

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 36

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

AN ACT

RELATING TO ACTIONS AFFECTING PROPERTY; PROVIDING LIMITATIONS
ON THE GARNISHMENT OF CERTAIN EARNINGS OR ACCOUNTS; IDENTIFYING
AND LIMITING EXEMPTIONS IN CERTAIN LEGAL PROCEEDINGS; PROVIDING
FOR COST-OF-LIVING ADJUSTMENTS; AMENDING, REPEALING AND
ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 35-12-7 NMSA 1978 (being Laws 1969,
Chapter 139, Section 6, as amended) is amended to read:

"35-12-7. GARNISHMENT--EXEMPTIONS.--

A. Exempt from garnishment with respect to the
enforcement of an order or decree for child support is fifty
percent of the defendant's disposable earnings for any pay
period. Exempt from garnishment in all other situations is the
greater of the following portions of the defendant's disposable

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1 earnings:

2 (1) seventy-five percent of the defendant's
3 disposable earnings for any pay period; or

4 (2) an amount each week equal to forty times
5 the ~~[federal]~~ highest applicable minimum hourly wage rate at
6 the place the wages were earned. The director of the financial
7 institutions division of the regulation and licensing
8 department shall provide a table giving equivalent exemptions
9 for pay periods of other than one week.

10 B. As used in this section:

11 (1) "disposable earnings" means that part of a
12 defendant's wage or salary remaining after deducting the
13 amounts ~~[which]~~ that are required by law to be withheld; and

14 (2) "~~[federal]~~ highest applicable minimum
15 hourly wage rate" means the highest federal, state or local
16 minimum hourly wage rate for an eight-hour day and a forty-hour
17 week applicable at the time the wages are payable. However, it
18 is immaterial whether the garnishee is exempt under federal,
19 state or local law from paying the ~~[federal]~~ highest applicable
20 minimum hourly wage rate.

21 C. The maximum amount ~~[which]~~ that may be taken
22 from a spouse's disposable earnings under both the garnishment
23 procedure and the wage deduction procedure for the enforcement
24 of child support is fifty percent of the spouse's disposable
25 earnings.

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1 D. Amounts exempt under this section shall retain
2 their exempt status when deposited into a personal bank
3 account, provided that they are reasonably traceable."

4 **SECTION 2.** Section 35-12-18 NMSA 1978 (being Laws 1968,
5 Chapter 62, Section 147, as amended) is amended to read:

6 "35-12-18. GARNISHMENT--FORM OF WRIT.--Writs of
7 garnishment in civil actions in the magistrate court shall
8 state whether the writ is issued in advance of or in aid of
9 execution of judgment and shall be in substantially the
10 following form:

11 "STATE OF NEW MEXICO

12 _____MAGISTRATE DISTRICT, DIVISION _____

13 (Name), Plaintiff)

14)

15 v.) CIVIL DOCKET NO. _____

16)

17 (Name), Defendant)

18)

19 (Name), Garnishee)

20 WRIT OF GARNISHMENT

21 THE STATE OF NEW MEXICO to the above-named garnishee:

22 You are ordered to appear before the magistrate court
23 located at _____ within twenty days from the
24 service of this writ upon you to answer under oath the
25 following questions, as of the date of service and as of the

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underscoring material = new
[bracketed material] = delete

1 date of your answer:

2 1. What, if anything, are you indebted to the
3 defendant in this action and on what account?

4 2. What, if any, personal property of the defendant
5 is in your possession or under your control?

6 3. What other persons, if any, within your
7 knowledge are indebted to the defendant or have personal
8 property of the defendant in their possession?

9 Service of this writ upon you has the effect of attaching
10 all nonexempt personal property, money, rights, credits, bonds,
11 bills, notes, drafts and other choses in action of the
12 defendant in your possession or under your control at the time
13 of service and ~~[which]~~ that may come into your possession or
14 under your control or be owing by you between the time of
15 service and the time of making your answer.

