

ASSEMBLY BILL NO. 491—COMMITTEE ON GOVERNMENT AFFAIRS

MARCH 23, 2009

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning the execution on property of a judgment debtor or defendant. (BDR 2-948)

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 civil actions; providing that a certain amount of money held in a bank that is likely to be exempt from execution is not subject to a writ of execution or garnishment; providing a procedure to execute on property held in a safe-deposit box; revising the procedure for claiming an exemption from execution on certain property; making various other changes to provisions governing writs of execution, attachment and garnishment; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law allows a judgment creditor to obtain a writ of execution, attachment or garnishment to levy on the property of a judgment debtor or defendant in certain circumstances. (Chapters 21 and 31 of NRS) Certain property, however, is exempt from execution and therefore cannot be the subject of such a writ. (NRS 21.090) **Section 2** of this bill provides that a certain amount of money held in the bank account of a judgment debtor which is likely to be exempt from execution is not subject to a writ of execution or garnishment and must remain accessible to the judgment debtor. **Section 3** of this bill provides that a separate writ must be issued to levy on a safe-deposit box and provides a procedure for executing on such a writ. **Section 5** of this bill revises the exemptions from execution so that the exemption for certain plans and accounts for deferred payments applies not only to the money that is held in the account, but also to the proceeds paid from those accounts. **Section 5** also adds a new exemption for proceeds from a private disability insurance plan.

Section 6 of this bill revises the procedures for claiming an exemption from execution, and for objecting to such a claim of exemption. **Sections 4 and 7** of this bill revise the notice that is provided to a judgment debtor or defendant when a writ



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of execution, attachment or garnishment is levied on the property of the judgment debtor so that the procedures listed in the notice reflect the changes made in **section 6. Sections 4 and 7** further revise the notice to provide additional information concerning the claiming of exemptions.

Section 9 of this bill prohibits a judgment creditor from submitting more than two applications for a writ of garnishment with respect to the same judgment for the same type of property if the property is held in a financial institution.

Section 11 of this bill revises the interrogatories that are used with a writ of execution, attachment or garnishment to clarify the manner of determining the earnings which must be identified as subject to execution and to provide specific questions for a bank to conform to the new provisions in **section 2** of this bill.

Section 12 of this bill requires the judgment creditor who caused a writ of attachment to issue to prepare an accounting and provide a report to the judgment debtor, the sheriff and each garnishee every 120 days providing information about the debt and the rights of the debtor. The accounting must also be submitted with each subsequent application for a writ filed by the judgment creditor concerning the same judgment. **Section 14** of this bill provides that the fee for receiving and taking property on execution, attachment or court order collected by a constable is not payable in advance. **Section 15** of this bill provides that certain benefits are exempt from execution regardless of whether they are mingled with other money. **Section**

16 of this bill repeals NRS 21.114 concerning the submission of sureties to the jurisdiction of the court because the requirement for an undertaking requiring a surety is removed in **section 6** of this bill.

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

Section 1. Chapter 21 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. *If a writ of execution or garnishment is levied on the bank account of the judgment debtor and money has been deposited into the account electronically within the immediately preceding 45 days from the date on which the writ was served which is reasonably identifiable as exempt from execution, notwithstanding any other deposits of money into the account, \$2,500 or the entire amount in the account, whichever is less, is not subject to execution and must remain accessible to the judgment debtor. Money which is reasonably identifiable as exempt from execution includes, without limitation:*

(a) Benefits provided pursuant to the Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits;

(b) Veterans' benefits; and

(c) Benefits provided pursuant to any other federal law.

