

SENATE AMENDMENTS TO SENATE BILL 303

By COMMITTEE ON JUDICIARY

April 12

1 On page 1 of the printed bill, line 2, after "ORS" insert "18.385,".

2 Delete line 3 and insert "18.838, 18.840, 18.845, 18.855, 18.896 and 90.300.".

3 Delete lines 19 through 30 and insert:

4 "(2)(a) Notwithstanding ORS 18.615, wages owing by a garnishee to a debtor for a specific pay
5 period are not garnishable property if:

6 "(A) The writ is delivered within two business days before the debtor's normal payday for the
7 pay period;

8 "(B) When the writ is delivered to the garnishee, the debtor's wages are paid by direct deposit
9 to a financial institution, or the garnishee uses the Oregon Department of Administrative Services
10 or an independent contractor as defined in ORS 670.600 as payroll administrator for the garnishee's
11 payroll; and

12 "(C) Before the writ is delivered to the garnishee, the garnishee issued instructions to the fi-
13 nancial institution or the payroll administrator to pay the debtor for the pay period.

14 "(b) If a garnishee owes any wages as described in paragraph (a) of this subsection, the
15 garnishee must so note in the garnishee response required by ORS 18.680."

16 On page 2, delete lines 1 through 3.

17 On page 4, delete lines 30 through 45 and insert:

18 "The writ does not garnish any wages you owe to a Debtor for a specific pay period if:

19 "(a) The writ is delivered to you within two business days before the Debtor's normal payday
20 for the pay period;

21 "(b) When the writ is delivered to you, the Debtor's wages are paid by direct deposit to a fi-
22 nancial institution, or you use an independent contractor as payroll administrator for your payroll;
23 and

24 "(c) Before the writ was delivered to you, you issued instructions to the financial institution or
25 the payroll administrator to pay the Debtor for the pay period.

26 "If any wages are not garnishable by reason of the issuance of instructions to a financial insti-
27 tution or a payroll administrator as described above, you must so note in the Garnishee Response.
28 Thereafter, you must pay to the Garnishor all wages that are subject to garnishment that are at-
29 tributable to services performed by the Debtor during the 90-day period following the date you re-
30 ceived the writ."

31 On page 14, delete lines 2 through 4 and insert:

32 "**SECTION 8.** ORS 18.385 is amended to read:

33 "18.385. (1) Except as provided in this section, 75 percent of the disposable earnings of an indi-
34 vidual are exempt from execution.

35 "(2) The disposable earnings of an individual are exempt from execution to the extent that

1 payment under a garnishment would result in net disposable earnings for an individual of less than
2 the following amounts:

3 “(a) [~~\$170~~] **\$196** for any period of one week or less;

4 “(b) [~~\$340~~] **\$392** for any two-week period;

5 “(c) [~~\$368~~] **\$420** for any half-month period;

6 “(d) [~~\$731~~] **\$840** for any one-month period; and

7 “(e) For any other period longer than one week, [~~\$170~~] **\$196** multiplied by that fraction produced
8 by dividing the number of days for which the earnings are paid by seven. The amount calculated
9 under this paragraph must be rounded to the nearest dollar.

10 “(3) If an individual is paid for a period shorter than one week, the exemption calculated under
11 subsection (2) of this section may not exceed [~~\$170~~] **\$196** for any one-week period.

12 “(4) An employer shall deduct from the amount of disposable earnings determined to be nonex-
13 empt under subsections (1) to (3) of this section any amounts withheld from the individual’s earnings
14 for the same period of time under an order issued pursuant to ORS 25.378, 419B.408 or 419C.600 or
15 ORS chapter 110. The employer shall make payment under a garnishment only of those amounts
16 remaining after the deduction is made.

17 “(5) Subsections (1) to (4) of this section do not apply to:

18 “(a) Any order of a court of bankruptcy.

19 “(b) Any debt due for federal tax.

20 “(6) Subsections (2) to (4) of this section do not apply to any debt due for state tax. Subsection
21 (1) of this section does not apply to a debt due for state tax if a state agency issues a special notice
22 of garnishment under ORS 18.855 (6).

23 “(7) A court may not make, execute or enforce any order or process in violation of this section.

24 “(8) Any waiver by an individual of the provisions of this section is void.

