

A-Engrossed
Senate Bill 519

Ordered by the Senate March 15
Including Senate Amendments dated March 15

Sponsored by Senator JOHNSON (at the request of John Harper) (Pre-session 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.

Increases minimum wage exemption for purposes of garnishment and execution.
[Declares emergency, effective on passage.]

A BILL FOR AN ACT

Relating to wage exemption; amending ORS 18.385, 18.840, 18.845 and 18.896.

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

SECTION 1. ORS 18.385 is amended to read:

18.385. (1) Except as provided in this section, 75 percent of the disposable earnings of an individual are exempt from execution.

(2) The disposable earnings of an individual are exempt from execution to the extent that payment under a garnishment would result in net disposable earnings for an individual of less than the following amounts:

(a) [~~\$218~~] **\$254** for any period of one week or less;

(b) [~~\$435~~] **\$509** for any two-week period;

(c) [~~\$468~~] **\$545** for any half-month period;

(d) [~~\$936~~] **\$1,090** for any one-month period; and

(e) For any other period longer than one week, [~~\$218~~] **\$254** multiplied by that fraction produced by dividing the number of days for which the earnings are paid by seven. The amount calculated under this paragraph must be rounded to the nearest dollar.

(3) If an individual is paid for a period shorter than one week, the exemption calculated under subsection (2) of this section may not exceed [~~\$218~~] **\$254** for any one-week period.

(4) An employer shall deduct from the amount of disposable earnings determined to be nonexempt under subsections (1) to (3) of this section any amounts withheld from the individual's earnings for the same period of time under an order issued pursuant to ORS 25.378, 419B.408 or 419C.600 or ORS chapter 110. The employer shall make payment under a garnishment only of those amounts remaining after the deduction is made.

(5) Subsections (1) to (4) of this section do not apply to:

(a) Any order of a court of bankruptcy.

(b) Any debt due for federal tax.

(6) Subsections (2) to (4) of this section do not apply to any debt due for state tax. Subsection (1) of this section does not apply to a debt due for state tax if a state agency issues a special notice

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 garnishment under ORS 18.855 (6).

2 (7) A court may not make, execute or enforce any order or process in violation of this section.

3 (8) Any waiver by an individual of the provisions of this section is void.

4 (9) An employer may not discharge any individual because the individual has had earnings
5 garnished.

6 **SECTION 2.** ORS 18.840 is amended to read:

7 18.840. A wage exemption calculation form must be delivered to the garnishee with each writ
8 of garnishment. A wage exemption calculation form must be in substantially the following form:

9 _____

10

11

WAGE EXEMPTION CALCULATION

12

(to be filled out by employers only)

13

14

1. Debtor's gross wages

15

for period covered by this

16

payment..... \$ _____

17

2. Total amount required to be

18

withheld by law for amount in Line 1

19

(Federal and state

20

withholding, Social

21

Security, etc.)..... \$ _____

22

3. Debtor's disposable wages

23

(Subtract Line 2

24

from Line 1)..... \$ _____

25

4. Normal exemption

26

(Enter 75 percent

27

of Line 3)..... \$ _____

28

5. Minimum exemption (check one)

29

— [\$218] **\$254** (payment of wages weekly)

30

— [\$435] **\$509** (payment of wages every

31

two weeks)

32

— [\$468] **\$545** (payment of wages half-monthly)

33

— [\$936] **\$1,090** (payment of wages monthly)

34

— \$_____ (Any other period longer

35

than one week, including partial

36

payments for less than full pay

37

period) (Multiply [\$218] **\$254** by number

38

of weeks or fraction of a week)

39

6. Wages exempt from garnishment

40

(Line 4 or 5,

41

whichever is greater)..... \$ _____

42

7. Nonexempt wages

43

(Subtract Line 6

44

from Line 3)..... \$ _____

45

8. Amount withheld for this pay period

1 minimum exemption is [~~\$467~~] **\$544** (~~[\$218]~~ **\$254** × 2.143 rounded to the nearest dollar).

