

House Bill 3044

Sponsored by Representative HOLVEY

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 **as introduced**.

Increases homestead exemption from \$30,000 to \$75,000 for individual debtor. Increases homestead exemption from \$39,600 to \$125,000 when two or more members of household with interest in property are debtors.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to homestead exemptions; creating new provisions; amending ORS 18.395, 18.402, 18.412,
3 18.845 and 18.896; and declaring an emergency.

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

5 **SECTION 1.** ORS 18.395 is amended to read:

6 18.395. (1) A homestead shall be exempt from sale on execution, from the lien of every judgment
7 and from liability in any form for the debts of the owner to the amount in value of [~~\$30,000~~
8 **\$75,000**, except as otherwise provided by law. The exemption shall be effective without the necessity
9 of a claim thereof by the judgment debtor. When two or more members of a household are debtors
10 whose interests in the homestead are subject to sale on execution, the lien of a judgment or liability
11 in any form, their combined exemptions under this section shall not exceed [~~\$39,600~~] **\$125,000**. The
12 homestead must be the actual abode of and occupied by the owner, or the owner's spouse, parent
13 or child, but the exemption shall not be impaired by:

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

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

17 (c) The sale of the property.

18 (2) The exemption shall extend to the proceeds derived from such sale to an amount not ex-
19 ceeding [~~\$30,000~~] **\$75,000** or [~~\$39,600~~] **\$125,000**, whichever amount is applicable under subsection (1)
20 of this section, if the proceeds are held for a period not exceeding one year and held with the in-
21 tention to procure another homestead therewith.

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

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

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

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

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

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

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

16 (8) Upon the issuance of an order authorizing sale as required by ORS 18.904, and in conform-
 17 ance with subsection (5) of this section, the sheriff may proceed to sell the property. If the home-
 18 stead exemption applies, the sheriff shall pay the homestead owner out of the proceeds the sum of
 19 ~~[\$30,000]~~ **\$75,000** or ~~[\$39,600]~~ **\$125,000**, whichever is applicable, and apply the balance of the pro-
 20 ceeds on the execution. However, no sale shall be made where the homestead exemption applies
 21 unless the sum bid for the homestead is in excess of the sum of the costs of sale and ~~[\$30,000]~~
 22 **\$75,000** or ~~[\$39,600]~~ **\$125,000**, whichever is applicable. If no such bid is received, the expense of the
 23 sale shall be borne by the petitioner.

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

26 **SECTION 2.** ORS 18.402 is amended to read:

27 18.402. The homestead mentioned in ORS 18.395 shall consist, when not located in any town or
 28 city laid off into blocks and lots, of any quantity of land not exceeding 160 acres, and when located
 29 in any such town or city, of any quantity of land not exceeding one block. However, a homestead
 30 under this section shall not exceed in value the sum of ~~[\$30,000]~~ **\$75,000** or ~~[\$39,600]~~ **\$125,000**,
 31 whichever amount is applicable under ORS 18.395 (1).

32 **SECTION 3.** ORS 18.412 is amended to read:

33 18.412. (1) At any time after the date of execution of an agreement to transfer the ownership
 34 of property in which a homestead exemption exists pursuant to ORS 18.395, the homestead owner
 35 or the owner's transferee may give notice of intent to discharge the property from the judgment lien
 36 to a judgment creditor. Each notice shall bear the caption of the action in which the judgment was
 37 recovered and shall:

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

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

45 (c) State that the property is claimed by the person giving the notice to be wholly exempt from

1 the lien of the judgment or, if the value of the property exceeds the sum of the encumbrances
2 specified as required under paragraph (b) of this subsection that are senior to the judgment lien and
3 [\$30,000] \$75,000 or [\$39,600] \$125,000, whichever amount of the homestead exemption is applicable
4 under ORS 18.395 (1), that the amount of the excess or the amount due on the judgment, whichever
5 is less, will be deposited with the court administrator for the court in which the judgment was en-
6 tered for the use of the judgment holder; and

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

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

17 **SECTION 4.** ORS 18.896 is amended to read:

18 18.896. (1) The challenge to execution form described in this section does not expand or restrict
19 the law relating to exempt property. A determination as to whether property is exempt from at-
20 tachment or execution must be made by reference to other law. The form provided in this section
21 may be modified to provide more information or to update the notice based on subsequent changes
22 in exemption laws.

23 (2) A challenge to execution form must be in substantially the following form:
24

25 _____ COURT
26 COUNTY OF _____
27

28

29 _____)	CHALLENGE TO
30 Plaintiff,)	EXECUTION
31)	
32 vs.)	Case No. _____
33)	
34 _____)	
35 Defendant.)	

36

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

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

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

41
42 THIS FORM MAY BE USED BY PERSONS OTHER THAN THE DEBTOR ONLY TO CLAIM
43 AN INTEREST IN THE PROPERTY THAT IS TO BE SOLD ON EXECUTION.

44
45 THIS FORM MAY NOT BE USED TO CHALLENGE THE VALIDITY OF THE DEBT.

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

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

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

Name _____ Name _____

Signature _____ Signature _____

Address _____ Address _____

Telephone Telephone

Number _____ Number _____

(Required) (Required)

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

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

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

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

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

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

YOU MAY NOT USE THE CHALLENGE TO EXECUTION FORM TO CHALLENGE THE

1 VALIDITY OF THE DEBT.

2
3 IF YOU CLAIM AN EXEMPTION IN BAD FAITH, YOU MAY BE SUBJECT TO PENALTIES
4 IMPOSED BY THE COURT THAT COULD INCLUDE A FINE. Penalties that you could be subject
5 to are listed in ORS 18.899.

