

A-Engrossed
Senate Bill 43

Ordered by the Senate March 14
Including Senate Amendments dated March 14

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Attorney General John Kroger for Department of Justice)

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.

[Eliminates] **Limits application of provision establishing** minimum amount obligor must retain as disposable monthly income from amount withheld for payment of arrearage-only support obligation.

Increases amount subject to withholding for payment of support obligation from lump sum payment or benefit.

Requires, under certain circumstances, administrator to lower amount of withholding. Limits authority of administrator to lower amount of withholding to circumstances where withholding is only for arrearage.

A BILL FOR AN ACT

1
2 Relating to limits on collection of support obligations; creating new provisions; and amending ORS
3 18.345, 18.358, 18.845, 18.896, 25.414, 238.445, 656.234 and 657.855.

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

5 **SECTION 1.** ORS 25.414 is amended to read:

6 25.414. (1) The withholder shall withhold from the obligor's disposable monthly income, other
7 than workers' compensation under ORS chapter 656 or unemployment compensation under ORS
8 chapter 657, the amount stated in the order to withhold. The entity issuing the order to withhold
9 shall compute this amount subject to the following:

10 (a) If withholding is for current support only, the amount to be withheld is the amount specified
11 as current support in the support order.

12 (b) If withholding is for current support and there is an arrearage, the amount to be withheld
13 is 120 percent of the amount specified as current support in the support order.

14 (c) If withholding is only for arrearage, the amount to be withheld is one of the following:

15 (A) The amount of the last ordered monthly support.

16 (B) If there is no last ordered monthly support amount, the monthly support amount used to
17 calculate the arrearage amount specified in the order or judgment for arrearage.

18 (C) If there is no last ordered monthly support amount and if there was no monthly support
19 amount, an amount calculated under the formula established under ORS 25.275. For purposes of this
20 subparagraph, this calculation shall be based on the obligor's current monthly gross income or, if
21 the obligor's current monthly gross income is not known, the Oregon hourly minimum wage con-
22 verted to a monthly amount based upon a 40-hour workweek, zero income for the obligee, and one
23 joint child, regardless of how many children the parties may actually have. No rebuttals to this

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 calculation may be allowed.

2 (d) Notwithstanding the amount determined to be withheld under paragraph (c) of this sub-
3 section, the obligor must retain disposable monthly income of at least 160 times the applicable fed-
4 eral minimum hourly wage prescribed by section 6 (a)(1) of the Fair Labor Standards Act of 1938 (29
5 U.S.C. 206) or any future minimum hourly wages prescribed in that section, **if the order to with-**
6 **hold is issued for:**

7 (A) **Disability benefits payments from the United States Social Security Administration;**

8 (B) **Black lung benefits payments from the United States Department of Labor; or**

9 (C) **Disability benefits payments from the United States Department of Veterans**
10 **Affairs.**

11 (2) The amount to be withheld from unemployment compensation under ORS chapter 657 is cal-
12 culated as follows:

13 (a) If withholding is for a current support order, regardless of the existence of arrearage, the
14 amount to be withheld is the lesser of:

15 (A) Twenty-five percent of the benefits paid; or

16 (B) The current monthly support obligation. The entity issuing the order to withhold may con-
17 vert the monthly support obligation amount to a percentage to be withheld from each benefits pay-
18 ment. [*However, the total amount withheld in one month may not exceed 25 percent of the benefits paid*
19 *in that month or the current monthly support obligation, whichever is less.*]

20 (b) If withholding is for arrearage only, the amount to be withheld is the lesser of:

21 (A) Fifteen percent of the benefits paid; or

22 (B) The amount of the last ordered monthly support obligation. The entity issuing the order to
23 withhold may convert the last ordered monthly support obligation amount to a percentage to be
24 withheld from each benefits payment. [*However, the total amount withheld in one month may not ex-*
25 *ceed 15 percent of the benefits paid in that month or the amount of the last ordered monthly support*
26 *obligation, whichever is less.*]

27 (c) The withholder may not charge or collect a processing fee when withholding from unem-
28 ployment compensation.

