Debtors' Exemption Statutes—Revision Ideas

Marjorie Dick Rombauer

University of Washington School of Law

Follow this and additional works at: https://digitalcommons.law.uw.edu/wlr

Recommended Citation


Available at: https://digitalcommons.law.uw.edu/wlr/vol36/iss4/9
Agricultural laborers... shall be secure in every part of Our Empire, so that no one can be found so audacious as to presume to seize, take or carry away either their persons, their oxen, their tools, or anything else used for the tillage of the soil.

—Constitution of Frederick, Code of Justinian, 529 A.D.¹

While the Washington statute which enumerates personal property which is exempt from seizure on execution or attachment is not as ancient as the Code of Justinian,² the oxen are still with us—a source of amusement for law students encountering the oxen and horse and buggy exemptions for the first time, a source of consternation for attorneys who encounter them in their practice, and a source of no comfort for those whom the statute was intended to protect. The wage exemption statute³ has a similar ring of frontier days. Although it was last amended in 1927, its history is one of retrogression rather than of advancement, in economic terms.

This article delineates the purposes which exemption laws should serve and surveys ways in which a comprehensive revision of the Washington statutes can more equitably (both as to debtors and creditors) effectuate these purposes.⁴ The discussion is far from exhaustive of the many provisions which might be considered in a revision of the debtor exemption area. It is intended only as a starting point for the thinking of attorneys.⁵

¹ Instructor, School of Law, University of Washington.  
² 14 Scott, The Civil Law 263-64 (1932).  
³ RCW 6.16.020 was originally adopted in substantially its present form in 1869 and was last amended in 1886.  
⁴ RCW 7.32.280.  
⁵ That present Washington exemption statutes are so antiquated as to serve little purpose seems too obvious to require discussion. See the brief but pointed attack on Washington's personal property exemptions by Judge Black in In re Rash, 81 F. Supp. 389, 394 (W. D. Wash. 1948).  
⁶ Two articles of particular interest to anyone who wishes to pursue the subject further are Joslin, Debtors' Exemption Laws: Time for Modernization, 34 Ind. L.J. 355 (1959), and Abrahams & Feldman, The Exemption of Wages from Garnishment: Some Comparisons and Comments, 3 De Paul L. Rev. 153 (1954). One premise of Joslin's article, however, has no significance in Washington. He suggests that flexible exemptions militate against a debtor's obtaining unsecured credit because of the creditor's inability to predict what assets would be available for collection purposes. Id. at 358-60. Assuming that the present Washington policy of permitting mortgaging of exempt assets and assignment of exempt wages is continued, such predictability would be lacking regardless of the manner of identifying exempt property.
ORIGINS AND PURPOSES

Common law paid no heed to the straits of debtors or of their families. Such exemptions from the reach of creditors as did exist were based upon purely practical considerations. A man's clothing could not be seized from his person, for this would lead to breaches of the peace. As against the ordinary distress for rent, there was an exemption of tools, utensils, and animals by means of which a debtor earned his living. The reason: To seize these objects would deprive the debtor of the only means by which he could earn money to pay the debt. Not until 1845 did England adopt a statute “to protect the actual necessities” of debtors from being seized on execution.

The Roman civil law much earlier followed a similar course from practical considerations to “necessaries” in its exemption policy. In 312 A.D., officers appointed by a judge for collection of debts were forbidden to seize “slaves, oxen, or implements used for the cultivation of the soil... by which act the payment of taxes may be delayed.” Ultimately, in the fourteenth century, creditors were prohibited from seizing the wearing apparel, beds, and doors of houses belonging to debtors. These were considered the bare necessities of a family’s existence.

By the eighteenth century there had appeared in the Spanish civil code (drawn in part from the Roman law) an extensive list of exemptions available to all debtors. The Spanish code exemptions became the basis for all state exemptions. However, the states and territories soon shifted the emphasis back to family protection, an emphasis

---

12 E.g., “Whereas it does not comport with justice or expediency to deprive innocent
which is still reflected in the Washington statutes today. As late as
1875 it was said that the sole purpose of the state statutes was protect-
ing families from want and misfortune, a statement borne out by the
fact that at that time only Pennsylvania and Texas exempted any per-
sonal property for single persons other than occupational tools and
accoutrements.

Notwithstanding this background, statements that exemption statutes
are intended, inter alia, for the benefit of the debtor are common, and
a three-pronged purpose is attributed to the exemptions—protection of
debtor, family, and society. Assuredly our society has an interest in
safeguarding a minimum standard of comfort for families and single
debtors. Additionally, to the extent that a debtor provides for his family
or himself, welfare and charitable funds may be relieved of that burden.
But, to emphasize the guarding of the “improvident... against penury
and want” is to invoke the defensive subconscious attitude of many
that “debtors should pay their bills.” Worse, the three-pronged ap-
proach ignores one of the important results of the occupational personal
property exemptions—the guarding of the productive ability of a debtor
for the benefit of all his creditors.

