

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1974

ENROLLED
Committee Substitute for
SENATE BILL NO. 158

(By Mr. *Brotherton (Mr. President)*
and Mr. Hubbard)

PASSED *March 9* 1974

In Effect *ninety days from* Passage



FILED IN THE OFFICE
EDGAR F. HEISKELL III
SECRETARY OF STATE
THIS DATE 3-22-74

158

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 158

(By MR. BROTHERTON, Mr. President, and MR. HUBBARD,
original sponsors)

[Passed March 9, 1974; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two, three, five, nine, ten, eleven and twelve, article eight, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article eight by adding thereto a new section, designated section fifteen; and to amend and reenact article nine of said chapter, relating to increasing the exemption from execution, levy and like process personal property and a homestead; defining terms; relating to method of claiming exemption of personal property; relating to appraisement of personal property, to debts and liabilities enforceable against the same, to appraisal procedures and fees, to setting aside appraisement and to determination of liens; providing that any waiver of personal property exemption shall be void; relating to persons entitled to a homestead exemption and to debts and liabilities enforceable against a homestead; relating to proceedings to reach excess value; relating to descent of homestead to infant children; and providing that any waiver of homestead exemption shall be void, except where there is a consensual security interest and such security interest cannot be satisfied without encroaching upon the homestead exemption.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, five, nine, ten, eleven and twelve, article eight, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article eight be further amended by adding thereto a new section, designated section fifteen; and that article nine of said chapter be amended and reenacted, all to read as follows:

ARTICLE 8. EXEMPTIONS FROM LEVY.

§38-8-1. Exemptions of personal property.

1 Any husband, wife, parent or other head of a household
2 residing in this state, or the infant children of deceased
3 parents, may set apart and hold personal property not ex-
4 ceeding one thousand dollars in value to be exempt from
5 execution or other process, except as hereinafter provided.
6 Any mechanic, artisan or laborer residing in this state,
7 whether he be a husband, wife, parent or other head of a
8 household, or not, may hold the working tools of his trade
9 or occupation to the value of fifty dollars exempt from
10 forced sale or execution: *Provided*, That in no case shall
11 the exemption allowed any one person exceed one thou-
12 sand dollars.

§38-8-2. Definition of value.

1 For the purpose of this article, the term "value," when
2 used without any modifying words, means fair market
3 value as of the date the exemption is claimed, less all
4 liens other than judicial liens obtained by legal or equi-
5 table proceedings.

§38-8-3. Method of claiming exemption on personal property.

1 When a debtor claims personal property as exempt un-
2 der the provisions of this article, he shall deliver to the
3 officer holding the execution or other process, a list by
4 separate items with the fair market value of each item,
5 according to the belief of the debtor, of all personal prop-
6 erty and estate owned or claimed by him, including
7 money, bonds, bills, notes, claims and demands, with the
8 residence of the person against whom such bonds, bills,

9 notes, claims and demands are. Such list shall also set
10 forth with respect to each such item of personal property
11 and estate the name and address of the holder of and the
12 current amount owing on each lien thereon other than
13 judicial liens obtained by legal or equitable proceedings.
14 The debtor shall verify such list, valuation and lien in-
15 debtedness by affidavit, which affidavit shall also show
16 that the debtor is entitled to such exemption, and shall
17 specify the character in which he claims to be so entitled,
18 as for example, that he is a husband. If the value of the
19 property named in such list exceeds, as stated therein, one
20 thousand dollars, the debtor shall state at the foot thereof
21 what part of such property he claims as exempt, as afore-
22 said; but if such value does not exceed one thousand dol-
23 lars, as so stated, the claim of exemption shall be held
24 to extend to the whole thereof without stating more; and
25 if no appraisement thereof be demanded, as hereinafter
26 provided, the property so claimed shall be set apart to
27 the debtor as exempt as aforesaid. If the husband, wife,
28 parent or other head of a household owning such prop-
29 erty be absent, or incapable of acting, or neglect or decline
30 to act, the claim may be made, the list delivered, and
31 the affidavit made by another member of the family, with
32 the same effect as if made by the owner, and the claim
33 may be made, the list delivered, and the affidavit made on
34 behalf of infant children by the guardian thereof or some-
35 one standing in loco parentis thereto. The officer shall
36 immediately, upon receipt of the list, exhibit the same
37 to the creditor, his agent or attorney.

§38-8-5. Appraisement.

1 The appraisers shall forthwith proceed to make a list,
2 by separate items, of the personal estate selected by the
3 debtor, affixing to each item the fair market value they
4 may agree on, and annexing to the list their affidavit to
5 the following effect: "We solemnly swear that, to the
6 best of our judgment, the above is the fair market value
7 of the property therein described;" which affidavit shall
8 be signed by two appraisers at least, and be certified by
9 some person authorized to administer oaths.

§38-8-9. Compensation of appraisers.

1 Each appraiser shall be entitled to one dollar, to be paid
2 by the creditor if the appraised fair market value of the
3 property claimed by the debtor as exempt is equal to or
4 greater than the fair market value ascribed to such prop-
5 erty by the debtor; otherwise to be paid by the debtor.

§38-8-10. Right of exemption of surviving spouse or minor children.

