

Amendment No. 558

Senate Amendment to Senate Bill No. 373 First Reprint (BDR 2-932)

Proposed by: Senator Segerblom

Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date
Adopted	☐	Lost	☐ _____	Adopted	☐	Lost	☐ _____
Concurred In	☐	Not	☐ _____	Concurred In	☐	Not	☐ _____
Receded	☐	Not	☐ _____	Receded	☐	Not	☐ _____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

NCA/BAW



Date: 4/22/2013

S.B. No. 373—Makes various changes relating to judgments. (BDR 2-932)



SENATE BILL NO. 373—SENATORS SEGERBLOM,
PARKS, SPEARMAN; ATKINSON AND KIHUEN

MARCH 18, 2013

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to judgments. (BDR 2-932)

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 judgments; authorizing a court to issue an order permitting a judgment debtor to pay a judgment in installments under certain circumstances; increasing the percentage of a judgment debtor's disposable earnings which is exempt from execution under certain circumstances; authorizing a judgment debtor who is a resident of this State to bring a civil action in certain circumstances against a judgment creditor who obtains a writ of garnishment without domesticating a foreign judgment; revising provisions relating to the exemption of annuity benefits from certain claims of the annuitant's creditors; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill authorizes a court to allow a person who has had a judgment for the payment of money entered against him or her to pay the judgment in installments from income or property that is not exempt from execution if the court determines that the defendant is unable to pay the judgment.

Existing law provides that 75 percent of a judgment debtor's disposable earnings for any workweek are exempt from execution. (NRS 21.025, 21.075, 21.090, 31.045, 31.295)

Sections 2-4 and 6 ~~4-6~~, **8 and 9** of this bill increase the exemption to ~~40~~ **85** percent of a judgment debtor's disposable earnings for any workweek if the gross annual salary or wage of the debtor is ~~\$70,000~~ **\$50,000** or less.

Existing law requires a judgment creditor who seeks to enforce a foreign judgment in this State to domesticate the foreign judgment by filing a copy of the foreign judgment with the clerk of any district court of this State. (NRS 17.330-17.400) **Section 5** of this bill authorizes a judgment debtor who is a resident of this State to bring a civil action against a judgment creditor who, without domesticating a foreign judgment, garnishes a bank account or any other personal property maintained by the judgment debtor at a branch of a financial institution located in this State or the earnings of the judgment debtor from employment in this State.

Existing law exempts annuity benefits from certain claims of the annuitant's creditors under certain circumstances. (NRS 687B.290) **Section 10** of this bill subjects certain amounts of annuity benefits to execution by certain creditors of the annuitant.

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 a new provision to read as follows:

1. A judge of any court having jurisdiction at the time of the entry of a judgment, upon proper showing made by the defendant with both parties or their attorneys present in court, may make a written order permitting the judgment debtor to pay the judgment in installments from that portion of the judgment debtor's income or property which is not exempt from execution, at such times and in such amounts as, in the opinion of the judge, the judgment debtor is able to pay.

2. Upon compliance by the judgment debtor with the provisions of this section and the court rules, a judge of any court may issue an order permitting a judgment debtor to pay in installments from that portion of the judgment debtor's income or property which is not exempt from execution, at such times and in such amounts as, in the opinion of the judge, the judgment debtor is able to pay, any judgment previously entered by his or her court or filed in his or her court pursuant to NRS 17.350.

3. At any time after the entry of a judgment by a court or the filing of a judgment in a court pursuant to NRS 17.350, a judgment debtor may file a petition with the clerk of the court in which the judgment was entered or filed requesting the clerk to issue a notice, directed to the judgment creditor. The petition must include an affidavit of the judgment debtor setting forth the judgment debtor's inability to pay the judgment from that portion of the judgment debtor's income or property which is not exempt from execution.

4. A notice issued pursuant to subsection 3 must notify the judgment creditor of the day and time of a hearing to allow the judgment debtor to pay the judgment in installments. The notice must be served on the judgment creditor not later than 4 days before the date set for the hearing on the petition, by placing the notice in the United States mail in an envelope properly stamped and addressed to the judgment creditor or the agent or attorney of the judgment creditor.

