

SENATE BILL NO. 173—COMMITTEE ON JUDICIARY

MARCH 9, 2005

Referred to Committee on Judiciary

SUMMARY—Increases amount of homestead exemption and makes various changes relating to property which is exempt from execution by creditors. (BDR 10-616)

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

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

AN ACT relating to property; increasing the amount of the homestead exemption; exempting from execution by creditors a greater amount of equity in certain dwellings and a greater value of certain property; exempting from execution by creditors certain money held in a Roth Individual Retirement Account; making various other changes concerning property which is exempt from execution by creditors; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law provides that, with certain exceptions, in a civil action in which
- 2 damages were awarded, the prevailing party in the action may obtain a writ of
- 3 execution to enforce the judgment at any time before the judgment expires. (NRS
- 4 21.010) Existing law exempts certain property from such a writ of execution up to a
- 5 specified monetary value. (NRS 21.090) In addition, existing law protects from
- 6 a forced sale up to \$200,000 in equity of certain property which is designated as a
- 7 homestead by a person, except in certain circumstances. (NRS 115.005, 115.010)
- 8 This bill increases the amount of equity protected in homestead property from
- 9 \$200,000 to \$350,000.
- 10 This bill also increases and revises other exemptions from a writ of execution.
- 11 This bill increases the exemption from a writ of execution for private libraries from
- 12 \$1,500 to \$5,000 and expands the property eligible for this exemption to works of
- 13 art, musical instruments and jewelry. This bill increases the exemption for
- 14 necessary household goods and yard equipment from \$10,000 to \$12,000 and
- 15 expands the property eligible for this exemption to furnishings, electronics, wearing
- 16 apparel and other personal effects. This bill increases the exemption for
- 17 professional libraries, office equipment, office supplies and tools from \$4,500 to



\$10,000 and expands the property eligible for this exemption to inventory and any equipment and supplies used in the trade or business of the judgment debtor with which he supports himself and his family. This bill increases the exemption for equity from \$200,000 to \$350,000 in the dwelling of the judgment debtor that is occupied as a home for himself and his family and situated upon lands not owned by him.

This bill also expands the property eligible for the \$500,000 exemption from writ of execution for money held in certain types of federally authorized savings accounts to include money held in a Roth Individual Retirement Account. (26 U.S.C. § 408A)

Existing law establishes the contents of a writ of execution issued on a judgment for the recovery of money, a notice of writ of execution and a notice of writ of attachment. (NRS 21.025, 21.075, 31.045)

This bill revises the contents of these documents to reflect the changes in the exemptions authorized by this bill.

Existing law provides an exemption from a writ of execution for 75 percent of the disposable earnings of a debtor in a pay period or 30 times the minimum hourly wage of the debtor. Existing law also defines the term "disposable earnings" as that part of the earnings of a judgment debtor remaining after deductions from those earnings that are required by law. (NRS 21.090)

This bill provides that the exemption applies to 75 percent of the disposable earnings of a debtor in a workweek or 50 times the minimum hourly wage of the debtor. The bill also defines "earnings" as compensation paid or payable for personal services performed by a judgment debtor in the course of regular business, such as income, wages, tips, a salary, a commission or a bonus. Earnings include compensation received by a judgment debtor that is held in a bank or other financial institution, or a receivable that is due the judgment debtor.

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

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

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

2. The exemption provided in subsection 1 extends only to that amount of equity in the property held by the claimant which does not exceed ~~[\$200,000]~~ *\$350,000* in value, unless allodial title has been established and not relinquished, in which case the exemption provided in subsection 1 extends to all equity in the dwelling, its appurtenances and the land on which it is located.

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



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

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

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

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

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

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

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

23 5. Establishment of allodial title does not exempt the property
24 from forfeiture pursuant to NRS 179.1156 to 179.119, inclusive, or
25 207.350 to 207.520, inclusive.

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

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

35 115.050 1. Whenever execution has been issued against
36 the property of a party claiming the property as a homestead, and the
37 creditor in the judgment makes an oath before the judge of the
38 district court of the county in which the property is situated, that
39 the amount of equity held by the claimant in the property exceeds, to
40 the best of the creditor's information and belief, the sum of
41 ~~[\$200,000,]~~ **\$350,000**, the judge shall, upon notice to the debtor,
42 appoint three disinterested and competent persons as appraisers to
43 estimate and report as to the amount of equity held by the claimant
44 in the property, and if the amount of equity exceeds the sum of



1 ~~[\$200,000,]~~ \$350,000, determine whether the property can be
2 divided so as to leave the property subject to the homestead
3 exemption without material injury.

