

BILL TEXT:

STATE OF NEW YORK

7034--A

IN SENATE

March 9, 2010

Introduced by Sen. SCHNEIDERMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil practice law and rules, in relation to increasing the property values which are exempt from the satisfaction of a money judgment; and to amend the debtor and creditor law, in relation to increasing the exemptions in bankruptcy

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Subdivision (a) of section 5205 of the civil practice law
2 and rules, the opening paragraph as amended by chapter 129 of the laws
3 of 1976 and paragraph 5 as amended by chapter 697 of the laws of 1976,
4 is amended to read as follows:
5 (a) Exemption for personal property. The following personal property
6 when owned by any person is exempt from application to the satisfaction
7 of a money judgment except where the judgment is for the purchase price
8 of the exempt property or was recovered by a domestic, laboring person
9 or mechanic for work performed by that person in such capacity:
10 1. all stoves and home heating equipment kept for use in the judgment
11 debtor's dwelling house and necessary fuel therefor for [~~sixty~~] one
12 hundred twenty days; one sewing machine with its appurtenances;
13 2. [~~the family bible~~] religious texts, family pictures and portraits,
14 and school books used by the judgment debtor or in the family; and other
15 books, not exceeding [~~fifty~~] five hundred dollars in value, kept and
16 used as part of the family or judgment debtor's library;
17 3. a seat or pew occupied by the judgment debtor or the family in a
18 place of public worship;
19 4. domestic animals with the necessary food for those animals for
20 [~~sixty~~] one hundred twenty days, provided that the total value of such
21 animals and food does not exceed [~~four hundred fifty~~] one thousand
22 dollars; all necessary food actually provided for the use of the judg-
23 ment debtor or his family for [~~sixty~~] one hundred twenty days;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 5. all wearing apparel, household furniture, one mechanical, gas or
2 electric refrigerator, one radio receiver, one television set, one
3 computer and associated equipment, one cellphone, crockery, tableware
4 and cooking utensils necessary for the judgment debtor and the family;
5 all prescribed health aids;

6 6. a wedding ring; a watch, jewelry and art not exceeding [~~thirty-~~
7 ~~five~~] one thousand dollars in value; [~~and~~]

8 7. tools of trade, necessary working tools and implements, including
9 those of a mechanic, farm machinery, team, professional instruments,
10 furniture and library, not exceeding [~~six hundred~~] three thousand
11 dollars in value, together with the necessary food for the team for
12 [~~sixty~~] one hundred twenty days, provided, however, that the articles
13 specified in this paragraph are necessary to the carrying on of the
14 judgment debtor's profession or calling[-];

15 8. one motor vehicle not exceeding four thousand dollars in value
16 above liens and encumbrances of the debtor; if such vehicle has been
17 equipped for use by a disabled debtor, then ten thousand dollars in
18 value above liens and encumbrances of the debtor; provided, however,
19 that this exemption for one motor vehicle shall not apply if the debt
20 enforced is for child support, spousal support, maintenance, alimony or
21 equitable distribution; and

22 9. if no homestead exemption is claimed, then one thousand dollars in
23 personal property, bank account or cash.

24 § 2. Section 5206 of the civil practice law and rules, as amended by
25 chapter 181 of the laws of 1977, subdivisions (a), (d) and (e) as
26 amended by chapter 623 of the laws of 2005, is amended to read as
27 follows:

28 § 5206. Real property exempt from application to the satisfaction of
29 money judgments. (a) Exemption of homestead. Property of one of the
30 following types, not exceeding one hundred fifty thousand dollars for
31 the counties of Kings, Queens, New York, Bronx, Richmond, Nassau,
32 Suffolk, Rockland, Westchester and Putnam; one hundred twenty-five thou-
33 sand dollars for the counties of Dutchess, Albany, Columbia, Orange,
34 Saratoga and Ulster; and seventy-five thousand dollars for the remaining
35 counties of the state in value above liens and encumbrances, owned and
36 occupied as a principal residence, is exempt from application to the
37 satisfaction of a money judgment, unless the judgment was recovered
38 wholly for the purchase price thereof:

- 39 1. a lot of land with a dwelling thereon,
- 40 2. shares of stock in a cooperative apartment corporation,
- 41 3. units of a condominium apartment, or
- 42 4. a mobile home.

43 But no exempt homestead shall be exempt from taxation or from sale for
44 non-payment of taxes or assessments.

45 (b) Homestead exemption after owner's death. The homestead exemption
46 continues after the death of the person in whose favor the property was
47 exempted for the benefit of the surviving spouse and surviving children
48 until the majority of the youngest surviving child and until the death
49 of the surviving spouse.

