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
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 may be levied upon any estate, real or personal, of the defendant named therein, or so much thereof as is sufficient to pay
the amount for which it issues: Provided, That funds on deposit in an individual retirement account (IRA) including a simplified employee pension (SEP) in the name of the defendant are exempt from attachment: Provided, however, That such amount shall be exempt only to the extent it is not, or has not been, subject to an excise or other tax on excess contributions under section 4973 and or section 4979 of the Internal Revenue Code of 1986, or any successor provisions, regardless of whether such tax is or has been paid.

ARTICLE 8. EXEMPTIONS FROM LEVY.

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

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

ARTICLE 10. FEDERAL TAX LIENS; ORDERS AND DECREES IN BANKRUPTCY.

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

Pursuant to the provisions of 11 U.S.C. 522(b)(1), this state specifically does not authorize debtors who are domiciled in this state to exempt the property specified under the provisions of 11 U.S.C. 522(d).
Any person who files a petition under the federal bankruptcy law may exempt from property of the estate in a bankruptcy proceeding the following property:

(a) The debtor's interest, not to exceed fifteen 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.

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

(c) The debtor's interest, not to exceed four hundred dollars in value in any particular item, 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: Provided, That the total amount of personal property exempted under this subsection shall not exceed eight thousand dollars.

(d) The debtor's 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.

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

(f) The debtor's 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.

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

(h) The debtor's interest, not to exceed in value eight thousand dollars less any amount of property of the estate transferred in the manner specified in 11 U.S.C. 542(d), 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.

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

(j) The debtor’s right to receive:

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

(2) A veterans’ benefit;

(3) A disability, illness or unemployment benefit;

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

(5) 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, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, and funds on deposit in an individual retirement account (IRA), including a simplified employee pension (SEP) regardless of the amount of funds, unless:

(A) Such 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 such plan or contract arose;

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

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

(D) With respect to an individual retirement account, including a simplified employee pension, such amount is subject to the excise tax on excess contributions under section 4973 and or section 4979 of the Internal Revenue Code of 1986, or any successor provisions, regardless of whether such tax is paid.
The debtor's right to receive, or property that is traceable to:

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

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

(3) 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 such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

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

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

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

This section shall not be construed to affect the applicability of any provision of the federal bankruptcy law other than 11 U.S.C. 552(d).
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect from passage.

[Signatures]

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within approval this the 7th day of __________, 1999.

[Signatures]

Governor
PRESENTED TO THE
GOVERNOR
Date: 4/6/99
Time: 2:30 p.m.