

PROPERTY EXEMPT FROM EXECUTION

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: James A. Dunnigan

LONG TITLE

General Description:

This bill modifies the Judicial Code to include additional benefits and contracts as exempt from judgment execution, and makes technical changes.

Highlighted Provisions:

This bill:

▶ adds the following to the list of property exempt from judgment execution:

- alimony and separate maintenance payments;
 - ~~H~~→ [\$250,000 of] ←~~H~~ life insurance benefits;
 - proceeds of unmatured life insurance contracts owned by the individual, unless pledged or used as collateral; and
 - disability plan payments with specific criteria; and
- ▶ allows for the exemption of the traceable proceeds from the execution of a judgment on any of the property listed above for one year under specific circumstances.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78-23-5, as last amended by Chapter 135, Laws of Utah 2004

78-23-9, as last amended by Chapter 13, Laws of Utah 1998



28 REPEALS:

29 78-23-6, as enacted by Chapter 111, Laws of Utah 1981

30 78-23-7, as last amended by Chapter 38, Laws of Utah 2001

31

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

33 Section 1. Section 78-23-5 is amended to read:

34 **78-23-5. Property exempt from execution.**

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

36 (i) a burial plot for the individual and ~~[his]~~ the individual's family;

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

39 (iii) benefits the individual or ~~[his]~~ the individual's dependent have received or are
40 entitled to receive ~~[because of disability, illness, or unemployment]~~ from any source[;] because
41 of:

42 (A) disability;

43 (B) illness; or

44 (C) unemployment;

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

47 (v) veterans benefits;

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

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

53 ~~[(vii)]~~ (viii) (A) one:

54 (I) clothes washer and dryer[~~,-one~~];

55 (II) refrigerator[~~,-one~~];

56 (III) freezer[~~,-one~~];

57 (IV) stove[~~,-one~~];

58 (V) microwave oven[~~,-one~~];

- 59 (VI) sewing machine[;];
- 60 (B) all carpets in use[;];
- 61 (C) provisions sufficient for 12 months actually provided for individual or family
- 62 use[;];
- 63 (D) all wearing apparel of every individual and dependent, not including jewelry or
- 64 furs[;]; and
- 65 (E) all beds and bedding for every individual or dependent;
- 66 ~~[(viii) works of art]~~
- 67 (ix) except for works ~~of~~ ~~or~~ of ~~art~~ art held by the debtor as part of a trade or business,
- 67a works of
- 68 art:
- 69 (A) depicting the debtor or the debtor and his resident family[;]; or
- 70 (B) produced by the debtor or the debtor and his resident family[~~except works of art~~
- 71 ~~held by the debtor as part of a trade or business];~~
- 72 ~~[(ix)]~~ (x) proceeds of insurance, a judgment, or a settlement, or other rights accruing as
- 73 a result of bodily injury of the individual or of the wrongful death or bodily injury of another
- 74 individual of whom the individual was or is a dependent to the extent that those proceeds are
- 75 compensatory;
- 76 (xi) ~~of~~ ~~the~~ ~~proceeds~~ or benefits of any life insurance contracts
- 76a or policies paid
- 77 or payable to the debtor upon the death of the spouse or ~~dependent~~ ~~children~~ children of the debtor
- 77a ~~of~~ [; provided that
- 78 the contract or policy has been owned by the debtor for a continuous unexpired period of two
- 79 years] ~~of~~ :
- 80 (xii) ~~of~~ ~~the~~ ~~proceeds~~ or benefits of any life insurance contracts
- 80a or policies
- 81 paid or payable to the spouse or ~~dependent~~ ~~children~~ children of the debtor upon the death of the
- 81a debtor ~~of~~ [; provided
- 82 that the contract or policy has been in existence for a continuous unexpired period of two years] ~~of~~ :
- 83 (xiii) proceeds and avails of any unmatured life insurance contracts owned by the
- 84 debtor ~~of~~ [; except:
- 85 —— (A) amounts assigned or pledged as collateral incident to a valid contract; or
- 86 —— (B) any payments made on a contract during the 24 months immediately preceding a
- 87 creditor's levy or execution] ~~of~~ :
- 88 ~~[(x)]~~ (xiv) except as provided in Subsection (1)(b), any money or other assets held for
- 89 or payable to the individual as a participant or beneficiary from or an interest of the individual

90 as a participant or beneficiary in a retirement plan or arrangement that is described in Section
 91 401(a), 401(h), 401(k), 403(a), 403(b), 408, 408A, 409, 414(d), or 414(e) [~~of the United~~
 92 ~~States~~], Internal Revenue Code [~~of 1986, as amended~~]; and

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

96 (b) The exemption granted by Subsection (1)(a)[~~(x)~~](xiv) does not apply to:

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

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

103 (2) **§→ The exemptions in Subsections (1)(xi), (xii), and (xiii) do not apply to**
 103a **proceeds and avails of any matured or unmatured life insurance contract assigned or pledged**
 103b **as collateral for repayment of a loan or other legal obligation.**

103c **(3) ←§** Exemptions under this section do not limit items [~~which~~] that may be claimed as
 104 exempt under Section 78-23-8.

105 Section 2. Section **78-23-9** is amended to read:

106 **78-23-9. Exemption of proceeds from property sold, taken by condemnation, lost,**
 107 **damaged, or destroyed -- Tracing exempt property and proceeds.**

108 (1) (a) [~~H~~] An individual who owned property described in this Subsection (1) is
 109 entitled to an exemption of proceeds that are traceable for one year after the compensation for
 110 the property is received if:

111 (i) (A) the property, or a part [thereof] of the property, [that] could have been claimed
 112 exempt under Subsection 78-23-5(1)(a)(i) or (ii)[;]; or

113 (B) the property is personal property subject to a value limitation under Subsection
 114 78-23-8(1)(a), (b), or (c); and

115 (ii) the property has been:

116 (A) sold or taken by condemnation[;]; or [has been]

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

118 (C) the owner has been compensated [therefor, the individual is entitled to an
 119 exemption of proceeds that are traceable for one year after the proceeds are received] for the
 120 property.

121 (b) The exemption of proceeds under this Subsection (1) does not entitle the individual
122 to claim an aggregate exemption in excess of the value limitation otherwise allowable under
123 Section 78-23-3 or 78-23-8.

124 (2) Money or other property exempt under Subsection 78-23-5(1)(a)(iii), (iv), (v), [or
125 (vi), ~~or exempt to the extent reasonably necessary for support under Section 78-23-6,~~] (vii),
126 (xiii), or (xiv) remains exempt after its receipt by, and while it is in the possession of, the
127 individual or in any other form into which it is traceable.

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

130 (a) the principle of:

131 (i) first-in first-out[;]; or

132 (ii) last-in last-out[;]; or

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

134 Section 3. **Repealer.**

135 This bill repeals:

136 Section **78-23-6, Property exempt from execution to extent necessary for support.**

137 Section **78-23-7, Exemption of unmatured life insurance contracts.**

Legislative Review Note
as of 1-21-05 4:12 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0121

Property Exempt from Execution

14-Feb-05

10:14 AM

AMENDED NOTE

State Impact

No state or local government fiscal impact.

Individual and Business Impact

There could be a fiscal impact on individuals affected by a judgment. The bill enables debtors to keep more of certain types of assets. This may reduce revenue to whom the debt is owed or extend the time required to collect it.

Office of the Legislative Fiscal Analyst