2. *If a writ of execution or garnishment is levied on the bank account of the judgment debtor and the provisions of subsection 1 do not apply, \$1,000 or the entire amount in the account,*



1 *whichever is less, is not subject to execution and must remain*
2 *accessible to the judgment debtor.*

3 *3. If a judgment debtor has more than one account with the*
4 *bank to which a writ is issued, the amount that is not subject to*
5 *execution must not in the aggregate exceed the amount specified*
6 *in subsection 1 or 2, as applicable.*

7 *4. A judgment debtor may apply to a court to claim an*
8 *exemption for any amount subject to a writ levied on a bank*
9 *account which exceeds the amount that is not subject to execution*
10 *pursuant to subsection 1 or 2.*

11 *5. If money in an account of the judgment debtor which*
12 *exceeds the amount that is not subject to execution pursuant to*
13 *subsection 1 or 2 includes exempt and nonexempt money, to*
14 *determine whether the money in the account is exempt, the*
15 *judgment creditor must use the method of accounting which*
16 *applies the standard that the first money deposited in the account*
17 *is the first money withdrawn from the account. The court may*
18 *require a judgment debtor to provide an accounting of all deposits*
19 *into and withdrawals from the account for the immediately*
20 *preceding 90 days.*

21 *6. If a writ of execution or garnishment that is levied on the*
22 *bank account of a judgment debtor is determined to be*
23 *unenforceable because all of the money in the account is exempt*
24 *from execution pursuant to subsection 1 or invalid or in violation*
25 *of the provisions of this chapter or chapter 31 of NRS, the bank*
26 *must not charge a fee to the judgment debtor regardless of any*
27 *agreement with or policy of the bank to the contrary.*

28 **Sec. 3.** *1. If a writ of execution or garnishment is levied on*
29 *property in a safe-deposit box maintained at a financial*
30 *institution, a separate writ must be issued from any writ that is*
31 *issued to levy on an account of the judgment debtor with the*
32 *financial institution. Notice of the writ must be served personally*
33 *on the financial institution and promptly thereafter on any third*
34 *person who is named on the safe-deposit box.*

35 *2. During the period in which the writ of execution or*
36 *garnishment is in effect, the financial institution must not allow*
37 *the contents of the safe-deposit box to be removed other than as*
38 *directed by the sheriff or by court order.*

39 *3. The sheriff may allow the person in whose name the safe-*
40 *deposit box is held to open the safe-deposit box so that the contents*
41 *may be removed pursuant to the levy. The financial institution*
42 *may refuse to allow the forcible opening of the safe-deposit box to*
43 *allow the removal of the property levied upon unless the judgment*
44 *creditor pays in advance the cost of forcibly opening the safe-*
45 *deposit box and of repairing any damage caused thereby.*



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

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 \$550,000, unless:



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

4 (b) Allodial title has been established and not relinquished
5 for the dwelling or mobile home, in which case all of the
6 dwelling or mobile home and its appurtenances are exempt,
7 including the land on which they are located, unless a valid
8 waiver executed pursuant to NRS 115.010 is applicable to the
9 judgment.

10 10. All money reasonably deposited with a landlord by
11 you to secure an agreement to rent or lease a dwelling that is
12 used by you as your primary residence, except that such
13 money is not exempt with respect to a landlord or his
14 successor in interest who seeks to enforce the terms of the
15 agreement to rent or lease the dwelling.

16 11. A vehicle, if your equity in the vehicle is less than
17 \$15,000.

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

22 13. Money, not to exceed \$500,000 in present value,
23 held in:

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

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

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

33 (d) A trust forming part of a stock bonus, pension or
34 profit-sharing plan that is a qualified plan pursuant to sections
35 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et
36 seq.; and

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

44 14. All money and other benefits paid pursuant to the
45 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.

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.

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.

17. A prosthesis or any equipment prescribed by a physician or dentist for you or your dependent.

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.

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.

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.

21. Payments received as restitution for a criminal act.

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

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

24. Stock of a corporation described in subsection 2 of NRS 78.746 except as set forth in that section.

↪ 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). ***If you do not wish to consult an attorney or receive***



legal services from an organization that provides assistance to persons who qualify, you may obtain the form to be used to claim an exemption from the clerk of the court.

