

SENATE BILL 216

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Bill B. O'Neill and Gail Chasey

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO ACTIONS AFFECTING PROPERTY; SHPAC→~~IDENTIFYING AND~~  
~~LIMITING EXEMPTIONS IN CERTAIN LEGAL PROCEEDINGS; PROVIDING FOR~~  
~~COST-OF-LIVING ADJUSTMENTS; AMENDING, REPEALING AND ENACTING~~  
~~SECTIONS OF THE NMSA 1978.~~←SHPAC SHPAC→PROVIDING LIMITATIONS  
ON THE GARNISHMENT OF CERTAIN EARNINGS AND ACCOUNTS;  
IDENTIFYING AND LIMITING THE HOMESTEAD EXEMPTION AND OTHER  
EXEMPTIONS IN CERTAIN LEGAL PROCEEDINGS, INCLUDING BANKRUPTCY;  
PROVIDING FOR COST-OF-LIVING ADJUSTMENTS; CHANGING NOTICE

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**REQUIREMENTS IN GARNISHMENT; AMENDING, REPEALING AND ENACTING  
SECTIONS OF THE NMSA 1978.** ←SHPAC

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

SECTION 1. Section 35-12-2 NMSA 1978 (being Laws 1968, Chapter 62, Section 134) is amended to read:

"35-12-2. GARNISHMENT--SERVICE ON GARNISHEE.--

A. The garnishment shall be served on the garnishee ~~Hf11~~→**and the defendant**←~~Hf11~~ within the magistrate district in the manner provided by law for service of a civil summons in the magistrate court and shall order the garnishee in the action to appear before the magistrate within twenty days from the date of service to answer under oath, as of the date the garnishment was served and also as of the date of [~~his~~] the garnishee's answer:

(1) what, if anything, [~~he~~] the garnishee is indebted to the defendant and on what account;

(2) what, if any, personal property of the defendant is in [~~his~~] the garnishee's possession; and

(3) what other persons, if any, within [~~his~~] the garnishee's knowledge are indebted to the defendant or have personal property of the defendant in their possession.

B. Return on the garnishment shall be made in the manner provided by law for return on a civil summons in the magistrate court. ~~Hf11~~→**u**←~~Hf11~~

~~Hf11~~→**C. At the same time as the garnishment is served on**

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the garnishee, a copy of the garnishment shall be sent to the defendant's last known address."←Hf11

SECTION 2. 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 earnings:

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

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

B. As used in this section:

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

(2) "~~[federal]~~ highest applicable minimum hourly wage rate" means the highest federal, state or local minimum hourly wage rate for an eight-hour day and a forty-hour

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week applicable at the time the wages are payable. However, it is immaterial whether the garnishee is exempt under federal, state or local law from paying the ~~[federal]~~ highest applicable minimum hourly wage rate.

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

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

SECTION 3. Section 35-12-18 NMSA 1978 (being Laws 1968, Chapter 62, Section 147, as amended) is amended to read:

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

"STATE OF NEW MEXICO

\_\_\_\_\_ MAGISTRATE DISTRICT, DIVISION \_\_\_\_\_

(Name), Plaintiff )

)

v. )

CIVIL DOCKET NO. \_\_\_\_\_

)

(Name), Defendant )

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)  
(Name), Garnishee )

WRIT OF GARNISHMENT

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

You are ordered to appear before the magistrate court located at \_\_\_\_\_ within twenty days from the service of this writ upon you to answer under oath the following questions, as of the date of service and as of the date of your answer:

1. What, if anything, are you indebted to the defendant in this action and on what account?
2. What, if any, personal property of the defendant is in your possession or under your control?
3. What other persons, if any, within your knowledge are indebted to the defendant or have personal property of the defendant in their possession?

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

This writ was issued in (advance) (aid of execution) of judgment against the defendant. If this writ was issued in advance of judgment, it does not attach any wages or salary due

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from you to the defendant. If this writ was issued in aid of execution of judgment, it attaches wages or salary due from you to the defendant in excess of the greater of the following portions of the defendant's disposable earnings:

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

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

#### FINANCIAL INSTITUTION WRITS

If you are a financial institution, the defendant who is an individual or sole proprietor has an exemption totaling two thousand four hundred dollars (\$2,400) in depository and investment accounts. This writ attaches only to money in

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excess of two thousand four hundred dollars (\$2,400). You may rely on the representations of the person executing this writ as to whether the exemption amount has already been satisfied with other accounts held by other financial institutions. This provision shall not prevent the individual or sole proprietor from claiming that additional money in depository or investment accounts is exempt under any other available exemption provided by law.

Any wages you owe the employee in excess of two thousand four hundred dollars (\$2,400) or that you may come to owe the employee in excess of that amount must be kept by you until further order of this court. This means that you shall not pay the non-exempt amounts to the plaintiff until further order from this court requiring payment.

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

Dated \_\_\_\_\_, [19] 20 \_\_\_\_\_

Magistrate".

