

EXEMPTIONS REVISIONS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to property and assets exempted from execution of a judgment with regard to certain retirement, beneficiary, and similar accounts.

Highlighted Provisions:

This bill:

▶ amends provisions related to property and assets exempted from execution of a judgment to include certain inherited funds or accounts described in the Internal Revenue Code;

▶ provides that certain exemptions do not terminate upon the death of the individual, or by reason of a direct transfer; and

▶ exempts assets deposited into certain higher education savings accounts.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-5-505, as last amended by Laws of Utah 2016, Chapter 262

78B-5-507, as renumbered and amended by Laws of Utah 2008, Chapter 3



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

29 Section 1. Section **78B-5-505** is amended to read:

30 **78B-5-505. Property exempt from execution.**

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

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

33 (ii) health aids reasonably necessary to enable the individual or a dependent to work or
34 sustain health;

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

37 (A) disability;

38 (B) illness; or

39 (C) unemployment;

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

42 (v) veterans benefits;

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

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

48 (viii) (A) one:

49 (I) clothes washer and dryer;

50 (II) refrigerator;

51 (III) freezer;

52 (IV) stove;

53 (V) microwave oven; and

54 (VI) sewing machine;

55 (B) all carpets in use;

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

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

- 59 (E) all beds and bedding for every individual or dependent;
- 60 (ix) except for works of art held by the debtor as part of a trade or business, works of
61 art:
- 62 (A) depicting the debtor or the debtor and his resident family; or
- 63 (B) produced by the debtor or the debtor and his resident family;
- 64 (x) proceeds of insurance, a judgment, or a settlement, or other rights accruing as a
65 result of bodily injury of the individual or of the wrongful death or bodily injury of another
66 individual of whom the individual was or is a dependent to the extent that those proceeds are
67 compensatory;
- 68 (xi) the proceeds or benefits of any life insurance contracts or policies paid or payable
69 to the debtor or any trust of which the debtor is a beneficiary upon the death of the spouse or
70 children of the debtor, provided that the contract or policy has been owned by the debtor for a
71 continuous unexpired period of one year;
- 72 (xii) the proceeds or benefits of any life insurance contracts or policies paid or payable
73 to the spouse or children of the debtor or any trust of which the spouse or children are
74 beneficiaries upon the death of the debtor, provided that the contract or policy has been in
75 existence for a continuous unexpired period of one year;
- 76 (xiii) proceeds and avails of any unmatured life insurance contracts owned by the
77 debtor or any revocable grantor trust created by the debtor, excluding any payments made on
78 the contract during the one year immediately preceding a creditor's levy or execution;
- 79 (xiv) except as provided in Subsection (1)(b), and except for a judgment described in
80 Subsection 75-7-503(2)(c), any money or other assets held for or payable to the individual as [a
81 participant or beneficiary] an owner, a participant, or a beneficiary from or an interest of the
82 individual as [a participant or beneficiary in a retirement plan or arrangement] an owner, a
83 participant, or a beneficiary in a fund or account, including an inherited fund or account, that is
84 described in Section 401(a), 401(h), 401(k), 403(a), 403(b), 408, 408A, 409, 414(d), 414(e), or
85 457, Internal Revenue Code, including an owner's, a participant's, or a beneficiary's interest
86 which arises by inheritance, designation, appointment, or otherwise;
- 87 (xv) the interest of or any money or other assets payable to an alternate payee under a
88 qualified domestic relations order as those terms are defined in Section 414(p), Internal
89 Revenue Code;

90 (xvi) unpaid earnings of the household of the filing individual due as of the date of the
91 filing of a bankruptcy petition in the amount of 1/24 of the Utah State annual median family
92 income for the household size of the filing individual as determined by the Utah State Annual
93 Median Family Income reported by the United States Census Bureau and as adjusted based
94 upon the Consumer Price Index for All Urban Consumers for an individual whose unpaid
95 earnings are paid more often than once a month or, if unpaid earnings are not paid more often
96 than once a month, then in the amount of 1/12 of the Utah State annual median family income
97 for the household size of the individual as determined by the Utah State Annual Median Family
98 Income reported by the United States Census Bureau and as adjusted based upon the Consumer
99 Price Index for All Urban Consumers; ~~and~~