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]~~ *an executed claim of exemption*. A copy of the ~~[affidavit]~~ *claim of exemption* must be served upon the sheriff ~~[and]~~, *the garnishee and the judgment creditor* within ~~[8]~~ *20 calendar* days after the notice of execution *or garnishment* is ~~[mailed]~~ *served on you by mail pursuant to NRS 21.076 which identifies the specific property that is being levied on*. The property must be returned to you within ~~[5]~~ *9* days after you ~~[file]~~ *serve the [affidavit] claim of exemption upon the sheriff, garnishee and judgment creditor*, unless ~~[you or the judgment creditor files a motion]~~ *the sheriff or garnishee receives a copy of an objection to the claim of exemption and a notice* 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]~~ *objection to the claim of exemption and notice* for the hearing to determine the issue of exemption must be filed within ~~[10]~~ *8* days after the ~~[affidavit claiming]~~ *claim of exemption* is ~~[filed]~~ *served on the judgment creditor by mail or in person and served on the judgment debtor, the sheriff and any garnishee not less than 5 days before the date set for the hearing*. The hearing to determine whether the property or money is exempt must be held within ~~[10]~~ *7* days after the ~~[motion]~~ *objection to the claim of exemption and notice* for the hearing is filed. *You may be able to have your property released more quickly if you mail to the judgment creditor or the attorney of the judgment creditor written proof that the property is exempt. Such proof may include, without limitation, a letter from the government, an annual statement from a pension fund, receipts for payment, copies of checks, records from financial institutions or any other document which demonstrates that the money in your account is exempt.*

IF YOU DO NOT FILE THE ~~[AFFIDAVIT]~~ *EXECUTED CLAIM OF EXEMPTION* 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. 5. 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 (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 (o), (s) and (t), the exemption provided in this paragraph does not apply in the case of any order of a court of competent jurisdiction for the support of any person, any order of a court of bankruptcy or of any debt due for any state or federal tax. As used in this paragraph:

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

(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



1 designated as income, wages, tips, a salary, a commission or a
2 bonus. The term includes compensation received by a judgment
3 debtor that is in the possession of the judgment debtor,
4 compensation held in accounts maintained in a bank or any other
5 financial institution or, in the case of a receivable, compensation
6 that is due the judgment debtor.

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

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

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

25 (k) All money, benefits, privileges or immunities accruing or in
26 any manner growing out of any life insurance, if the annual
27 premium paid does not exceed \$15,000. If the premium exceeds that
28 amount, a similar exemption exists which bears the same proportion
29 to the money, benefits, privileges and immunities so accruing or
30 growing out of the insurance that the \$15,000 bears to the whole
31 annual premium paid.

32 (l) The homestead as provided for by law, including a
33 homestead for which allodial title has been established and not
34 relinquished and for which a waiver executed pursuant to NRS
35 115.010 is not applicable.

36 (m) The dwelling of the judgment debtor occupied as a home for
37 himself and family, where the amount of equity held by the
38 judgment debtor in the home does not exceed \$550,000 in value and
39 the dwelling is situated upon lands not owned by him.

40 (n) All money reasonably deposited with a landlord by the
41 judgment debtor to secure an agreement to rent or lease a dwelling
42 that is used by the judgment debtor as his primary residence, except
43 that such money is not exempt with respect to a landlord or his
44 successor in interest who seeks to enforce the terms of the
45 agreement to rent or lease the dwelling.




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

(r) Money, not to exceed \$500,000 in present value, held in  *and any proceeds paid from:*

(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) 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) 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.

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



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

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

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

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

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

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

24 (bb) Stock of a corporation described in subsection 2 of NRS
25 78.746 except as set forth in that section.