2

3 The amount of time actually worked by the Debtor during the period covered by the paycheck
4 does not affect the calculation of the minimum exemption.

5

6 Example 3: You pay Debtor A on a weekly basis. Debtor A works two days per week. The
7 minimum exemption is [~~\$218~~] **\$254** for each weekly payment you make for Debtor A.

8

9 If the payment you are making is based on a period of time less than one week, the minimum
10 wage exemption may not exceed [~~\$218~~] **\$254** for any one-week period.

11

12 If you receive more than one writ of garnishment. If you receive more than one writ of
13 garnishment for the same debtor, the writs have priority based on the date on which you receive
14 them. If the full amount of wages subject to garnishment for a given pay period is paid on the first
15 writ, you should not make any payment on subsequently received writs until the first writ expires.
16 In some cases, it may be necessary to make payments on two or more writs for the same pay period.

17

18 Example 4. You have received two writs of garnishment for Debtor A. You pay Debtor A
19 on a monthly basis. The first writ expires on October 16. The second writ will not expire
20 until November 15. You will need to prepare two wage exemption calculation forms for
21 Debtor A's October wages and make payments under both writs. The wage exemption cal-
22 culation form for the first writ will be for the wages attributable to October 1 to October
23 15 as described in Example 2. The wage exemption calculation form for the second writ will
24 be for all wages for the month of October, but the amounts withheld under the first writ
25 must be subtracted on Line 8 to determine the October wages subject to garnishment under
26 the second writ.

27

28

29 **SECTION 3.** ORS 18.845 is amended to read:

30 18.845. A notice of exemptions form must be in substantially the form set forth in this section.
31 Nothing in the notice form described in this section is intended to expand or restrict the law re-
32 lating to exempt property. A determination as to whether property is exempt from execution, at-
33 tachment and garnishment must be made by reference to other law. The form provided in this
34 section may be modified to provide more information or to update the notice based on subsequent
35 changes in exemption laws.

36

37

38

39

40

41

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

45 YOU MAY BE ABLE TO GET YOUR PROPERTY BACK, SO READ THIS NOTICE CARE-

1 FULLY.

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

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

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

7 (b) [~~\$218~~] **\$254** per workweek.

8 (2) Social Security benefits.

9 (3) Supplemental Security Income (SSI).

10 (4) Public assistance (welfare).

11 (5) Unemployment benefits.

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

13 (7) Workers' compensation benefits.

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

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

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

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

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

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

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

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

33 *(16) Wearing apparel, jewelry and other personal items with a combined value not to exceed
34 \$1,800.

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

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

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

40 (20) Public or private pensions.

41 (21) Veterans' benefits and loans.

42 (22) Medical assistance benefits.

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

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

45 (25) Federal annuities.

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

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

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

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

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

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

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

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

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

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

17 (33) Equitable interests in property.

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

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

22
23 Note: If two or more people in your household owe the claim or judgment, each of them may
24 claim the exemptions marked by an asterisk (*).

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

33
34 **YOU MUST ACT PROMPTLY IF YOU WANT TO GET YOUR MONEY OR PROPERTY BACK.**
35 You may seek to reclaim your exempt property by doing the following:

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

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

45 (3) The law only requires that the Garnishor hold the garnished money or property for 10 days

1 before applying it to the Creditor's use. You may be able to keep the property from being used by
2 the Creditor by promptly following (1) and (2) above.

3
4 You should be prepared to explain your exemption in court. If you have any questions about the
5 garnishment or the debt, you should see an attorney.

6 YOU MAY USE THE CHALLENGE TO GARNISHMENT FORM ONLY FOR THE FOLLOW-
7 ING PURPOSES:

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

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

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

12
13 YOU MAY NOT USE THE CHALLENGE TO GARNISHMENT FORM TO CHALLENGE THE
14 VALIDITY OF THE DEBT.

