SENATE BILL NO. 83–SENATOR O'CONNELL

FEBRUARY 6, 2001

Referred to Committee on Judiciary

SUMMARY—Increases amount of homestead exemption. (BDR 10-4)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to property; increasing the amount of the homestead exemption; exempting from execution a greater amount of equity in certain dwellings; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 115.010 is hereby amended to read as follows:

115.010 1. The homestead is not subject to forced sale on execution or any final process from any court, except as otherwise provided by subsections 2, 3 and 5.

2. The exemption provided in subsection 1 extends only to that amount of equity in the property held by the claimant which does not exceed ~~[$125,000]~~ ***$160,000*** in value, unless allodial title has been established and not relinquished, in which case the exemption provided in subsection 1 extends to all equity in the dwelling, its appurtenances and the land on which it is located.

3. Except as otherwise provided in subsection 4, the exemption provided in subsection 1 does not extend to process to enforce the payment of obligations contracted for the purchase of the property, or for improvements made thereon, including any mechanic's lien lawfully obtained, or for legal taxes, or for:

(a) Any mortgage or deed of trust thereon executed and given; or

(b) Any lien to which prior consent has been given through the acceptance of property subject to any recorded declaration of restrictions, deed restriction, restrictive covenant or equitable servitude, specifically including any lien in favor of an association pursuant to NRS 116.3116 or 117.070,

by both husband and wife, when that relation exists.

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4. If allodial title has been established and not relinquished, the exemption provided in subsection 1 extends to process to enforce the payment of obligations contracted for the purchase of the property, and for improvements made thereon, including any mechanic's lien lawfully obtained, and for legal taxes levied by a state or local government, and for:

(a) Any mortgage or deed of trust thereon; and

(b) Any lien even if prior consent has been given through the acceptance of property subject to any recorded declaration of restrictions, deed restriction, restrictive covenant or equitable servitude, specifically including any lien in favor of an association pursuant to NRS 116.3116 or 117.070,

unless a waiver for the specific obligation to which the judgment relates has been executed by all allodial titleholders of the property.

5. Establishment of allodial title does not exempt the property from forfeiture pursuant to NRS 179.1156 to 179.119, inclusive, or 207.350 to 207.520, inclusive.

6. Any declaration of homestead which has been filed before October 1, ~~[1995,]~~ ***2001,*** shall be deemed to have been amended on that date by extending the homestead exemption commensurate with any increase in the amount of equity held by the claimant in the property selected and claimed for the exemption up to the amount permitted by law on that date, but the increase does not impair the right of any creditor to execute upon the property when that right existed before October 1, ~~[1995.]~~ ***2001.***

Sec. 2. NRS 115.050 is hereby amended to read as follows:

115.050 1. Whenever execution has been issued against the property of a party claiming the property as a homestead, and the creditor in the judgment makes an oath before the judge of the district court of the county in which the property is situated, that the amount of equity held by the claimant in the property exceeds, to the best of the creditor's information and belief, the sum of ~~[$125,000,]~~ ***$160,000,*** the judge shall, upon notice to the debtor, appoint three disinterested and competent persons as appraisers to estimate and report as to the amount of equity held by the claimant in the property, and if the amount of equity exceeds the sum of ~~[$125,000,]~~ ***$160,000,*** determine whether the property can be divided so as to leave the property subject to the homestead exemption without material injury.

2. If it appears, upon the report, to the satisfaction of the judge that the property can be thus divided, he shall order the excess to be sold under execution. If it appears that the property cannot be thus divided, and the amount of equity held by the claimant in the property exceeds the exemption allowed by this chapter, he shall order the entire property to be sold, and out of the proceeds the sum of ~~[$125,000]~~ ***$160,000*** to be paid to the defendant in execution, and the excess to be applied to the satisfaction on the execution. No bid under ~~[$125,000]~~ ***$160,000*** may be received by the officer making the sale.

3. When the execution is against a husband or wife, the judge may direct the ~~[$125,000]~~ ***$160,000*** to be deposited in court, to be paid out only upon the joint receipt of the husband and wife, and the deposit possesses all the protection against legal process and voluntary disposition by either spouse as did the original homestead.

Sec. 3. NRS 21.075 is hereby amended to read as follows:

21.075 1. Execution on the writ of execution by levying on the property of the judgment debtor may occur only if the sheriff serves the judgment debtor with a notice of the writ of execution pursuant to NRS 21.076 and a copy of the writ. The notice must describe the types of property exempt from execution and explain the procedure for claiming those exemptions in the manner required in subsection 2. The clerk of the court shall attach the notice to the writ of execution at the time the writ is issued.

