

ASSEMBLY BILL NO. 365—ASSEMBLYWOMAN OHRENSCHALL

MARCH 23, 2005

Referred to Committee on Judiciary

SUMMARY—Increases amount of homestead exemption.
(BDR 10-1026)

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; and providing other matters
properly relating thereto.

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

- 1 **Section 1.** NRS 115.010 is hereby amended to read as follows:
- 2 115.010 1. The homestead is not subject to forced sale on
- 3 execution or any final process from any court, except as otherwise
- 4 provided by subsections 2, 3 and 5, and NRS 115.090.
- 5 2. The exemption provided in subsection 1 extends only to that
- 6 amount of equity in the property held by the claimant which does
- 7 not exceed ~~[\$200,000]~~ *\$400,000* in value, unless allodial title has
- 8 been established and not relinquished, in which case the exemption
- 9 provided in subsection 1 extends to all equity in the dwelling, its
- 10 appurtenances and the land on which it is located.
- 11 3. Except as otherwise provided in subsection 4, the exemption
- 12 provided in subsection 1 does not extend to process to enforce the
- 13 payment of obligations contracted for the purchase of the property,
- 14 or for improvements made thereon, including any mechanic's lien
- 15 lawfully obtained, or for legal taxes, or for:
- 16 (a) Any mortgage or deed of trust thereon executed and given;
- 17 or
- 18 (b) Any lien to which prior consent has been given through the
- 19 acceptance of property subject to any recorded declaration of



1 restrictions, deed restriction, restrictive covenant or equitable
2 servitude, specifically including any lien in favor of an association
3 pursuant to NRS 116.3116 or 117.070,

4 ↳ by both husband and wife, when that relation exists.

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

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

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

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

19 5. Establishment of allodial title does not exempt the property
20 from forfeiture pursuant to NRS 179.1156 to 179.119, inclusive, or
21 207.350 to 207.520, inclusive.

22 6. Any declaration of homestead which has been filed before
23 October 1, ~~[2003,]~~ 2005, shall be deemed to have been amended on
24 that date by extending the homestead exemption commensurate with
25 any increase in the amount of equity held by the claimant in the
26 property selected and claimed for the exemption up to the amount
27 permitted by law on that date, but the increase does not impair the
28 right of any creditor to execute upon the property when that right
29 existed before October 1, ~~[2003,]~~ 2005.

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

31 115.050 1. Whenever execution has been issued against the
32 property of a party claiming the property as a homestead, and
33 the creditor in the judgment makes an oath before the judge of the
34 district court of the county in which the property is situated, that the
35 amount of equity held by the claimant in the property exceeds, to
36 the best of the creditor's information and belief, the sum of
37 ~~[\$200,000,]~~ \$400,000, the judge shall, upon notice to the debtor,
38 appoint three disinterested and competent persons as appraisers to
39 estimate and report as to the amount of equity held by the claimant
40 in the property, and if the amount of equity exceeds the sum of
41 ~~[\$200,000,]~~ \$400,000, determine whether the property can be
42 divided so as to leave the property subject to the homestead
43 exemption without material injury.

44 2. If it appears, upon the report, to the satisfaction of the judge
45 that the property can be thus divided, he shall order the excess to be



1 sold under execution. If it appears that the property cannot be thus
2 divided, and the amount of equity held by the claimant in the
3 property exceeds the exemption allowed by this chapter, he shall
4 order the entire property to be sold, and out of the proceeds the sum
5 of ~~[\$200,000]~~ \$400,000 to be paid to the defendant in execution, and
6 the excess to be applied to the satisfaction on the execution. No bid
7 under ~~[\$200,000]~~ \$400,000 may be received by the officer making
8 the sale.

9 3. When the execution is against a husband or wife, the judge
10 may direct the ~~[\$200,000]~~ \$400,000 to be deposited in court, to be
11 paid out only upon the joint receipt of the husband and wife, and the
12 deposit possesses all the protection against legal process and
13 voluntary disposition by either spouse as did the original homestead.

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

15 21.075 1. Execution on the writ of execution by levying on
16 the property of the judgment debtor may occur only if the sheriff
17 serves the judgment debtor with a notice of the writ of execution
18 pursuant to NRS 21.076 and a copy of the writ. The notice must
19 describe the types of property exempt from execution and explain
20 the procedure for claiming those exemptions in the manner required
21 in subsection 2. The clerk of the court shall attach the notice to the
22 writ of execution at the time the writ is issued.

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

25
26 NOTICE OF EXECUTION

27
28 YOUR PROPERTY IS BEING ATTACHED OR
29 YOUR WAGES ARE BEING GARNISHED
30

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

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

- 40 1. Payments received under the Social Security Act.
41 2. Payments for benefits or the return of contributions
42 under the Public Employees' Retirement System.
43 3. Payments for public assistance granted through the
44 Welfare Division of the Department of Human Resources or a
45 local governmental entity.