26 *(cc) Proceeds received from a private disability insurance plan.*

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

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

35 **Sec. 6.** NRS 21.112 is hereby amended to read as follows:

36 21.112 1. In order to claim exemption of any property levied
37 on, the judgment debtor must, within ~~[8]~~ 20 days after the notice
38 ~~[prescribed in NRS 21.075 is mailed,]~~ *of a writ of execution or*
39 *garnishment is served on him by mail pursuant to NRS 21.076*
40 *which identifies the specific property that is being levied on,* serve
41 on the sheriff, *the garnishee* and *the* judgment creditor and file
42 with the clerk of the court issuing the writ of execution ~~[an affidavit~~
43 ~~setting out]~~ his claim of exemption ~~[.]~~ *which is executed in the*
44 *manner set forth in NRS 53.045. If the property that is levied on is*
45 *the earnings of the judgment debtor, the judgment debtor must file*



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1 *the claim of exemption pursuant to this subsection within 20 days*
2 *after the date of each withholding of his earnings.*

3 2. The clerk of the court shall provide the form for the
4 ~~[affidavit.~~

5 ~~—2.] claim of exemption and must further provide with the~~
6 *form instructions concerning the manner in which to claim an*
7 *exemption, a checklist and description of the most commonly*
8 *claimed exemptions and an order to be used by the court to grant*
9 *or deny an exemption. No fee may be charged for providing such a*
10 *form or for filing the form with the court.*

11 3. When the ~~[affidavit]~~ *claim of exemption* is served, the
12 *sheriff or garnishee* shall release the property *and make the*
13 *property available to the judgment debtor by not later than the end*
14 *of business on the ninth day following such service* if the
15 ~~[judgment creditor.] sheriff or garnishee has not received~~ within
16 ~~[5] 8 days [after written demand by the sheriff:~~

17 ~~—(a) Fails to give the sheriff an undertaking executed by two good~~
18 ~~and sufficient sureties which:~~

19 ~~——(1) Is in a sum equal to double the value of the property~~
20 ~~levied on; and~~

21 ~~——(2) Indemnifies the judgment debtor against loss, liability,~~
22 ~~damages, costs and attorney's fees by reason of the taking,~~
23 ~~withholding or sale of the property by the sheriff; or~~

24 ~~——(b) Fails to file a motion]~~ *a copy of the objection to the claim of*
25 *exemption and notice* for a hearing *from the judgment creditor* to
26 determine whether the property or money is exempt.

27 ~~[→]~~ The clerk of the court shall provide the form for the ~~[motion.~~

28 ~~—3. At the time of giving the sheriff the undertaking provided for~~
29 ~~in subsection 2, the judgment creditor shall give notice of the~~
30 ~~undertaking to the judgment debtor.] objection to the claim of~~
31 *exemption and notice for a hearing to determine whether the*
32 *property or money is exempt.*

33 4. *An objection to the claim of exemption and notice for a*
34 *hearing must be filed with the court within 8 days after the claim*
35 *of exemption is served on the judgment creditor by mail or in*
36 *person and served on the judgment debtor, the sheriff and any*
37 *garnishee. The judgment creditor shall also serve notice of the*
38 *date of the hearing on the judgment debtor, the sheriff and any*
39 *garnishee not less than 5 days before the date set for the hearing.*

40 5. The sheriff is not liable to the judgment debtor for damages
41 by reason of the taking, withholding or sale of any property ~~[;~~
42 where ~~[;~~

43 ~~——(a) No affidavit claiming]~~ *a claim of* exemption is *not* served on
44 him . ~~[; or~~



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~~—(b) An affidavit claiming exemption is served on him, but the sheriff fails to release the property in accordance with this section.~~

~~—5.]~~ 6. Unless the court continues the hearing for good cause shown, the hearing *on an objection to a claim of exemption* to determine whether the property or money is exempt must be held within ~~[10]~~ 7 days after the ~~[motion]~~ *claim of objection and notice* for ~~[the]~~ a hearing is filed.

