

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**ENROLLED**

**House Bill 2730**

BY DELEGATES BROWN, LOVEJOY, GARCIA AND ZUKOFF

[Passed April 8, 2021; in effect ninety days from passage.]



1 AN ACT to amend and reenact §38-10-4 of the Code of West Virginia, 1931, as amended, relating  
2 generally to exemptions of property in bankruptcy; allowing a debtor in bankruptcy to use  
3 the federal law exemptions under 11 U.S.C. §522(d); increasing the value of a debtor's  
4 interest in property the debtor or a dependent of the debtor uses as a residence, in a  
5 cooperative that owns property that the debtor or a dependent of the debtor uses as a  
6 residence or in a burial plot for the debtor or a dependent of the debtor to \$35,000;  
7 increasing the value of a debtor physician's interest that is exempt to \$35,000; increasing  
8 the value of a debtor's interest in one motor vehicle to \$7,500; and providing for an  
9 effective date.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 10. 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 subsection 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 subsection 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 subsection (a) of this section 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 (IRA), including a simplified employee pension (SEP) regardless  
42 of the 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 409  
47 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 of this code on behalf of any  
68 beneficiary.

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within ..... this the.....  
day of ....., 2021.

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*Governor*