

House Bill 3271

Sponsored by Representative MEEK; Representatives GORSEK, HERNANDEZ, POWER, Senator MANNING JR

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

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

A BILL FOR AN ACT

1
2 Relating to the homestead exemption; creating new provisions; and amending ORS 18.395, 18.402,
3 18.412, 18.845 and 18.896.

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

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

6 18.395. (1) A homestead shall be exempt from sale on execution, from the lien of every judgment
7 and from liability in any form for the debts of the owner to the amount in value of [*\$40,000*]
8 **\$90,000**, except as otherwise provided by law. The exemption shall be effective without the necessity
9 of a claim thereof by the judgment debtor. When two or more members of a household are debtors
10 whose interests in the homestead are subject to sale on execution, the lien of a judgment or liability
11 in any form, their combined exemptions under this section shall not exceed [*\$50,000*] **\$120,000**. The
12 homestead must be the actual abode of and occupied by the owner, or the owner's spouse, parent
13 or child, but the exemption shall not be impaired by:

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

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

17 (c) The sale of the property.

18 (2) The exemption shall extend to the proceeds derived from such sale to an amount not ex-
19 ceeding [*\$40,000 or \$50,000*] **\$90,000 or \$120,000**, whichever amount is applicable under subsection
20 (1) of this section, if the proceeds are held for a period not exceeding one year and held with the
21 intention to procure another homestead therewith.

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

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

31 (5) Except as provided in subsection (7) of this section, no homestead that is the actual abode

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 of and occupied by the judgment debtor, or that is the actual abode of and occupied by a spouse,
 2 dependent parent or dependent child of the judgment debtor, shall be sold on execution to satisfy a
 3 judgment that at the time of entry does not exceed \$3,000. However, such judgment shall remain a
 4 lien upon the real property, and the property may be sold on execution:

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

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

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

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

15 (8) Upon the issuance of an order authorizing sale as required by ORS 18.904, and in conform-
 16 ance with subsection (5) of this section, the sheriff may proceed to sell the property. If the home-
 17 stead exemption applies, the sheriff shall pay the homestead owner out of the proceeds the sum of
 18 *[\$40,000 or \$50,000]* **\$90,000 or \$120,000**, whichever is applicable, and apply the balance of the pro-
 19 ceeds on the execution. However, no sale shall be made where the homestead exemption applies
 20 unless the sum bid for the homestead is in excess of the sum of the costs of sale and *[\$40,000 or*
 21 *\$50,000]* **\$90,000 or \$120,000**, whichever is applicable. If no such bid is received, the expense of the
 22 sale shall be borne by the petitioner.

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

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

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

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

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

29 18.402. The homestead mentioned in ORS 18.395 shall consist, when not located in any town or
 30 city laid off into blocks and lots, of any quantity of land not exceeding 160 acres, and when located
 31 in any such town or city, of any quantity of land not exceeding one block. However, a homestead
 32 under this section shall not exceed in value the sum of *[\$40,000 or \$50,000]* **\$90,000 or \$120,000**,
 33 whichever amount is applicable under ORS 18.395 (1).

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

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

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

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

1 presently secured by each encumbrance;

2 (c) State that the property is claimed by the person giving the notice to be wholly exempt from
3 the lien of the judgment or, if the value of the property exceeds the sum of the encumbrances
4 specified as required under paragraph (b) of this subsection that are senior to the judgment lien and
5 [~~\$40,000 or \$50,000~~] **\$90,000 or \$120,000**, whichever amount of the homestead exemption is applicable
6 under ORS 18.395 (1), that the amount of the excess or the amount due on the judgment, whichever
7 is less, will be deposited with the court administrator for the court in which the judgment was en-
8 tered for the use of the judgment holder; and

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

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

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

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

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27
28 **NOTICE OF EXEMPT PROPERTY**
29 **AND INSTRUCTIONS FOR**
30 **CHALLENGE TO GARNISHMENT**
31

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

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

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

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

- 41 (a) 75 percent of your take-home wages; or
- 42 (b) \$218 per workweek.
- 43 (2) Social Security benefits.
- 44 (3) Supplemental Security Income (SSI).
- 45 (4) Public assistance (welfare).