29 (3) The amount to be withheld from workers' compensation under ORS chapter 656 is set forth
30 in ORS 656.234.

31 (4) Notwithstanding any other provision of this section, when withholding is from a lump sum
32 payment or benefit, including but not limited to retroactive workers' compensation benefits, lump
33 sum retirement plan disbursements or withdrawals, insurance payments or settlements, severance
34 pay, bonus payments or any other similar payments or benefits that are not periodic recurring in-
35 come, the amount subject to withholding for payment of a support obligation may not exceed [*one-*
36 *fourth*] **one-half** of the amount of the lump sum payment or benefit.

37 (5)(a) Notwithstanding any other provision of this section, **when the withholding is only for**
38 **arrearage**, the administrator [*may*] **shall** set a lesser amount to be withheld if the obligor demon-
39 strates the withholding is prejudicial to the obligor's ability to provide for a child the obligor has
40 a duty to support **or the obligor's ability to provide for the obligor's basic needs. The factors**
41 **to be considered by the administrator in determining whether the obligor can provide for the**
42 **obligor's basic needs include but are not limited to:**

43 (A) **The health expenses of the obligor;**

44 (B) **A verified disability affecting the obligor's ability to work;**

45 (C) **Whether the obligor's income remaining after withholding would be less than the**

1 **self-support reserve established by rule of the Department of Justice under paragraph (c) of**
2 **this subsection;**

3 **(D) The available resources of the obligor; and**

4 **(E) The number and basic needs of other persons in the obligor's household.**

5 **(b) The administrator shall establish a procedure to give advance and periodic notice to**
6 **the obligor of the provisions of paragraph (a) of this subsection and of the means to reduce**
7 **the amount stated in the order to withhold.**

8 **(c) The Department of Justice shall adopt rules to implement this subsection.** *[The De-*
9 *partment of Justice shall adopt rules consistent with federal regulations to implement this subsection.]*

10 (6) Except as provided in subsection (2) of this section, the withholder may deduct from the
11 obligor's disposable income a monthly processing fee not to exceed \$5. The processing fee is in ad-
12 dition to the amount calculated to be withheld for support, unless the amount to be withheld for
13 support is the maximum allowed under subsection (8) of this section, in which case the fee is de-
14 ducted from the amount withheld as support.

15 (7) If there are multiple withholding orders against the same obligor, the amount to be withheld
16 is the sum of each support order calculated independently.

17 (8) No withholding as calculated under this section, including the processing fee permitted in
18 subsection (6) of this section, shall exceed 50 percent of the obligor's net disposable income. The
19 limit established in this subsection applies whenever withholding is implemented under this section,
20 whether by a single order or by multiple orders against the same obligor.

21 (9) When the obligor's income is not sufficient for the withholder to fully comply with each
22 withholding order, the withholder shall withhold the maximum amount allowed under this section.
23 If all withholding orders for a particular obligor are payable to or through the department, the
24 withholder shall pay to the department the income withheld and the department shall determine
25 priorities for allocating income withheld to multiple child support cases relative to that obligor. If
26 one or more of the withholding orders for a particular obligor require payment other than to or
27 through the department, the withholder shall use the following to determine priorities for with-
28 holding and allocating income withheld to multiple child support cases:

29 (a) If the amount withheld from the obligor's income is sufficient to pay the current support due
30 to each case but is not enough to fully comply with the withholding order for each case where past
31 due support is owed, the withholder shall:

32 (A) Pay to each case the amount of support due for the current month; and

33 (B) Pay the remainder of the amount withheld in equal amounts to each case where past due
34 support is owed. However, no case shall receive more than the total amount of current support and
35 past due support owed to that case at the time the payment is made.

