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SENATE BILL NO. 434—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE STATE TREASURER)

MARCH 24, 2003

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Referred to Committee on Judiciary

SUMMARY—Exempts from execution by creditors certain money held in trust forming part of qualified tuition program. (BDR 2-303)

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 ~~fornitted material~~ is material to be omitted.

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AN ACT relating to exempt property; exempting from execution by creditors certain money held in a trust forming part of a qualified tuition program; and providing other matters properly relating thereto.

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

- 1     **Section 1.** NRS 21.075 is hereby amended to read as follows:  
2     21.075 1. Execution on the writ of execution by levying on  
3 the property of the judgment debtor may occur only if the sheriff  
4 serves the judgment debtor with a notice of the writ of execution  
5 pursuant to NRS 21.076 and a copy of the writ. The notice must  
6 describe the types of property exempt from execution and explain  
7 the procedure for claiming those exemptions in the manner required  
8 in subsection 2. The clerk of the court shall attach the notice to the  
9 writ of execution at the time the writ is issued.  
10   2. The notice required pursuant to subsection 1 must be  
11 substantially in the following form:



NOTICE OF EXECUTION

YOUR PROPERTY IS BEING ATTACHED OR  
YOUR WAGES ARE BEING GARNISHED

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

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

- 1. Payments received under the Social Security Act.
- 2. Payments for benefits or the return of contributions under the Public Employees' Retirement System.
- 3. Payments for public assistance granted through the Welfare Division of the Department of Human Resources.
- 4. Proceeds from a policy of life insurance.
- 5. Payments of benefits under a program of industrial insurance.
- 6. Payments received as unemployment compensation.
- 7. Veteran's benefits.
- 8. A homestead in a dwelling or a mobile home, not to exceed \$125,000, 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.
- 9. A vehicle, if your equity in the vehicle is less than \$4,500.
- 10. Seventy-five percent of the take-home pay for any pay period, unless the weekly take-home pay is less than 30 times the federal minimum wage, in which case the entire amount may be exempt.
- 11. Money, not to exceed \$500,000 in present value, held ~~for retirement pursuant to certain arrangements or plans meeting the requirements for qualified arrangements or plans~~



1 ~~of sections 401 et seq. of the Internal Revenue Code (26~~  
2 ~~U.S.C. §§ 401 et seq.) in:~~

3 (a) *An individual retirement arrangement which*  
4 *conforms with the applicable limitations and requirements*  
5 *of 26 U.S.C. § 408;*

6 (b) *A written simplified employee pension plan which*  
7 *conforms with the applicable limitations and requirements*  
8 *of 26 U.S.C. § 408;*

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

11 (d) *A trust forming part of a stock bonus, pension or*  
12 *profit-sharing plan that is a qualified plan pursuant to*  
13 *sections 401 et seq. of the Internal Revenue Code, 26 U.S.C.*  
14 *§§ 401 et seq.; and*

15 (e) *A trust forming part of a qualified tuition program*  
16 *pursuant to chapter 353B of NRS, any applicable*  
17 *regulations adopted pursuant to chapter 353B of NRS and*  
18 *section 529 of the Internal Revenue Code, 26 U.S.C. § 529.*

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

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

28 14. 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 15. A prosthesis or any equipment prescribed by a  
32 physician or dentist for you or your dependent.

33 These exemptions may not apply in certain cases such as a  
34 proceeding to enforce a judgment for support of a person or a  
35 judgment of foreclosure on a mechanic's lien. You should  
36 consult an attorney immediately to assist you in determining  
37 whether your property or money is exempt from execution. If  
38 you cannot afford an attorney, you may be eligible for  
39 assistance through .....(name of organization in  
40 county providing legal services to indigent or elderly  
41 persons).



