

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 91
Judiciary

(Delegate Norman, *et al.*)

Courts - Bankruptcy - Arms

This bill authorizes an individual debtor domiciled in the State to exempt up to \$2,000 in arms. The bill applies only to a bankruptcy proceeding under Title 11 of the United States Code and does not provide an exemption from execution on a money judgment.

The bill applies prospectively and may not be applied or interpreted to affect any case filed before the bill's October 1, 2011 effective date.

Fiscal Summary

State Effect: None. The bill does not directly affect State finances.

Local Effect: None. The bill does not directly affect local finances

Small Business Effect: None.

Analysis

Current Law: 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;
- money payable or paid according to an agreement or court order for alimony, to the same extent that wages are exempt, and child support;
- the debtor's beneficial interest in any property that was held by a husband and wife as tenants by the entirety and subsequently conveyed to a trustee and specified proceeds of that property; and
- claims by a separate creditor of a husband or wife to property that was held by a husband and wife as tenants by the entirety and subsequently conveyed to a trustee and specified proceeds of that property.

In any federal bankruptcy proceeding under Title 11 of the U.S. Code (the federal Bankruptcy Code), an individual debtor may further exempt up to \$5,000 of personal property and owner-occupied residential real property up to the amount allowed under federal bankruptcy law (currently \$21,625). 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 wife in the same bankruptcy proceeding.

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.

The Second Amendment of the United States Constitution says: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” In 2008, the United States Supreme Court struck down a sweeping ban on handguns in the District of Columbia and held that an individual has the right to possess firearms unconnected with service in a militia and can use that firearm for traditionally lawful purposes, such as self-defense within the home. *District of Columbia v. Heller*, 554 U.S. 570 (2008). In *McDonald v. City of Chicago*, 561 U.S. ___, 130 S.Ct. 3020 (2010), the U.S. Supreme Court held that the right to possess firearms recognized in the *Heller* case also applies to state and local gun control laws.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), United States Supreme Court, Department of Legislative Services

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mlm/kdm

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