

Bankruptcy Exemptions

A Proposed Revision

General Assembly of the Commonwealth of Pennsylvania
JOINT STATE GOVERNMENT COMMISSION

Harrisburg, Pennsylvania

April 1982

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Joint State Government Commission, 1982

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Bankruptcy Exemptions

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GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA
JOINT STATE GOVERNMENT COMMISSION

ROOM 108 - FINANCE BUILDING
HARRISBURG 17120

April 20, 1982

TO THE MEMBERS OF THE GENERAL ASSEMBLY:

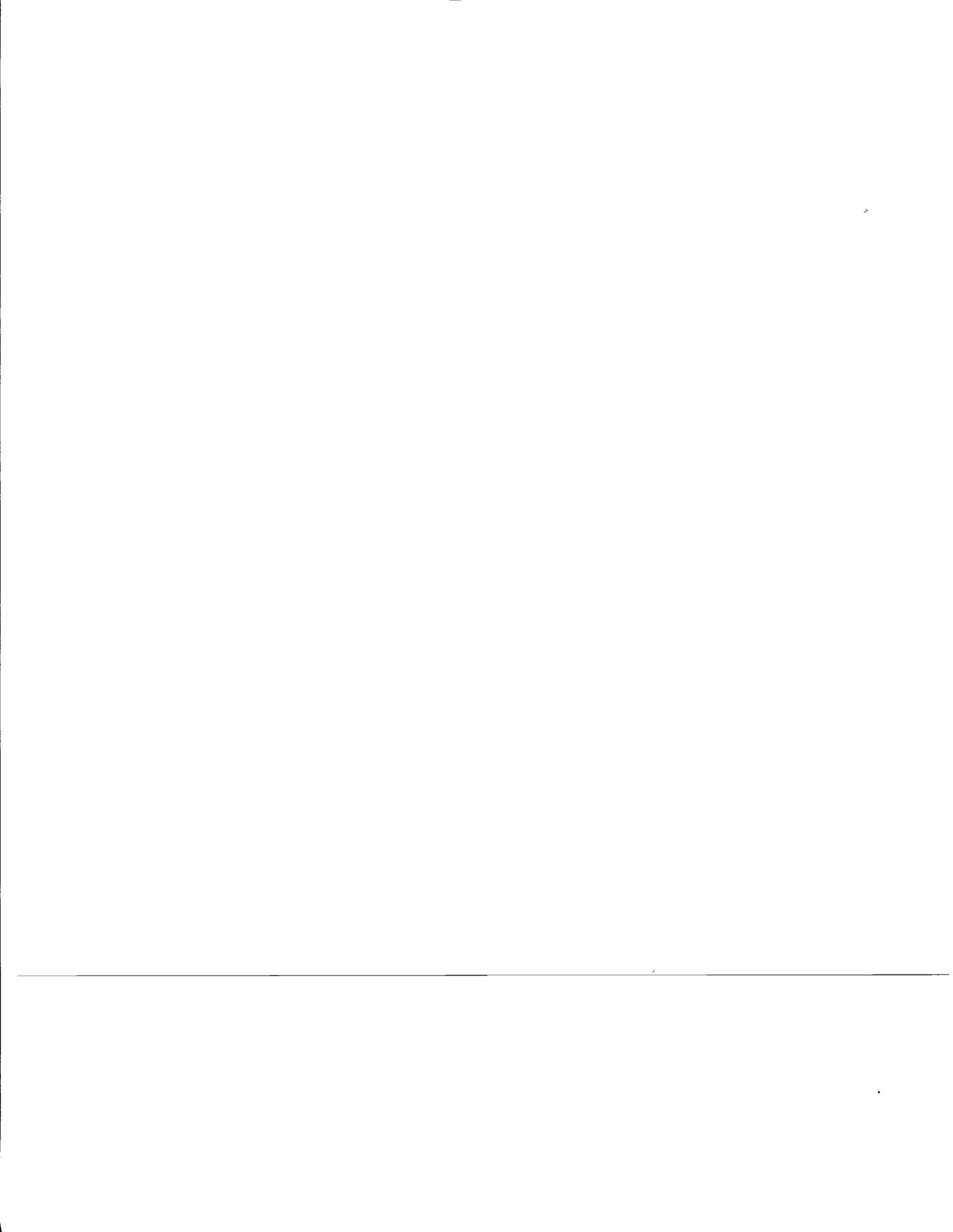
The Joint State Government Commission is pleased to present this report containing the recommendations and proposed legislation of the Task Force on Bankruptcy Exemptions. The comprehensive study of exemption law of the Federal Government, Pennsylvania and other states was authorized by 1980 House Resolution 243, adopted on September 29, 1980.