It is probable that a factor in growth of the attitude that exemptions
are intended as a shield for debtors was their conversion to bankruptcy
exemptions under the 1898 Bankruptcy Act. In shifting the purpose
from protection of the family and of creditors to rehabilitation of a
bankrupt, there has been imported a seeming counter purpose which
undoubtedly has been a strong inhibiting factor in revision of the
exemption area generally. To consider the unsatisfactory results from
use of state exemptions as bankruptcy exemptions is not a purpose of
this article. However, the dual function should be considered in any
revision of the personal property exemptions. Perhaps the most effec-
tive way to cope with this dual function is to build personal property
exemptions to serve the basic purposes of debtor exemptions—protect-

13 Herman, Executions 105 (1880).
14 Ibid. Note that Texas retained the Spanish civil code exemptions verbatim until
1839, Cobbs v. Coleman, 14 Tex. 599 (1855), and has since maintained a similarly
liberal exemption policy.
15 E.g., Slyfield v. Willard, 43 Wash. 179, 182, 86 Pac. 392, 394 (1906).
16 Ibid.
17 11 U.S.C. § 6 (1952). The state exemptions were similarly incorporated with
limitations under the Bankruptcy Act of 1867, 14 Stat. 522-23.
18 As to the antiquity of personal property exemptions in the states generally, see
Joslin, supra note 5.
19 The subject is exhaustively considered in Comment, 68 Yale L.J. 1459 (1959),
tion of family and creditors—and then to temper them if, as bankruptcy exemptions, they too greatly defeat the interests of existing creditors.

Unlike personal property exemptions, wage exemptions seem to have been a product of the industrialization of the United States, born of the realization that an increasing number of householders were entirely dependent on moneys earned from their labors for others, owning no tools or implements of their own. It has been suggested that the incentive for wage exemptions was the social interest in not having a debtor pushed below the line of subsistence living. An element of creditor protection may be suggested: if all the earnings of a debtor are taken by a single creditor, the debtor will maintain himself by borrowing—creating new debts—or using funds intended for other creditors—producing collection problems for them. Early limitation of the exemption to persons having dependents indicates that family protection was a strong factor in adoption of wage exemptions. Today, however, only twenty-one states do not make provision for single persons. Exemptions of savings or share accounts of building (or savings) and loan associations is a relative newcomer in the exemption field, the earliest one appearing to be that of New York, adopted in 1851. The New York act provided for exemption of shares of enumerated associations to the amount of $600. A variation appeared in the Michigan laws in 1887: a $1,000 share account exemption for members who did not own a homestead. Addition of the proviso with regard to non-ownership of homestead suggests an intent to provide an in lieu of homestead exemption. Two facts suggest, however, that such exemptions have been prompted, rather, by a desire to promote the growth of a new form of credit association. The author has been confronted at every turn by an assumption that inadequate wage exemptions are a determinative factor in bankruptcy filings. Limited statistical studies have neither proved nor disproved this assumption. But see Nugent, Devices for Liquidating Small Claims in Detroit, 2 Law & Contemp. Prob. 259, 263 (1935), suggesting that pressure for revision of Michigan collection methods in the early 1930’s came in part from creditors who had compunctions about garnishing but who found themselves being cut out by others who had no such compunctions, and Sturges & Cooper, Credit Administration and Wage Earner Bankruptcies, 42 Yale L.J. 487, 502-10 (1932).

20 2 Freeman, Executions 1243-44 (3d ed. 1900).
22 The author has been confronted at every turn by an assumption that inadequate wage exemptions are a determinative factor in bankruptcy filings. Limited statistical studies have neither proved nor disproved this assumption. But see Nugent, Devices for Liquidating Small Claims in Detroit, 2 Law & Contemp. Prob. 259, 263 (1935), suggesting that pressure for revision of Michigan collection methods in the early 1930’s came in part from creditors who had compunctions about garnishing but who found themselves being cut out by others who had no such compunctions, and Sturges & Cooper, Credit Administration and Wage Earner Bankruptcies, 42 Yale L.J. 487, 502-10 (1932).
type of financial institution: the fact that such exemptions have been adopted as part of an act providing for incorporation and regulation of building (or savings) and loan associations and the fact that the original New York act attached no such limitation.27

If a cash exemption is believed to serve the purpose of debtor exemption statutes generally, then there is justification for savings account exemptions. But is there justification for continuation of what may appear to be a competitive or collection advantage—as against mutual, commercial and credit union savings—for what is now a well established financial institution?

**History of Washington Statutes**

Personal property exemptions were first enumerated in a Washington statute in 1854.29 In 1869 a statute in substantially the present form was adopted.30 The last amendment came in 1886 when value limits were raised to their present level.31

In 1897 there was an attempt to liberalize the exemption statute by adoption of a selective personal property exemption to the value of $1,000 for every householder.32 Tacked to this liberalization was a nullification of all exemptions against executions for wages of clerks, laborers, and mechanics and certain attorney liabilities. The only portion of this ill-fated act which survives to the present day is the definition of "householder" contained in section 2.33 The portion creating the $1,000 selective exemption was held not to have been adopted in accordance with constitutional requirements.34 The portion favoring judgments for wages and attorney’s liabilities was ultimately declared unconstitutional as creating an unjustified discrimination between classes of general creditors.35

