

SENATE BILL NO. 348—SENATORS ROBERSON; CEGAVSKE,
GUSTAVSON, HALSETH, MCGINNESS AND SETTELMAYER

MARCH 21, 2011

Referred to Committee on Judiciary

SUMMARY—Eliminates limits on the amounts of certain property that is exempt from execution. (BDR 2-779)

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; eliminating limits on the amounts of certain property that is exempt from execution; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law exempts from execution all money, benefits, privileges or
2 immunities arising out of a policy of life insurance if the annual premium paid for
3 the policy does not exceed \$15,000 and exempts a portion of those insurance
4 proceeds if the premium does exceed \$15,000. (NRS 21.090) **Section 1** of this bill
5 eliminates the \$15,000 premium limit, allowing for a complete exemption from the
6 execution of all money, benefits, privileges or immunities arising from a policy of
7 life insurance.
8 Existing law exempts from execution any annuity benefits presently due and
9 payable to an annuitant on a scheduled or periodic basis up to a total of \$350 per
10 month but allows a court to order certain just and proper payments from annuity
11 benefits if those benefits exceed \$350 per month. (NRS 687B.290) **Section 2** of this
12 bill eliminates the \$350 monthly benefit exemption limit, allowing for a complete
13 exemption from the execution of annuity benefits.
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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** NRS 21.090 is hereby amended to read as follows:
2 21.090 1. The following property is exempt from execution,
3 except as otherwise specifically provided in this section or required
4 by federal law:



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

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

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

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

17 (e) The cabin or dwelling of a miner or prospector, the miner's
18 or prospector's cars, implements and appliances necessary for
19 carrying on any mining operations and the mining claim actually
20 worked by the miner or prospector, not exceeding \$4,500 in total
21 value.

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

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

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

38 (2) "Earnings" means compensation paid or payable for
39 personal services performed by a judgment debtor in the regular
40 course of business, including, without limitation, compensation
41 designated as income, wages, tips, a salary, a commission or a
42 bonus. The term includes compensation received by a judgment
43 debtor that is in the possession of the judgment debtor,
44 compensation held in accounts maintained in a bank or any other



1 financial institution or, in the case of a receivable, compensation
2 that is due the judgment debtor.

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

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

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

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

28 (l) The homestead as provided for by law, including a
29 homestead for which allodial title has been established and not
30 relinquished and for which a waiver executed pursuant to NRS
31 115.010 is not applicable.

32 (m) The dwelling of the judgment debtor occupied as a home for
33 himself or herself and family, where the amount of equity held by
34 the judgment debtor in the home does not exceed \$550,000 in value
35 and the dwelling is situated upon lands not owned by the judgment
36 debtor.

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

43 (o) All property in this State of the judgment debtor where the
44 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 (p) Any vehicle owned by the judgment debtor for use by the
4 judgment debtor or the judgment debtor's dependent that is
5 equipped or modified to provide mobility for a person with a
6 permanent disability.

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

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

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

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

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

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

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

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

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

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

42 (v) Payments received as compensation for the wrongful death
43 of a person upon whom the judgment debtor was dependent at the
44 time of the wrongful death, to the extent reasonably necessary for



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1 the support of the judgment debtor and any dependent of the
2 judgment debtor.

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

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

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

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

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

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

25 (cc) Regardless of whether a trust contains a spendthrift
26 provision:

27 (1) A beneficial interest in the trust as defined in NRS
28 163.4145 if the interest has not been distributed;

29 (2) A remainder interest in the trust as defined in NRS
30 163.416 if the trust does not indicate that the remainder interest is
31 certain to be distributed within 1 year after the date on which the
32 instrument that creates the remainder interest becomes irrevocable;

33 (3) A discretionary interest in the trust as described in NRS
34 163.4185 if the interest has not been distributed;

35 (4) A power of appointment in the trust as defined in NRS
36 163.4157 regardless of whether the power has been distributed or
37 transferred;

38 (5) A power listed in NRS 163.5553 that is held by a trust
39 protector as defined in NRS 163.5547 or any other person regardless
40 of whether the power has been distributed or transferred;

41 (6) A reserved power in the trust as defined in NRS 163.4165
42 regardless of whether the power has been distributed or transferred;
43 and



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(7) Any other property of the trust that has not been distributed from the trust. Once the property is distributed from the trust, the property is subject to execution.

(dd) If a trust contains a spendthrift provision:

(1) A mandatory interest in the trust as described in NRS 163.4185 if the interest has not been distributed;

(2) Notwithstanding a beneficiary's right to enforce a support interest, a support interest in the trust as described in NRS 163.4185 if the interest has not been distributed; and

(3) Any other property of the trust that has not been distributed from the trust. Once the property is distributed from the trust, the property is subject to execution.

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. 2. NRS 687B.290 is hereby amended to read as follows:

687B.290 1. The benefits, rights, privileges and options which under any annuity contract issued prior to or after January 1, 1972, are due or prospectively due the annuitant shall not be subject to execution nor shall the annuitant be compelled to exercise any such rights, powers or options, nor shall creditors be allowed to interfere with or terminate the contract, except ~~for~~ **as** to amounts paid for or as premium on any such annuity with intent to defraud creditors, with interest thereon, and of which the creditor has given the insurer written notice at its home office prior to the making of the payment to the annuitant out of which the creditor seeks to recover. Any such notice shall specify the amount claimed or such facts as will enable the insurer to ascertain such amount, and shall set forth such facts as will enable the insurer to ascertain the annuity contract, the annuitant and the payment sought to be avoided on the ground of fraud.

~~[(b) The total exemption of benefits presently due and payable to any annuitant periodically or at stated times under all annuity contracts under which he or she is an annuitant shall not at any time exceed \$350 per month for the length of time represented by such installments, and such periodic payments in excess of \$350 per month shall be subject to garnishee execution to the same extent as are wages and salaries.~~

~~—(c) If the total benefits presently due and payable to any annuitant under all annuity contracts under which he or she is an~~



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1 annuitant, at any time exceed payment at the rate of \$350 per month,
2 then the court may order such annuitant to pay to a judgment
3 creditor or apply on the judgment, in installments, such portion of
4 such excess benefits as to the court may appear just and proper, after
5 due regard for the reasonable requirements of the judgment debtor
6 and the family of the judgment debtor, if dependent upon the
7 judgment debtor, as well as any payments required to be made by
8 the annuitant to other creditors under prior court orders.}]

9 2. If the contract so provides, the benefits, rights, privileges or
10 options accruing under such contract to a beneficiary or assignee
11 shall not be transferable or subject to commutation, and ~~if the~~
12 ~~benefits are payable periodically or at stated times,]~~ the same
13 exemptions and exceptions contained in this section for the
14 annuitant shall apply with respect to such beneficiary or assignee.