~~[6. The judgment creditor shall give the judgment debtor at least 5 days' notice of the hearing.]~~ *The judgment creditor has the burden to prove that the judgment debtor is not entitled to the claimed exemption at such a hearing. After determining whether the judgment debtor is entitled to an exemption, the court shall mail a copy of the order to the judgment debtor, the judgment creditor, any other named party, the sheriff and any garnishee.*

7. *If the sheriff or garnishee does not receive a copy of a claim of exemption from the judgment debtor within 25 days after the property is levied on, the garnishee shall release the property to the sheriff or, if the property is held by the sheriff, the sheriff shall release the property to the judgment creditor.*

8. *At any time after:*

(a) *An exemption is claimed pursuant to this section, the judgment debtor may withdraw the claim of exemption and direct that the property be released to the judgment creditor.*

(b) *An objection to a claim of exemption is filed pursuant to this section, the judgment creditor may withdraw the objection and direct that the property be released to the judgment debtor.*

9. *If a court determines after a hearing that an objection to a claim of exemption was claimed in bad faith or if the judgment creditor had reason to know that the property was exempt from execution or submitted more than two applications for a writ of execution for the same judgment on the same property or account of the judgment debtor in violation of subsection 2 of NRS 31.249, the court shall award to the judgment debtor reasonable costs, attorney fees, actual damages and an amount not to exceed \$1,000.*

10. *The provisions of this section do not limit or prohibit any other remedy provided by law.*

11. *In addition to any other procedure or remedy authorized by law, a person other than the judgment debtor whose property is the subject of a writ of execution or garnishment may follow the procedures set forth in this section for claiming an exemption to have the property released.*



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12. Regardless of whether the judgment debtor claims an exemption, any exemption to which the debtor is entitled may not be waived.

Sec. 7. 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 \$550,000, 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 by you as your primary residence, except that such money is not exempt with respect to a landlord or his successor in interest who seeks to enforce the terms of the agreement to rent or lease the dwelling.

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

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.

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



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1 the Internal Revenue Code, 26 U.S.C. § 529, unless the
2 money is deposited after the entry of a judgment against the
3 purchaser or account owner or the money will not be used by
4 any beneficiary to attend a college or university.

5 14. All money and other benefits paid pursuant to the
6 order of a court of competent jurisdiction for the support,
7 education and maintenance of a child, whether collected by
8 the judgment debtor or the State.

9 15. All money and other benefits paid pursuant to the
10 order of a court of competent jurisdiction for the support and
11 maintenance of a former spouse, including the amount of any
12 arrearages in the payment of such support and maintenance to
13 which the former spouse may be entitled.

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

17 17. A prosthesis or any equipment prescribed by a
18 physician or dentist for you or your dependent.

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

25 19. Payments received as compensation for the wrongful
26 death of a person upon whom the judgment debtor was
27 dependent at the time of the wrongful death, to the extent
28 reasonably necessary for the support of the judgment debtor
29 and any dependent of the judgment debtor.

30 20. Payments received as compensation for the loss of
31 future earnings of the judgment debtor or of a person upon
32 whom the judgment debtor is dependent at the time the
33 payment is received, to the extent reasonably necessary for
34 the support of the judgment debtor and any dependent of the
35 judgment debtor.

36 21. Payments received as restitution for a criminal act.

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

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

41 24. Stock of a corporation described in subsection 2 of
42 NRS 78.746 except as set forth in that section.

43 ➤ These exemptions may not apply in certain cases such as
44 proceedings to enforce a judgment for support of a child or a
45 judgment of foreclosure on a mechanic's lien. You should



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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). *If you do not wish to consult an attorney or receive legal services from an organization that provides assistance to persons who qualify, you may obtain the form to be used to claim an exemption from the clerk of the court.*

