

ASSEMBLY BILL NO. 428—ASSEMBLYWOMAN GANSERT

MARCH 25, 2005

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to property that is exempt from execution by creditors and revises certain provisions relating to homestead exemption. (BDR 2-966)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.  
Effect on the State: Yes.

~

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

AN ACT relating to property; making various changes concerning property that is exempt from execution by creditors; revising the requirements for obtaining a 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 21.075 is hereby amended to read as follows:  
2     21.075 1. Execution on the writ of execution by levying on  
3 the property of the judgment debtor may occur only if the sheriff  
4 serves the judgment debtor with a notice of the writ of execution  
5 pursuant to NRS 21.076 and a copy of the writ. The notice must  
6 describe the types of property exempt from execution and explain  
7 the procedure for claiming those exemptions in the manner required  
8 in subsection 2. The clerk of the court shall attach the notice to the  
9 writ of execution at the time the writ is issued.  
10    2. The notice required pursuant to subsection 1 must be  
11 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 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, *provided that you have resided in the dwelling or mobile home for at least 180 days before entry of a judgment against you or before you filed a petition in bankruptcy and* 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 ~~that is in operable condition,~~ if your equity in the vehicle is less than ~~[\$15,000.]~~ \$10,000, *except that a vehicle which is owned by your spouse is not exempt unless your spouse is also a judgment debtor.*

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



1 federal minimum wage, in which case the entire amount may be  
2 exempt.

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

4 (a) An individual retirement arrangement which conforms with  
5 the applicable limitations and requirements of *section 408 of the*  
6 *Internal Revenue Code*, 26 U.S.C. § 408 [H], *if the money is held*  
7 *in the arrangement for at least 180 days before a judgment is*  
8 *entered against you or you file a petition in bankruptcy and the*  
9 *money is held in the arrangement for not less than 1 year after the*  
10 *judgment is entered or the petition is filed;*

11 (b) A written simplified employee pension plan which conforms  
12 with the applicable limitations and requirements of *section 408 of*  
13 *the Internal Revenue Code*, 26 U.S.C. § 408 [H], *if the money is*  
14 *held in the plan for at least 180 days before a judgment is entered*  
15 *against you or you file a petition in bankruptcy and the money is*  
16 *held in the plan for not less than 1 year after the judgment is*  
17 *entered or the petition is filed;*

18 (c) A cash or deferred arrangement that is a qualified plan  
19 pursuant to the Internal Revenue Code [H] *if the money is held in*  
20 *the plan for at least 180 days before a judgment is entered against*  
21 *you or you file a petition in bankruptcy and the money is held in*  
22 *the plan for not less than 1 year after the judgment is entered or*  
23 *the petition is filed;*

24 (d) A trust forming part of a stock bonus, pension or profit-  
25 sharing plan that is a qualified plan pursuant to sections 401 et seq.  
26 of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq. [H], *if the*  
27 *money is held in the trust for at least 180 days before a judgment*  
28 *is entered against you or you file a petition in bankruptcy and the*  
29 *money is held in the trust for not less than 1 year after the*  
30 *judgment is entered or the petition is filed;* and

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

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

43 14. All money and other benefits paid pursuant to the order of  
44 a court of competent jurisdiction for the support and maintenance of  
45 a former spouse, including the amount of any arrearages in the



1 payment of such support and maintenance to which the former  
2 spouse may be entitled.

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

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

8 17. Payments, in an amount not to exceed \$16,150, received as  
9 compensation for personal injury ~~[, not including compensation for~~  
10 ~~pain and suffering or actual pecuniary loss, by the judgment debtor]~~  
11 *by you* or by a person upon whom ~~[the judgment debtor is]~~ *you are*  
12 *dependent at the time the payment is received* ~~[,]~~ *, if, pursuant to a*  
13 *petition in bankruptcy filed by you, you have not discharged a debt*  
14 *which was incurred to treat, correct or repair the personal injury*  
15 *or the damages to property related to the personal injury or was*  
16 *incurred to collect or pursue compensation for the personal injury,*  
17 *including, without limitation, debts for applicable medical and*  
18 *legal services.*

