



HB 322 - Courts - Judgments - Exemptions From Execution

Committee: Senate Judicial Proceedings Committee

Date: March 23, 2022

Position: Oppose

The Maryland Bankers Association (MBA) **OPPOSES** HB 322. This bill would exempt up to \$500 from execution on a money judgement, without election by the judgement debtor. While well intentioned, HB 322 does not totally account for key facets of Maryland's judgement garnishment and exemption laws and does not fit with the reality of Maryland's current garnishment and exemption framework.

Garnishee Banks Cannot Replace the Courts as Gatekeepers for Exemption Claims

Under Maryland law, exemptions require debtor election. That is, when a creditor seeks to enforce its judgment via court process (such as through bank account garnishments), the debtor may file a motion electing to exempt certain property from execution. Under this framework, the court serves as a gatekeeper to ensure that the debtor obtains only the proper exemptions to which an individual is entitled. Under the current system, a creditor could object if the debtor's election is incorrect or if the debtor has already exhausted the permitted exemptions.

HB 322 could automatically trigger a \$500 cash exemption from bank account garnishment, but the \$500 exemption will count against a debtor's \$6,000 cap on exemptions. The problem is that by bypassing the court, HB 322 implicitly requires banks to determine whether a debtor has funds available in the \$6,000 wildcard exemption from which to apply the automatic exemption. A debtor could have already exhausted their \$6,000 cap, but the garnishee has no way of knowing.

The interplay between HB322's Automatic Exemption and Preexisting Automatic Exemptions

Under federal law, certain federal benefits, such as Social Security benefits or VA benefits, are automatically exempt from garnishment. To the extent that another automatic exemption does not fully exempt a debtor's deposits, garnishee banks will not know whether the automatic exemption contemplated by HB 322 (a) stacks on top of the other automatic exemptions or (b) gets subsumed within the other automatic exemptions.

Accordingly, MBA urges issue a **UNFAVORABLE** report on **HB 322**.

The Maryland Bankers Association (MBA) represents FDIC-insured community, regional, and national banks, employing more than 29,000 Marylanders and holding more than \$201 billion in deposits in over 1,300 branches across our State. The Maryland banking industry serves about 4 million customers across the State and provides an array of financial services including residential mortgage lending, business banking, estates and trust services, consumer banking, and more.

BY:

(To be offered in the Judicial Proceedings Committee)

AMENDMENTS TO HOUSE BILL 322
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 7, after “amount;” insert “providing for a delayed effective date;”.

AMENDMENT NO. 2

On page 1, in line 18, after “(a)” insert “**(1)**”; in the same line, strike “section,” and substitute “SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.”

(2) “DEPOSITORY INSTITUTION” MEANS A BANK, CREDIT UNION, TRUST COMPANY, SAVINGS BANK, OR SAVINGS AND LOAN ASSOCIATION AND ANY OF THEIR AFFILIATES OR SUBSIDIARIES.

(3) ”.

On page 2, in line 17, after “**(5)**” insert “**(1)**”; strike beginning with “A” in line 14 down through “SUBSIDIARIES,” in line 19 and substitute “DEPOSITORY INSTITUTION,”; after line 20, insert:

(II) A DEPOSITORY INSTITUTION SHALL, UPON RECEIPT OF A WRIT OF GARNISHMENT, OTHER LEVY, OR ATTACHMENT, PROVIDE AN ANSWER AND IF THE DEBTOR MAINTAINS ANY DEPOSIT ACCOUNTS WITH THE DEPOSITORY INSTITUTION, STATE THAT:

- 1.** THE TOTAL AMOUNT OF FUNDS DOES NOT EXCEED \$500; OR
- 2.** THE AMOUNT OF FUNDS EXCEEDING \$500 THAT HAVE BEEN HELD PENDING FURTHER ORDER OF THE COURT.

(III) **1.** THIS PARAGRAPH MAY NOT BE CONSTRUED TO PRECLUDE OR REDUCE A DEBTOR’S RIGHT TO ANY OTHER EXEMPTION PROVIDED BY STATE OR FEDERAL LAW.

2. IF THE DEPOSITORY INSTITUTION IS REQUIRED TO APPLY ANY OTHER EXEMPTION WITHOUT DEBTOR ELECTION OR COURT ORDER UNDER APPLICABLE FEDERAL OR STATE LAW, THE EXEMPTION SET FORTH IN THIS PARAGRAPH SHALL APPLY TO ANY FUNDS THAT ARE NOT OTHERWISE DEEMED EXEMPT UNDER SUCH OTHER APPLICABLE LAW.

(IV) A DEPOSITORY INSTITUTION THAT COMPLIES WITH SUBPARAGRAPHS (I) THROUGH (III) OF THIS PARAGRAPH SHALL NOT BE LIABLE TO THE JUDGMENT CREDITOR IF THE DEBTOR HAS PREVIOUSLY ELECTED TO EXEMPT CASH AND OTHER PROPERTY WITH AN AGGREGATE VALUE OF \$6,000 PURSUANT TO PARAGRAPH (6) OF THIS SUBSECTION, OR IS OTHERWISE INELIGIBLE FOR AN EXEMPTION PURSUANT TO PARAGRAPH (6) OF THIS SUBSECTION.

AMENDMENT NO. 3

On page 5, in line 20, strike “October 1, 2022” and substitute “January 1, 2023”.