

D R A F T

SUMMARY

Increases amount of value of homesteads exempt from sale on execution, judgment lien or liability for debts of owner.

A BILL FOR AN ACT

Relating to the homestead exemption; creating new provisions; and amending ORS 18.395, 18.402, 18.412, 18.845 and 18.896.

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

SECTION 1. ORS 18.395 is amended to read:

18.395. (1) A homestead shall be exempt from sale on execution, from the lien of every judgment and from liability in any form for the debts of the owner to the amount in value of [~~\$40,000~~] \$____, except as otherwise provided by law. The exemption shall be effective without the necessity of a claim thereof by the judgment debtor. When two or more members of a household are debtors whose interests in the homestead are subject to sale on execution, the lien of a judgment or liability in any form, their combined exemptions under this section shall not exceed [~~\$50,000~~] \$____. The homestead must be the actual abode of and occupied by the owner, or the owner's spouse, parent or child, but the exemption shall not be impaired by:

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

(b) Removal or absence from the property; or

(c) The sale of the property.

(2) The exemption shall extend to the proceeds derived from such sale to an amount not exceeding [~~\$40,000 or \$50,000~~] \$____ or \$____, whichever

1 amount is applicable under subsection (1) of this section, if the proceeds are
2 held for a period not exceeding one year and held with the intention to
3 procure another homestead therewith.

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

6 (4) When the owner of a homestead has been granted a discharge in
7 bankruptcy or has conveyed the homestead property, the value thereof, for
8 the purpose of determining a leviable interest in excess of the homestead
9 exemption, shall be the value on the date of the petition in bankruptcy,
10 whether the value is determined in the bankruptcy proceedings or not, or on
11 the date the conveyance becomes effective, whichever shall first occur.
12 However, with respect to judgments not discharged in the bankruptcy, or
13 entered against the owner after discharge, the value on the effective date of
14 conveyance shall be controlling.

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

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

23 (b) At any time after the property is no longer the actual abode of and
24 occupied by the judgment debtor or the spouse, dependent parent or depend-
25 ent child of the judgment debtor.

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

29 (7) The limitation on execution sales imposed by subsection (5) of this
30 section does not apply if two or more judgments are owing to a single judg-
31 ment creditor and the total amount owing to the judgment creditor, deter-

1 mined by adding the amount of each individual judgment as of the date the
2 judgment was entered, is greater than \$3,000.

3 (8) Upon the issuance of an order authorizing sale as required by ORS
4 18.904, and in conformance with subsection (5) of this section, the sheriff
5 may proceed to sell the property. If the homestead exemption applies, the
6 sheriff shall pay the homestead owner out of the proceeds the sum of [\$40,000
7 or \$50,000] \$____ or \$____, whichever is applicable, and apply the balance
8 of the proceeds on the execution. However, no sale shall be made where the
9 homestead exemption applies unless the sum bid for the homestead is in ex-
10 cess of the sum of the costs of sale and [\$40,000 or \$50,000] \$____ or
11 \$____, whichever is applicable. If no such bid is received, the expense of the
12 sale shall be borne by the petitioner.

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

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

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

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

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

19 18.402. The homestead mentioned in ORS 18.395 shall consist, when not
20 located in any town or city laid off into blocks and lots, of any quantity of
21 land not exceeding 160 acres, and when located in any such town or city, of
22 any quantity of land not exceeding one block. However, a homestead under
23 this section shall not exceed in value the sum of [\$40,000 or \$50,000] \$____
24 or \$____, whichever amount is applicable under ORS 18.395 (1).

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

26 18.412. (1) At any time after the date of execution of an agreement to
27 transfer the ownership of property in which a homestead exemption exists
28 pursuant to ORS 18.395, the homestead owner or the owner's transferee may
29 give notice of intent to discharge the property from the judgment lien to a
30 judgment creditor. Each notice shall bear the caption of the action in which
31 the judgment was recovered and shall:

1 (a) Identify the property and the judgment and state that the judgment
2 debtor is about to transfer, or has transferred, the property and that the
3 transfer is intended to discharge the property from any lien effect of the
4 judgment;

