

SENATE BILL NO. 70—SENATOR O’CONNELL

FEBRUARY 7, 2003

Referred to Committee on Judiciary

SUMMARY—Increases amount of homestead exemption.
(BDR 10-15)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to property; increasing the amount of the homestead exemption; exempting from execution a greater amount of equity in certain dwellings; 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 115.010 is hereby amended to read as follows:
2 115.010 1. The homestead is not subject to forced sale on
3 execution or any final process from any court, except as otherwise
4 provided by subsections 2, 3 and 5.
5 2. The exemption provided in subsection 1 extends only to that
6 amount of equity in the property held by the claimant which does
7 not exceed ~~[\$125,000]~~ *\$200,000* in value, unless allodial title has
8 been established and not relinquished, in which case the exemption
9 provided in subsection 1 extends to all equity in the dwelling, its
10 appurtenances and the land on which it is located.
11 3. Except as otherwise provided in subsection 4, the exemption
12 provided in subsection 1 does not extend to process to enforce the
13 payment of obligations contracted for the purchase of the property,
14 or for improvements made thereon, including any mechanic’s lien
15 lawfully obtained, or for legal taxes, or for:



* S B 7 0 R 1 *

1 (a) Any mortgage or deed of trust thereon executed and given;
2 or

3 (b) Any lien to which prior consent has been given through the
4 acceptance of property subject to any recorded declaration of
5 restrictions, deed restriction, restrictive covenant or equitable
6 servitude, specifically including any lien in favor of an association
7 pursuant to NRS 116.3116 or 117.070,
8 by both husband and wife, when that relation exists.

9 4. If allodial title has been established and not relinquished, the
10 exemption provided in subsection 1 extends to process to enforce
11 the payment of obligations contracted for the purchase of the
12 property, and for improvements made thereon, including any
13 mechanic's lien lawfully obtained, and for legal taxes levied by a
14 state or local government, and for:

15 (a) Any mortgage or deed of trust thereon; and
16 (b) Any lien even if prior consent has been given through the
17 acceptance of property subject to any recorded declaration of
18 restrictions, deed restriction, restrictive covenant or equitable
19 servitude, specifically including any lien in favor of an association
20 pursuant to NRS 116.3116 or 117.070,
21 unless a waiver for the specific obligation to which the judgment
22 relates has been executed by all allodial titleholders of the property.

23 5. Establishment of allodial title does not exempt the property
24 from forfeiture pursuant to NRS 179.1156 to 179.119, inclusive, or
25 207.350 to 207.520, inclusive.

26 6. Any declaration of homestead which has been filed before
27 October 1, ~~1995,~~ 2003, shall be deemed to have been amended on
28 that date by extending the homestead exemption commensurate with
29 any increase in the amount of equity held by the claimant in the
30 property selected and claimed for the exemption up to the amount
31 permitted by law on that date, but the increase does not impair the
32 right of any creditor to execute upon the property when that right
33 existed before October 1, ~~1995,~~ 2003.

34 **Sec. 2.** NRS 115.050 is hereby amended to read as follows:
35 115.050 1. Whenever execution has been issued against the
36 property of a party claiming the property as a homestead, and the
37 creditor in the judgment makes an oath before the judge of
38 the district court of the county in which the property is situated, that
39 the amount of equity held by the claimant in the property exceeds, to
40 the best of the creditor's information and belief, the sum of
41 ~~125,000,~~ \$200,000, the judge shall, upon notice to the debtor,
42 appoint three disinterested and competent persons as appraisers to
43 estimate and report as to the amount of equity held by the claimant
44 in the property, and if the amount of equity exceeds the sum of
45 ~~125,000,~~ \$200,000, determine whether the property can be



1 divided so as to leave the property subject to the homestead
2 exemption without material injury.

3 2. If it appears, upon the report, to the satisfaction of the judge
4 that the property can be thus divided, he shall order the excess to be
5 sold under execution. If it appears that the property cannot be thus
6 divided, and the amount of equity held by the claimant in the
7 property exceeds the exemption allowed by this chapter, he shall
8 order the entire property to be sold, and out of the proceeds the sum
9 of ~~[\$125,000]~~ \$200,000 to be paid to the defendant in execution, and
10 the excess to be applied to the satisfaction on the execution. No bid
11 under ~~[\$125,000]~~ \$200,000 may be received by the officer making
12 the sale.

