

HOUSE AMENDMENTS TO HOUSE BILL 2359

By COMMITTEE ON JUDICIARY

May 10

1 On page 1 of the printed bill, line 3, after “18.428,” insert “18.468,” and after “18.505,” insert
2 “18.512, 18.845, 19.270,”.

3 In line 4, after “125.090” insert “, 156.220”.

4 In line 9, after “requirements” insert “are the only requirements” and after “chapter” insert
5 “that”.

6 On page 5, line 11, delete “as”.

7 In line 12, delete “a condition of creating a judgment lien”.

8 In line 15, delete “as a condition of creating a judgment lien”.

9 In lines 19 and 20, restore the bracketed material and delete the boldfaced material.

10 In line 23, after the period delete the rest of the line and delete lines 24 through 30 and insert:

11 “(1) Except as provided in this section, the judgment document in a criminal action that contains
12 a money award, whether by reason of a fine, restitution, forfeiture of security under ORS 135.280,
13 a fee, an assessment, costs and disbursements or any other monetary obligation, must contain a
14 separate section clearly labeled as a money award.”

15 On page 6, after line 9, insert:

16 “(4) If a judgment is for conviction of a violation as described in ORS 153.008, the judgment
17 creates a lien only if the court so orders. If a judgment does not create a lien under this subsection,
18 the judgment document need not contain the separate money award section described by subsection
19 (1) of this section.”

20 In line 10, delete “(4)” and insert “(5)”.

21 On page 9, line 13, after “18.042” insert “(1)” and after “18.048” insert “(1)”.

22 In line 19, delete “(1)” and insert “(4)”.

23 On page 11, line 25, delete the second “the” and insert “a conveyance to a grantee”.

24 In line 26, delete “grantee’s title”.

25 On page 14, after line 23, insert:

26 “**SECTION 24a.** ORS 18.468 is amended to read:

27 “18.468. (1) The court administrator shall issue writs of execution. The writ must be directed to
28 the sheriff and must contain the name of the court, the names of the parties to the action, and the
29 title of the action. **The writ must contain the name and address of the person requesting is-**
30 **suance of the writ.** The writ must describe the judgment and, if the writ of execution is issued for
31 application of property of the judgment debtor against a money award, the writ must state the
32 amount due on the money award when the writ is issued.

33 “(2) If the judgment requires that specific real or personal property of the judgment debtor be
34 sold, the writ must particularly describe the property and direct the sheriff to sell the specified
35 property and apply the proceeds as directed by the judgment.

1 “(3) If the judgment requires the delivery of the possession of real or personal property, the writ
2 must direct the sheriff to deliver the possession of the property. The writ must particularly describe
3 the property and specify the party to whom the property is to be delivered.

4 “(4) If the judgment does not require that specific real or personal property of the judgment
5 debtor be sold or delivered, the writ may direct the sheriff to sell the real or personal property
6 specified by the judgment creditor in instructions given to the sheriff. The judgment creditor must
7 provide the sheriff with instructions that particularly describe the personal property to be seized
8 and indicate where the property may be found. The judgment creditor must provide the sheriff with
9 instructions that particularly describe any real property to be sold.

10 “(5) Upon issuance of a writ of execution to the sheriff of any county, the judgment creditor
11 must record a certified copy of the writ or a lien record abstract of the writ in the County Clerk
12 Lien Record for the county if the writ of execution or the accompanying instructions to the sheriff
13 require the sale of real property. The recorded documents must contain a legal description of the
14 real property. The recording of the writ or lien record abstract in any county in which a judgment
15 lien does not exist under ORS 18.150 or 18.152, or in a county in which a notice of pendency under
16 ORS 93.740 has not been previously recorded, has the same effect as recording a notice of pendency
17 under ORS 93.740.

18 “(6) A single writ of execution may be issued for the purposes specified in subsections (2), (3)
19 and (4) of this section.

20 “(7) When issuing a writ of execution, the court administrator may rely on the information
21 provided by the person seeking issuance of the writ and is not liable for any errors or omissions in
22 that information.”.

