE. REV. STAT. §§ 23.175, 23.185 (Chapters Replaced 1969-1970).

132. PA. STAT. ANN. tit. 42, § 886 (1966).

133. *Id.* § 621.

134. R. I. GEN. LAWS ANN. § 9-26-4(12c) (Supp. 1967).

135. S. C. CODE ANN. § 10-1731 (1962).

condition is satisfied, however, the judge at his discretion may allow garnishment on fifteen percent of gross earnings, up to a maximum of one hundred dollars, "when the judgment is for the balance due upon food, fuel, or medicine accounts."

There are at least two cases in which the South Carolina statute does not offer protection equal to or greater than that of Title III. First, no protection at all is afforded a debtor who does not qualify; and secondly, there is no minimum exemption for those who do qualify when the debt is for the specified items. It also requires the exemption to be pleaded as an affirmative defense, and restricts application to earnings within the preceding sixty days.

To obtain an exemption, the legislature must remedy these points of conflict and provide for an exemption, equal to that of Title III, which applies to all persons and transactions without being pleaded as an affirmative defense. It could do so, without eliminating the more restrictive features, by incorporating an equivalent of Title III into its state code, and then providing for an additional exemption when the necessary conditions were satisfied.

SOUTH DAKOTA¹³⁶ has a basic formula very similar to that of South Carolina, exempting one hundred percent of earnings within the preceding sixty days, but only "when it is made to appear by the debtor's affidavit or otherwise that such earnings are necessary for the use of a family supported wholly or partly by his labor."

This statute affords more protection than Title III for those persons who qualify but none for those who do not, and requires the exemption to be pleaded as an affirmative defense. It also limits application to earnings within the preceding sixty days. To obtain an exemption the legislature must provide for protection equal to that of Title III which applies to all persons and which need not be raised as an affirmative defense. It could then retain the additional exemption for persons who meet the requirements.

The TENNESSEE¹³⁷ wage garnishment statutes require a complete revision before they can qualify for an exemption. For resident heads of families, they exempt the greater of \$20 per week or fifty percent of gross earnings. For a resident who is not a head of family the exemption is \$17.50 per week or forty percent. There is also an additional weekly

136. S. D. COMP. LAWS ANN. § 15-20-12 (1967).

137. TENN. CODE ANN. §§ 26-207, -208 (Supp. 1969).

exemption of \$2.50 to heads of families for each dependent under sixteen years of age.

Tennessee law affords no protection to nonresidents, and considerably less than Title III to residents, regardless of whether or not they are a head of family. It further requires the debtor to submit a signed statement stating the basis for his claim of an exemption. It is therefore another of the states which requires major revision to qualify for an exemption.

TEXAS has a constitutional prohibition¹³⁸ of all garnishment of "current wages for personal service" which is reiterated in statute form.¹³⁹ Unlike other states who start with a total ban on all wage garnishment and then severely restrict its application, Texas applies its law to all persons and transactions without procedural burdens. Texas law thus effects a maximum restriction on wage garnishment and should qualify for an exemption.

UTAH¹⁴⁰ is another state which has adopted the Uniform Commercial Credit Code limitation on garnishment, but unlike Oklahoma it has adopted the minimum weekly exemption of forty times the federal minimum wage. It thus provides protection greater than or equal to Title III, but only in the consumer transactions covered by the commercial credit code (consumer credit sales, leases and loans).

The exemption¹⁴¹ in other transactions is restricted to the greater of fifty dollars per week or fifty percent of gross earnings, and is available only when the debtor establishes that the money is necessary for the support of his resident family. These restrictions mean that Utah does not offer equal or greater protection in *all* cases, a requisite before qualifying for an exemption.

The VERMONT¹⁴² exemption formula results in much lower exemptions than Title III. It exempts either thirty dollars per week or fifty percent if the weekly gross earnings are above sixty dollars. There are no restrictions on persons or transactions, or procedural burdens. Thus

138. TEX. CONST. art. 16, § 28.

139. TEX. REV. CIV. STAT. ANN. art. 4099 (1966).

140. UTAH CODE ANN. § 70B-5-107 (Supp. 1970).

141. *Id.* § 78-23-1(7) (1953).

142. VT. STAT. ANN. tit. 12, § 3020(5) (Supp. 1969).

Vermont needs only to amend its basic formula so that it will afford protection equal to or greater than that of Title III.

VIRGINIA¹⁴³ has adopted legislation identical to Title III that became effective on October 1, 1970. Virginia now offers protection identical to that of Title III in all cases.

WASHINGTON¹⁴⁴ has also adopted legislation which is virtually identical to Title III, except that it provides for a minimum weekly exemption of forty times the federal minimum wage. It therefore affords equal or *greater* protection in all cases and appears to qualify for an exemption.

The WEST VIRGINIA¹⁴⁵ wage garnishment exemption applies to all persons and transactions, and does not impose any procedural burdens, but the exemption itself is smaller than that afforded by Title III. It provides for a minimum exemption of twenty dollars per week and an additional one of eighty percent of all excess gross earnings. This formula must be amended so that it corresponds to the federal standards before West Virginia can qualify for an exemption.

WISCONSIN¹⁴⁶ has amended its wage garnishment statute so that it affords exactly the same protection as Title III in all cases. It is apparent, therefore, that it will qualify for an exemption.

WYOMING¹⁴⁷ has a wage garnishment law which violates all three principal criteria on which the granting of an exemption is based. The basic formula exempts only fifty percent of gross earnings. Its application is restricted to persons who require these earnings for the support of their resident family, and the debtor must establish his right to the exemption by "affidavit or otherwise." The application is further limited to earnings within the preceding sixty days. If the Wyoming legislature wishes to obtain an exemption, it will have to effect a complete revision of its existing law.

143. VA. CODE ANN. § 34-29 (Interim Supp. 1970).

144. Ch. 264, [1969] WASH. LAWS (1st Ex. Sess.).

145. W. VA. CODE ANN. § 38-5A-3 (1966).

146. WIS. STAT. ANN. §§ 267.01, 267.18(2) (a) (Supp. 1969).

147. WYO. STAT. ANN. § 1-422 (1959).

APPENDIX

As of December 18, 1970, nine states had filed applications for exemptions.¹⁴⁸ Six of those applications have been denied: Illinois, Kansas, New Hampshire, North Carolina, Ohio, and South Carolina. Only that of Kentucky has been granted. A ruling was made granting Virginia an exemption effective January 12, 1971.¹⁴⁹ The time for comment has not yet expired on the application filed by Utah, and no ruling can be made until that date.

In closing, it might be well to summarize the means by which interested parties can follow the filing, and subsequent granting or denial, of state applications for exemptions. Notice of all filings will be published in the *Federal Register*.¹⁵⁰ Interested persons will be given a specified period of time in which to comment upon whether the application should be granted.¹⁵¹ Notice of all exemptions granted will also be published in the *Federal Register*.¹⁵² No notice of denials will be published; therefore, this information can be obtained only from the Wage and Hour Division, or from the attorney general's office of the state concerned.

DOUGLAS S. WOOD

148. Phone conversation with Joseph P. McAuliffe, Director Division of Minimum Wage and Hour Standards, on December 18, 1970.

149. 36 FED. REG. 367 (1971).

150. C.F.R. § 870.52 (c) (1970).

151. *Id.*

152. *Id.* § 870.53 (c) (1970).