5. Except as otherwise provided by court order, a writ of execution or a writ of garnishment may not be issued on the judgment after the filing of a petition pursuant to subsection 3.

Sec. 2. NRS 21.025 is hereby amended to read as follows:

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

(Title of the Court)

(Number and abbreviated title of the case)

EXECUTION

THE PEOPLE OF THE STATE OF NEVADA:

To the sheriff of County.

Greetings:

To FINANCIAL INSTITUTIONS: This judgment is for the recovery of money for the support of a person.

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

\$.....principal,
\$.....attorney's fees,
\$.....interest, and
\$.....costs, making a total amount of
\$.....the judgment as entered, and

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

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

Credit must be given for payments and partial satisfactions in the amount of \$..... which is to be first credited against the total accrued costs and accrued interest, with any excess credited against the judgment as entered, leaving a net balance of

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

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

NOW, THEREFORE, SHERIFF OF COUNTY, you are hereby commanded to satisfy this judgment with interest and costs as provided by law, out of the personal property of the judgment debtor, except that for any workweek, ~~40%~~ *85 percent of the disposable earnings of the debtor during that week if the gross annual salary or wage of the debtor is ~~\$70,000~~ \$50,000 or less,* 75 percent of the disposable earnings of the debtor during that week *if the gross annual salary or wage of the debtor exceeds ~~\$70,000~~ \$50,000,* or 50 times the minimum hourly wage prescribed by section 6(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. § 206(a)(1), and in effect at the time the earnings are payable, whichever is greater, is exempt from any levy of execution pursuant to this writ, and if sufficient personal property cannot be found, then out of the real property belonging to the debtor in the aforesaid county, and make return to this writ within not less than 10 days or more than 60 days endorsed thereon with what you have done.

Dated: This day of the month of of the year

....., Clerk.

By....., Deputy Clerk.

Sec. 3. 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

1 procedure for claiming those exemptions in the manner required in subsection 2.
2 The clerk of the court shall attach the notice to the writ of execution at the time the
3 writ is issued.

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

6
7 NOTICE OF EXECUTION

8
9 YOUR PROPERTY IS BEING ATTACHED OR
10 YOUR WAGES ARE BEING GARNISHED
11

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

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

20 1. Payments received pursuant to the federal Social Security Act,
21 including, without limitation, retirement and survivors' benefits,
22 supplemental security income benefits and disability insurance benefits.

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

25 3. Payments for public assistance granted through the Division of
26 Welfare and Supportive Services of the Department of Health and Human
27 Services or a local governmental entity.

28 4. Proceeds from a policy of life insurance.

29 5. Payments of benefits under a program of industrial insurance.

30 6. Payments received as disability, illness or unemployment benefits.

31 7. Payments received as unemployment compensation.

32 8. Veteran's benefits.

33 9. A homestead in a dwelling or a mobile home, not to exceed
34 \$550,000, unless:

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

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

42 10. All money reasonably deposited with a landlord by you to secure
43 an agreement to rent or lease a dwelling that is used by you as your primary
44 residence, except that such money is not exempt with respect to a landlord
45 or landlord's successor in interest who seeks to enforce the terms of the
46 agreement to rent or lease the dwelling.

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

48 12. ~~Seventy-five~~ ~~Ninety~~ ~~Eighty-five~~ percent of the take-home pay
49 for any workweek ~~if your gross annual salary or wage is \$70,000~~
50 ~~\$50,000 or less, or seventy-five percent of the take-home pay for any~~
51 ~~workweek if your gross annual salary or wage exceeds \$70,000~~
52 ~~\$50,000~~, unless the weekly take-home pay is less than 50 times the federal
53 minimum hourly wage, in which case the entire amount may be exempt.