SECTION 4. 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) a person's aggregate interest in household goods and furnishings, not exceeding a value of seventy-five thousand dollars (\$75,000);

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

(3) a person's interest in a wedding band and an engagement ring and a person's interest in additional jewelry held primarily for the use of the person, the person's spouse or any dependent of the person, not exceeding five



thousand dollars (\$5,000) in the aggregate for this additional jewelry;

(4) works of art or artwork of the person or any relative of the person, not exceeding a value of two thousand five hundred dollars (\$2,500) in the aggregate;

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

(6) the person's right to receive:

(a) social security benefits;

(b) veteran's benefits;

(c) disability, illness, unemployment or workers' compensation benefits;

(d) public benefits such as medicaid, medicare, food stamps or other aid from a government public assistance program;

(e) alimony, family or domestic support or separate maintenance to the extent reasonably necessary for the support of the person or any dependent of the person; and

(f) payment pursuant to a stock bonus, pension, profit-sharing individual retirement account, annuity or similar plan or contract on account of illness, disability, death or length of service, to the extent reasonably necessary for the support of the person or any dependent of the person,

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unless such plan or contract does not qualify pursuant to Section 401(a), 403(a), 403(b) or 408 of the Internal Revenue Code of 1986;

(7) refundable federal and state tax credits;

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

(9) any stimulus payment held by or payable to the person or the person's dependents in any form;

(10) an interest in or proceeds from a pension, individual retirement account, annuity, profit-sharing plan and any other retirement account;

(11) an individual retirement account that would qualify for tax exemptions under 26 U.S.C. 408 or any similar individual retirement account;

(12) an educational savings account that would qualify for tax exemptions under 26 U.S.C. 529 or any similar educational savings account;

(13) a health savings account that would qualify for tax exemptions under 26 U.S.C. 223 or any similar health savings account; and

(14) a person's aggregate interest, not exceeding fifteen thousand dollars (\$15,000), in any personal property, tangible or intangible, not otherwise specified in this subsection, including any deposits in financial or investments accounts or personal property that exceeds the monetary limits set forth in this section; provided that for an

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individual or sole proprietor who is a defendant in any action except a bankruptcy action, the maximum cumulative amount that a defendant may claim as exempt in a depository or investment account is two thousand four hundred dollars (\$2,400), plus any money derived from the sources set forth in Paragraphs (6) through (11) of this subsection.

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

(1) furniture;

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

(3) clothing and personal effects;

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

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

(6) musical instruments, not exceeding four thousand dollars (\$4,000) in the aggregate;

(7) toys, games, sports, hobby and craft

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equipment, materials and supplies, not exceeding two thousand five hundred dollars (\$2,500) in the aggregate;

(8) books; and

(9) two firearms.

C. Property exempted pursuant to the provisions of this section shall be valued at the property's fair market value."

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

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

SECTION 6. Section 42-10-7 NMSA 1978 (being Laws 1971, Chapter 215, Section 4) is amended to read:

"42-10-7. TAXES ~~[AND GARNISHMENT]~~ EXCEPTED.--~~[This article is]~~ Sections 42-10-1 through 42-10-7 NMSA 1978 are not applicable to taxes ~~[or garnishment]~~."

SECTION 7. Section 42-10-9 NMSA 1978 (being Laws 1971, Chapter 215, Section 6, as amended) is amended to read:

"42-10-9. HOMESTEAD EXEMPTION.--~~[Each person shall have exempt a homestead in a dwelling house and land occupied by the~~

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~~person or in a dwelling house occupied by the person although the dwelling is on land owned by another, provided that the dwelling is owned, leased or being purchased by the person claiming the exemption. Such a person has a homestead of sixty thousand dollars (\$60,000) exempt from attachment, execution or foreclosure by a judgment creditor and from any proceeding of receivers or trustees in insolvency proceedings and from executors or administrators in probate. If the homestead is owned jointly by two persons, each joint owner is entitled to an exemption of sixty thousand dollars (\$60,000).]~~

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

SHPAC → ~~B. The amount of the homestead exemption is:~~

~~(1) two hundred thousand dollars (\$200,000)~~

~~unless the person or spouse of the person who resides in the homestead is a person described in Paragraph (3) of this subsection;~~

~~(2) four hundred thousand dollars (\$400,000)~~

~~if the spouse of the person claiming the exemption died within two years prior to the date of claiming the homestead exemption, if the deceased spouse would have been able to claim~~

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~~the exemption had the deceased spouse survived until the date of claiming the homestead exemption; or~~

~~(3) two hundred fifty thousand dollars (\$250,000) if the person is:~~

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

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

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

~~(c) physically or mentally disabled and who, as a result of that disability, is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title 2 of the federal Social Security Act or supplemental security income payments under Title 16 of the federal Social Security Act satisfies the requirements of this subparagraph as to the person's inability to engage in substantial gainful employment.~~ ←SHPAC