The Commission recognizes with gratitude the dedicated work of the task force members, under the capable leadership of Representative Warren H. Spencer, as well as of the many representatives of diverse business, consumer and legal interests who provided assistance.

Respectfully submitted,

Roger A. Madigan

ROGER A. MADIGAN
Chairman



Summary of Recommendations

The Joint State Government Commission recommends that the Federal statutory authority granted to states to foreclose the use of Federal bankruptcy exemptions be exercised and the present State exemptions available to Pennsylvania residents filing bankruptcy be modernized and expanded to provide the following exemptions:

- Personal property in an aggregate amount not to exceed \$5,000.
- Debtor's aggregate interest not to exceed \$5,000 in real or personal property used as his primary residence.
- Professionally prescribed health aids.
- Uniforms and accoutrements.
- Retirement funds and accounts.
- Insurance proceeds.
- Unemployment compensation.

--Debtor's right to receive Social Security benefits, public assistance benefits, veterans' benefits, alimony and support, awards under a crime victim's compensation program, wrongful death payments, payments on account of pain and suffering from bodily injury and payments in compensation of loss of future earnings.

The Federal exemption for a debtor's interest in real or personal property held as a tenant by the entirety is not affected.

Background

The revised Federal Bankruptcy Code enacted in 1978 provides in section 522(b)(1) that an individual debtor may exempt from property of the estate "property that is specified under subsection (d) of this section unless the State law that is applicable to the debtor . . . specifically does not so authorize."

House Resolution No. 243 of 1980--sponsored by Representatives D. Michael Fisher, E. Raymond Lynch, Robert W. O'Donnell, Warren H. Spencer and L. Eugene Smith--calls upon the Joint State Government Commission to appoint a task force to conduct a comprehensive review of the new Federal exemptions and the exemption laws of Pennsylvania and other states. The need for the study became apparent during consideration by the House Judiciary Committee of 1979 House Bill 1874, Pr.'s No. 2318. The bill foreclosed use of the Federal exemptions by Pennsylvania residents filing bankruptcy

and restricted them to the less generous, outmoded exemptions available in Pennsylvania execution proceedings (i.e., proceedings involving the enforcement of a judgment or decree by seizure of the property of a debtor).

The Task Force on Bankruptcy Exemptions, chaired by Representative Warren H. Spencer, met four times between March 1981 and March 1982 to consider data and compare current state and Federal exemption laws. On May 7, 1981 the task force held a public hearing at which consumers, lenders, retailers, lawyers providing community legal services, private practitioners and bankruptcy trustees presented testimony. The task force finalized its recommendations on March 30, 1982.

A list of witnesses and others who contributed to the study is found in appendix A. The Pennsylvania bankruptcy judges and their staffs were most helpful in providing factual information.

History of Revised Federal Bankruptcy Code

On November 6, 1978, Congress enacted the Revised Bankruptcy Code, P.L. 95-598, 92 Stat: 2549, as Title 11 of the United States Code, effective October 1, 1979. Section 522 of Title 11 departs from earlier bankruptcy law by providing a uniform system of Federal exemptions. Prior to October 1, 1979 bankrupts (the term "debtors"

is used in the new code) were granted the exemptions allowed by state laws and Federal nonbankruptcy laws,¹ as provided for in section 6 of the Bankruptcy Act of 1898. Critics of section 6 noted that bankrupts were treated unequally because of the vast differences in exemption laws among the states and the failure of most states to update their laws when inflation and changes in societal patterns made many exemptions meaningless.

These criticisms were reiterated during consideration of the Bankruptcy Code. A congressional committee suggested that state exemption laws, many of which had not been revised in this century, were inadequate: "[M]ost are outmoded, designed for more rural times, and hopelessly inadequate to serve the needs of and provide a fresh start for modern urban debtors."² The House report noted that, historically, one purpose of allowing a debtor

1. See foreign service retirement and disability payments, 22 U.S.C. § 1104; Social Security payments, 42 U.S.C. § 407; injury or death compensation payments from war risk hazards, 42 U.S.C. § 1717; wages of fishermen, seamen and apprentices, 46 U.S.C. § 601; Civil Service retirement benefits, 5 U.S.C. § 8346; Longshoremen's and Harbor Workers' Compensation Act benefits, 33 U.S.C. § 916; Railroad Retirement Act annuities and pensions, 45 U.S.C. § 228(1); veterans' benefits, 45 U.S.C. § 352(e); special pensions paid to winners of Congressional Medal of Honor, 38 U.S.C. § 3101; and Federal homestead lands on debts contracted before issuance of the patent, 43 U.S.C. § 175.

