

HB 2424

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WEST VIRGINIA LEGISLATURE

**WEST VIRGINIA LEGISLATURE**  
FIRST REGULAR SESSION, 1999



**ENROLLED**

**House Bill No. 2424**

(By Delegates Martin, Michael, Thompson and Rowe)



Passed March 13, 1999

In Effect from Passage

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# H. B. 2424

(BY DELEGATES MARTIN, MICHAEL, THOMPSON AND ROWE)

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[Passed March 13, 1999; in effect from passage.]

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AN ACT to amend and reenact section seven, article seven, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article eight of said chapter; and to amend and reenact section four, article ten of said chapter, all relating to exempting certain retirement funds from levy and attachment by creditors; exempting individual retirement and simplified employee pension accounts from attachments, levy and bankruptcy proceedings; and providing limits for exemptions.

*Be it enacted by the Legislature of West Virginia:*

That section seven, article seven, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section one, article eight of said chapter be amended and reenacted; and that section four, article ten of said chapter be amended and reenacted, all to read as follows:

#### ARTICLE 7. ATTACHMENT.

##### **§38-7-7. What property may be attached.**

- 1 Every attachment issued under the provisions of this article
- 2 may be levied upon any estate, real or personal, of the defen-
- 3 dant named therein, or so much thereof as is sufficient to pay

4 the amount for which it issues: *Provided*, That funds on deposit  
5 in an individual retirement account (IRA) including a simplified  
6 employee pension (SEP) in the name of the defendant are  
7 exempt from attachment: *Provided, however*, That such amount  
8 shall be exempt only to the extent it is not, or has not been,  
9 subject to an excise or other tax on excess contributions under  
10 section 4973 and or section 4979 of the Internal Revenue Code  
11 of 1986, or any successor provisions, regardless of whether  
12 such tax is or has been paid.

#### 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 parents,  
3 may set apart and hold personal property not exceeding one  
4 thousand dollars in value to be exempt from execution or other  
5 process, except as hereinafter provided. Any mechanic, artisan  
6 or laborer residing in this state, whether he or she be a husband,  
7 wife, parent or other head of a household, or not, may hold the  
8 working tools of his or her trade or occupation to the value of  
9 fifty dollars exempt from forced sale or execution: *Provided*,  
10 That in no case shall the exemption allowed any one person  
11 exceed one thousand dollars: *Provided, however*, That funds on  
12 deposit in an individual retirement account (IRA) including a  
13 simplified employee pension (SEP) in the name of the defen-  
14 dant are exempt from attachment: *Provided further*, That such  
15 amount shall be exempt only to the extent it is not or has not  
16 been subject to an excise or other tax on excess contributions  
17 under section 4973 and or section 4979 of the Internal Revenue  
18 Code of 1986, or any successor provisions, regardless of  
19 whether such tax is or has been paid.

#### ARTICLE 10. FEDERAL TAX LIENS; ORDERS AND DECREES IN BANK- RUPTCY.

##### **§38-10-4. Exemptions of property in bankruptcy proceedings.**

1 Pursuant to the provisions of 11 U.S.C. 522(b)(1), this state  
2 specifically does not authorize debtors who are domiciled in  
3 this state to exempt the property specified under the provisions  
4 of 11 U.S.C. 522(d).

5 Any person who files a petition under the federal bank-  
6 ruptcy law may exempt from property of the estate in a bank-  
7 ruptcy proceeding the following property:

8 (a) The debtor's interest, not to exceed fifteen thousand  
9 dollars in value, in real property or personal property that the  
10 debtor or a dependent of the debtor uses as a residence, in a  
11 cooperative that owns property that the debtor or a dependent  
12 of the debtor uses as a residence or in a burial plot for the  
13 debtor or a dependent of the debtor.

14 (b) The debtor's interest, not to exceed two thousand four  
15 hundred dollars in value, in one motor vehicle.

