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AN ACT

RELATING TO ACTIONS AFFECTING PROPERTY; 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 REQUIREMENTS IN GARNISHMENT; AMENDING,
REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

SECTION 1. Section 35-12-2 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 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 the
garnishee's answer:

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

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

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

4 B. Return on the garnishment shall be made in the
5 manner provided by law for return on a civil summons in the
6 magistrate court.

7 C. At the same time as the garnishment is served
8 on the garnishee, a copy of the garnishment shall be sent to
9 the defendant's last known address."

10 SECTION 2. Section 35-12-7 NMSA 1978 (being Laws 1969,
11 Chapter 139, Section 6, as amended) is amended to read:

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

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

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

21 (2) an amount each week equal to forty times
22 the highest applicable minimum hourly wage rate at the place
23 the wages were earned. The director of the financial
24 institutions division of the regulation and licensing
25 department shall provide a table giving equivalent exemptions

1 for pay periods of other than one week.

2 B. As used in this section:

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

6 (2) "highest applicable minimum hourly wage
7 rate" means the highest federal, state or local minimum
8 hourly wage rate for an eight-hour day and a forty-hour week
9 applicable at the time the wages are payable. However, it is
10 immaterial whether the garnishee is exempt under federal,
11 state or local law from paying the highest applicable minimum
12 hourly wage rate.

13 C. The maximum amount that may be taken from a
14 spouse's disposable earnings under both the garnishment
15 procedure and the wage deduction procedure for the
16 enforcement of child support is fifty percent of the spouse's
17 disposable earnings.

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

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

23 "35-12-18. GARNISHMENT--FORM OF WRIT.--Writs of
24 garnishment in civil actions in the magistrate court shall
25 state whether the writ is issued in advance of or in aid of

1 execution of judgment and shall be in substantially the
2 following form:

3 "STATE OF NEW MEXICO

4 _____MAGISTRATE DISTRICT, DIVISION _____

5 (Name), Plaintiff)

6)

7 v.) CIVIL DOCKET NO. _____

8)

9 (Name), Defendant)

10)

11 (Name), Garnishee)

12 WRIT OF GARNISHMENT

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

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

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

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

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

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

8 This writ was issued in (advance) (aid of execution) of
9 judgment against the defendant. If this writ was issued in
10 advance of judgment, it does not attach any wages or salary
11 due from you to the defendant. If this writ was issued in
12 aid of execution of judgment, it attaches wages or salary due
13 from you to the defendant in excess of the greater of the
14 following portions of the defendant's disposable earnings:

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

17 B. an amount each week equal to forty times the
18 highest applicable minimum hourly wage rate at the place the
19 wages were earned. A table giving equivalent exemptions for
20 pay periods of other than one week may be obtained from the
21 director of the financial institutions division of the
22 regulation and licensing department. "Disposable earnings"
23 means that part of the defendant's wage or salary remaining
24 after deducting the amounts that are required by law to be
25 withheld. "Highest applicable minimum hourly wage rate"

1 means the highest federal, state or local minimum hourly wage
2 rate for an eight-hour day or a forty-hour week. It is
3 immaterial whether you are exempt under federal, state or
4 local law from paying the highest applicable minimum hourly
5 wage rate.

6 FINANCIAL INSTITUTION WRITS

7 If you are a financial institution, the defendant who is
8 an individual or sole proprietor has an exemption totaling
9 two thousand four hundred dollars (\$2,400) in depository and
10 investment accounts. This writ attaches only to money in
11 excess of two thousand four hundred dollars (\$2,400). You
12 may rely on the representations of the person executing this
13 writ as to whether the exemption amount has already been
14 satisfied with other accounts held by other financial
15 institutions. This provision shall not prevent the
16 individual or sole proprietor from claiming that additional
17 money in depository or investment accounts is exempt under
18 any other available exemption provided by law.

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

25 It is unlawful to pay or deliver to the defendant any

1 item attached by this writ. If you fail to appear and answer
2 as directed, or if you unlawfully dispose of any item
3 attached by this writ, judgment may be rendered against you
4 for the full amount of the plaintiff's claim against the
5 defendant in this action.

6 Dated _____, 20 _____

7 Magistrate".

8 SECTION 4. Section 42-10-1 NMSA 1978 (being Laws 1971,
9 Chapter 215, Section 1, as amended) is amended to read:

10 "42-10-1. EXEMPTIONS.--

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

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

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

21 (3) a person's interest in a wedding band
22 and an engagement ring and a person's interest in additional
23 jewelry held primarily for the use of the person, the
24 person's spouse or any dependent of the person, not exceeding
25 five thousand dollars (\$5,000) in the aggregate for this

1 additional jewelry;

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

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

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

12 (a) social security benefits;

13 (b) veteran's benefits;

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

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

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

23 (f) payment pursuant to a stock bonus,
24 pension, profit-sharing individual retirement account,
25 annuity or similar plan or contract on account of illness,

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

6 (7) refundable federal and state tax
7 credits;

8 (8) exempt wages as defined by Section
9 35-12-7 NMSA 1978;

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

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

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

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

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

24 (14) a person's aggregate interest, not
25 exceeding fifteen thousand dollars (\$15,000), in any personal

1 property, tangible or intangible, not otherwise specified in
2 this subsection, including any deposits in financial or
3 investments accounts or personal property that exceeds the
4 monetary limits set forth in this section; provided that for
5 an individual or sole proprietor who is a defendant in any
6 action except a bankruptcy action, the maximum cumulative
7 amount that a defendant may claim as exempt in a depository
8 or investment account is two thousand four hundred dollars
9 (\$2,400), plus any money derived from the sources set forth
10 in Paragraphs (6) through (11) of this subsection.