36 (b) If the amount withheld is not sufficient to pay the current support due to each case, each
37 case shall be paid a proportionate share of the amount withheld. The withholder shall determine this
38 for each case by dividing the monthly amount ordered as current support for that case by the com-
39 bined monthly amount ordered as current support for all cases relative to the same obligor, and
40 multiplying this percentage by the total amount withheld.

41 (10) An order to withhold income is not subject to the limitations of ORS 18.385.

42 (11) A withholder shall withhold funds as directed in the order to withhold, except that when
43 a withholder receives an income-withholding order issued by another state, the withholder shall
44 apply the income-withholding law of the state of the obligor's principal place of employment in de-
45 termining:

1 (a) The withholder's fee for processing an income-withholding order;

2 (b) The maximum amount permitted to be withheld from the obligor's income;

3 (c) The time periods within which the withholder must implement the income-withholding order
4 and forward the child support payment;

5 (d) The priorities for withholding and allocating income withheld for multiple child support
6 obligees; and

7 (e) Any withholding terms or conditions not specified in the order.

8 **SECTION 2.** ORS 656.234 is amended to read:

9 656.234. (1) No moneys payable under this chapter on account of injuries or death are subject
10 to assignment prior to their receipt by the beneficiary entitled thereto, nor shall they pass by op-
11 eration of law. All such moneys and the right to receive them are exempt from seizure on execution,
12 attachment or garnishment, or by the process of any court.

13 (2) Notwithstanding any other provision of this section:

14 (a) Moneys payable under ORS 656.210 and 656.212 are subject to an order to enforce child
15 support obligations, and spousal support when there is a current support obligation for a joint child
16 of the obligated parent and the person to whom spousal support is owed, under ORS 25.378; and

17 (b) Moneys payable under ORS 656.206, 656.214, 656.236 and 656.289 (4) are subject to an order
18 to enforce child support obligations under ORS 25.378.

19 (3) Notwithstanding the provisions of ORS 25.378 and 25.414, the amount of child support obli-
20 gation subject to enforcement may not exceed:

21 (a) One-fourth of moneys paid under ORS 656.210 and 656.212 or the amount of the current
22 support to be paid as continuing support, whichever is less, or, if there is no current support obli-
23 gation and the withholding is for arrearages only, 15 percent of the moneys paid under ORS 656.210
24 and 656.212 or the amount previously paid as current support, whichever is less;

25 (b) [*One-fourth*] **One-half** of moneys paid in a lump sum award under ORS 656.210 and 656.212
26 when the award becomes final by operation of law or waiver of the right to appeal its adequacy;

27 (c) [*One-fourth*] **One-half** of moneys paid under ORS 656.206, 656.214 and 656.236; or

28 (d) [*One-fourth*] **One-half** of the net proceeds paid to the worker in a disputed claim settlement
29 under ORS 656.289 (4).

30 (4) Notwithstanding any other provision of this section, when withholding is only for arrearages
31 assigned to this or another state, the Department of Justice may set a lesser amount to be withheld
32 if the obligor demonstrates the withholding is prejudicial to the obligor's ability to provide for a
33 child the obligor has a duty to support.

34 **SECTION 3.** ORS 657.855 is amended to read:

35 657.855. (1) Except as provided in this section, benefits due under this chapter may not be as-
36 signed, pledged, encumbered, released or commuted and shall, except as otherwise provided in this
37 chapter, be exempt from all claims of creditors and from levy, execution and attachment or remedy
38 for recovery or collection of a debt, which exemption may not be waived. No agreement by an in-
39 dividual to waive the individual's rights under this chapter is valid.

40 (2) The exemption from execution or other process granted under this section applies to only
41 [75] **50** percent of benefits payable under this chapter if the execution or other process is issued for
42 a child support obligation or an order or notice entered pursuant to ORS chapter 25, 107, 108, 109,
43 110, 416, 419B or 419C and the child support obligation or the order or notice is being enforced
44 pursuant to a plan approved under Title IV-D of the Social Security Act.

