

Senate Bill 396

Sponsored by Senator SHIELDS (Presession filed.)

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**.

Exempts from execution debtor's right to assets held in, or right to receive payments under, medical savings account or health savings account.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to execution of property; creating new provisions; amending ORS 18.345, 18.845 and 18.896;
3 and declaring an emergency.

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

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

6 18.345. (1) All property, including franchises, or rights or interest therein, of the judgment
7 debtor, shall be liable to an execution, except as provided in this section and in other statutes
8 granting exemptions from execution. The following property, or rights or interest therein of the
9 judgment debtor, except as provided in ORS 18.305, shall be exempt from execution:

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

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

12 (c) The tools, implements, apparatus, team, harness or library, necessary to enable the judgment
13 debtor to carry on the trade, occupation or profession by which the judgment debtor habitually
14 earns a living, to the value of \$5,000.

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

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

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

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

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

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

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

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

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 whom the debtor is a dependent.

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

5 (m) Veterans' benefits and loans.

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

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

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

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

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

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

39 **SECTION 2.** ORS 18.845 is amended to read:

40 18.845. A notice of exemptions form must be in substantially the form set forth in this section.
41 Nothing in the notice form described in this section is intended to expand or restrict the law re-
42 lating to exempt property. A determination as to whether property is exempt from execution, at-
43 tachment and garnishment must be made by reference to other law. The form provided in this
44 section may be modified to provide more information or to update the notice based on subsequent
45 changes in exemption laws.

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3 NOTICE OF EXEMPT PROPERTY
4 AND INSTRUCTIONS FOR
5 CHALLENGE TO GARNISHMENT
6

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

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

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

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

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

17 (b) \$218 per workweek.

18 (2) Social Security benefits.

19 (3) Supplemental Security Income (SSI).

20 (4) Public assistance (welfare).

21 (5) Unemployment benefits.

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

23 (7) Workers' compensation benefits.

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

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. Up to \$40,000 of the value of the homestead is exempt. If you jointly
32 own the homestead with another person who is also liable on the debt, up to \$50,000 of the value
33 of the homestead is exempt.

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

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

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

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

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

43 *(16) Wearing apparel, jewelry and other personal items with a combined value not to exceed
44 \$1,800.

45 (17) Domestic animals and poultry for family use with a combined value not to exceed \$1,000

1 and their food for 60 days.

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

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

5 (20) Public or private pensions.

6 (21) Veterans' benefits and loans.

7 (22) Medical assistance benefits.

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

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

10 (25) Federal annuities.

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

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

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

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

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

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

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

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

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

26 *[(31)] (32) Interest in personal property to the value of \$400, but this cannot be used to increase
27 the amount of any other exemption.

28 [(32)] (33) Equitable interests in property.

29 [(33)] (34) Security deposits or prepaid rent held by a residential landlord under ORS 90.300.

30 [(34)] (35) If the amount shown as owing on the Debt Calculation form exceeds the amount you
31 actually owe to the creditor, the difference between the amount owed and the amount shown on the
32 Debt Calculation form.

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

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

44
45 YOU MUST ACT PROMPTLY IF YOU WANT TO GET YOUR MONEY OR PROPERTY BACK.

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

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

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

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

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

17 YOU MAY USE THE CHALLENGE TO GARNISHMENT FORM ONLY FOR THE FOLLOW-
18 ING PURPOSES:

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

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

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

23
24 YOU MAY NOT USE THE CHALLENGE TO GARNISHMENT FORM TO CHALLENGE THE
25 VALIDITY OF THE DEBT.

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

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

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36 **SECTION 3.** ORS 18.896 is amended to read:

37 18.896. (1) The challenge to execution form described in this section does not expand or restrict
38 the law relating to exempt property. A determination as to whether property is exempt from at-
39 tachment or execution must be made by reference to other law. The form provided in this section
40 may be modified to provide more information or to update the notice based on subsequent changes
41 in exemption laws.

42 (2) A challenge to execution form must be in substantially the following form:
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45 _____ COURT

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COUNTY OF _____

_____) CHALLENGE TO
Plaintiff,) 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 _____

1 (Required) (Required)

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

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

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

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

13
14 YOU MAY USE THE CHALLENGE TO EXECUTION FORM ONLY FOR THE FOLLOWING
15 PURPOSES:

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

19
20 YOU MAY NOT USE THE CHALLENGE TO EXECUTION FORM TO CHALLENGE THE
21 VALIDITY OF THE DEBT.

22
23 IF YOU CLAIM AN EXEMPTION IN BAD FAITH, YOU MAY BE SUBJECT TO PENALTIES
24 IMPOSED BY THE COURT THAT COULD INCLUDE A FINE. Penalties that you could be subject
25 to are listed in ORS 18.899.

26
27 NOTICE OF EXEMPT PROPERTY

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

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

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

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- 37 amounts is greater:
 - 38 (a) 75 percent of your take-home wages; or
 - 39 (b) \$218 per workweek.
- 40 (2) Social Security benefits.
- 41 (3) Supplemental Security Income (SSI).
- 42 (4) Public assistance (welfare).
- 43 (5) Unemployment benefits.
- 44 (6) Disability benefits (other than SSI benefits).
- 45 (7) Workers' compensation benefits.

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

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 \$5,000.

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) Your right to the assets held in, or right to receive payments under, a medical**
 45 **savings account or health savings account authorized under section 220 or 223 of the Internal**

1 **Revenue Code.**

2 [(31)] **(32)** Interest in personal property to the value of \$400, but this cannot be used to increase
3 the amount of any other exemption.

4 [(32)] **(33)** Equitable interests in property.

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

7 _____
8

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

15 _____
16

17 **SECTION 4. The amendments to ORS 18.345, 18.845 and 18.896 by sections 1 to 3 of this**
18 **2013 Act apply only to executions as defined in ORS 18.005 issued on or after the effective**
19 **date of this 2013 Act.**

20 **SECTION 5. This 2013 Act being necessary for the immediate preservation of the public**
21 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
22 **on its passage.**

23 _____