

A-Engrossed
House Bill 2306

Ordered by the House April 29
Including House Amendments dated April 29

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon State Bar Consumer Law Section)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

[Allows Oregon resident filing for bankruptcy to either claim exemptions established by federal law or claim exemptions established by state law.]

Increases amount of value of vehicles and homesteads exempt from sale on execution of bankruptcy proceedings. Provides that homestead exemption applies to floating homes and manufactured dwellings.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to exemptions from execution; creating new provisions; amending ORS 18.345, 18.395,
3 18.402, 18.412, 18.845, 18.896, 18.908 and 18.912; repealing ORS 18.428; and declaring an emer-
4 gency.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1.** ORS 18.345 is amended to read:

7 18.345. (1) All property, including franchises, or rights or interest therein, of the judgment
8 debtor, shall be liable to an execution, except as provided in this section and in other statutes
9 granting exemptions from execution. The following property, or rights or interest therein of the
10 judgment debtor, except as provided in ORS 18.305, shall be exempt from execution:

11 (a) Books, pictures and musical instruments to the value of \$600.

12 (b) Wearing apparel, jewelry and other personal items to the value of \$1,800.

13 (c) The tools, implements, apparatus, team, harness or library, necessary to enable the judgment
14 debtor to carry on the trade, occupation or profession by which the judgment debtor habitually
15 earns a living, to the value of \$3,000.

16 (d) A vehicle to the value of [~~\$2,150~~] **\$3,000**. As used in this paragraph "vehicle" includes an
17 automobile, truck, trailer, truck and trailer or other motor vehicle.

18 (e) Domestic animals and poultry kept for family use, to the total value of \$1,000 and food suf-
19 ficient to support such animals and poultry for 60 days.

20 (f) Household goods, furniture, radios, a television set and utensils all to the total value of
21 \$3,000, if the judgment debtor holds the property primarily for the personal, family or household use
22 of the judgment debtor; provisions actually provided for family use and necessary for the support
23 of a householder and family for 60 days and also 60 days' supply of fuel.

24 (g) All property of the state or any county or incorporated city therein, or of any other public
25 or municipal corporation of like character.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (h) All professionally prescribed health aids for the debtor or a dependent of the debtor.

2 (i) Spousal support, child support, or separate maintenance to the extent reasonably necessary
3 for the support of the debtor and any dependent of the debtor.

4 (j) The debtor's right to receive, or property that is traceable to, an award under any crime
5 victim reparation law.

6 (k) The debtor's right to receive, or property that is traceable to, a payment or payments, not
7 to exceed a total of \$10,000, on account of personal bodily injury of the debtor or an individual of
8 whom the debtor is a dependent.

9 (L) The debtor's right to receive, or property that is traceable to, a payment in compensation
10 of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent,
11 to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

12 (m) Veterans' benefits and loans.

13 (n) The debtor's right to receive an earned income tax credit under the federal tax laws and any
14 moneys that are traceable to a payment of an earned income tax credit under the federal tax laws.

15 (o) The debtor's interest, not to exceed \$400 in value, in any personal property. However, this
16 exemption may not be used to increase the amount of any other exemption.

17 (2) If the property claimed by the judgment debtor as exempt is adjudicated by the court out of
18 which the execution issued to be of a value in excess of that allowed by the appropriate paragraph
19 of subsection (1) of this section, the officer seizing the property shall proceed to sell such property.
20 Out of the proceeds of such sale, the officer shall deduct costs of sale and shall pay to the judgment
21 debtor an amount equivalent to the value declared to be exempt by any of the paragraphs of sub-
22 section (1) of this section and shall apply the balance of the proceeds of sale on the execution. A
23 sale may not be made under such execution unless the highest bid made exceeds the appropriate
24 exemption claimed and allowed plus costs of sale. If no bid is received in excess of the value allowed
25 by the appropriate paragraph of subsection (1) of this section, the costs of sale shall be borne by the
26 judgment creditor.

27 (3) If two or more members of a household are joint judgment debtors, each judgment debtor
28 shall be entitled to claim the exemptions in subsection (1)(a), (b), (c), (d) and (o) of this section in
29 the same or different properties. The exemptions provided by subsection (1)(a), (b), (c), (d), (j), (k) and
30 (o) of this section, when claimed for jointly owned property, may be combined at the option of the
31 debtors.

