

# HOUSE BILL REPORT

## ESSB 5173

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### As Passed House - Amended:

April 7, 2023

**Title:** An act relating to property exempt from execution.

**Brief Description:** Concerning property exempt from execution.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senators Stanford, Hasegawa, Kuderer, Pedersen, Saldaña and Trudeau).

### Brief History:

#### Committee Activity:

Civil Rights & Judiciary: 3/21/23, 3/28/23 [DPA].

#### Floor Activity:

Passed House: 4/7/23, 65-32.

### Brief Summary of Engrossed Substitute Bill (As Amended by House)

- Modifies and increases the maximum value of certain exemptions from execution, attachment, and garnishment.
- Provides that, in the case of married persons, each spouse is entitled to their own exemptions, which may be taken separately or combined.

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## HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

**Majority Report:** Do pass as amended. Signed by 8 members: Representatives Hansen, Chair; Farivar, Vice Chair; Walsh, Ranking Minority Member; Entenman, Goodman, Peterson, Thai and Walen.

**Minority Report:** Do not pass. Signed by 1 member: Representative Graham, Assistant Ranking Minority Member.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

**Minority Report:** Without recommendation. Signed by 2 members: Representatives Cheney and Rude.

**Staff:** John Burzynski (786-7133).

**Background:**

Attachment, execution, and garnishment are legal procedures a creditor can use to enforce their right to obtain payment of a debt. More specifically:

- Attachment is a legal process by which a plaintiff may secure the property of a defendant, at the time of commencing a legal action, to secure any judgment the plaintiff may recover.
- Execution is a legal process by which a judgment creditor may enforce a judgment against the judgment debtor by requiring payment of money or delivery of property.
- Garnishment is a legal process by which a judgment creditor may recover funds owed by a judgment debtor by compelling third parties to divert to the creditor certain funds owned by or owed to the debtor (e.g., funds held in bank accounts or wages paid by an employer).

Washington law allows debtors to claim certain property and funds as exempt from attachment, execution, and garnishment. A number of exemptions are available to individuals or, for spouses maintaining a single household, to the marital community as a whole.

Exemptions exist for:

- wearing apparel, not to exceed \$3,500 in value in furs, jewelry, and personal ornaments;
- private libraries including electronic media, not to exceed \$3,500 in value, and all family pictures and keepsakes;
- a cell phone, personal computer, and printer;
- household goods, appliances, furniture, home and yard equipment, and fuel for comfortable maintenance, not to exceed \$6,500 in value for an individual or \$13,000 in value for a marital community, with no single item to exceed \$750 in value;
- other personal property, excluding personal earnings, not to exceed \$3,000 in value, of which no more than \$1,500 may consist of cash;
- a motor vehicle used for personal transportation for an individual, not to exceed \$3,250 in value; or two motor vehicles used for personal transportation for a marital community, not to exceed \$6,500 in value;
- past due, current, or future child support paid or owed to the debtor;
- professionally prescribed health aids;
- the right to or proceeds of a personal injury award, not to exceed \$20,000, not including pain and suffering or compensation for actual pecuniary loss; or the right to or proceeds of a payment in compensation of loss of future earnings to the extent reasonably necessary for support;

- specific tools and supplies relevant to farmers, physicians, surgeons, attorneys, clergy, and other professionals (e.g., farm equipment, seed, libraries, office equipment, etc.) not to exceed \$10,000 in value; and for all others, all tools, instruments, and materials used to carry on a trade for the support of oneself or family, not to exceed \$10,000 in value;
- qualifying tuition units; and
- workers' compensation payments, but only before the issuance and delivery of payment.

In 2021 the underlying statute governing most exemptions was amended to temporarily provide for automatic exemptions of certain funds, which a debtor is not required to apply for to receive. These automatic exemptions are scheduled to lapse on July 1, 2025, after which the 2019 version of the statute is scheduled to come back into effect.

### **Summary of Amended Bill:**

#### Exemption Modifications.

Specific exemptions to execution, attachment, and garnishment are modified and increased:

- The exemption maximum for household goods, appliances, furniture, home and yard equipment, and fuel for comfortable maintenance is maintained at \$6,500. The limitation that no single item may exceed \$750 in value is removed.
- The exemption maximum for other personal property is increased from \$3,000 to \$10,000 in a bankruptcy case. The \$3,000 maximum is retained outside of bankruptcy. The limitation that no more than \$1,500 in value may consist of cash is removed.
- The exemption maximum for a motor vehicle is increased from \$3,250 to \$15,000. The requirement that the vehicle be used for personal transportation is removed.
- The exemption maximum for qualifying personal injury awards and compensation for loss of future earnings is removed in a bankruptcy case. Such awards and compensation are free from the claims of creditors, except to satisfy liens or subrogation claims arising out of the claims for personal injury or death.
- The exemption maximum for trade tools, instruments, and materials is increased from \$10,000 to \$15,000. The exemption is extended to cover supplies. The requirement that the trade be carried on for the support of oneself or family is removed. Exemptions for certain kinds of property for specific professions are removed.
- The exemption for workers' compensation payments is extended to apply after issuance and delivery of payment.

#### Separate and Combined Exemptions for Spouses.

Each spouse is entitled to his or her own exemptions to execution, attachment, and garnishment. A couple may combine exemptions or take them separately. Distinct maximum exemption values for marital communities are removed.

#### Notice and Exemption Forms.

The garnishment notice sent to garnishees is modified to instruct the garnishee to double automatic exemption values for specified funds if the garnishee has documentation that the funds in the account are the community property of married persons or domestic partners. This provision is scheduled to lapse alongside the temporary automatic exemptions for certain funds on July 1, 2025.