100 (xvii) except for curio or relic firearms, as defined in Section 76-10-501, any three of
101 the following:

102 (A) one handgun and ammunition for the handgun not exceeding 1,000 rounds;

103 (B) one shotgun and ammunition for the shotgun not exceeding 1,000 rounds; and

104 (C) one shoulder arm and ammunition for the shoulder arm not exceeding 1,000
105 rounds~~[-]; and~~

106 (xviii) a tax-advantaged method of saving for higher education costs on behalf of a
107 particular individual that meets the requirements of Section 529, Internal Revenue Code.

108 (b) (i) Any money or other assets or any interest in any fund or account that is exempt
109 from claims of creditors of the owner, beneficiary, or participant under Subsection (1)(a)(xiv)
110 does not cease to be exempt after the owner's, participant's, or beneficiary's death by reason of a
111 direct transfer or eligible rollover that is excluded from gross income under the Internal
112 Revenue Code, including, a direct transfer or eligible rollover to an inherited individual
113 retirement account as defined in Section 408(d)(3), Internal Revenue Code.

114 (ii) Subsections (1)(a)(xiv) and (1)(b)(i) shall apply to all inherited individual
115 retirement accounts without regard to the date an account was created.

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

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

119 ~~(ii)~~ (B) amounts contributed or benefits accrued by or on behalf of a debtor within
120 one year before the debtor files for bankruptcy.

121 (ii) This may not include amounts directly rolled over from other funds which are
122 exempt from attachment under this section.

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

126 (3) (a) Disability benefits, as described in Subsection (1)(a)(iii)(A), and veterans
127 benefits, as described in Subsection (1)(a)(v), may be garnished on behalf of a child victim if
128 the person receiving the benefits has been convicted of a felony sex offense against a child and
129 ordered by the convicting court to pay restitution to the victim.

130 (b) The exemption from execution under this section shall be reinstated upon payment
131 of the restitution in full.

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

134 Section 2. Section 78B-5-507 is amended to read:

135 **78B-5-507. Exemption of proceeds from property sold, taken by condemnation,**
136 **lost, damaged, or destroyed -- Tracing exempt property and proceeds.**

137 (1) (a) An individual who owned property described in this Subsection (1) is entitled to
138 an exemption of proceeds that are traceable for one year after the compensation for the property
139 is received if:

140 (i) (A) the property, or a part of the property, could have been claimed exempt under
141 Subsection 78B-5-505(1)(a)(i) or (ii); or

142 (B) the property is personal property subject to a value limitation under Subsection
143 78B-5-506(1)(a), (b), or (c); and

144 (ii) the property has been:

145 (A) sold or taken by condemnation; or

146 (B) lost, damaged, or destroyed; and

147 (C) the owner has been compensated for the property.

148 (b) The exemption of proceeds under this Subsection (1) does not entitle the individual
149 to claim an aggregate exemption in excess of the value limitation otherwise allowable under
150 Section 78B-5-503 or 78B-5-506.

151 (2) Money or other property exempt under Subsection 78B-5-505(1)(a)(iii), (iv), (v),

152 (vi), (vii), (xiii), [~~or~~] (xiv), or (xviii) remains exempt after its receipt by, and while it is in the
153 possession of, the individual or in any other form into which it is traceable.

154 (3) Money or other property and proceeds exempt under this chapter are traceable
155 under this section by application of:

156 (a) the principle of:

157 (i) first-in first-out; or

158 (ii) last-in last-out; or

159 (b) any other reasonable basis for tracing selected by the individual.