

Enrolled
Senate Bill 273

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CHAPTER

AN ACT

Relating to exemptions from execution; creating new provisions; and amending ORS 18.345, 18.395, 18.402, 18.412, 18.512 and 18.845.

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

SECTION 1. ORS 18.345 is amended to read:

18.345. (1) All property, including franchises, or rights or interest therein, of the judgment debtor, shall be liable to an execution, except as provided in this section and in other statutes granting exemptions from execution. The following property, or rights or interest therein of the judgment debtor, except as provided in ORS 18.305, shall be exempt from execution:

- (a) Books, pictures and musical instruments to the value of \$600.
- (b) Wearing apparel, jewelry and other personal items to the value of \$1,800.
- (c) The tools, implements, apparatus, team, harness or library, necessary to enable the judgment debtor to carry on the trade, occupation or profession by which the judgment debtor habitually earns a living, to the value of \$3,000.
- (d) A vehicle to the value of [~~\$1,700~~] **\$2,150**. As used in this paragraph "vehicle" includes an automobile, truck, trailer, truck and trailer or other motor vehicle.
- (e) Domestic animals and poultry kept for family use, to the total value of \$1,000 and food sufficient to support such animals and poultry for 60 days.
- (f) Household goods, furniture, radios, a television set and utensils all to the total value of \$3,000, if the judgment debtor holds the property primarily for the personal, family or household use of the judgment debtor; provisions actually provided for family use and necessary for the support of a householder and family for 60 days and also 60 days' supply of fuel.
- (g) All property of the state or any county or incorporated city therein, or of any other public or municipal corporation of like character.
- (h) All professionally prescribed health aids for the debtor or a dependent of the debtor.
- (i) Spousal support, child support, or separate maintenance to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.
- (j) The debtor's right to receive, or property that is traceable to, an award under any crime victim reparation law.
- (k) The debtor's right to receive, or property that is traceable to, a payment or payments, not to exceed a total of \$10,000, on account of personal bodily injury of the debtor or an individual of whom the debtor is a dependent.

(L) The debtor's right to receive, or property that is traceable to, a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(m) Veterans' benefits and loans.

(n) The debtor's right to receive an earned income tax credit under the federal tax laws and any moneys that are traceable to a payment of an earned income tax credit under the federal tax laws.

(o) The debtor's interest, not to exceed \$400 in value, in any personal property. However, this exemption may not be used to increase the amount of any other exemption.

(2) If the property claimed by the judgment debtor as exempt is adjudicated by the court out of which the execution issued to be of a value in excess of that allowed by the appropriate paragraph of subsection (1) of this section, the officer seizing the property shall proceed to sell such property. Out of the proceeds of such sale, the officer shall deduct costs of sale and shall pay to the judgment debtor an amount equivalent to the value declared to be exempt by any of the paragraphs of subsection (1) of this section and shall apply the balance of the proceeds of sale on the execution. A sale may not be made under such execution unless the highest bid made exceeds the appropriate exemption claimed and allowed plus costs of sale. If no bid is received in excess of the value allowed by the appropriate paragraph of subsection (1) of this section, the costs of sale shall be borne by the judgment creditor.

(3) If two or more members of a household are joint judgment debtors, each judgment debtor shall be entitled to claim the exemptions in subsection (1)(a), (b), (c), (d) and (o) of this section in the same or different properties. The exemptions provided by subsection (1)(a), (b), (c), (d), (j), (k) and (o) of this section, when claimed for jointly owned property, may be combined at the option of the debtors.

(4) Notwithstanding any other provision of law except ORS 657.855, if a writ of garnishment or other execution is issued to collect past due support as defined in ORS 18.600, 75 percent of unemployment compensation benefits, workers' compensation benefits and other benefits paid to the debtor by the United States, by the state or by a political subdivision of the state are exempt. The exemption related to unemployment compensation benefits provided by this subsection is subject to ORS 657.855. The exemption provided by this subsection applies without regard to whether the payment is made on a periodic basis or in a lump sum, including any lump sum payable pursuant to a settlement or judgment. Notwithstanding subsection (1)(k) of this section, if a payment is made under a settlement or judgment on account of personal bodily injury and the garnishment or other execution is issued to collect past due support as defined in ORS 18.600, the lesser of 75 percent of the payment or \$7,500 is exempt.

SECTION 2. ORS 18.395 is amended to read:

18.395. (1) A homestead shall be exempt from sale on execution, from the lien of every judgment and from liability in any form for the debts of the owner to the amount in value of [~~\$25,000~~] **\$30,000**, except as otherwise provided by law. The exemption shall be effective without the necessity of a claim thereof by the judgment debtor. When two or more members of a household are debtors whose interests in the homestead are subject to sale on execution, the lien of a judgment or liability in any form, their combined exemptions under this section shall not exceed [~~\$33,000~~] **\$39,600**. The homestead must be the actual abode of and occupied by the owner, or the owner's spouse, parent or child, but the exemption shall not be impaired by:

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

(b) Removal or absence from the property; or

(c) The sale of the property.

(2) The exemption shall extend to the proceeds derived from such sale to an amount not exceeding [~~\$25,000~~] **\$30,000** or [~~\$33,000~~] **\$39,600**, whichever amount is applicable under subsection (1) of this section, if the proceeds are held for a period not exceeding one year and held with the intention to procure another homestead therewith.

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

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

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

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

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

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

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

(8) Upon the issuance of an order authorizing sale as provided in ORS 18.536, and in conformance with subsection (5) of this section, the levying officer may proceed to advertise and sell the property. If the homestead exemption applies, the levying officer shall pay the homestead owner out of the proceeds the sum of [~~\$25,000~~] **\$30,000** or [~~\$33,000~~] **\$39,600**, whichever is applicable, and apply the balance of the proceeds on the execution. However, no sale shall be made where the homestead exemption applies unless the sum bid for the homestead is in excess of the sum of the costs of sale and [~~\$25,000~~] **\$30,000** or [~~\$33,000~~] **\$39,600**, whichever is applicable. If no such bid is received, the expense of the advertising and preparation for sale shall be borne by the petitioner.