5 (b) State the fair market value of the property on the date of the notice
6 or of any applicable petition in bankruptcy, whichever is applicable, and list
7 the encumbrances against the property, including the nature and date of each
8 encumbrance, the name of the encumbrancer and the amount presently se-
9 cured by each encumbrance;

10 (c) State that the property is claimed by the person giving the notice to
11 be wholly exempt from the lien of the judgment or, if the value of the prop-
12 erty exceeds the sum of the encumbrances specified as required under para-
13 graph (b) of this subsection that are senior to the judgment lien and [*\$40,000*
14 *or \$50,000*] \$____ or \$____, whichever amount of the homestead exemption
15 is applicable under ORS 18.395 (1), that the amount of the excess or the
16 amount due on the judgment, whichever is less, will be deposited with the
17 court administrator for the court in which the judgment was entered for the
18 use of the judgment holder; and

19 (d) Advise the holder of the judgment that the property may be discharged
20 from any lien arising from the judgment, without further notice to the
21 judgment creditor, unless prior to a specified date, which in no case may be
22 earlier than 14 days after the date of mailing of the notice, the judgment
23 creditor files objections and a request for a hearing on the matter as pro-
24 vided in ORS 18.415.

25 (2) Each notice described by subsection (1) of this section shall be sent
26 by certified mail to the judgment creditor, as shown by the court records,
27 at the judgment creditor's present or last-known address according to the
28 best knowledge of the person sending the notice. A copy of each notice, to-
29 gether with proof of mailing, may be filed with the court administrator for
30 the court in which the judgment was entered and shall be filed by the court
31 administrator with the records and files of the action in which the judgment

1 was recovered.

2 **SECTION 4.** ORS 18.845 is amended to read:

3 18.845. A notice of exemptions form must be in substantially the form set
4 forth in this section. Nothing in the notice form described in this section is
5 intended to expand or restrict the law relating to exempt property. A deter-
6 mination as to whether property is exempt from execution, attachment and
7 garnishment must be made by reference to other law. The form provided in
8 this section may be modified to provide more information or to update the
9 notice based on subsequent changes in exemption laws.

10
11 **NOTICE OF EXEMPT PROPERTY**
12 **AND INSTRUCTIONS FOR**
13 **CHALLENGE TO GARNISHMENT**
14

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

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

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

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

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

25 (b) \$218 per workweek.

26 (2) Social Security benefits.

27 (3) Supplemental Security Income (SSI).

28 (4) Public assistance (welfare).

29 (5) Unemployment benefits.

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

31 (7) Workers' compensation benefits.

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

6 (9) Spousal support, child support or separate maintenance to the extent
7 reasonably necessary for your support or the support of any of your depen-
8 dents.

9 (10) A homestead (house, manufactured dwelling or floating home) occu-
10 pied by you, or occupied by your spouse, parent or child. Up to [~~\$40,000~~]
11 \$_____ of the value of the homestead is exempt. If you jointly own the
12 homestead with another person who is also liable on the debt, up to
13 [~~\$50,000~~] \$_____ of the value of the homestead is exempt.

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

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

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

21 *(14) Tools, implements, apparatus, team, harness or library that are
22 necessary to carry on your occupation, with a combined value not to exceed
23 \$5,000.

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

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

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

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

31 (19) One rifle or shotgun and one pistol. The combined value of all

1 firearms claimed as exempt may not exceed \$1,000.

2 (20) Public or private pensions.

3 (21) Veterans' benefits and loans.

4 (22) Medical assistance benefits.

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

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

9 (25) Federal annuities.

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

12 (27) Professionally prescribed health aids for you or any of your depen-
13 dents.

14 *(28) Rental assistance to an elderly person allowed pursuant to ORS
15 458.375.

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

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

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

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

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

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

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

31 (33) Equitable interests in property.

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

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

6

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

9

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

17

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

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

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

1 when the challenge was mailed or delivered.

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

6

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

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

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

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

13 (3) To assert that the amount specified in the writ of garnishment as be-
14 ing subject to garnishment is greater than the total amount owed.

