

OREGON STATE BAR
Legislative Proposal
Part I – Legislative Summary

RE: HB 2306 Repeal of ORS 18.300 relating to Federal Bankruptcy Exemptions

Submitted by: Consumer Law Section

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1. Does this amend current law or program? Yes.

Repeal ORS 18.300

2. PROBLEM PRESENTED (including level of severity):

This proposal would repeal ORS 18.300. By doing so Oregon would allow debtors in bankruptcy to elect to choose either the exemptions contained in ORS 18 or the Federal Bankruptcy Exemptions contained in 11 U.S.C. § 522.

Several states, including Washington, have opted in to the Federal Bankruptcy Exemptions. California has exemptions similar to the federal exemptions. See CCP 703 et seq., CCP 704 et seq.

Under the Bankruptcy Amendments of 2005 residents of Oregon who lived elsewhere 2 years prior to their bankruptcy filing claim exemptions other than Oregon exemptions. This can often lead to them claiming federal Exemptions. However, long term resident are forbidden from claiming these exemptions.

Further, the exemptions in 11 U.S.C. § 522 are tied to the consumer price index. Therefore, there will be less need for the legislature to amend the exemption as time passes.

The Federal Exemptions treat non-homeowners more fairly. Under current law, a single homeowner can claim \$30,000 exempt pursuant to ORS 18.395. However, non-homeowners cannot claim exemptions in property in lieu of the homestead. Federal Exemptions allow a non-homeowner to claim one-half of the homestead in personal property. See 11 U.S.C. § 522 (d) (5). This creates less disparate treatment between homeowners and non-homeowners.

3. SOLUTION:

11 U.S.C. § 522 allows the states to opt out of the Federal Exemptions. ORS 18.300 opts out of the Federal Bankruptcy Exemptions. This proposal would repeal ORS 18.300 and allow debtors in bankruptcy to claim Federal Exemptions.

4. **PUBLIC POLICY IMPLICATION** of this proposed legislative change:

Those who have been long-term residents of Oregon are placed on equal footing with those who moved to Oregon in the last 2 years. Further, long-term residents are not reliant upon the legislature to increase the exemptions as the price of living increases.

5. Could the problem be addressed through a **NON-LEGISLATIVE SOLUTION**, such as administrative rule or education?

No.

6. **COULD ANOTHER SECTION OR GROUP MORE APPROPRIATELY INTRODUCE THE BILL?** If so, have you suggested it to the section or group?

We believe that either the consumer section or the debtor/creditor section would be equally appropriate. The debtor/creditor section does not oppose the legislation.

7. **IDENTIFY THE GROUP OR CONSTITUENCIES THAT WOULD BE MOST IMPACTED** or interested in this change. Who would support it and who would oppose it?

Any person living in Oregon more than 2 years and who needs to file bankruptcy would be impacted the most. Bankruptcy trustees would also be impacted. Bankruptcy trustees may oppose it.

8. **Has this been introduced in a prior session?** Not to our knowledge.