16 This writ was issued in (advance) (aid of execution) of
17 judgment against the defendant. If this writ was issued in
18 advance of judgment, it does not attach any wages or salary due
19 from you to the defendant. If this writ was issued in aid of
20 execution of judgment, it attaches wages or salary due from you
21 to the defendant in excess of the greater of the following
22 portions of the defendant's disposable earnings:

23 A. seventy-five percent of the defendant's
24 disposable earnings for any pay period; or

25 B. an amount each week equal to forty times the

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1 ~~[federal]~~ highest applicable minimum hourly wage rate at the
2 place the wages were earned. A table giving equivalent
3 exemptions for pay periods of other than one week may be
4 obtained from the ~~[commissioner of banking]~~ director of the
5 financial institutions division of the regulation and licensing
6 department. "Disposable earnings" means that part of the
7 defendant's wage or salary remaining after deducting the
8 amounts ~~[which]~~ that are required by law to be withheld.
9 "~~[Federal]~~ Highest applicable minimum hourly wage rate" means
10 the highest federal, state or local minimum hourly wage rate
11 for an eight-hour day or a forty-hour week. It is immaterial
12 whether you are exempt under federal, state or local law from
13 paying the ~~[federal]~~ highest applicable minimum hourly wage
14 rate; or

15 C. if you are a financial institution holding money
16 in any amount for the defendant, this writ attaches only to
17 funds in excess of two thousand four hundred dollars (\$2,400),
18 and you shall hold any funds in excess of two thousand four
19 hundred dollars (\$2,400), pursuant to this writ.

20 It is unlawful to pay or deliver to the defendant any item
21 attached by this writ. If you fail to appear and answer as
22 directed, or if you unlawfully dispose of any item attached by
23 this writ, judgment may be rendered against you for the full
24 amount of the plaintiff's claim against the defendant in this
25 action.

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Dated _____, [19] 20 _____
Magistrate".

SECTION 3. Section 42-10-1 NMSA 1978 (being Laws 1971, Chapter 215, Section 1, as amended) is amended to read:

"42-10-1. EXEMPTIONS [~~OF MARRIED PERSONS OR HEADS OF HOUSEHOLDS~~].--~~[Personal property in the amount of five hundred dollars (\$500), tools of the trade in the amount of fifteen hundred dollars (\$1,500), one motor vehicle in the amount of four thousand dollars (\$4,000), jewelry in the amount of twenty-five hundred dollars (\$2,500), clothing, furniture, books, medical health equipment being used for the health of the person and not for his profession and any interest in or proceeds from a pension or retirement fund of every person supporting another person is exempt from receivers or trustees in bankruptcy or other insolvency proceedings, fines, attachment, execution or foreclosure by a judgment creditor. Property exempted shall be valued at the market value of used chattels.]~~

A. The following shall be exempt from receivers or trustees in bankruptcy or other insolvency proceedings, fines, attachment, execution, garnishment, levy or foreclosure by a judgment creditor:

(1) household goods and furnishings;

(2) a person's aggregate interest in motor vehicles, not exceeding ten thousand dollars (\$10,000) in

underscoring material = new
[bracketed material] = delete

1 value;

2 (3) a person's interest in a wedding band and
3 an engagement ring, not exceeding fair market value, and a
4 person's interest in additional jewelry held primarily for the
5 use of the person, the person's spouse or any dependent of the
6 person, not exceeding five thousand dollars (\$5,000) in the
7 aggregate for this additional jewelry;

8 (4) works of art or artwork, not exceeding a
9 fair market value of two thousand five hundred dollars (\$2,500)
10 in the aggregate, unless by or of the person or any relative of
11 the person;

12 (5) tools, implements, professional books,
13 instruments, inventory, supplies and materials reasonably
14 necessary for use in the person's trade, profession, business
15 or occupation, or that of the person's spouse, not exceeding
16 fifteen thousand dollars (\$15,000) in the aggregate;

17 (6) the person's right to receive:
18 (a) social security benefits;
19 (b) veteran's benefits;
20 (c) disability, illness, unemployment or
21 workers' compensation benefits;

22 (d) public benefits such as medicaid,
23 social security benefits including medicare, food stamps or
24 other aid from a government public assistance program;

25 (e) alimony, family or domestic support

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1 or separate maintenance to the extent reasonably necessary for
2 the support of the person or any dependent of the person; and

3 (f) payment pursuant to a stock bonus,
4 pension, retirement account, profit-sharing individual
5 retirement account, annuity or similar plan or contract on
6 account of illness, disability, death or length of service, to
7 the extent reasonably necessary for the support of the person
8 or any dependent of the person, unless such plan or contract
9 does not qualify pursuant to Section 401(a), 403(a), 403(b) or
10 408 of the Internal Revenue Code of 1986;

11 (7) refundable federal and state tax credits;

12 (8) exempt wages as defined by Section 35-12-7
13 NMSA 1978; and

14 (9) money in a deposit account or other
15 account of a person up to two thousand four hundred dollars
16 (\$2,400); provided that a garnishment writ issued to the bank
17 or other deposit institution shall instruct the garnishee that
18 this exempt amount is not attached by the writ and shall not be
19 held by the garnishee; provided further that this provision
20 shall not prevent the person from claiming that additional
21 money or accounts are exempt under any other available
22 exemption provided by law.