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]~~ *an executed claim of exemption*. A copy of the ~~[affidavit]~~ *claim of exemption* must be served upon the sheriff ~~[and]~~ *, the garnishee and* the judgment creditor within ~~[8]~~ *20* calendar days after the notice of execution *or garnishment* is ~~[mailed.]~~ *served on you by mail pursuant to NRS 21.076 which identifies the specific property that is being levied on.* The property must be returned to you within ~~[5]~~ *9* days after you ~~[file]~~ *serve the [affidavit] claim of exemption upon the sheriff, garnishee and judgment creditor,* unless the ~~[judgment creditor files a motion]~~ *sheriff or garnishee receives a copy of an objection to the claim of exemption and a notice* 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 objection to the claim of exemption and notice for the hearing to determine the issue of exemption must be filed within 8 days after the claim of exemption is served on the judgment creditor by mail or in person and served on the judgment debtor, the sheriff and any garnishee not less than 5 days before the date set for the hearing.* The hearing must be held within ~~[10]~~ *7* days after the ~~[motion]~~ *objection to the claim of exemption and notice* for a hearing is filed. *You may be able to have your property released more quickly if you mail to the judgment creditor or the attorney of the judgment creditor written proof that the property is exempt. Such proof may include, without limitation, a letter from the government, an annual statement from a pension fund, receipts for payment, copies of checks, records from*



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financial institutions or any other document which demonstrates that the money in your account is exempt.

IF YOU DO NOT FILE THE ~~[AFFIDAVIT]~~ **EXECUTED CLAIM OF EXEMPTION** WITHIN THE TIME SPECIFIED, YOUR PROPERTY MAY BE SOLD AND THE MONEY GIVEN TO THE JUDGMENT CREDITOR, EVEN IF THE PROPERTY OR MONEY IS EXEMPT.

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

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

Sec. 8. (Deleted by amendment.)

Sec. 9. NRS 31.249 is hereby amended to read as follows:

31.249 1. No writ of garnishment in aid of attachment may issue except on order of the court. The court may order the writ of garnishment to be issued:

(a) In the order directing the clerk to issue a writ of attachment; or

(b) If the writ of attachment has previously issued without notice to the defendant and the defendant has not appeared in the action, by a separate order without notice to the defendant.

2. The plaintiff's application to the court for an order directing the issuance of a writ of garnishment must be by affidavit made by or on behalf of the plaintiff to the effect that the affiant is informed and believes that the named garnishee:

(a) Is the employer of the defendant; or

(b) Is indebted to or has property in his possession or under his control belonging to the defendant,

➔ and that to the best of the knowledge and belief of the affiant, the defendant's future wages, the garnishee's indebtedness or the property possessed is not by law exempt from execution. If the



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1 named garnishee is the State of Nevada, the writ of garnishment
2 must be served upon the State Controller. *A judgment creditor shall*
3 *not submit more than two applications for a writ of garnishment*
4 *with respect to the same judgment for the same type of property in*
5 *any calendar year upon the same account of a judgment debtor if*
6 *the property is held in a financial institution. A judgment creditor*
7 *who submits more than two applications may be subject to the*
8 *penalties set forth in subsection 9 of NRS 21.112.*

9 3. The affidavit by or on behalf of the plaintiff may be
10 contained in the application for the order directing the writ of
11 attachment to issue or may be filed and submitted to the court
12 separately thereafter.

13 4. Except as otherwise provided in this section, the grounds
14 and procedure for a writ of garnishment are identical to those for a
15 writ of attachment.

16 5. If the named garnishee is the subject of more than one writ
17 of garnishment regarding the defendant, the court shall determine
18 the priority and method of satisfying the claims, except that any writ
19 of garnishment to satisfy a judgment for the collection of child
20 support must be given first priority.

21 **Sec. 10.** (Deleted by amendment.)

22 **Sec. 11.** NRS 31.290 is hereby amended to read as follows:

23 31.290 1. The interrogatories to *be submitted with any writ*
24 *of execution, attachment or garnishment to* the garnishee may be
25 in substance as follows:

26 INTERROGATORIES

27 Are you in any manner indebted to the defendants.....

28
29
30
31
32 or either of them, either in property or money, and is the debt now
33 due? If not due, when is the debt to become due? State fully all
34 particulars.