13 3. When the execution is against a husband or wife, the judge
14 may direct the ~~[\$125,000]~~ \$200,000 to be deposited in court, to be
15 paid out only upon the joint receipt of the husband and wife, and the
16 deposit possesses all the protection against legal process and
17 voluntary disposition by either spouse as did the original homestead.

18 **Sec. 3.** NRS 21.075 is hereby amended to read as follows:

19 21.075 1. Execution on the writ of execution by levying on
20 the property of the judgment debtor may occur only if the sheriff
21 serves the judgment debtor with a notice of the writ of execution
22 pursuant to NRS 21.076 and a copy of the writ. The notice must
23 describe the types of property exempt from execution and explain
24 the procedure for claiming those exemptions in the manner required
25 in subsection 2. The clerk of the court shall attach the notice to the
26 writ of execution at the time the writ is issued.

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

29
30 **NOTICE OF EXECUTION**

31
32 **YOUR PROPERTY IS BEING ATTACHED OR**
33 **YOUR WAGES ARE BEING GARNISHED**

34
35 A court has determined that you owe money
36 to(name of person), the judgment creditor. He
37 has begun the procedure to collect that money by garnishing
38 your wages, bank account and other personal property held by
39 third persons or by taking money or other property in your
40 possession.

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

- 44 1. Payments received under the Social Security Act.



- 1 2. Payments for benefits or the return of contributions
- 2 under the Public Employees' Retirement System.
- 3 3. Payments for public assistance granted through the
- 4 Welfare Division of the Department of Human Resources.
- 5 4. Proceeds from a policy of life insurance.
- 6 5. Payments of benefits under a program of industrial
- 7 insurance.
- 8 6. Payments received as unemployment compensation.
- 9 7. Veteran's benefits.
- 10 8. A homestead in a dwelling or a mobile home, not to
- 11 exceed ~~[\$125,000,]~~ \$200,000, unless:
- 12 (a) The judgment is for a medical bill, in which case all of
- 13 the primary dwelling, including a mobile or manufactured
- 14 home, may be exempt.
- 15 (b) Allodial title has been established and not relinquished
- 16 for the dwelling or mobile home, in which case all of the
- 17 dwelling or mobile home and its appurtenances are exempt,
- 18 including the land on which they are located, unless a valid
- 19 waiver executed pursuant to NRS 115.010 is applicable to the
- 20 judgment.
- 21 9. A vehicle, if your equity in the vehicle is less
- 22 than \$4,500.
- 23 10. Seventy-five percent of the take-home pay for any
- 24 pay period, unless the weekly take-home pay is less than 30
- 25 times the federal minimum wage, in which case the entire
- 26 amount may be exempt.
- 27 11. Money, not to exceed \$500,000 in present value,
- 28 held for retirement pursuant to certain arrangements or plans
- 29 meeting the requirements for qualified arrangements or plans
- 30 of sections 401 et seq. of the Internal Revenue Code , ~~§~~ 26
- 31 U.S.C. §§ 401 et seq. ~~§~~
- 32 12. All money and other benefits paid pursuant to the
- 33 order of a court of competent jurisdiction for the support,
- 34 education and maintenance of a child, whether collected by
- 35 the judgment debtor or the State.
- 36 13. All money and other benefits paid pursuant to the
- 37 order of a court of competent jurisdiction for the support and
- 38 maintenance of a former spouse, including the amount of any
- 39 arrearages in the payment of such support and maintenance to
- 40 which the former spouse may be entitled.
- 41 14. A vehicle for use by you or your dependent which is
- 42 specially equipped or modified to provide mobility for a
- 43 person with a permanent disability.



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

12
 13 **PROCEDURE FOR CLAIMING EXEMPT PROPERTY**

14
 15 If you believe that the money or property taken from you
 16 is exempt, you must complete and file with the clerk of the
 17 court a notarized affidavit claiming the exemption. A copy of the
 18 affidavit must be served upon the sheriff and the judgment
 19 creditor within 8 days after the notice of execution is mailed.
 20 The property must be returned to you within 5 days after you
 21 file the affidavit unless you or the judgment creditor files a
 22 motion for a hearing to determine the issue of exemption. If
 23 this happens, a hearing will be held to determine whether the
 24 property or money is exempt. The motion for the hearing to
 25 determine the issue of exemption must be filed within 10 days
 26 after the affidavit claiming exemption is filed. The hearing to
 27 determine whether the property or money is exempt must be
 28 held within 10 days after the motion for the hearing is filed.
 29

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

35
 36 **Sec. 4.** NRS 21.090 is hereby amended to read as follows:
 37 21.090 1. The following property is exempt from execution,
 38 except as otherwise specifically provided in this section:
 39 (a) Private libraries not to exceed \$1,500 in value, and all family
 40 pictures and keepsakes.
 41 (b) Necessary household goods, as defined in 16 C.F.R. §
 42 444.1(i) as that section existed on January 1, 1987, and yard
 43 equipment, not to exceed \$3,000 in value, belonging to the judgment
 44 debtor to be selected by him.