25 “(9) An employer may not discharge any individual because the individual has had earnings
26 garnished.

27 “**SECTION 9.** ORS 18.840 is amended to read:

28 “18.840. A wage exemption calculation form must be delivered to the garnishee with each writ
29 of garnishment. A wage exemption calculation form must be in substantially the following form:

30 “

31
32 **WAGE EXEMPTION CALCULATION**
33 (to be filled out by employers only)
34

- 35 1. Debtor’s gross wages
36 for period covered by this
37 payment..... \$_____
- 38 2. Total amount required to be
39 withheld by law for amount in Line 1
40 (Federal and state
41 withholding, Social
42 Security, etc.)..... \$_____
- 43 3. Debtor’s disposable wages
44 (Subtract Line 2
45 from Line 1)..... \$_____

- 1 4. Normal exemption (Enter 75
2 percent of Line 3) \$_____
- 3 5. Minimum exemption (check one)
4 — [\$170] **\$196** (payment of wages weekly)
5 — [\$340] **\$392** (payment of wages every
6 two weeks)
7 — [\$368] **\$420** (payment of wages half-monthly)
8 — [\$731] **\$840** (payment of wages monthly)
9 — \$_____ (Any other period longer
10 than one week, including partial
11 payments for less than full pay period)
12 (Multiply [\$170] **\$196** by number of weeks or
13 fraction of a week)
- 14 6. Wages exempt from garnishment
15 (Line 4 or 5,
16 whichever is greater) \$_____
- 17 7. Nonexempt wages (Subtract
18 Line 6 from Line 3) \$_____
- 19 8. Amount withheld for this pay period
20 pursuant to a support order under
21 support withholding process or under
22 another writ with priority \$_____
- 23 9. Wages subject to garnishment
24 (Subtract Line 8
25 from Line 7)..... \$_____

26
27 INSTRUCTIONS FOR WAGE
28 EXEMPTION CALCULATION FORM
29

30 If you employ the Debtor named in the writ of garnishment, you must fill out and return this
31 Wage Exemption Calculation form. A Wage Exemption Calculation form must be sent with the first
32 payment you make under the writ. For the 90-day period during which the writ is effective, you must
33 also fill out and return a Wage Exemption Calculation form with a subsequent payment any time the
34 initial calculation changes. Finally, you must fill out and return a Wage Exemption Calculation form
35 with the final payment that you make under the writ.
36

37 Normal wage exemption. The wage exemption calculation is based on the amount of the payment
38 you make under the writ of garnishment. The normal wage exemption in Line 4 is 75 percent of the
39 employee's disposable wages in Line 3.
40

41 Minimum wage exemption. The minimum exemption in Line 5 is also based on the amount of the
42 payment you are making. The minimum exemption is designed to ensure that an employee receives
43 at least a certain minimum amount in any one-week period. If the payment is for a one-week period
44 (without regard to whether the period is a calendar week or any other seven-day period), the mini-
45 mum exemption is [\$170] **\$196**. The minimum exemption is [\$340] **\$392** if the payment is for a two-

1 week period. If the payment is for one-half of one month (i.e., the Debtor is paid twice each month),
2 the minimum exemption is [~~\$368~~] **\$420**. The minimum exemption for a monthly payment is [~~\$731~~]
3 **\$840**.

4 If the payment you are making is based on some period of time other than one week, two weeks,
5 half month or month, and the payment is for more than one week, you must calculate the minimum
6 exemption by multiplying [~~\$170~~] **\$196** by the number of weeks covered by the paycheck, including
7 any fraction of a week. You should round the amount calculated to the nearest dollar.

8
9 Example 1: You pay Debtor A every 10 days. Each 10-day period is equal to 1.429 weeks (10
10 divided by 7). The minimum exemption is [~~\$243~~] **\$280** (~~[\$170] \$196~~ × 1.429 rounded to the
11 nearest dollar).

12
13 You must use this same calculation for computing the minimum exemption when making a pay-
14 ment for less than a full pay period (e.g., for the final payment at the end of the 90-day period cov-
15 ered by the writ).