---

27 Nor have other states attached the limitation. E.g., CAL. CIV. PROC. § 690.21 ($1,000), VT. STAT. ANN. tit. 8, § 1512 (1958) ($1,000), and RCW 33.20.140 ($250).
28RCW 33.20.140, for example, provides for the exemption of a $250 account except as to any indebtedness due to the savings and loan association with which the account is maintained.
30 Wash. Sess. Laws 1869, § 343, at 87. In 1877 the $300 exemption for loggers, the present subsection 13, was added. Wash. Sess. Laws 1877, § 351, at 73. The statute was again amended in 1879 to provide an alternative choice (for farmers) of mules instead of a span of horses. Wash. Sess. Laws 1879 § 1, at 157. One cannot help but wish that the legislature had been equally responsive in later years in permitting an alternative choice of a truck or tractor when horses and mules became exceptions.
31 RCW 6.16.020.
33 Codified as RCW 6.16.010.
34 Copland v. Pirie, 26 Wash. 481, 67 Pac. 227 (1901) (specific exemptions section amended not set forth in full as required by WASH. CONST. art. 2, § 37). Surprisingly, the prohibition against claim of exemptions survived a similar attack. Creditors Collection Ass'n v. Bisbee, 80 Wash. 358, 141 Pac. 886 (1914).
The original version of the present statute provided that exemptions could be waived by written agreement. In 1906 the Washington court held that this provision defeated the constitutional provision requiring that the legislature protect "a certain portion of the homestead and other property of all heads of family" from forced sale in permitting a binding executory contract to waive all exemptions. The court subsequently held, however, that this constitutional provision did not prevent the mortgaging of specific exempt property and the spirit of these two decisions was carried into the present waiver provision which specifically permits the mortgaging of exempt property.

Despite the particularity of the section detailing mechanics of an exemption claim, this section has provoked the most questions. Numerous decisions now chart a clear interpretation, suggesting the wisdom of retaining this section in any proposed revision.

The first specific exemption of wages from garnishment was created in 1893, covering all current wages or salary for personal services earned within the preceding sixty days by one having a "family dependent on him for support," a requirement that has been retained through subsequent amendments to the present statute. In 1907 the proviso was added that wages due or earned could not be claimed as exempt under "in lieu" provisions of any statute. The present statute was adopted in 1927, when the exemption was reduced to $20 per week.

37 Wash. Const. art. 19, § 1.
38 Slyfield v. Willard, 43 Wash. 179, 86 Pac. 392 (1906).
40 RCW 6.16.080 (exemptions waived if not claimed "prior to sale under execution").
41 RCW 6.16.090.
42 The burden of asserting the exemptions is on the debtor. Zelinsky v. Price, 8 Wash. 256, 36 Pac. 28 (1894). But see RCW 6.16.020 (3) and (4). Absent demand by the creditor within a "reasonable time" for an appraisement, the sheriff is under a duty to return to the debtor property claimed exempt. Shell v. Svennson, 93 Wash. 40, 159 Pac. 1076 (1916) (twenty days more than reasonable time). However, even an express waiver of appraisement does not preclude a challenge to the debtor's claimed status. State ex rel. McKee v. McNell, 58 Wash. 47, 107 Pac. 1028 (1910). Should the sheriff ignore the exemption claim, the debtor may proceed by mandamus, State ex rel. Hill v. Gardner, 32 Wash. 550, 73 Pac. 690 (1903), replevin, Mikkleson v. Parker, 3 Wash. Terr. 527, 19 Pac. 31 (1888), or by an order to show cause, at least if the sheriff submits to the jurisdiction of the court, American Paper Co. v. Sullivan, 34 Wash. 391, 75 Pac. 991 (1904).
44 RCW 7.32.280. In 1897, the amount of the exemption was reduced to $100. Wash. Sess. Laws 1897, ch. 24, § 1. Under Wash. Sess. Laws 1901, ch. 139, § 1, the exemption was limited to $10 a week for four consecutive weeks if the garnishment was founded upon a debt for actual necessaries, an exception which remained until the most recent amendment in 1927.
45 Wash. Sess. Laws 1907, ch. 210, § 1. It is this provision, retained in the present version of the wage exemption statute which prevents claiming the $250 in lieu exemp-
An exemption of $250 of the savings of a member of a savings and loan association was originally adopted in 1933.⁴⁶ Unchanged substantially since that date, it has enjoyed relative obscurity as part of the regulatory chapter covering savings and loan associations, unindexed as an exemption.