- 1 (c) Farm trucks, farm stock, farm tools, farm equipment,
2 supplies and seed not to exceed \$4,500 in value, belonging to the
3 judgment debtor to be selected by him.
- 4 (d) Professional libraries, office equipment, office supplies and
5 the tools, instruments and materials used to carry on the trade of the
6 judgment debtor for the support of himself and his family not to
7 exceed \$4,500 in value.
- 8 (e) The cabin or dwelling of a miner or prospector, his cars,
9 implements and appliances necessary for carrying on any mining
10 operations and his mining claim actually worked by him, not
11 exceeding \$4,500 in total value.
- 12 (f) Except as otherwise provided in paragraph (o), one vehicle if
13 the judgment debtor's equity does not exceed \$4,500 or the creditor
14 is paid an amount equal to any excess above that equity.
- 15 (g) For any pay period, 75 percent of the disposable earnings of
16 a judgment debtor during that period, or for each week of the period
17 30 times the minimum hourly wage prescribed by section 6(a)(1) of
18 the federal Fair Labor Standards Act of 1938 , **29 U.S.C. §**
19 **206(a)(1)**, and in effect at the time the earnings are payable,
20 whichever is greater. Except as otherwise provided in paragraphs
21 (n), (r) and (s), the exemption provided in this paragraph does not
22 apply in the case of any order of a court of competent jurisdiction
23 for the support of any person, any order of a court of bankruptcy or
24 of any debt due for any state or federal tax. As used in this
25 paragraph, "disposable earnings" means that part of the earnings of
26 a judgment debtor remaining after the deduction from those earnings
27 of any amounts required by law, to be withheld.
- 28 (h) All fire engines, hooks and ladders, with the carts, trucks and
29 carriages, hose, buckets, implements and apparatus thereunto
30 appertaining, and all furniture and uniforms of any fire company or
31 department organized under the laws of this state.
- 32 (i) All arms, uniforms and accouterments required by law to be
33 kept by any person, and also one gun, to be selected by the debtor.
- 34 (j) All courthouses, jails, public offices and buildings, lots,
35 grounds and personal property, the fixtures, furniture, books, papers
36 and appurtenances belonging and pertaining to the courthouse, jail
37 and public offices belonging to any county of this state, all
38 cemeteries, public squares, parks and places, public buildings, town
39 halls, markets, buildings for the use of fire departments and military
40 organizations, and the lots and grounds thereto belonging and
41 appertaining, owned or held by any town or incorporated city, or
42 dedicated by the town or city to health, ornament or public use, or
43 for the use of any fire or military company organized under the laws
44 of this state and all lots, buildings and other school property owned
45 by a school district and devoted to public school purposes.



1 (k) All money, benefits, privileges or immunities accruing or in
2 any manner growing out of any life insurance, if the annual
3 premium paid does not exceed \$1,000. If the premium exceeds that
4 amount, a similar exemption exists which bears the same proportion
5 to the money, benefits, privileges and immunities so accruing or
6 growing out of the insurance that the \$1,000 bears to the whole
7 annual premium paid.

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 and family, where the amount of equity held by the
14 judgment debtor in the home does not exceed ~~[\$125,000]~~ \$200,000
15 in value and the dwelling is ~~[situate]~~ *situated* upon lands not owned
16 by him.

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

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

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

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

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

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

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

34 (4) A trust forming part of a stock bonus, pension or profit-
35 sharing plan which is a qualified plan pursuant to sections 401 et
36 seq. of the Internal Revenue Code, ~~[§ 26 U.S.C. §§ 401 et seq. §]~~

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

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



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

5 3. Any exemptions specified in subsection (d) of section 522 of
6 the Bankruptcy Act of 1978 ~~[(92 Stat. 2586)]~~, *11 U.S.C. § 522(d)*,
7 do not apply to property owned by a resident of this state unless
8 conferred also by subsection 1, as limited by subsection 2. ~~[of this~~
9 ~~section.]~~

10 **Sec. 5.** NRS 31.045 is hereby amended to read as follows:

11 31.045 1. Execution on the writ of attachment by attaching
12 property of the defendant may occur only if:

13 (a) The judgment creditor serves the defendant with notice of
14 the execution when the notice of the hearing is served pursuant to
15 NRS 31.013; or

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

20 If the attachment occurs pursuant to an ex parte hearing, the clerk of
21 the court shall attach the notice to the writ of attachment at the time
22 the writ is issued.

