WRITTEN TESTIMONY OF DANIEL M. PRESS

MARYLAND STATE BAR ASSOCIATON, CONSUMER BANKRUPTCY SECTION

IN SUPPORT OF **HB 772**, WITH AMENDMENTS

This testimony is being presented on behalf of the Consumer Bankruptcy Section of the Maryland State Bar Association. It is on behalf of the Section only and not on behalf of the MSBA as a whole. The Consumer Bankruptcy Section represents consumer bankruptcy lawyers throughout the state, including lawyers representing Debtors, Creditors, and Trustees. Although some Council members abstained primarily due to their professional positions with the government or otherwise, this position was adopted unanimously by the Section Council.

Honorable Delegates -

It appears that the purpose of this legislation is a noble one, and well taken, to prevent a money judgment from turning into a disaster for Marylanders of limited means. Present law allows all funds held in bank accounts to be garnished by judgment creditors, and thereby frozen and unavailable to the judgment debtor until the judgment debtor files with the court a claim of exemptions and the Court rules on it, often after a hearing even where there is no objection filed by the creditor. A judgment debtor is entitled to exempt up to $6000 of any property under CJ 11-504(b)(5), including money in the bank, but this process can take months, and results in people's rent and food money being tied up in court and unable to be used for the necessities of life, despite being unquestionably exempt from being taken to satisfy the judgment. The result is that people can lose their homes, their cars, or their heat and power, because of the requirement to file and have the court rule on claims of exemption that are not subject to any legitimate dispute.

This bill is intended to fix that, without increasing[1] the total that a Marylander can claim as exempt, by allowing up to $2,600 in the bank not to be frozen by a garnishment.

However, the Section is concerned that the language presently proposed will actually limit the exemption to $2,600 of money in the bank. Under the doctrine of *inclusio unius, exclusio alterius,* the present language of 11-506(b)(5) (new (b)(6)) could be read not to encompass property (i.e., bank deposits) within the scope of new (b)(5), because they are provided for specifically in the prior subsection. The simple fix for that is to amend old (b)(5)/new (b)(6) to state [in LINE 17 OF THE BILL]:

> **"Cash or property of any kind, INCLUDING BUT NOT LIMITED TO DEPOSIT ACCOUNTS IN EXCESS OF OR NOT OTHERWISE EXEMPT UNDER SUBSECTION (b)(5), equivalent in value…".**

That should solve the problem of new (b)(5) being deemed to limit old (b)(5)/new (b)(6), such that the only impact of this will be to avoid the need to claim the new (b)(5) exemption, making it automatic.

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[1] The Section, being composed of both Debtor and Creditor counsel, does not take a position on whether the total should be increased.

Another concern is to make sure that it is clear that the bank has the responsibility not to freeze the $2,600 (which is exempt in addition to federal benefits exempt under federal law). It is already a matter of federal law that a bank (or other depository institution) must not freeze social security and certain other federal benefits as a result of a garnishment, so by tracking the same language as the federal regulation, the State will not be imposing any new concepts or material obligations on the banks.

To that end, we would propose to add the end of new (b)(5) [LINE 16 OF THE BILL]:

> UPON BEING SERVED WITH A WRIT OF GARNISHMENT OR LEVY FOR SUCH ACCOUNT OF AN INDIVIDUAL JUDGMENT DEBTOR, OTHER THAN FOR CHILD SUPPORT, THE FINANCIAL INSTITUTION SHALL ENSURE THAT THE ACCOUNT HOLDER HAS FULL AND CUSTOMARY ACCESS TO THE AMOUNT EXEMPT UNDER THIS SUBSECTION, WHICH THE FINANCIAL INSTITUTION SHALL NOT FREEZE IN RESPONSE TO THE GARNISHMENT ORDER OR LEVY. THE AMOUNT EXEMPT AND PROTECTED HEREUNDER SHALL BE IN ADDITION TO PROTECTED AMOUNTS NOT TO BE FROZEN UNDER FEDERAL LAW INCLUDING BUT NOT LIMITED TO 31 C.F.R. PART 212.

This tracks the language in the regulation (31 C.F.R. 212) freeing up social security in deposit accounts (so it should be easy to understand and implement) and makes clear that the exemptions of this and social security are cumulative.

Finally, in order to be clear that the $2,600 exempt amount is per individual judgment debtor, not per account, we would propose that new subsection (b)(5) [line 14 of the bill]:

> UP TO A TOTAL OF $2,600 IN [A] DEPOSIT ACCOUNTS OR OTHER ACCOUNTS OF THE DEBTOR HELD BY A BANK, CREDIT UNION, …

This would make it clearly $2,600 in a financial institution, not $2,600 in each of multiple accounts.

With these changes, our section unanimously and enthusiastically supports this bill.