

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

House Bill 837
Judiciary

(Delegate Smigiel, *et al.*)

Judicial Proceedings

Courts - Exemption from Execution - Exception for Child Support Arrearage

This bill establishes that 25% of the net recovery by a person on a claim for personal injury is subject to execution on a judgment for a child support arrearage.

“Net recovery” is defined as the sum of money to be distributed to the debtor after deduction of attorney’s fees, expenses, medical bills, and satisfaction of any liens or subrogation claims arising out of the claims for personal injury, including those arising under:

- The Medicare Secondary Payer Act, 42 U.S.C. § 1395y;
- A program of the Department of Health and Mental Hygiene for which a right of subrogation exists under §§ 15–120 and 15–121.1 of the Health–General Article;
- An employee benefit plan subject to the Federal Employee Retirement Income Security Act of 1974; or
- A health insurance contract.

Fiscal Summary

State Effect: Minimal increase in special fund revenues to the extent that the bill increases the amount of child support collected. Expenditures are not affected.

Local Effect: None.

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.

Background: The bill is intended to authorize the withholding of a portion of a personal injury, wrongful death or other award, settlement or payment for garnishment to pay a child support arrearage. It is in response to a Court of Appeals decision, *Curtis O. Rosemann v. Salsbury, Clements, Bekman, Marder & Atkins, LLC*, 412 Md. 308 (2010). In the case, the petitioner, who was the custodial parent of two minor children, filed writs of garnishment for unpaid child support obligations. The writs requested garnishment of a personal injury judgment against the respondent. The respondent was the petitioner's ex-wife and had been under orders to pay child support since 1999 – an order with which the respondent had not complied. In 2005, the respondent was injured on board an America West flight and subsequently received a settlement of \$30,000.

The petitioner asked the Court to carve out an exemption so that some portion of the personal injury settlement could be withheld to satisfy what the respondent owed in child support. Given the plain language of the statute which specifies exemptions from executions, the lower courts and the Court of Appeals declined to carve out such an exemption. In spite of the strong public policy favoring payment of child support and allowing for the withholding of licenses, certain privileges, and even the threat of imprisonment in the face of nonpayment of child support, the Court of Appeals ruled that the plain language of the statute clearly did not authorize the withholding of a personal injury judgment to remedy a child support arrearage. The Court noted that a personal injury award or settlement, unlike wages, is intended primarily to pay medical bills and compensate for loss of future earnings and is not intended for familial support.

The Court concluded that the General Assembly would have to specifically authorize the deduction of child support arrearages from personal injury settlements and awards.

State Revenues: Temporary Cash Assistance (TCA) recipients must assign their support rights to the State and federal governments as partial reimbursement for payments made on behalf of the child of the obligor. As a result, TCA child support collections are distributed 50% to the State and 50% to the federal government. Because the bill establishes that certain exemptions against execution on a judgment do not apply to child support liens enforced by the Child Support Enforcement Administration, special fund revenues may increase to the extent that the amount of child support collected on behalf

of TCA recipients increases. Any such increase cannot be quantified due to the unavailability of data, but is not expected to be significant.

Additional Information

Prior Introductions: HB 761 of 2010, a similar bill, was heard in the House Judiciary Committee but received no further action.

Cross File: None.

Information Source(s): Department of Human Resources, Comptroller's Office, Judiciary (Administrative Office of the Courts), *The Daily Record*, Department of Legislative Services

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