1                   PROCEDURE FOR CLAIMING EXEMPT PROPERTY  
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3                   If you believe that the money or property taken from you  
4 is exempt, you must complete and file with the clerk of the  
5 court a notarized affidavit claiming the exemption. A copy of  
6 the affidavit must be served upon the sheriff and the judgment  
7 creditor within 8 days after the notice of execution is mailed.  
8 The property must be returned to you within 5 days after you  
9 file the affidavit unless you or the judgment creditor files a  
10 motion for a hearing to determine the issue of exemption. If  
11 this happens, a hearing will be held to determine whether the  
12 property or money is exempt. The motion for the hearing to  
13 determine the issue of exemption must be filed within 10 days  
14 after the affidavit claiming exemption is filed. The hearing to  
15 determine whether the property or money is exempt must be  
16 held within 10 days after the motion for the hearing is filed.  
17

18                   IF YOU DO NOT FILE THE AFFIDAVIT WITHIN THE  
19 TIME SPECIFIED, YOUR PROPERTY MAY BE SOLD  
20 AND THE MONEY GIVEN TO THE JUDGMENT  
21 CREDITOR, EVEN IF THE PROPERTY OR MONEY IS  
22 EXEMPT.  
23

24                   **Sec. 2.** NRS 21.090 is hereby amended to read as follows:  
25                   21.090 1. The following property is exempt from execution,  
26 except as otherwise specifically provided in this section:  
27                   (a) Private libraries not to exceed \$1,500 in value, and all family  
28 pictures and keepsakes.  
29                   (b) Necessary household goods, as defined in 16 C.F.R. §  
30 444.1(i) as that section existed on January 1, 1987, and yard  
31 equipment, not to exceed \$3,000 in value, belonging to the judgment  
32 debtor to be selected by him.  
33                   (c) Farm trucks, farm stock, farm tools, farm equipment,  
34 supplies and seed not to exceed \$4,500 in value, belonging to the  
35 judgment debtor to be selected by him.  
36                   (d) Professional libraries, office equipment, office supplies and  
37 the tools, instruments and materials used to carry on the trade of the  
38 judgment debtor for the support of himself and his family not to  
39 exceed \$4,500 in value.  
40                   (e) The cabin or dwelling of a miner or prospector, his cars,  
41 implements and appliances necessary for carrying on any mining  
42 operations and his mining claim actually worked by him, not  
43 exceeding \$4,500 in total value.



- 1 (f) Except as otherwise provided in paragraph (o), one vehicle if  
2 the judgment debtor's equity does not exceed \$4,500 or the creditor  
3 is paid an amount equal to any excess above that equity.
- 4 (g) For any pay period, 75 percent of the disposable earnings of  
5 a judgment debtor during that period, or for each week of the period  
6 30 times the minimum hourly wage prescribed by section 6(a)(1) of  
7 the federal Fair Labor Standards Act of 1938 , **29 U.S.C. §**  
8 **206(a)(1)**, and in effect at the time the earnings are payable,  
9 whichever is greater. Except as otherwise provided in paragraphs  
10 (n), (r) and (s), the exemption provided in this paragraph does not  
11 apply in the case of any order of a court of competent jurisdiction  
12 for the support of any person, any order of a court of bankruptcy or  
13 of any debt due for any state or federal tax. As used in this  
14 paragraph, "disposable earnings" means that part of the earnings of  
15 a judgment debtor remaining after the deduction from those earnings  
16 of any amounts required by law, to be withheld.
- 17 (h) All fire engines, hooks and ladders, with the carts, trucks and  
18 carriages, hose, buckets, implements and apparatus thereunto  
19 appertaining, and all furniture and uniforms of any fire company or  
20 department organized under the laws of this state.
- 21 (i) All arms, uniforms and accouterments required by law to be  
22 kept by any person, and also one gun, to be selected by the debtor.
- 23 (j) All courthouses, jails, public offices and buildings, lots,  
24 grounds and personal property, the fixtures, furniture, books, papers  
25 and appurtenances belonging and pertaining to the courthouse, jail  
26 and public offices belonging to any county of this state, all  
27 cemeteries, public squares, parks and places, public buildings, town  
28 halls, markets, buildings for the use of fire departments and military  
29 organizations, and the lots and grounds thereto belonging  
30 and appertaining, owned or held by any town or incorporated city, or  
31 dedicated by the town or city to health, ornament or public use, or  
32 for the use of any fire or military company organized under the laws  
33 of this state and all lots, buildings and other school property owned  
34 by a school district and devoted to public school purposes.
- 35 (k) All money, benefits, privileges or immunities accruing or in  
36 any manner growing out of any life insurance, if the annual  
37 premium paid does not exceed \$1,000. If the premium exceeds that  
38 amount, a similar exemption exists which bears the same proportion  
39 to the money, benefits, privileges and immunities so accruing or  
40 growing out of the insurance that the \$1,000 bears to the whole  
41 annual premium paid.
- 42 (l) The homestead as provided for by law, including a  
43 homestead for which allodial title has been established and not  
44 relinquished and for which a waiver executed pursuant to NRS  
45 115.010 is not applicable.



