

UTAH EXEMPTION CODE AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: David L. Gladwell

LONG TITLE

General Description:

This bill makes changes to the Utah Exemptions Act.

Highlighted Provisions:

This bill:

- ▶ clarifies that a mobile home may be considered a primary residence under the homestead exemption; and
- ▶ states that funds rolled over from an exempt retirement fund into another exempt retirement fund are exempt in bankruptcy proceedings.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78-23-3, as last amended by Chapter 370, Laws of Utah 1999

78-23-5, as last amended by Chapter 370, Laws of Utah 1999

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

Section 1. Section **78-23-3** is amended to read:

78-23-3. Homestead exemption -- Definitions -- Excepted obligations -- Water rights and interests -- Conveyance -- Sale and disposition -- Property right for federal tax



28 **purposes.**

29 (1) For purposes of this section:

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

33 (b) "primary personal residence" means a dwelling or mobile home, and the land
34 surrounding it, not exceeding one acre, as is reasonably necessary for the use of the dwelling or
35 mobile home, in which the individual and the individual's household reside; and

36 (c) "property" means:

37 (i) a primary personal residence;

38 (ii) real property; or

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

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

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

45 (ii) \$20,000 in value if the property claimed is the primary personal residence of the
46 individual.

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

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

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

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

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

55 or

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

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

- 59 (a) statutory liens for property taxes and assessments on the property;
- 60 (b) security interests in the property and judicial liens for debts created for the purchase
- 61 price of the property;
- 62 (c) judicial liens obtained on debts created by failure to provide support or maintenance
- 63 for dependent children; and
- 64 (d) consensual liens obtained on debts created by mutual contract.

65 (4) (a) Except as provided in Subsection (4)(b), water rights and interests, either in the

66 form of corporate stock or otherwise, owned by the homestead claimant are exempt from

67 execution to the extent that those rights and interests are necessarily employed in supplying

68 water to the homestead for domestic and irrigating purposes.

69 (b) Those water rights and interests are not exempt from calls or assessments and sale

70 by the corporations issuing the stock.

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

72 may not subject the property to any lien to which it would not be subject in the hands of the

73 owner.

74 (b) The proceeds of any sale, to the amount of the exemption existing at the time of

75 sale, is exempt from levy, execution, or other process for one year after the receipt of the

76 proceeds by the person entitled to the exemption.

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

78 purchase of another.

79 (7) For purposes of any claim or action for taxes brought by the United States Internal

80 Revenue Service, a homestead exemption claimed on real property in this state is considered to

81 be a property right.

82 Section 2. Section **78-23-5** is amended to read:

83 **78-23-5. Property exempt from execution.**

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

- 85 (i) a burial plot for the individual and his family;
- 86 (ii) health aids reasonably necessary to enable the individual or a dependent to work or
- 87 sustain health;
- 88 (iii) benefits the individual or his dependent have received or are entitled to receive
- 89 because of disability, illness, or unemployment from any source;

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

92 (v) veterans benefits;

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

95 (vii) one clothes washer and dryer, one refrigerator, one freezer, one stove, one
96 microwave oven, one sewing machine, all carpets in use, provisions sufficient for 12 months
97 actually provided for individual or family use, all wearing apparel of every individual and
98 dependent, not including jewelry or furs, and all beds and bedding for every individual or
99 dependent;

100 (viii) works of art depicting the debtor or the debtor and his resident family, or
101 produced by the debtor or the debtor and his resident family, except works of art held by the
102 debtor as part of a trade or business;

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

107 (x) except as provided in Subsection (1)(b), any money or other assets held for or
108 payable to the individual as a participant or beneficiary from or an interest of the individual as
109 a participant or beneficiary in a retirement plan or arrangement that is described in Section
110 401(a), 401(h), 401(k), 403(a), 403(b), 408, 408A, 409, 414(d), or 414(e) of the United States
111 Internal Revenue Code of 1986, as amended; and

112 (xi) the interest of or any money or other assets payable to an alternate payee under a
113 qualified domestic relations order as those terms are defined in Section 414(p) of the United
114 States Internal Revenue Code of 1986, as amended.

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

116 (i) an alternate payee under a qualified domestic relations order, as those terms are
117 defined in Section 414(p) of the United States Internal Revenue Code of 1986, as amended; or

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

121 (2) Exemptions under this section do not limit items which may be claimed as exempt
122 under Section 78-23-8.

Legislative Review Note
as of 1-15-04 7:59 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0042

Utah Exemption Code Amendments

26-Jan-04

12:10 PM

State Impact

Provisions of this bill can be handled within existing resources.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst