

EXEMPTIONS AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kelly B. Miles

Senate Sponsor: Lyle W. Hillyard

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 that are 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;

- ▶ amends provisions related to the tracing of property; and

- ▶ makes technical and conforming changes.

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 2019, Chapter 298

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

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

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

31 **78B-5-505. Property exempt from execution.**

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

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

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

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

38 (A) disability;

39 (B) illness; or

40 (C) unemployment;

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

43 (v) veterans benefits;

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

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

49 (viii) (A) one:

50 (I) clothes washer and dryer;

51 (II) refrigerator;

52 (III) freezer;

53 (IV) stove;

54 (V) microwave oven; and

55 (VI) sewing machine;

56 (B) all carpets in use;

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

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

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

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

63 (A) depicting the debtor or the debtor and the debtor's resident family; or

64 (B) produced by the debtor or the debtor and the debtor's resident family;

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

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

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

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

80 (xiv) except as provided in Subsection (1)(b), and except for a judgment described in
81 Subsection 75-7-503(2)(c), any money or other assets held for or payable to the individual as [a
82 participant or beneficiary] an owner, participant, or beneficiary from or an interest of the
83 individual as [a participant or beneficiary] an owner, participant, or beneficiary in a fund or
84 account, including an inherited fund or account, in a retirement plan or arrangement that is
85 described in Section 401(a), 401(h), 401(k), 403(a), 403(b), 408, 408A, 409, 414(d), 414(e), or

86 457, Internal Revenue Code, including an owner's, a participant's, or a beneficiary's interest that
87 arises by inheritance, designation, appointment, or otherwise;

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

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

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

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

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

105 (C) one shoulder arm and ammunition for the shoulder arm not exceeding 1,000
106 rounds; and

107 (xviii) money, not exceeding \$200,000, in the aggregate, that an individual deposits,
108 more than 18 months before the day on which the individual files a petition for bankruptcy or
109 an action is filed by a creditor against the individual, as applicable, in all tax-advantaged
110 accounts for saving for higher education costs on behalf of a particular individual that meets
111 the requirements of Section 529, Internal Revenue Code.

112 (b) (i) Any money, asset, or other interest in a fund or account that is exempt from a
113 claim of a creditor of the owner, beneficiary, or participant under Subsection (1)(a)(xiv) does

114 not cease to be exempt after the owner's, participant's, or beneficiary's death by reason of a
115 direct transfer or eligible rollover to an inherited individual retirement account as defined in
116 Section 408(d)(3), Internal Revenue Code.

117 (ii) Subsections (1)(a)(xiv) and (1)(b)(i) apply to all inherited individual retirement
118 accounts without regard to the date on which the account was created.

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

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

122 [~~(ii)~~] (B) amounts contributed or benefits accrued by or on behalf of a debtor within
123 one year before the debtor files for bankruptcy, except amounts directly rolled over from other
124 funds that are exempt from attachment under this section.

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

128 [~~(3)~~] (2) (a) Disability benefits, as described in Subsection (1)(a)(iii)(A), and veterans
129 benefits, as described in Subsection (1)(a)(v), may be garnished on behalf of a child victim if
130 the person receiving the benefits has been convicted of a felony sex offense against a child and
131 ordered by the convicting court to pay restitution to the victim.

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

134 [~~(4)~~] (3) Exemptions under this section do not limit items that may be claimed as
135 exempt under Section 78B-5-506.

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

137 **78B-5-507. Exemption of proceeds from property sold, taken by condemnation,**
138 **lost, damaged, or destroyed -- Tracing exempt property and proceeds.**

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

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

144 (B) the property is personal property subject to a value limitation under Subsection
145 78B-5-506(1)(a), (b), or (c); and

146 (ii) the property has been:

147 (A) sold or taken by condemnation; or

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

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

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

153 (2) Money or other property exempt under Subsection 78B-5-505(1)(a)(iii), (iv), (v),
154 (vi), (vii), (xiii), [~~or~~] (xiv), or (xviii) remains exempt after its receipt by, and while it is in the
155 possession of, the individual or in any other form into which it is traceable.

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

158 (a) the principle of:

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

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

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