2. The notice required pursuant to subsection 1 must be substantially in the following form:

NOTICE OF EXECUTION

YOUR PROPERTY IS BEING ATTACHED OR
YOUR WAGES ARE BEING GARNISHED

A court has determined that you owe money to ....(name of person), the judgment creditor. He has begun the procedure to collect that money by garnishing your wages, bank account and other personal property held by third persons or by taking money or other property in your possession.

Certain benefits and property owned by you may be exempt from execution and may not be taken from you. The following is a partial list of exemptions:

1. Payments received under the Social Security Act.
2. Payments for benefits or the return of contributions under the public employees' retirement system.
3. Payments for public assistance granted through the welfare division of the department of human resources.
4. Proceeds from a policy of life insurance.
5. Payments of benefits under a program of industrial insurance.
6. Payments received as unemployment compensation.
7. Veteran's benefits.
8. A homestead in a dwelling or a mobile home, not to exceed ~~[$125,000,]~~ ***$160,000,*** unless:

(a) The judgment is for a medical bill, in which case all of the primary dwelling, including a mobile or manufactured home, may be exempt.

(b) Allodial title has been established and not relinquished for the dwelling or mobile home, in which case all of the dwelling or mobile home and its appurtenances are exempt, including the land on which they are located, unless a valid waiver executed pursuant to NRS 115.010 is applicable to the judgment.

9. A vehicle, if your equity in the vehicle is less than $4,500.
10. Seventy-five percent of the take-home pay for any pay period, unless the weekly take-home pay is less than 30 times the federal minimum wage, in which case the entire amount may be exempt.
11. Money, not to exceed $500,000 in present value, held for retirement pursuant to certain arrangements or plans meeting the

requirements for qualified arrangements or plans of sections 401 et seq. of the Internal Revenue Code ***,*** ~~[(]~~ 26 U.S.C. §§ 401 et seq***.*** ~~[).]~~

12. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the state.

13. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support and maintenance of a former spouse, including the amount of any arrearages in the payment of such support and maintenance to which the former spouse may be entitled.

14. A vehicle for use by you or your dependent which is specially equipped or modified to provide mobility for a person with a permanent disability.

15. A prosthesis or any equipment prescribed by a physician or dentist for you or your dependent.

These exemptions may not apply in certain cases such as a proceeding to enforce a judgment for support of a person or a judgment of foreclosure on a mechanic's lien. You should consult an attorney immediately to assist you in determining whether your property or money is exempt from execution. If you cannot afford an attorney, you may be eligible for assistance through ....(name of organization in county providing legal services to indigent or elderly persons).

PROCEDURE FOR CLAIMING EXEMPT PROPERTY

If you believe that the money or property taken from you is exempt, you must complete and file with the clerk of the court a notarized affidavit claiming the exemption. A copy of the affidavit must be served upon the sheriff and the judgment creditor within 8 days after the notice of execution is mailed. The property must be returned to you within 5 days after you file the affidavit unless you or the judgment creditor files a motion for a hearing to determine the issue of exemption. If this happens, a hearing will be held to determine whether the property or money is exempt. The motion for the hearing to determine the issue of exemption must be filed within 10 days after the affidavit claiming exemption is filed. The hearing to determine whether the property or money is exempt must be held within 10 days after the motion for the hearing is filed.

IF YOU DO NOT FILE THE AFFIDAVIT WITHIN THE TIME SPECIFIED, YOUR PROPERTY MAY BE SOLD AND THE MONEY GIVEN TO THE JUDGMENT CREDITOR, EVEN IF THE PROPERTY OR MONEY IS EXEMPT.

Sec. 4. NRS 21.090 is hereby amended to read as follows:

21.090 1. The following property is exempt from execution, except as otherwise specifically provided in this section:

(a) Private libraries not to exceed $1,500 in value, and all family pictures and keepsakes.

(b) Necessary household goods, as defined in 16 C.F.R. § 444.1(i) as that section existed on January 1, 1987, and yard equipment, not to exceed $3,000 in value, belonging to the judgment debtor to be selected by him.

(c) Farm trucks, farm stock, farm tools, farm equipment, supplies and seed not to exceed $4,500 in value, belonging to the judgment debtor to be selected by him.

(d) Professional libraries, office equipment, office supplies and the tools, instruments and materials used to carry on the trade of the judgment debtor for the support of himself and his family not to exceed $4,500 in value.