45 **SECTION 4.** ORS 18.345 is amended to read:

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

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

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

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

10 (d) A vehicle to the value of \$3,000. As used in this paragraph "vehicle" includes an automobile,
11 truck, trailer, truck and trailer or other motor vehicle.

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

14 (f) Household goods, furniture, radios, a television set and utensils all to the total value of
15 \$3,000, if the judgment debtor holds the property primarily for the personal, family or household use
16 of the judgment debtor; provisions actually provided for family use and necessary for the support
17 of a householder and family for 60 days and also 60 days' supply of fuel.

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

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

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

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

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

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

31 (m) Veterans' benefits and loans.

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

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

36 (2) If the property claimed by the judgment debtor as exempt is adjudicated by the court out of
37 which the execution issued to be of a value in excess of that allowed by the appropriate paragraph
38 of subsection (1) of this section, the officer seizing the property shall proceed to sell such property.
39 Out of the proceeds of such sale, the officer shall deduct costs of sale and shall pay to the judgment
40 debtor an amount equivalent to the value declared to be exempt by any of the paragraphs of sub-
41 section (1) of this section and shall apply the balance of the proceeds of sale on the execution. A
42 sale may not be made under such execution unless the highest bid made exceeds the appropriate
43 exemption claimed and allowed plus costs of sale. If no bid is received in excess of the value allowed
44 by the appropriate paragraph of subsection (1) of this section, the costs of sale shall be borne by the
45 judgment creditor.

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

6 (4) Notwithstanding any other provision of law except ORS 657.855, if a writ of garnishment or
7 other execution is issued to collect past due support as defined in ORS 18.600, [75] 50 percent of
8 unemployment compensation benefits, workers' compensation benefits and other benefits paid to the
9 debtor by the United States, by the state or by a political subdivision of the state are exempt. The
10 exemption related to unemployment compensation benefits provided by this subsection is subject to
11 ORS 657.855. The exemption provided by this subsection applies without regard to whether the
12 payment is made on a periodic basis or in a lump sum, including any lump sum payable pursuant to
13 a settlement or judgment. Notwithstanding subsection (1)(k) of this section, if a payment is made
14 under a settlement or judgment on account of personal bodily injury and the garnishment or other
15 execution is issued to collect past due support as defined in ORS 18.600, the lesser of [75] 50 percent
16 of the payment or \$7,500 is exempt.

17 **SECTION 5.** ORS 18.358 is amended to read:

18 18.358. (1) As used in this section:

19 (a) "Beneficiary" means a person for whom retirement plan benefits are provided [and] or their
20 spouse.

21 (b) "Internal Revenue Code" means the federal Internal Revenue Code as amended and in effect
22 on December 31, 1998.

23 (c) "Permitted contribution" means:

24 (A) A contribution that, at the time of the contribution, is not taxable income to the beneficiary
25 and, if the sponsor is a taxable entity, is tax deductible to the sponsor;

26 (B) A nondeductible contribution by a beneficiary to a retirement plan to the extent that the
27 contribution is permitted to be made under the Internal Revenue Code;

28 (C) A deductible or nondeductible contribution to an individual retirement account to the extent
29 the contribution is not subject to federal excise tax as an excess contribution;

30 (D) A contribution, pursuant to a rollover or transfer, from one retirement plan to another, to
31 the extent the federal tax deferred status is preserved at such time;

32 (E) A rollover from an individual retirement account described in section 408 of the Internal
33 Revenue Code to an individual retirement account described in section 408A of the Internal Revenue
34 Code; and

35 (F) Any earnings under a retirement plan which are attributable to a contribution described in
36 subparagraphs (A) to (E) of this paragraph.