Revision Ideas

Personal Property Exemptions—For Benefit of Family. Despite the diversity of provisions among state exemptions for families, items specifically exempted fall into a few well defined categories.⁴⁷ The common basic provision is the selective exemption of household goods or utensils or furniture, sometimes with a dollar limit, as in the Washington statute,⁴⁸ or without limit save such as is inherent in the category label.⁴⁹

Use of the "household furniture" label frequently necessitated additional specific itemization of items not necessarily falling within that term.⁵⁰ South Dakota has avoided this necessity for repeated modernization of RCW 6.16.020 against wage garnishments, at least against superior court garnishments. Cash may be claimed as exempt under the in lieu provision. Lemagie v. Acme Stamp Co., 98 Wash. 34, 167 Pac. 60 (1917) and Dean v. Opdycke, 151 Wash. 504, 276 Pac. 545 (1929). In State ex rel. Seals v. Lewis, Superior Court for King County No. 571588, Sept. 28, 1961, it was held that neither the $20 wage exemption nor the prohibition against claiming the $250 in lieu exemption applies to justice court garnishments. The decision is based on the absence of any provision in the present wage exemption statute making it specifically applicable to justice court garnishments. But see 1958 Ops. Wash. Att'y Gen. 122 which, in arguing for a liberal construction of the wage exemption statute, does not take into account the fact that a liberal construction would require that it be inapplicable in justice court actions.

⁴⁶ Wash. Sess. Laws 1933, ch. 183, § 91, now codified as RCW 33.20.140.

⁴⁷ Following the Spanish civil code, almost every state, including Washington, specifically exempts wearing apparel and beds; a number exempt books of students, e.g., Tenn. Code Ann. § 26-201 (1955), many states having expanded the books to "private" or family libraries, e.g., RCW 6.16.020(2), and items of religious significance, e.g., Me. Rev. Stat. Ann. ch. 60, § 232 (one pew in meeting-house where debtor statedly worships) and V.A. Code Ann. §34-26(1) (1953) (family Bible). The early agrarian economy with its emphasis on self production produced additions of provisions for family food supplies, e.g., Tenn. Code Ann. § 26-201 (1955) which specifically itemizes quantities of basic necessities and RCW 6.16.020(4), and for animals owned by most householders, e.g., RCW 6.16.020(4).


⁵⁰ E.g., sewing machine, Conn. Gen. Stat. Rev. § 52-35 (1958), musical instruments, IOWA Code Ann § 267.6(3) (1950), and spinning wheels, Ky. Rev. Stat. § 427.010 (1959). Legislatures which have continued to add to specific delineations with modern items have added radios, e.g., Cal. Civ. Proc. § 690.2, and are currently adding television sets, e.g., Cal. Civ. Proc. § 690.2 and Wis. Stat. Ann. § 272.18 (5) (1958). An as yet unconclusively settled question under the present Washington statute is whether a television set may be claimed as exempt as household "furniture." An Attorney General's opinion says yes, relying on Black's definition of "furniture"—"whatever is added to the interior of a house or apartment, for use or convenience," 1960 Ors. Wash. Att'y Gen. 170. At least one court has reached a contrary conclusion. Michaelson v. Elliott, 209 F.2d 625 (8th Cir. 1954) (applying a Minnesota statutory ejusdem generis rule because of itemization preceding generic term).
zation amendments by dividing its exemptions into two categories. The "absolute" exemption consists of those derived from the Spanish civil code plus one year's food and fuel.\(^5\) As an "additional" exemption, a head of family may select $1500 of other personal property and a single person, $600.\(^5\) The present Washington $250 in lieu householders' exemption is an example of the value of a selective exemption in overcoming the obsolescence of items specifically delineated.\(^5\)

There is another advantage of an additional selective exemption. The generic term "household goods" does not encompass all "necessities" for families. Perhaps the best example of an equivocal "necessity" is the automobile.\(^5\) Certainly it can be argued that for families living in remote areas or in suburban areas not adequately serviced by public transportation, an automobile is a necessity which should be exempted within the objective of family protection. However, any definition of those for whom an automobile is a necessity would leave much room for dispute. Would not this result in such delay and burden on the courts as to suggest that an automobile should be specifically exempted to all families or that families for whom it is a necessity be permitted to claim it under the type of selective provision suggested above?\(^5\)

One provision of the present Washington statute seems worth retaining:\(^6\) the provision permitting either the husband or wife to select exempt property.\(^7\) However, this permissive provision has created one problem area worth considering in a revised version of the personal property exemptions. An 1893 decision, Carter v. Davis,\(^8\) held that in

