

Senator Stephen H. Urquhart proposes the following substitute bill:

HOMESTEAD EXEMPTION MODIFICATION

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies the homestead exemptions by increasing it and providing special exceptions for disabled individuals, widows and widowers, and tools of a trade.

Highlighted Provisions:

This bill:

- ▶ defines "disabled" in accordance with the Social Security Act;
- ▶ increases the exemption for a primary residence from \$20,000 to \$50,000 and adds an additional \$50,000 if the individual is disabled or a widow or widower who has not remarried;
- ▶ requires a judgement creditor who purchases a property at a sheriff's sale to pay the amount of the homestead exemption to the sheriff in cash;
- ▶ exempts vehicles which have been retrofitted to accommodate a disabled individual;
- ▶ exempts an extra \$1,000 of property which would not otherwise be exempt;
- ▶ increases the exemption for professional books and tools of a trade from \$3,500 to \$20,000;
- ▶ adds livestock, farm implements and animals, and crops to tools of a trade;
- ▶ increases the exemption for a vehicle from \$2,500 to \$5,000 and allows it to be divided over more than one vehicle; and



26 ▶ provides a look-back provision to allow a bankruptcy court to include otherwise
27 exempt property if purchased within six months of filing bankruptcy.

28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **78B-5-502**, as renumbered and amended by Laws of Utah 2008, Chapter 3

35 **78B-5-503**, as last amended by Laws of Utah 2010, Chapter 131

36 **78B-5-505**, as renumbered and amended by Laws of Utah 2008, Chapter 3

37 **78B-5-506**, as renumbered and amended by Laws of Utah 2008, Chapter 3



39 *Be it enacted by the Legislature of the state of Utah:*

40 Section 1. Section **78B-5-502** is amended to read:

41 **78B-5-502. Definitions.**

42 As used in this part:

43 (1) "Debt" means a legally enforceable monetary obligation or liability of an
44 individual, whether arising out of contract, tort, or otherwise.

45 (2) "Dependent" means the spouse of an individual, and the grandchild or the natural or
46 adoptive child of an individual who derives support primarily from that individual.

47 (3) "Disabled" means having a disability as defined by Sec. 416 of the Social Security
48 Act.

49 ~~(3)~~ (4) "Exempt" means protected, and "exemption" means protection from
50 subjection to a judicial process to collect an unsecured debt.

51 ~~(4)~~ (5) "Judicial lien" means a lien on property obtained by judgment or other legal
52 process instituted for the purpose of collecting an unsecured debt.

53 ~~(5)~~ (6) "Levy" means the seizure of property pursuant to any legal process issued for
54 the purpose of collecting an unsecured debt.

55 ~~(6)~~ (7) "Lien" means a judicial, or statutory lien, in property securing payment of a
56 debt or performance of an obligation.

57 ~~[(7)]~~ (8) "Liquid assets" means deposits, securities, notes, drafts, unpaid earnings not
58 otherwise exempt, accrued vacation pay, refunds, prepayments, and other receivables.

59 ~~[(8)]~~ (9) "Security interest" means an interest in property created by contract to secure
60 payment or performance of an obligation.

61 ~~[(9)]~~ (10) "Statutory lien" means a lien arising by force of a statute, but does not
62 include a security interest or a judicial lien.

63 ~~[(10)]~~ (11) "Value" means fair market value of an individual's interest in property,
64 exclusive of valid liens.

65 Section 2. Section **78B-5-503** is amended to read:

66 **78B-5-503. Homestead exemption -- Definitions -- Excepted obligations -- Water**
67 **rights and interests -- Conveyance -- Sale and disposition -- Property right for federal tax**
68 **purposes.**

69 (1) For purposes of this section:

70 (a) "Household" means a group of persons related by blood or marriage living together
71 in the same dwelling as an economic unit, sharing furnishings, facilities, accommodations, and
72 expenses.

73 (b) "Mobile home" is as defined in Section 57-16-3.

74 (c) "Primary personal residence" means a dwelling or mobile home, and the land
75 surrounding it, not exceeding one acre, as is reasonably necessary for the use of the dwelling or
76 mobile home, in which the individual and the individual's household reside.

77 (d) "Property" means:

78 (i) a primary personal residence;

79 (ii) real property; or

80 (iii) an equitable interest in real property, including an interest awarded to a person in a
81 divorce decree by a court.

82 (2) (a) An individual is entitled to a homestead exemption consisting of property in this
83 state in an amount not exceeding:

84 (i) \$5,000 in value if the property consists in whole or in part of property which is not
85 the primary personal residence of the individual; or

86 (ii) ~~[\$20,000]~~ \$50,000 in value if the property claimed is the primary personal
87 residence of the individual and an additional \$50,000 if the individual is disabled or a widow or

88 widower who has not remarried.