23 On page 15, after line 1, insert:

24 “**SECTION 25a.** ORS 18.512 is amended to read:

25 “18.512. (1) The challenge to execution form described in this section does not expand or restrict
26 the law relating to exempt property. A determination as to whether property is exempt from at-
27 tachment or execution must be made by reference to other law. The form provided in this section
28 may be modified to provide more information or to update the notice based on subsequent changes
29 in exemption laws.

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

31 “ _____

32
33 _____ COURT
34 COUNTY OF _____

35
36 _____) CHALLENGE TO
37 Plaintiff,) EXECUTION
38)
39 vs.) Case No. _____
40)
41 _____)
42 Defendant.)

43
44 THIS FORM MAY BE USED BY THE DEBTOR ONLY TO CLAIM SUCH EXEMPTIONS
45 FROM EXECUTION AS ARE PERMITTED BY LAW.

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 person who requested**
40 **issuance of the writ at the 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 TO CLAIM SUCH EX-
45 EMPTIONS FROM EXECUTION AS ARE PERMITTED BY LAW.

1 YOU MAY NOT USE THE CHALLENGE TO EXECUTION FORM TO CHALLENGE THE
2 VALIDITY OF THE DEBT.

3
4 IF YOU CLAIM AN EXEMPTION IN BAD FAITH, YOU MAY BE SUBJECT TO PENALTIES
5 IMPOSED BY THE COURT THAT COULD INCLUDE A FINE. Penalties that you could be subject
6 to are listed in ORS 18.518.

7
8 NOTICE OF EXEMPT PROPERTY

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

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

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

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

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

20 (b) \$170 per workweek.

21 (2) Social Security benefits.

22 (3) Supplemental Security Income (SSI).

23 (4) Public assistance (welfare).

24 (5) Unemployment benefits.

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

26 (7) Workers' compensation benefits.

27 (8) Exempt wages, Social Security benefits (other than SSI), welfare, unemployment benefits and
28 disability benefits when placed in a checking or savings account (up to \$7,500).

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

31 (10) A homestead (home, farm, manufactured dwelling or houseboat) if you live in it, to the value
32 of \$20,000 (\$23,000 for a manufactured dwelling with land included; \$25,000 for any other homestead
33 with land included) or proceeds from its sale for one year.

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

36 *(12) An automobile, truck, trailer or other vehicle with a value not to exceed \$1,700.

37 *(13) Tools, implements, apparatus, team, harness or library that are necessary to carry on your
38 occupation, with a combined value not to exceed \$3,000.

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

40 *(15) Wearing apparel, jewelry and other personal items with a combined value not to exceed
41 \$1,800.

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

44 (17) Provisions (food) and fuel for your family for 60 days.

45 (18) One rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt

1 may not exceed \$1,000.

2 (19) Public or private pensions.

3 (20) Veterans' benefits and loans.

4 (21) Medical assistance benefits.

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

6 (23) Cash surrender value of life insurance policies not payable to your estate.

7 (24) Federal annuities.

8 (25) Other annuities to \$250 per month (excess over \$250 per month is subject to the same ex-
9 emption as wages).

10 (26) Professionally prescribed health aids for you or any of your dependents.

11 *(27) Elderly rental assistance allowed pursuant to ORS 310.635.

12 *(28) Your right to receive, or property traceable to:

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

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

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

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

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

22 (31) Equitable interests in property.

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 75 percent of a lump sum payment of these benefits is exempt if the debt is owed for a support
32 obligation.

33 “ _____
34

35 “**SECTION 25b.** ORS 18.845 is amended to read:

36 “18.845. A notice of exemptions form must be in substantially the form set forth in this section.
37 Nothing in the notice form described in this section is intended to expand or restrict the law re-
38 lating to exempt property. A determination as to whether property is exempt from execution, at-
39 tachment and garnishment must be made by reference to other law. The form provided in this
40 section may be modified to provide more information or to update the notice based on subsequent
41 changes in exemption laws.

