

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2730

BY DELEGATES BROWN, LOVEJOY, GARCIA AND ZUKOFF

[Introduced February 24, 2021; referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §38-10-4 of the Code of West Virginia, 1931, as amended, relating
2 to allowing a debtor in bankruptcy to use the federal law exemptions under 11 U.S.C.
3 §522(d).

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 ~~Pursuant to the provisions of 11 U.S.C. §522(b)(1), this state specifically does not~~
2 ~~authorize debtors who are domiciled in this state to exempt the property specified under the~~
3 ~~provisions of 11 U.S.C. §522(d)~~

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

6 (a) The debtor's interest, not to exceed \$25,000 in value, in real property or personal
7 property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that
8 owns property that the debtor or a dependent of the debtor uses as a residence or in a burial plot
9 for the debtor or a dependent of the debtor: *Provided*, That when the debtor is a physician licensed
10 to practice medicine in this state under §30-3-1 *et seq.* or §30-14-1 *et seq.* of this code, and has
11 commenced a bankruptcy proceeding in part due to a verdict or judgment entered in a medical
12 professional liability action, if the physician has current medical malpractice insurance in the
13 amount of at least \$1 million for each occurrence, the debtor physician's interest that is exempt
14 under this subsection may exceed \$25,000 in value but may not exceed \$250,000 per household.

15 (b) The debtor's interest, not to exceed \$2,400 in value, in one motor vehicle.

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

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

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

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

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

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

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

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

35 (1) A social security benefit, unemployment compensation or a local public assistance
36 benefit;

37 (2) A veterans' benefit;

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

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

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

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

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

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

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

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

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

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

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

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

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

69 (6) Payments made to the prepaid tuition trust fund or to the savings plan trust fund,
70 including earnings, in accordance with §18-30-1 *et seq.* of this code on behalf of any beneficiary.

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

NOTE: The purpose of this bill is to allow a debtor in bankruptcy to use the federal law exemptions under 11 U.S.C. § 522(d).

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