35 Answer:

36
37 Are you an employer of one or all of the defendants? If so,
38 state the length of your pay period and the amount *of disposable*
39 *earnings, as defined in NRS 31.295, that* each defendant presently
40 earns during a pay period. *State the minimum amount of*
41 *disposable earnings that is exempt from this garnishment, which is*
42 *the federal minimum hourly wage prescribed by section 6(a)(1) of*
43 *the federal Fair Labor Standards Act of 1938, 29 U.S.C. §*
44 *206(a)(1), in effect at the time the earnings are payable multiplied*
45 *by 50 for each week of the pay period, after deducting any amount*



1 *required by law to be withheld. The minimum amount of*
2 *disposable earnings may be determined, if the pay period is:*

3 *Weekly: By multiplying 50 times the federal minimum*
4 *hourly wage;*

5 *Biweekly: By multiplying 50 times the federal minimum*
6 *hourly wage, times 2;*

7 *Semimonthly: By multiplying 50 times the federal minimum*
8 *hourly wage, times 52, divided by 24; or*

9 *Monthly: By multiplying 50 times the federal minimum*
10 *hourly wage, times 52, divided by 12.*

11 *State the amount that is subject to garnishment, which must*
12 *not exceed 25 percent of the disposable earnings.*

13 Answer:

14
15 Did you have in your possession, in your charge or under
16 your control, on the date the writ of garnishment was served upon
17 you, any money, property, effects, goods, chattels, rights, credits or
18 choses in action of the defendants, or either of them, or in which
19is interested? If so, state its value, and state fully
20 all particulars.

21 Answer:

22
23 Do you know of any debts owing to the defendants, whether
24 due or not due, or any money, property, effects, goods, chattels,
25 rights, credits or choses in action, belonging to or in which
26is interested, and now in the possession or under
27 the control of others? If so, state particulars.

28 Answer:

29
30 *Are you a financial institution with an account held by one*
31 *or all of the defendants? If so, state the account number and the*
32 *amount of money in the account which is subject to garnishment.*
33 *As set forth in section 1 of this act, \$2,500 or the amount in the*
34 *account, whichever is less, is not subject to garnishment if the*
35 *financial institution reasonably identifies that an electronic*
36 *deposit of money has been made into the account within the*
37 *immediately preceding 45 days which is exempt from execution,*
38 *including, without limitation, payments of money described in*
39 *section 1 of this act or, if no such deposit has been made, \$1,000*
40 *or the amount in the account, whichever is less, is not subject to*
41 *garnishment. The amount which is not subject to garnishment*
42 *does not apply to each account of the judgment debtor, but rather*
43 *is an aggregate amount that is not subject to garnishment.*

44 Answer:



1 State your correct name and address, or the name and address
2 of your attorney upon whom written notice of further proceedings in
3 this action may be served.

4 Answer:

5

6

7 Garnishee

8 I (insert the name of the garnishee), do solemnly swear (or
9 affirm) that the answers to the foregoing interrogatories by me
10 subscribed are true.

11

12 (Signature of garnishee)

13 SUBSCRIBED and SWORN to before me this day of the
14 month of of the year

15
16 2. The garnishee shall answer the interrogatories in writing
17 upon oath or affirmation and submit his answers to the sheriff within
18 the time required by the writ. *The garnishee shall submit his*
19 *answers to the judgment debtor within the same time.* If the
20 garnishee fails to do so, he shall be deemed in default.

21 **Sec. 12.** NRS 31.296 is hereby amended to read as follows:

22 31.296 1. Except as otherwise provided in subsection 3, if the
23 garnishee indicates in his answer to garnishee interrogatories that he
24 is the employer of the defendant, the writ of garnishment served on
25 the garnishee shall be deemed to continue for 120 days or until the
26 amount demanded in the writ is satisfied, whichever occurs earlier.