4 2. If it appears, upon the report, to the satisfaction of the judge
5 that the property can be thus divided, he shall order the excess to be
6 sold under execution. If it appears that the property cannot be thus
7 divided, and the amount of equity held by the claimant in the
8 property exceeds the exemption allowed by this chapter, he shall
9 order the entire property to be sold, and out of the proceeds the sum
10 of ~~[\$200,000]~~ \$350,000 to be paid to the defendant in execution, and
11 the excess to be applied to the satisfaction on the execution. No bid
12 under ~~[\$200,000]~~ \$350,000 may be received by the officer making
13 the sale.

14 3. When the execution is against a husband or wife, the judge
15 may direct the ~~[\$200,000]~~ \$350,000 to be deposited in court, to be
16 paid out only upon the joint receipt of the husband and wife, and the
17 deposit possesses all the protection against legal process and
18 voluntary disposition by either spouse as did the original homestead.

19 **Sec. 3.** NRS 21.025 is hereby amended to read as follows:

20 21.025 A writ of execution issued on a judgment for the
21 recovery of money must be substantially in the following form:

22
23 (Title of the Court)

24 (Number and abbreviated title of the case)

25 EXECUTION

26
27 THE PEOPLE OF THE STATE OF NEVADA:

28
29 To the sheriff of County.

30
31 Greetings:

32
33 On(month).....(day).....(year), a judgment was entered by the
34 above-entitled court in the above-entitled action in favor of
35 as judgment creditor and against as
36 judgment debtor for:

37
38 \$..... principal,
39 \$..... attorney's fees,
40 \$..... interest, and
41 \$..... costs, making a total amount of
42 \$..... the judgment as entered, and



WHEREAS, according to an affidavit or a memorandum of costs after judgment, or both, filed herein, it appears that further sums have accrued since the entry of judgment, to wit:

\$..... accrued interest, and
\$..... accrued costs, together with \$..... fee, for
the issuance of this writ, making a total of
\$..... as accrued costs, accrued interest and fees.

Credit must be given for payments and partial satisfactions in the amount of

\$.....
which is to be first credited against the total accrued costs and accrued interest, with any excess credited against the judgment as entered, leaving a net balance of

\$.....
actually due on the date of the issuance of this writ, of which
\$.....

bears interest at percent per annum, in the amount of \$..... per day, from the date of judgment to the date of levy, to which must be added the commissions and costs of the officer executing this writ.

NOW, THEREFORE, SHERIFF OF
COUNTY, you are hereby commanded to satisfy this judgment with interest and costs as provided by law, out of the personal property of the judgment debtor, except that for any ~~[pay period,]~~ **workweek**, 75 percent of the disposable earnings of the debtor during ~~[this period or for each week of the period 30]~~ **that week or 50** 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, is exempt from any levy of execution pursuant to this writ, and if sufficient personal property cannot be found, then out of the real property belonging to the debtor in the aforesaid county, and make return to this writ within not less than 10 days ~~[nor]~~ **or** more than 60 days endorsed thereon with what you have done.

Dated: This day of the month of of the year

....., Clerk.
By....., Deputy Clerk.

Sec. 4. 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



1 describe the types of property exempt from execution and explain
2 the procedure for claiming those exemptions in the manner required
3 in subsection 2. The clerk of the court shall attach the notice to the
4 writ of execution at the time the writ is issued.

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

7
8 NOTICE OF EXECUTION
9

10 YOUR PROPERTY IS BEING ATTACHED OR
11 YOUR WAGES ARE BEING GARNISHED
12

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

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

- 22 1. Payments received under the Social Security Act.
- 23 2. Payments for benefits or the return of contributions
24 under the Public Employees' Retirement System.
- 25 3. Payments for public assistance granted through the
26 Welfare Division of the Department of Human Resources or a
27 local governmental entity.
- 28 4. Proceeds from a policy of life insurance.
- 29 5. Payments of benefits under a program of industrial
30 insurance.
- 31 6. Payments received as disability, illness or
32 unemployment benefits.
- 33 7. Payments received as unemployment compensation.
- 34 8. Veteran's benefits.
- 35 9. A homestead in a dwelling or a mobile home, not to
36 exceed ~~[\$200,000,]~~ \$350,000, unless:

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

40 (b) Allodial title has been established and not relinquished
41 for the dwelling or mobile home, in which case all of the
42 dwelling or mobile home and its appurtenances are exempt,
43 including the land on which they are located, unless a valid



1 waiver executed pursuant to NRS 115.010 is applicable to the
2 judgment.

3 10. A vehicle, if your equity in the vehicle is less than
4 \$15,000.

