

SENATE BILL 782

D3, N1

0lr2812
CF HB 456

By: **Senator Raskin**

Introduced and read first time: February 10, 2010

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 29, 2010

CHAPTER _____

1 AN ACT concerning

2 ~~**Mortgage Foreclosure Bankruptcy Exemption**~~
3 **Homestead Exemption – Bankruptcy**

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

13 BY repealing and reenacting, with amendments,
14 Article – Courts and Judicial Proceedings
15 Section 11-504
16 Annotated Code of Maryland
17 (2006 Replacement Volume and 2009 Supplement)

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

20 **Article – Courts and Judicial Proceedings**

21 11-504.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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

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

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

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

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

15 (3) Professionally prescribed health aids for the debtor or any
16 dependent of the debtor.

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

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

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

27 (7) Money payable or paid in accordance with an agreement or court
28 order for alimony to the same extent that wages are exempt from attachment under §
29 15-601.1(b)(1)(ii) or (2)(i) of the Commercial Law Article.

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

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

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

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

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

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

11 **(I) PERSONAL PROPERTY, UP TO \$5,000; AND**

12 ~~**(II) REAL PROPERTY, UP TO \$5,000; AND**~~

13 ~~**(III) (II) SINGLE FAMILY, OWNER OCCUPIED**~~
14 **OWNER-OCCUPIED RESIDENTIAL REAL PROPERTY, UP TO ~~\$80,000~~ **\$20,200,****
15 **SUBJECT TO THE PROVISIONS OF PARAGRAPHS (2) AND (3) OF THIS**
16 **SUBSECTION.**

17 **(2) AN INDIVIDUAL MAY NOT CLAIM THE EXEMPTION UNDER**
18 **PARAGRAPH ~~(1)(III)~~ (1)(II) OF THIS SUBSECTION ON A PARTICULAR PROPERTY**
19 **IF:**

20 **(I) THE INDIVIDUAL HAS CLAIMED SUCCESSFULLY THE**
21 **EXEMPTION ON THE PROPERTY WITHIN THE PRIOR 8 YEARS; OR**

22 **(II) ~~A MEMBER OF THE INDIVIDUAL'S IMMEDIATE FAMILY,~~**
23 **~~AS DEFINED IN § 8 101(G) OF THE FINANCIAL INSTITUTIONS ARTICLE, THE~~**
24 **INDIVIDUAL'S SPOUSE, CHILD, CHILD'S SPOUSE, PARENT, SIBLING,**
25 **GRANDPARENT, OR GRANDCHILD HAS CLAIMED SUCCESSFULLY THE**
26 **EXEMPTION ON THE PROPERTY WITHIN THE PRIOR 8 YEARS.**

27 **(3) THE EXEMPTION UNDER PARAGRAPH ~~(1)(III)~~ (1)(II) OF THIS**
28 **SUBSECTION:**

29 ~~**(I) APPLIES ONLY TO UNSECURED DEBT OF AN**~~
30 ~~**INDIVIDUAL; AND**~~

31 ~~**(II) MAY NOT**~~ **MAY BE CLAIMED BY BOTH A HUSBAND AND**
32 **WIFE IN THE SAME BANKRUPTCY PROCEEDING.**

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

3 (h) (1) In addition to the exemptions provided in subsections (b) and (f) of
4 this section and any other provisions of law, any money or other assets payable to a
5 participant or beneficiary from, or any interest of any participant or beneficiary in, a
6 retirement plan qualified under § 401(a), § 403(a), § 403(b), § 408, § 408A, § 414(d), or
7 § 414(e) of the United States Internal Revenue Code of 1986, as amended, or § 409 (as
8 in effect prior to January 1984) of the United States Internal Revenue Code of 1954, as
9 amended, shall be exempt from any and all claims of the creditors of the beneficiary or
10 participant, other than claims by the Department of Health and Mental Hygiene.

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

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

15 (ii) A retirement plan, qualified under § 401(a) of the United
16 States Internal Revenue Code of 1986, as amended, as a creditor of an individual
17 retirement account qualified under § 408 of the United States Internal Revenue Code
18 of 1986, as amended; or

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

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

23 (4) If a contribution to a retirement plan described under paragraph
24 (1) of this subsection exceeds the amount deductible or, in the case of contribution
25 under § 408A of the Internal Revenue Code, the maximum contribution allowed under
26 the applicable provisions of the United States Internal Revenue Code of 1986, as
27 amended, the portion of that contribution that exceeds the amount deductible or, in
28 the case of contribution under § 408A of the Internal Revenue Code, the maximum
29 contribution allowed, and any accrued earnings on such a portion, are not exempt
30 under paragraph (1) of this subsection.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
32 construed to apply only prospectively and may not be applied or interpreted to have
33 any effect on or application to any case filed before the effective date of this Act.

34 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
35 effect October 1, 2010.