

ASSEMBLY BILL NO. 483—COMMITTEE ON JUDICIARY

MARCH 20, 2007

Referred to Committee on Judiciary

SUMMARY—Revises provisions concerning the enforcement of judgments. (BDR 2-1408)

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; providing that certain property of a judgment debtor is exempt from execution; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 **Section 2** of this bill expands the list of the property of a judgment debtor that
2 is exempt from execution to include: (1) certain personal property not to exceed
3 \$1,000 in total value; and (2) any tax refund the judgment debtor receives because
4 of the federal earned income credit or any similar credit under a state law. (NRS
5 21.090) **Sections 1 and 3** of this bill add those new exemptions to the list of
6 exemptions provided in certain notices of execution. (NRS 21.076, 31.045)

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 pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.

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

3. Payments for public assistance granted through the Division of Welfare and Supportive Services of the Department of Health and Human Services 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 \$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.



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1 11. Seventy-five percent of the take-home pay for any
2 workweek, unless the weekly take-home pay is less than 50
3 times the federal minimum hourly wage, in which case the
4 entire amount may be exempt.

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

7 (a) An individual retirement arrangement which conforms
8 with the applicable limitations and requirements of section
9 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408
10 and 408A;

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

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

16 (d) A trust forming part of a stock bonus, pension or
17 profit-sharing plan that is a qualified plan pursuant to sections
18 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et
19 seq.; and

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

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

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

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

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

41 17. Payments, in an amount not to exceed \$16,150,
42 received as compensation for personal injury, not including
43 compensation for pain and suffering or actual pecuniary loss,
44 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.

21. Personal property, not to exceed \$1,000 in total value, if the property is not otherwise exempt from execution.

22. A tax refund received from the earned income credit provided by federal law or a similar state law.

↳ These exemptions may not apply in certain cases such as a proceeding to enforce a judgment for support of a person 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 indigent or elderly 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.



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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. 2.** 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 required
9 by federal law:

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

14 (b) Necessary household goods, furnishings, electronics,
15 wearing apparel, other personal effects and yard equipment, not to
16 exceed \$12,000 in value, belonging to the judgment debtor or a
17 dependent of the judgment debtor, to be selected by the judgment
18 debtor.

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

22 (d) Professional libraries, equipment, supplies, and the tools,
23 inventory, instruments and materials used to carry on the trade or
24 business of the judgment debtor for the support of himself and his
25 family not to exceed \$10,000 in value.

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

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

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

43 (1) "Disposable earnings" means that part of the earnings of
44 a judgment debtor remaining after the deduction from those earnings
45 of any amounts required by law to be withheld.



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(2) "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.

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

(j) 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) 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 \$15,000. 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 \$15,000 bears to the whole annual premium paid.

(l) 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.

(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 \$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



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1 income tax on benefits received from a pension or other retirement
2 plan.

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

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

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

9 (1) An individual retirement arrangement which conforms
10 with the applicable limitations and requirements of section 408 or
11 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A;

12 (2) A written simplified employee pension plan which
13 conforms with the applicable limitations and requirements of section
14 408 of the Internal Revenue Code, 26 U.S.C. § 408;

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

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

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

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

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

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

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



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(v) 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.

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

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

(y) Any personal property not otherwise exempt from execution pursuant to this subsection belonging to the judgment debtor, including, without limitation, the judgment debtor's equity in any property, money, stocks, bonds or other funds on deposit with a financial institution, not to exceed \$1,000 in total value, to be selected by the judgment debtor.

(z) Any tax refund received by the judgment debtor that is derived from the earned income credit described in section 32 of the Internal Revenue Code, 26 U.S.C. § 32, or a similar credit provided pursuant to a state law.

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

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

Sec. 3. 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 pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.

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

3. Payments for public assistance granted through the Division of Welfare and Supportive Services of the Department of Health and Human Services 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 \$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.



1 11. Seventy-five percent of the take-home pay for any
2 workweek, unless the weekly take-home pay is less than 50
3 times the federal minimum hourly wage, in which case the
4 entire amount may be exempt.

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

7 (a) An individual retirement arrangement which conforms
8 with the applicable limitations and requirements of section
9 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408
10 and 408A;

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

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

16 (d) A trust forming part of a stock bonus, pension or
17 profit-sharing plan that is a qualified plan pursuant to sections
18 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et
19 seq.; and

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

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

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

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

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

41 17. Payments, in an amount not to exceed \$16,150,
42 received as compensation for personal injury, not including
43 compensation for pain and suffering or actual pecuniary loss,
44 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.

21. Personal property, not to exceed \$1,000 in total value, if the property is not otherwise exempt from execution.

22. A tax refund received from the earned income credit provided by federal law or a similar state law.

↳ 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.



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

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

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

Sec. 4. This act becomes effective on July 1, 2007.

