

SB0116S01 compared with SB0116

~~text~~ shows text that was in SB0116 but was deleted in SB0116S01.

inserted text shows text that was not in SB0116 but was inserted into SB0116S01.

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

Highlighted Provisions:

This bill:

- ▶ ~~increases~~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 ~~from \$20,000 to \$100,000 for the primary~~

SB0116S01 compared with SB0116

~~residence for one person; and~~ 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 ~~{amount of the homestead exemption from \$40,000 to \$150,000 for a jointly owned primary residence}~~ 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
- ▶ provides a look-back provision to allow a bankruptcy court to include otherwise exempt property if purchased within six months of filing bankruptcy.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

78B-5-502. Definitions.

As used in this part:

- (1) "Debt" means a legally enforceable monetary obligation or liability of an individual, whether arising out of contract, tort, or otherwise.
- (2) "Dependent" means the spouse of an individual, and the grandchild or the natural or adoptive child of an individual who derives support primarily from that individual.
- (3) "Disabled" means having a disability as defined by Sec. 416 of the Social Security

SB0116S01 compared with SB0116

Act.

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

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

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

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

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

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

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

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

Section ~~[(1)]~~2. Section **78B-5-503** is amended to read:

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

(1) For purposes of this section:

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

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

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

(d) "Property" means:

~~[(1)]~~i a primary personal residence;

SB0116S01 compared with SB0116

(ii) real property; or

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

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

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

(ii) ~~[\$20,000]~~ ~~+\$100,~~\$50,000 in value if the property claimed is the primary personal residence of the individual and an additional \$50,000 if the individual is disabled or a widow or widower who has not remarried.

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

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

(ii) for property exempt under Subsection (2)(a)(ii), the maximum exemption may not exceed ~~+\$40,000~~ ~~+\$150,000~~ per household.

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

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

or

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

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

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

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

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

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

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

(b) If a property is sold at a sheriff's sale, the homestead claim amount shall be paid by

SB0116S01 compared with SB0116

the judgement creditor in cash to the sheriff at or before the time of sale for immediate transmittal by the sheriff to the individual entitled to the exemption.

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

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

(5) (a) When a homestead is conveyed by the owner of the property, the conveyance may not subject the property to any lien to which it would not be subject in the hands of the owner.

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

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

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

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Legislative Review Note

— as of 1-12-11 1:27 PM

— ~~Office of Legislative Research and General Counsel~~; Section 3. Section 78B-5-505 is amended to read:

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

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

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

SB0116S01 compared with SB0116

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

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

(A) disability;

(B) illness; or

(C) unemployment;

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

(v) veterans benefits;

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

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

(viii) (A) one:

(I) clothes washer and dryer;

(II) refrigerator;

(III) freezer;

(IV) stove;

(V) microwave oven; and

(VI) sewing machine;

(B) all carpets in use;

(C) provisions sufficient for 12 months actually provided for individual or family use;

(D) all wearing apparel of every individual and dependent, not including jewelry or furs; and

(E) all beds and bedding for every individual or dependent;

(ix) except for works of art held by the debtor as part of a trade or business, works of art:

(A) depicting the debtor or the debtor and his resident family; or

SB0116S01 compared with SB0116

(B) produced by the debtor or the debtor and his resident family;

(x) proceeds of insurance, a judgment, or a settlement, or other rights accruing as a result of bodily injury of the individual or of the wrongful death or bodily injury of another individual of whom the individual was or is a dependent to the extent that those proceeds are compensatory;

(xi) the proceeds or benefits of any life insurance contracts or policies paid or payable to the debtor or any trust of which the debtor is a beneficiary upon the death of the spouse or children of the debtor, provided that the contract or policy has been owned by the debtor for a continuous unexpired period of one year;

(xii) the proceeds or benefits of any life insurance contracts or policies paid or payable to the spouse or children of the debtor or any trust of which the spouse or children are beneficiaries upon the death of the debtor, provided that the contract or policy has been in existence for a continuous unexpired period of one year;

(xiii) proceeds and avails of any unexpired life insurance contracts owned by the debtor or any revocable grantor trust created by the debtor, excluding any payments made on the contract during the one year immediately preceding a creditor's levy or execution;

(xiv) except as provided in Subsection (1)(b), any money or other assets held for or payable to the individual as a participant or beneficiary from or an interest of the individual as a participant or beneficiary in a retirement plan or arrangement that is described in Section 401(a), 401(h), 401(k), 403(a), 403(b), 408, 408A, 409, 414(d), or 414(e), or 457 of the Internal Revenue Code; [and]

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

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

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

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

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

SB0116S01 compared with SB0116

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

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

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

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

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

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

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

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

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

(2) (a) An individual is entitled to an exemption, not exceeding [~~\$3,500~~] \$20,000 in aggregate value, of implements, professional books, or tools of [~~his trade~~] the individual's trade, including livestock, farm animals, farm crops or farm implements, if the items were used within the previous 12 months or are reasonably anticipated to be used to earn income in the next 18 months.

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

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

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

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

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

SB0116S01 compared with SB0116

more vehicles of a spouse or a dependent.

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

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

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

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

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