The garnishment exemption notice and form sent to debtors is modified to: (1) state and list the doubled value of specific exemption maximums for spouses who combine their exemptions; (2) allow a debtor to declare under penalty of perjury they are married and wish to use a marital exemption; and (3) remove the signature line for a spouse, and move the debtor's signature line to the end of each form.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains multiple effective dates. Please see the bill.

**Staff Summary of Public Testimony:**

(In support) This bill increases incredibly low exemption amounts and brings them more in line with the twenty-first century and rapid inflation resulting from the pandemic. The failure to update this bill has created real life challenges for some. While bank account exemptions were increased four years ago, the world has changed and both rent and interest rates have increased. Two thousand dollars in a bank account is not enough to pay one's bills. It is inhumane to think a family going through bankruptcy does not deserve a modest vehicle.

The state's exemption laws should provide a basic safety net. Many people who need to use these exemptions are on the financial edge and food insecure. Many renters are surviving primarily on debt via payday loans and credit cards. This bill is measured and designed to prevent people from losing their property because of an inability to pay credit card or medical bills. The personal property of Washingtonians should be off-limits for creditors, and they should be able to maintain their wages so they can pay down their debts. This bill provides a fiscal shelter to vulnerable working people.

The National Consumer Law Center currently grades Washington's safety net laws as a C. This law will increase protections of family cars worth up to \$15,000, taking Washington's grade from a C to an A.

The changes in this bill are modest but will make a meaningful difference. The bill provides specific protections for creditors. Subrogation and medical lien holders are protected. Nothing in this bill prevents creditors with secured loans from repossession and starting a replevin action if a borrower is in default and not paying. Debtors will still need

to pay off loans to keep cars or other property.

Existing bankruptcy laws are outdated and prejudiced against debtors. Taxpayers should not be forced to fund creditors and their attorneys. The spirit of bankruptcy law is to provide persons with a fresh start free from crippling debt.

The bill corrects a gender inequality present in current law. Moreover, communities of color are disproportionately burdened by debt and wage seizure. There are long-standing racial wealth gaps in the nation.

The provisions of the bill allowing for automatic adjustments of exemption values based on inflation are meritorious. Without this provision, exemption amounts become meaningless over time.

One couple previously owned a store they were forced to shut down during the pandemic. They declared bankruptcy, forcing them to live paycheck to paycheck. Current exemptions failed to meet their needs.

One individual was forced to go on disability after a drunk driver struck their vehicle, causing severe injuries that prevented them from returning to work. The individual's deteriorating finances and the state's low exemption amounts compelled them to take out predatory loans to survive. If higher exemption amounts had existed, the individual could have declined predatory loans and covered necessities like food and rent.

(Opposed) This bill needs more stakeholder work. Concerns are not being addressed. Many of the issues addressed in this bill are already the subject of recent reforms. In 2019 exemptions were increased fourfold, from \$500 to \$2,000. Automatic exemptions were then added in 2021. Further increasing exemptions regardless of need is premature. The Legislature should wait and see how its prior increases to exemptions play out.

Emergency options and relief that applied during the pandemic should not continue to apply today outside that context. Bankruptcy protections and automatic exemptions can be important tools but they should not be expanded without consideration of unintended consequences. Some entities may stop their credit policies and impose cash-up-front requirements because laws are making it impossible to enforce their agreements. This bill will increase the cost of credit.

The bill does not amend garnishment forms, forcing them out of sync with the exemption statute. Consumer attorneys want a conflict in the law. The forms must match.

The automatic inflation of exemption amounts based on the Consumer Price Index is not recommended. It is an essential function of the Legislature to carefully consider increases. Some price categories increase while others may fall. Under this bill, the exemption values will keep going up. It is better for the Legislature to review exemption levels periodically,

rather than automatically increase them without thought.

This bill doubles exemptions for married consumers. Tying exemptions to marriage is problematic because banks do not necessarily know when a consumer is married. Many married couples have separate bank accounts. The bill should be amended to require consumers to self-identify as married. Doubling for marital communities is also unnecessary when not all expenses double for a married couple. Some costs increase while others fall, e.g., housing. Current law doubles exemptions for some assets, but not all. That approach makes more sense.

This bill requires no proof of need and fails to differentiate between those who need help and those with the means to support themselves.

(Other) Personal property exemptions protect funds in bank accounts and vehicles so a debtor is not wiped out financially when they face collection on a judgment. During the pandemic, many struggled with debt and families relied on exemptions to protect property and housing. Outdated laws put financial stability out of reach. Cars are a critical lifeline. The existing exemption of \$3,250 for a vehicle is grossly outdated, and the proposed update reflects the current average price of vehicles. The doubling of marital exemptions is a necessary update to old laws drafted in the 1800s.

**Persons Testifying:** (In support) Mark Fredrich; Emilie Padiernos; Samia El-Moslimany; Christina Henry, Northwest Consumer Law Center; John Webber, Washington State Association for Justice; Shaun Scott, Statewide Poverty Action Network; and Michael Best, National Consumer Law Center.

(Opposed) Kevin Underwood and Kelsi Hamilton, Washington Collectors Association; Sonia Gibson, Receivables Management Association International; Mindy Chumbley, Solverity; and Andrew Roskam, Accounts Receivable Incorporated.

(Other) Fadi Assaf, Northwest Justice Project.

**Persons Signed In To Testify But Not Testifying:** None.