1 (m) The dwelling of the judgment debtor occupied as a home for  
2 himself and family, where the amount of equity held by the  
3 judgment debtor in the home does not exceed \$125,000 in value and  
4 the dwelling is ~~situate~~ *situated* upon lands not owned by him.

5 (n) All property in this state of the judgment debtor where the  
6 judgment is in favor of any state for failure to pay that state's  
7 income tax on benefits received from a pension or other retirement  
8 plan.

9 (o) Any vehicle owned by the judgment debtor for use by him or  
10 his dependent that is equipped or modified to provide mobility for a  
11 person with a permanent disability.

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

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

15 (1) An individual retirement arrangement which conforms  
16 with the applicable limitations and requirements of 26 U.S.C. § 408;

17 (2) A written simplified employee pension plan which  
18 conforms with the applicable limitations and requirements of 26  
19 U.S.C. § 408;

20 (3) A cash or deferred arrangement which is a qualified plan  
21 pursuant to the Internal Revenue Code; ~~and~~

22 (4) A trust forming part of a stock bonus, pension or profit-  
23 sharing plan which is a qualified plan pursuant to sections 401 et  
24 seq. of the Internal Revenue Code, ~~{~~ 26 U.S.C. §§ 401 et seq. ~~}~~;  
25 *and*

26 *(5) A trust forming part of a qualified tuition program*  
27 *pursuant to chapter 353B of NRS, any applicable regulations*  
28 *adopted pursuant to chapter 353B of NRS and section 529 of the*  
29 *Internal Revenue Code, 26 U.S.C. § 529.*

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

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

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

43 3. Any exemptions specified in subsection (d) of section 522 of  
44 the Bankruptcy Act of 1978 ~~{(92-Stat-2586)}~~, *11 U.S.C. § 522(d)*,  
45 do not apply to property owned by a resident of this state unless



1 conferred also by subsection 1, as limited by subsection 2. ~~[-of this~~  
2 ~~section.]~~

3 **Sec. 3.** NRS 31.045 is hereby amended to read as follows:

4 31.045 1. Execution on the writ of attachment by attaching  
5 property of the defendant may occur only if:

6 (a) The judgment creditor serves the defendant with notice of  
7 the execution when the notice of the hearing is served pursuant to  
8 NRS 31.013; or

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

13 If the attachment occurs pursuant to an ex parte hearing, the clerk of  
14 the court shall attach the notice to the writ of attachment at the time  
15 the writ is issued.

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

18  
19 **NOTICE OF EXECUTION**

20  
21 **YOUR PROPERTY IS BEING ATTACHED OR**  
22 **YOUR WAGES ARE BEING GARNISHED**

23  
24 Plaintiff, ..... (name of person), alleges that you  
25 owe him money. He has begun the procedure to collect that  
26 money. To secure satisfaction of judgment the court has  
27 ordered the garnishment of your wages, bank account or other  
28 personal property held by third persons or the taking of  
29 money or other property in your possession.

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

- 33 1. Payments received under the Social Security Act.
- 34 2. Payments for benefits or the return of contributions  
35 under the Public Employees' Retirement System.
- 36 3. Payments for public assistance granted through the  
37 Welfare Division of the Department of Human Resources.
- 38 4. Proceeds from a policy of life insurance.
- 39 5. Payments of benefits under a program of industrial  
40 insurance.
- 41 6. Payments received as unemployment compensation.
- 42 7. Veteran's benefits.
- 43 8. A homestead in a dwelling or a mobile home, not to  
44 exceed \$125,000, unless:



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

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

10 9. A vehicle, if your equity in the vehicle is less than  
11 \$4,500.

