

ASSEMBLY BILL NO. 257—ASSEMBLYWOMAN PIERCE

MARCH 21, 2005

Referred to Committee on Commerce and Labor

SUMMARY—Provides certain protections to person who receives payments pursuant to federal Social Security Act. (BDR 55-69)

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; prohibiting a financial institution from including a provision in a loan agreement that allows the financial institution to satisfy a debt or liability owed to the financial institution under the loan agreement from certain money in an account unrelated to the loan agreement; exempting payments received pursuant to the federal Social Security Act from execution and attachment; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides extensive regulation of banks and other financial institutions in this State. (Title 55 of NRS)

This bill prohibits certain financial institutions from including in a loan agreement a provision which would allow the financial institution to obtain as satisfaction to the loan money from an unrelated account, to the extent that money in the account is from payments received by the debtor pursuant to the federal Social Security Act, including retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits in certain circumstances. This prohibition applies prospectively to an agreement entered into or renewed on or after October 1, 2005.

Existing law provides that, with certain exceptions, in a civil action in which damages were awarded, the prevailing party in the action may obtain a writ of execution to enforce the judgment at any time before the judgment expires. (NRS 21.010) However, existing law exempts certain property from such a writ of execution up to a specified monetary value. (NRS 21.090)



This bill adds a new exemption from such a writ of execution for payments received by a person pursuant to the federal Social Security Act, including retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.

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

Section 1. Chapter 657 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A financial institution shall not include in any loan agreement a provision that allows the financial institution to recover, take, appropriate or otherwise apply as a setoff against any debt or liability owing to the financial institution under the loan agreement money from an account unrelated to the loan agreement to the extent the money is exempt from execution pursuant to paragraph (x) of subsection 1 of NRS 21.090.

2. The provisions of this section may not be varied by agreement and the rights conferred by this section may not be waived. Any provision included in an agreement that conflicts with this section is void.

3. As used in this section:

(a) "An account unrelated to the loan agreement" includes, without limitation, an account pledged as security under the loan agreement.

(b) "Financial institution" means an institution licensed pursuant to the provisions of this title or title 56 or chapter 645B, 645E or 649 of NRS, or a similar institution chartered or licensed pursuant to federal law.

Sec. 2. 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



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

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

10 1. Payments received ~~under~~ *pursuant to* the *federal*
11 *Social Security Act* ~~[-]~~ *, including, without limitation,*
12 *retirement and survivors' benefits, supplemental security*
13 *income benefits and disability insurance benefits.*

14 2. Payments for benefits or the return of contributions
15 under the Public Employees' Retirement System.

16 3. Payments for public assistance granted through the
17 Welfare Division of the Department of Human Resources or a
18 local governmental entity.

19 4. Proceeds from a policy of life insurance.

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

22 6. Payments received as disability, illness or
23 unemployment benefits.

24 7. Payments received as unemployment compensation.

25 8. Veteran's benefits.

26 9. A homestead in a dwelling or a mobile home, not to
27 exceed \$200,000, unless:

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

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

37 10. A vehicle, if your equity in the vehicle is less than
38 \$15,000.

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

43 12. Money, not to exceed \$500,000 in present value,
44 held in:



1 (a) An individual retirement arrangement which conforms
2 with the applicable limitations and requirements of
3 26 U.S.C. § 408;

4 (b) A written simplified employee pension plan which
5 conforms with the applicable limitations and requirements of
6 26 U.S.C. § 408;

7 (c) A cash or deferred arrangement that is a qualified plan
8 pursuant to the Internal Revenue Code;

9 (d) A trust forming part of a stock bonus, pension or
10 profit-sharing plan that is a qualified plan pursuant to sections
11 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et
12 seq.; and

13 (e) A trust forming part of a qualified tuition program
14 pursuant to chapter 353B of NRS, any applicable regulations
15 adopted pursuant to chapter 353B of NRS and section 529 of
16 the Internal Revenue Code, 26 U.S.C. § 529, unless the
17 money is deposited after the entry of a judgment against the
18 purchaser or account owner or the money will not be used by
19 any beneficiary to attend a college or university.

20 13. All money and other benefits paid pursuant to the
21 order of a court of competent jurisdiction for the support,
22 education and maintenance of a child, whether collected by
23 the judgment debtor or the State.

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

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

32 16. A prosthesis or any equipment prescribed by a
33 physician or dentist for you or your dependent.

34 17. Payments, in an amount not to exceed \$16,150,
35 received as compensation for personal injury, not including
36 compensation for pain and suffering or actual pecuniary loss,
37 by the judgment debtor or by a person upon whom the
38 judgment debtor is dependent at the time the payment is
39 received.

40 18. Payments received as compensation for the wrongful
41 death of a person upon whom the judgment debtor was
42 dependent at the time of the wrongful death, to the extent
43 reasonably necessary for the support of the judgment debtor
44 and any dependent of the judgment debtor.



1 19. Payments received as compensation for the loss of
2 future earnings of the judgment debtor or of a person upon
3 whom the judgment debtor is dependent at the time the
4 payment is received, to the extent reasonably necessary for
5 the support of the judgment debtor and any dependent of the
6 judgment debtor.

