**South Carolina General Assembly**

118th Session, 2009-2010

**S. 1352**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Reese

Document Path: l:\council\bills\ms\7334zw09.docx

Introduced in the Senate on April 13, 2010

Currently residing in the Senate Committee on **Judiciary**

Summary: Homestead creditor protection

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

4/13/2010 Senate Introduced and read first time [SJ](file:///h:\SJ%20Archive\2010\04-13-10.docx)‑11

4/13/2010 Senate Referred to Committee on **Judiciary** [SJ](file:///h:\SJ%20Archive\2010\04-13-10.docx)‑11

4/28/2010 Senate Referred to Subcommittee: L.Martin (ch), Rankin, Hutto, Bright, Davis

**VERSIONS OF THIS BILL**

[4/13/2010](file:///p:\pprever\2009-10\1352_20100413.docx)

**A** **BILL**

TO AMEND SECTION 15‑41‑30, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PROPERTY EXEMPT FROM BANKRUPTCY PROCEEDINGS OR ATTACHMENT, LEVY, AND SALE, SO AS TO REVISE THE MANNER IN WHICH THE VALUE OF THE MAXIMUM HOMESTEAD CREDITOR PROTECTION IS TO BE DETERMINED.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 15‑41‑30 of the 1976 Code, as last amended by Act 225 of 2008, is further amended to read:

“Section 15‑41‑30. (A) The following real and personal property of a debtor domiciled in this State is exempt from attachment, levy, and sale under any mesne or final process issued by a court or bankruptcy proceeding:

(1) ~~The debtor’s aggregate interest, not to exceed fifty thousand dollars in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor, except that the aggregate value of multiple homestead exemptions allowable with respect to a single living unit may not exceed one hundred thousand dollars. If there are multiple owners of such a living unit exempt as a homestead, the value of the exemption of each individual owner may not exceed his fractional portion of one hundred thousand dollars.~~ A homestead, if located outside a municipality, to the extent of one hundred sixty acres of contiguous land and improvements, may not be reduced without the owner’s consent by reason of subsequent inclusion in a municipality; or if located within a municipality, to the extent of one‑half acre of contiguous land, the exemption is limited to the residence of the owner or the owner’s family.

(a) These exemptions inure to the surviving spouse or heirs of the owner.

(b) The homestead is not subject to devise if the owner is survived by a spouse or minor child, except the homestead may be devised to the owner’s spouse if there is no minor child. The owner of homestead real estate, joined by the spouse, if married, may alienate the homestead by mortgage, sale, or gift. If the owner or spouse is incompetent, the method of alienation or encumbrance is as provided by law.

(2) The debtor’s interest, not to exceed five thousand dollars in value, in one motor vehicle.

(3) The debtor’s interest, not to exceed four thousand dollars in aggregate value in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor’s aggregate interest, not to exceed one thousand dollars in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor’s aggregate interest in cash and other liquid assets to the extent of a value not exceeding five thousand dollars, except that this exemption is available only to an individual who does not claim a homestead exemption. The term ‘liquid assets’ includes deposits, securities, notes, drafts, unpaid earnings not otherwise exempt, accrued vacation pay, refunds, prepayments, and other receivables.

(6) The debtor’s aggregate interest, not to exceed one thousand five hundred dollars in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

(7) The debtor’s aggregate interest in any property, not to exceed five thousand dollars in value of an unused exemption amount to which the debtor is entitled pursuant to subsection (A), items ~~(1)~~ (2) through (6).

(8) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

(9) The debtor’s aggregate interest, not to exceed in value four thousand dollars less any amount of property of the estate transferred in the manner specified in Section 542(d) of the Bankruptcy Code of 1978, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

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

(11) The debtor’s right to receive or property that is traceable to:

(a) a social security benefit, unemployment compensation, or a local public assistance benefit;

(b) a veteran’s benefit;

(c) a disability benefit, except as provided in Section 15‑41‑33, or an illness or unemployment benefit;

(d) alimony, support, or separate maintenance; or

(e) a payment under a stock bonus, pension, profit sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, unless:

(i) the plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor’s rights under the plan or contract arose;

(ii) the payment is on account of age or length of service; and

(iii) the plan or contract does not qualify under Sections 401(a), 403(a), 403(b), or 409 of the Internal Revenue Code of 1954 (26 U.S.C. 401(a), 403(a), 403(b), or 409).

(12) The debtor’s right to receive or property that is traceable to:

(a) an award under a crime victim’s reparation law;

(b) a payment on account of the bodily injury of the debtor or of the wrongful death or bodily injury of another individual of whom the debtor was or is a dependent; or

(c) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of that individual’s death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(13) The debtor’s right to receive individual retirement accounts as described in Sections 408(a) and 408A of the Internal Revenue Code, individual retirement annuities as described in Section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in Section 408(c) of the Internal Revenue Code, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor. A claimed exemption may be reduced or eliminated by the amount of a fraudulent conveyance into the individual retirement account or other plan. For purposes of this item, ‘Internal Revenue Code’ has the meaning provided in Section 12‑6‑40(A).

(14) The debtor’s interest in a pension plan qualified under the Employee Retirement Income Security Act of 1974, as amended.

(B) Beginning on July 1, 2008, and each even‑numbered year thereafter, each dollar amount in subsection (A), items ~~(1)~~ (2) through (14), immediately before July first, must be adjusted to reflect the change in the Southeastern Consumer Price Index, All Urban Consumers, as published by the Department of Labor, Bureau of Labor Statistics, for the most recent year ending immediately before January first preceding July first, and to round to the nearest twenty‑five dollars, the dollar amount that represents this change. No later than March first of each even‑numbered year, the Economic Research Section of the Office of Research and Statistics of the State Budget and Control Board shall publish in the State Register the dollar amounts that will become effective on July first of each even‑numbered year.”

SECTION 2. This act takes effect upon approval by the Governor.

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