

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4780

BY DELEGATE WESTFALL

[Introduced February 15, 2022; Referred to the
Committee on Banking and Insurance then the
Judiciary]

1 A BILL to amend and reenact § 22-6-2 of the Code of West Virginia, 1931, as amended, relating
2 to bankruptcy, excluding all of proceeds from life insurance policy from creditors in
3 bankruptcy proceeding.

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) Any and all life insurance proceeds paid to the debtor as a beneficiary.

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

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

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

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

35 (2) A veterans' benefit;

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

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

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

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

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

47 (C) The plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408, or
48 409 of the Internal Revenue Code of 1986; and

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

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

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

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

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

61 ~~(4)~~ (3) A payment, not to exceed \$15,000 on account of personal bodily injury, not
62 including pain and suffering or compensation for actual pecuniary loss, of the debtor or an
63 individual of whom the debtor is a dependent;

64 ~~(5)~~ (4) A payment in compensation of loss of future earnings of the debtor or an individual
65 of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of
66 the debtor and any dependent of the debtor;

67 ~~(6)~~ (5) Payments made to the prepaid tuition trust fund or to the savings plan trust fund,
68 including earnings, in accordance with §18-30-1 *et seq.* of this code on behalf of any beneficiary.

69 ~~(f)~~ (m) Solely for the purpose of applying the provisions of 11 U.S.C. § 522(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 of the debtor's bankruptcy
72 estate the property specified under 11 U.S.C. § 522(d).

73 ~~(m)~~ (n) 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 exclude all life insurance proceeds from attachment during bankruptcy proceedings.

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