

SENATE BILL NO. 542—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE GOVERNOR)

MARCH 26, 2007

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Referred to Committee on Judiciary

SUMMARY—Revises provisions governing exemptions from execution by creditors. (BDR 2-1364)

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.

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AN ACT relating to property; providing an exemption from execution for certain security deposits made to rent or lease a dwelling; 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) **Section 2** of this bill provides an  
6 additional exemption from execution for all money reasonably deposited with a  
7 landlord by the judgment debtor to secure an agreement to rent or lease a dwelling  
8 that is used as the judgment debtor's primary residence.  
9 **Sections 1 and 3** of this bill revise the contents of a notice of writ of execution  
10 and a notice of writ of attachment to reflect the exemption added in **section 2** of  
11 this bill. (NRS 21.075, 31.045)

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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



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

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

28 3. Payments for public assistance granted through the  
29 Division of Welfare and Supportive Services of the  
30 Department of Health and Human Services or a local  
31 governmental entity.

32 4. Proceeds from a policy of life insurance.

33 5. Payments of benefits under a program of industrial  
34 insurance.

35 6. Payments received as disability, illness or  
36 unemployment benefits.

37 7. Payments received as unemployment compensation.

38 8. Veteran's benefits.

39 9. A homestead in a dwelling or a mobile home, not to  
40 exceed \$350,000, unless:

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

44 (b) Allodial title has been established and not relinquished  
45 for the dwelling or mobile home, in which case all of the



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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. *All money reasonably deposited with a landlord by you to secure an agreement to rent or lease a dwelling that is used as your primary residence.*

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

~~11.1~~ 12. Seventy-five percent of the take-home pay for any workweek, unless the weekly take-home pay is less than 50 times the federal minimum hourly wage, in which case the entire amount may be exempt.

~~12.1~~ 13. 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 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.

~~13.1~~ 14. 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.

~~14.1~~ 15. 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.]~~ 16. 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.]~~ 17. A prosthesis or any equipment prescribed by a physician or dentist for you or your dependent.

~~[17.]~~ 18. 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.]~~ 19. 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.]~~ 20. 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.]~~ 21. Payments received as restitution for a criminal act.

☛ 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



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property or money is exempt. The motion for the hearing to determine the issue of exemption must be filed within 10 days after the affidavit claiming exemption is filed. The hearing to determine whether the property or money is exempt must be held within 10 days after the motion for the hearing is filed.

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

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

21.090 1. The following property is exempt from execution, except as otherwise specifically provided in this section or required by federal law:

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

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

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

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

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

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

(g) For any workweek, 75 percent of the disposable earnings of a judgment debtor during 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. Except as otherwise provided in paragraphs ~~[(n), (r) and (s)]~~ (o), (s) and (t), the exemption provided in this paragraph does not apply in the case



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1 of any order of a court of competent jurisdiction for the support of  
2 any person, any order of a court of bankruptcy or of any debt due for  
3 any state or federal tax. As used in this paragraph:

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

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

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

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

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

34 (k) All money, benefits, privileges or immunities accruing or in  
35 any manner growing out of any life insurance, if the annual  
36 premium paid does not exceed \$15,000. If the premium exceeds that  
37 amount, a similar exemption exists which bears the same proportion  
38 to the money, benefits, privileges and immunities so accruing or  
39 growing out of the insurance that the \$15,000 bears to the whole  
40 annual premium paid.

41 (l) The homestead as provided for by law, including a  
42 homestead for which allodial title has been established and not  
43 relinquished and for which a waiver executed pursuant to NRS  
44 115.010 is not applicable.



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(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 money reasonably deposited with a landlord by the judgment debtor to secure an agreement to rent or lease a dwelling that is used by the judgment debtor as his primary residence.*

(o) 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.

~~(p)~~ (p) 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.

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

~~(r)~~ (r) 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 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.

~~(s)~~ (s) 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.

~~(t)~~ (t) 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.



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~~[(u)]~~ (u) 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.

~~[(v)]~~ (v) 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.

~~[(w)]~~ (w) 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.

~~[(x)]~~ (x) Payments received as restitution for a criminal act.

~~[(y)]~~ (y) 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. 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. *All money reasonably deposited with a landlord by you to secure an agreement to rent or lease a dwelling that is used as your primary residence.*



1        **11.** A vehicle, if your equity in the vehicle is less than  
2        \$15,000.

