

Senate Bill 6

Sponsored by Senators COURTNEY, FAGAN (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 **as introduced**.

Increases minimum wage exemption for purposes of garnishment and execution.

A BILL FOR AN ACT

1
2 Relating to wage exemption; creating new provisions; and amending ORS 18.385, 18.840, 18.845 and
3 18.896.

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

5 **SECTION 1.** ORS 18.385 is amended to read:

6 18.385. (1) Except as provided in this section, 75 percent of the disposable earnings of an indi-
7 vidual are exempt from execution.

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

11 (a) [~~\$218~~] **\$550** for any period of one week or less;

12 (b) [~~\$435~~] **\$1,097** for any two-week period;

13 (c) [~~\$468~~] **\$1,181** for any half-month period;

14 (d) [~~\$936~~] **\$2,361** for any one-month period; and

15 (e) For any other period longer than one week, [~~\$218~~] **\$550** multiplied by that fraction produced
16 by dividing the number of days for which the earnings are paid by seven. The amount calculated
17 under this paragraph must be rounded to the nearest dollar.

18 (3) If an individual is paid for a period shorter than one week, the exemption calculated under
19 subsection (2) of this section may not exceed [~~\$218~~] **\$550** for any one-week period.

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

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

26 (a) Any order of a court of bankruptcy.

27 (b) Any debt due for federal tax.

28 (6) Subsections (2) to (4) of this section do not apply to any debt due for state tax. Subsection
29 (1) of this section does not apply to a debt due for state tax if a state agency issues a special notice
30 of garnishment under ORS 18.855 (6).

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

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

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

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

4 18.840. A wage exemption calculation form must be delivered to the garnishee with each writ
5 of garnishment. A wage exemption calculation form must be in substantially the following form:
6

7
8 **WAGE EXEMPTION CALCULATION**
9 (to be filled out by employers only)

- 10
- 11 1. Debtor's gross wages
- 12 for period covered by this
- 13 payment..... \$ _____
- 14 2. Total amount required to be
- 15 withheld by law for amount in Line 1
- 16 (Federal and state
- 17 withholding, Social
- 18 Security, etc.)..... \$ _____
- 19 3. Debtor's disposable wages
- 20 (Subtract Line 2
- 21 from Line 1)..... \$ _____
- 22 4. Normal exemption
- 23 (Enter 75 percent
- 24 of Line 3)..... \$ _____
- 25 5. Minimum exemption (check one)
- 26 — [\$218] **\$550** (payment of wages weekly)
- 27 — [\$435] **\$1,097** (payment of wages every
- 28 two weeks)
- 29 — [\$468] **\$1,181** (payment of wages half-monthly)
- 30 — [\$936] **\$2,361** (payment of wages monthly)
- 31 — \$_____ (Any other period longer
- 32 than one week, including partial
- 33 payments for less than full pay
- 34 period) (Multiply [\$218] **\$550** by number
- 35 of weeks or fraction of a week)
- 36 6. Wages exempt from garnishment
- 37 (Line 4 or 5,
- 38 whichever is greater)..... \$ _____
- 39 7. Nonexempt wages
- 40 (Subtract Line 6
- 41 from Line 3)..... \$ _____
- 42 8. Amount withheld for this pay period
- 43 pursuant to a support order under
- 44 support withholding process or under
- 45 another writ with priority..... \$ _____

1 9. Wages subject to garnishment
2 (Subtract Line 8
3 from Line 7) \$ _____
4

5 INSTRUCTIONS FOR WAGE
6 EXEMPTION CALCULATION FORM
7

8 If you employ the Debtor named in the writ of garnishment, you must fill out and return this
9 Wage Exemption Calculation form. A Wage Exemption Calculation form must be sent with the first
10 payment you make under the writ. For the 90-day period during which the writ is effective, you must
11 also fill out and return a Wage Exemption Calculation form with a subsequent payment any time the
12 initial calculation changes. Finally, you must fill out and return a Wage Exemption Calculation form
13 with the final payment that you make under the writ.
14

15 Normal wage exemption. The wage exemption calculation is based on the amount of the payment
16 you make under the writ of garnishment. The normal wage exemption in Line 4 is 75 percent of the
17 employee’s disposable wages in Line 3.
18

19 Minimum wage exemption. The minimum exemption in Line 5 is also based on the amount of the
20 payment you are making. The minimum exemption is designed to ensure that an employee receives
21 at least a certain minimum amount in any one-week period. If the payment is for a one-week period
22 (without regard to whether the period is a calendar week or any other seven-day period), the mini-
23 mum exemption is [~~\$218~~] **\$550**. The minimum exemption is [~~\$435~~] **\$1,097** if the payment is for a two-
24 week period. If the payment is for one-half of one month (i.e., the Debtor is paid twice each month),
25 the minimum exemption is [~~\$468~~] **\$1,181**. The minimum exemption for a monthly payment is [~~\$936~~]
26 **\$2,361**.