42 “ _____
43

44 NOTICE OF EXEMPT PROPERTY
45 AND INSTRUCTIONS FOR

CHALLENGE TO GARNISHMENT

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

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

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

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

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

(b) \$170 per workweek.

(2) Social Security benefits.

(3) Supplemental Security Income (SSI).

(4) Public assistance (welfare).

(5) Unemployment benefits.

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

(7) Workers' compensation benefits.

(8) Exempt wages, Social Security benefits (other than SSI), welfare, unemployment benefits and disability benefits when placed in a checking or savings account (up to \$7,500).

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

(10) A homestead (home, farm, manufactured dwelling or houseboat) if you live in it, to the value of \$20,000 (\$23,000 for a manufactured dwelling with land included; \$25,000 for any other homestead with land included) or proceeds from its sale for one year.

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

*(12) An automobile, truck, trailer or other vehicle with a value not to exceed \$1,700.

*(13) Tools, implements, apparatus, team, harness or library that are necessary to carry on your occupation, with a combined value not to exceed \$3,000.

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

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

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

(17) Provisions (food) and fuel for your family for 60 days.

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

(19) Public or private pensions.

(20) Veterans' benefits and loans.

(21) Medical assistance benefits.

(22) Health insurance proceeds and disability proceeds of life insurance policies.

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

(24) Federal annuities.

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

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

4 *(27) Elderly rental assistance allowed pursuant to ORS 310.635.

5 (28) 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 (29) Amounts paid to you as an earned income tax credit under federal tax law.

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

15 (31) Equitable interests in property.

16 (32) If the amount shown as owing on the Debt Calculation form exceeds the amount you actu-
17 ally owe to the creditor, the difference between the amount owed and the amount shown on the Debt
18 Calculation form.

19
20 Note: If two or more people in your household owe the claim or judgment, each of them may
21 claim the exemptions marked by an asterisk (*).

22
23
24 SPECIAL RULES APPLY FOR DEBTS THAT ARE OWED FOR CHILD SUPPORT AND
25 SPOUSAL SUPPORT. Some property that may not otherwise be taken for payment against the debt
26 may be taken to pay for overdue support. For instance, Social Security benefits, workers' compen-
27 sation benefits, unemployment benefits, veterans' benefits and pensions are normally exempt, but
28 only 75 percent of a lump sum payment of these benefits is exempt if the debt is owed for a support
29 obligation.

30
31 YOU MUST ACT PROMPTLY IF YOU WANT TO GET YOUR MONEY OR PROPERTY BACK.
32 You may seek to reclaim your exempt property by doing the following:

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

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

42 (3) The law only requires that the Garnishor hold the garnished money or property for 10 days
43 before applying it to the Creditor's use. You may be able to keep the property from being used by
44 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.

20 “

21
22 “**SECTION 25c.** ORS 19.270 is amended to read:

23 “19.270. (1) The Supreme Court or the Court of Appeals has jurisdiction of the cause when the
24 notice of appeal has been served and filed as provided in ORS 19.240, 19.250 and 19.255. The trial
25 court may exercise those powers in connection with the appeal as are conferred by law, and retains
26 jurisdiction in the matter for the following purposes:

27 “(a) Deciding requests for attorney fees, costs and disbursements or expenses pursuant to ORCP
28 68 or other provision of law.

29 “(b) Enforcing the judgment, subject to any stay of the judgment.

30 “(2) The following requirements of ORS 19.240, 19.250 and 19.255 are jurisdictional and may not
31 be waived or extended:

32 “(a) Service of the notice of appeal on all parties identified in the notice of appeal as adverse
33 parties or, if the notice of appeal does not identify adverse parties, on all parties who have appeared
34 in the action, suit or proceeding, as provided in ORS 19.240 (2)(a), within the time limits prescribed
35 by ORS 19.255.

36 “(b) Filing of the original of the notice of appeal with the Court of Appeals as provided in ORS
37 19.240 (3), within the time limits prescribed by ORS 19.255.