12 10. Seventy-five percent of the take-home pay for any  
13 pay period, unless the weekly take-home pay is less than 30  
14 times the federal minimum wage, in which case the entire  
15 amount may be exempt.

16 11. Money, not to exceed \$500,000 in present value,  
17 held ~~for retirement pursuant to certain arrangements or plans~~  
18 ~~meeting the requirements for qualified arrangements or plans~~  
19 ~~of sections 401 et seq. of the Internal Revenue Code (26~~  
20 ~~U.S.C. §§ 401 et seq.)~~ in:

21 (a) *An individual retirement arrangement which*  
22 *conforms with the applicable limitations and requirements*  
23 *of 26 U.S.C. § 408;*

24 (b) *A written simplified employee pension plan which*  
25 *conforms with the applicable limitations and requirements*  
26 *of 26 U.S.C. § 408;*

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

29 (d) *A trust forming part of a stock bonus, pension or*  
30 *profit-sharing plan that is a qualified plan pursuant to*  
31 *sections 401 et seq. of the Internal Revenue Code, 26 U.S.C.*  
32 *§§ 401 et seq.; and*

33 (e) *A trust forming part of a qualified tuition program*  
34 *pursuant to chapter 353B of NRS, any applicable*  
35 *regulations adopted pursuant to chapter 353B of NRS and*  
36 *section 529 of the Internal Revenue Code, 26 U.S.C. § 529.*

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

41 13. All money and other benefits paid pursuant to the  
42 order of a court of competent jurisdiction for the support and  
43 maintenance of a former spouse, including the amount of any  
44 arrearages in the payment of such support and maintenance to  
45 which the former spouse may be entitled.





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

4 15. A prosthesis or any equipment prescribed by a  
5 physician or dentist for you or your dependent.  
6 These exemptions may not apply in certain cases such as  
7 proceedings to enforce a judgment for support of a child or a  
8 judgment of foreclosure on a mechanic's lien. You should  
9 consult an attorney immediately to assist you in determining  
10 whether your property or money is exempt from execution. If  
11 you cannot afford an attorney, you may be eligible for  
12 assistance through ..... (name of organization in  
13 county providing legal services to the indigent or elderly  
14 persons).

15  
16 **PROCEDURE FOR CLAIMING EXEMPT PROPERTY**

17  
18 If you believe that the money or property taken from you  
19 is exempt or necessary for the support of you or your family,  
20 you must file with the clerk of the court on a form provided  
21 by the clerk a notarized affidavit claiming the exemption. A  
22 copy of the affidavit must be served upon the sheriff and the  
23 judgment creditor within 8 days after the notice of execution  
24 is mailed. The property must be returned to you within 5 days  
25 after you file the affidavit unless the judgment creditor files a  
26 motion for a hearing to determine the issue of exemption. If  
27 this happens, a hearing will be held to determine whether the  
28 property or money is exempt. The hearing must be held  
29 within 10 days after the motion for a hearing is filed.

30  
31 **IF YOU DO NOT FILE THE AFFIDAVIT WITHIN THE**  
32 **TIME SPECIFIED, YOUR PROPERTY MAY BE SOLD**  
33 **AND THE MONEY GIVEN TO THE JUDGMENT**  
34 **CREDITOR, EVEN IF THE PROPERTY OR MONEY IS**  
35 **EXEMPT.**

36  
37 If you received this notice with a notice of a hearing for  
38 attachment and you believe that the money or property which  
39 would be taken from you by a writ of attachment is exempt or  
40 necessary for the support of you or your family, you are  
41 entitled to describe to the court at the hearing why you  
42 believe your property is exempt. You may also file a motion  
43 with the court for a discharge of the writ of attachment. You  
44 may make that motion any time before trial. A hearing will be  
45 held on that motion.



1 IF YOU DO NOT FILE THE MOTION BEFORE THE  
2 TRIAL, YOUR PROPERTY MAY BE SOLD AND  
3 THE MONEY GIVEN TO THE PLAINTIFF, EVEN IF THE  
4 PROPERTY OR MONEY IS EXEMPT OR NECESSARY  
5 FOR THE SUPPORT OF YOU OR YOUR FAMILY.  
6

7 **Sec. 4.** This act becomes effective upon passage and approval.

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