SHPAC → B. The amount of the homestead exemption is:

(1) one hundred fifty thousand dollars

(\$150,000); or

(2) three hundred thousand dollars (\$300,000)

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if the spouse of the person claiming the exemption died within two years prior to the date of claiming the homestead exemption and if the deceased spouse would have been able to claim the homestead exemption had the deceased spouse survived until the date of claiming the homestead exemption. ←SHPAC

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

D. This section shall be liberally construed in favor of the person claiming a homestead exemption.

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

SECTION 8. Section 42-10-10 NMSA 1978 (being Laws 1971, Chapter 215, Section 7, as amended) is amended to read:

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

~~[B. If the resident does not own a homestead, the sheriff or any other person or officer seeking to attach,~~

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~~execute or foreclose by judgment on property shall provide the resident with written notification of the resident's right to exemption in lieu of homestead as described in Subsection A of this section, together with a simple form by which the resident may designate that the resident is aware of the exemption and does or does not desire to claim the exemption. If the resident refuses to make the election provided for in this section, the sheriff, other person or officer shall proceed to attach, execute or foreclose on the resident's property. If the resident claims the exemption in lieu of homestead, the sheriff, other person or officer making attachment, execution or foreclosure by judgment shall file as part of the return a description, including the resident's stated value, of the property claimed as exempt, bearing the resident's signature witnessed by the sheriff, other person or officer seeking to attach, execute or foreclose.]"~~

SECTION 9. Section 42-10-13 NMSA 1978 (being Laws 1975, Chapter 246, Section 1) is amended to read:

"42-10-13. CLAIM OF EXEMPTION OR PRIORITY.--

A. Any person desiring to claim that property is exempt from execution or garnishment or is subject to execution only after other property is used to satisfy a debt under the provisions of Sections [~~57-4A-4 and 57-4A-5 NMSA 1953~~] 40-3-10 and 40-3-11 NMSA 1978 shall file [~~his~~] a claim of exemption or priority in the appropriate court; [~~or the right to claim such exemption is waived as between a spouse and the creditor~~]

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provided that the time to file that claim of exemption shall not be less than ten days after the filing of a writ of execution as set forth in New Mexico Rule of Civil Procedure 1-065.1.

B. A notice of the right to claim exemption to garnishment, execution, levy, attachment or foreclosure or a form to file or claim that exemption shall be provided by the creditor to the person whose property is subject to garnishment, execution, levy, attachment or foreclosure, and that notice shall contain a complete list of exemptions provided by the law."

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

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

A. On July 1, 2025, and at each two-year interval ending on July 1 thereafter, each dollar amount provided for in Sections 35-12-18, 42-10-1, 42-10-4, 42-10-9 and 42-10-10 NMSA 1978 shall be adjusted to reflect the change in the consumer price index for all urban consumers as published by the United States department of labor for the most recent two-year period ending immediately before such January 1 preceding such July 1. The administrative office of the courts shall publish any adjustments to the exemptions in Sections 35-12-18, 42-10-1, 42-10-4, 42-10-9 and 42-10-10 NMSA 1978 every two years on July 1, beginning July 1, 2025. The dollar amount shall be adjusted to the twenty-five-dollar (\$25.00) increment nearest to the

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dollar amount that represents such change.

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

SECTION 11. Section 51-1-37 NMSA 1978 (being Laws 1936 (S.S.), Chapter 1, Section 15, as amended) is amended to read:

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

A. Except as provided by Section 51-1-37.1 NMSA 1978, any agreement by an individual to waive, release or commute [~~his~~] the individual's rights to benefits or any other rights under the Unemployment Compensation Law shall be void. No agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions or payments in lieu of contributions, required under the Unemployment Compensation Law from such employer, shall be valid. No employer shall directly or indirectly make or require or accept any deduction from the remuneration of individuals in [~~his~~] the employer's employ to finance the employer's contributions or payments in lieu of contributions required from [~~him~~] the employer or require or accept any waiver of any right hereunder by an individual in [~~his~~] the employer's employ. Any employer or officer or agent of an employer who violates any provisions of this subsection shall, for each offense, be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or be imprisoned for not more than six months, or both.

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

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

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this subsection is void.

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

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

(2) levy by the federal internal revenue service pursuant to Section 6331(h)(2)(C) of the Internal Revenue Code of 1986; provided that arrangements have been made by the internal revenue service for reimbursement of the division for administrative costs incurred by the division that are attributable to the repayment of uncollected federal internal revenue taxes. Levy of federal income taxes will be made in accordance with such regulations as the secretary may prescribe; and

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

SECTION 12. REPEAL.--Section 42-10-2 NMSA 1978 (being Laws 1971, Chapter 215, Section 2, as amended) is repealed.

SECTION 13. APPLICABILITY.--The provisions of this act apply to actions filed on or after July 1, 2023.

SECTION 14. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2023.