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

25
26 NOTICE OF EXECUTION

27
28 YOUR PROPERTY IS BEING ATTACHED OR
29 YOUR WAGES ARE BEING GARNISHED

30
31 Plaintiff, (name of person), alleges that you
32 owe him money. He has begun the procedure to collect that
33 money. To secure satisfaction of judgment, the court has
34 ordered the garnishment of your wages, bank account or other
35 personal property held by third persons or the taking of
36 money or other property in your possession.

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

- 40 1. Payments received under the Social Security Act.
41 2. Payments for benefits or the return of contributions
42 under the Public Employees' Retirement System.
43 3. Payments for public assistance granted through the
44 Welfare Division of the Department of Human Resources.
45 4. Proceeds from a policy of life insurance.



- 1 5. Payments of benefits under a program of industrial
- 2 insurance.
- 3 6. Payments received as unemployment compensation.
- 4 7. Veteran's benefits.
- 5 8. A homestead in a dwelling or a mobile home, not to
- 6 exceed ~~[\$125,000,]~~ \$200,000, unless:
- 7 (a) The judgment is for a medical bill, in which case all of
- 8 the primary dwelling, including a mobile or manufactured
- 9 home, may be exempt.
- 10 (b) Allodial title has been established and not relinquished
- 11 for the dwelling or mobile home, in which case all of the
- 12 dwelling or mobile home and its appurtenances are exempt,
- 13 including the land on which they are located, unless a valid
- 14 waiver executed pursuant to NRS 115.010 is applicable to the
- 15 judgment.
- 16 9. A vehicle, if your equity in the vehicle is less
- 17 than \$4,500.
- 18 10. Seventy-five percent of the take-home pay for any
- 19 pay period, unless the weekly take-home pay is less than 30
- 20 times the federal minimum wage, in which case the entire
- 21 amount may be exempt.
- 22 11. Money, not to exceed \$500,000 in present value,
- 23 held for retirement pursuant to certain arrangements or plans
- 24 meeting the requirements for qualified arrangements or plans
- 25 of sections 401 et seq. of the Internal Revenue Code , ~~§~~ 26
- 26 U.S.C. §§ 401 et seq. ~~§~~
- 27 12. All money and other benefits paid pursuant to the
- 28 order of a court of competent jurisdiction for the support,
- 29 education and maintenance of a child, whether collected by
- 30 the judgment debtor or the State.
- 31 13. All money and other benefits paid pursuant to the
- 32 order of a court of competent jurisdiction for the support and
- 33 maintenance of a former spouse, including the amount of any
- 34 arrearages in the payment of such support and maintenance to
- 35 which the former spouse may be entitled.
- 36 14. A vehicle for use by you or your dependent which is
- 37 specially equipped or modified to provide mobility for a
- 38 person with a permanent disability.
- 39 15. A prosthesis or any equipment prescribed by a
- 40 physician or dentist for you or your dependent.
- 41 These exemptions may not apply in certain cases such as
- 42 proceedings to enforce a judgment for support of a child or a
- 43 judgment of foreclosure on a mechanic's lien. You should
- 44 consult an attorney immediately to assist you in determining
- 45 whether your property or money is exempt from execution. If



1 you cannot afford an attorney, you may be eligible for
2 assistance through (name of organization in
3 county providing legal services to the indigent or elderly
4 persons).
5

6 **PROCEDURE FOR CLAIMING EXEMPT PROPERTY**
7

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

21 **IF YOU DO NOT FILE THE AFFIDAVIT WITHIN THE**
22 **TIME SPECIFIED, YOUR PROPERTY MAY BE SOLD**
23 **AND THE MONEY GIVEN TO THE JUDGMENT**
24 **CREDITOR, EVEN IF THE PROPERTY OR MONEY IS**
25 **EXEMPT.**
26

27 If you received this notice with a notice of a hearing for
28 attachment and you believe that the money or property which
29 would be taken from you by a writ of attachment is exempt or
30 necessary for the support of you or your family, you are
31 entitled to describe to the court at the hearing why you
32 believe your property is exempt. You may also file a motion
33 with the court for a discharge of the writ of attachment. You
34 may make that motion any time before trial. A hearing will be
35 held on that motion.
36

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