32 (4) Notwithstanding any other provision of law except ORS 657.855, if a writ of garnishment or
33 other execution is issued to collect past due support as defined in ORS 18.600, 75 percent of unem-
34 ployment compensation benefits, workers' compensation benefits and other benefits paid to the
35 debtor by the United States, by the state or by a political subdivision of the state are exempt. The
36 exemption related to unemployment compensation benefits provided by this subsection is subject to
37 ORS 657.855. The exemption provided by this subsection applies without regard to whether the
38 payment is made on a periodic basis or in a lump sum, including any lump sum payable pursuant to
39 a settlement or judgment. Notwithstanding subsection (1)(k) of this section, if a payment is made
40 under a settlement or judgment on account of personal bodily injury and the garnishment or other
41 execution is issued to collect past due support as defined in ORS 18.600, the lesser of 75 percent of
42 the payment or \$7,500 is exempt.

43 **SECTION 2.** ORS 18.395 is amended to read:

44 18.395. (1) A homestead shall be exempt from sale on execution, from the lien of every judgment
45 and from liability in any form for the debts of the owner to the amount in value of [\$30,000]

1 **\$40,000**, except as otherwise provided by law. The exemption shall be effective without the necessity
 2 of a claim thereof by the judgment debtor. When two or more members of a household are debtors
 3 whose interests in the homestead are subject to sale on execution, the lien of a judgment or liability
 4 in any form, their combined exemptions under this section shall not exceed [~~\$39,600~~] **\$50,000**. The
 5 homestead must be the actual abode of and occupied by the owner, or the owner's spouse, parent
 6 or child, but the exemption shall not be impaired by:

7 (a) Temporary removal or temporary absence with the intention to reoccupy the same as a
 8 homestead;

9 (b) Removal or absence from the property; or

10 (c) The sale of the property.

11 (2) The exemption shall extend to the proceeds derived from such sale to an amount not ex-
 12 ceeding [~~\$30,000~~] **\$40,000** or [~~\$39,600~~] **\$50,000**, whichever amount is applicable under subsection (1)
 13 of this section, if the proceeds are held for a period not exceeding one year and held with the in-
 14 tention to procure another homestead therewith.

15 (3) The exemption period under subsection (1)(b) and (c) of this section shall be one year from
 16 the removal, absence or sale, whichever occurs first.

17 (4) When the owner of a homestead has been granted a discharge in bankruptcy or has conveyed
 18 the homestead property, the value thereof, for the purpose of determining a leviable interest in ex-
 19 cess of the homestead exemption, shall be the value on the date of the petition in bankruptcy,
 20 whether the value is determined in the bankruptcy proceedings or not, or on the date the
 21 conveyance becomes effective, whichever shall first occur. However, with respect to judgments not
 22 discharged in the bankruptcy, or entered against the owner after discharge, the value on the effec-
 23 tive date of conveyance shall be controlling.

24 (5) Except as provided in subsection (7) of this section, no homestead that is the actual abode
 25 of and occupied by the judgment debtor, or that is the actual abode of and occupied by a spouse,
 26 dependent parent or dependent child of the judgment debtor, shall be sold on execution to satisfy a
 27 judgment that at the time of entry does not exceed \$3,000. However, such judgment shall remain a
 28 lien upon the real property, and the property may be sold on execution:

29 (a) At any time after the sale of the property by the judgment debtor; and

30 (b) At any time after the property is no longer the actual abode of and occupied by the judgment
 31 debtor or the spouse, dependent parent or dependent child of the judgment debtor.

32 (6) The limitation on execution sales imposed by subsection (5) of this section is not impaired
 33 by temporary removal or temporary absence with the intention to reoccupy the property as a
 34 homestead.

35 (7) The limitation on execution sales imposed by subsection (5) of this section does not apply if
 36 two or more judgments are owing to a single judgment creditor and the total amount owing to the
 37 judgment creditor, determined by adding the amount of each individual judgment as of the date the
 38 judgment was entered, is greater than \$3,000.

39 (8) Upon the issuance of an order authorizing sale as required by ORS 18.904, and in conform-
 40 ance with subsection (5) of this section, the sheriff may proceed to sell the property. If the home-
 41 stead exemption applies, the sheriff shall pay the homestead owner out of the proceeds the sum of
 42 [~~\$30,000~~] **\$40,000** or [~~\$39,600~~] **\$50,000**, whichever is applicable, and apply the balance of the proceeds
 43 on the execution. However, no sale shall be made where the homestead exemption applies unless the
 44 sum bid for the homestead is in excess of the sum of the costs of sale and [~~\$30,000~~] **\$40,000** or
 45 [~~\$39,600~~] **\$50,000**, whichever is applicable. If no such bid is received, the expense of the sale shall

1 be borne by the petitioner.