1 After the death of a husband, wife or parent residing in
2 this state, his surviving spouse or minor children, or such
3 of them as there may be, may select personal estate of the
4 deceased, not exceeding one thousand dollars in value,
5 and hold the same exempt from any debts or liabilities of
6 the deceased spouse or parent, contracted or incurred by
7 the deceased in his lifetime, but the personal representa-
8 tive or any creditor of the deceased may have the personal
9 estate so selected appraised as prescribed in the preceding
10 sections of this article, and with like effect; and no greater
11 amount than one thousand dollars of the personal estate
12 of the deceased shall be exempt by virtue of this pro-
13 vision; and if during his lifetime, he had himself set apart
14 personal estate to be exempt from execution and other
15 process, the same shall be subject thereto after his death,
16 so far as it is not selected as aforesaid by his surviving
17 spouse and minor children, or such of them as there may
18 be.

§38-8-11. No exemption from claims for purchase money or taxes.

1 No exemption claimed under the preceding sections of
2 this article, or any of them, shall affect or impair any
3 claim for the purchase money of the personal estate in
4 respect to which such exemption is claimed, or any pro-
5 ceeding for the collection of taxes, or county or district
6 or municipal levies. The increase in such exemption pro-
7 vided by this article shall not be applicable to liens and
8 all other debts and liabilities contracted and incurred
9 prior to the effective date of this article.

§38-8-12. How appraisal may be set aside; determination of liens.

1 Whenever an appraisal has been timely demanded
2 by the creditor, his agent or attorney, the circuit court
3 of the county, or judge thereof in vacation, on motion of
4 any person aggrieved made within ten days after de-
5 livery of the appraisal list to the officer as specified
6 in section six of this article, may set aside any appraise-
7 ment made as provided in this article, order a new ap-
8 praisal to be made and returned, and appoint ap-
9 praisers for that purpose, and may determine the amount
10 and validity of the liens on the items of personal property
11 and estate set forth on the debtor's list delivered to the
12 officer as specified in section three of this article, and
13 make such order respecting the costs as may be deemed
14 just. Any determination under this section of the amount
15 and validity of liens shall be binding only as between
16 the debtor and the creditor at whose instance the exe-
17 cution or other process has issued.

§38-8-15. Waiver of exemption void.

1 Any waiver of the rights conferred by this article shall
2 be void and unenforceable.

ARTICLE 9. HOMESTEAD EXEMPTIONS.

§38-9-1. Persons entitled to homestead; value.

1 Any husband, wife, parent or other head of a household
2 residing in this state, or the infant children of deceased or
3 insane parents, owning a homestead shall by operation of
4 law have a homestead exemption therein to the value of
5 five thousand dollars, subject to the provisions of section
6 forty-eight, article six of the constitution of this state.

§38-9-2. Definitions.

1 As used in this article:

2 (1) "Homestead" means property owned and used as
3 the principal home for the debtor, his spouse or a depen-
4 dent, or any or all of them, whether classified as real
5 property, chattel real, a fixture or personal property;
6 and

7 (2) "Value," without any modifying words, means
8 fair market value as of the date the exemption is asserted,
9 less all liens other than judicial liens obtained by legal or
10 equitable proceedings.

§38-9-3. Debts enforceable against homestead.

1 As of the effective date of this article, a homestead
2 shall be exempt up to the value of five thousand
3 dollars from all debts and liabilities, except debts
4 incurred for the purchase money thereof, or for the erec-
5 tion of permanent improvements thereon, and claims for
6 taxes or county or district or municipal levies due there-
7 on: *Provided*, That the exemption herein granted by
8 operation of law shall not render the homestead exempt
9 from liens and all other debts and liabilities contracted
10 and incurred prior to the effective date of this article:
11 *Provided further*, That with respect to a homestead ex-
12 emption up to one thousand dollars perfected by execu-
13 tion and recordation of a written instrument as required
14 under the former provisions of this article, such exemption
15 shall for all purposes continue to be governed by such
16 former provisions of this article.

§38-9-4. Proceedings to reach excess value of homestead.

1 Any creditor of the person owning such homestead may
2 assert a claim in a civil action, alleging that the value of
3 the homestead is of greater value than five thousand dol-
4 lars, and if the court shall be satisfied, from the proofs
5 in the cause, that the allegations are true, it shall make
6 such order or decree as may be necessary to subject such
7 excess of value, above the sum of five thousand dollars,
8 to the payment of the debt, or demand of such creditor.
9 If more than one creditor shall join in such judicial pro-
10 ceeding, and their debts or claims be of equal priority,
11 such excess shall be paid pro rata upon the debt or claim
12 of each.

§38-9-5. Descent of homestead to infant children.

1 In case of the death of a husband, wife or parent owning
2 such homestead, the benefit thereof shall descend to his or
3 her minor children, and shall be held and enjoyed by them

4 as such homestead, until all of such infants attain the age
5 of twenty-one years unless they sooner die.

§38-9-6. Waiver of exemption void.

1 Any waiver of the rights conferred by this article shall
2 be void and unenforceable except to the extent that (1)
3 such waiver is accompanied by a consensual security in-
4 terest in the property in which the homestead exemption
5 is asserted and (2) such security interest cannot be sat-
6 isfied without encroaching upon the homestead exemption
7 so asserted.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

H. David Hardy
Chairman Senate Committee

Clarence C. Johnston, Jr.
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Hawaii Carson
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

H. T. Brotherton, Jr.
President of the Senate

Lewis T. McPhee
Speaker House of Delegates

The within Approved this the 20th
day of March, 1974.

Arthur A. Shaare, Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 3/14/74

Time 2:15 p.m.