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

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

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

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

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

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

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

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

26 16. Regardless of whether a trust contains a spendthrift provision:

27 (a) A present or future interest in the income or principal of a trust that
28 is a contingent interest, if the contingency has not been satisfied or
29 removed;

30 (b) A present or future interest in the income or principal of a trust for
31 which discretionary power is held by a trustee to determine whether to
32 make a distribution from the trust, if the interest has not been distributed
33 from the trust;

34 (c) The power to direct dispositions of property in the trust, other than
35 such a power held by a trustee to distribute property to a beneficiary of the
36 trust;

37 (d) Certain powers held by a trust protector or certain other persons;
38 and

39 (e) Any power held by the person who created the trust.

40 17. If a trust contains a spendthrift provision:

41 (a) A present or future interest in the income or principal of a trust that
42 is a mandatory interest in which the trustee does not have discretion
43 concerning whether to make the distribution from the trust, if the interest
44 has not been distributed from the trust; and

45 (b) A present or future interest in the income or principal of a trust that
46 is a support interest in which the standard for distribution may be
47 interpreted by the trustee or a court, if the interest has not been distributed
48 from the trust.

49 18. A vehicle for use by you or your dependent which is specially
50 equipped or modified to provide mobility for a person with a permanent
51 disability.

52 19. A prosthesis or any equipment prescribed by a physician or
53 dentist for you or your dependent.

20. 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.

21. 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.

22. 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.

23. Payments received as restitution for a criminal act.

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

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

26. 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 an executed claim of exemption. A copy of the claim of exemption must be served upon the sheriff, the garnishee and the judgment creditor within 10 days after the notice of execution or garnishment is served on you by mail pursuant to NRS 21.076 which identifies the specific property that is being levied on. The property must be released by the garnishee or the sheriff within 9 judicial days after you serve the claim of exemption upon the sheriff, garnishee and judgment creditor, unless 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 objection to the claim of exemption and notice for the hearing to determine the issue of exemption must be filed within 8 judicial 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 judicial days before the date set for the hearing. The hearing to determine whether the property or money is exempt must be held within 7 judicial days after the 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 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. 4. 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 the judgment debtor.

(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 the judgment debtor and his or her family not to exceed \$10,000 in value.

(e) The cabin or dwelling of a miner or prospector, the miner's or prospector's cars, implements and appliances necessary for carrying on any mining operations and the mining claim actually worked by the miner or prospector, 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, ~~70%~~ 85 percent of the disposable earnings of a judgment debtor during that week if the gross annual salary or wage of the judgment debtor is ~~\$70,000~~ \$50,000 or less, 75 percent of the disposable earnings of a judgment debtor during that week ~~or~~ if the gross annual salary or wage of the judgment debtor exceeds ~~\$70,000~~ \$50,000, 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,

1 without limitation, compensation designated as income, wages, tips, a salary, a
2 commission or a bonus. The term includes compensation received by a judgment
3 debtor that is in the possession of the judgment debtor, compensation held in
4 accounts maintained in a bank or any other financial institution or, in the case of a
5 receivable, compensation that is due the judgment debtor.

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

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

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

22 (k) All money, benefits, privileges or immunities accruing or in any manner
23 growing out of any life insurance.

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

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

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

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

39 (p) Any vehicle owned by the judgment debtor for use by the judgment debtor
40 or the judgment debtor's dependent that is equipped or modified to provide
41 mobility for a person with a permanent disability.

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

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

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

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

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

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

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

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

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

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

20 (v) Payments received as compensation for the wrongful death of a person
21 upon whom the judgment debtor was dependent at the time of the wrongful death,
22 to the extent reasonably necessary for the support of the judgment debtor and any
23 dependent of the judgment debtor.

24 (w) Payments received as compensation for the loss of future earnings of the
25 judgment debtor or of a person upon whom the judgment debtor is dependent at the
26 time the payment is received, to the extent reasonably necessary for the support of
27 the judgment debtor and any dependent of the judgment debtor.