2 (9) The homestead exemption provided by this section applies to a purchaser's interest under a
3 land sale contract, as defined by ORS 18.960.

4 **(10) The homestead exemption provided by this section applies to:**

5 **(a) A floating home, as defined by ORS 830.700; and**

6 **(b) A manufactured dwelling, as defined by ORS 446.003.**

7 **SECTION 3.** ORS 18.402 is amended to read:

8 18.402. The homestead mentioned in ORS 18.395 shall consist, when not located in any town or
9 city laid off into blocks and lots, of any quantity of land not exceeding 160 acres, and when located
10 in any such town or city, of any quantity of land not exceeding one block. However, a homestead
11 under this section shall not exceed in value the sum of [~~\$30,000~~] **\$40,000** or [~~\$39,600~~] **\$50,000**,
12 whichever amount is applicable under ORS 18.395 (1).

13 **SECTION 4.** ORS 18.412 is amended to read:

14 18.412. (1) At any time after the date of execution of an agreement to transfer the ownership
15 of property in which a homestead exemption exists pursuant to ORS 18.395, the homestead owner
16 or the owner's transferee may give notice of intent to discharge the property from the judgment lien
17 to a judgment creditor. Each notice shall bear the caption of the action in which the judgment was
18 recovered and shall:

19 (a) Identify the property and the judgment and state that the judgment debtor is about to
20 transfer, or has transferred, the property and that the transfer is intended to discharge the property
21 from any lien effect of the judgment;

22 (b) State the fair market value of the property on the date of the notice or of any applicable
23 petition in bankruptcy, whichever is applicable, and list the encumbrances against the property, in-
24 cluding the nature and date of each encumbrance, the name of the encumbrancer and the amount
25 presently secured by each encumbrance;

26 (c) State that the property is claimed by the person giving the notice to be wholly exempt from
27 the lien of the judgment or, if the value of the property exceeds the sum of the encumbrances
28 specified as required under paragraph (b) of this subsection that are senior to the judgment lien and
29 [~~\$30,000~~] **\$40,000** or [~~\$39,600~~] **\$50,000**, whichever amount of the homestead exemption is applicable
30 under ORS 18.395 (1), that the amount of the excess or the amount due on the judgment, whichever
31 is less, will be deposited with the court administrator for the court in which the judgment was en-
32 tered for the use of the judgment holder; and

33 (d) Advise the holder of the judgment that the property may be discharged from any lien arising
34 from the judgment, without further notice to the judgment creditor, unless prior to a specified date,
35 which in no case may be earlier than 14 days after the date of mailing of the notice, the judgment
36 creditor files objections and a request for a hearing on the matter as provided in ORS 18.415.

37 (2) Each notice described by subsection (1) of this section shall be sent by certified mail to the
38 judgment creditor, as shown by the court records, at the judgment creditor's present or last-known
39 address according to the best knowledge of the person sending the notice. A copy of each notice,
40 together with proof of mailing, may be filed with the court administrator for the court in which the
41 judgment was entered and shall be filed by the court administrator with the records and files of the
42 action in which the judgment was recovered.

43 **SECTION 5.** ORS 18.896 is amended to read:

44 18.896. (1) The challenge to execution form described in this section does not expand or restrict
45 the law relating to exempt property. A determination as to whether property is exempt from at-

1 attachment or execution must be made by reference to other law. The form provided in this section
2 may be modified to provide more information or to update the notice based on subsequent changes
3 in exemption laws.

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

5 _____

6
7 _____ COURT

8 COUNTY OF _____

9
10 _____) CHALLENGE TO

11 Plaintiff,) EXECUTION

12)

13 vs.) Case No. _____

14)

15 _____)

16 Defendant.)

17
18 THIS FORM MAY BE USED BY THE DEBTOR ONLY FOR THE FOLLOWING PURPOSES:

19 (1) To claim such exemptions from execution as are permitted by law.

20 (2) To assert that the amount specified in the writ of execution as being subject to execution is
21 greater than the total amount owed.

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 _____

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

8
9

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

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

- 12 (1) Fill out the Challenge to Execution form that you received with this notice.
- 13 (2) Mail or deliver the Challenge to Execution form to the court administrator at the address
- 14 shown on the writ of execution.
- 15 (3) Mail or deliver a copy of the Challenge to Execution form to the judgment creditor at the
- 16 address shown on the writ of execution.