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

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

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

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

## 38 39 PROCEDURE FOR CLAIMING EXEMPT PROPERTY 40

41 If you believe that the money or property taken from you is  
42 exempt, you must complete and file with the clerk of the court a  
43 notarized affidavit claiming the exemption. A copy of the affidavit  
44 must be served upon the sheriff and the judgment creditor within 8  
45 days after the notice of execution is mailed. The property must be



1 returned to you within 5 days after you file the affidavit unless you  
2 or the judgment creditor files a motion for a hearing to determine  
3 the issue of exemption. If this happens, a hearing will be held to  
4 determine whether the property or money is exempt. The motion for  
5 the hearing to determine the issue of exemption must be filed within  
6 10 days after the affidavit claiming exemption is filed. The hearing  
7 to determine whether the property or money is exempt must be held  
8 within 10 days after the motion for the hearing is filed.

9  
10 IF YOU DO NOT FILE THE AFFIDAVIT WITHIN THE TIME  
11 SPECIFIED, YOUR PROPERTY MAY BE SOLD AND THE  
12 MONEY GIVEN TO THE JUDGMENT CREDITOR, EVEN IF  
13 THE PROPERTY OR MONEY IS EXEMPT.

14 **Sec. 2.** NRS 21.090 is hereby amended to read as follows:

15 21.090 1. The following property is exempt from execution,  
16 except as otherwise specifically provided in this section:

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

19 (b) *Keepsakes not to exceed \$100 in value.*

20 (c) Necessary household goods, as defined in 16 C.F.R. §  
21 444.1(i) as that section existed on January 1, 1987, and yard  
22 equipment, not to exceed \$10,000 in value, belonging to the  
23 judgment debtor to be selected by him ~~to~~

24 ~~—(e)—~~ , *provided that collectibles are not included within the*  
25 *scope of the term household goods. Two or more judgment debtors*  
26 *may not apply the exemption provided pursuant to this paragraph*  
27 *to the same household.*

28 (d) *Computer systems and related equipment, not to exceed*  
29 *\$500 in value.*

30 (e) Farm trucks, farm stock, farm tools, farm equipment,  
31 supplies and seed *used by the judgment debtor for the support of*  
32 *himself and his family*, not to exceed \$4,500 in value, belonging to  
33 the judgment debtor ~~to be~~ and selected by him.

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

38 ~~(e)~~ (g) The cabin or dwelling of a miner or prospector, his cars,  
39 implements and appliances necessary for carrying on any mining  
40 operations and his mining claim actually worked by him ~~to~~ and  
41 *used by the judgment debtor for the support of himself and his*  
42 *family*, not exceeding \$4,500 in total value.

43 ~~(f)~~ (h) Except as otherwise provided in paragraph ~~(e)~~ (q),  
44 one vehicle *that is in operable condition and that is necessary for*  
45 *the judgment debtor to support himself and his family* if the



judgment debtor's equity does not exceed ~~[\$15,000]~~ **\$10,000** or the creditor is paid an amount equal to any excess above that equity.

~~[(e)]~~ ***Except as otherwise provided in this paragraph, in a proceeding in bankruptcy that involves two or more judgment debtors who are jointly liable on a judgment for money, each judgment debtor may apply his exemption provided pursuant to this paragraph to a vehicle selected by the judgment debtor except that more than one such exemption may not be applied to the same vehicle. An exemption provided pursuant to this paragraph may not be applied to a vehicle owned by the spouse of a judgment debtor unless the spouse is also a judgment debtor.***

(i) 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)]~~ **(p), (t) and (u)**, 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)]~~ **(j)** 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)]~~ **(k)** All arms, uniforms and accouterments required by law to be kept by any person, and also one gun, to be selected by the judgment debtor ~~[-~~ ***(j) and not to exceed \$350 in value.***

**(l)** 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)]~~ (m) 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.

