

EXEMPTIONS ACT AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill amends provisions relating to exempted items in bankruptcy proceedings for the purposes of collecting an unsecured debt.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ describes firearms and ammunition that are exempted from bankruptcy proceedings for the purposes of collecting an unsecured debt; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-10-501, as last amended by Laws of Utah 2014, Chapter 428

78B-5-505, as last amended by Laws of Utah 2013, Chapter 192

78B-5-506, as last amended by Laws of Utah 2013, Chapter 192

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



28 Section 1. Section **76-10-501** is amended to read:

29 **76-10-501. Definitions.**

30 As used in this part:

31 (1) (a) "Antique firearm" means:

32 (i) any firearm, including any firearm with a matchlock, flintlock, percussion cap, or
33 similar type of ignition system, manufactured in or before 1898; or

34 (ii) a firearm that is a replica of any firearm described in this Subsection (1)(a), if the
35 replica:

36 (A) is not designed or redesigned for using rimfire or conventional centerfire fixed
37 ammunition; or

38 (B) uses rimfire or centerfire fixed ammunition which is:

39 (I) no longer manufactured in the United States; and

40 (II) is not readily available in ordinary channels of commercial trade; or

41 (iii) (A) that is a muzzle loading rifle, shotgun, or pistol; and

42 (B) is designed to use black powder, or a black powder substitute, and cannot use fixed
43 ammunition.

44 (b) "Antique firearm" does not include:

45 (i) a weapon that incorporates a firearm frame or receiver;

46 (ii) a firearm that is converted into a muzzle loading weapon; or

47 (iii) a muzzle loading weapon that can be readily converted to fire fixed ammunition by
48 replacing the:

49 (A) barrel;

50 (B) bolt;

51 (C) breechblock; or

52 (D) any combination of Subsection (1)(b)(iii)(A), (B), or (C).

53 (2) "Bureau" means the Bureau of Criminal Identification created in Section [53-10-201](#)
54 within the Department of Public Safety.

55 (3) (a) "Concealed dangerous weapon" means a dangerous weapon that is:

56 (i) covered, hidden, or secreted in a manner that the public would not be aware of its
57 presence; and

58 (ii) readily accessible for immediate use.

59 (b) A dangerous weapon is not a concealed dangerous weapon if it is a firearm which is
60 unloaded and is securely encased.

61 (4) "Criminal history background check" means a criminal background check
62 conducted by a licensed firearms dealer on every purchaser of a handgun, except a Federal
63 Firearms Licensee, through the bureau or the local law enforcement agency where the firearms
64 dealer conducts business.

65 (5) "Curio or relic firearm" means a firearm that:

66 (a) is of special interest to a collector because of a quality that is not associated with
67 firearms intended for:

68 (i) sporting use;

69 (ii) use as an offensive weapon; or

70 (iii) use as a defensive weapon;

71 (b) (i) was manufactured at least 50 years before the current date; and

72 (ii) is not a replica of a firearm described in Subsection (5)(b)(i);

73 (c) is certified by the curator of a municipal, state, or federal museum that exhibits
74 firearms to be a curio or relic of museum interest;

75 (d) derives a substantial part of its monetary value:

76 (i) from the fact that the firearm is:

77 (A) novel;

78 (B) rare; or

79 (C) bizarre; or

80 (ii) because of the firearm's association with an historical:

81 (A) figure;

82 (B) period; or

83 (C) event; and

84 (e) has been designated as a curio or relic firearm by the director of the United States
85 Treasury Department Bureau of Alcohol, Tobacco, and Firearms under 27 C.F.R. Sec. 478.11.

86 (6) (a) "Dangerous weapon" means:

87 (i) a firearm; or

88 (ii) an object that in the manner of its use or intended use is capable of causing death or
89 serious bodily injury.