15

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

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

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

28

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

30 18.896. (1) The challenge to execution form described in this section does
31 not expand or restrict the law relating to exempt property. A determination

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

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

7 _____

8 _____ COURT

9 COUNTY OF _____

10

11 _____) CHALLENGE TO

12 Plaintiff,) EXECUTION

13)

14 vs.) Case No. _____

15)

16 _____)

17 Defendant.)

18

19 THIS FORM MAY BE USED BY THE DEBTOR ONLY FOR THE FOL-
20 LOWING PURPOSES:

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

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

24

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

28

29 THIS FORM MAY NOT BE USED TO CHALLENGE THE VALIDITY
30 OF THE DEBT.

31

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

3 _____
4 _____

5

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

9 _____
10 _____

11

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

14 _____
15 _____

16

17 Name _____ Name _____

18 Signature _____ Signature _____

19 Address _____ Address _____

20 _____

21 Telephone Telephone

22 Number _____ Number _____

23 (Required) (Required)

24

25

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

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

31 (2) Mail or deliver the Challenge to Execution form to the court admin-

1 istrator at the address shown on the writ of execution.

2 (3) Mail or deliver a copy of the Challenge to Execution form to the
3 judgment creditor at the address shown on the writ of execution.

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

6

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

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

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

12

13 **YOU MAY NOT USE THE CHALLENGE TO EXECUTION FORM TO**
14 **CHALLENGE THE VALIDITY OF THE DEBT.**

15

16 **IF YOU CLAIM AN EXEMPTION IN BAD FAITH, YOU MAY BE**
17 **SUBJECT TO PENALTIES IMPOSED BY THE COURT THAT COULD IN-**
18 **CLUDE A FINE. Penalties that you could be subject to are listed in ORS**
19 **18.899.**

20

21 **NOTICE OF EXEMPT PROPERTY**

22

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

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

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

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

- 1 (a) 75 percent of your take-home wages; or
- 2 (b) \$218 per workweek.
- 3 (2) Social Security benefits.
- 4 (3) Supplemental Security Income (SSI).
- 5 (4) Public assistance (welfare).
- 6 (5) Unemployment benefits.
- 7 (6) Disability benefits (other than SSI benefits).
- 8 (7) Workers' compensation benefits.
- 9 (8) All Social Security benefits and Supplemental Security Income bene-
10 fits, and up to \$7,500 in exempt wages, retirement benefits, welfare, unem-
11 ployment benefits and disability benefits, that are held in a bank account.
- 12 (9) Spousal support, child support or separate maintenance to the extent
13 reasonably necessary for your support or the support of any of your depen-
14 dents.
- 15 (10) A homestead (house, manufactured dwelling or floating home) occu-
16 pied by you, or occupied by your spouse, parent or child. Up to [~~\$40,000~~]
17 \$_____ of the value of the homestead is exempt. If you jointly own the
18 homestead with another person who is also liable on the debt, up to
19 [~~\$50,000~~] \$_____ of the value of the homestead is exempt.
- 20 (11) Proceeds from the sale of a homestead described in item 10, up to the
21 limits described in item 10, if you hold the proceeds for less than one year
22 and intend to use those proceeds to procure another homestead.
- 23 (12) Household goods, furniture, radios, a television set and utensils with
24 a combined value not to exceed \$3,000.
- 25 *(13) An automobile, truck, trailer or other vehicle with a value not to
26 exceed \$3,000.
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28 necessary to carry on your occupation, with a combined value not to exceed
29 \$5,000.
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31 to exceed \$600.

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2 value not to exceed \$1,800.

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4 not to exceed \$1,000 and their food for 60 days.

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

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

8 (20) Public or private pensions.

9 (21) Veterans' benefits and loans.

10 (22) Medical assistance benefits.

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

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

15 (25) Federal annuities.

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

18 (27) Professionally prescribed health aids for you or any of your depen-
19 dents.

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21 458.375.

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25 of personal bodily injury suffered by you or an individual of whom you are
26 a dependent.

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

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

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

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

6 (33) Equitable interests in property.

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

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

17

18 **SECTION 6. The amendments to ORS 18.395, 18.402, 18.412, 18.845**
19 **and 18.896 by sections 1 to 5 of this 2019 Act apply only to executions,**
20 **as defined in ORS 18.005, issued on or after the effective date of this**
21 **2019 Act.**

22