

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, 8 and 9** of this bill increase the exemption to 85 percent of a judgment debtor's disposable earnings for any workweek if the gross annual salary or wage of the debtor is \$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



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1 *and addressed to the judgment creditor or the agent or attorney of*
2 *the judgment creditor.*

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

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

7 21.025 A writ of execution issued on a judgment for the
8 recovery of money must be substantially in the following form:
9

10 (Title of the Court)

11 (Number and abbreviated title of the case)

12 EXECUTION

13
14 THE PEOPLE OF THE STATE OF NEVADA:
15

16 To the sheriff of County.
17

18 Greetings:
19

20 To FINANCIAL INSTITUTIONS: This judgment is for
21 the recovery of money for the support of a person.
22

23 On(month).....(day).....(year), a judgment was entered
24 by the above-entitled court in the above-entitled action in
25 favor of as judgment creditor and against
26 as judgment debtor for:
27

28 \$..... principal,
29 \$..... attorney's fees,
30 \$..... interest, and
31 \$..... costs, making a total amount of
32 \$..... the judgment as entered, and
33

34 WHEREAS, according to an affidavit or a memorandum
35 of costs after judgment, or both, filed herein, it appears
36 that further sums have accrued since the entry of judgment, to
37 wit:
38

39 \$..... accrued interest, and
40 \$..... accrued costs, together with \$..... fee, for the
41 issuance of this writ, making a total of
42 \$..... 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, *85 percent of the disposable earnings of the debtor during that week if the gross annual salary or wage of the debtor is \$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 \$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 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. The judgment creditor 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:

(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 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.

12. ~~Seventy-five~~ *Eighty-five* percent of the take-home pay for any workweek ~~if~~ *if your gross annual salary or wage is \$50,000 or less, or seventy-five percent of the take-home pay for any workweek if your gross annual salary or wage exceeds \$50,000*, 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 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.

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

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



1 arrearages in the payment of such support and maintenance to
2 which the former spouse may be entitled.

3 16. Regardless of whether a trust contains a spendthrift
4 provision:

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

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

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

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

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

18 17. If a trust contains a spendthrift provision:

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

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

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

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

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

39 21. Payments received as compensation for the wrongful
40 death of a person upon whom the judgment debtor was
41 dependent at the time of the wrongful death, to the extent
42 reasonably necessary for the support of the judgment debtor
43 and any dependent of the judgment debtor.



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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



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1 worked by the miner or prospector, not exceeding \$4,500 in total
2 value.

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

6 (g) For any workweek, *85 percent of the disposable earnings of*
7 *a judgment debtor during that week if the gross annual salary or*
8 *wage of the judgment debtor is \$50,000 or less*, 75 percent of the
9 disposable earnings of a judgment debtor during that week ~~H~~ *if the*
10 *gross annual salary or wage of the judgment debtor exceeds*
11 *\$50,000*, or 50 times the minimum hourly wage prescribed by
12 section 6(a)(1) of the federal Fair Labor Standards Act of 1938, 29
13 U.S.C. § 206(a)(1), and in effect at the time the earnings are
14 payable, whichever is greater. Except as otherwise provided in
15 paragraphs (o), (s) and (t), the exemption provided in this paragraph
16 does not apply in the case of any order of a court of competent
17 jurisdiction for the support of any person, any order of a court of
18 bankruptcy or of any debt due for any state or federal tax. As used in
19 this paragraph:

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

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

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

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

39 (j) All courthouses, jails, public offices and buildings, lots,
40 grounds and personal property, the fixtures, furniture, books, papers
41 and appurtenances belonging and pertaining to the courthouse, jail
42 and public offices belonging to any county of this State, all
43 cemeteries, public squares, parks and places, public buildings, town
44 halls, markets, buildings for the use of fire departments and military
45 organizations, and the lots and grounds thereto belonging and



1 appertaining, owned or held by any town or incorporated city, or
2 dedicated by the town or city to health, ornament or public use, or
3 for the use of any fire or military company organized under the laws
4 of this State and all lots, buildings and other school property owned
5 by a school district and devoted to public school purposes.

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

8 (l) The homestead as provided for by law, including a
9 homestead for which allodial title has been established and not
10 relinquished and for which a waiver executed pursuant to NRS
11 115.010 is not applicable.

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

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

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

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

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

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

34 (1) An individual retirement arrangement which conforms
35 with the applicable limitations and requirements of section 408
36 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and
37 408A;

38 (2) A written simplified employee pension plan which
39 conforms with the applicable limitations and requirements of section
40 408 of the Internal Revenue Code, 26 U.S.C. § 408;

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

43 (4) A trust forming part of a stock bonus, pension or profit-
44 sharing plan which is a qualified plan pursuant to sections 401
45 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 time of the wrongful death, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

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

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

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

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

(aa) Any tax refund received by the judgment debtor that is derived from the earned income credit described in section 32 of the



1 Internal Revenue Code, 26 U.S.C. § 32, or a similar credit provided
2 pursuant to a state law.

3 (bb) Stock of a corporation described in subsection 2 of NRS
4 78.746 except as set forth in that section.