37 (d) "Retirement plan" means:

38 (A) A pension plan and trust, including a profit sharing plan, that is described in sections 401(a),
39 401(c), 401(k), 403 and 457 of the Internal Revenue Code, including that portion attributable to con-
40 tributions made by or attributable to a beneficiary;

41 (B) An individual retirement account or annuity, including one that is pursuant to a simplified
42 employee pension, as described in section 408 or 408A of the Internal Revenue Code; and

43 (C) Any pension not described in subparagraphs (A) and (B) of this paragraph granted to any
44 person in recognition or by reason of a period of employment by or service for the Government of
45 the United States or any state or political subdivision of any state, or any municipality, person,

1 partnership, association or corporation.

2 (e) "Sponsor" means an individual or entity which establishes a retirement plan.

3 (2) Subject to the limitations set forth in subsection (3) of this section, a retirement plan shall
4 be conclusively presumed to be a valid spendthrift trust under these statutes and the common law
5 of this state, whether or not the retirement plan is self-settled, and a beneficiary's interest in a re-
6 tirement plan shall be exempt, effective without necessity of claim thereof, from execution and all
7 other process, mesne or final.

8 (3) Notwithstanding subsection (2) of this section:

9 (a) A contribution to a retirement plan, other than a permitted contribution, shall be subject to
10 ORS 95.200 to 95.310 concerning fraudulent transfers; and

11 (b) Unless otherwise ordered by a court under ORS 25.387, 75 percent of a beneficiary's interest
12 in a retirement plan, **or 50 percent of a lump sum retirement plan disbursement or withdrawal,**
13 shall be exempt from execution or other process arising out of a support obligation or an order or
14 notice entered or issued under ORS chapter 25, 107, 108, 109, 110, 416, 419B or 419C.

15 **SECTION 6.** ORS 18.845 is amended to read:

16 18.845. A notice of exemptions form must be in substantially the form set forth in this section.
17 Nothing in the notice form described in this section is intended to expand or restrict the law re-
18 lating to exempt property. A determination as to whether property is exempt from execution, at-
19 tachment and garnishment must be made by reference to other law. The form provided in this
20 section may be modified to provide more information or to update the notice based on subsequent
21 changes in exemption laws.

22
23
24 **NOTICE OF EXEMPT PROPERTY**
25 **AND INSTRUCTIONS FOR**
26 **CHALLENGE TO GARNISHMENT**
27

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

31 **YOU MAY BE ABLE TO GET YOUR PROPERTY BACK, SO READ THIS NOTICE CARE-**
32 **FULLY.**

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

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

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

38 (b) \$196 per workweek.

39 (2) Social Security benefits.

40 (3) Supplemental Security Income (SSI).

41 (4) Public assistance (welfare).

42 (5) Unemployment benefits.

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

44 (7) Workers' compensation benefits.

45 (8) All Social Security benefits and Supplemental Security Income benefits, and up to \$7,500 in

1 exempt wages, retirement benefits, welfare, unemployment benefits and disability benefits, that are
2 held in a bank account. You may attach copies of bank statements to the Challenge to Garnishment
3 form if you claim this exemption.

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

6 (10) A homestead (house, manufactured dwelling or floating home) occupied by you, or occupied
7 by your spouse, parent or child. Up to \$40,000 of the value of the homestead is exempt. If you jointly
8 own the homestead with another person who is also liable on the debt, up to \$50,000 of the value
9 of the homestead is exempt.

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

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

15 *(13) An automobile, truck, trailer or other vehicle with a value not to exceed \$3,000.

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

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

19 *(16) Wearing apparel, jewelry and other personal items with a combined value not to exceed
20 \$1,800.

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

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

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

26 (20) Public or private pensions.

27 (21) Veterans' benefits and loans.

28 (22) Medical assistance benefits.

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

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

31 (25) Federal annuities.

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

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

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

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

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

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

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

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

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

1 (32) Equitable interests in property.

