

02-029

CHAPTER 143

Regulation #43

(Also BUREAU OF CONSUMER CREDIT PROTECTION Chapter 120)

MULTIPLE OF THE STATE OR FEDERAL MINIMUM WAGE

SUMMARY

This Rule provides the method for calculating the portion of earnings that are subject to garnishment when an individual is not paid on a weekly basis.

Rule 120, last promulgated in 2005, provides guidance for those seeking to abide by the statutory limitations on garnishment found in the Maine Consumer Code ("the Code"). It is amended following enactment of P.L. 2007, Chapter 7, which changes the standard by which maximum garnishment ratios are computed. Previously, the Code limited garnishment arising from a consumer credit transaction to the lesser of 25% of the individual's disposable earnings for that week or the amount by which the individual's disposable earnings for that week exceeded 40 times the federal minimum hourly wage. The new law makes the State minimum hourly wage an alternative to the federal minimum hourly wage in the calculation, requires that comparison with disposable earnings be based on the higher of the State or federal minimum wage, and requires that maximum garnishment for a pay period other than a week be "equivalent in effect" to that for a week.

I. AUTHORITY

Title 9-A M.R.S.A. § 6-104 permits the Administrator to adopt, amend, and repeal rules to carry out the specific provisions of the Code.

Title 9-A M.R.S.A. §§ 6-103 and 1-301(2) state that except in cases in which a supervised financial organization is the creditor, the Administrator is the Superintendent of the Bureau of Consumer Credit Protection. In cases in which a supervised financial organization is the creditor, the Administrator is the Superintendent of the Bureau of Financial Institutions.

Title 9-B M.R.S.A. § 215 permits the Superintendent of the Bureau of Financial Institutions to implement rules relating to the supervision of financial institutions or their subsidiaries or financial institution holding companies or their subsidiaries.

Title 9-A M.R.S.A. § 5-105(2)(B) requires the Administrator to prescribe by rule a means of calculating the disposable income that is subject to garnishment when an individual is not paid on a weekly basis.

II. PURPOSE

The purpose of this Rule is to amend the previous joint rule to include language changing the method for computing maximum garnishment ratios required by 9-A M.R.S.A. § 5-105(2)(B) as amended by P.L. 2007, Chapter 7.

Both the Bureau of Consumer Credit Protection and the Bureau of Financial Institutions have oversight responsibilities with respect to the Code.

III. DEFINITIONS

For purposes of this Rule, the following terms have the following meanings:

- A. "Administrator" has the same meaning as in 9-A M.R.S.A. §1-301(2);
- B. "Consumer Credit Transaction" has the same meaning as in 9-A M.R.S.A. §1-301(12);
- C. "Disposable Earnings" has the same meaning as in 9-A M.R.S.A. § 5-105(1)(A);
- D. "Federal minimum hourly wage" is that wage prescribed by Section 6(a)(1) of the Fair Labor Standards Act of 1938, 29 U.S.C. §206(a)(1) in effect at the time earnings are payable, pursuant to 9-A M.R.S.A. §5-105(1)(B); and
- E. "Garnishment" has the same meaning as in 9-A M.R.S.A. §5-105(1)(B).
- F. "State minimum hourly wage" is that wage prescribed by 26 M.R.S.A. § 664 in effect at the time the earnings are payable.

IV. GENERAL PROVISIONS

Limitations on Garnishment of Earnings for Pay Periods Other Than a Week

The maximum part of the aggregate disposable earnings of an individual for any pay period other than a week that is subjected to garnishment to enforce payment of a judgment arising from a consumer credit transaction may not exceed:

- A. Twenty-five percent of the individual's disposable earnings for that pay period;
- B. For those employees paid for a two week period, the amount by which the individual's disposable earnings exceed 40 times the federal minimum hourly wage or State minimum hourly wage, whichever is higher, in effect at the time the earnings are payable, multiplied by 2;

C. For those employees paid monthly, the amount by which the disposable earnings exceed 40 times the federal minimum hourly wage or State minimum hourly wage, whichever is higher, in effect at the time the earnings are payable, multiplied by $4 \frac{1}{3}$; or

D. For those employees paid twice monthly, the amount by which the disposable earnings exceed 40 times the federal minimum hourly wage or State minimum hourly wage, whichever is higher, in effect at the time the earnings are payable, multiplied by $4 \frac{1}{3}$ and then divided by 2.

EFFECTIVE DATE: January 20, 2008

BASIS STATEMENT:

The Administrators of Title 9-A are required by Section 5-105(2)(B) to issue this Rule to provide a means of calculating the portion of an individual's earnings that are subject to garnishment when the individual is not paid on a weekly basis. The Rule incorporates changes mandated by enactment of P.L. 2007, Chapter 7, which sets a new benchmark by establishing the greater of the State's minimum wage or the federal minimum wage as the "floor" from which additional computations are calculated. A notice of agency rulemaking was published and mailed on or about October 10th, 2007. The period for public comment was open until November 12th, 2007.