16
17 Example 2: You pay Debtor A on a monthly basis. You are required to make a final payment
18 under a writ of garnishment for the wages owing to Debtor A for the period beginning Oc-
19 tober 1 and ending October 15. This period is equal to 2.143 weeks (15 divided by 7). The
20 minimum exemption is [~~\$364~~] **\$420** (~~[\$170] \$196~~ × 2.143 rounded to the nearest dollar).

21
22 The amount of time actually worked by the Debtor during the period covered by the paycheck
23 does not affect the calculation of the minimum exemption.

24
25 Example 3: You pay Debtor A on a weekly basis. Debtor A works two days per week. The
26 minimum exemption is [~~\$170~~] **\$196** for each weekly payment you make for Debtor A.

27
28 If the payment you are making is based on a period of time less than one week, the minimum
29 wage exemption may not exceed [~~\$170~~] **\$196** for any one-week period.

30
31 If you receive more than one writ of garnishment. If you receive more than one writ of
32 garnishment for the same debtor, the writs have priority based on the date on which you receive
33 them. If the full amount of wages subject to garnishment for a given pay period is paid on the first
34 writ, you should not make any payment on subsequently received writs until the first writ expires.
35 In some cases, it may be necessary to make payments on two or more writs for the same pay period.

36
37 Example 4. You have received two writs of garnishment for Debtor A. You pay Debtor A
38 on a monthly basis. The first writ expires on October 16. The second writ will not expire
39 until November 15. You will need to prepare two wage exemption calculation forms for
40 Debtor A's October wages and make payments under both writs. The wage exemption cal-
41 culation form for the first writ will be for the wages attributable to October 1 to October
42 15 as described in Example 2. The wage exemption calculation form for the second writ will
43 be for all wages for the month of October, but the amounts withheld under the first writ
44 must be subtracted on Line 8 to determine the October wages subject to garnishment under
45 the second writ.

1 “ _____

2

3 “**SECTION 10.** ORS 18.845 is amended to read:

4 “18.845. A notice of exemptions form must be in substantially the form set forth in this section.
5 Nothing in the notice form described in this section is intended to expand or restrict the law re-
6 lating to exempt property. A determination as to whether property is exempt from execution, at-
7 tachment and garnishment must be made by reference to other law. The form provided in this
8 section may be modified to provide more information or to update the notice based on subsequent
9 changes in exemption laws.

10 “ _____

11

12

NOTICE OF EXEMPT PROPERTY
AND INSTRUCTIONS FOR
CHALLENGE TO GARNISHMENT

13

14

15

16 Property belonging to you may have been taken or held in order to satisfy a debt. The debt may be
17 reflected in a judgment or in a warrant or order issued by a state agency. Important legal papers
18 are enclosed.

19 YOU MAY BE ABLE TO GET YOUR PROPERTY BACK, SO READ THIS NOTICE CARE-
20 FULLY.

21 State and federal law specify that certain property may not be taken. Some of the property that
22 you may be able to get back is listed below.

23 (1) Wages or a salary as described in ORS 18.375 and 18.385. Whichever of the following
24 amounts is greater:

25 (a) 75 percent of your take-home wages; or

26 (b) [~~\$170~~] **\$196** per workweek.

27 (2) Social Security benefits.

28 (3) Supplemental Security Income (SSI).

29 (4) Public assistance (welfare).

30 (5) Unemployment benefits.

31 (6) Disability benefits (other than SSI benefits).

32 (7) Workers' compensation benefits.

33 (8) Exempt wages, Social Security benefits (other than SSI), welfare, unemployment benefits and
34 disability benefits when placed in a checking or savings account (up to \$7,500).

35 (9) Spousal support, child support or separate maintenance to the extent reasonably necessary
36 for your support or the support of any of your dependents.

37 (10) A homestead (house, mobile home or houseboat) occupied by you, or occupied by your
38 spouse, parent or child. The value of the homestead is exempt up to the following amounts:

39 (a) For a mobile home or houseboat located on land that is not owned by you, \$20,000. If you
40 jointly own the mobile home or houseboat with another person who is also liable on the debt,
41 \$27,000.

42 (b) For a mobile home or houseboat located on land that is owned by you, \$23,000. If you jointly
43 own the mobile home or houseboat with another person who is also liable on the debt, \$30,000.