\(^5\) S.D. CODE § 51.1802 (1939).
\(^6\) S.D. Sess. Laws 1957, ch. 267, § 2. As an alternative to the "additional" exemption, the debtor may choose, if the head of a family, a long list of itemized specifics (quite antiquated) encompassing not only family but occupational exemptions. S.D. CODE § 51.1804 (1939).
\(^6\) RCW 6.16.020(3) and (4).
\(^6\) Only one state, California, specifically exempts an automobile for all debtors. CAL. CIV. PROC. § 690.24 (originally added in 1935, value limit raised to $250 in 1949). See also HAWAI REV. LAWS § 233-65(c) (1955) (exempting "one vehicle belonging to any person who is crippled or maimed").
\(^5\) There is an aspect of protection of creditor to this argument as well. If an article regarded as a "necessity" by a family is seized for one creditor's benefit, the head of the family will acquire a replacement if at all possible. When a replacement is acquired, funds will be diverted from existing creditors, or the family will have acquired another debt, to the detriment of existing creditors.
\(^5\) The same might be said for the definition of "householder" contained in RCW 6.16.010. Its particularity has precluded all but one question: Is a man residing with his illegitimate child a "householder," to which question the Washington court said, "no." Peerless Pac. Co. v. F. Burckhard, 90 Wash. 221, 155 Pac. 1037 (1916). Quaere whether this is a socially desirable conclusion. Is not an illegitimate child being raised under such circumstances even more in need of the material comforts and appearances of a "home" than a child being raised in a normal home? See OHIO REV. CODE ANN. § 2329.66 (Page Supp. 1961) which makes dependency the test.
\(^5\) RCW 6.16.020(3) and (4).
\(^5\) 6 Wash. 327, 33 Pac. 833 (1893).
the absence of the husband, a wife has the privilege of selecting exempt property only in a representative capacity for the husband. Thus, in the *Carter* case, the husband having left the state with intent to defraud creditors, the wife was without any right to claim exemptions. In 1897 the legislature adopted the present definition of "householder," the first section of which includes in the definition, "The husband and wife, or either." Does this remove the wife's claim from the representative category? Certainly the *Carter* decision is not consonant with the basic purpose of the householder exemptions—protection of the family. Because of the uncertainty which it engenders, it would seem wise to settle the question specifically by a provision similar to that contained in the Tennessee statute: "When a debtor absconds or leaves his family, the exempted property shall be set apart for the use of the wife and family, and shall be exempt in the hands of the wife or children...."

**Personal Property Exemptions—For Benefit of Creditors.** Most states retain some type of occupational exemption. It is now generally recognized that these exemptions should extend to single debtors as well as to those having dependents.

Specific provisions still cling to the Spanish civil code occupational classes: farmers, mechanics (tools of trade), professional, and miscellaneous. True exemptions for farmers are found almost exclusively in the midwestern and western states. They follow a fairly definite pattern: named items without a dollar limit, plus a selective provision

---

59 RCW 6.16.010.
60 If not, was the *Carter* decision overruled sub silentio by State *ex rel.* Achey v. Creech, 18 Wash. 186, 51 Pac. 363 (1897)? Under the *Achey* decision a wife was permitted to maintain an action for return of attached farming utensils and animals exempt to householders. The court held, as an alternative ground, that she was entitled to maintain the claim as an abandoned wife. The appellant (defendant below) had relied on *Carter.* Brief for Appellant, p. 12. Respondent contended that *Carter* had no bearing on the dispute. Brief for Respondent, p. 4. The court did not discuss appellant's contention that separation of the wife from the husband was part of a plan to defraud creditors. Brief for Appellant, p. 8.
62 E.g., despite the diversity of language used in the Washington exemptions for specific occupational groups contained in RCW 6.16.020, the Washington court early held that they were intended to extend to both family and individual income producers. State *ex rel.* McKee v. McNeill, 58 Wash. 47, 107 Pac. 1028 (1910) (reading "for the support of himself and family" as "or family" to permit single tailor to claim tools of trade exemption). Note that the legislature had specifically amended subsection (12) (teamster or drayman) to change "and family" to "or family," Wash. Sess. Laws 1886, § 1, at 96, but made no such change in the tools of trade section.
63 The miscellaneous group encompasses special occupations popular within the state, e.g., Washington makes special provisions for lighterers, teamsters, and loggers. RCW 6.16.020(11), (12) and (13). Virginia provides a $500 exemption for fishermen or oystermen. VA. CODE ANN. § 34-26 (1953).
64 Usually the named items consist of transportation animals and vehicles, but a few states have modernized these items by including a tractor, e.g., MNN. STAT. ANN.
for farming "utensils" with a dollar limit, plus seed or crops, usually with a dollar limit. More than a third of the states retain a tools of trade exemption, a catchall for many occupations. Although a few states, like Washington, have wide-open provisions, a dollar limit is usually attached, ranging from $50 to $500. Approximately one-fourth of the states provide a special exemption for professional men. A few exempt simply "professional libraries" without limit. Nebraska exempts "libraries and implements" of professional men; a few exempt the same with a dollar limit. Others, like Washington, have singled out clergymen and attorneys as one class and physicians and surgeons as another class. Only Vermont specifically includes dentists.

Rather than attempting to categorize various occupations, several states have adopted a collective definition covering all occupations. Some use a dollar limit. Others use a wide-open provision, the only limitation imposed being that of the word "necessary."

The foregoing discussion adequately illustrates the approaches which can be used to identify what items shall be exempt. The vice of specific item delineation is apparent if one simply refers to the Washington teamster exemption: "One span of horses, or mules, or two yoke of oxen" etc. Any specific delineation will ultimately become obsolete. Even if the legislature is responsive in modernizing the items, the very specificity is bound to cut out the necessary implements of some income producer working in that occupation.

The second approach—a selective provision with dollar limit—solves this problem in part. An example in the Washington statute is the pro-

---

§ 550.37 (Supp. 1960), or other modern farm implements, e.g., WIS. STAT. ANN. § 272.18(6) (Supp. 1960) (itemizing thirteen specific farm implements).

65 E.g., RCW 6.16.020(5) ($500). Other limits range from $50, NEB. REV. STAT. § 25-1556(6) (1943), to $4,000, CAL. CIV. PROC. § 690.3 (1955).

