

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE**Revised**

Senate Bill 782

(Senator Raskin)

Judicial Proceedings

Judiciary

Homestead Exemption - Bankruptcy

This bill authorizes an individual debtor domiciled in the State to exempt up to \$5,000 of personal property and up to the amount allowed under the federal bankruptcy law of owner-occupied residential real property in a bankruptcy proceeding. This homestead exemption (1) may be claimed if the individual debtor and specified family members have not successfully claimed the exemption on the property within eight years prior to the filing of the bankruptcy proceeding in which the exemption is claimed; and (2) may not be claimed by both a husband and a wife in the same bankruptcy proceeding.

The bill applies prospectively and may not be applied or interpreted to affect any case filed before the bill's October 1, 2010 effective date.

Fiscal Summary

State Effect: The bill does not directly affect State finances or operations.

Local Effect: The bill does not directly affect local finances or operations.

Small Business Effect: None.

Analysis

Current Law/Background: The amount of the homestead exemption allowed under the federal bankruptcy law is adjusted every three years. As of April 1, 2010, the allowance is \$21,625.

A "money judgment" is a judgment that a specified amount of money is immediately payable to the judgment creditor. A money judgment constitutes a lien on the debtor's

interest in real or personal property located where the judgment was rendered and may be executed by a writ. Upon the issuance of a writ of execution, a sheriff or constable may seize and sell the debtor's legal or equitable interest in the real or personal property. The sheriff or constable must execute the writ, conduct the sale, and distribute the proceeds pursuant to court-approved rules.

A writ of execution on a money judgment does not become a lien on the personal property of the debtor until an actual levy is made. The lien then extends only to the property included in the levy. In general, the following items are exempt from execution on a money judgment:

- up to \$5,000 of apparel, books, tools, instruments, or appliances necessary for the practice of a trade or profession, except those items kept for sale, lease, or barter;
- money payable in the event of the sickness, accident, injury, or death of any person, including compensation for loss of future earnings – the exemption includes money payable for judgments, arbitrations, compromises, insurance benefits, compensation, and relief; it does not include disability income benefits if the judgment is for necessities after the occurrence of the disability;
- professionally prescribed health aids for the debtor or any dependent;
- up to \$1,000 of household furnishings, goods, apparel, appliance, books, pets, and other items kept primarily for personal, household, or family purposes;
- up to \$6,000 of cash or property of any kind, if the debtor elects to exempt such cash or property within 30 days from the date of attachment or the levy by the sheriff; and
- money payable or paid according to an agreement or court order for alimony, to the same extent that wages are exempt, and child support.

In any federal bankruptcy proceeding under Title 11 of the U.S. Code (the federal Bankruptcy Code), an individual debtor domiciled in the State may further exempt up to \$5,000 worth of real property or personal property. The State has opted out of the federal bankruptcy exemptions that are similar to those exemptions specified above; thus, in a bankruptcy proceeding, a debtor is not entitled to the federal exemptions provided by § 522(d) of the federal Bankruptcy Code.

Additional Information

Prior Introductions: HB 1340 of 2009 received an unfavorable report from the House Judiciary Committee.

Cross File: HB 456 (Delegate Ramirez, *et al.*) - Judiciary.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Legislative Services

Fiscal Note History: First Reader - February 23, 2010
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