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

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

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

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

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

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

43 (1) A distribution interest in the trust as defined in NRS 163.4155 that is a
44 contingent interest, if the contingency has not been satisfied or removed;

45 (2) A distribution interest in the trust as defined in NRS 163.4155 that is a
46 discretionary interest as described in NRS 163.4185, if the interest has not been
47 distributed;

48 (3) A power of appointment in the trust as defined in NRS 163.4157
49 regardless of whether the power has been exercised;

50 (4) A power listed in NRS 163.5553 that is held by a trust protector as
51 defined in NRS 163.5547 or any other person regardless of whether the power has
52 been exercised; and

(5) A reserved power in the trust as defined in NRS 163.4165 regardless of whether the power has been exercised.

(dd) If a trust contains a spendthrift provision:

(1) A distribution interest in the trust as defined in NRS 163.4155 that is a mandatory interest as described in NRS 163.4185, if the interest has not been distributed; and

(2) Notwithstanding a beneficiary's right to enforce a support interest, a distribution interest in the trust as defined in NRS 163.4155 that is a support interest as described in NRS 163.4185, if the interest has not been distributed.

(ee) Proceeds received from a private disability insurance plan.

(ff) Money in a trust fund for funeral or burial services pursuant to NRS 689.700.

(gg) Compensation that was payable or paid pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS as provided in NRS 616C.205.

(hh) Unemployment compensation benefits received pursuant to NRS 612.710.

(ii) Benefits or refunds payable or paid from the Public Employees' Retirement System pursuant to NRS 286.670.

(jj) Money paid or rights existing for vocational rehabilitation pursuant to NRS 615.270.

(kk) Public assistance provided through the Department of Health and Human Services pursuant to NRS 422.291.

(ll) Child welfare assistance provided pursuant to NRS 432.036.

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. 5. Chapter 31 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Any judgment debtor who is a resident of this State and who maintains an account or any other property at a branch of a financial institution located in this State or whose earnings are derived from employment in this State may bring a civil action against a judgment creditor under a foreign judgment, if the judgment creditor, without satisfying the requirements of NRS 17.330 to 17.400, inclusive, has obtained a writ of garnishment to satisfy all or part of the foreign judgment from:

(a) The earnings of the judgment debtor derived from employment in this State; or

(b) Money in the account or any other property maintained by the judgment debtor at a branch of a financial institution located in this State.

2. A judgment debtor who prevails in an action brought under this section may recover from the judgment creditor damages equal to two times any amount paid to the judgment creditor under the writ of garnishment. If the judgment debtor prevails in an action brought under this section, the court must award reasonable attorney's fees and costs to the plaintiff.

3. As used in this section, "foreign judgment" has the meaning ascribed to it in NRS 17.340.

Sec. 6. 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 the plaintiff money. The plaintiff 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 the landlord's 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.

1 12. ~~Seventy-five~~ ~~Ninety~~ Eighty-five percent of the take-home pay
2 for any workweek H if your gross annual salary or wage is ~~(\$70,000)~~
3 ~~\$50,000 or less, or seventy-five percent of the take-home pay for any~~
4 ~~workweek if your gross annual salary or wage exceeds ~~(\$70,000)~~~~
5 ~~\$50,000,~~ unless the weekly take-home pay is less than 50 times the federal
6 minimum hourly wage, in which case the entire amount may be exempt.

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

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

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

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

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

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

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

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

32 16. Regardless of whether a trust contains a spendthrift provision:

33 (a) A present or future interest in the income or principal of a trust that
34 is a contingent interest, if the interest has not been satisfied or removed;

35 (b) A present or future interest in the income or principal of a trust for
36 which discretionary power is held by a trustee to determine whether to
37 make a distribution from the trust, if the interest has not been distributed
38 from the trust;

39 (c) The power to direct dispositions of property in the trust, other than
40 such a power held by a trustee to distribute property to a beneficiary of the
41 trust;

42 (d) Certain powers held by a trust protector or certain other persons;
43 and

44 (e) Any power held by the person who created the trust.

45 17. If a trust contains a spendthrift provision:

46 (a) A present or future interest in the income or principal of a trust that
47 is a mandatory interest in which the trustee does not have discretion
48 concerning whether to make the distribution from the trust, if the interest
49 has not been distributed from the trust; and

50 (b) A present or future interest in the income or principal of a trust that
51 is a support interest in which the standard for distribution may be
52 interpreted by the trustee or a court, if the interest has not been distributed
53 from the trust.