27 If the payment you are making is based on some period of time other than one week, two weeks,
28 half month or month, and the payment is for more than one week, you must calculate the minimum
29 exemption by multiplying [~~\$218~~] **\$550** by the number of weeks covered by the paycheck, including
30 any fraction of a week. You should round the amount calculated to the nearest dollar.
31

32 Example 1: You pay Debtor A every 10 days. Each 10-day period is equal to 1.429 weeks (10
33 divided by 7). The minimum exemption is [~~\$312~~] **\$786** ([~~\$218~~] **\$550** × 1.429 rounded to the
34 nearest dollar).
35

36 You must use this same calculation for computing the minimum exemption when making a pay-
37 ment for less than a full pay period (e.g., for the final payment at the end of the 90-day period cov-
38 ered by the writ).
39

40 Example 2: You pay Debtor A on a monthly basis. You are required to make a final payment
41 under a writ of garnishment for the wages owing to Debtor A for the period beginning Oc-
42 tober 1 and ending October 15. This period is equal to 2.143 weeks (15 divided by 7). The
43 minimum exemption is [~~\$467~~] **\$1,179** ([~~\$218~~] **\$550** × 2.143 rounded to the nearest dollar).
44

45 The amount of time actually worked by the Debtor during the period covered by the paycheck

1 does not affect the calculation of the minimum exemption.

2
 3 Example 3: You pay Debtor A on a weekly basis. Debtor A works two days per week. The
 4 minimum exemption is [§218] **\$550** for each weekly payment you make for Debtor A.

5
 6 If the payment you are making is based on a period of time less than one week, the minimum
 7 wage exemption may not exceed [§218] **\$550** for any one-week period.

8
 9 If you receive more than one writ of garnishment. If you receive more than one writ of
 10 garnishment for the same debtor, the writs have priority based on the date on which you receive
 11 them. If the full amount of wages subject to garnishment for a given pay period is paid on the first
 12 writ, you should not make any payment on subsequently received writs until the first writ expires.
 13 In some cases, it may be necessary to make payments on two or more writs for the same pay period.

14
 15 Example 4. You have received two writs of garnishment for Debtor A. You pay Debtor A
 16 on a monthly basis. The first writ expires on October 16. The second writ will not expire
 17 until November 15. You will need to prepare two wage exemption calculation forms for
 18 Debtor A's October wages and make payments under both writs. The wage exemption cal-
 19 culation form for the first writ will be for the wages attributable to October 1 to October
 20 15 as described in Example 2. The wage exemption calculation form for the second writ will
 21 be for all wages for the month of October, but the amounts withheld under the first writ
 22 must be subtracted on Line 8 to determine the October wages subject to garnishment under
 23 the second writ.

24
 25
 26 **SECTION 3.** ORS 18.845 is amended to read:

27 18.845. A notice of exemptions form must be in substantially the form set forth in this section.
 28 Nothing in the notice form described in this section is intended to expand or restrict the law re-
 29 lating to exempt property. A determination as to whether property is exempt from execution, at-
 30 tachment and garnishment must be made by reference to other law. The form provided in this
 31 section may be modified to provide more information or to update the notice based on subsequent
 32 changes in exemption laws.

33
 34
 35 NOTICE OF EXEMPT PROPERTY
 36 AND INSTRUCTIONS FOR
 37 CHALLENGE TO GARNISHMENT
 38

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

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

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

- 1 (1) Wages or a salary as described in ORS 18.375 and 18.385. Whichever of the following
 2 amounts is greater:
- 3 (a) 75 percent of your take-home wages; or
 4 (b) [~~\$218~~] **\$550** per workweek.
- 5 (2) Social Security benefits.
 6 (3) Supplemental Security Income (SSI).
 7 (4) Public assistance (welfare).
 8 (5) Unemployment benefits.
 9 (6) Disability benefits (other than SSI benefits).
 10 (7) Workers' compensation benefits.
- 11 (8) All Social Security benefits and Supplemental Security Income benefits, and up to \$7,500 in
 12 exempt wages, retirement benefits, welfare, unemployment benefits and disability benefits, that are
 13 held in a bank account. You may attach copies of bank statements to the Challenge to Garnishment
 14 form if you claim this exemption.
- 15 (9) Spousal support, child support or separate maintenance to the extent reasonably necessary
 16 for your support or the support of any of your dependents.
- 17 (10) A homestead (house, manufactured dwelling or floating home) occupied by you, or occupied
 18 by your spouse, parent or child. Up to \$40,000 of the value of the homestead is exempt. If you jointly
 19 own the homestead with another person who is also liable on the debt, up to \$50,000 of the value
 20 of the homestead is exempt.
- 21 (11) Proceeds from the sale of a homestead described in item 10, up to the limits described in
 22 item 10, if you hold the proceeds for less than one year and intend to use those proceeds to procure
 23 another homestead.
- 24 (12) Household goods, furniture, radios, a television set and utensils with a combined value not
 25 to exceed \$3,000.
- 26 *(13) An automobile, truck, trailer or other vehicle with a value not to exceed \$3,000.
 27 *(14) Tools, implements, apparatus, team, harness or library that are necessary to carry on your
 28 occupation, with a combined value not to exceed \$5,000.
 29 *(15) Books, pictures and musical instruments with a combined value not to exceed \$600.
 30 *(16) Wearing apparel, jewelry and other personal items with a combined value not to exceed
 31 \$1,800.
- 32 (17) Domestic animals and poultry for family use with a combined value not to exceed \$1,000
 33 and their food for 60 days.
- 34 (18) Provisions and fuel for your family for 60 days.
- 35 (19) One rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt
 36 may not exceed \$1,000.
- 37 (20) Public or private pensions.
 38 (21) Veterans' benefits and loans.
 39 (22) Medical assistance benefits.
 40 (23) Health insurance proceeds and disability proceeds of life insurance policies.
 41 (24) Cash surrender value of life insurance policies not payable to your estate.
 42 (25) Federal annuities.
 43 (26) Other annuities to \$250 per month (excess over \$250 per month is subject to the same ex-
 44 emption as wages).
 45 (27) Professionally prescribed health aids for you or any of your dependents.