SECTION 3. ORS 18.402 is amended to read:

18.402. The homestead mentioned in ORS 18.395 shall consist, when not located in any town or city laid off into blocks and lots, of any quantity of land not exceeding 160 acres, and when located in any such town or city, of any quantity of land not exceeding one block. However, a homestead under this section shall not exceed in value the sum of [~~\$25,000~~] **\$30,000** or [~~\$33,000~~] **\$39,600**, whichever amount is applicable under ORS 18.395 (1).

SECTION 4. ORS 18.412 is amended to read:

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

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

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

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.

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 TO CLAIM SUCH EX-EMPTIONS FROM EXECUTION AS ARE PERMITTED BY LAW.

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

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

NOTICE OF EXEMPT PROPERTY

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]* **house, mobile home** 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]* **occupied by you, or occupied by your spouse, parent or child. The value of the homestead is exempt up to the following amounts:**
 - (a) **For a mobile home or houseboat located on land that is not owned by you, \$20,000. If you jointly own the mobile home or houseboat with another person who is also liable on the debt, \$27,000.**
 - (b) **For a mobile home or houseboat located on land that is owned by you, \$23,000. If you jointly own the mobile home or houseboat with another person who is also liable on the debt, \$30,000.**
 - (c) **For any other homestead, \$30,000. If you jointly own the homestead with another person who is also liable on the debt, \$39,600.**
- (11) **Proceeds from the sale of a homestead described in item 10, up to the limits described in item 10, if you hold the proceeds for less than one year and intend to use those proceeds to procure another homestead.**
 - [(11)]* (12) Household goods, furniture, radios, a television set and utensils with a combined value not to exceed \$3,000.
 - *[(12)]* (13) An automobile, truck, trailer or other vehicle with a value not to exceed *[\$1,700]* **\$2,150.**
 - *[(13)]* (14) 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)]* (15) Books, pictures and musical instruments with a combined value not to exceed \$600.
 - *[(15)]* (16) Wearing apparel, jewelry and other personal items with a combined value not to exceed \$1,800.
 - [(16)]* (17) Domestic animals and poultry for family use with a combined value not to exceed \$1,000 and their food for 60 days.
 - [(17)]* (18) Provisions *[(food)]* and fuel for your family for 60 days.
 - [(18)]* (19) One rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt may not exceed \$1,000.
 - [(19)]* (20) Public or private pensions.
 - [(20)]* (21) Veterans' benefits and loans.
 - [(21)]* (22) Medical assistance benefits.
 - [(22)]* (23) Health insurance proceeds and disability proceeds of life insurance policies.
 - [(23)]* (24) Cash surrender value of life insurance policies not payable to your estate.
 - [(24)]* (25) Federal annuities.
 - [(25)]* (26) Other annuities to \$250 per month (excess over \$250 per month is subject to the same exemption as wages).
 - [(26)]* (27) Professionally prescribed health aids for you or any of your dependents.
 - *[(27)]* (28) Elderly rental assistance allowed pursuant to ORS 310.635.
 - *[(28)]* (29) Your right to receive, or property traceable to:

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

*(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.

*(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.

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

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

[(31)] (32) Equitable interests in property.

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 (*).

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

SECTION 6. ORS 18.845 is amended to read:

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

NOTICE OF EXEMPT PROPERTY
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*) **house, mobile home** 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*] **occupied by you, or occupied by your spouse, parent or child. The value of the homestead is exempt up to the following amounts:**

(a) **For a mobile home or houseboat located on land that is not owned by you, \$20,000. If you jointly own the mobile home or houseboat with another person who is also liable on the debt, \$27,000.**

(b) **For a mobile home or houseboat located on land that is owned by you, \$23,000. If you jointly own the mobile home or houseboat with another person who is also liable on the debt, \$30,000.**

(c) **For any other homestead, \$30,000. If you jointly own the homestead with another person who is also liable on the debt, \$39,600.**

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

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

[(12)] (13) An automobile, truck, trailer or other vehicle with a value not to exceed [\$1,700*] **\$2,150.**

*[(13)] (14) 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)] (15) Books, pictures and musical instruments with a combined value not to exceed \$600.

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

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

[(17)] (18) Provisions [*food*] and fuel for your family for 60 days.

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

[(19)] (20) Public or private pensions.

[(20)] (21) Veterans' benefits and loans.

[(21)] (22) Medical assistance benefits.

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

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

[(24)] (25) Federal annuities.

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

[(26)] (27) Professionally prescribed health aids for you or any of your dependents.

*[(27)] (28) Elderly rental assistance allowed pursuant to ORS 310.635.

[(28)] (29) Your right to receive, or property traceable to:

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

(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.

(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.

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

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

[(31)] **(32)** Equitable interests in property.

[(32)] **(33)** 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.

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 (*).

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

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 Garnishment form that you received with this notice.

(2) Mail or deliver the Challenge to Garnishment form to the court administrator 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.

(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.

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

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

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

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

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

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

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

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

SECTION 7. The amendments to ORS 18.345 and 18.395 by sections 1 and 2 of this 2005 Act apply only to execution as defined by ORS 18.005 that is issued on or after the effective date of this 2005 Act.

Passed by Senate April 25, 2005

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Secretary of Senate

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President of Senate

Passed by House June 22, 2005

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Speaker of House

Received by Governor:

.....M,....., 2005

Approved:

.....M,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M,....., 2005

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Secretary of State