

## LEGISLATIVE BILL 335

Approved by the Governor June 3, 1987

Introduced by Landis, 46

AN ACT relating to creditors' claims; to amend section 44-371, Reissue Revised Statutes of Nebraska, 1943, and section 44-1089, Revised Statutes Supplement, 1986; to provide for and change provisions relating to the exemption from legal or equitable process and claims of creditors of certain insurance benefits, interest in pension, profitsharing, and similar plans and contracts, and proceeds and benefits from structured settlements; to provide that excess proceeds of certain sales of property be retained by the debtor; to provide for the applicability of provisions as prescribed; to provide severability; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 44-371, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-371. (1) All proceeds, cash values, and benefits accruing under any annuity contract, ~~or~~ under any policy or certificate of life insurance payable upon the death of the insured to a beneficiary other than the estate of the insured, ~~and or~~ under any accident or health insurance policy, ~~issued before, on, or after August 30, 1981,~~ shall be exempt from attachment, garnishment, or other legal or equitable process, and from all claims of creditors of the insured, and of the beneficiary if related to the insured by blood or marriage, unless a written assignment to the contrary has been obtained by the claimant. ~~The provisions of this section shall not apply to any loan value in excess of five thousand dollars of an unmatured life insurance contract~~

(2) This section shall not apply to an individual's aggregate interests greater than ten thousand dollars on all loan values or cash values of all matured or unmatured life insurance contracts or to all proceeds, cash values, or benefits accruing under all annuity contracts owned by such individual. Notwithstanding anything in this subsection to the

contrary, the aggregate exemptions any person may claim under this subsection and subsection (3) of section 44-1089 shall not exceed ten thousand dollars.

(3) No insurance company shall be liable or responsible to any person to determine or ascertain the aggregate total of life insurance policy or annuity contract loan values, cash values, proceeds, or benefits for any policyholder or annuitant.

Sec. 2. That section 44-1089, Revised Statutes Supplement, 1986, be amended to read as follows:

44-1089. (1) No noninsurance benefit, charity, relief, or aid to be paid, provided, or rendered by any society shall be liable to attachment, garnishment, or other process, or to be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary, or any other person who may have a right thereunder, either before or after payment by the society.

(2) All proceeds, cash values, and benefits accruing under any annuity contract, under any policy or certificate of life insurance payable upon the death of the insured to a beneficiary other than the estate of the insured, ~~and or~~ under any accident or health insurance policy ~~issued before, on, or after October 1, 1985,~~ shall be exempt from attachment, garnishment, or other legal or equitable process and from all claims of creditors of the insured and of the beneficiary if related to the insured by blood or marriage, unless a written assignment to the contrary has been obtained by the claimant.

(3) This section shall not apply to an individual's aggregate interests greater than ten thousand dollars on all loan values or cash values of all matured or unmatured life insurance contracts or to all proceeds, cash values, or benefits accruing under all annuity contracts owned by such individual. Notwithstanding anything in this subsection to the contrary, the aggregate exemptions any person may claim under subsection (2) of section 44-371 and this subsection shall not exceed ten thousand dollars. This section shall not apply to any loan value in excess of five thousand dollars of an unmatured life insurance contract.

(4) No fraternal benefit society shall be liable or responsible to any person to determine or ascertain the aggregate total of policy or certificate of life insurance or annuity contract loan values, cash

values, proceeds, or benefits for any policy or certificate owner or annuitant.

Sec. 3. In any forced sale of real or personal property conducted to satisfy the claims of creditors, any proceeds of such sale which exceed the claims of such creditors shall be retained by the debtor.

Sec. 4. In bankruptcy and in the collection of a money judgment, the following benefits shall be exempt from attachment, garnishment, or other legal or equitable process and from all claims of creditors: To the extent reasonably necessary for the support of the debtor and any dependent of the debtor, an interest held under a stock bonus, pension, profitsharing, or similar plan or contract payable on account of illness, disability, death, age, or length of service unless:

(1) Within two years prior to bankruptcy or to entry against the individual of a money judgment which thereafter becomes final, such plan or contract was established or was amended to increase contributions by or under the auspices of the individual or of an insider that employed the individual at the time the individual's rights under such plan or contract arose; or

(2) Such plan or contract does not qualify under section 401(a), 403(a), 403(b), or 408 of the Internal Revenue Code of 1986 or the successors of such sections.

For purposes of this section, unless the context otherwise requires, insider shall have the meaning provided in 11 U.S.C. 101(30).

Sec. 5. All proceeds and benefits accruing under any structured settlement providing periodic payments for personal injuries shall be exempt from attachment, garnishment, or other legal or equitable process and from all claims of creditors of the beneficiary of the structured settlement unless a written assignment to the contrary has been obtained by the claimant.

Sec. 6. Sections 3 to 5 of this act and the changes made to sections 44-371 and 44-1089 by Legislative Bill 335, Ninetieth Legislature, First Session, 1987, shall apply to actions filed after the effective date of this act.

Sec. 7. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 8. That original section 44-371, Reissue Revised Statutes of Nebraska, 1943, and section 44-1089, Revised Statutes Supplement, 1986, are repealed.