23 B. Property exempted pursuant to the provisions of
24 this section shall be valued at the property's fair market
25 value.

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1 C. As used in this section, "household goods and
2 furnishings" means items primarily used by or for the support
3 and maintenance of the household of the person or the person's
4 spouse, family and dependents, including:

5 (1) furniture;

6 (2) appliances such as a refrigerator, stove,
7 oven, freezer, clothes washer, clothes dryer, dishwasher,
8 microwave, coffee maker, toaster and vacuum cleaner;

9 (3) clothing and personal effects;

10 (4) electronic equipment such as televisions,
11 radios, cellular telephones, computers, computer equipment,
12 digital or compact disc players and other electronic consumer
13 devices;

14 (5) medical equipment, supplies and
15 professionally prescribed health aids reasonably necessary for
16 the care and support of the person or any dependent of the
17 person;

18 (6) toys, games, sports, hobby and craft
19 equipment, materials and supplies, not exceeding two thousand
20 five hundred dollars (\$2,500) in the aggregate;

21 (7) books;

22 (8) two firearms; and

23 (9) a person's aggregate interest, not
24 exceeding fifteen thousand dollars (\$15,000), in any personal
25 property, tangible or intangible, not otherwise specified in

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1 this subsection, including any deposits in financial or
2 investment accounts or personal property that exceeds the
3 monetary limits set forth in this section."

4 SECTION 4. Section 42-10-4 NMSA 1978 (being Laws 1887,
5 Chapter 37, Section 7, as amended) is amended to read:

6 "42-10-4. BENEVOLENT ASSOCIATIONS--BENEFITS.--~~[SEC. 5.]~~
7 Any beneficiary fund not exceeding ~~[five thousand dollars]~~
8 fifty thousand dollars (\$50,000) set apart, appropriated or
9 paid by any benevolent association or society, according to its
10 rules, regulations or bylaws, to the family of any deceased
11 member or to any member of ~~[such]~~ the deceased member's family,
12 shall not be liable to be taken by any process or proceedings,
13 legal or equitable, to pay any debts of ~~[such]~~ the deceased
14 member."

15 SECTION 5. Section 42-10-7 NMSA 1978 (being Laws 1971,
16 Chapter 215, Section 4) is amended to read:

17 "42-10-7. TAXES ~~[AND GARNISHMENT]~~ EXCEPTED.--~~[This~~
18 ~~article]~~ Chapter 42, Article 10 NMSA 1978 is not applicable to
19 taxes ~~[or garnishment]~~."

20 SECTION 6. Section 42-10-9 NMSA 1978 (being Laws 1971,
21 Chapter 215, Section 6, as amended) is amended to read:

22 "42-10-9. HOMESTEAD EXEMPTION.--~~[Each person shall have~~
23 ~~exempt a homestead in a dwelling house and land occupied by the~~
24 ~~person or in a dwelling house occupied by the person although~~
25 ~~the dwelling is on land owned by another, provided that the~~

1 ~~dwelling is owned, leased or being purchased by the person~~
 2 ~~claiming the exemption. Such a person has a homestead of sixty~~
 3 ~~thousand dollars (\$60,000) exempt from attachment, execution or~~
 4 ~~foreclosure by a judgment creditor and from any proceeding of~~
 5 ~~receivers or trustees in insolvency proceedings and from~~
 6 ~~executors or administrators in probate. If the homestead is~~
 7 ~~owned jointly by two persons, each joint owner is entitled to~~
 8 ~~an exemption of sixty thousand dollars (\$60,000).]~~

9 A. A person shall have a homestead exemption in a
 10 domicile or land owned by the person that is the primary
 11 residence of the person. Such homestead is exempt from
 12 attachment, execution or foreclosure by a judgment creditor and
 13 from any proceeding of receivers or trustees in insolvency or
 14 bankruptcy proceedings and from executors or administrators in
 15 probate.