90 (b) The following factors are used in determining whether any object, other than a
91 firearm, is a dangerous weapon:

- 92 (i) the location and circumstances in which the object was used or possessed;
- 93 (ii) the primary purpose for which the object was made;
- 94 (iii) the character of the wound, if any, produced by the object's unlawful use;
- 95 (iv) the manner in which the object was unlawfully used;
- 96 (v) whether the manner in which the object is used or possessed constitutes a potential
97 imminent threat to public safety; and
- 98 (vi) the lawful purposes for which the object may be used.

99 (c) "Dangerous weapon" does not include an explosive, chemical, or incendiary device
100 as defined by Section [76-10-306](#).

101 (7) "Dealer" means a person who is:

- 102 (a) licensed under 18 U.S.C. Sec. 923; and
- 103 (b) engaged in the business of selling, leasing, or otherwise transferring a handgun,
104 whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.

105 (8) "Enter" means intrusion of the entire body.

106 (9) "Federal Firearms Licensee" means a person who:

- 107 (a) holds a valid Federal Firearms License issued under 18 U.S.C. Sec. 923; and
- 108 (b) is engaged in the activities authorized by the specific category of license held.

109 (10) (a) "Firearm" means a pistol, revolver, shotgun, short barreled shotgun, rifle or
110 short barreled rifle, or a device that could be used as a dangerous weapon from which is
111 expelled a projectile by action of an explosive.

112 (b) As used in Sections [76-10-526](#) and [76-10-527](#), "firearm" does not include an
113 antique firearm.

114 (11) "Firearms transaction record form" means a form created by the bureau to be
115 completed by a person purchasing, selling, or transferring a handgun from a dealer in the state.

116 (12) "Fully automatic weapon" means a firearm which fires, is designed to fire, or can
117 be readily restored to fire, automatically more than one shot without manual reloading by a
118 single function of the trigger.

119 (13) (a) "Handgun" means a pistol, revolver, or other firearm of any description, loaded
120 or unloaded, from which a shot, bullet, or other missile can be discharged, the length of which,

121 not including any revolving, detachable, or magazine breech, does not exceed 12 inches.

122 (b) As used in Sections 76-10-520, 76-10-521, and 76-10-522, "handgun" and "pistol
123 or revolver" do not include an antique firearm.

124 (14) "House of worship" means a church, temple, synagogue, mosque, or other
125 building set apart primarily for the purpose of worship in which religious services are held and
126 the main body of which is kept for that use and not put to any other use inconsistent with its
127 primary purpose.

128 (15) "Prohibited area" means a place where it is unlawful to discharge a firearm.

129 (16) "Readily accessible for immediate use" means that a firearm or other dangerous
130 weapon is carried on the person or within such close proximity and in such a manner that it can
131 be retrieved and used as readily as if carried on the person.

132 (17) "Residence" means an improvement to real property used or occupied as a
133 primary or secondary residence.

134 (18) "Securely encased" means not readily accessible for immediate use, such as held
135 in a gun rack, or in a closed case or container, whether or not locked, or in a trunk or other
136 storage area of a motor vehicle, not including a glove box or console box.

137 (19) "Short barreled shotgun" or "short barreled rifle" means a shotgun having a barrel
138 or barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or barrels
139 of fewer than 16 inches in length, or a dangerous weapon made from a rifle or shotgun by
140 alteration, modification, or otherwise, if the weapon as modified has an overall length of fewer
141 than 26 inches.

142 (20) "Shotgun" means a smooth bore firearm designed to fire cartridges containing
143 pellets or a single slug.

144 (21) "Shoulder arm" means a firearm that is designed to be fired while braced against
145 the shoulder.

146 (22) "Slug" means a single projectile discharged from a shotgun shell.

147 ~~[(20)]~~ (23) "State entity" means a department, commission, board, council, agency,
148 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
149 unit, bureau, panel, or other administrative unit of the state.

150 ~~[(21)]~~ (24) "Violent felony" ~~[has the same meaning as]~~ means the same as that term is
151 defined in Section 76-3-203.5.