66 RCW 6.16.020(5) itemizes specific seed. California provides for $1,000 of seed.

67 E.g., RCW 6.16.020(5) itemizes specific seed. California provides for $1,000 of seed.

68 RCW 6.16.020(5) itemizes specific seed. California provides for $1,000 of seed.

69 E.g., RCW 6.16.020(12).
vision for attorneys and professional men: "...also office furniture, fuel and stationery not exceeding in value two hundred dollars in coin." This approach at least permits some flexibility as to coverage, but it too has a shortcoming. While the $200 limit may have been a reasonable amount in 1869 when it was attached, it would hardly cover stationery supplies for an attorney today. One solution is to attach a seemingly large dollar limit and hope that it will cover dollar value fluctuations for an extended period. This solution, however, means that debtors are actually going to have a substantial shield against creditors during recession or depression. So, in trying to import flexibility as to time, there is defeat of the basic purpose—protection of creditors.

The final approach—the wide open approach—overcomes the objections to the first two but introduces its own problem. One variation of the approach is the mechanics' exemption under the present Washington statute: "The tools and instruments used to carry on his trade." This exemption has served its purposes well for more than 70 years. It covers every modern development in tools and instruments used to carry on any trade. It has an implicit limitation: if a debtor tries to extend the exemption to questionable items, the creditor can resort to the court to test the claim. The wide open approach has its limitation when carried beyond the tools of trade exemption. Consider, as an example, the 1959 amendment to the Missouri farmers' exemption: "all necessary farm implements." When, as in farming, the possibilities as to what is "necessary" are increased, there is danger that every attachment may necessitate a judicial determination of what is "necessary," increasing the burden on the courts and making the attachment process so complex as to interfere with the rights of the very creditors we are trying to protect. One solution is to attach a dollar limit in order to reduce room for maneuvering by an astute debtor. Because of the limitation imposed by the word "necessary," the dollar limit could be made large enough to be realistic far into the future.

As indicated above, the usual approach to occupational exemptions has been to identify occupational categories. This approach produces particularly unwieldy results if carried to specific occupations, neces-

---

78 RCW 6.16.020(8).
79 RCW 6.16.020(6).
sitting a determination as to who falls within the descriptive term. Should the fact that one's occupation does not fall within a descriptive term require that an occupational exemption be denied? Even under the broader categorization of farmers, mechanics, and professional men there are gaps. There are many persons not on a payroll, requiring specialized chattels to continue to produce an income, who are wholly excluded. Additionally, if the definition of "mechanics" is expanded too much to cover these gaps, there will be inevitable questions as to whether a particular occupation falls within that or the "professional" category. The collective definition eliminates these questions.

A final question which must be considered in connection with revision of occupational exemptions is that which appears to evoke the most consideration: should motor vehicles be specifically exempted? Some courts have exempted motor vehicles through a liberal interpretation of dated exemption statutes. Other states, including Washington, have not been so fortunate in having language sufficiently general to permit this result. A few legislatures have adopted specific provisions. For example, the Wisconsin statute includes an exemption of "any automobile used or kept for the purpose of carrying on the debtor's trade or business."

It would seem that if an automobile or truck is necessary for a debtor's continued production of income, it should be exempted, within limits, either specifically or within a realistic selective provision. If a wage earner must have an automobile to get to and from his work, then, again, perhaps an automobile should be exempt for him, to attain the objective of keeping him producing income.

---

81 E.g., Grimm v. Naugle, 34 Wn.2d 75, 208 P.2d 123 (1949) (one who engages in hauling logs for others—even though not currently licensed—is engaged in the "business of logging") and In re Rash, 81 F. Supp. 389 (W.D. Wash. 1948) (is one who has built up an individual hauling business to a large motor freight company of which he is an executive a "teamster or drayman").

82 E.g., it has been held that a dentist is entitled to claim his tools as exempt, as a mechanic, Maxon v. Perott, 17 Mich. 332 (1868), yet is a dentist not more appropriately identified as a professional man?

83 E.g., Kelly v. Degelau, 244 Iowa 873, 58 N.W.2d 374 (1953) ("vehicle...by the use of which he habitually earns his living") and Dowd v. Henson, 122 Kans. 278, 252 Pac. 260 (1927) ("necessary tools and implements").

84 In re Rash, 81 F. Supp. 389 (W.D. Wash. 1948).

85 Wis. Stat. Ann. § 272.18(6) (Supp. 1960). The Oregon statute specifically provides that, as used in the occupational exemption section "vehicle" includes a truck, trailer or motor vehicle. Ore. Rev. Stat. § 23.160(3) (1959). Quaere the value of this special provision when the overall occupational exemption is only $400. Other provisions: Idaho Code Ann. § 11-205(3) and (4) ($200 motor vehicle for farmers and artisans) and Nev. Rev. Stat. § 21.090(f) (1959) (no value limit on motor vehicle for drayman, hackman, teamster, etc., but $1,000 limit on motor car for physicians, surgeons, constables and ministers).