44 (c) For any other homestead, \$30,000. If you jointly own the homestead with another person who
45 is also liable on the debt, \$39,600.

1 (11) Proceeds from the sale of a homestead described in item 10, up to the limits described in
2 item 10, if you hold the proceeds for less than one year and intend to use those proceeds to procure
3 another homestead.

4 (12) Household goods, furniture, radios, a television set and utensils with a combined value not
5 to exceed \$3,000.

6 *(13) An automobile, truck, trailer or other vehicle with a value not to exceed \$2,150.

7 *(14) Tools, implements, apparatus, team, harness or library that are necessary to carry on your
8 occupation, with a combined value not to exceed \$3,000.

9 *(15) Books, pictures and musical instruments with a combined value not to exceed \$600.

10 *(16) Wearing apparel, jewelry and other personal items with a combined value not to exceed
11 \$1,800.

12 (17) Domestic animals and poultry for family use with a combined value not to exceed \$1,000
13 and their food for 60 days.

14 (18) Provisions and fuel for your family for 60 days.

15 (19) One rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt
16 may not exceed \$1,000.

17 (20) Public or private pensions.

18 (21) Veterans' benefits and loans.

19 (22) Medical assistance benefits.

20 (23) Health insurance proceeds and disability proceeds of life insurance policies.

21 (24) Cash surrender value of life insurance policies not payable to your estate.

22 (25) Federal annuities.

23 (26) Other annuities to \$250 per month (excess over \$250 per month is subject to the same ex-
24 emption as wages).

25 (27) Professionally prescribed health aids for you or any of your dependents.

26 *(28) Elderly rental assistance allowed pursuant to ORS 310.635.

27 (29) Your right to receive, or property traceable to:

28 (a) An award under any crime victim reparation law.

29 (b) A payment or payments, not exceeding a total of \$10,000, on account of personal bodily in-
30 jury suffered by you or an individual of whom you are a dependent.

31 (c) A payment in compensation of loss of future earnings of you or an individual of whom you
32 are or were a dependent, to the extent reasonably necessary for your support and the support of
33 any of your dependents.

34 (30) Amounts paid to you as an earned income tax credit under federal tax law.

35 *(31) Interest in personal property to the value of \$400, but this cannot be used to increase the
36 amount of any other exemption.

37 (32) Equitable interests in property.

38 (33) Security deposits or prepaid rent held by a residential landlord under ORS 90.300.

39 (34) If the amount shown as owing on the Debt Calculation form exceeds the amount you actu-
40 ally owe to the creditor, the difference between the amount owed and the amount shown on the Debt
41 Calculation form.

42
43 Note: If two or more people in your household owe the claim or judgment, each of them may
44 claim the exemptions marked by an asterisk (*).

45 “ _____

1
2 SPECIAL RULES APPLY FOR DEBTS THAT ARE OWED FOR CHILD SUPPORT AND
3 SPOUSAL SUPPORT. Some property that may not otherwise be taken for payment against the debt
4 may be taken to pay for overdue support. For instance, Social Security benefits, workers' compen-
5 sation benefits, unemployment benefits, veterans' benefits and pensions are normally exempt, but
6 only 75 percent of a lump sum payment of these benefits is exempt if the debt is owed for a support
7 obligation.

8
9 YOU MUST ACT PROMPTLY IF YOU WANT TO GET YOUR MONEY OR PROPERTY BACK.
10 You may seek to reclaim your exempt property by doing the following:

11 (1) Fill out the Challenge to Garnishment form that you received with this notice.

12 (2) Mail or deliver the Challenge to Garnishment form to the court administrator at the address
13 shown on the writ of garnishment, and mail or deliver a copy of the form to the Garnishor at the
14 address shown on the writ of garnishment. If you wish to claim wages or salary as exempt, you must
15 mail or deliver the form within 120 days after you receive this notice. If you wish to claim that any
16 other money or property is exempt, or claim that the property is not subject to garnishment, you
17 must mail or deliver the form within 30 days after you receive this notice. You have the burden of
18 showing that your challenge is made on time, so you should keep records showing when the chal-
19 lenge was mailed or delivered.

20 (3) The law only requires that the Garnishor hold the garnished money or property for 10 days
21 before applying it to the Creditor's use. You may be able to keep the property from being used by
22 the Creditor by promptly following (1) and (2) above.