(e) The cabin or dwelling of a miner or prospector, his cars, implements and appliances necessary for carrying on any mining operations and his mining claim actually worked by him, not exceeding $4,500 in total value.

(f) Except as otherwise provided in paragraph (o), one vehicle if the judgment debtor's equity does not exceed $4,500 or the creditor is paid an amount equal to any excess above that equity.

(g) For any pay period, 75 percent of the disposable earnings of a judgment debtor during that period, or for each week of the period 30 times the minimum hourly wage prescribed by section 6(a)(1) of the federal Fair Labor Standards Act of 1938 ***, 29 U.S.C § 206(a)(1),*** and in effect at the time the earnings are payable, whichever is greater. Except as otherwise provided in paragraphs (n), (r) and (s), the exemption provided in this paragraph does not apply in the case of any order of a court of competent jurisdiction for the support of any person, any order of a court of bankruptcy or of any debt due for any state or federal tax. As used in this paragraph, "disposable earnings" means that part of the earnings of a judgment debtor remaining after the deduction from those earnings of any amounts required by law, to be withheld.

(h) All fire engines, hooks and ladders, with the carts, trucks and carriages, hose, buckets, implements and apparatus thereunto appertaining, and all furniture and uniforms of any fire company or department organized under the laws of this state.

(i) All arms, uniforms and accouterments required by law to be kept by any person, and also one gun, to be selected by the debtor.

(j) All courthouses, jails, public offices and buildings, lots, grounds and personal property, the fixtures, furniture, books, papers and appurtenances belonging and pertaining to the courthouse, jail and public offices belonging to any county of this state, all cemeteries, public squares, parks and places, public buildings, town halls, markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by the town or city to health, ornament or public use, or for the use of any fire or military company organized under the laws of this state and all lots, buildings and other school property owned by a school district and devoted to public school purposes.

(k) All money, benefits, privileges or immunities accruing or in any manner growing out of any life insurance, if the annual premium paid does not exceed $1,000. If the premium exceeds that amount, a similar exemption exists which bears the same proportion to the money, benefits, privileges and immunities so accruing or growing out of the insurance that the $1,000 bears to the whole annual premium paid.

(l) The homestead as provided for by law, including a homestead for which allodial title has been established and not relinquished and for which a waiver executed pursuant to NRS 115.010 is not applicable.

(m) The dwelling of the judgment debtor occupied as a home for himself and family, where the amount of equity held by the judgment debtor in the home does not exceed ~~[$125,000]~~ ***$160,000*** in value and the dwelling is situate upon lands not owned by him.

(n) All property in this state of the judgment debtor where the judgment is in favor of any state for failure to pay that state's income tax on benefits received from a pension or other retirement plan.

(o) Any vehicle owned by the judgment debtor for use by him or his dependent that is equipped or modified to provide mobility for a person with a permanent disability.

(p) Any prosthesis or equipment prescribed by a physician or dentist for the judgment debtor or a dependent of the debtor.

(q) Money, not to exceed $500,000 in present value, held in:

(1) An individual retirement arrangement which conforms with the applicable limitations and requirements of 26 U.S.C. § 408;

(2) A written simplified employee pension plan which conforms with the applicable limitations and requirements of 26 U.S.C. § 408;

(3) A cash or deferred arrangement which is a qualified plan pursuant to the Internal Revenue Code; and

(4) A trust forming part of a stock bonus, pension or profit-sharing plan which is a qualified plan pursuant to sections 401 et seq. of the Internal Revenue Code ***,*** ~~[(~~ 26 U.S.C. §§ 401 et seq***.*** ~~).]~~

(r) All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the state.

(s) All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support and maintenance of a former spouse, including the amount of any arrearages in the payment of such support and maintenance to which the former spouse may be entitled.

2. Except as otherwise provided in NRS 115.010, no article or species of property mentioned in this section is exempt from execution issued upon a judgment to recover for its price, or upon a judgment of foreclosure of a mortgage or other lien thereon.

3. Any exemptions specified in subsection (d) of section 522 of the Bankruptcy Act of 1978 ~~[(92 Stat. 2586)]~~ ***, 11 U.S.C § 522(d),*** do not apply to property owned by a resident of this state unless conferred also by subsection 1, as limited by subsection 2, of this section.

Sec. 5. NRS 31.045 is hereby amended to read as follows:

31.045 1. Execution on the writ of attachment by attaching property of the defendant may occur only if:

(a) The judgment creditor serves the defendant with notice of the execution when the notice of the hearing is served pursuant to NRS 31.013; or

(b) Pursuant to an ex parte hearing, the sheriff serves upon the judgment debtor notice of the execution and a copy of the writ at the same time and in the same manner as set forth in NRS 21.076.

