~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 18, 2016

**H. 4398**

Introduced by Reps. Clemmons, Yow, Burns, Pitts, McCoy and Hicks

S. Printed 5/18/16--S.

Read the first time April 20, 2016.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 4398) 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, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking page 1, lines 30‑41 and page 2, lines 1‑2, in their entirety and inserting the following:

/ (1)(a) 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.

(b) A surviving spouse may exempt, in addition to the aggregate interest, not to exceed fifty thousand dollars, that the surviving spouse owned in the residence prior to the death of the decedent spouse, the aggregate interest of the deceased spouse to which the surviving spouse succeeded by inheritance, testamentary transfer, or non‑probate transfer on the death of the decedent spouse, not to exceed fifty thousand dollars. For purposes of this subsection, a surviving spouse means a spouse married to the decedent at the time of death, who has not remarried, and who is living in the residence or cooperative that is used as a residence. /

Amend the bill further, as and if amended, by striking page 4, lines 1‑2 in their entirety and inserting the following:

/ (15) The debtor’s aggregate interest, not to exceed three thousand dollars in value, in any rifle, shotgun, pistol, or any combination not to exceed three firearms. /

Renumber sections to conform.

Amend title to conform.

Majority favorable. Minority unfavorable.

CHAUNCEY K. GREGORY MARLON E. KIMPSON

For Majority. For Minority.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Fiscal Impact Summary**

This bill would have no expenditure impact on the general fund, federal funds, or other funds.

**Explanation of Fiscal Impact**

**Explanation of Amendment by the House Judiciary Committee on April 19, 2016**

**State Expenditure**

This bill, as amended by the House Judiciary Committee on April 19, 2016, revises Section 15-41-30 to provide that a surviving spouse of a debtor may exempt from attachment, levy, or sale in a bankruptcy proceeding both his aggregate interest in real or personal property less than $50,000 in value and his deceased spouse’s aggregate interest in real or personal property less than $50,000 in value. The bill also exempts a debtor’s firearms whose total value is less than $5,000 dollars from attachment, levy, or sale in a bankruptcy proceeding.

The Judicial Department reports that this bill would have no expenditure impact on the general fund, federal funds, or other funds.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**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 EXEMPT THREE FIREARMS OF ANY VALUE AND ONE THOUSAND ROUNDS OF AMMUNITION FOR EACH FIREARM OWNED BY THE DEBTOR.

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

SECTION 1. Section 15‑41‑30(A) of the 1976 Code, as last amended by Act 153 of 2012, is further amended to read:

“(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 except that a surviving spouse may exempt, in addition to their interest, the aggregate interest of a deceased spouse 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.

(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) 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. 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). The interest of an individual under a retirement plan shall be exempt from creditor process to the same extent permitted in Section 522(d) under federal bankruptcy law and is an exception to Section 15‑41‑35. The exemption provided by this section shall be available whether such individual has an interest in the retirement plan as a participant, beneficiary, contingent annuitant, alternate payee, or otherwise.

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

(15) Any firearms not exceeding a total value of five thousand dollars owned by the debtor.”

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

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