

GARNISHMENT AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad L. Dee

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill lifts the ban on certain property from execution under specific circumstances.

Highlighted Provisions:

This bill:

▶ excludes disability and veterans benefits from property exempt from execution if the recipient has been convicted of a felony and ordered to pay restitution to a victim.

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 2015, Chapter 212

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

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

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

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

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



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

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

32 (A) disability;

33 (B) illness; or

34 (C) unemployment;

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

37 (v) veterans benefits;

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

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

43 (viii) (A) one:

44 (I) clothes washer and dryer;

45 (II) refrigerator;

46 (III) freezer;

47 (IV) stove;

48 (V) microwave oven; and

49 (VI) sewing machine;

50 (B) all carpets in use;

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

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

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

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

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

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

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

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

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

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

74 (xiv) except as provided in Subsection (1)(b), any money or other assets held for or
75 payable to the individual as a participant or beneficiary from or an interest of the individual as
76 a participant or beneficiary in a retirement plan or arrangement that is described in Section
77 401(a), 401(h), 401(k), 403(a), 403(b), 408, 408A, 409, 414(d), 414(e), or 457, Internal
78 Revenue Code;

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

82 (xvi) unpaid earnings of the household of the filing individual due as of the date of the
83 filing of a bankruptcy petition in the amount of 1/24 of the Utah State annual median family
84 income for the household size of the filing individual as determined by the Utah State Annual
85 Median Family Income reported by the United States Census Bureau and as adjusted based
86 upon the Consumer Price Index for All Urban Consumers for an individual whose unpaid
87 earnings are paid more often than once a month or, if unpaid earnings are not paid more often
88 than once a month, then in the amount of 1/12 of the Utah State annual median family income
89 for the household size of the individual as determined by the Utah State Annual Median Family

90 Income reported by the United States Census Bureau and as adjusted based upon the Consumer
91 Price Index for All Urban Consumers; and

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

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

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

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

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

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

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

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

107 (3) Disability benefits, as described in Subsection (1)(a)(iii)(A), and veterans benefits,
108 as described in Subsection (1)(a)(v), may be garnished on behalf of a child victim if the person
109 receiving the benefits has been convicted of a felony sex offense against a child and ordered by
110 the convicting court to pay restitution to the victim. The exemption from execution under this
111 section shall be reinstated upon payment of the restitution in full.

112 [~~3~~] (4) Exemptions under this section do not limit items that may be claimed as
113 exempt under Section 78B-5-506.

Legislative Review Note
Office of Legislative Research and General Counsel