If the attachment occurs pursuant to an ex parte hearing, the clerk of the court shall attach the notice to the writ of attachment at the time the writ is issued.

2. The notice required pursuant to subsection 1 must be substantially in the following form:

NOTICE OF EXECUTION

YOUR PROPERTY IS BEING ATTACHED OR
YOUR WAGES ARE BEING GARNISHED

Plaintiff, ... (name of person), alleges that you owe him money. He has begun the procedure to collect that money. To secure satisfaction of judgment ***,*** the court has ordered the garnishment of your wages, bank account or other personal property held by third persons or the taking of money or other property in your possession.

Certain benefits and property owned by you may be exempt from execution and may not be taken from you. The following is a partial list of exemptions:

1. Payments received under the Social Security Act.

2. Payments for benefits or the return of contributions under the public employees' retirement system.

3. Payments for public assistance granted through the welfare division of the department of human resources.

4. Proceeds from a policy of life insurance.

5. Payments of benefits under a program of industrial insurance.

6. Payments received as unemployment compensation.

7. Veteran's benefits.

8. A homestead in a dwelling or a mobile home, not to exceed ~~[$125,000,]~~ ***$160,000,*** unless:

(a) The judgment is for a medical bill, in which case all of the primary dwelling, including a mobile or manufactured home, may be exempt.

(b) Allodial title has been established and not relinquished for the dwelling or mobile home, in which case all of the dwelling or mobile home and its appurtenances are exempt, including the land on which they are located, unless a valid waiver executed pursuant to NRS 115.010 is applicable to the judgment.

9. A vehicle, if your equity in the vehicle is less than $4,500.

10. Seventy-five percent of the take-home pay for any pay period, unless the weekly take-home pay is less than 30 times the federal minimum wage, in which case the entire amount may be exempt.

11. Money, not to exceed $500,000 in present value, held for retirement pursuant to certain arrangements or plans meeting the requirements for qualified arrangements or plans of sections 401 et seq. of the Internal Revenue Code ***,*** ~~[(]~~ 26 U.S.C. §§ 401 et seq. ~~[).]~~

12. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the state.

13. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support and maintenance of a former spouse, including the amount of any arrearages in the payment of such support and maintenance to which the former spouse may be entitled.

14. A vehicle for use by you or your dependent which is specially equipped or modified to provide mobility for a person with a permanent disability.

15. A prosthesis or any equipment prescribed by a physician or dentist for you or your dependent.

These exemptions may not apply in certain cases such as proceedings to enforce a judgment for support of a child or a judgment of foreclosure on a mechanic's lien. You should consult an attorney immediately to assist you in determining whether your property or money is exempt from execution. If you cannot afford an attorney, you may be eligible for assistance through .... (name of organization in county providing legal services to the indigent or elderly persons).

PROCEDURE FOR CLAIMING EXEMPT PROPERTY

If you believe that the money or property taken from you is exempt or necessary for the support of you or your family, you must file with the clerk of the court on a form provided by the clerk a notarized affidavit claiming the exemption. A copy of the affidavit must be served upon the sheriff and the judgment creditor within 8 days after the notice of execution is mailed. The property must be returned to you within 5 days after you file the affidavit unless the judgment creditor files a motion for a hearing to determine the issue of exemption. If this happens, a hearing will be held to determine whether the property or money is exempt. The hearing must be held within 10 days after the motion for a hearing is filed.

IF YOU DO NOT FILE THE AFFIDAVIT WITHIN THE TIME SPECIFIED, YOUR PROPERTY MAY BE SOLD AND THE MONEY GIVEN TO THE JUDGMENT CREDITOR, EVEN IF THE PROPERTY OR MONEY IS EXEMPT.

If you received this notice with a notice of a hearing for attachment and you believe that the money or property which would be taken from you by a writ of attachment is exempt or necessary for the support of you or your family, you are entitled to describe to the court at the hearing why you believe your property is exempt. You may also file a motion with the court for a discharge of the writ of attachment. You may make that motion any time before trial. A hearing will be held on that motion.

IF YOU DO NOT FILE THE MOTION BEFORE THE TRIAL, YOUR PROPERTY MAY BE SOLD AND THE MONEY GIVEN TO THE PLAINTIFF, EVEN IF THE PROPERTY OR MONEY IS EXEMPT OR NECESSARY FOR THE SUPPORT OF YOU OR YOUR FAMILY.