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

15 (1) furniture;

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

20 (3) clothing and personal effects;

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

25 (5) medical equipment, supplies and

1 professionally prescribed health aids reasonably necessary
2 for the care and support of the person or any dependent of
3 the person;

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

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

9 (8) books; and

10 (9) two firearms.

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

14 SECTION 5. 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.--Any
17 beneficiary fund not exceeding fifty thousand dollars
18 (\$50,000) set apart, appropriated or paid by any benevolent
19 association or society, according to its rules, regulations
20 or bylaws, to the family of any deceased member or to any
21 member of the deceased member's family, shall not be liable
22 to be taken by any process or proceedings, legal or
23 equitable, to pay any debts of the deceased member."

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

1 "42-10-7. TAXES EXCEPTED.--Sections 42-10-1 through
2 42-10-7 NMSA 1978 are not applicable to taxes."

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

5 "42-10-9. HOMESTEAD EXEMPTION.--

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

13 B. The amount of the homestead exemption is:

14 (1) one hundred fifty thousand dollars
15 (\$150,000); or

16 (2) three hundred thousand dollars (\$300,000)
17 if the spouse of the person claiming the exemption died
18 within two years prior to the date of claiming the homestead
19 exemption and if the deceased spouse would have been able to
20 claim the homestead exemption had the deceased spouse
21 survived until the date of claiming the homestead exemption.

22 C. As used in this section, "domicile" means any
23 shelter or dwelling used by the person as a primary residence
24 and may include a mobile home, trailer, recreational vehicle,
25 outbuilding or other similar shelter, regardless of whether

1 such dwelling complies with relevant housing or building
2 regulations.

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

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

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

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

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

17 "42-10-13. CLAIM OF EXEMPTION OR PRIORITY.--

18 A. Any person desiring to claim that property is
19 exempt from execution or garnishment or is subject to
20 execution only after other property is used to satisfy a debt
21 under the provisions of Sections 40-3-10 and 40-3-11 NMSA
22 1978 shall file a claim of exemption or priority in the
23 appropriate court; provided that the time to file that claim
24 of exemption shall not be less than ten days after the filing
25 of a writ of execution as set forth in New Mexico Rule of

1 Civil Procedure 1-065.1.

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

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

11 "42-10-14. COST-OF-LIVING ADJUSTMENTS.--

12 A. On July 1, 2025, and at each two-year interval
13 ending on July 1 thereafter, each dollar amount provided for
14 in Sections 35-12-18, 42-10-1, 42-10-4, 42-10-9 and 42-10-10
15 NMSA 1978 shall be adjusted to reflect the change in the
16 consumer price index for all urban consumers as published by
17 the United States department of labor for the most recent
18 two-year period ending immediately before such January 1
19 preceding such July 1. The administrative office of the
20 courts shall publish any adjustments to the exemptions in
21 Sections 35-12-18, 42-10-1, 42-10-4, 42-10-9 and 42-10-10
22 NMSA 1978 every two years on July 1, beginning July 1, 2025.
23 The dollar amount shall be adjusted to the twenty-five-dollar
24 (\$25.00) increment nearest to the dollar amount that
25 represents such change.

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

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

7 "51-1-37. PROTECTION OF RIGHTS AND BENEFITS.--

8 A. Except as provided by Section 51-1-37.1 NMSA
9 1978, any agreement by an individual to waive, release or
10 commute the individual's rights to benefits or any other
11 rights under the Unemployment Compensation Law shall be void.
12 No agreement by any individual in the employ of any person or
13 concern to pay all or any portion of an employer's
14 contributions or payments in lieu of contributions, required
15 under the Unemployment Compensation Law from such employer,
16 shall be valid. No employer shall directly or indirectly
17 make or require or accept any deduction from the remuneration
18 of individuals in the employer's employ to finance the
19 employer's contributions or payments in lieu of contributions
20 required from the employer or require or accept any waiver of
21 any right hereunder by an individual in the employer's
22 employ. Any employer or officer or agent of an employer who
23 violates any provisions of this subsection shall, for each
24 offense, be fined not less than one hundred dollars (\$100)
25 nor more than one thousand dollars (\$1,000) or be imprisoned

1 for not more than six months, or both.

2 B. No individual claiming benefits shall be
3 charged fees of any kind in any proceeding under the
4 Unemployment Compensation Law by the department or its
5 representatives or by any court or any officer thereof. Any
6 individual claiming benefits and any employer in any
7 proceeding before the secretary, the secretary's authorized
8 representative or the board of review may be represented by
9 counsel or any other duly authorized agent, but no such
10 counsel or agent shall either charge or receive for such
11 services more than an amount approved by the secretary. Any
12 person who violates any provision of this subsection shall,
13 for each such offense, be fined not less than fifty dollars
14 (\$50.00) nor more than five hundred dollars (\$500) or
15 imprisoned for not more than six months, or both.

16 C. Except as provided in Subsection D of this
17 section, any assignment, pledge or encumbrance of any right
18 to benefits that are or may become due or payable under the
19 Unemployment Compensation Law shall be void, and such rights
20 to benefits shall be exempt from levy, execution, attachment,
21 garnishment or any other remedy provided for the collection
22 of debt. Benefits received by any individual shall be exempt
23 from a remedy for the collection of debts. Any waiver of any
24 exemption provided for in this subsection is void.

25 D. The following actions for collection of the

1 indicated obligations may be taken:

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

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

13 (3) deduction and withholding of amounts for
14 food stamp overissuances pursuant to Section 51-1-37.2 NMSA
15 1978."

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

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

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

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