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

19

20 YOU MAY USE THE CHALLENGE TO EXECUTION FORM ONLY FOR THE FOLLOWING
21 PURPOSES:

- 22 (1) To claim such exemptions from execution as are permitted by law.
- 23 (2) To assert that the amount specified in the writ of execution as being subject to execution is
- 24 greater than the total amount owed.

25

26 YOU MAY NOT USE THE CHALLENGE TO EXECUTION FORM TO CHALLENGE THE
27 VALIDITY OF THE DEBT.

28

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

32

33 NOTICE OF EXEMPT PROPERTY

34

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

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

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

- 42 (1) Wages or a salary as described in ORS 18.375 and 18.385. Whichever of the following
- 43 amounts is greater:
- 44 (a) 75 percent of your take-home wages; or
- 45 (b) \$196 per workweek.

- 1 (2) Social Security benefits.
- 2 (3) Supplemental Security Income (SSI).
- 3 (4) Public assistance (welfare).
- 4 (5) Unemployment benefits.
- 5 (6) Disability benefits (other than SSI benefits).
- 6 (7) Workers' compensation benefits.
- 7 (8) Exempt wages, Social Security benefits (other than SSI), welfare, unemployment benefits and
8 disability benefits when placed in a checking or savings account (up to \$7,500).
- 9 (9) Spousal support, child support or separate maintenance to the extent reasonably necessary
10 for your support or the support of any of your dependents.
- 11 (10) A homestead (house, manufactured dwelling or floating home) occupied by you, or occupied
12 by your spouse, parent or child. **Up to \$40,000 of the value of the homestead is exempt. If you**
13 **jointly own the homestead with another person who is also liable on the debt, up to \$50,000**
14 **of the value of the homestead is exempt.** *[The value of the homestead is exempt up to the following*
15 *amounts:]*
 - 16 *[(a) For a manufactured dwelling or floating home located on land that is not owned by you,*
17 *\$20,000. If you jointly own the manufactured dwelling or floating home with another person who is also*
18 *liable on the debt, \$27,000.]*
 - 19 *[(b) For a manufactured dwelling or floating home located on land that is owned by you, \$23,000.*
20 *If you jointly own the manufactured dwelling or floating home with another person who is also liable*
21 *on the debt, \$30,000.]*
 - 22 *[(c) For any other homestead, \$30,000. If you jointly own the homestead with another person who*
23 *is also liable on the debt, \$39,600.]*
- 24 (11) Proceeds from the sale of a homestead described in item 10, up to the limits described in
25 item 10, if you hold the proceeds for less than one year and intend to use those proceeds to procure
26 another homestead.
- 27 (12) Household goods, furniture, radios, a television set and utensils with a combined value not
28 to exceed \$3,000.
- 29 *(13) An automobile, truck, trailer or other vehicle with a value not to exceed [~~\$2,150~~] **\$3,000.**
- 30 *(14) Tools, implements, apparatus, team, harness or library that are necessary to carry on your
31 occupation, with a combined value not to exceed \$3,000.
- 32 *(15) Books, pictures and musical instruments with a combined value not to exceed \$600.
- 33 *(16) Wearing apparel, jewelry and other personal items with a combined value not to exceed
34 \$1,800.
- 35 (17) Domestic animals and poultry for family use with a combined value not to exceed \$1,000
36 and their food for 60 days.
- 37 (18) Provisions and fuel for your family for 60 days.
- 38 (19) One rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt
39 may not exceed \$1,000.
- 40 (20) Public or private pensions.
- 41 (21) Veterans' benefits and loans.
- 42 (22) Medical assistance benefits.
- 43 (23) Health insurance proceeds and disability proceeds of life insurance policies.
- 44 (24) Cash surrender value of life insurance policies not payable to your estate.
- 45 (25) Federal annuities.

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

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

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

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

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

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

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

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

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

15 (32) Equitable interests in property.

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

18
19
20 SPECIAL RULES APPLY FOR DEBTS THAT ARE OWED FOR CHILD SUPPORT AND
21 SPOUSAL SUPPORT. Some property that may not otherwise be taken for payment against the debt
22 may be taken to pay for overdue support. For instance, Social Security benefits, workers' compen-
23 sation benefits, unemployment benefits, veterans' benefits and pensions are normally exempt, but
24 only 75 percent of a lump sum payment of these benefits is exempt if the debt is owed for a support
25 obligation.

