

Enrolled
Senate Bill 396

Sponsored by Senator SHIELDS (Presession filed.)

CHAPTER

AN ACT

Relating to execution of property; creating new provisions; amending ORS 18.300, 18.345, 18.845 and 18.896; and declaring an emergency.

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

SECTION 1. ORS 18.345 is amended to read:

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

- (a) Books, pictures and musical instruments to the value of \$600.
- (b) Wearing apparel, jewelry and other personal items to the value of \$1,800.
- (c) The tools, implements, apparatus, team, harness or library, necessary to enable the judgment debtor to carry on the trade, occupation or profession by which the judgment debtor habitually earns a living, to the value of \$5,000.
- (d) A vehicle to the value of \$3,000. As used in this paragraph "vehicle" includes an automobile, truck, trailer, truck and trailer or other motor vehicle.
- (e) Domestic animals and poultry kept for family use, to the total value of \$1,000 and food sufficient to support such animals and poultry for 60 days.
- (f) Household goods, furniture, radios, a television set and utensils all to the total value of \$3,000, if the judgment debtor holds the property primarily for the personal, family or household use of the judgment debtor; provisions actually provided for family use and necessary for the support of a householder and family for 60 days and also 60 days' supply of fuel.
- (g) All property of the state or any county or incorporated city therein, or of any other public or municipal corporation of like character.
- (h) All professionally prescribed health aids for the debtor or a dependent of the debtor.
- (i) Spousal support, child support, or separate maintenance to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.
- (j) The debtor's right to receive, or property that is traceable to, an award under any crime victim reparation law.
- (k) The debtor's right to receive, or property that is traceable to, a payment or payments, not to exceed a total of \$10,000, on account of personal bodily injury of the debtor or an individual of whom the debtor is a dependent.
- (L) The debtor's right to receive, or property that is traceable to, a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(m) Veterans' benefits and loans.

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

(o) The debtor's right to the assets held in, or right to receive payments under, a medical savings account or health savings account authorized under section 220 or 223 of the Internal Revenue Code.

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

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

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

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

SECTION 2. ORS 18.845 is amended to read:

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

NOTICE OF EXEMPT PROPERTY
AND INSTRUCTIONS FOR
CHALLENGE TO GARNISHMENT

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

YOU MAY BE ABLE TO GET YOUR PROPERTY BACK, SO READ THIS NOTICE CAREFULLY.

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

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

- (a) 75 percent of your take-home wages; or
- (b) \$218 per workweek.
- (2) Social Security benefits.
- (3) Supplemental Security Income (SSI).
- (4) Public assistance (welfare).
- (5) Unemployment benefits.
- (6) Disability benefits (other than SSI benefits).
- (7) Workers' compensation benefits.

(8) All Social Security benefits and Supplemental Security Income benefits, and up to \$7,500 in exempt wages, retirement benefits, welfare, unemployment benefits and disability benefits, that are held in a bank account. You may attach copies of bank statements to the Challenge to Garnishment form if you claim this exemption.

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

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

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

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

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

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

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

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

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

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

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

(20) Public or private pensions.

(21) Veterans' benefits and loans.

(22) Medical assistance benefits.

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

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

(25) Federal annuities.

(26) Other annuities to \$250 per month (excess over \$250 per month is subject to the same exemption as wages).

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

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

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

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

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

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

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

(31) Your right to the assets held in, or right to receive payments under, a medical savings account or health savings account authorized under section 220 or 223 of the Internal Revenue Code.

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

[(32)] **(33)** Equitable interests in property.

[(33)] **(34)** Security deposits or prepaid rent held by a residential landlord under ORS 90.300.

[(34)] **(35)** If the amount shown as owing on the Debt Calculation form exceeds the amount you actually owe to the creditor, the difference between the amount owed and the amount shown on the Debt Calculation form.

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

SPECIAL RULES APPLY FOR DEBTS THAT ARE OWED FOR CHILD SUPPORT AND SPOUSAL SUPPORT. Some property that may not otherwise be taken for payment against the debt may be taken to pay for overdue support. For instance, Social Security benefits, workers' compensation benefits, unemployment benefits, veterans' benefits and pensions are normally exempt, but only 50 percent of a lump sum payment of these benefits is exempt if the debt is owed for a support obligation.

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 Garnishment form that you received with this notice.

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

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

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

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

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

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

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

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

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

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

SECTION 3. ORS 18.896 is amended to read:

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

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

_____ COURT
COUNTY OF _____

Plaintiff,) CHALLENGE TO
) EXECUTION
) vs.) Case No. _____

Defendant.)

THIS FORM MAY BE USED BY THE DEBTOR 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.

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

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 VALIDITY OF THE DEBT.

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

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- (3) Supplemental Security Income (SSI).
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- (6) Disability benefits (other than SSI benefits).
- (7) Workers' compensation benefits.
- (8) All Social Security benefits and Supplemental Security Income benefits, and up to \$7,500 in exempt wages, retirement benefits, welfare, unemployment benefits and disability benefits, that are held in a bank account.
- (9) Spousal support, child support or separate maintenance to the extent reasonably necessary for your support or the support of any of your dependents.
- (10) A homestead (house, manufactured dwelling or floating home) occupied by you, or occupied by your spouse, parent or child. Up to \$40,000 of the value of the homestead is exempt. If you jointly own the homestead with another person who is also liable on the debt, up to \$50,000 of the value of the homestead is exempt.
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- (24) Cash surrender value of life insurance policies not payable to your estate.
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- (26) Other annuities to \$250 per month (excess over \$250 per month is subject to the same exemption as wages).
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- *(29) Your right to receive, or property traceable to:
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[32] (33) Equitable interests in property.

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SECTION 4. ORS 18.300 is amended to read:

18.300. *[In accordance with section 522(b) of the Bankruptcy Code of 1978 (11 U.S.C. 522(b)), residents of this state shall not be entitled to the federal exemptions provided in section 522(d) of the Bankruptcy Code of 1978 (11 U.S.C. 522(d)). Nothing in this section shall affect the exemptions given to residents of this state by the Constitution of the State of Oregon and the Oregon Revised Statutes.]*

(1) **For purposes of a bankruptcy petition, a resident of this state may use the federal exemptions provided in section 522(d) of the Bankruptcy Code of 1978 (11 U.S.C. 522(d)) or the exemptions given to residents of this state under state law, but may not use both.**

(2)(a) **If a resident of this state uses any of the federal exemptions provided in section 522(d) of the Bankruptcy Code of 1978 (11 U.S.C. 522(d)) for purposes of a bankruptcy petition, the resident may not use any of the exemptions given to residents of this state under state law.**

(b) **If a resident of this state uses any of the exemptions given to residents of this state under state law for purposes of a bankruptcy petition, the resident may not use any of the federal exemptions provided in section 522(d) of the Bankruptcy Code of 1978 (11 U.S.C. 522(d)).**

(3) **This section does not apply to executions.**

SECTION 5. (1) **The amendments to ORS 18.345, 18.845 and 18.896 by sections 1 to 3 of this 2013 Act apply only to executions as defined in ORS 18.005 issued on or after the effective date of this 2013 Act.**

(2) **The amendments to ORS 18.300 by section 4 of this 2013 Act apply only to bankruptcy petitions first filed on or after the effective date of this 2013 Act.**

SECTION 6. **This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.**

Passed by Senate April 18, 2013

Repassed by Senate June 25, 2013

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 14, 2013

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Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2013

Approved:

.....M,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

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Kate Brown, Secretary of State