18. 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.

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

20. 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.

21. 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.

22. 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.

23. Payments received as restitution for a criminal act.

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

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

26. 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 proceedings to enforce a judgment for support of a child or a judgment of foreclosure on a mechanic's lien. You should consult an attorney immediately to assist you in determining whether your property or money is exempt from execution. If you cannot afford an attorney, you may be eligible for assistance through (name of organization in county providing legal services to the indigent or elderly persons). 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 an executed claim of exemption. A copy of the claim of exemption must be served upon the sheriff, the garnishee and the judgment creditor within 10 days after the notice of execution or garnishment is served on you by mail pursuant to NRS 21.076 which identifies the specific property that is being levied on. The property must be released by the garnishee or the sheriff within 9 judicial days after you serve the claim of exemption upon the sheriff, garnishee and judgment creditor, unless 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 objection to the claim of exemption and notice for the hearing to determine the issue of

exemption must be filed within 8 judicial 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 judicial days before the date set for the hearing. The hearing must be held within 7 judicial days after the 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 financial institutions or any other document which demonstrates that the money in your account is exempt.

IF YOU DO NOT FILE THE 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. 7. NRS 31.060 is hereby amended to read as follows:

31.060 Subject to the requirements of NRS 31.045, the sheriff to whom the writ is directed and delivered shall execute it without delay, and if the undertaking mentioned in NRS 31.040 is not given, as follows:

1. Real property must be attached by leaving a copy of the writ with the occupant of the property or, if there is no occupant, by posting a copy in a conspicuous place on the property and recording the writ, together with a description of the property attached, with the recorder of the county.

2. Personal property must be attached:

(a) By taking it into immediate custody, and, if directed by the plaintiff, using the services of any company which operates a tow car, as defined in NRS 706.131, or common motor carrier, as defined in NRS 706.036, to transport it for storage in a warehouse or storage yard that is insured or bonded in an amount not less than the full value of the property; or

(b) By placing a keeper in charge of a going business where the property is located, with the plaintiff prepaying the expense of the keeper to the sheriff, during which period, the defendant, by order of the court or the consent of the plaintiff, may continue to operate in the ordinary course of business at the defendant's own expense if all sales are for cash and the full proceeds are paid to the keeper for the purpose of the attachment.

➤ If the property is stored pursuant to paragraph (a), the property must be segregated from other property and marked by signs or other appropriate means indicating that it is in the custody of the sheriff.

3. Any mobile home, as defined in NRS 40.215, must be attached by:
(a) Posting a copy of the writ in a conspicuous place on the mobile home;
(b) Taking it into immediate custody, subject to the provisions of subsection 2;
or

(c) Placing a keeper in charge of the mobile home for 2 days, with the plaintiff prepaying the expense of the keeper to the sheriff:

(1) During which period, the defendant may continue to occupy the mobile home; and

(2) After which period, the sheriff shall take the mobile home into the sheriff's immediate custody, subject to the provisions of subsection 2, unless other disposition is made by the court or the parties to the action.

4. Debts and credits, due or to become due, and other personal property in the possession or under the control of persons other than the defendant must be attached by service of a writ of garnishment as provided in NRS 31.240 to 31.460, inclusive ~~H~~, and section 5 of this act.

Sec. 8. NRS 31.290 is hereby amended to read as follows:
31.290 1. The interrogatories to be submitted with any writ of execution, attachment or garnishment to the garnishee may be in substance as follows:

INTERROGATORIES

Are you in any manner indebted to the defendants

.....
or either of them, either in property or money, and is the debt now due? If not due, when is the debt to become due? State fully all particulars.