7 20. Payments received as restitution for a criminal act.
8 ➔ These exemptions may not apply in certain cases such as a
9 proceeding to enforce a judgment for support of a person or a
10 judgment of foreclosure on a mechanic's lien. You should
11 consult an attorney immediately to assist you in determining
12 whether your property or money is exempt from execution. If
13 you cannot afford an attorney, you may be eligible for
14 assistance through(name of organization in
15 county providing legal services to indigent or elderly
16 persons).
17

18 PROCEDURE FOR CLAIMING EXEMPT PROPERTY 19

20 If you believe that the money or property taken from you
21 is exempt, you must complete and file with the clerk of the
22 court a notarized affidavit claiming the exemption. A copy of
23 the affidavit must be served upon the sheriff and the judgment
24 creditor within 8 days after the notice of execution is mailed.
25 The property must be returned to you within 5 days after you
26 file the affidavit unless you or the judgment creditor files a
27 motion for a hearing to determine the issue of exemption. If
28 this happens, a hearing will be held to determine whether the
29 property or money is exempt. The motion for the hearing to
30 determine the issue of exemption must be filed within 10 days
31 after the affidavit claiming exemption is filed. The hearing to
32 determine whether the property or money is exempt must be
33 held within 10 days after the motion for the hearing is filed.
34

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

40 **Sec. 3.** NRS 21.090 is hereby amended to read as follows:

41 21.090 1. The following property is exempt from execution,
42 except as otherwise specifically provided in this section:

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



1 (b) Necessary household goods, as defined in 16 C.F.R. §
2 444.1(i) as that section existed on January 1, 1987, and yard
3 equipment, not to exceed \$10,000 in value, belonging to the
4 judgment debtor to be selected by him.

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

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

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

16 (f) Except as otherwise provided in paragraph (o), one vehicle if
17 the judgment debtor's equity does not exceed \$15,000 or the
18 creditor is paid an amount equal to any excess above that equity.

19 (g) For any pay period, 75 percent of the disposable earnings of
20 a judgment debtor during that period, or for each week of the period
21 30 times the minimum hourly wage prescribed by section 6(a)(1) of
22 the federal Fair Labor Standards Act of 1938, 29 U.S.C. § 206(a)(1),
23 and in effect at the time the earnings are payable, whichever is
24 greater. Except as otherwise provided in paragraphs (n), (r) and (s),
25 the exemption provided in this paragraph does not apply in the case
26 of any order of a court of competent jurisdiction for the support of
27 any person, any order of a court of bankruptcy or of any debt due for
28 any state or federal tax. As used in this paragraph, "disposable
29 earnings" means that part of the earnings of a judgment debtor
30 remaining after the deduction from those earnings of any amounts
31 required by law, to be withheld.

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

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

38 (j) All courthouses, jails, public offices and buildings, lots,
39 grounds and personal property, the fixtures, furniture, books, papers
40 and appurtenances belonging and pertaining to the courthouse, jail
41 and public offices belonging to any county of this State, all
42 cemeteries, public squares, parks and places, public buildings, town
43 halls, markets, buildings for the use of fire departments and military
44 organizations, and the lots and grounds thereto belonging and
45 appertaining, owned or held by any town or incorporated city, or



1 dedicated by the town or city to health, ornament or public use, or
2 for the use of any fire or military company organized under the laws
3 of this State and all lots, buildings and other school property owned
4 by a school district and devoted to public school purposes.

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

12 (l) The homestead as provided for by law, including a
13 homestead for which allodial title has been established and not
14 relinquished and for which a waiver executed pursuant to NRS
15 115.010 is not applicable.

16 (m) The dwelling of the judgment debtor occupied as a home for
17 himself and family, where the amount of equity held by the
18 judgment debtor in the home does not exceed \$200,000 in value and
19 the dwelling is situated upon lands not owned by him.

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

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

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

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

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

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

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

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

40 (5) A trust forming part of a qualified tuition program
41 pursuant to chapter 353B of NRS, any applicable regulations
42 adopted pursuant to chapter 353B of NRS and section 529 of the
43 Internal Revenue Code, 26 U.S.C. § 529, unless the money is
44 deposited after the entry of a judgment against the purchaser or



1 account owner or the money will not be used by any beneficiary to
2 attend a college or university.

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

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

12 (t) Payments, in an amount not to exceed \$16,150, received as
13 compensation for personal injury, not including compensation for
14 pain and suffering or actual pecuniary loss, by the judgment debtor
15 or by a person upon whom the judgment debtor is dependent at the
16 time the payment is received.

17 (u) Payments received as compensation for the wrongful death
18 of a person upon whom the judgment debtor was dependent at the
19 time of the wrongful death, to the extent reasonably necessary for
20 the support of the judgment debtor and any dependent of the
21 judgment debtor.

22 (v) Payments received as compensation for the loss of future
23 earnings of the judgment debtor or of a person upon whom the
24 judgment debtor is dependent at the time the payment is received, to
25 the extent reasonably necessary for the support of the judgment
26 debtor and any dependent of the judgment debtor.