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

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

23
24
25 **SECTION 4.** ORS 18.896 is amended to read:

26 18.896. (1) The challenge to execution form described in this section does not expand or restrict
27 the law relating to exempt property. A determination as to whether property is exempt from at-
28 tachment or execution must be made by reference to other law. The form provided in this section
29 may be modified to provide more information or to update the notice based on subsequent changes
30 in exemption laws.

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

32
33
34 _____ COURT
35 COUNTY OF _____
36
37 _____) CHALLENGE TO
38 Plaintiff,) EXECUTION
39)
40 vs.) Case No. _____
41)
42 _____)
43 Defendant.)
44

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

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

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

4
5 THIS FORM MAY BE USED BY PERSONS OTHER THAN THE DEBTOR ONLY TO CLAIM
6 AN INTEREST IN THE PROPERTY THAT IS TO BE SOLD ON EXECUTION.

7
8 THIS FORM MAY NOT BE USED TO CHALLENGE THE VALIDITY OF THE DEBT.

9
10 I/We claim that the following described property or money is exempt from execution:

11 _____
12
13 _____

14
15
16 I/We believe this property is exempt from execution because (the Notice of Exempt Property at
17 the end of this form describes most types of property that you can claim as exempt from execution):

18 _____
19
20 _____

21
22
23 I am a person other than the Debtor and I have the following interest in the property:

24 _____
25
26 _____

27
28
29 Name _____ Name _____
30 Signature _____ Signature _____
31 Address _____ Address _____
32 _____
33 Telephone Telephone
34 Number _____ Number _____
35 (Required) (Required)

36
37
38 **YOU MUST ACT PROMPTLY IF YOU WANT TO GET YOUR MONEY OR PROPERTY BACK.**

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

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

41 (2) Mail or deliver the Challenge to Execution form to the court administrator at the address
42 shown on the writ of execution.

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

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

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

2
3 YOU MAY USE THE CHALLENGE TO EXECUTION FORM ONLY FOR THE FOLLOWING
4 PURPOSES:

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

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

8
9 YOU MAY NOT USE THE CHALLENGE TO EXECUTION FORM TO CHALLENGE THE
10 VALIDITY OF THE DEBT.

11
12 IF YOU CLAIM AN EXEMPTION IN BAD FAITH, YOU MAY BE SUBJECT TO PENALTIES
13 IMPOSED BY THE COURT THAT COULD INCLUDE A FINE. Penalties that you could be subject
14 to are listed in ORS 18.899.

15
16 NOTICE OF EXEMPT PROPERTY

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

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

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

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

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

28 (b) [~~\$218~~] **\$254** per workweek.

29 (2) Social Security benefits.

30 (3) Supplemental Security Income (SSI).

31 (4) Public assistance (welfare).

32 (5) Unemployment benefits.

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

34 (7) Workers' compensation benefits.

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

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

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

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

1 another homestead.

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

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

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

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

8 *(16) Wearing apparel, jewelry and other personal items with a combined value not to exceed
9 \$1,800.

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

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

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

15 (20) Public or private pensions.

16 (21) Veterans' benefits and loans.

17 (22) Medical assistance benefits.

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

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

20 (25) Federal annuities.

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

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

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

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

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

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

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

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

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

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

37 (33) Equitable interests in property.

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

41
42 SPECIAL RULES APPLY FOR DEBTS THAT ARE OWED FOR CHILD SUPPORT AND
43 SPOUSAL SUPPORT. Some property that may not otherwise be taken for payment against the debt
44 may be taken to pay for overdue support. For instance, Social Security benefits, workers' compen-
45 sation benefits, unemployment benefits, veterans' benefits and pensions are normally exempt, but

1 only 50 percent of a lump sum payment of these benefits is exempt if the debt is owed for a support
2 obligation.

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4

5