16 B. The amount of the homestead exemption is:

17 (1) ninety thousand dollars (\$90,000) unless
 18 the person or spouse of the person who resides in the homestead
 19 is a person described in Paragraph (3) or (4) of this
 20 subsection;

21 (2) one hundred eighty thousand dollars
 22 (\$180,000) if the spouse of the person claiming the exemption
 23 died within two years prior to the date of claiming the
 24 homestead exemption, if the deceased spouse would have been
 25 able to claim the exemption had the deceased spouse survived

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1 until the date of claiming the homestead exemption; or

2 (3) one hundred twenty thousand dollars
3 (\$120,000) if the person is:

4 (a) sixty-five years of age or older;

5 (b) fifty-five years of age or older

6 with: 1) a gross annual income of not more than twenty-five
7 thousand dollars (\$25,000); or 2) if the person is married, a
8 gross annual income, including the gross annual income of the
9 person's spouse, of not more than fifty thousand dollars
10 (\$50,000); or

11 (c) physically or mentally disabled and
12 who, as a result of that disability, is unable to engage in
13 substantial gainful employment. There is a rebuttable
14 presumption affecting the burden of proof that a person
15 receiving disability insurance benefit payments under Title II
16 of the federal Social Security Act or supplemental security
17 income payments under Title XVI of the federal Social Security
18 Act satisfies the requirements of this subparagraph as to the
19 person's inability to engage in substantial gainful employment.

20 C. As used in this section, "domicile" means any
21 shelter or dwelling used by the person as a primary residence
22 and may include a mobile home, outbuilding or other similar
23 shelter, regardless of whether such dwelling complies with
24 relevant housing or building regulations.

25 D. This section shall be liberally construed in

1 favor of the person claiming a homestead exemption.

2 E. The provisions of this section shall not apply
 3 to garnishment or properly perfected liens of secured
 4 creditors."

5 SECTION 7. Section 42-10-10 NMSA 1978 (being Laws 1971,
 6 Chapter 215, Section 7, as amended) is amended to read:

7 "42-10-10. EXEMPTION IN LIEU OF HOMESTEAD.--~~[A.]~~ Any
 8 resident of this state who does not own a homestead shall in
 9 addition to other exemptions hold exempt real or personal
 10 property in the amount of ~~[five thousand dollars (\$5,000)]~~
 11 fifteen thousand dollars (\$15,000) in lieu of the homestead
 12 exemption.

13 ~~[B. If the resident does not own a homestead, the~~
 14 ~~sheriff or any other person or officer seeking to attach,~~
 15 ~~execute or foreclose by judgment on property shall provide the~~
 16 ~~resident with written notification of the resident's right to~~
 17 ~~exemption in lieu of homestead as described in Subsection A of~~
 18 ~~this section, together with a simple form by which the resident~~
 19 ~~may designate that the resident is aware of the exemption and~~
 20 ~~does or does not desire to claim the exemption. If the~~
 21 ~~resident refuses to make the election provided for in this~~
 22 ~~section, the sheriff, other person or officer shall proceed to~~
 23 ~~attach, execute or foreclose on the resident's property. If~~
 24 ~~the resident claims the exemption in lieu of homestead, the~~
 25 ~~sheriff, other person or officer making attachment, execution~~

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1 or foreclosure by judgment shall file as part of the return a
2 description, including the resident's stated value, of the
3 property claimed as exempt, bearing the resident's signature
4 witnessed by the sheriff, other person or officer seeking to
5 attach, execute or foreclose.]"

6 SECTION 8. Section 42-10-13 NMSA 1978 (being Laws 1975,
7 Chapter 246, Section 1) is amended to read:

8 "42-10-13. CLAIM OF EXEMPTION OR PRIORITY.--~~[Any person~~
9 ~~desiring to claim that property is exempt from execution or is~~
10 ~~subject to execution only after other property is used to~~
11 ~~satisfy a debt under the provisions of Sections 57-4A-4 and~~
12 ~~57-4A-5 NMSA 1953 shall file his claim of exemption or priority~~
13 ~~in the appropriate court, or the right to claim such exemption~~
14 ~~is waived as between a spouse and the creditor]~~ A notice of the
15 right to claim exemption to garnishment, execution, levy,
16 attachment or foreclosure and a form to file or claim that
17 exemption shall be provided by the creditor to the person whose
18 property is subject to garnishment, execution, levy, attachment
19 or foreclosure, and that notice shall contain a complete list
20 of exemptions provided in Chapter 42, Article 10 NMSA 1978."

21 SECTION 9. A new Section 42-10-14 NMSA 1978 is enacted to
22 read:

23 "42-10-14. [NEW MATERIAL] COST-OF-LIVING ADJUSTMENTS.--

24 A. On July 1, 2023, and at each two-year interval
25 ending on July 1 thereafter, each dollar amount provided for in

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1 Sections 42-10-1, 42-10-4, 42-10-9 and 42-10-10 NMSA 1978 shall
 2 be adjusted to reflect the change in the consumer price index
 3 for all urban consumers as published by the United States
 4 department of labor for the most recent two-year period ending
 5 immediately before such January 1 preceding such July 1. The
 6 administrative office of the courts shall publish any
 7 adjustments to the exemptions in Sections 42-10-1, 42-10-4,
 8 42-10-9 and 42-10-10 NMSA 1978 every two years on July 1,
 9 beginning July 1, 2023. The dollar amount shall be adjusted to
 10 the twenty-five-dollar (\$25.00) increment nearest to the dollar
 11 amount that represents such change.