- 1 (5) Unemployment benefits.
- 2 (6) Disability benefits (other than SSI benefits).
- 3 (7) Workers' compensation benefits.
- 4 (8) All Social Security benefits and Supplemental Security Income benefits, and up to \$7,500 in
5 exempt wages, retirement benefits, welfare, unemployment benefits and disability benefits, that are
6 held in a bank account. You may attach copies of bank statements to the Challenge to Garnishment
7 form if you claim this exemption.
- 8 (9) Spousal support, child support or separate maintenance to the extent reasonably necessary
9 for your support or the support of any of your dependents.
- 10 (10) A homestead (house, manufactured dwelling or floating home) occupied by you, or occupied
11 by your spouse, parent or child. Up to [\$40,000] **\$90,000** of the value of the homestead is exempt. If
12 you jointly own the homestead with another person who is also liable on the debt, up to [\$50,000]
13 **\$120,000** of the value of the homestead is exempt.
- 14 (11) Proceeds from the sale of a homestead described in item 10, up to the limits described in
15 item 10, if you hold the proceeds for less than one year and intend to use those proceeds to procure
16 another homestead.
- 17 (12) Household goods, furniture, radios, a television set and utensils with a combined value not
18 to exceed \$3,000.
- 19 *(13) An automobile, truck, trailer or other vehicle with a value not to exceed \$3,000.
- 20 *(14) Tools, implements, apparatus, team, harness or library that are necessary to carry on your
21 occupation, with a combined value not to exceed \$5,000.
- 22 *(15) Books, pictures and musical instruments with a combined value not to exceed \$600.
- 23 *(16) Wearing apparel, jewelry and other personal items with a combined value not to exceed
24 \$1,800.
- 25 (17) Domestic animals and poultry for family use with a combined value not to exceed \$1,000
26 and their food for 60 days.
- 27 (18) Provisions and fuel for your family for 60 days.
- 28 (19) One rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt
29 may not exceed \$1,000.
- 30 (20) Public or private pensions.
- 31 (21) Veterans' benefits and loans.
- 32 (22) Medical assistance benefits.
- 33 (23) Health insurance proceeds and disability proceeds of life insurance policies.
- 34 (24) Cash surrender value of life insurance policies not payable to your estate.
- 35 (25) Federal annuities.
- 36 (26) Other annuities to \$250 per month (excess over \$250 per month is subject to the same ex-
37 emption as wages).
- 38 (27) Professionally prescribed health aids for you or any of your dependents.
- 39 *(28) Rental assistance to an elderly person allowed pursuant to ORS 458.375.
- 40 (29) Your right to receive, or property traceable to:
 - 41 (a) An award under any crime victim reparation law.
 - 42 (b) A payment or payments, not exceeding a total of \$10,000, on account of personal bodily in-
43 jury suffered by you or an individual of whom you are a dependent.
 - 44 (c) A payment in compensation of loss of future earnings of you or an individual of whom you
45 are or were a dependent, to the extent reasonably necessary for your support and the support of

1 any of your dependents.

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

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

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

7 (33) Equitable interests in property.

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

9 (35) If the amount shown as owing on the Debt Calculation form exceeds the amount you actu-
10 ally owe to the creditor, the difference between the amount owed and the amount shown on the Debt
11 Calculation form.

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

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

23
24 YOU MUST ACT PROMPTLY IF YOU WANT TO GET YOUR MONEY OR PROPERTY BACK.
25 You may seek to reclaim your exempt property by doing the following:

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

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

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

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

41 YOU MAY USE THE CHALLENGE TO GARNISHMENT FORM ONLY FOR THE FOLLOW-
42 ING PURPOSES:

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

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

45 (3) To assert that the amount specified in the writ of garnishment as being subject to

1 garnishment is greater than the total amount owed.

2
3 YOU MAY NOT USE THE CHALLENGE TO GARNISHMENT FORM TO CHALLENGE THE
4 VALIDITY OF THE DEBT.