23
24 You should be prepared to explain your exemption in court. If you have any questions about the
25 garnishment or the debt, you should see an attorney.

26 YOU MAY USE THE CHALLENGE TO GARNISHMENT FORM ONLY FOR THE FOLLOW-
27 ING PURPOSES:

28 (1) To claim such exemptions from garnishment as are permitted by law.

29 (2) To assert that property is not garnishable property under ORS 18.618.

30 (3) To assert that the amount specified in the writ of garnishment as being subject to
31 garnishment is greater than the total amount owed.

32
33 YOU MAY NOT USE THE CHALLENGE TO GARNISHMENT FORM TO CHALLENGE THE
34 VALIDITY OF THE DEBT.

35 IF YOU FILE A CHALLENGE TO A GARNISHMENT IN BAD FAITH, YOU MAY BE SUB-
36 JECT TO PENALTIES IMPOSED BY THE COURT THAT COULD INCLUDE A FINE. Penalties
37 that you could be subject to are listed in ORS 18.715.

38 When you file a Challenge to Garnishment form, the Garnishee may be required to make all
39 payments under the garnishment to the court, and the Garnishor may be required to pay to the
40 court all amounts received by the Garnishor that are subject to the challenge to the garnishment.
41 The Garnishee and Garnishor are subject to penalties if they do not. For a complete explanation of
42 their responsibilities, see ORS 18.705 and 18.708.

43 “

44
45 “SECTION 11. ORS 18.896 is amended to read:

1 "18.896. (1) The challenge to execution form described in this section does not expand or restrict
2 the law relating to exempt property. A determination as to whether property is exempt from at-
3 tachment or execution must be made by reference to other law. The form provided in this section
4 may be modified to provide more information or to update the notice based on subsequent changes
5 in exemption laws.

6 "(2) A challenge to execution form must be in substantially the following form:

7 " _____

8

9

_____ COURT

10

COUNTY OF _____

11

12

_____) CHALLENGE TO

13

Plaintiff,) EXECUTION

14

)

15

vs.) Case No. _____

16

)

17

_____)

18

Defendant.)

19

20

THIS FORM MAY BE USED BY THE DEBTOR ONLY TO CLAIM SUCH EXEMPTIONS
21 FROM EXECUTION AS ARE PERMITTED BY LAW.

22

23

THIS FORM MAY BE USED BY PERSONS OTHER THAN THE DEBTOR ONLY TO CLAIM
24 AN INTEREST IN THE PROPERTY THAT IS TO BE SOLD ON EXECUTION.

25

26

THIS FORM MAY NOT BE USED TO CHALLENGE THE VALIDITY OF THE DEBT.

27

28

I/We claim that the following described property or money is exempt from execution:

29

30

31

32

33

34

I/We believe this property is exempt from execution because (the Notice of Exempt Property at
35 the end of this form describes most types of property that you can claim as exempt from execution):

36

37

38

39

40

41

I am a person other than the Debtor and I have the following interest in the property:

42

43

44

45

1 Name _____ Name _____
2 Signature _____ Signature _____
3 Address _____ Address _____
4 _____
5 Telephone Telephone
6 Number _____ Number _____
7 (Required) (Required)
8

9 YOU MUST ACT PROMPTLY IF YOU WANT TO GET YOUR MONEY OR PROPERTY BACK.

10 You may seek to reclaim your exempt property by doing the following:

11 (1) Fill out the Challenge to Execution form that you received with this notice.

12 (2) Mail or deliver the Challenge to Execution form to the court administrator at the address
13 shown on the writ of execution.

14 (3) Mail or deliver a copy of the Challenge to Execution form to the judgment creditor at the
15 address shown on the writ of execution.

16 You should be prepared to explain your exemption in court. If you have any questions about the
17 execution or the debt, you should see an attorney.

18
19 YOU MAY USE THE CHALLENGE TO EXECUTION FORM ONLY TO CLAIM SUCH EX-
20 EMPTIONS FROM EXECUTION AS ARE PERMITTED BY LAW.

21
22 YOU MAY NOT USE THE CHALLENGE TO EXECUTION FORM TO CHALLENGE THE
23 VALIDITY OF THE DEBT.