~~[(d)]~~ (n) 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 ~~f~~.

~~—(m)]~~, *provided that the judgment debtor has resided on or in the homestead property for at least 180 days before the entry of a judgment against the judgment debtor or the filing of the petition in bankruptcy by the judgment debtor.*

(o) 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 \$200,000 in value and the dwelling is situated upon lands not owned by him ~~f~~.

~~—(n)]~~, *provided that the judgment debtor has resided in the dwelling for at least 180 days before the entry of a judgment against the judgment debtor or the filing of the petition in bankruptcy by the judgment debtor.*

(p) 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.

~~[(e)]~~ (q) 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)]~~ (r) Any prosthesis or equipment prescribed by a physician or dentist for the judgment debtor or a dependent of the *judgment* debtor.

~~[(q)]~~ (s) 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;

(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.; and





(5) 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 ~~[-~~

~~(+)]~~, *and provided that the money held in such a trust is not accessible to or used by the judgment debtor.*

(t) 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.

~~(+)]~~ (u) 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.

~~(+)]~~ (v) 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.

~~(+)]~~ *The exemption provided pursuant to this paragraph does not apply if, pursuant to a petition in bankruptcy filed by the judgment debtor, the judgment debtor discharges a debt which was incurred to treat, correct or repair the personal injury or the damages to property related to the personal injury or was incurred to collect or pursue compensation for the personal injury, including, without limitation, debts for applicable medical and legal services.*

(w) 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.

~~(+)]~~ (x) 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.

~~(+)]~~ (y) Payments received as restitution for a criminal act.

2. Except as otherwise provided in NRS 115.010, no article or species of property mentioned in this section is exempt from





1 execution issued upon a judgment to recover for its price, or upon a  
2 judgment of foreclosure of a mortgage or other lien thereon.

3 3. *Except as otherwise provided in NRS 115.050 and 115.070,*  
4 *proceeds from the sale of any property that is exempt pursuant to*  
5 *paragraphs (n) or (o) of subsection 1 are exempt for a period of 90*  
6 *days after the receipt of the proceeds by the judgment debtor if the*  
7 *proceeds are separately maintained from other property and are*  
8 *identified as exempt proceeds. Such proceeds remain exempt after*  
9 *90 days only if the proceeds are used to purchase a homestead or*  
10 *dwelling on or in which the judgment debtor resides.*

11 4. Any exemptions specified in subsection (d) of section 522 of  
12 the Bankruptcy Act of 1978, 11 U.S.C. § 522(d), do not apply to  
13 property owned by a resident of this State unless conferred also by  
14 ~~{subsection 1.}~~ *subsections 1 and 3*, as limited by subsection 2.

15 5. *Money is not exempt pursuant to paragraph (s) of*  
16 *subsection 1 if the money is:*

17 (a) *Held in an arrangement, plan or trust described in*  
18 *subparagraphs (1) to (4), inclusive, of paragraph (s) of subsection*  
19 *1; and*

20 (b) *Held in such an arrangement, plan or trust for:*

21 (1) *Less than 180 days before the entry of a judgment*  
22 *against the purchaser or account owner or the filing of the*  
23 *petition in bankruptcy by the purchaser or account owner; or*

24 (2) *Less than 1 year after the entry of judgment against the*  
25 *purchaser or account owner or the filing of the petition in*  
26 *bankruptcy by the purchaser or account owner.*

27 6. *As used in this section, "vehicle" has the meaning ascribed*  
28 *to it in NRS 482.135. The term does not include:*

29 (a) *An off-road vehicle as defined in NRS 480.420;*

30 (b) *A vehicle that satisfies the requirements for the issuance of*  
31 *vintage license plates pursuant to NRS 482.3818;*

32 (c) *A vehicle that satisfies the requirements for the issuance of*  
33 *license plates pursuant to NRS 482.3816; or*

34 (d) *A recreational vehicle as defined in NRS 482.101.*

35 **Sec. 3.** NRS 21.100 is hereby amended to read as follows:

36 21.100 1. Any bona fide owner of a collection or cabinet of  
37 metal-bearing ores, geological specimens, art curiosities, or  
38 paleontological remains who shall properly arrange, classify,  
39 number and catalog in a suitable book or books of reference any  
40 such collection of ores, specimens, curiosities or remains, whether  
41 the same be kept at a private residence or in a public hall or in a  
42 place of public business or traffic, ~~{shall be}~~ *is* entitled to hold the  
43 same *in an amount not to exceed \$2,000 in value*, exempt from  
44 execution as other property is exempted from execution under the  
45 provisions of NRS 21.090.



