

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 under certain circumstances 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)

Except with respect to provisions that specifically authorize automatic withdrawals from an account, 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. Except as otherwise provided in subsection 2, 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 subsection 1 do not apply to a provision in a loan agreement that specifically authorizes automatic withdrawals from an account.

3. 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.

4. 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, unless the specific account pledged as security is conspicuously described in 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

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~~ *pursuant to* the *federal Social Security Act* ~~§~~ *, 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.

(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.

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

11. 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.

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

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

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

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

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

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

13. 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.

14. 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.

15. 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.

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

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

18. Payments received as compensation for the wrongful death of a person upon whom the judgment debtor was



1 dependent at the time of the wrongful death, to the extent
2 reasonably necessary for the support of the judgment debtor
3 and any dependent of the judgment debtor.

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

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

20 PROCEDURE FOR CLAIMING EXEMPT PROPERTY

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

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

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

44 21.090 1. The following property is exempt from execution,
45 except as otherwise specifically provided in this section:



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

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

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

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

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

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

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

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

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

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



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

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

14 (l) The homestead as provided for by law, including a
15 homestead for which allodial title has been established and not
16 relinquished and for which a waiver executed pursuant to NRS
17 115.010 is not applicable.

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

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

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

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

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

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

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

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

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

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



1 deposited after the entry of a judgment against the purchaser or
2 account owner or the money will not be used by any beneficiary to
3 attend a college or university.

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

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

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

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

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

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

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

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

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

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

42 31.045 1. Execution on the writ of attachment by attaching
43 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~~ *pursuant to* the *federal* Social Security Act ~~§~~ *, 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:



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

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

10 10. A vehicle, if your equity in the vehicle is less than
11 \$15,000.

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

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

18 (a) An individual retirement arrangement which conforms
19 with the applicable limitations and requirements of 26 U.S.C.
20 § 408;

21 (b) A written simplified employee pension plan which
22 conforms with the applicable limitations and requirements of
23 26 U.S.C. § 408;

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

26 (d) A trust forming part of a stock bonus, pension or
27 profit-sharing plan that is a qualified plan pursuant to sections
28 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et
29 seq.; and

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

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

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



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

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

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

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

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

23 20. Payments received as restitution for a criminal act.

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

33 PROCEDURE FOR CLAIMING EXEMPT PROPERTY

34 If you believe that the money or property taken from you
35 is exempt or necessary for the support of you or your family,
36 you must file with the clerk of the court on a form provided
37 by the clerk a notarized affidavit claiming the exemption. A
38 copy of the affidavit must be served upon the sheriff and the
39 judgment creditor within 8 days after the notice of execution
40 is mailed. The property must be returned to you within 5 days
41 after you file the affidavit unless the judgment creditor files a
42 motion for a hearing to determine the issue of exemption. If
43 this happens, a hearing will be held to determine whether the
44
45



1 property or money is exempt. The hearing must be held
2 within 10 days after the motion for a hearing is filed.
3

4 IF YOU DO NOT FILE THE AFFIDAVIT WITHIN THE
5 TIME SPECIFIED, YOUR PROPERTY MAY BE SOLD
6 AND THE MONEY GIVEN TO THE JUDGMENT
7 CREDITOR, EVEN IF THE PROPERTY OR MONEY IS
8 EXEMPT.
9

10 If you received this notice with a notice of a hearing for
11 attachment and you believe that the money or property which
12 would be taken from you by a writ of attachment is exempt or
13 necessary for the support of you or your family, you are
14 entitled to describe to the court at the hearing why you
15 believe your property is exempt. You may also file a motion
16 with the court for a discharge of the writ of attachment. You
17 may make that motion any time before trial. A hearing will be
18 held on that motion.
19

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

25 **Sec. 5.** The provisions of section 1 of this act apply to an
26 agreement that is entered into or renewed on or after October 1,
27 2005.