12 B. Adjustments made in accordance with Subsection A
 13 of this section shall not apply to legal proceedings commenced
 14 prior to the date of such adjustments."

15 SECTION 10. Section 51-1-37 NMSA 1978 (being Laws 1936
 16 (S.S.), Chapter 1, Section 15, as amended) is amended to read:

17 "51-1-37. PROTECTION OF RIGHTS AND BENEFITS.--

18 A. Except as provided by Section 51-1-37.1 NMSA
 19 1978, any agreement by an individual to waive, release or
 20 commute [~~his~~] the individual's rights to benefits or any other
 21 rights under the Unemployment Compensation Law shall be void.
 22 No agreement by any individual in the employ of any person or
 23 concern to pay all or any portion of an employer's
 24 contributions or payments in lieu of contributions, required
 25 under the Unemployment Compensation Law from such employer,

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1 shall be valid. No employer shall directly or indirectly make
2 or require or accept any deduction from the remuneration of
3 individuals in [~~his~~] the employer's employ to finance the
4 employer's contributions or payments in lieu of contributions
5 required from [~~him~~] the employer or require or accept any
6 waiver of any right hereunder by an individual in [~~his~~] the
7 employer's employ. Any employer or officer or agent of an
8 employer who violates any provisions of this subsection shall,
9 for each offense, be fined not less than one hundred dollars
10 (\$100) nor more than one thousand dollars (\$1,000) or be
11 imprisoned for not more than six months, or both.

12 B. No individual claiming benefits shall be charged
13 fees of any kind in any proceeding under the Unemployment
14 Compensation Law by the department or its representatives or by
15 any court or any officer thereof. Any individual claiming
16 benefits and any employer in any proceeding before the
17 secretary, [~~his~~] the secretary's authorized representative or
18 the board of review may be represented by counsel or any other
19 duly authorized agent, but no such counsel or agent shall
20 either charge or receive for such services more than an amount
21 approved by the secretary. Any person who violates any
22 provision of this subsection shall, for each such offense, be
23 fined not less than fifty dollars (\$50.00) nor more than five
24 hundred dollars (\$500) or imprisoned for not more than six
25 months, or both.

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1 C. Except as provided in Subsection D of this
 2 section, any assignment, pledge or encumbrance of any right to
 3 benefits [~~which~~] that are or may become due or payable under
 4 the Unemployment Compensation Law shall be void, and such
 5 rights to benefits shall be exempt from levy, execution,
 6 attachment, garnishment or any other remedy provided for the
 7 collection of debt. Benefits received by any individual [~~so~~
 8 ~~long as they are not mingled with other funds of the recipient]~~
 9 shall be exempt from a remedy for the collection of debts
 10 [~~except debts incurred for necessities furnished to an~~
 11 ~~individual or his spouse or dependents during the time when he~~
 12 ~~was unemployed]. Any waiver of any exemption provided for in~~
 13 this subsection is void.

14 D. The following actions for collection of the
 15 indicated obligations may be taken:

16 (1) deduction and [~~withholding~~] withholding of
 17 amounts of unpaid child support pursuant to Section 51-1-37.1
 18 NMSA 1978;

19 (2) levy by the federal internal revenue
 20 service pursuant to Section 6331(h)(2)(C) of the Internal
 21 Revenue Code of 1986; provided that arrangements have been made
 22 by the internal revenue service for reimbursement of the
 23 division for administrative costs incurred by the division that
 24 are attributable to the repayment of uncollected federal
 25 internal revenue taxes. Levy of federal income taxes will be

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1 made in accordance with such regulations as the secretary may
2 prescribe; and

3 (3) deduction and withholding of amounts for
4 food stamp overissuances pursuant to Section 51-1-37.2 NMSA
5 1978."

6 SECTION 11. REPEAL.--Section 42-10-2 NMSA 1978 (being
7 Laws 1971, Chapter 215, Section 2, as amended) is repealed.

8 SECTION 12. APPLICABILITY.--The provisions of this act
9 apply to actions filed on or after July 1, 2021.

10 SECTION 13. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2021.