50 (c) Suspension of occupation as affecting homestead. The homestead
51 exemption ceases if the property ceases to be occupied as a residence by
52 a person for whose benefit it may so continue, except where the suspen-
53 sion of occupation is for a period not exceeding one year, and occurs in
54 consequence of injury to, or destruction of, the dwelling house upon the
55 premises.

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1 (d) Exemption of homestead exceeding one hundred fifty thousand
2 dollars in value for the counties of Kings, Queens, New York, Bronx,
3 Richmond, Nassau, Suffolk, Rockland, Westchester and Putnam; one hundred
4 twenty-five thousand dollars for the counties of Dutchess, Albany,
5 Columbia, Orange, Saratoga and Ulster; and seventy-five thousand dollars
6 for the remaining counties of the state. The exemption of a homestead
7 is not void because the value of the property exceeds one hundred fifty
8 thousand dollars for the counties of Kings, Queens, New York, Bronx,
9 Richmond, Nassau, Suffolk, Rockland, Westchester and Putnam; one hundred
10 twenty-five thousand dollars for the counties of Dutchess, Albany,
11 Columbia, Orange, Saratoga and Ulster; and seventy-five thousand dollars
12 for the remaining counties of the state but the lien of a judgment
13 attaches to the surplus.

14 (e) Sale of homestead exceeding one hundred fifty thousand dollars for
15 the counties of Kings, Queens, New York, Bronx, Richmond, Nassau,
16 Suffolk, Rockland, Westchester and Putnam; one hundred twenty-five thou-
17 sand dollars for the counties of Dutchess, Albany, Columbia, Orange,
18 Saratoga and Ulster; and seventy-five thousand dollars for the remaining
19 counties of the state in value. A judgment creditor may commence a
20 special proceeding in the county in which the homestead is located
21 against the judgment debtor for the sale, by a sheriff or receiver, of a
22 homestead exceeding one hundred fifty thousand dollars for the counties
23 of Kings, Queens, New York, Bronx, Richmond, Nassau, Suffolk, Rockland,
24 Westchester and Putnam; one hundred twenty-five thousand dollars for the
25 counties of Dutchess, Albany, Columbia, Orange, Saratoga and Ulster; and
26 seventy-five thousand dollars for the remaining counties of the state in
27 value. The court may direct that the notice of petition be served upon
28 any other person. The court, if it directs such a sale, shall so marshal
29 the proceeds of the sale that the right and interest of each person in
30 the proceeds shall correspond as nearly as may be to his right and
31 interest in the property sold. Money, not exceeding one hundred fifty
32 thousand dollars for the counties of Kings, Queens, New York, Bronx,
33 Richmond, Nassau, Suffolk, Rockland, Westchester and Putnam; one hundred
34 twenty-five thousand dollars for the counties of Dutchess, Albany,
35 Columbia, Orange, Saratoga and Ulster; and seventy-five thousand dollars
36 for the remaining counties of the state, paid to a judgment debtor, as
37 representing his interest in the proceeds, is exempt for one year after
38 the payment, unless, before the expiration of the year, he acquires an
39 exempt homestead, in which case, the exemption ceases with respect to so
40 much of the money as was not expended for the purchase of that property;
41 and the exemption of the property so acquired extends to every debt
42 against which the property sold was exempt. Where the exemption of prop-
43 erty sold as prescribed in this subdivision has been continued after the
44 judgment debtor's death, or where he dies after the sale and before
45 payment to him of his portion of the proceeds of the sale, the court may
46 direct that portion of the proceeds which represents his interest be
47 invested for the benefit of the person or persons entitled to the bene-
48 fit of the exemption, or be otherwise disposed of as justice requires.

49 (f) Exemption of burying ground. Land, set apart as a family or
50 private burying ground, is exempt from application to the satisfaction
51 of a money judgment, upon the following conditions only:

- 52 1. a portion of it must have been actually used for that purpose;
- 53 2. it must not exceed in extent one-fourth of an acre; and
- 54 3. it must not contain any building or structure, except one or more
55 vaults or other places of deposit for the dead, or mortuary monuments.

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1 § 3. Subdivision 1 of section 282 of the debtor and creditor law, as
2 added by chapter 540 of the laws of 1982, is amended to read as follows:

3 1. Bankruptcy exemption of a motor vehicle. One motor vehicle not
4 exceeding [~~twenty-four hundred~~] four thousand dollars in value above
5 liens and encumbrances of the debtor; provided, however, if such vehicle
6 has been equipped for use by a disabled debtor, then ten thousand
7 dollars in value above liens and encumbrances of the debtor.