6
7 NOTICE OF EXEMPT PROPERTY

8
9 Property belonging to you may have been taken or held in order to satisfy a debt. The debt may
10 be reflected in a judgment or in a warrant or order issued by a state agency. Important legal papers
11 are enclosed.

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

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

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

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

19 (b) \$196 per workweek.

20 (2) Social Security benefits.

21 (3) Supplemental Security Income (SSI).

22 (4) Public assistance (welfare).

23 (5) Unemployment benefits.

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

25 (7) Workers' compensation benefits.

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

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

30 (10) A homestead (house, manufactured dwelling or floating home) occupied by you, or occupied
31 by your spouse, parent or child. The value of the homestead is exempt up to the following amounts:

32 (a) For a manufactured dwelling or floating home located on land that is not owned by you,
33 \$20,000. If you jointly own the manufactured dwelling or floating home with another person who is
34 also liable on the debt, \$27,000.

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

38 (c) For any other homestead, [~~\$30,000~~] **\$75,000**. If you jointly own the homestead with another
39 person who is also liable on the debt, [~~\$39,600~~] **\$125,000**.

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

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

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

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

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

4 *(16) Wearing apparel, jewelry and other personal items with a combined value not to exceed
5 \$1,800.

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

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

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

11 (20) Public or private pensions.

12 (21) Veterans' benefits and loans.

13 (22) Medical assistance benefits.

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

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

16 (25) Federal annuities.

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

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

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

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

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

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

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

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

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

31 (32) Equitable interests in property.

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

34
35
36 SPECIAL RULES APPLY FOR DEBTS THAT ARE OWED FOR CHILD SUPPORT AND
37 SPOUSAL SUPPORT. Some property that may not otherwise be taken for payment against the debt
38 may be taken to pay for overdue support. For instance, Social Security benefits, workers' compen-
39 sation benefits, unemployment benefits, veterans' benefits and pensions are normally exempt, but
40 only 75 percent of a lump sum payment of these benefits is exempt if the debt is owed for a support
41 obligation.

42
43
44 **SECTION 5.** ORS 18.845 is amended to read:

45 18.845. A notice of exemptions form must be in substantially the form set forth in this section.

1 Nothing in the notice form described in this section is intended to expand or restrict the law re-
 2 lating to exempt property. A determination as to whether property is exempt from execution, at-
 3 tachment and garnishment must be made by reference to other law. The form provided in this
 4 section may be modified to provide more information or to update the notice based on subsequent
 5 changes in exemption laws.

7
 8 NOTICE OF EXEMPT PROPERTY
 9 AND INSTRUCTIONS FOR
 10 CHALLENGE TO GARNISHMENT
 11

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

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

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

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

- 21 (a) 75 percent of your take-home wages; or
- 22 (b) \$196 per workweek.
- 23 (2) Social Security benefits.
- 24 (3) Supplemental Security Income (SSI).
- 25 (4) Public assistance (welfare).
- 26 (5) Unemployment benefits.
- 27 (6) Disability benefits (other than SSI benefits).
- 28 (7) Workers' compensation benefits.

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

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

33 (10) A homestead (house, manufactured dwelling or floating home) occupied by you, or occupied
 34 by your spouse, parent or child. The value of the homestead is exempt up to the following amounts:

35 (a) For a manufactured dwelling or floating home located on land that is not owned by you,
 36 \$20,000. If you jointly own the manufactured dwelling or floating home with another person who is
 37 also liable on the debt, \$27,000.

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

41 (c) For any other homestead, [~~\$30,000~~] **\$75,000**. If you jointly own the homestead with another
 42 person who is also liable on the debt, [~~\$39,600~~] **\$125,000**.

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

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

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

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

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

7 *(16) Wearing apparel, jewelry and other personal items with a combined value not to exceed
8 \$1,800.

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

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

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

14 (20) Public or private pensions.

15 (21) Veterans' benefits and loans.

16 (22) Medical assistance benefits.

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

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

19 (25) Federal annuities.

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

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

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

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

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

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

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

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

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

34 (32) Equitable interests in property.

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

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

39
40 Note: If two or more people in your household owe the claim or judgment, each of them may
41 claim the exemptions marked by an asterisk (*).

42
43
44 SPECIAL RULES APPLY FOR DEBTS THAT ARE OWED FOR CHILD SUPPORT AND
45 SPOUSAL SUPPORT. Some property that may not otherwise be taken for payment against the debt

1 may be taken to pay for overdue support. For instance, Social Security benefits, workers' compen-
2 sation benefits, unemployment benefits, veterans' benefits and pensions are normally exempt, but
3 only 75 percent of a lump sum payment of these benefits is exempt if the debt is owed for a support
4 obligation.

5
6 **YOU MUST ACT PROMPTLY IF YOU WANT TO GET YOUR MONEY OR PROPERTY BACK.**

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

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

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

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

20
21 You should be prepared to explain your exemption in court. If you have any questions about the
22 garnishment or the debt, you should see an attorney.

23 **YOU MAY USE THE CHALLENGE TO GARNISHMENT FORM ONLY FOR THE FOLLOW-**
24 **ING PURPOSES:**

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

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

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

29
30 **YOU MAY NOT USE THE CHALLENGE TO GARNISHMENT FORM TO CHALLENGE THE**
31 **VALIDITY OF THE DEBT.**

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

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

40
41
42 **SECTION 6. The amendments to ORS 18.395, 18.402, 18.412, 18.845 and 18.896 by sections**
43 **1 to 5 of this 2009 Act apply only to executions, as defined in ORS 18.005, issued on or after**
44 **the effective date of this 2009 Act.**

45 **SECTION 7. This 2009 Act being necessary for the immediate preservation of the public**

1 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
2 **on its passage.**

3