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

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

6
7 Note: If two or more people in your household owe the claim or judgment, each of them may
8 claim the exemptions marked by an asterisk (*).

9
10
11 **SPECIAL RULES APPLY FOR DEBTS THAT ARE OWED FOR CHILD SUPPORT AND**
12 **SPOUSAL SUPPORT.** Some property that may not otherwise be taken for payment against the debt
13 may be taken to pay for overdue support. For instance, Social Security benefits, workers' compen-
14 sation benefits, unemployment benefits, veterans' benefits and pensions are normally exempt, but
15 only [75] **50** percent of a lump sum payment of these benefits is exempt if the debt is owed for a
16 support obligation.

17
18 **YOU MUST ACT PROMPTLY IF YOU WANT TO GET YOUR MONEY OR PROPERTY BACK.**
19 You may seek to reclaim your exempt property by doing the following:

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

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

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

32
33 You should be prepared to explain your exemption in court. If you have any questions about the
34 garnishment or the debt, you should see an attorney.

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

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

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

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

41
42 **YOU MAY NOT USE THE CHALLENGE TO GARNISHMENT FORM TO CHALLENGE THE**
43 **VALIDITY OF THE DEBT.**

44 **IF YOU FILE A CHALLENGE TO A GARNISHMENT IN BAD FAITH, YOU MAY BE SUB-**
45 **JECT TO PENALTIES IMPOSED BY THE COURT THAT COULD INCLUDE A FINE.** Penalties

1 that you could be subject to are listed in ORS 18.715.

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

7 _____
8
9 **SECTION 7.** ORS 18.896 is amended to read:

10 18.896. (1) The challenge to execution form described in this section does not expand or restrict
11 the law relating to exempt property. A determination as to whether property is exempt from at-
12 tachment or execution must be made by reference to other law. The form provided in this section
13 may be modified to provide more information or to update the notice based on subsequent changes
14 in exemption laws.

15 (2) A challenge to execution form must be in substantially the following form:
16 _____

17
18 _____ COURT
19 COUNTY OF _____

20
21 _____) CHALLENGE TO
22 Plaintiff,) EXECUTION
23)
24 vs.) Case No. _____
25)
26 _____)
27 Defendant.)

28
29 THIS FORM MAY BE USED BY THE DEBTOR ONLY FOR THE FOLLOWING PURPOSES:

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

33
34 THIS FORM MAY BE USED BY PERSONS OTHER THAN THE DEBTOR ONLY TO CLAIM
35 AN INTEREST IN THE PROPERTY THAT IS TO BE SOLD ON EXECUTION.

36
37 THIS FORM MAY NOT BE USED TO CHALLENGE THE VALIDITY OF THE DEBT.
38

39 I/We claim that the following described property or money is exempt from execution:
40 _____
41 _____
42 _____

43
44
45 I/We believe this property is exempt from execution because (the Notice of Exempt Property at

1 the end of this form describes most types of property that you can claim as exempt from execution):

2 _____

3 _____

4 _____

5 _____

6 _____

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

8 _____

9 _____

10 _____

11 _____

12 _____

13 Name _____ Name _____

14 Signature _____ Signature _____

15 Address _____ Address _____

16 _____ _____

17 Telephone _____ Telephone _____

18 Number _____ Number _____

19 (Required) (Required)

20 _____

21 _____

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

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

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

25 (2) Mail or deliver the Challenge to Execution form to the court administrator at the address

26 shown on the writ of execution.

27 (3) Mail or deliver a copy of the Challenge to Execution form to the judgment creditor at the

28 address shown on the writ of execution.

29 You should be prepared to explain your exemption in court. If you have any questions about the

30 execution or the debt, you should see an attorney.

31 _____

32 YOU MAY USE THE CHALLENGE TO EXECUTION FORM ONLY FOR THE FOLLOWING

33 PURPOSES:

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

35 (2) To assert that the amount specified in the writ of execution as being subject to execution is

36 greater than the total amount owed.