2. The owner of any collection or cabinet as described in subsection 1 shall keep constantly at or near ~~such~~ *the* collection or cabinet, for free inspection of all visitors who may desire to examine the same, written or printed catalogs as provided in subsection 1. Any person owning such *a* collection or cabinet who fails or neglects to comply with the provisions of this section shall forfeit all right to hold ~~such~~ *the* collection or cabinet exempt from legal execution as provided herein.

3. Nothing in this section shall be construed so as to exempt from execution any numismatic collection, ~~such as~~ *including, without limitation,* gold and silver coins, paper currency, bank notes, legal tender currency, national or state bonds, or any negotiable note, or valuable copper, bronze, nickel, platinum or other coin.

**Sec. 4.** 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 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, *provided that you have resided in the dwelling or mobile home for at least 180 days before entry of a judgment against you or before you filed a petition in bankruptcy and* 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 ~~that is in operable condition~~, if your equity in the vehicle is less than ~~[\$15,000.]~~ \$10,000, *except that a vehicle which is owned by your spouse is not exempt unless your spouse is also a judgment debtor.*

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 *section 408 of the Internal Revenue Code*, 26 U.S.C. § 408 ~~that~~, *if the money is held in the arrangement for at least 180 days before a judgment is entered against you or you file a petition in bankruptcy and the money is held in the arrangement for not less than 1 year after the judgment is entered or the petition is filed;*

(b) A written simplified employee pension plan which conforms with the applicable limitations and requirements of *section 408 of the Internal Revenue Code*, 26 U.S.C. § 408 ~~that~~, *if the money is held in the plan for at least 180 days before a judgment is entered against you or you file a petition in bankruptcy and the money is*



1 *held in the plan for not less than 1 year after the judgment is*  
2 *entered or the petition is filed;*

3 (c) A cash or deferred arrangement that is a qualified plan  
4 pursuant to the Internal Revenue Code ~~[.]~~ *if the money is held in*  
5 *the plan for at least 180 days before a judgment is entered against*  
6 *you or you file a petition in bankruptcy and the money is held in*  
7 *the plan for not less than 1 year after the judgment is entered or*  
8 *the petition is filed;*

9 (d) A trust forming part of a stock bonus, pension or profit-  
10 sharing plan that is a qualified plan pursuant to sections 401 et seq.  
11 of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq. ~~[.]~~ *, if the*  
12 *money is held in the trust for at least 180 days before a judgment*  
13 *is entered against you or you file a petition in bankruptcy and the*  
14 *money is held in the trust for not less than 1 year after the*  
15 *judgment is entered or the petition is filed;* and

16 (e) A trust forming part of a qualified tuition program pursuant  
17 to chapter 353B of NRS, any applicable regulations adopted  
18 pursuant to chapter 353B of NRS and section 529 of the Internal  
19 Revenue Code, 26 U.S.C. § 529, unless the money is deposited after  
20 the entry of a judgment against the purchaser or account owner or  
21 the money will not be used by any beneficiary to attend a college or  
22 university ~~[.]~~ *, and provided that the money held in such a trust is*  
23 *not accessible to or used by you.*

24 13. All money and other benefits paid pursuant to the order of  
25 a court of competent jurisdiction for the support, education and  
26 maintenance of a child, whether collected by the judgment debtor or  
27 the State.

