Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

Senate Bill 1025   (Senator Ruben)

Judicial Proceedings

Family Law - Invalid Property Transfers Between Spouses

This bill provides that a creditor seeking to invalidate a transfer of property between spouses into a joint account must prove by clear and convincing evidence that the transfer was made in prejudice of the creditor's rights. The bill exempts from a claim of prejudice a transfer of funds between spouses to pay for "necessaries." The bill also specifies that the provisions are not repealed by the Maryland Fraudulent Conveyance Act.

Fiscal Summary

State Effect: None. This bill is not expected to directly affect governmental operations or finances.

Local Effect: None. This bill is not expected to affect governmental operations or finances.

Small Business Effect: Potential minimal revenue loss to the extent that it becomes more difficult for creditors to access funds in spousal joint accounts for payment of debts.

Analysis

Bill Summary: This bill establishes that the creditor has the burden of proving, by clear and convincing evidence, that a transfer of property between spouses into a joint account was made in prejudice of the creditor's rights. By clear and convincing evidence, the creditor must show an attempt was made to legally collect a debt owed by one spouse and that the debt could not be collected because of the transfer.

A transfer of funds between spouses into a joint account is exempt from a claim of prejudice if the funds are used to pay for "necessaries." "Necessaries" means the basic items needed to maintain a standard of living and includes the payments required to maintain ownership of jointly owned real property, and food, clothing, educational, and child care expenses.

Current Law: An individual is not liable for any debt of, or claim or demand against the individual's spouse that arose before the marriage. The debtor spouse and his/her property are liable for the debt as if the marriage had not occurred.

A husband is not liable for a tort that is committed separately by his wife and without his participation or sanction, nor is the husband liable for a contract made by his wife in her own name and on her own responsibility. A judgment or decree relating to a contract or tort regarding the wife must be passed against the wife only and operate only on property she individually owned before or after the marriage. The property that a woman owns at the time of her marriage or acquires after her marriage is not liable for payment of her husband's debts. However, a transfer of property between spouses is invalid if made in prejudice of the rights of present creditors.

A creditor's claim of invalid spousal transfer must be asserted by the creditor within three years after the transfer or be barred absolutely. For purposes of claiming an invalid transfer, all claims are considered due and matured.

A third party may make a contract, sue on the contract, sue for a tort, or execute a judgment with or against a married woman, as if the married woman was not married. A third party may also maintain an action at law or in equity against a married woman in her married name.

Provisions in the Maryland Fraudulent Conveyance Act regarding fair consideration, conveyances, and the rights of creditors who may or may not have claims regarding conveyances between businesses, partnerships, or persons do not repeal the provisions that govern the protection of an individual from liability for his/her spouse's obligations incurred before marriage or independently assumed contractual obligations or tort liability.

Additional Information

Prior Introductions: None.

Cross File: None.

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