26
27
28 **SECTION 6.** ORS 18.845 is amended to read:

29 18.845. A notice of exemptions form must be in substantially the form set forth in this section.
30 Nothing in the notice form described in this section is intended to expand or restrict the law re-
31 lating to exempt property. A determination as to whether property is exempt from execution, at-
32 tachment and garnishment must be made by reference to other law. The form provided in this
33 section may be modified to provide more information or to update the notice based on subsequent
34 changes in exemption laws.

35
36
37 NOTICE OF EXEMPT PROPERTY
38 AND INSTRUCTIONS FOR
39 CHALLENGE TO GARNISHMENT
40

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

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

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

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

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

6 (b) \$196 per workweek.

7 (2) Social Security benefits.

8 (3) Supplemental Security Income (SSI).

9 (4) Public assistance (welfare).

10 (5) Unemployment benefits.

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

12 (7) Workers' compensation benefits.

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

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

17 (10) A homestead (house, manufactured dwelling or floating home) occupied by you, or occupied
18 by your spouse, parent or child. **Up to \$40,000 of the value of the homestead is exempt. If you**
19 **jointly own the homestead with another person who is also liable on the debt, up to \$50,000**
20 **of the value of the homestead is exempt.** *[The value of the homestead is exempt up to the following*
21 *amounts:]*

22 *[(a) For a manufactured dwelling or floating home located on land that is not owned by you,*
23 *\$20,000. If you jointly own the manufactured dwelling or floating home with another person who is also*
24 *liable on the debt, \$27,000.]*

25 *[(b) For a manufactured dwelling or floating home located on land that is owned by you, \$23,000.*
26 *If you jointly own the manufactured dwelling or floating home with another person who is also liable*
27 *on the debt, \$30,000.]*

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

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

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

35 *(13) An automobile, truck, trailer or other vehicle with a value not to exceed [~~\$2,150~~] **\$3,000.**

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

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

39 *(16) Wearing apparel, jewelry and other personal items with a combined value not to exceed
40 \$1,800.

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

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

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

- 1 (20) Public or private pensions.
- 2 (21) Veterans' benefits and loans.
- 3 (22) Medical assistance benefits.
- 4 (23) Health insurance proceeds and disability proceeds of life insurance policies.
- 5 (24) Cash surrender value of life insurance policies not payable to your estate.
- 6 (25) Federal annuities.
- 7 (26) Other annuities to \$250 per month (excess over \$250 per month is subject to the same ex-
- 8 emption as wages).
- 9 (27) Professionally prescribed health aids for you or any of your dependents.
- 10 *(28) Elderly rental assistance allowed pursuant to ORS 310.635.
- 11 (29) Your right to receive, or property traceable to:
- 12 (a) An award under any crime victim reparation law.
- 13 (b) A payment or payments, not exceeding a total of \$10,000, on account of personal bodily in-
- 14 jury suffered by you or an individual of whom you are a dependent.
- 15 (c) A payment in compensation of loss of future earnings of you or an individual of whom you
- 16 are or were a dependent, to the extent reasonably necessary for your support and the support of
- 17 any of your dependents.
- 18 (30) Amounts paid to you as an earned income tax credit under federal tax law.
- 19 *(31) Interest in personal property to the value of \$400, but this cannot be used to increase the
- 20 amount of any other exemption.
- 21 (32) Equitable interests in property.
- 22 (33) Security deposits or prepaid rent held by a residential landlord under ORS 90.300.
- 23 (34) If the amount shown as owing on the Debt Calculation form exceeds the amount you actu-
- 24 ally owe to the creditor, the difference between the amount owed and the amount shown on the Debt
- 25 Calculation form.

26

27 Note: If two or more people in your household owe the claim or judgment, each of them may

28 claim the exemptions marked by an asterisk (*).

29

30

31 SPECIAL RULES APPLY FOR DEBTS THAT ARE OWED FOR CHILD SUPPORT AND

32 SPOUSAL SUPPORT. Some property that may not otherwise be taken for payment against the debt

33 may be taken to pay for overdue support. For instance, Social Security benefits, workers' compen-

34 sation benefits, unemployment benefits, veterans' benefits and pensions are normally exempt, but

35 only 75 percent of a lump sum payment of these benefits is exempt if the debt is owed for a support

36 obligation.