37 _____

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

39 VALIDITY OF THE DEBT.

40 _____

41 IF YOU CLAIM AN EXEMPTION IN BAD FAITH, YOU MAY BE SUBJECT TO PENALTIES

42 IMPOSED BY THE COURT THAT COULD INCLUDE A FINE. Penalties that you could be subject

43 to are listed in ORS 18.899.

44 _____

45 _____

NOTICE OF EXEMPT PROPERTY

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

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

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

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

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

11 (b) \$196 per workweek.

12 (2) Social Security benefits.

13 (3) Supplemental Security Income (SSI).

14 (4) Public assistance (welfare).

15 (5) Unemployment benefits.

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

17 (7) Workers' compensation benefits.

18 (8) All Social Security benefits and Supplemental Security Income benefits, and up to \$7,500 in
19 exempt wages, retirement benefits, welfare, unemployment benefits and disability benefits, that are
20 held in a bank account.

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

23 (10) A homestead (house, manufactured dwelling or floating home) occupied by you, or occupied
24 by your spouse, parent or child. Up to \$40,000 of the value of the homestead is exempt. If you jointly
25 own the homestead with another person who is also liable on the debt, up to \$50,000 of the value
26 of the homestead is exempt.

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

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

32 *(13) An automobile, truck, trailer or other vehicle with a value not to exceed \$3,000.

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

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

36 *(16) Wearing apparel, jewelry and other personal items with a combined value not to exceed
37 \$1,800.

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

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

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

43 (20) Public or private pensions.

44 (21) Veterans' benefits and loans.

45 (22) Medical assistance benefits.

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

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

3 (25) Federal annuities.

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

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

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

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

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

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

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

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

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

18 (32) Equitable interests in property.

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

21
22
23 SPECIAL RULES APPLY FOR DEBTS THAT ARE OWED FOR CHILD SUPPORT AND
24 SPOUSAL SUPPORT. Some property that may not otherwise be taken for payment against the debt
25 may be taken to pay for overdue support. For instance, Social Security benefits, workers' compen-
26 sation benefits, unemployment benefits, veterans' benefits and pensions are normally exempt, but
27 only [75] 50 percent of a lump sum payment of these benefits is exempt if the debt is owed for a
28 support obligation.

30
31 **SECTION 8.** ORS 238.445 is amended to read:

32 238.445. (1) Except as provided in this section, the right of a person to a pension, an annuity
33 or a retirement allowance, to the return of contribution, the pension, annuity or retirement allow-
34 ance itself, any optional benefit or death benefit, or any other right accrued or accruing to any
35 person under the provisions of this chapter or ORS chapter 238A, and the money in the various
36 funds created by ORS 238.660 and 238.670, shall be exempt from garnishment and all state, county
37 and municipal taxes heretofore or hereafter imposed, except as provided under ORS chapter 118,
38 shall not be subject to execution, garnishment, attachment or any other process or to the operation
39 of any bankruptcy or insolvency law heretofore or hereafter existing or enacted, and shall be un-
40 assignable.

41 (2) Subsection (1) of this section does not apply to state personal income taxation of amounts
42 paid under this chapter and ORS chapter 238A.

43 (3) Unless otherwise ordered by a court under ORS 25.387, the exemption from execution or
44 other process granted under this section applies to [75] 50 percent of amounts paid under this
45 chapter and ORS chapter 238A if the execution or other process is issued for a support obligation

1 or an order or notice entered or issued under ORS chapter 25, 107, 108, 109, 110, 416, 419B or 419C.

2 **SECTION 9. The amendments to ORS 18.345, 18.358, 18.845, 18.896, 25.414, 238.445, 656.234**
3 **and 657.855 by sections 1 to 8 of this 2011 Act apply to actions taken to enforce support ob-**
4 **ligations on or after the effective date of this 2011 Act.**

5