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

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

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

16 18.896. (1) The challenge to execution form described in this section does not expand or restrict
17 the law relating to exempt property. A determination as to whether property is exempt from at-
18 tachment or execution must be made by reference to other law. The form provided in this section
19 may be modified to provide more information or to update the notice based on subsequent changes
20 in exemption laws.

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

23
24 _____ COURT
25 COUNTY OF _____

26
27 _____) CHALLENGE TO
28 Plaintiff,) EXECUTION
29)
30 vs.) Case No. _____
31)
32 _____)
33 Defendant.)

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

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

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

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43 THIS FORM MAY NOT BE USED TO CHALLENGE THE VALIDITY OF THE DEBT.
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45 I/We claim that the following described property or money is exempt from execution:

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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.

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

4
5 NOTICE OF EXEMPT PROPERTY
6

7 Property belonging to you may have been taken or held in order to satisfy a debt. The debt may
8 be 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.

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15 amounts is greater:

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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.

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

29 (10) A homestead (house, manufactured dwelling or floating home) occupied by you, or occupied
30 by your spouse, parent or child. Up to [~~\$40,000~~] **\$90,000** of the value of the homestead is exempt. If
31 you jointly own the homestead with another person who is also liable on the debt, up to [~~\$50,000~~]
32 **\$120,000** of the value of the homestead is exempt.

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

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

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

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

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

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

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

- 1 (18) Provisions and fuel for your family for 60 days.
- 2 (19) One rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt
- 3 may not exceed \$1,000.
- 4 (20) Public or private pensions.
- 5 (21) Veterans' benefits and loans.
- 6 (22) Medical assistance benefits.
- 7 (23) Health insurance proceeds and disability proceeds of life insurance policies.
- 8 (24) Cash surrender value of life insurance policies not payable to your estate.
- 9 (25) Federal annuities.
- 10 (26) Other annuities to \$250 per month (excess over \$250 per month is subject to the same ex-
- 11 emption as wages).
- 12 (27) Professionally prescribed health aids for you or any of your dependents.
- 13 *(28) Rental assistance to an elderly person allowed pursuant to ORS 458.375.
- 14 *(29) Your right to receive, or property traceable to:
- 15 *(a) An award under any crime victim reparation law.
- 16 *(b) A payment or payments, not exceeding a total of \$10,000, on account of personal bodily in-
- 17 jury suffered by you or an individual of whom you are a dependent.
- 18 *(c) A payment in compensation of loss of future earnings of you or an individual of whom you
- 19 are or were a dependent, to the extent reasonably necessary for your support and the support of
- 20 any of your dependents.
- 21 (30) Amounts paid to you as an earned income tax credit under federal tax law.
- 22 (31) Your right to the assets held in, or right to receive payments under, a medical savings ac-
- 23 count or health savings account authorized under section 220 or 223 of the Internal Revenue Code.
- 24 (32) Interest in personal property to the value of \$400, but this cannot be used to increase the
- 25 amount of any other exemption.
- 26 (33) Equitable interests in property.
- 27 Note: If two or more people in your household owe the claim or judgment, each of them may
- 28 claim the exemptions marked by an asterisk (*).

29 _____

30

31 SPECIAL RULES APPLY FOR DEBTS THAT ARE OWED FOR CHILD SUPPORT AND

32 SPOUSAL SUPPORT. Some property that may not otherwise be taken for payment against the debt

33 may be taken to pay for overdue support. For instance, Social Security benefits, workers' compen-

34 sation benefits, unemployment benefits, veterans' benefits and pensions are normally exempt, but

35 only 50 percent of a lump sum payment of these benefits is exempt if the debt is owed for a support

36 obligation.

37 _____

38

39 **SECTION 6. The amendments to ORS 18.395, 18.402, 18.412, 18.845 and 18.896 by sections**

40 **1 to 5 of this 2019 Act apply only to executions, as defined in ORS 18.005, issued on or after**

41 **the effective date of this 2019 Act.**

42 _____