27 2. In addition to the fee set forth in NRS 31.270, a garnishee is
28 entitled to a fee from the plaintiff of \$3 per pay period, not to exceed
29 \$12 per month, for each withholding made of the defendant's
30 earnings. This subsection does not apply to the first pay period in
31 which the defendant's earnings are garnished.

32 3. If the defendant's employment by the garnishee is
33 terminated before the writ of garnishment is satisfied, the garnishee:

34 (a) Is liable only for the amount of earned but unpaid, disposable
35 earnings that are subject to garnishment.

36 (b) Shall provide the plaintiff or the plaintiff's attorney with the
37 last known address of the defendant and the name of any new
38 employer of the defendant, if known by the garnishee.

39 *4. The judgment creditor who caused the writ of attachment*
40 *to issue pursuant to NRS 31.013 shall prepare an accounting and*
41 *provide a report to the judgment debtor, the sheriff and each*
42 *garnishee every 120 days which sets forth, without limitation, the*
43 *amount owed by the judgment debtor, the costs and fees allowed*
44 *pursuant to NRS 18.160 and any accrued interest and costs on the*
45 *judgment. The report must advise the judgment debtor of his right*



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1 *to request a hearing pursuant to NRS 18.110 to dispute any*
2 *accrued interest, fee or other charge. The judgment creditor must*
3 *submit this accounting with each subsequent application for writ*
4 *made by the judgment creditor concerning the same debt.*

5 **Sec. 13.** (Deleted by amendment.)

6 **Sec. 14.** NRS 258.230 is hereby amended to read as follows:

7 258.230 Except with respect to the ~~fee~~ *fees* described in
8 ~~paragraph~~ *paragraphs (a) and* (d) of subsection 2 of NRS
9 258.125, all fees prescribed in this chapter shall be payable in
10 advance, if demanded. If a constable shall not have received any or
11 all of his fees, which may be due him for services rendered by him
12 in any suit or proceedings, he may have execution therefor in his
13 own name against the party or parties from whom they are due, to
14 be issued from the court where the action is pending, upon the order
15 of the justice of the peace or court upon affidavit filed.

16 **Sec. 15.** NRS 612.710 is hereby amended to read as follows:

17 612.710 Except as otherwise provided in NRS 31A.150:

18 1. Any assignment, pledge or encumbrance of any right to
19 benefits which are or may become due or payable under this chapter
20 is void, except for a voluntary assignment of benefits to satisfy an
21 obligation to pay support for a child.

22 2. Benefits are exempt from levy, execution, attachment, or any
23 other remedy provided for the collection of debt. Benefits received
24 by any person ~~[, if they are not mingled with other money of the~~
25 ~~recipient,]~~ are exempt from any remedy for the collection of all
26 debts, except debts incurred for necessities furnished to the person
27 or his spouse or dependents during the time when the person was
28 unemployed.

29 3. Any other waiver of any exemption provided for in this
30 section is void.

31 **Sec. 16.** NRS 21.114 is hereby repealed.

TEXT OF REPEALED SECTION

21.114 Sureties: Submission to jurisdiction of court; exceptions to sufficiency and justification.

1. By entering into any undertaking provided for in NRS 21.112, the sureties thereunder submit themselves to the jurisdiction of the court and irrevocably appoint the clerk of the court as agent upon whom any papers affecting liability on the undertaking may be served. Liability on such undertaking may be enforced on motion to the court without the necessity of an independent action. The motion



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and such reasonable notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known.

2. Exceptions to the sufficiency of the sureties and their justification may be had and taken in the same manner as upon an undertaking given in other cases under titles 2 and 3 of NRS. If they, or others in their place, fail to justify at the time and place appointed, the sheriff must release the property; but if no exception is taken within 5 days after notice of receipt of the undertaking, the judgment debtor shall be deemed to have waived any and all objections to the sufficiency of the sureties.