- 1 4. Proceeds from a policy of life insurance.
- 2 5. Payments of benefits under a program of industrial
- 3 insurance.
- 4 6. Payments received as disability, illness or
- 5 unemployment benefits.
- 6 7. Payments received as unemployment compensation.
- 7 8. Veteran's benefits.
- 8 9. A homestead in a dwelling or a mobile home, not to
- 9 exceed ~~[\$200,000,]~~ \$400,000, unless:
- 10 (a) The judgment is for a medical bill, in which case all of
- 11 the primary dwelling, including a mobile or manufactured
- 12 home, may be exempt.
- 13 (b) Allodial title has been established and not relinquished
- 14 for the dwelling or mobile home, in which case all of the
- 15 dwelling or mobile home and its appurtenances are exempt,
- 16 including the land on which they are located, unless a valid
- 17 waiver executed pursuant to NRS 115.010 is applicable to the
- 18 judgment.
- 19 10. A vehicle, if your equity in the vehicle is less than
- 20 \$15,000.
- 21 11. Seventy-five percent of the take-home pay for any
- 22 pay period, unless the weekly take-home pay is less than 30
- 23 times the federal minimum wage, in which case the entire
- 24 amount may be exempt.
- 25 12. Money, not to exceed \$500,000 in present value,
- 26 held in:
- 27 (a) An individual retirement arrangement which conforms
- 28 with the applicable limitations and requirements of 26 U.S.C.
- 29 § 408;
- 30 (b) A written simplified employee pension plan which
- 31 conforms with the applicable limitations and requirements of
- 32 26 U.S.C. § 408;
- 33 (c) A cash or deferred arrangement that is a qualified plan
- 34 pursuant to the Internal Revenue Code;
- 35 (d) A trust forming part of a stock bonus, pension or
- 36 profit-sharing plan that is a qualified plan pursuant to sections
- 37 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et
- 38 seq.; and
- 39 (e) A trust forming part of a qualified tuition program
- 40 pursuant to chapter 353B of NRS, any applicable regulations
- 41 adopted pursuant to chapter 353B of NRS and section 529 of
- 42 the Internal Revenue Code, 26 U.S.C. § 529, unless the
- 43 money is deposited after the entry of a judgment against the
- 44 purchaser or account owner or the money will not be used by
- 45 any beneficiary to attend a college or university.



1 13. All money and other benefits paid pursuant to the
2 order of a court of competent jurisdiction for the support,
3 education and maintenance of a child, whether collected by
4 the judgment debtor or the State.

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

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

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

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

21 18. Payments received as compensation for the wrongful
22 death of a person upon whom the judgment debtor was
23 dependent at the time of the wrongful death, to the extent
24 reasonably necessary for the support of the judgment debtor
25 and any dependent of the judgment debtor.

26 19. Payments received as compensation for the loss of
27 future earnings of the judgment debtor or of a person upon
28 whom the judgment debtor is dependent at the time the
29 payment is received, to the extent reasonably necessary for
30 the support of the judgment debtor and any dependent of the
31 judgment debtor.

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

33 ➤ These exemptions may not apply in certain cases such as a
34 proceeding to enforce a judgment for support of a person or a
35 judgment of foreclosure on a mechanic's lien. You should
36 consult an attorney immediately to assist you in determining
37 whether your property or money is exempt from execution. If
38 you cannot afford an attorney, you may be eligible for
39 assistance through(name of organization in
40 county providing legal services to indigent or elderly
41 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 \$10,000 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 \$15,000 or the creditor is paid an amount equal to any excess above that equity.



1 (g) For any pay period, 75 percent of the disposable earnings of
2 a judgment debtor during that period, or for each week of the period
3 30 times the minimum hourly wage prescribed by section 6(a)(1) of
4 the federal Fair Labor Standards Act of 1938, 29 U.S.C. § 206(a)(1),
5 and in effect at the time the earnings are payable, whichever is
6 greater. Except as otherwise provided in paragraphs (n), (r) and (s),
7 the exemption provided in this paragraph does not apply in the case
8 of any order of a court of competent jurisdiction for the support of
9 any person, any order of a court of bankruptcy or of any debt due for
10 any state or federal tax. As used in this paragraph, "disposable
11 earnings" means that part of the earnings of a judgment debtor
12 remaining after the deduction from those earnings of any amounts
13 required by law, to be withheld.

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

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

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

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

39 (l) The homestead as provided for by law, including a
40 homestead for which allodial title has been established and not
41 relinquished and for which a waiver executed pursuant to NRS
42 115.010 is not applicable.

43 (m) The dwelling of the judgment debtor occupied as a home for
44 himself and family, where the amount of equity held by the



1 judgment debtor in the home does not exceed ~~[\$200,000]~~ \$400,000
2 in value and the dwelling is situated upon lands not owned by him.

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

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

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

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

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

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

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

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

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

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

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

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

44 (u) Payments received as compensation for the wrongful death
45 of a person upon whom the judgment debtor was dependent at the



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

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

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

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

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

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

19 31.045 1. Execution on the writ of attachment by attaching
20 property of the defendant may occur only if:

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

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

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

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

32
33 NOTICE OF EXECUTION

34
35 YOUR PROPERTY IS BEING ATTACHED OR
36 YOUR WAGES ARE BEING GARNISHED
37

38 Plaintiff, (name of person), alleges that you
39 owe him money. He has begun the procedure to collect that
40 money. To secure satisfaction of judgment the court has
41 ordered the garnishment of your wages, bank account or other
42 personal property held by third persons or the taking of
43 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 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,]~~ \$400,000, 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 dependent at the time of the wrongful death, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

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

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