86 Julius v. Druckrey, 214 Wisc. 643, 254 N.W. 358 (1934) (debtor-employee who
Personal Property Exemptions—For Benefit of Single Debtors. Apart from occupational exemptions, the present Washington statute exempts only wearing apparel, private libraries to $500, and family keepsakes for single debtors. While an aspect of creditor protection may be suggested, more liberal provisions are justified on the basis of social interest. Some states have made special provision only for the aged, widows, or women. Other states have extended a special exemption to all single persons.

Wage Exemptions. While personal property exemptions have remained relatively static, wage exemptions in other states have been tailored to meet almost every type of eventuality. Few remain at the niggardly $20 per week level of the Washington statute. By contrast, exemptions of neighboring states seem exceedingly liberal: Montana, all wages earned within a period of 45 days preceding garnishment for heads of families and single persons over age 60; Oregon, $175 per month for heads of families, and California, one-half the earnings of all debtors, all if necessary for the use of the debtor's family.

Rather than a flat rate or percentage exemption, a few states use a percentage with a minimum, maximum, or both. Escalator provisions are used to provide for the greater needs of larger families. Under the New Jersey statute, 90% of wages are exempt, but courts

lived one-half mile from place of employment might be entitled to claim $400 automobile as exempt "for the purpose of carrying on the debtor's trade or business").

87 RCW 6.16.020(1) and (2).
88 See note 55 supra.
89 MONT. REV. CODES ANN. §§ 93-5816 and 33-125 (1947).
90 E.g., N.M. STAT. ANN. § 24-5-1 (1953).
91 N.Y. CIV. PRAC. ACT. § 665-a.
94 MONT. REV. CODES ANN. §§ 93-5816 and 33-125 (1947).
96 CAL. CIV. PROC. § 690.11.
98 E.g., IDAHO CODE ANN. § 11-205 (7) (1953) (75% of earnings, $100 maximum).
99 E.g., VA. CODE ANN. § 34-29 (Supp. 1960) (75% with a minimum of $50 and maximum of $75 for nonhouseholders and $100 minimum and $150 maximum for householders).
100 E.g., WIS. STAT. ANN. § 272.18(15) (a) and (b) (1958) (60% with a minimum of $100 and maximum of $120 per month plus $20 for each dependent, up to 85% of wages), and IOWA CODE ANN. § 627.10 (Supp. 1960) ($35 per week for head of family plus $3 per week for each dependent under age 18). The Iowa wage exemption statute, amended in 1957, is criticized in Note, 43 IOWA L. REV. 555 (1958).
have discretion to release exempt wages if the debtor's earnings are more than $2500 per year. Under the New York statute only 10% of wages are subject to garnishment, and only after judgment. An execution on judgment then becomes a lien on the non-exempt portion until paid in full.

A flat amount exemption has the obvious disadvantage of being almost always out of step with dollar value fluctuations. Of course, if the legislature is responsive, this is not an unsurmountable objection. Massachusetts, for example, uses a flat amount exemption. In 1947 it was increased from $20 to $25 per week; in 1951, to $30; in 1956 to $40, and in 1959, to $50 per week.

The percentage exemption, on the other hand, has timeless utility. It gives recognition to the fact that families have different standards of living, fixed to a large degree by the size of the wages of the head of the family. It is better than the flat amount exemption from the creditor's viewpoint because it assures that some portion of the wage earner's salary will always be subject to garnishment. It has the obvious disadvantage of exempting too little for those with small incomes and too much for large income producers. Additionally, if the percentage is set too high, a wage earner will be subject to repeated garnishments by the same creditor, endangering his job while producing only negligible amounts for the creditor. These disadvantages are largely overcome by the use of minimum and maximum limitations, but these additions, unless very liberal, build in the very rigidity which the percentage exemption is supposed to avoid.

Escalator provisions seem the most practical means of recognizing the greater needs of larger families. An area of discretion for the courts, such as that under the New Jersey statute, is another way to permit recognition of individual needs, but if the area of discretion were too large, the burden cast on the courts could be staggering.

---

102 N.Y. Civ. Prac. Act. § 684. See also Conn. Gen. Stat. Rev. § 52-361 (1958), under which a judgment may become a continuing lien on wages in excess of $25, but the debtor may apply for modification.
104 One area in which court discretion might well be considered is that of garnishments for child support obligations. Although the Washington court has not directly so held, it is probable that the present wage exemption can be claimed against such garnishments. In Stafford v. Stafford, 18 Wn.2d 775, 140 P.2d 545 (1943), it was held that homestead property is exempt from execution sale on an alimony and child support decree. The material language of the present wage exemption statute is as commanding as that of the homestead exemption statute, RCW 6.12.090. Courts might be given the same power to allocate a portion of the exempt wages of a father to child support as they have assumed to allocate a portion of the wages of a new community to a child.
The continuing lien feature of the New York statute is of particular interest if exempted amounts are substantial. It eliminates the necessity for repeated garnishments which might endanger a debtor's job. On the other hand, such a provision puts a premium on early suit and garnishment.

Approximately 60% of the states today make some provision for single debtors. In many instances, the exemption is the same for all wage earners. More frequently, however, a smaller amount is provided for single persons. Since the result of a wage exemption is usually only to delay collection of larger amounts—for example, to require two garnishments rather than one—there seems to be no valid argument against at least a subsistence exemption for single persons.