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

7 (1) A distribution interest in the trust as defined in NRS
8 163.4155 that is a contingent interest, if the contingency has not
9 been satisfied or removed;

10 (2) A distribution interest in the trust as defined in NRS
11 163.4155 that is a discretionary interest as described in NRS
12 163.4185, if the interest has not been distributed;

13 (3) A power of appointment in the trust as defined in NRS
14 163.4157 regardless of whether the power has been exercised;

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

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

20 (dd) If a trust contains a spendthrift provision:

21 (1) A distribution interest in the trust as defined in NRS
22 163.4155 that is a mandatory interest as described in NRS 163.4185,
23 if the interest has not been distributed; and

24 (2) Notwithstanding a beneficiary's right to enforce a support
25 interest, a distribution interest in the trust as defined in NRS
26 163.4155 that is a support interest as described in NRS 163.4185, if
27 the interest has not been distributed.

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

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

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

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

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

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

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

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

43 2. Except as otherwise provided in NRS 115.010, no article or
44 species of property mentioned in this section is exempt from



1 execution issued upon a judgment to recover for its price, or upon a
2 judgment of foreclosure of a mortgage or other lien thereon.

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

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

9 *1. Any judgment debtor who is a resident of this State and
10 who maintains an account or any other property at a branch of a
11 financial institution located in this State or whose earnings are
12 derived from employment in this State may bring a civil action
13 against a judgment creditor under a foreign judgment, if the
14 judgment creditor, without satisfying the requirements of NRS
15 17.330 to 17.400, inclusive, has obtained a writ of garnishment to
16 satisfy all or part of the foreign judgment from:*

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

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

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

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

30 **Sec. 6.** NRS 31.045 is hereby amended to read as follows:

31 31.045 1. Execution on the writ of attachment by attaching
32 property of the defendant may occur only if:

33 (a) The judgment creditor serves the defendant with notice of
34 the execution when the notice of the hearing is served pursuant to
35 NRS 31.013; or

36 (b) Pursuant to an ex parte hearing, the sheriff serves upon the
37 judgment debtor notice of the execution and a copy of the writ at the
38 same time and in the same manner as set forth in NRS 21.076.

39 ➤ If the attachment occurs pursuant to an ex parte hearing, the clerk
40 of the court shall attach the notice to the writ of attachment at the
41 time the writ is issued.

42 2. The notice required pursuant to subsection 1 must be
43 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.

12. ~~Seventy-five~~ *Eighty-five* percent of the take-home pay for any workweek ~~if~~ *if your gross annual salary or wage is \$50,000 or less, or seventy-five percent of the take-home pay for any workweek if your gross annual salary or wage exceeds \$50,000,* 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 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.

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

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.



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

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

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

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

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

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

17. If a trust contains a spendthrift provision:

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

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



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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:



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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 ~~25%~~ **15 percent of the disposable earnings from line 3 if the employee's gross annual salary or wage is \$50,000 or less or 25 percent of the disposable earnings**



1 *from line 3 if the employee's gross annual salary or wage*
2 *exceeds ~~for the disposable earnings from line 3-~~ \$50,000.*

3 Answer:

4
5 Did you have in your possession, in your charge or
6 under your control, on the date the writ of garnishment was
7 served upon you, any money, property, effects, goods,
8 chattels, rights, credits or choses in action of the defendants,
9 or either of them, or in whichis interested?
10 If so, state its value, and state fully all particulars.

11 Answer:

12
13 Do you know of any debts owing to the defendants,
14 whether due or not due, or any money, property, effects,
15 goods, chattels, rights, credits or choses in action, belonging
16 to or in whichis interested, and
17 now in the possession or under the control of others? If so,
18 state particulars.

19 Answer:

20
21 Are you a financial institution with a personal account
22 held by one or all of the defendants? If so, state the account
23 number and the amount of money in the account which is
24 subject to garnishment. As set forth in NRS 21.105, \$2,000 or
25 the entire amount in the account, whichever is less, is not
26 subject to garnishment if the financial institution reasonably
27 identifies that an electronic deposit of money has been made
28 into the account within the immediately preceding 45 days
29 which is exempt from execution, including, without
30 limitation, payments of money described in NRS 21.105 or, if
31 no such deposit has been made, \$400 or the entire amount in
32 the account, whichever is less, is not subject to garnishment,
33 unless the garnishment is for the recovery of money owed for
34 the support of any person. The amount which is not subject to
35 garnishment does not apply to each account of the judgment
36 debtor, but rather is an aggregate amount that is not subject to
37 garnishment.

38 Answer:

39
40 State your correct name and address, or the name and
41 address of your attorney upon whom written notice of further
42 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) *Fifteen percent of the person's disposable earnings for the relevant workweek if the person's gross annual salary or wage is \$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 \$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 home office *within 1 year after the annuitant makes a payment to the insurer or* 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.

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