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

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

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

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

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

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

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

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

9 (33) Equitable interests in property.

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

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

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

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

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31 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:

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

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

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

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

3 YOU MAY USE THE CHALLENGE TO GARNISHMENT FORM ONLY FOR THE FOLLOW-
4 ING PURPOSES:

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

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

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

9
10 YOU MAY NOT USE THE CHALLENGE TO GARNISHMENT FORM TO CHALLENGE THE
11 VALIDITY OF THE DEBT.

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

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

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21
22 **SECTION 4.** ORS 18.896 is amended to read:

23 18.896. (1) The challenge to execution form described in this section does not expand or restrict
24 the law relating to exempt property. A determination as to whether property is exempt from at-
25 tachment or execution must be made by reference to other law. The form provided in this section
26 may be modified to provide more information or to update the notice based on subsequent changes
27 in exemption laws.

28 (2) A challenge to execution form must be in substantially the following form:
29

30
31 _____ COURT
32 COUNTY OF _____
33
34 _____) CHALLENGE TO
35 Plaintiff,) EXECUTION
36)
37 vs.) Case No. _____
38)
39 _____)
40 Defendant.)

41
42 THIS FORM MAY BE USED BY THE DEBTOR ONLY FOR THE FOLLOWING PURPOSES:

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

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

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

3
4 THIS FORM MAY NOT BE USED TO CHALLENGE THE VALIDITY OF THE DEBT.

5
6 I/We claim that the following described property or money is exempt from execution:
7 _____
8 _____
9 _____

10
11
12 I/We believe this property is exempt from execution because (the Notice of Exempt Property at
13 the end of this form describes most types of property that you can claim as exempt from execution):
14 _____
15 _____
16 _____

17
18
19 I am a person other than the Debtor and I have the following interest in the property:
20 _____
21 _____
22 _____

23
24
25 Name _____ Name _____
26 Signature _____ Signature _____
27 Address _____ Address _____
28 _____
29 Telephone Telephone
30 Number _____ Number _____
31 (Required) (Required)
32
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 Execution form that you received with this notice.
37 (2) Mail or deliver the Challenge to Execution form to the court administrator at the address
38 shown on the writ of execution.
39 (3) Mail or deliver a copy of the Challenge to Execution form to the judgment creditor at the
40 address shown on the writ of execution.

41 You should be prepared to explain your exemption in court. If you have any questions about the
42 execution or the debt, you should see an attorney.
43

44 **YOU MAY USE THE CHALLENGE TO EXECUTION FORM ONLY FOR THE FOLLOWING**
45 **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 YOU MAY NOT USE THE CHALLENGE TO EXECUTION FORM TO CHALLENGE THE
6 VALIDITY OF THE DEBT.

7
8 IF YOU CLAIM AN EXEMPTION IN BAD FAITH, YOU MAY BE SUBJECT TO PENALTIES
9 IMPOSED BY THE COURT THAT COULD INCLUDE A FINE. Penalties that you could be subject
10 to are listed in ORS 18.899.

11
12 NOTICE OF EXEMPT PROPERTY

13
14 Property belonging to you may have been taken or held in order to satisfy a debt. The debt may
15 be reflected in a judgment or in a warrant or order issued by a state agency. Important legal papers
16 are enclosed.

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

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

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

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

24 (b) [~~\$218~~] **\$550** per workweek.

25 (2) Social Security benefits.

26 (3) Supplemental Security Income (SSI).

27 (4) Public assistance (welfare).

28 (5) Unemployment benefits.

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

30 (7) Workers' compensation benefits.

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

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

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

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

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

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

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

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

4 *(16) Wearing apparel, jewelry and other personal items with a combined value not to exceed
 5 \$1,800.

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

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

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

11 (20) Public or private pensions.

12 (21) Veterans' benefits and loans.

13 (22) Medical assistance benefits.

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

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

16 (25) Federal annuities.

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

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

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

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

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

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

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

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

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

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

33 (33) Equitable interests in property.

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 (*).

37
 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.

1 **SECTION 5.** The amendments to ORS 18.385, 18.840, 18.845 and 18.896 by sections 1 to 4
2 of this 2019 Act apply to garnishments issued on or after the effective date of this 2019 Act.
3 _____