5 11. Seventy-five percent of the take-home pay for any
6 ~~[pay period,]~~ *workweek*, unless the weekly take-home pay is
7 less than ~~[30]~~ 50 times the federal minimum *hourly* wage, in
8 which case the entire amount may be exempt.

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

11 (a) An individual retirement arrangement which conforms
12 with the applicable limitations and requirements of *section*
13 *408 or 408A of the Internal Revenue Code*, 26 U.S.C. ~~§~~
14 ~~408;~~ *§§ 408 and 408A;*

15 (b) A written simplified employee pension plan which
16 conforms with the applicable limitations and requirements of
17 *section 408 of the Internal Revenue Code*, 26 U.S.C. § 408;

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

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

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

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

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

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

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



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

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

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

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

29 PROCEDURE FOR CLAIMING EXEMPT PROPERTY 30

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



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

6 **Sec. 5.** NRS 21.090 is hereby amended to read as follows:

7 21.090 1. The following property is exempt from execution,
8 except as otherwise specifically provided in this section ~~{ }~~ *or*
9 *federal law*:

10 (a) Private libraries, *works of art, musical instruments and*
11 *jewelry* not to exceed ~~{ \$1,500 }~~ *\$5,000* in value, *belonging to the*
12 *judgment debtor or a dependent of the judgment debtor, to be*
13 *selected by the judgment debtor,* and all family pictures and
14 keepsakes.

15 (b) Necessary household goods, ~~{ as defined in 16 C.F.R. §~~
16 ~~444.1(i) as that section existed on January 1, 1987, }~~ *furnishings,*
17 *electronics, wearing apparel, other personal effects* and yard
18 equipment, not to exceed ~~{ \$10,000 }~~ *\$12,000* in value, belonging to
19 the judgment debtor *or a dependent of the judgment debtor,* to be
20 selected by ~~{ him }~~ *the judgment debtor.*

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

24 (d) Professional libraries, ~~{ office equipment, office }~~ *equipment,*
25 *supplies,* and the tools, *inventory,* instruments and materials used to
26 carry on the trade *or business* of the judgment debtor for the support
27 of himself and his family not to exceed ~~{ \$4,500 }~~ *\$10,000* in value.

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

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

35 (g) For any ~~{ pay period }~~ *workweek,* 75 percent of the
36 disposable earnings of a judgment debtor during that ~~{ period, or for~~
37 ~~each week of the period 30 }~~ *week, or 50* times the minimum hourly
38 wage prescribed by section 6(a)(1) of the federal Fair Labor
39 Standards Act of 1938, 29 U.S.C. § 206(a)(1), and in effect at the
40 time the earnings are payable, whichever is greater. Except as
41 otherwise provided in paragraphs (n), (r) and (s), the exemption
42 provided in this paragraph does not apply in the case of any order of
43 a court of competent jurisdiction for the support of any person, any



1 order of a court of bankruptcy or of any debt due for any state or
2 federal tax. As used in this paragraph ~~[-, “disposable”]~~:

3 (1) “*Disposable* earnings” means that part of the earnings of
4 a judgment debtor remaining after the deduction from those earnings
5 of any amounts required by law ~~[-]~~ to be withheld.

6 (2) “*Earnings*” means compensation paid or payable for
7 personal services performed by a judgment debtor in the regular
8 course of business, including, without limitation, compensation
9 designated as income, wages, tips, a salary, a commission or a
10 bonus. The term includes compensation received by a judgment
11 debtor that is in the possession of the judgment debtor,
12 compensation held in accounts maintained in a bank or any other
13 financial institution or, in the case of a receivable, compensation
14 that is due the judgment debtor.

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

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

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

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

40 (l) The homestead as provided for by law, including a
41 homestead for which allodial title has been established and not
42 relinquished and for which a waiver executed pursuant to NRS
43 115.010 is not applicable.



(m) The dwelling of the judgment debtor occupied as a home for himself and family, where the amount of equity held by the judgment debtor in the home does not exceed ~~[\$200,000]~~ *\$350,000* in value and the dwelling is situated upon lands not owned by him.

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

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

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

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

(1) An individual retirement arrangement which conforms with the applicable limitations and requirements of *section 408 or 408A of the Internal Revenue Code*, 26 U.S.C. ~~§§ 408;~~ *§§ 408 and 408A;*

(2) 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;

(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.

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

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

(t) Payments, in an amount not to exceed \$16,150, received as compensation for personal injury, not including compensation for



1 pain and suffering or actual pecuniary loss, by the judgment debtor
2 or by a person upon whom the judgment debtor is dependent at the
3 time the payment is received.