27 (w) Payments received as restitution for a criminal act.

28 *(x) Payments received pursuant to the federal Social Security*
29 *Act, including, without limitation, retirement and survivors'*
30 *benefits, supplemental security income benefits and disability*
31 *insurance benefits.*

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

36 3. Any exemptions specified in subsection (d) of section 522 of
37 the Bankruptcy Act of 1978, 11 U.S.C. § 522(d), do not apply to
38 property owned by a resident of this State unless conferred also by
39 subsection 1, as limited by subsection 2.

40 **Sec. 4.** NRS 31.045 is hereby amended to read as follows:

41 31.045 1. Execution on the writ of attachment by attaching
42 property of the defendant may occur only if:

43 (a) The judgment creditor serves the defendant with notice of
44 the execution when the notice of the hearing is served pursuant to
45 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~~ *pursuant to the federal Social Security Act [H], including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.*

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 or a local governmental entity.

4. Proceeds from a policy of life insurance.

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

6. Payments received as disability, illness or unemployment benefits.

7. Payments received as unemployment compensation.

8. Veteran's benefits.

9. A homestead in a dwelling or a mobile home, not to exceed \$200,000, 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.



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

7 10. A vehicle, if your equity in the vehicle is less than
8 \$15,000.

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

13 12. Money, not to exceed \$500,000 in present value,
14 held in:

15 (a) An individual retirement arrangement which conforms
16 with the applicable limitations and requirements of 26 U.S.C.
17 § 408;

18 (b) A written simplified employee pension plan which
19 conforms with the applicable limitations and requirements of
20 26 U.S.C. § 408;

21 (c) A cash or deferred arrangement that is a qualified plan
22 pursuant to the Internal Revenue Code;

23 (d) A trust forming part of a stock bonus, pension or
24 profit-sharing plan that is a qualified plan pursuant to sections
25 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et
26 seq.; and

27 (e) A trust forming part of a qualified tuition program
28 pursuant to chapter 353B of NRS, any applicable regulations
29 adopted pursuant to chapter 353B of NRS and section 529 of
30 the Internal Revenue Code, 26 U.S.C. § 529, unless the
31 money is deposited after the entry of a judgment against the
32 purchaser or account owner or the money will not be used by
33 any beneficiary to attend a college or university.

34 13. All money and other benefits paid pursuant to the
35 order of a court of competent jurisdiction for the support,
36 education and maintenance of a child, whether collected by
37 the judgment debtor or the State.

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

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



1 16. A prosthesis or any equipment prescribed by a
2 physician or dentist for you or your dependent.

3 17. Payments, in an amount not to exceed \$16,150,
4 received as compensation for personal injury, not including
5 compensation for pain and suffering or actual pecuniary loss,
6 by the judgment debtor or by a person upon whom the
7 judgment debtor is dependent at the time the payment is
8 received.

9 18. Payments received as compensation for the wrongful
10 death of a person upon whom the judgment debtor was
11 dependent at the time of the wrongful death, to the extent
12 reasonably necessary for the support of the judgment debtor
13 and any dependent of the judgment debtor.

14 19. Payments received as compensation for the loss of
15 future earnings of the judgment debtor or of a person upon
16 whom the judgment debtor is dependent at the time the
17 payment is received, to the extent reasonably necessary for
18 the support of the judgment debtor and any dependent of the
19 judgment debtor.

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

30 31 PROCEDURE FOR CLAIMING EXEMPT PROPERTY

32
33 If you believe that the money or property taken from you
34 is exempt or necessary for the support of you or your family,
35 you must file with the clerk of the court on a form provided
36 by the clerk a notarized affidavit claiming the exemption. A
37 copy of the affidavit must be served upon the sheriff and the
38 judgment creditor within 8 days after the notice of execution
39 is mailed. The property must be returned to you within 5 days
40 after you file the affidavit unless the judgment creditor files a
41 motion for a hearing to determine the issue of exemption. If
42 this happens, a hearing will be held to determine whether the
43 property or money is exempt. The hearing must be held
44 within 10 days after the motion for a hearing is filed.



1 IF YOU DO NOT FILE THE AFFIDAVIT WITHIN THE
2 TIME SPECIFIED, YOUR PROPERTY MAY BE SOLD
3 AND THE MONEY GIVEN TO THE JUDGMENT
4 CREDITOR, EVEN IF THE PROPERTY OR MONEY IS
5 EXEMPT.
6

7 If you received this notice with a notice of a hearing for
8 attachment and you believe that the money or property which
9 would be taken from you by a writ of attachment is exempt or
10 necessary for the support of you or your family, you are
11 entitled to describe to the court at the hearing why you
12 believe your property is exempt. You may also file a motion
13 with the court for a discharge of the writ of attachment. You
14 may make that motion any time before trial. A hearing will be
15 held on that motion.
16

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

22 **Sec. 5.** The provisions of section 1 of this act apply to an
23 agreement that is entered into or renewed on or after October 1,
24 2005.

