

PROPERTY EXEMPT FROM EXECUTION

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Lyle W. Hillyard

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;
 - 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

REPEALS:

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

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

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

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

78-23-5. Property exempt from execution.

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

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

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

(iii) benefits the individual or ~~[his]~~ the individual's dependent have received or are entitled to receive ~~[because of disability, illness, or unemployment]~~ 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 ~~[his]~~ 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;

~~[(vii)]~~ (viii) (A) one;

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

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

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

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

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

(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;

~~[(viii) works of art]~~

(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

(B) produced by the debtor or the debtor and his resident family~~[-except works of art held by the debtor as part of a trade or business]~~;

~~[(ix)]~~ (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 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 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, excluding any payments made on the contract during the one year immediately preceding a creditor's levy or execution;

~~[(x)]~~ (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) [~~of the United States~~], Internal Revenue Code [~~of 1986, as amended~~]; and

~~[(xi)]~~ (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) [~~of the United States~~], Internal Revenue Code [~~of 1986, as amended~~].

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

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

(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.

~~[(2)]~~ (3) Exemptions under this section do not limit items [~~which~~] that may be claimed as exempt under Section 78-23-8.

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

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

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

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

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

(ii) the property has been:

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

(B) lost, damaged, or destroyed; and

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

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

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

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

(a) the principle of:

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

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

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

Section 3. **Repealer.**

This bill repeals:

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

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