89 (b) If the property claimed as exempt is jointly owned, each joint owner is entitled to a
90 homestead exemption; however

91 (i) for property exempt under Subsection (2)(a)(i), the maximum exemption may not
92 exceed ~~[\$10,000]~~ \$100,000 per household; or

93 (ii) for property exempt under Subsection (2)(a)(ii), the maximum exemption may not
94 exceed \$40,000 per household.

95 (c) A person may claim a homestead exemption in either or both of the following:

96 (i) one or more parcels of real property together with appurtenances and improvements;

97 or

98 (ii) a mobile home in which the claimant resides.

99 (d) A person may not claim a homestead exemption for property that the person
100 acquired as a result of criminal activity.

101 (3) (a) A homestead is exempt from judicial lien and from levy, execution, or forced
102 sale except for:

103 ~~[(a)]~~ (i) statutory liens for property taxes and assessments on the property;

104 ~~[(b)]~~ (ii) security interests in the property and judicial liens for debts created for the
105 purchase price of the property;

106 ~~[(c)]~~ (iii) judicial liens obtained on debts created by failure to provide support or
107 maintenance for dependent children; and

108 ~~[(d)]~~ (iv) consensual liens obtained on debts created by mutual contract.

109 (b) If a property is sold at a sheriff's sale, the homestead claim amount shall be paid by
110 the judgement creditor in cash to the sheriff at or before the time of sale for immediate
111 transmittal by the sheriff to the individual entitled to the exemption.

112 (4) (a) Except as provided in Subsection (4)(b), water rights and interests, either in the
113 form of corporate stock or otherwise, owned by the homestead claimant are exempt from
114 execution to the extent that those rights and interests are necessarily employed in supplying
115 water to the homestead for domestic and irrigating purposes.

116 (b) Those water rights and interests are not exempt from calls or assessments and sale
117 by the corporations issuing the stock.

118 (5) (a) When a homestead is conveyed by the owner of the property, the conveyance

119 may not subject the property to any lien to which it would not be subject in the hands of the
120 owner.

121 (b) The proceeds of any sale, to the amount of the exemption existing at the time of
122 sale, is exempt from levy, execution, or other process for one year after the receipt of the
123 proceeds by the person entitled to the exemption.

124 (6) The sale and disposition of one homestead does not prevent the selection or
125 purchase of another.

126 (7) For purposes of any claim or action for taxes brought by the United States Internal
127 Revenue Service, a homestead exemption claimed on real property in this state is considered to
128 be a property right.

129 Section 3. Section **78B-5-505** is amended to read:

130 **78B-5-505. Property exempt from execution.**

131 (1) (a) An individual is entitled to exemption of the following property:

132 (i) a burial plot for the individual and the individual's family;

133 (ii) health aids reasonably necessary to enable the individual or a dependent to work or
134 sustain health, including vehicles retrofitted to accommodate a disability of the individual or a
135 dependent;

136 (iii) benefits the individual or the individual's dependent have received or are entitled
137 to receive from any source because of:

138 (A) disability;

139 (B) illness; or

140 (C) unemployment;

141 (iv) benefits paid or payable for medical, surgical, or hospital care to the extent they are
142 used by an individual or the individual's dependent to pay for that care;

143 (v) veterans benefits;

144 (vi) money or property received, and rights to receive money or property for child
145 support;

146 (vii) money or property received, and rights to receive money or property for alimony
147 or separate maintenance, to the extent reasonably necessary for the support of the individual
148 and the individual's dependents;

149 (viii) (A) one:

- 150 (I) clothes washer and dryer;
- 151 (II) refrigerator;
- 152 (III) freezer;
- 153 (IV) stove;
- 154 (V) microwave oven; and
- 155 (VI) sewing machine;
- 156 (B) all carpets in use;
- 157 (C) provisions sufficient for 12 months actually provided for individual or family use;
- 158 (D) all wearing apparel of every individual and dependent, not including jewelry or
- 159 furs; and
- 160 (E) all beds and bedding for every individual or dependent;
- 161 (ix) except for works of art held by the debtor as part of a trade or business, works of
- 162 art:
- 163 (A) depicting the debtor or the debtor and his resident family; or
- 164 (B) produced by the debtor or the debtor and his resident family;
- 165 (x) proceeds of insurance, a judgment, or a settlement, or other rights accruing as a
- 166 result of bodily injury of the individual or of the wrongful death or bodily injury of another
- 167 individual of whom the individual was or is a dependent to the extent that those proceeds are
- 168 compensatory;
- 169 (xi) the proceeds or benefits of any life insurance contracts or policies paid or payable
- 170 to the debtor or any trust of which the debtor is a beneficiary upon the death of the spouse or
- 171 children of the debtor, provided that the contract or policy has been owned by the debtor for a
- 172 continuous unexpired period of one year;
- 173 (xii) the proceeds or benefits of any life insurance contracts or policies paid or payable
- 174 to the spouse or children of the debtor or any trust of which the spouse or children are
- 175 beneficiaries upon the death of the debtor, provided that the contract or policy has been in
- 176 existence for a continuous unexpired period of one year;
- 177 (xiii) proceeds and avails of any unmatured life insurance contracts owned by the
- 178 debtor or any revocable grantor trust created by the debtor, excluding any payments made on
- 179 the contract during the one year immediately preceding a creditor's levy or execution;
- 180 (xiv) except as provided in Subsection (1)(b), any money or other assets held for or

181 payable to the individual as a participant or beneficiary from or an interest of the individual as
 182 a participant or beneficiary in a retirement plan or arrangement that is described in Section
 183 401(a), 401(h), 401(k), 403(a), 403(b), 408, 408A, 409, 414(d), or 414(e), or 457 of the Internal
 184 Revenue Code; [~~and~~]

185 (xv) the interest of or any money or other assets payable to an alternate payee under a
 186 qualified domestic relations order as those terms are defined in Section 414(p), Internal
 187 Revenue Code[-]; and

188 (xvi) any property not otherwise exempt up to an aggregate value of \$1,000.

189 (b) The exemption granted by Subsection (1)(a)(xiv) does not apply to:

190 (i) an alternate payee under a qualified domestic relations order, as those terms are
 191 defined in Section 414(p), Internal Revenue Code; or

192 (ii) amounts contributed or benefits accrued by or on behalf of a debtor within one year
 193 before the debtor files for bankruptcy. This may not include amounts directly rolled over from
 194 other funds which are exempt from attachment under this section.

195 (2) The exemptions in Subsections (1)(a)(xi), (xii), and (xiii) do not apply to proceeds
 196 and avails of any matured or unmatured life insurance contract assigned or pledged as collateral
 197 for repayment of a loan or other legal obligation.

198 (3) Exemptions under this section do not limit items that may be claimed as exempt
 199 under Section 78B-5-506.

200 Section 4. Section **78B-5-506** is amended to read:

201 **78B-5-506. Value of exempt property -- Exemption of implements, professional**
 202 **books, tools, and motor vehicle.**

203 (1) An individual is entitled to exemption of the following property up to an aggregate
 204 value of items in each subsection of \$500:

205 (a) sofas, chairs, and related furnishings reasonably necessary for one household;

206 (b) dining and kitchen tables and chairs reasonably necessary for one household;

207 (c) animals, books, and musical instruments, if reasonably held for the personal use of
 208 the individual or his dependents; and

209 (d) heirlooms or other items of particular sentimental value to the individual.

210 (2) (a) An individual is entitled to an exemption, not exceeding [~~\$3,500~~] \$20,000 in
 211 aggregate value, of implements, professional books, or tools of [~~his trade~~] the individual's

212 trade, including livestock, farm animals, farm crops or farm implements, if the items were used
213 within the previous 12 months or are reasonably anticipated to be used to earn income in the
214 next 18 months.

215 (b) The exemption in this Subsection (1) may be aggregated with the exemption in
216 Subsection 3(b) to exempt one or more motor vehicles that are used primarily as a tool of the
217 individual's trade.

218 (3) (a) As used in this Subsection (3), "motor vehicle" does not include any motor
219 vehicle designed for or used primarily for recreational purposes, such as:

220 (i) an off-highway vehicle as defined in Section 41-22-2, except a motorcycle the
221 individual regularly uses for daily transportation; or

222 (ii) a recreational vehicle as defined in Section 13-14-102, except a van the individual
223 regularly uses for daily transportation.

224 (b) An individual is entitled to an exemption, not exceeding [~~\$2,500~~] \$5,000 in value,
225 of one motor vehicle. The total amount of this Subsection (3)(b) may be divided over one or
226 more vehicles of a spouse or a dependent.

227 (4) This section does not affect property exempt under Section 78B-5-505.

228 (5) In any bankruptcy proceeding involving more than 50% consumer debt, the
229 exemption amounts for personal property provided for in this chapter shall be reduced by the
230 amount of any proceeds of any unsecured loan or charge account that was:

231 (a) acquired within six months of the filing of the bankruptcy petition; and

232 (b) actually used to purchase the item of personal property for which an exemption for
233 personal property is claimed.

234 (6) Notwithstanding the provisions of Subsection (5), the exemption is available to the
235 extent that the principal of the loan or charge account used to purchase the item has been paid,
236 unless the principal was paid with funds from another unsecured loan or charge account
237 currently included in a bankruptcy proceeding.