37

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

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

- 40 (1) Fill out the Challenge to Garnishment form that you received with this notice.
- 41 (2) Mail or deliver the Challenge to Garnishment form to the court administrator at the address
- 42 shown on the writ of garnishment, and mail or deliver a copy of the form to the Garnishor at the
- 43 address shown on the writ of garnishment. If you wish to claim wages or salary as exempt, you must
- 44 mail or deliver the form within 120 days after you receive this notice. If you wish to claim that any
- 45 other money or property is exempt, or claim that the property is not subject to garnishment, you

1 must mail or deliver the form within 30 days after you receive this notice. You have the burden of
2 showing that your challenge is made on time, so you should keep records showing when the chal-
3 lenge was mailed or delivered.

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

7
8 You should be prepared to explain your exemption in court. If you have any questions about the
9 garnishment or the debt, you should see an attorney.

10 YOU MAY USE THE CHALLENGE TO GARNISHMENT FORM ONLY FOR THE FOLLOW-
11 ING PURPOSES:

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

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

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

16
17 YOU MAY NOT USE THE CHALLENGE TO GARNISHMENT FORM TO CHALLENGE THE
18 VALIDITY OF THE DEBT.

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

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

27
28
29 **SECTION 7.** ORS 18.908 is amended to read:

30 18.908. (1) At least 10 days before the hearing on a motion filed under ORS 18.906, the judgment
31 creditor must:

32 (a) Serve the judgment debtor in the manner provided by ORCP 7 with a copy of the motion and
33 the supporting affidavit, and with a notice of the time and place of the hearing; and

34 (b) Send a copy of the motion and the notice by first class mail to the property at the mailing
35 address for the property.

36 (2) The notice required by subsection (1) of this section must be in substantially the following
37 form:

38
39
40 **NOTICE OF HEARING ON SHERIFF’S**
41 **SALE OF YOUR PROPERTY**

42
43 This is to notify you that _____ has asked the court to order the sheriff to sell property lo-
44 cated at _____ to satisfy a judgment against _____.

45 Before deciding whether to order the sale, the court will hold a hearing on _____, 2_____, at

1 _____ a.m./p.m., in Room _____, _____.

2 The law provides that property is your homestead if the property is actually used as a home by
3 you, your spouse, a dependent parent or a dependent child. If you are temporarily absent from the
4 property but intend to move back in, the property is still your homestead.

5 The law provides that if the property is your homestead, then \$_____ of its value [(*\$_____*
6 *for a manufactured dwelling if you do not own the property where the dwelling is located*)] may not
7 be taken to satisfy a judgment against you. In addition, a homestead usually may not be sold to
8 satisfy a judgment for \$3,000 or less.

9 The law provides that property may be sold despite the fact that it is your homestead and all
10 of its value may be taken to satisfy a judgment against you if the judgment is for child support.

11 IF YOU WISH TO PROTECT THIS PROPERTY FROM A SHERIFF’S SALE, YOU SHOULD
12 COME TO THE COURT HEARING.

13 IF YOU HAVE ANY QUESTIONS, YOU SHOULD SEE A LAWYER AT ONCE.

14 If you do not own this property, please give this notice and the papers served with it to the
15 owner.

16 _____
17
18 **SECTION 8.** ORS 18.912 is amended to read:

19 18.912. (1) Whether or not the judgment debtor appears at the hearing, the court shall inquire
20 as to the facts alleged in a motion filed under ORS 18.906 and make a summary determination on
21 the motion.

22 (2) The court shall authorize sale of the property pursuant to a motion filed under ORS 18.906
23 unless the court finds:

24 (a) That the property is the homestead of the judgment debtor;

25 (b) That the judgment is subject to the homestead exemption; and

26 (c) That the amount of the judgment or judgments was \$3,000 or less at the time of entry of the
27 judgment or judgments as described in ORS 18.395 (7) [*and 18.428 (9)*].

28 (3) If the court authorizes the sale of residential property, the order must state whether the
29 homestead exemption applies to the property. If the homestead exemption does apply to the property,
30 the order must state the allowed amount of the exemption.

31 (4) If the court authorizes the sale of residential property, the judgment creditor may recover
32 the costs of service of the motion and notice under ORS 18.908 as part of the costs of the sale.

33 **SECTION 9.** ORS 18.428 is repealed.

34 **SECTION 10.** The amendments to ORS 18.345, 18.395, 18.402, 18.412, 18.845, 18.896, 18.908
35 and 18.912 by sections 1 to 8 of this 2009 Act and the repeal of ORS 18.428 by section 9 of this
36 2009 Act apply only to executions, as defined in ORS 18.005, issued on or after the effective
37 date of this 2009 Act.

38 **SECTION 11.** This 2009 Act being necessary for the immediate preservation of the public
39 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
40 on its passage.