3        ~~11.1~~ **12.** Seventy-five percent of the take-home pay for  
4        any workweek, unless the weekly take-home pay is less than  
5        50 times the federal minimum hourly wage, in which case the  
6        entire amount may be exempt.

7        ~~11.2~~ **13.** Money, not to exceed \$500,000 in present  
8        value, held in:

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

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

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

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

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

29       ~~11.3~~ **14.** All money and other benefits paid pursuant to  
30       the order of a court of competent jurisdiction for the support,  
31       education and maintenance of a child, whether collected by  
32       the judgment debtor or the State.

33       ~~11.4~~ **15.** All money and other benefits paid pursuant to  
34       the order of a court of competent jurisdiction for the support  
35       and maintenance of a former spouse, including the amount of  
36       any arrearages in the payment of such support and  
37       maintenance to which the former spouse may be entitled.

38       ~~11.5~~ **16.** A vehicle for use by you or your dependent  
39       which is specially equipped or modified to provide mobility  
40       for a person with a permanent disability.

41       ~~11.6~~ **17.** A prosthesis or any equipment prescribed by a  
42       physician or dentist for you or your dependent.

43       ~~11.7~~ **18.** Payments, in an amount not to exceed \$16,150,  
44       received as compensation for personal injury, not including  
45       compensation for pain and suffering or actual pecuniary loss,



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1 by the judgment debtor or by a person upon whom the  
2 judgment debtor is dependent at the time the payment is  
3 received.

4 ~~[18.]~~ 19. Payments received as compensation for the  
5 wrongful death of a person upon whom the judgment debtor  
6 was dependent at the time of the wrongful death, to the extent  
7 reasonably necessary for the support of the judgment debtor  
8 and any dependent of the judgment debtor.

9 ~~[19.]~~ 20. Payments received as compensation for the loss  
10 of future earnings of the judgment debtor or of a person upon  
11 whom the judgment debtor is dependent at the time the  
12 payment is received, to the extent reasonably necessary for  
13 the support of the judgment debtor and any dependent of the  
14 judgment debtor.

15 ~~[20.]~~ 21. Payments received as restitution for a criminal  
16 act.

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

## 26 27 PROCEDURE FOR CLAIMING EXEMPT PROPERTY

28  
29 If you believe that the money or property taken from you  
30 is exempt or necessary for the support of you or your family,  
31 you must file with the clerk of the court on a form provided  
32 by the clerk a notarized affidavit claiming the exemption. A  
33 copy of the affidavit must be served upon the sheriff and the  
34 judgment creditor within 8 days after the notice of execution  
35 is mailed. The property must be returned to you within 5 days  
36 after you file the affidavit unless the judgment creditor files a  
37 motion for a hearing to determine the issue of exemption. If  
38 this happens, a hearing will be held to determine whether the  
39 property or money is exempt. The hearing must be held  
40 within 10 days after the motion for a hearing is filed.

41  
42 IF YOU DO NOT FILE THE AFFIDAVIT WITHIN THE  
43 TIME SPECIFIED, YOUR PROPERTY MAY BE SOLD  
44 AND THE MONEY GIVEN TO THE JUDGMENT



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CREDITOR, EVEN IF THE PROPERTY OR MONEY IS  
EXEMPT.

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

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

**Sec. 4.** (Deleted by amendment.)

**Sec. 5.** (Deleted by amendment.)

**Sec. 5.5.** NRS 657.140 is hereby amended to read as follows:

657.140 1. Except as otherwise provided in subsection 2, a financial institution shall not include in any loan agreement a provision that allows the financial institution to recover, take, appropriate or otherwise apply as a setoff against any debt or liability owing to the financial institution under the loan agreement money from an account unrelated to the loan agreement to the extent the money is exempt from execution pursuant to paragraph ~~(x)~~ (y) of subsection 1 of NRS 21.090.

2. The provisions of subsection 1 do not apply to a provision in a loan agreement that specifically authorizes automatic withdrawals from an account.

3. The provisions of this section may not be varied by agreement and the rights conferred by this section may not be waived. Any provision included in an agreement that conflicts with this section is void.

4. As used in this section:

(a) "An account unrelated to the loan agreement" includes, without limitation, an account pledged as security under the loan agreement, unless the specific account pledged as security is conspicuously described in the loan agreement.

(b) "Financial institution" means an institution licensed pursuant to the provisions of this title or title 56 or chapter 645B, 645E or 649 of NRS, or a similar institution chartered or licensed pursuant to federal law.



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1      **Sec. 6.**   This act becomes effective on July 1, 2007.

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