

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2221

BY DELEGATES WESTFALL, KELLY, STEELE, SHAMBLIN,

HILLENBRAND, KUMP AND GARCIA

[Passed March 9, 2023; 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 to bankruptcy; correcting an erroneous term; updating the monetary amounts of certain
3 exemptions to account for inflation, including those amounts related to household goods,
4 jewelry, tools of the trade, and payments made on account of a personal bodily injury;
5 excluding life insurance proceeds paid to the debtor as a beneficiary; excluding any
6 annuities, other than those annuities included in §38-10-4(i)(5), which are paid to the
7 debtor as a beneficiary; and, excluding any annuities or life insurance policies owned by
8 the debtor which are payable to someone other than the debtor, including any applicable
9 cash surrender value, from inclusion in the bankruptcy estate used to satisfy creditors in
10 a 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 \$800 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 \$16,000.

18 (d) The debtor's interest, not to exceed \$2,000 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 \$3,000 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 unmaturred life insurance contract owned by the debtor, other than a credit life
25 insurance contract.

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

27 (i) The debtor's right to receive:

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

30 (2) A veterans' benefit;

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

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

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

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

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

42 (C) The plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408, or
43 409 of the Internal Revenue Code of 1986; and

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

48 (j) The debtor's right to receive or property that is traceable to:

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

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

53 (3) All life insurance proceeds paid to the debtor as a beneficiary, any annuities, other than
54 those annuities included in §38-10-4(i)(5), which are paid to the debtor as a beneficiary, or any
55 annuities or life insurance policies owned by the debtor which are payable to someone other than
56 the debtor, including any applicable cash surrender value.

57 (4) A payment, not to exceed \$50,000 on account of personal bodily injury, not including
58 pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of
59 whom the debtor is a dependent;

60 (5) A payment in compensation of loss of future earnings of the debtor or an individual of
61 whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the
62 debtor and any dependent of the debtor;

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

65 (k) Solely for the purpose of applying the provisions of 11 U.S.C. § 522(b)(2) in a federal
66 bankruptcy proceeding and only to the extent otherwise allowed by applicable federal law, an
67 individual debtor domiciled in this state may exempt from property of the debtor's bankruptcy
68 estate the property specified under 11 U.S.C. § 522(d).

69 (l) The amendments made to this section during the 2023 regular session of the
70 Legislature shall apply to bankruptcies filed on or after the effective date of those amendments.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

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Clerk of the House of Delegates

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Clerk of the Senate

Originated in the House of Delegates.

In effect ninety days from passage.

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Speaker of the House of Delegates

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President of the Senate

The within is this the.....
Day of, 2023.

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Governor