



NEWS

OHIO MAKES SWEEPING CHANGES TO EXEMPTION STATUTE

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In Ohio, a person's real and personal property is subject to the payment of their debts and may be taken by execution, garnishment, attachment, or sale to satisfy a judgment or order. However, every person domiciled in Ohio may hold some property interests in certain types of property exempt from being taken on execution, garnishment, attachment, or sale to satisfy a judgment or order. These exemptions are generally set forth under Ohio's exemption statute (R.C. 2329.66) and pursuant to section 522 of the Bankruptcy Code apply in federal bankruptcy proceedings.

On June 27, 2008 Ohio Governor Ted Strickland signed Senate Bill 281 into law which among other things amended Ohio's exemption statute. The amendments, which become effective on September 30, 2008, have significantly increased the benefits of bankruptcy in that Ohioans now can exempt from their creditors' collection efforts (both in and outside of bankruptcy) more property than they previously could. The following is a synopsis of these important amendments as recently reported by the Ohio Legislative Service Commission.

RESIDENTIAL PROPERTY

Under prior law, a person domiciled in Ohio could exempt a property interest of no more than \$5,000 in one parcel or item of real or personal property that the person or that person's dependent uses as a residence. The act raises the exemption amount to \$20,200. (R.C. 2329.66(A) (1).)

MOTOR VEHICLES

Prior law also exempted from being taken to satisfy a judgment or order a person's interest in one motor vehicle in the amount of \$1,000 or less. The act increases the maximum amount to \$3,225. (R.C. 2329.66(A) (2).)

PERSONAL, FAMILY, AND HOUSEHOLD ITEMS AND APPLIANCES

The following personal interests in property were exempt under prior law from being taken to satisfy a judgment or order: (1) no more than \$200 in any one particular item of wearing apparel,

beds, and bedding, (2) no more than \$300 in one cooking unit, (3) no more than \$300 in one refrigerator or other food preservation unit, (4) no more than \$200 in any particular item, in household furnishings, household goods, appliances, books, animals, crops, musical instruments, firearms, and hunting and fishing equipment held primarily for personal, family, or household use, and (5) no more than \$400 in one item of jewelry and no more than \$200 in every other item of jewelry. Prior law also specified that exemption items described in (1) through (3) above cannot be included as exemption items under (4) and (5) above. Additionally, prior law provided that if a person did not claim the residential property exemption (see "Residential property" above), the exemption items described in (4) and (5) above, when their values were added together, could not exceed \$2,000. If a person did claim the residential property exemption, those exemption items added together could not exceed \$1,500. (R.C. 2329.66(A) (3) and (4) (b), (c), and (d).)

The act eliminates exemption items (1) to (3) above. The act changes exemption item (4) above by raising the exemption amount to \$525 in any particular item or \$10,775 in the aggregate, and by specifically including wearing apparel. With respect to (5) above, the act eliminates the existing exemption and instead exempts an aggregate interest in one or more items of jewelry of no more than \$1,350 if the jewelry is held primarily for personal, family, or household use. The act also eliminates the provisions of prior law discussed in the last three sentences of the prior paragraph. (R.C. 2329.66(A) (4) and repeal of prior R.C. 2329.66(A) (3) and (4) (d).)

#### MONEY

Prior law exempted a person's interest, not to exceed \$400, in cash on hand, money due and payable, money to become due within 90 days, tax refunds, and money on deposit with a bank, savings and loan association, credit union, public utility, landlord, or other person. The exemption applied only in bankruptcy proceedings and could include the portion of personal earnings that was not exempt under R.C. 2329.66(A) (13). [2] The act eliminates both the restriction of the exemption to bankruptcy proceedings and the possible inclusion of personal earnings in the exemption (R.C. 2329.66(A) (4) (a)).

#### PROFESSIONAL BOOKS AND TOOLS

Prior law exempted a person's interest of no more than \$750 in aggregate in all implements, professional books, or tools of that person's profession, trade, or business, including agriculture. The act increases the interest in such exempt

property to no more than \$2,025 in aggregate. (R.C. 2329.66(A)(5).)

#### TAX CREDITS

The act exempts a person's interest in the federal child tax credit and the federal earned income credit (R.C. 2329.66(A)(9)(g)).

#### PAYMENT ON ACCOUNT OF PERSONAL BODILY INJURY

Money received during the past 12 months, or the right to receive such money, as payment for personal bodily injury, but excluding pain and suffering or compensation for actual pecuniary loss, of the person or another individual for whom the person is a dependent was exempt under prior law in an amount not exceeding \$5,000.[3] The act increases the value of this exemption to a maximum of \$20,200. (R.C. 2329.66(A)(12)(c).)

#### OTHER PROPERTY

Prior law permitted a person, in a bankruptcy proceeding, to exempt an interest of up to \$400 in any property. The act, instead, permits a person, in a bankruptcy proceeding, to exempt an aggregate interest in any property not to exceed \$1,075. (R.C. 2329.66(A)(18).)

#### ANNUAL ADJUSTMENTS OF EXEMPT PROPERTY AMOUNTS

Unlike prior law, the act requires periodic adjustment of the maximum amounts for each type of property that may be exempt from execution, garnishment, attachment, or sale to satisfy a judgment or order. The act requires that on April 1, 2010, and on the same day every third year thereafter, each exempted dollar amount must be adjusted to reflect the change in the Consumer Price Index,[4] as published by the U.S. Department of Labor. In the event the index is no longer published, the amounts instead must be adjusted to reflect a generally available comparable index for the three-year period ending on December 31 of the preceding year, with any such adjustment being rounded to the nearest \$25. (R.C. 2329.66(B).)

#### EXEMPTION OF INSURANCE AND SIMILAR BENEFITS FROM ATTACHMENT

Under prior law, the portion of any benefits under all policies of sickness and accident insurance as did not exceed \$600 for each month during any period of disability covered by the policies was not liable to attachment or other process or to be taken, appropriated, or applied by any legal or equitable

process or by operation of law, either before or after payment of the benefits, to pay any liabilities of the person insured under the policies. The exemption did not apply if an action was brought to recover for necessities contracted for during the period of disability and if the complaint contained a statement to that effect. When a policy provided for a lump sum payment because of a dismemberment or other loss insured, the payment was exempt from execution by the insured's creditors. The act eliminates the \$600 limit and the provision regarding actions for necessities. Instead, it allows the exemption to the extent that the benefits are reasonably necessary for the support of the debtor and any of the debtor's dependents. (R.C. 3923.19.)

The act adds an exemption from attachment or other legal process for payments made under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the person who is the beneficiary of the plan or party to the contract and any dependent of the person. No such payment is liable to attachment or other process, or to be taken, appropriated, or applied by any legal or equitable process or by operation of law, either before or after payment of the benefits, to pay any liabilities of the person unless the plan or contract was established by or under the auspices of an insider that employed the person at the time the person's rights under the plan or contract arose, the payment is on account of age or length of service, and the plan or contract does not qualify under section 401(a), 403(a), 403(b), or 408 of the Internal Revenue Code. [5] When a plan or contract provides for a lump sum payment because of a dismemberment or other loss covered by the plan or contract, the payment is exempt from execution by the person's creditors. (R.C. 3923.19(B)).