24
25 IF YOU CLAIM AN EXEMPTION IN BAD FAITH, YOU MAY BE SUBJECT TO PENALTIES
26 IMPOSED BY THE COURT THAT COULD INCLUDE A FINE. Penalties that you could be subject
27 to are listed in ORS 18.899.

28
29 NOTICE OF EXEMPT PROPERTY
30

31 Property belonging to you may have been taken or held in order to satisfy a debt. The debt may
32 be reflected in a judgment or in a warrant or order issued by a state agency. Important legal papers
33 are enclosed.

34 YOU MAY BE ABLE TO GET YOUR PROPERTY BACK, SO READ THIS NOTICE CARE-
35 FULLY.

36 State and federal law specify that certain property may not be taken. Some of the property that
37 you may be able to get back is listed below.

38 (1) Wages or a salary as described in ORS 18.375 and 18.385. Whichever of the following
39 amounts is greater:

40 (a) 75 percent of your take-home wages; or

41 (b) [\$170] **\$196** per workweek.

42 (2) Social Security benefits.

43 (3) Supplemental Security Income (SSI).

44 (4) Public assistance (welfare).

45 (5) Unemployment benefits.

- 1 (6) Disability benefits (other than SSI benefits).
- 2 (7) Workers' compensation benefits.
- 3 (8) Exempt wages, Social Security benefits (other than SSI), welfare, unemployment benefits and
4 disability benefits when placed in a checking or savings account (up to \$7,500).
- 5 (9) Spousal support, child support or separate maintenance to the extent reasonably necessary
6 for your support or the support of any of your dependents.
- 7 (10) A homestead (house, mobile home or houseboat) occupied by you, or occupied by your
8 spouse, parent or child. The value of the homestead is exempt up to the following amounts:
 - 9 (a) For a mobile home or houseboat located on land that is not owned by you, \$20,000. If you
10 jointly own the mobile home or houseboat with another person who is also liable on the debt,
11 \$27,000.
 - 12 (b) For a mobile home or houseboat located on land that is owned by you, \$23,000. If you jointly
13 own the mobile home or houseboat with another person who is also liable on the debt, \$30,000.
 - 14 (c) For any other homestead, \$30,000. If you jointly own the homestead with another person who
15 is also liable on the debt, \$39,600.
- 16 (11) Proceeds from the sale of a homestead described in item 10, up to the limits described in
17 item 10, if you hold the proceeds for less than one year and intend to use those proceeds to procure
18 another homestead.
- 19 (12) Household goods, furniture, radios, a television set and utensils with a combined value not
20 to exceed \$3,000.
- 21 *(13) An automobile, truck, trailer or other vehicle with a value not to exceed \$2,150.
- 22 *(14) Tools, implements, apparatus, team, harness or library that are necessary to carry on your
23 occupation, with a combined value not to exceed \$3,000.
- 24 *(15) Books, pictures and musical instruments with a combined value not to exceed \$600.
- 25 *(16) Wearing apparel, jewelry and other personal items with a combined value not to exceed
26 \$1,800.
- 27 (17) Domestic animals and poultry for family use with a combined value not to exceed \$1,000
28 and their food for 60 days.
- 29 (18) Provisions and fuel for your family for 60 days.
- 30 (19) One rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt
31 may not exceed \$1,000.
- 32 (20) Public or private pensions.
- 33 (21) Veterans' benefits and loans.
- 34 (22) Medical assistance benefits.
- 35 (23) Health insurance proceeds and disability proceeds of life insurance policies.
- 36 (24) Cash surrender value of life insurance policies not payable to your estate.
- 37 (25) Federal annuities.
- 38 (26) Other annuities to \$250 per month (excess over \$250 per month is subject to the same ex-
39 emption as wages).
- 40 (27) Professionally prescribed health aids for you or any of your dependents.
- 41 *(28) Elderly rental assistance allowed pursuant to ORS 310.635.
- 42 *(29) Your right to receive, or property traceable to:
 - 43 *(a) An award under any crime victim reparation law.
 - 44 *(b) A payment or payments, not exceeding a total of \$10,000, on account of personal bodily in-
45 jury suffered by you or an individual of whom you are a dependent.