Under the present Washington statute, the mechanics of claiming the exemption are not specified. The usual procedure is submission by the wage earner of an affidavit as to his status as head of a family. The delay entailed frequently leaves the wage earner without current funds for a period of a day to several days. Recognizing the resulting hardship, many states have adopted provisions which make the exempt amount automatically payable.

The form of an automatic exemption is to a degree dependent upon the manner in which the exempt amount is determined. The Wisconsin statute, which uses a complex percentage with minimum and maximum and escalator provision, permits payment of a subsistence allowance of $15 to an individual or $25 to an individual with dependents, not to exceed 50% of amounts owing. Virginia has attempted to support obligation of a former marriage of the husband. Fisch v. Marler, 12 Wn.2d 698, 97 P.2d 147 (1939). See, e.g., Tenn. Code Ann. § 26-210 (1955).

Under statutes providing the same exemption for single persons and householders there is no problem, e.g., Cal. Civ. Proc. § 690.11 (“One-half of the earnings of the defendant... shall be exempt from execution or attachment without filing a claim for exemption...”) and Iowa Code Ann. § 627.10 (Supp. 1960) (“Every employer shall pay to such employee such exempt wages or salary or commission or profit allowances... upon such employee's making and delivering to his employer, his affidavit that he is such head of family.”) The Iowa statute is criticized in Note, 43 Iowa L. Rev. (1958).

Wis. Stat. Ann. § 272.18 (15) (c) (1) (1958). If the court subsequently deter-
DEBTORS' EXEMPTION STATUTES

solve the problem of providing an automatic exemption under an exemption of a percentage with minimum and maximum, varying for householders and nonhouseholders, by providing that the employer may rely on the employee's withholding exemption certificate filed for income tax purposes. Any person showing more than one exemption on the certificate is considered to be a householder or head of a family.\textsuperscript{110}

One possible additional salutory result of provision for automatic exemption is that it might relieve a part of the burden thrown on employers by employee garnishments. Part of this burden is the confusion and time loss incident to garnishment, caused by the employee's efforts to secure an immediate release of his check or to effect release of the exempt portion. Since one of the major problems in the garnishment area is the discharge policy which most employers must maintain as a result of the garnishment burden, this result is particularly to be sought. Any automatic exemption provision should be designed with this possibility in mind.

PROPOSED REVISIONS IN THE WASHINGTON LEGISLATURE

Since 1945 more than two dozen bills have been introduced in the two branches of the Washington legislature, amending either or both the personal property exemptions and wage exemption. Most have incorporated one or more of the better features of the statutes of other states.\textsuperscript{111} All have contained substantial increases in some value limits.\textsuperscript{112} During each session, with one exception, at least one of these

\textsuperscript{110}The objection to such a provision is that it forces the employer to make a judicial determination. An additional objection is that a withholding certificate does not always reflect the true circumstances of a taxpayer since exemptions may be claimed to which he is not entitled.

\textsuperscript{111}E.g., S.B. 268 (1961), prepared and introduced on behalf of the Legislative Committee of the Washington State Bar Association, exempted an automobile to $500 for single persons and householders and provided a $500 selective exemption for both single persons and householders in addition to a $1,500 household goods exemption for householders. The Legislative Committee has recommended that this bill be introduced again in the 1963 legislature. 15 Wash. S.B. News 20 (1961). Surprisingly, some bills have included more restrictive provisions than present statutes, e.g., S.B. 97 (1961) deleted all provisions for farmers and H.B. 528 (1951) restricted a $1,000 selective occupational exemption to householders.

\textsuperscript{112}None of the personal property exemption bills have raised all values to present dollar values of the 1886 limits. As examples of such a conversion, the household goods exemption would become $1,500; the in lieu exemption, $800; farm utensils, $1,500, and attorneys' libraries, $3100, and supplies, $600. (Values are rounded to the nearest $100.) Conversions are based upon the following comparative purchasing values of the dollar, the base period 1935-39 being equal to $1.00: 1886 = $1.45; 1927 = $0.85; June 1961 = $0.469. Banking, Sept. 1958, p. 54.

Wage exemptions, on the other hand, have been proposed in excess of the $36 converted value of the present exemption, e.g., three of the wage exemption bills introduced in the 1961 legislature provided three different formulae: H.B. 150 (automatic exemp-
bills has been passed by one branch of the legislature, only to be lost in the shuffle in the other branch.

Ideally, exemption statutes should be the product of compromises among interested groups, and most of the bills which have been introduced in the Washington legislature have reflected an attempt to effect such compromises. However, after a review of the Washington legislative record in connection with proposed debtor exemption revisions, one ceases to think in terms of the ideal and to think only that change—any change—is to be sought. It is to be hoped that the revision which must ultimately come will not be a product of such frustration but, rather, will reflect an attempt to deal with a difficult area intelligently and with consideration for the interests of all.

---

113 1945: S.B. 277 (wage exemption) passed Senate, 41 in favor, 0 opposed, 5 not voting. 1945 H. Jour. 548.