

HOUSE BILL 1340

D3, N1

9lr3173

By: **Delegates Norman, Niemann, Ali, Anderson, Bartlett, Boteler, Carr, Carter, V. Clagett, Frush, Glenn, Holmes, James, Lafferty, McComas, McConkey, Riley, Robinson, Serafini, Sossi, Stein, and Stull**

Introduced and read first time: February 18, 2009

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Courts – Bankruptcy – Unsecured Creditor Homestead Exemption**

3 FOR the purpose of authorizing an individual to claim a certain exemption in a certain
4 bankruptcy proceeding; providing that the exemption may be for a certain
5 amount in an individual's interest in owner-occupied, residential real property;
6 prohibiting an individual from claiming the exemption under certain conditions;
7 limiting the exemption to apply to claims by unsecured creditors; prohibiting
8 both a husband and wife from claiming the exemption in the same proceeding;
9 making conforming changes; and generally relating to debtor exemptions in
10 bankruptcy proceedings.

11 BY repealing and reenacting, with amendments,
12 Article – Courts and Judicial Proceedings
13 Section 11–504
14 Annotated Code of Maryland
15 (2006 Replacement Volume and 2008 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article – Courts and Judicial Proceedings**

19 11–504.

20 (a) (1) In this section the following terms have the meanings indicated.

21 (2) “Value” means fair market value as of the date upon which the
22 execution or other judicial process becomes effective against the property of the debtor,
23 or the date of filing the petition under the federal Bankruptcy Code.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (b) The following items are exempt from execution on a judgment:

2 (1) Wearing apparel, books, tools, instruments, or appliances, in an
3 amount not to exceed \$5,000 in value necessary for the practice of any trade or
4 profession except those kept for sale, lease, or barter.

5 (2) Money payable in the event of sickness, accident, injury, or death
6 of any person, including compensation for loss of future earnings. This exemption
7 includes but is not limited to money payable on account of judgments, arbitrations,
8 compromises, insurance, benefits, compensation, and relief. Disability income benefits
9 are not exempt if the judgment is for necessities contracted for after the disability is
10 incurred.

11 (3) Professionally prescribed health aids for the debtor or any
12 dependent of the debtor.

13 (4) The debtor's interest, not to exceed \$1,000 in value, in household
14 furnishings, household goods, wearing apparel, appliances, books, animals kept as
15 pets, and other items that are held primarily for the personal, family, or household use
16 of the debtor or any dependent of the debtor.

17 (5) Cash or property of any kind equivalent in value to \$6,000 is
18 exempt, if within 30 days from the date of the attachment or the levy by the sheriff,
19 the debtor elects to exempt cash or selected items of property in an amount not to
20 exceed a cumulative value of \$6,000.

21 (6) Money payable or paid in accordance with an agreement or court
22 order for child support.

23 (7) Money payable or paid in accordance with an agreement or court
24 order for alimony to the same extent that wages are exempt from attachment under §
25 15-601.1(b)(1)(ii) or (2)(i) of the Commercial Law Article.

26 (c) (1) In order to determine whether the property listed in subsection
27 (b)(4) and (5) of this section is subject to execution, the sheriff shall appraise the
28 property at the time of levy. The sheriff shall return the appraisal with the writ.

29 (2) An appraisal made by the sheriff under this subsection is subject to
30 review by the court on motion of the debtor.

31 (3) Procedures will be as prescribed by rules issued by the Court of
32 Appeals.

33 (d) The debtor may not waive, by cognovit note or otherwise, the provisions
34 of subsections (b) and (h) of this section.

35 (e) The exemptions in this section do not apply to wage attachments.

1 (f) (1) In addition to the exemptions provided in subsection (b) of this
2 section, and in other statutes of this State, in any proceeding under Title 11 of the
3 United States Code, entitled "Bankruptcy", any individual debtor domiciled in this
4 State may exempt the debtor's aggregate interest[, not to exceed \$5,000 in value, in
5 real property or personal property] IN:

6 (I) PERSONAL PROPERTY, UP TO \$5,000;

7 (II) REAL PROPERTY, UP TO \$5,000; AND

8 (III) SINGLE-FAMILY, OWNER-OCCUPIED RESIDENTIAL
9 REAL PROPERTY, UP TO \$80,000, SUBJECT TO THE PROVISIONS OF
10 PARAGRAPHS (2) AND (3) OF THIS SUBSECTION.

11 (2) AN INDIVIDUAL MAY NOT CLAIM THE EXEMPTION UNDER
12 PARAGRAPH (1)(III) OF THIS SUBSECTION ON A PARTICULAR PROPERTY IF:

13 (I) THE INDIVIDUAL HAS CLAIMED THE EXEMPTION ON THE
14 PROPERTY WITHIN THE PRIOR 8 YEARS; OR

15 (II) A MEMBER OF THE INDIVIDUAL'S IMMEDIATE FAMILY,
16 AS DEFINED IN § 8-101(G) OF THE FINANCIAL INSTITUTIONS ARTICLE, HAS
17 CLAIMED THE EXEMPTION ON THE PROPERTY WITHIN THE PRIOR 8 YEARS.

18 (3) THE EXEMPTION UNDER PARAGRAPH (1)(III) OF THIS
19 SUBSECTION:

20 (I) APPLIES ONLY TO UNSECURED DEBT OF AN
21 INDIVIDUAL; AND

22 (II) MAY NOT BE CLAIMED BY BOTH A HUSBAND AND WIFE
23 IN THE SAME BANKRUPTCY PROCEEDING.

24 (g) In any bankruptcy proceeding, a debtor is not entitled to the federal
25 exemptions provided by § 522(d) of the federal Bankruptcy Code.

26 (h) (1) In addition to the exemptions provided in subsections (b) and (f) of
27 this section and any other provisions of law, any money or other assets payable to a
28 participant or beneficiary from, or any interest of any participant or beneficiary in, a
29 retirement plan qualified under § 401(a), § 403(a), § 403(b), § 408, § 408A, § 414(d), or
30 § 414(e) of the United States Internal Revenue Code of 1986, as amended, or § 409 (as
31 in effect prior to January 1984) of the United States Internal Revenue Code of 1954, as
32 amended, shall be exempt from any and all claims of the creditors of the beneficiary or
33 participant, other than claims by the Department of Health and Mental Hygiene.

1 (2) Paragraph (1) of this subsection does not apply to:

2 (i) An alternate payee under a qualified domestic relations
3 order, as defined in § 414(p) of the United States Internal Revenue Code of 1986, as
4 amended;

5 (ii) A retirement plan, qualified under § 401(a) of the United
6 States Internal Revenue Code of 1986, as amended, as a creditor of an individual
7 retirement account qualified under § 408 of the United States Internal Revenue Code
8 of 1986, as amended; or

9 (iii) The assets of a bankruptcy case filed before January 1, 1988.

10 (3) The interest of an alternate payee in a plan described in subsection
11 (h)(1) of this section shall be exempt from any and all claims of any creditor of the
12 alternate payee, except claims by the Department of Health and Mental Hygiene.

13 (4) If a contribution to a retirement plan described under paragraph
14 (1) of this subsection exceeds the amount deductible or, in the case of contribution
15 under § 408A of the Internal Revenue Code, the maximum contribution allowed under
16 the applicable provisions of the United States Internal Revenue Code of 1986, as
17 amended, the portion of that contribution that exceeds the amount deductible or, in
18 the case of contribution under § 408A of the Internal Revenue Code, the maximum
19 contribution allowed, and any accrued earnings on such a portion, are not exempt
20 under paragraph (1) of this subsection.

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 2009.