38 “(3) After the Supreme Court or the Court of Appeals has acquired jurisdiction of the cause, the
39 omission of a party to perform any of the acts required in connection with an appeal, or to perform
40 such acts within the time required, shall be cause for dismissal of the appeal. In the event of such
41 omission, the court, on motion of a party or on its own motion may dismiss the appeal. An appeal
42 dismissed on a party’s motion or on the court’s own motion may be reinstated upon showing of good
43 cause.

44 “(4) Notwithstanding the filing of a notice of appeal, the trial court has jurisdiction, with leave
45 of the appellate court, to enter an appealable judgment if the appellate court determines that:

1 “(a) At the time of the filing of the notice of appeal the trial court intended to enter an
2 appealable judgment; and

3 “(b) The judgment from which the appeal is taken is defective in form or was entered at a time
4 when the trial court did not have jurisdiction of the cause under subsection (1) of this section, or
5 the trial court had not yet entered an appealable judgment.

6 “(5) Notwithstanding the filing of a notice of appeal, the trial court has jurisdiction:

7 “(a) To enter an order or supplemental judgment under ORCP 71 or ORS 19.275, 107.105 (4) or
8 107.452; and

9 “(b) To enter an order or supplemental judgment for the purpose of implementing a settlement
10 as allowed by ORS 19.410 (3).

11 “(6) Jurisdiction of the appellate court over a cause ends when a copy of the appellate judgment
12 is mailed by the State Court Administrator to the court from which the appeal was taken pursuant
13 to ORS 19.450, except that the appellate court may:

14 “(a) Recall the appellate judgment as justice may require;

15 “(b) Stay enforcement of the appellate judgment to allow the filing of a petition for writ of
16 certiorari to the Supreme Court of the United States; and

17 “(c) Stay enforcement of the appellate judgment pending disposition of the matter by the Su-
18 preme Court of the United States or for such other time as the Oregon appellate court may deem
19 appropriate.

20 “(7) **If a limited or supplemental judgment is appealed, the jurisdiction of the appellate**
21 **court is limited to the matters decided by the limited or supplemental judgment, and the trial**
22 **court retains jurisdiction over all other matters in the proceeding.**

23 “[7] (8) After jurisdiction of the appellate court ends, all orders which may be necessary to
24 carry the appellate judgment into effect shall be made by the court from which the appeal was
25 taken.”.

26 On page 19, after line 19, insert:

27 “**SECTION 29a.** ORS 156.220 is amended to read:

28 “156.220. Except as provided in ORS 18.048 (3) **and (4)**, any judgment rendered by a justice court
29 on an offense that imposes a monetary obligation must contain the separate section required by ORS
30 18.048 [(2)] (1).”.

31 On page 21, delete lines 34 through 39 and insert:

32 “**SECTION 33.** (1) The court in a probate proceeding under ORS chapters 111, 112, 113, 114, 115,
33 116 and 117 may enter a limited judgment only for the following decisions of the court:

34 “(a) A decision on a petition for appointment or removal of a personal representative.

35 “(b) A decision in a will contest filed in the probate proceeding.

36 “(c) A decision on an objection to an accounting.

37 “(d) A decision on a request made in the proceeding for a declaratory judgment under ORS
38 111.095.”.

39 In line 44, delete “not” and insert “no”.

40 On page 22, delete lines 34 through 36 and insert:

41 “(a) A decision on an objection to an accounting.

42 “(b) A decision on placement of a protected person.

43 “(c) A decision on the sale of the residence of a protected person.”.

44 In line 41, delete “not” and insert “no”.

45 On page 23, after line 45, insert:

1 **“SECTION 40. Section 41 of this 2005 Act is added to and made a part of ORS chapter 18.**

2 **“SECTION 41. The provisions of this chapter do not affect the ability of the Chief Justice**
3 **of the Supreme Court to authorize the use of electronic judgment forms pursuant to rules**
4 **adopted under ORS 1.002 (2).”.**

5 On page 24, line 1, delete “40” and insert “42”.

6