16 (c) The debtor's interest, not to exceed four hundred dollars  
17 in value in any particular item, in household furnishings,  
18 household goods, wearing apparel, appliances, books, animals,  
19 crops or musical instruments, that are held primarily for the  
20 personal, family or household use of the debtor or a dependent  
21 of the debtor: *Provided*, That the total amount of personal  
22 property exempted under this subsection shall not exceed eight  
23 thousand dollars.

24 (d) The debtor's interest, not to exceed one thousand dollars  
25 in value, in jewelry held primarily for the personal, family or  
26 household use of the debtor or a dependent of the debtor.

27 (e) The debtor's interest, not to exceed in value eight  
28 hundred dollars plus any unused amount of the exemption  
29 provided under subsection (a) of this section in any property.

30 (f) The debtor's interest, not to exceed one thousand five  
31 hundred dollars in value, in any implements, professional books  
32 or tools of the trade of the debtor or the trade of a dependent of  
33 the debtor.

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

36 (h) The debtor's interest, not to exceed in value eight  
37 thousand dollars less any amount of property of the estate  
38 transferred in the manner specified in 11 U.S.C. 542(d), in any  
39 accrued dividend or interest under, or loan value of, any

40 unmatured life insurance contract owned by the debtor under  
41 which the insured is the debtor or an individual of whom the  
42 debtor is a dependent.

43 (i) Professionally prescribed health aids for the debtor or a  
44 dependent of the debtor.

45 (j) The debtor's right to receive:

46 (1) A social security benefit, unemployment compensation  
47 or a local public assistance benefit;

48 (2) A veterans' benefit;

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

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

53 (5) A payment under a stock bonus, pension, profit sharing,  
54 annuity or similar plan or contract on account of illness,  
55 disability, death, age or length of service, to the extent reason-  
56 ably necessary for the support of the debtor and any dependent  
57 of the debtor, and funds on deposit in an individual retirement  
58 account (IRA), including a simplified employee pension (SEP)  
59 regardless of the amount of funds, unless:

60 (A) Such plan or contract was established by or under the  
61 auspices of an insider that employed the debtor at the time the  
62 debtor's rights under such plan or contract arose;

63 (B) Such payment is on account of age or length of service;

64 (C) Such plan or contract does not qualify under Section  
65 401(a), 403(a), 403(b), 408 or 409 of the Internal Revenue Code  
66 of 1986; and

67 (D) With respect to an individual retirement account,  
68 including a simplified employee pension, such amount is  
69 subject to the excise tax on excess contributions under section  
70 4973 and or section 4979 of the Internal Revenue Code of 1986,  
71 or any successor provisions, regardless of whether such tax is  
72 paid.

73 (k) The debtor's right to receive, or property that is trace-  
74 able to:

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

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

80 (3) A payment under a life insurance contract that insured  
81 the life of an individual of whom the debtor was a dependent on  
82 the date of such individual's death, to the extent reasonably  
83 necessary for the support of the debtor and any dependent of the  
84 debtor;

85 (4) A payment, not to exceed fifteen thousand dollars on  
86 account of personal bodily injury, not including pain and  
87 suffering or compensation for actual pecuniary loss, of the  
88 debtor or an individual of whom the debtor is a dependent;

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

93 (6) Payments made to the prepaid tuition trust fund on  
94 behalf of any beneficiary.

95 This section shall not be construed to affect the applicabil-  
96 ity of any provision of the federal bankruptcy law other than 11  
97 U.S.C. 552(d).

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

*Kandy Solomon*  
Chairman Senate Committee

*Joe F. Smith*  
Chairman House Committee

Originating in the House.

Takes effect from passage.

*David Holmes*  
Clerk of the Senate

*Bryan D. Snow*  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
President of the Senate

*Steve*  
Speaker of the House of Delegates

The within *approved* this the *7th*  
day of *April*, 1999.

*Paul Anderson*  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/6/99

Time 2:30 pm