152 Section 2. Section **78B-5-505** is amended to read:

153 **78B-5-505. Property exempt from execution.**

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

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

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

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

160 (A) disability;

161 (B) illness; or

162 (C) unemployment;

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

165 (v) veterans benefits;

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

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

171 (viii) (A) one:

172 (I) clothes washer and dryer;

173 (II) refrigerator;

174 (III) freezer;

175 (IV) stove;

176 (V) microwave oven; and

177 (VI) sewing machine;

178 (B) all carpets in use;

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

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

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

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

185 (A) depicting the debtor or the debtor and his resident family; or

186 (B) produced by the debtor or the debtor and his resident family;

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

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

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

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

202 (xiv) except as provided in Subsection (1)(b), any money or other assets held for or
203 payable to the individual as a participant or beneficiary from or an interest of the individual as
204 a participant or beneficiary in a retirement plan or arrangement that is described in Section
205 401(a), 401(h), 401(k), 403(a), 403(b), 408, 408A, 409, 414(d), 414(e), or 457, Internal
206 Revenue Code;

207 (xv) the interest of or any money or other assets payable to an alternate payee under a
208 qualified domestic relations order as those terms are defined in Section 414(p), Internal
209 Revenue Code; [~~and~~]

210 (xvi) unpaid earnings of the household of the filing individual due as of the date of the
211 filing of a bankruptcy petition in the amount of 1/24 of the Utah State annual median family
212 income for the household size of the filing individual as determined by the Utah State annual
213 Median Family Income reported by the United States Census Bureau and as adjusted based

214 upon the Consumer Price Index for All Urban Consumers for an individual whose unpaid
 215 earnings are paid more often than once a month or, if unpaid earnings are not paid more often
 216 than once a month, then in the amount of 1/12 of the Utah State annual median family income
 217 for the household size of the individual as determined by the Utah State Annual Median Family
 218 Income reported by the United States Census Bureau and as adjusted based upon the Consumer
 219 Price Index for All Urban Consumers[-]; and

220 (xvii) except for curio or relic firearms, as defined in Section 76-10-501 ~~H~~→ , **any three of**
 220a **the following** ←~~H~~ :

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

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

223 (C) one shoulder arm and ammunition for the shoulder arm not exceeding 1,000
 224 rounds.

225 (b) The exemption granted by Subsection (1)(a)(xiv) does not apply to:

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

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

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

234 (3) Exemptions under this section do not limit items that may be claimed as exempt
 235 under Section 78B-5-506.

236 Section 3. Section **78B-5-506** is amended to read:

237 **78B-5-506. Value of exempt property -- Exemption of implements, professional**
 238 **books, tools, and motor vehicles.**

239 (1) An individual is entitled to exemption of the following property up to an aggregate
 240 value of items in each subsection of \$1,000:

241 (a) sofas, chairs, and related furnishings reasonably necessary for one household;

242 (b) dining and kitchen tables and chairs reasonably necessary for one household;

243 (c) animals, books, and musical instruments, if reasonably held for the personal use of
 244 the individual or the individual's dependents; and

245 (d) heirlooms or other items of particular sentimental value to the individual~~[,] and].~~
246 ~~[(e) firearms and ammunition not included in other exemption categories in the amount~~
247 ~~of \$250 per individual, and not more than \$500 per household.]~~

248 (2) An individual is entitled to an exemption, not exceeding \$5,000 in aggregate value,
249 of implements, professional books, or tools of the individual's trade, including motor vehicles
250 to which no other exemption has been applied, and that are actually used by the individual in
251 the individual's principal business, trade, or profession.

252 (3) (a) As used in this Subsection (3), "motor vehicle" does not include any motor
253 vehicle designed for or used primarily for recreational purposes, such as:

254 (i) an off-highway vehicle as defined in Section [41-22-2](#), except a motorcycle the
255 individual regularly uses for daily transportation; or

256 (ii) a recreational vehicle as defined in Section [13-14-102](#), except a van the individual
257 regularly uses for daily transportation.

258 (b) An individual is entitled to an exemption, not exceeding \$3,000 in value, of one
259 motor vehicle.

260 (4) This section does not affect property exempt under Section [78B-5-505](#).

Legislative Review Note
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Office of Legislative Research and General Counsel