8 § 4. Section 283 of the debtor and creditor law, as added by chapter
9 540 of the laws of 1982, is amended to read as follows:

10 § 283. Aggregate individual bankruptcy exemption for certain annuities
11 and personal property. 1. General application. The aggregate amount the
12 debtor may exempt from the property of the estate for personal property
13 exempt from application to the satisfaction of a money judgment under
14 subdivision (a) of section fifty-two hundred five of the civil practice
15 law and rules and for benefits, rights, privileges, and options of annu-
16 ity contracts described in the following sentence shall not exceed
17 [~~five~~] ten thousand dollars. Annuity contracts subject to the foregoing
18 limitation are those that are: (a) initially purchased by the debtor
19 within six months of the debtor's filing a petition in bankruptcy, (b)
20 not described in any paragraph of section eight hundred five (d) of the
21 Internal Revenue Code of nineteen hundred fifty-four, and (c) not
22 purchased by application of proceeds under settlement options of annuity
23 contracts purchased more than six months before the debtor's filing a
24 petition in bankruptcy or under settlement options of life insurance
25 policies.

26 2. Contingent alternative bankruptcy exemption. Notwithstanding
27 section two hundred eighty-two of this article, a debtor, who (a) does
28 not elect, claim, or otherwise avail himself of an exemption described
29 in section fifty-two hundred six of the civil practice law and rules;
30 (b) utilizes to the fullest extent permitted by law as applied to said
31 debtor's property, the exemptions referred to in subdivision one of this
32 section which are subject to the [~~five~~] ten thousand dollar aggregate
33 limit; and (c) does not reach such aggregate limit, may exempt cash in
34 the amount by which [~~five~~] ten thousand dollars exceeds the aggregate of
35 his or her exemptions referred to in subdivision one of this section or
36 in the amount of [~~two~~] five thousand [~~five hundred~~] dollars, whichever
37 amount is less. For purposes of this subdivision, cash means currency of
38 the United States at face value, savings bonds of the United States at
39 face value, the right to receive a refund of federal, state and local
40 income taxes, and deposit accounts in any state or federally chartered
41 depository institution.

42 § 5. The debtor and creditor law is amended by adding a new section
43 285 to read as follows:

44 § 285. Alternative federal exemptions. Notwithstanding any inconsis-
45 ent provision of law, an individual debtor may opt to exempt from prop-
46 erty of the estate such property as is permitted to be exempted pursuant
47 to section five hundred twenty-two of title eleven of the United States
48 Code in lieu of such property as is permitted to be exempted pursuant to
49 the applicable provisions of this article.

50 § 6. The civil practice law and rules is amended by adding a new
51 section 5253 to read as follows:

52 § 5253. Cost of living adjustment for personal and real property
53 exempt from application to the satisfaction of money judgments and
54 exemptions in bankruptcy. (a) Beginning on April first, two thousand
55 twelve, and at each three-year interval ending on April first thereaft-
56 er, the dollar amount of the exemption provided in sections fifty-two

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1 hundred five and fifty-two hundred six of this article and sections two
2 hundred eighty-two and two hundred eighty-three of the debtor and credi-
3 tor law shall be adjusted as provided in subdivision (b) of this
4 section.

5 (b) The superintendent of banks shall determine the amount of the
6 adjustment based on the change in the consumer price index for all urban
7 consumers, New York-Northern New Jersey-Long Island, NY-NJ-CT-PA,
8 published by the U.S. department of labor, bureau of labor statistics,
9 for the most recent three-year period ending on December thirty-first
10 preceding the adjustment, with each adjusted amount rounded to the near-
11 est twenty-five dollars.

12 (c) Beginning on April first, two thousand twelve, and at each three-
13 year interval ending on April first thereafter, the superintendent of
14 banks shall publish the current dollar amount of the applicable
15 exemption provided in this article, together with the date of the next
16 scheduled adjustment. The publication shall be substantially in the form
17 set forth below:

18 "Current dollar amount of exemption from application to the satisfac-
19 tion of money judgments under New York civil practice law and rules
20 sections 5205 and 5206 and exemptions in bankruptcy under debtor and
21 creditor law sections 282 and 283:

22 The following is the current dollar amount of exemptions from the
23 satisfaction of money judgments under civil practice law and rules
24 sections 5205 and 5206 and under debtor and creditor law sections 282
25 and 283:

26 (amount)

27 This amount is effective on April 1, (year) and shall not apply to
28 cases commenced before April 1, (year). The next adjustment is scheduled
29 for April 1, (year). Such adjustments shall not apply with respect to
30 restraining notices served or executions effected before the date of the
31 adjustment. Nothing in this section limits the judgment debtor's
32 exemption rights in this section or under any other law."

33 § 7. This act shall take effect on the thirtieth day after it shall
34 have become a law and shall apply to the satisfaction of judgments on or
35 after such date.