

WEST VIRGINIA LEGISLATURE
2021 FIRST EXTRAORDINARY SESSION

Introduced

Senate Bill 1007

BY SENATORS BLAIR (MR. PRESIDENT) AND BALDWIN

(BY REQUEST OF THE EXECUTIVE)

[Introduced June 7, 2021]

1 A BILL to amend and reenact Chapter 46, Acts of the Legislature, Regular Session, 2021, as last
 2 amended and reenacted by Chapter 147, Acts of the Legislature, Regular Session, 2003,
 3 relating to exemptions of property in federal bankruptcy proceedings; allowing a debtor in
 4 bankruptcy to use the federal law exemptions under 11 U.S.C. §522(d); and updating the
 5 effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. FEDERAL TAX LIENS; ORDERS AND DECREES IN BANKRUPTCY.

§38-10-4. Exemptions of property in bankruptcy proceedings.

1 Any person who files a petition under the federal bankruptcy law may exempt from
 2 property of the estate in a bankruptcy proceeding the following property:

3 (a) The debtor’s interest, not to exceed \$35,000 in value, in real property or personal
 4 property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that
 5 owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot
 6 for the debtor or a dependent of the debtor: *Provided*, That when the debtor is a physician licensed
 7 to practice medicine in this state under §30-3-1 *et seq.* or §30-14-1 *et seq.* of this code, and has
 8 commenced a bankruptcy proceeding in part due to a verdict or judgment entered in a medical
 9 professional liability action, if the physician has current medical malpractice insurance in the
 10 amount of at least \$1 million for each occurrence, the debtor physician’s interest that is exempt
 11 under this subdivision may exceed \$35,000 in value but may not exceed \$250,000 per household.

12 (b) The debtor’s interest, not to exceed \$7,500 in value, in one motor vehicle.

13 (c) The debtor’s interest, not to exceed \$400 in value in any particular item, in household
 14 furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical
 15 instruments that are held primarily for the personal, family, or household use of the debtor or a
 16 dependent of the debtor: *Provided*, That the total amount of personal property exempted under
 17 this subdivision may not exceed \$8,000.

18 (d) The debtor's interest, not to exceed \$1,000 in value, in jewelry held primarily for the
19 personal, family, or household use of the debtor or a dependent of the debtor.

20 (e) The debtor's interest, not to exceed in value \$800 plus any unused amount of the
21 exemption provided under subdivision (a) of this subsection in any property.

22 (f) The debtor's interest, not to exceed \$1,500 in value, in any implements, professional
23 books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

24 (g) Any unmeasured life insurance contract owned by the debtor, other than a credit life
25 insurance contract.

26 (h) The debtor's interest, not to exceed in value \$8,000 less any amount of property of the
27 estate transferred in the manner specified in 11 U.S.C. §542(d), in any accrued dividend or
28 interest under, or loan value of, any unmeasured life insurance contract owned by the debtor
29 under which the insured is the debtor or an individual of whom the debtor is a dependent.

30 (i) Professionally prescribed health aids for the debtor or a dependent of the debtor.

31 (j) The debtor's right to receive:

32 (1) A Social Security benefit, unemployment compensation, or a local public assistance
33 benefit;

34 (2) A veterans' benefit;

35 (3) A disability, illness, or unemployment benefit;

36 (4) Alimony, support, or separate maintenance, to the extent reasonably necessary for the
37 support of the debtor and any dependent of the debtor;

38 (5) A payment under a stock bonus, pension, profit sharing, annuity, or similar plan or
39 contract on account of illness, disability, death, age, or length of service, to the extent reasonably
40 necessary for the support of the debtor and any dependent of the debtor, and funds on deposit in
41 an individual retirement account, including a simplified employee pension regardless of the
42 amount of funds, unless:

43 (A) The plan or contract was established by or under the auspices of an insider that
44 employed the debtor at the time the debtor's rights under the plan or contract arose;

45 (B) The payment is on account of age or length of service;

46 (C) The plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408, or
47 409 of the Internal Revenue Code of 1986; and

48 (D) With respect to an individual retirement account, including a simplified employee
49 pension, the amount is subject to the excise tax on excess contributions under Section 4973
50 and/or Section 4979 of the Internal Revenue Code of 1986, or any successor provisions,
51 regardless of whether the tax is paid.

52 (k) The debtor's right to receive or property that is traceable to:

53 (1) An award under a crime victim's reparation law;

54 (2) A payment on account of the wrongful death of an individual of whom the debtor was
55 a dependent, to the extent reasonably necessary for the support of the debtor and any dependent
56 of the debtor;

57 (3) A payment under a life insurance contract that insured the life of an individual of whom
58 the debtor was a dependent on the date of the individual's death, to the extent reasonably
59 necessary for the support of the debtor and any dependent of the debtor;

60 (4) A payment, not to exceed \$15,000 on account of personal bodily injury, not including
61 pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of
62 whom the debtor is a dependent;

63 (5) A payment in compensation of loss of future earnings of the debtor or an individual of
64 whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the
65 debtor and any dependent of the debtor;

66 (6) Payments made to the prepaid tuition trust fund or to the savings plan trust fund,
67 including earnings, in accordance with ~~article thirty, chapter eighteen~~ §18-30-1 et seq. of this code
68 on behalf of any beneficiary.

69 (l) Solely for the purpose of applying the provisions of ~~11 U.S.C. § 552(b)(2)~~ 11 U.S.C.
70 §522(b)(2) in a federal bankruptcy proceeding and only to the extent otherwise allowed by
71 applicable federal law, an individual debtor domiciled in this state may exempt from property of
72 the debtor's bankruptcy estate the property specified under ~~11 U.S.C. § 552(d)~~ 11 U.S.C. §522(d).

73 (m) The amendments made to this section during the 2021 regular session of the
74 Legislature, as amended during the first extraordinary session of the Legislature, 2021, shall apply
75 to bankruptcies filed on or after the effective date of those amendments.

NOTE: The purpose of this bill is to correct references to the federal code in subsection (l) of this section and make other technical and stylistic corrections.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.