MAINE BUREAU OF FINANCIAL INSTITUTIONS
MAINE OFFICE OF CONSUMER CREDIT REGULATION
SUPERINTENDENT'S
NOTICE TO INTERESTED PARTIES

The purpose of this rulemaking is to repeal and replace the Office of Consumer Credit Regulation Chapter 120, Multiple of the Federal Minimum Wage, with a rule adopted jointly by the Office of Consumer Credit Regulation and the Bureau of Financial Institutions. The Office of Consumer Credit Regulation originally issued Chapter 120 with an effective date of September 7, 1981. The rule is required by §5-105(2) of the Maine Consumer Credit Code. The rule establishes a method for calculating the maximum earnings subject to garnishment when an individual debtor is not paid on a weekly basis. The proposed rule eliminates the outdated example used in the original rule and provides additional guidance for those seeking to abide by its terms.

Notice of this proposed Rule is being published by the Secretary of State. Interested parties may submit written comments or requests for a hearing to the Bureau of Financial Institutions, 36 State House Station, Augusta, Maine 04333-0036 or the Office of Consumer Credit Regulation, 35 State House Station, Augusta, Maine 04333-0035 by March 10, 2005. Electronic comments or requests for a hearing may be submitted by accessing the Internet Home Page of the Bureau of Financial Institutions at http://www.maine.gov/financialinstitutions or the Home Page of the Office of Consumer Credit Regulation at http://www.MaineCreditReg.org.

/s/ Colette L. Mooney, Acting Superintendent
Bureau of Financial Institutions

/s/ William N. Lund, Director
Office of Consumer Credit Regulation

Gardiner, Maine
February 9, 2005

MULTIPLE OF THE 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Rule 120, last promulgated in 1981, is repealed and replaced to eliminate outdated examples regarding the rule's application and to provide additional guidance for those seeking to abide by the statutory limitations on garnishment found in the Maine Consumer Credit Code ("the Code"). The Code limits garnishment arising from a consumer credit transaction to the lesser of 25% of the individual's disposable earnings or the amount by which the individual's disposable earnings for a week exceed 40 times the Federal minimum hourly wage. Examples of how to calculate the amount of disposable earnings subject to garnishment found in the former rule pertained to the calculation of earnings for individuals paid on a weekly basis, and this rule only pertains to individuals not paid on a weekly basis.

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 Director of the Office of Consumer Credit Regulation. 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)(C) 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 rulemaking is to repeal and replace Office of Consumer Credit Regulation Chapter 120 with a rule adopted jointly by the Office of Consumer Credit Regulation and the Bureau of Financial Institutions. This rule is required by § 5-105(2) of the Code. The rule establishes a method for calculating the maximum earnings subject to garnishment when an individual debtor is not paid on a weekly basis. The method for calculating maximum earnings subject to garnishment for individuals paid on a weekly basis is set forth in § 5-105 of the Code.

Both the Office of Consumer Credit Regulation and the Bureau of Financial Institutions have oversight responsibilities with respect to the Code. Pursuant to 9-A M.R.S.A. § 6-104(6), "unless … modified by the Superintendent of Financial Institutions," the former Chapter 120 as adopted by the Office of Consumer Credit Regulation will remain applicable to supervised financial organizations.

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).

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 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 in effect at the time the earnings are payable multiplied by 4 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 in effect at the time the earnings are payable multiplied by 4 1/3 and then divided by 2.