4 (u) Payments received as compensation for the wrongful death
5 of a person upon whom the judgment debtor was dependent at the
6 time of the wrongful death, to the extent reasonably necessary for
7 the support of the judgment debtor and any dependent of the
8 judgment debtor.

9 (v) Payments received as compensation for the loss of future
10 earnings of the judgment debtor or of a person upon whom the
11 judgment debtor is dependent at the time the payment is received, to
12 the extent reasonably necessary for the support of the judgment
13 debtor and any dependent of the judgment debtor.

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

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

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

23 **Sec. 6.** NRS 31.045 is hereby amended to read as follows:

24 31.045 1. Execution on the writ of attachment by attaching
25 property of the defendant may occur only if:

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

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

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

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

37
38 NOTICE OF EXECUTION

39
40 YOUR PROPERTY IS BEING ATTACHED OR
41 YOUR WAGES ARE BEING GARNISHED

42 Plaintiff, (name of person), alleges that you
43 owe him money. He has begun the procedure to collect that
44 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.]~~ **\$350,000**, 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.]~~ **workweek**, unless the weekly take-home pay is less than ~~[30]~~ **50** times the federal minimum **hourly** 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 or 408A of the Internal Revenue Code**, 26 U.S.C. ~~§ 408;~~ **§§ 408 and 408A;**



(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;

(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



1 payment is received, to the extent reasonably necessary for
2 the support of the judgment debtor and any dependent of the
3 judgment debtor.

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

5 ➡ These exemptions may not apply in certain cases such as
6 proceedings to enforce a judgment for support of a child or a
7 judgment of foreclosure on a mechanic's lien. You should
8 consult an attorney immediately to assist you in determining
9 whether your property or money is exempt from execution. If
10 you cannot afford an attorney, you may be eligible for
11 assistance through (name of organization in
12 county providing legal services to the indigent or elderly
13 persons).
14

15 PROCEDURE FOR CLAIMING EXEMPT PROPERTY 16

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

30 IF YOU DO NOT FILE THE AFFIDAVIT WITHIN THE
31 TIME SPECIFIED, YOUR PROPERTY MAY BE SOLD
32 AND THE MONEY GIVEN TO THE JUDGMENT
33 CREDITOR, EVEN IF THE PROPERTY OR MONEY IS
34 EXEMPT.
35

36 If you received this notice with a notice of a hearing for
37 attachment and you believe that the money or property which
38 would be taken from you by a writ of attachment is exempt or
39 necessary for the support of you or your family, you are
40 entitled to describe to the court at the hearing why you
41 believe your property is exempt. You may also file a motion
42 with the court for a discharge of the writ of attachment. You
43 may make that motion any time before trial. A hearing will be
44 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.

Sec. 7. NRS 31.295 is hereby amended to read as follows:

31.295 1. As used in this section ~~[, the term “disposable”~~ :

(a) “*Disposable* earnings” means that part of the earnings of any person remaining after the deduction from those earnings of any amounts required by law to be withheld.

(b) “*Earnings*” means compensation paid or payable for personal services performed by a judgment debtor in the regular course of business, including, without limitation, compensation designated as income, wages, tips, a salary, a commission or a bonus. The term includes compensation received by a judgment debtor that is in the possession of the judgment debtor, compensation held in accounts maintained in a bank or any other financial institution or, in the case of a receivable, compensation that is due the judgment debtor.

2. The maximum amount of the aggregate disposable earnings of a person which are subject to garnishment may not exceed:

(a) Twenty-five percent of his disposable earnings for the relevant ~~[pay period;]~~ *workweek*; or

(b) The amount by which his disposable earnings for ~~[each week of that period exceed 30]~~ *that week exceed 50* times the federal 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)*, in effect at the time the earnings are payable,

↪ whichever is less.

3. The restrictions of subsection 2 do not apply in the case of:

(a) Any order of any court for the support of any person.

(b) Any order of any court of bankruptcy.

(c) Any debt due for any state or federal tax.

4. Except as otherwise provided in this subsection, the maximum amount of the aggregate disposable earnings of a person for any workweek which are subject to garnishment to enforce any order for the support of any person may not exceed:

(a) Fifty percent of his disposable earnings for that week if he is supporting a spouse or child other than the spouse or child for whom the order of support was rendered; or

(b) Sixty percent of his disposable earnings for that week if he is not supporting such a spouse or child,

↪ except that if the garnishment is to enforce a previous order of support with respect to a period occurring at least 12 weeks before



- 1 the beginning of the workweek, the limits which apply to the
- 2 situations described in paragraphs (a) and (b) are 55 percent and 65
- 3 percent, respectively.
- 4 **Sec. 8.** This act becomes effective on July 1, 2005.



