

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

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

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

25 Dated _____, [~~19~~] 20 _____

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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 value;

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1 (3) a person's interest in jewelry held
2 primarily for the use of the person, the person's spouse or any
3 dependent of the person, not exceeding five thousand dollars
4 (\$5,000) in the aggregate;

5 (4) a person's aggregate interest in any
6 personal property, not exceeding fifteen thousand dollars
7 (\$15,000);

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

13 (6) the person's right to receive:

14 (a) social security benefits;

15 (b) veteran's benefits;

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

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

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

24 (f) payment pursuant to a stock bonus,
25 pension, profit-sharing, annuity or similar plan or contract on

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1 account of illness, disability, death or length of service, to
2 the extent reasonably necessary for the support of the person
3 or any dependent of the person, unless such plan or contract
4 does not qualify pursuant to Section 401(a), 403(a), 403(b) or
5 408 of the Internal Revenue Code of 1986;

6 (7) retirement funds to the extent that those
7 funds are in a fund or account that is exempt from taxation
8 pursuant to Section 401, 403, 408, 408A, 414, 457 or 501(a) of
9 the Internal Revenue Code of 1986;

10 (8) an interest in or proceeds from a pension
11 or retirement fund;

12 (9) refundable federal and state tax credits;

13 (10) exempt wages as defined by Section
14 35-12-7 NMSA 1978; and

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

24 B. Property exempted pursuant to the provisions of
25 this section shall be valued at the market value of used

1 chattels.

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

6 (1) furniture;

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

10 (3) clothing and personal effects, including
11 wedding rings;

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

16 (5) kitchenware, cookware, dishes, utensils,
17 silverware, china and glasses;

18 (6) linens;

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

21 (8) educational materials and equipment;

22 (9) medical equipment, supplies and
23 professionally prescribed health aids reasonably necessary for
24 the care and support of the person or any dependent of the
25 person;

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1 (10) toys, games, sports, hobby and craft
2 equipment, materials and supplies, not exceeding two thousand
3 five hundred dollars (\$2,500) in the aggregate;

4 (11) books; and

5 (12) two firearms.

6 D. As used in this section, "household goods and
7 furnishings" does not include:

8 (1) works of art or artwork, unless by or of
9 the person or any relative of the person, not exceeding two
10 thousand five hundred dollars (\$2,500) in the aggregate; and

11 (2) electronic entertainment equipment with a
12 fair market value of more than one thousand five hundred
13 dollars (\$1,500) per item."

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

16 "42-10-4. BENEVOLENT ASSOCIATIONS--BENEFITS.--~~[SEC. 5.]~~
17 Any beneficiary fund not exceeding ~~[five thousand dollars]~~
18 fifty thousand dollars (\$50,000) set apart, appropriated or
19 paid by any benevolent association or society, according to its
20 rules, regulations or bylaws, to the family of any deceased
21 member or to any member of ~~[such]~~ the deceased member's family,
22 shall not be liable to be taken by any process or proceedings,
23 legal or equitable, to pay any debts of ~~[such]~~ the deceased
24 member."

25 SECTION 5. Section 42-10-7 NMSA 1978 (being Laws 1971,

1 Chapter 215, Section 4) is amended to read:

2 "42-10-7. TAXES [~~AND GARNISHMENT~~] EXCEPTED.--~~[This~~
3 ~~article]~~ Chapter 42, Article 10 NMSA 1978 is not applicable to
4 taxes [~~or garnishment~~]."

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

7 "42-10-9. HOMESTEAD EXEMPTION.--~~[Each person shall have~~
8 ~~exempt a homestead in a dwelling house and land occupied by the~~
9 ~~person or in a dwelling house occupied by the person although~~
10 ~~the dwelling is on land owned by another, provided that the~~
11 ~~dwelling is owned, leased or being purchased by the person~~
12 ~~claiming the exemption. Such a person has a homestead of sixty~~
13 ~~thousand dollars (\$60,000) exempt from attachment, execution or~~
14 ~~foreclosure by a judgment creditor and from any proceeding of~~
15 ~~receivers or trustees in insolvency proceedings and from~~
16 ~~executors or administrators in probate. If the homestead is~~
17 ~~owned jointly by two persons, each joint owner is entitled to~~
18 ~~an exemption of sixty thousand dollars (\$60,000).]~~

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

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B. The amount of the homestead exemption is:

(1) one hundred fifty thousand dollars (\$150,000) unless the person or spouse of the person who resides in the homestead is a person described in Paragraph (3) or (4) of this subsection;

(2) three hundred thousand dollars (\$300,000) if the spouse of the person who owns or resides in the homestead is deceased, and the deceased spouse died within two years prior to the date of claiming the homestead exemption;

(3) three hundred thousand dollars (\$300,000) if the homestead is owned jointly by:

(a) a person and the person who owns or resides in the homestead; or

(b) a spouse of the person who owns or resides in the homestead; or

(4) three hundred fifty thousand dollars (\$350,000) if the person or spouse of the person who owns or resides in the homestead 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

1 (c) physically or mentally disabled and
2 who, as a result of that disability, is unable to engage in
3 substantial gainful employment. There is a rebuttable
4 presumption affecting the burden of proof that a person
5 receiving disability insurance benefit payments under Title II
6 of the federal Social Security Act or supplemental security
7 income payments under Title XVI of the federal Social Security
8 Act satisfies the requirements of this subparagraph as to the
9 person's inability to engage in substantial gainful employment.

10 C. The combined homestead exemptions of spouses
11 shall not exceed the amount specified in Paragraph (3) or (4)
12 of Subsection B of this section, whichever is applicable,
13 regardless of whether the spouses are jointly obligated on the
14 judgment and regardless of whether the homestead consists of
15 community or separate property or both.

16 D. If both spouses are entitled to a homestead
17 exemption, the exemption of proceeds of the homestead shall be
18 apportioned between the spouses on the basis of their
19 proportionate interests in the homestead.

20 E. 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 vehicle, mobile home, outbuilding or other
23 similar shelter, regardless of whether such dwelling complies
24 with relevant housing or building regulations.

25 F. This section shall be liberally construed in

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1 favor of the person claiming a homestead exemption."

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

4 "42-10-10. EXEMPTION IN LIEU OF HOMESTEAD.--

5 A. Any resident of this state who does not own a
6 homestead shall in addition to other exemptions hold exempt
7 real or personal property in the amount of [~~five thousand~~
8 ~~dollars (\$5,000)~~] fifteen thousand dollars (\$15,000) in lieu of
9 the homestead exemption.

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

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1 witnessed by the sheriff, other person or officer seeking to
2 attach, execute or foreclose."

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

5 "42-10-13. CLAIM OF EXEMPTION OR PRIORITY.--

6 A. Any person desiring to claim that property is
7 exempt from execution or garnishment or is subject to execution
8 only after other property is used to satisfy a debt under the
9 provisions of Sections [57-4A-4 and 57-4A-5 NMSA 1953] 40-3-10
10 and 40-3-11 NMSA 1978 shall file [his] a claim of exemption or
11 priority in the appropriate court; [or the right to claim such
12 exemption is waived] provided that the time to file such claim
13 of exemption shall not be less than thirty days. If a claim of
14 exemption is filed after the expiration of any deadline to
15 claim an exemption, the court shall determine, in the interest
16 of justice, whether the exemption was waived; however, a
17 failure to timely file a claim of exemption shall waive the
18 exemption as between a spouse and the creditor.

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

25 SECTION 9. A new Section 42-10-14 NMSA 1978 is enacted to

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1 read:

2 "42-10-14. [NEW MATERIAL] COST-OF-LIVING ADJUSTMENTS.--

3 A. On July 1, 2023, and at each two-year interval
4 ending on July 1 thereafter, each dollar amount provided for in
5 Sections 42-10-1, 42-10-4, 42-10-9 and 42-10-10 NMSA 1978 shall
6 be adjusted to reflect the change in the consumer price index
7 for all urban consumers as published by the United States
8 department of labor for the most recent two-year period ending
9 immediately before such January 1 preceding such July 1. The
10 dollar amount shall be adjusted to the twenty-five-dollar
11 (\$25.00) increment nearest to the dollar amount that represents
12 such change.

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

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

18 "51-1-37. PROTECTION OF RIGHTS AND BENEFITS.--

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

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

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

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1 months, or both.

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

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

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

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

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1 internal revenue taxes. Levy of federal income taxes will be
2 made in accordance with such regulations as the secretary may
3 prescribe; and

4 (3) deduction and withholding of amounts for
5 food stamp overissuances pursuant to Section 51-1-37.2 NMSA
6 1978."

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

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

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

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