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

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

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

38 17. Payments, in an amount not to exceed \$16,150, received as  
39 compensation for personal injury ~~[, not including compensation for~~  
40 ~~pain and suffering or actual pecuniary loss, by the judgment debtor]~~  
41 *by you or by a person upon whom [the judgment debtor is] you are*  
42 *dependent at the time the payment is received [.] , if, pursuant to a*  
43 *petition in bankruptcy filed by you, you have not discharged a debt*  
44 *which was incurred to treat, correct or repair the personal injury*  
45 *or the damages to property related to the personal injury or was*



*incurred to collect or pursue compensation for the personal injury, including, without limitation, debts for applicable medical and legal services.*

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



1 for the support of you or your family, you are entitled to describe to  
2 the court at the hearing why you believe your property is exempt.  
3 You may also file a motion with the court for a discharge of the writ  
4 of attachment. You may make that motion any time before trial. A  
5 hearing will be held on that motion.

6  
7 IF YOU DO NOT FILE THE MOTION BEFORE THE TRIAL,  
8 YOUR PROPERTY MAY BE SOLD AND THE MONEY GIVEN  
9 TO THE PLAINTIFF, EVEN IF THE PROPERTY OR MONEY IS  
10 EXEMPT OR NECESSARY FOR THE SUPPORT OF YOU OR  
11 YOUR FAMILY.

12 **Sec. 5.** NRS 115.005 is hereby amended to read as follows:

13 115.005 As used in this chapter, unless the context otherwise  
14 requires:

15 1. "Equity" means the amount that is determined by subtracting  
16 from the fair market value of the property the value of any liens  
17 excepted from the homestead exemption pursuant to subsection 3 of  
18 NRS 115.010 or NRS 115.090.

19 2. "Homestead" means the property consisting of:

20 (a) A *contiguous* quantity of land ~~that~~ *that is used solely as the*  
21 *location of the dwelling house and its appurtenances*, together with  
22 the dwelling house thereon and its appurtenances;

23 (b) A mobile home whether or not the underlying land is owned  
24 by the claimant; or

25 (c) A unit, whether real or personal property, existing pursuant  
26 to chapter 116 or 117 of NRS, with any appurtenant limited  
27 common elements and its interest in the common elements of the  
28 common-interest community,

29 ➔ to be selected by the husband and wife, or either of them, or a  
30 single person claiming the homestead. *The term does not include*  
31 *segregated parcels that are contiguous with the parcel on which*  
32 *the dwelling house is located.*

33 **Sec. 6.** NRS 115.010 is hereby amended to read as follows:

34 115.010 1. The homestead is not subject to forced sale on  
35 execution or any final process from any court, except as otherwise  
36 provided by subsections 2, 3 and 5, and NRS 115.090.

37 2. The exemption provided in subsection 1 extends only ~~to~~ :

38 (a) *If the claimant has resided on or in the homestead property*  
39 *for at least 180 days before the entry of a judgment against the*  
40 *claimant or the filing of the petition in bankruptcy by the*  
41 *claimant; and*

42 (b) *To* that amount of equity in the property held by the claimant  
43 which does not exceed \$200,000 in value,

44 ➔ unless allodial title has been established and not relinquished, in  
45 which case the exemption provided in subsection 1 extends to all



1 equity in the dwelling, its appurtenances and the land on which it is  
2 located.

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

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

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

15 ➔ by both husband and wife, when that relation exists.

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

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

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

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

30 5. Establishment of allodial title does not exempt the property  
31 from forfeiture pursuant to NRS 179.1156 to 179.119, inclusive, or  
32 207.350 to 207.520, inclusive.

33 6. Any declaration of homestead which has been filed before  
34 October 1, 2003, shall be deemed to have been amended on that date  
35 by extending the homestead exemption commensurate with any  
36 increase in the amount of equity held by the claimant in the property  
37 selected and claimed for the exemption up to the amount permitted  
38 by law on that date, but the increase does not impair the right of any  
39 creditor to execute upon the property when that right existed before  
40 October 1, 2003.

41 **Sec. 7.** This act becomes effective on July 1, 2005.