Answer:

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

Calculate the garnishable amount as follows:

(Check one of the following) The employee is paid:

[A] Weekly: __ [B] Biweekly: __ [C] Semimonthly: __ [D] Monthly: __

(1) Gross Earnings \$

(2) Deductions required by law (not including child support) \$

(3) Disposable Earnings [Subtract line 2 from line 1] \$

(4) Federal Minimum Wage \$

(5) Multiply line 4 by 50 \$

(6) Complete the following directions in accordance with the letter selected above:

[A] Multiply line 5 by 1 \$

[B] Multiply line 5 by 2 \$

[C] Multiply line 5 by 52 and then divide by 24 \$

[D] Multiply line 5 by 52 and then divide by 12 \$

(7) Subtract line 6 from line 3 \$

This is the attachable earnings. This amount must not exceed ~~125%~~ ~~140%~~ 15 percent of the disposable earnings from line 3 if the employee's gross annual salary or wage is ~~\$70,000~~ \$50,000 or less or 25 percent of the disposable earnings from line 3 if the employee's gross annual salary or wage exceeds ~~\$70,000~~ of the disposable earnings from line 3, \$50,000.

Answer:

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

Answer:

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

Answer:

Are you a financial institution with a personal account held by one or all of the defendants? If so, state the account number and the amount of money in the account which is subject to garnishment. As set forth in NRS 21.105, \$2,000 or the entire amount in the account, whichever is less, is not subject to garnishment if the financial institution reasonably identifies that an electronic deposit of money has been made into the account within the immediately preceding 45 days which is exempt from execution, including, without limitation, payments of money described in NRS 21.105 or, if no such deposit has been made, \$400 or the entire amount in the account, whichever is less, is not subject to garnishment, unless the garnishment is for the recovery of money owed for the support of any person. The amount which is not subject to garnishment does not apply to each account of the judgment debtor, but rather is an aggregate amount that is not subject to garnishment.

Answer:

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

Answer:

Garnishee

I (insert the name of the garnishee), declare under penalty of perjury that the answers to the foregoing interrogatories by me subscribed are true and correct.

(Signature of garnishee)

2. The garnishee shall answer the interrogatories in writing upon oath or affirmation and submit the answers to the sheriff within the time required by the writ. The garnishee shall submit his or her answers to the judgment debtor within

the same time. If the garnishee fails to do so, the garnishee shall be deemed in default.

Sec. 9. NRS 31.295 is hereby amended to read as follows:

31.295 1. As used in this section:

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

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

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

(a) ~~Fifty~~ *Fifteen percent of the person's disposable earnings for the relevant workweek if the person's gross annual salary or wage is ~~is \$70,000;~~ \$50,000 or less;*

(b) Twenty-five percent of the person's disposable earnings for the relevant workweek ~~is or~~

~~—(b) if the person's gross annual salary or wage exceeds ~~is \$70,000;~~ \$50,000;~~
or

(c) The amount by which the person's disposable earnings for that week exceed 50 times the federal minimum hourly wage prescribed by section 6(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. § 206(a)(1), in effect at the time the earnings are payable,

↳ whichever is less.

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

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

(b) Any order of any court of bankruptcy.

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

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

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

(b) Sixty percent of the person's disposable earnings for that week if the person is not supporting such a spouse or child,

↳ except that if the garnishment is to enforce a previous order of support with respect to a period occurring at least 12 weeks before the beginning of the workweek, the limits which apply to the situations described in paragraphs (a) and (b) are 55 percent and 65 percent, respectively.

Sec. 10. 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 as to *amounts listed as an asset on an application for a loan or pledged as payment for a loan or* 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

1 home office *within 1 year after the annuitant makes a payment to the insurer or*
2 prior to the making of the payment to the annuitant out of which the creditor seeks
3 to recover. Any such notice shall specify the amount claimed or such facts as will
4 enable the insurer to ascertain such amount, and shall set forth such facts as will
5 enable the insurer to ascertain the annuity contract, the annuitant and the payment
6 sought to be avoided on the ground of fraud.

7 2. If the contract so provides, the benefits, rights, privileges or options
8 accruing under such contract to a beneficiary or assignee shall not be transferable or
9 subject to commutation, and the same exemptions and exceptions contained in this
10 section for the annuitant shall apply with respect to such beneficiary or assignee.