2. H.R. Rep. No. 595, 95th Cong. 2d Sess. (1978), at 126.

to exempt property was to insure that "even if his creditors levy on all of his nonexempt property, the debtor will not be left destitute and a public charge."³ For example, the basic exemption policy of Pennsylvania has not changed since the original provisions were enacted in 1849.

(See act of April 9, 1849, P.L. 533, No. 356.)

In legislation proposed to Congress and in response to these criticisms of section 6, the Commission on the Bankruptcy Laws of the United States recommended a system of uniform Federal exemptions rather than the 1898 approach of deferring exemption policy to each state. The commission's proposal adopted general categories of property exempted under state law and compromised dollar and other limitations between the more generous and the more parsimonious state exemption provisions. The National Conference of Bankruptcy Judges proposed that bankrupts be given a choice between state exemptions and a set of Federal exemptions comparable to the commission's proposal.

Under the Bankruptcy Code as finally enacted, 11 U.S.C. § 522(b), an individual debtor may elect:

1. The Federal exemptions specified in 11 U.S.C. § 522(d) or

3. Ibid.

2. State exemptions, including property otherwise exempt from creditors' processes, such as tenancies by the entirety.

Under section 522(b)(1), a state may require the exclusive use of state law exemptions by statutorily "not authorizing" the use of the Federal exemptions. Thus, uniform exemptions were made available to bankruptcy debtors, but a state could foreclose its residents from selecting the Federal alternative and require them to use the state exemptions.

Current Exemptions

Property exempted under section 522(d) of the Federal code may be summarized as follows:⁴

1. Property used as a residence and certain burial plots, not to exceed \$7,500.
2. Motor vehicle, not to exceed \$1,200.
3. Household furnishings, goods, wearing apparel, appliances, books, animals, crops, or musical instruments, not to exceed \$200 for any particular item.
4. Jewelry, not to exceed \$500 in value.

4. For the provisions of section 522(d) see appendix B, p. 31.

5. General exemption of \$400 plus any of the \$7,500 residence exemption not used.
6. Tools of the trade, not to exceed \$750.
7. Life insurance other than credit life.
8. Certain life insurance benefits, not to exceed \$4,000.
9. Health aids.
10. Pensions, government benefits, alimony and support payments.
11. Certain tort or contract claims benefits.

A Pennsylvania resident filing bankruptcy may elect in lieu of the foregoing Federal exemptions those exemptions provided under Pennsylvania law applicable to execution proceedings, which may be summarized as follows:

1. Any property, not to exceed \$300.
2. Wearing apparel.
3. Sewing machine.
4. Uniforms and accoutrements.
5. Retirement funds and accounts.
6. Insurance proceeds.
7. Personal earnings.

Pennsylvania's exemption law, which has remained virtually unchanged in the past 100 years, was codified

as subchapter B of Chapter 81, Title 42, Judicial Code, sections 8121 through 8127.⁵ Since codification of subchapter B by the act of July 9, 1976, P.L. 586, No. 142, sections 8122, 8123, 8124 and 8127 were amended by the act of April 28, 1978, P.L. 202, No. 53. Section 8123 also was amended by the act of June 8, 1979, P.L. 42, No. 14, and section 8124 amended by the act of October 5, 1980, P.L. 693, No. 142.

Unlike most states and the Federal Government, Pennsylvania generally exempts all wages while in the hands of the employer. In addition, under Pennsylvania case law real and personal property owned by a husband and wife as tenants by the entirety is immune from the reach of a creditor of one spouse.⁶ Pennsylvania law presumes that title, possession or other evidence of ownership in either real or personal property held by both spouses creates an

5. The statutes codified were the acts of April 15, 1845, P.L. 459, No. 303; April 9, 1849, P.L. 533, No. 356; April 12, 1855, P.L. 213, No. 226; April 8, 1859, P.L. 425, No. 418; April 17, 1869, P.L. 69, No. 44; March 4, 1870, P.L. 35, No. 13; May 14, 1874, P.L. 145, No. 79; April 20, 1876, P.L. 43, No. 30; May 17, 1883, P.L. 34, No. 25; May 23, 1887, P.L. 164, No. 91; April 4, 1889, P.L. 23, No. 20; June 7, 1907, P.L. 429, No. 293; June 7, 1915, P.L. 866, No. 385; May 3, 1917, P.L. 112, No. 70; May 17, 1919, P.L. 208, No. 129; June 28, 1923, P.L. 884, No. 335; May 4, 1933, P.L. 276, No. 98; April 6, 1951, P.L. 69, No. 20 (see § 402); and July 13, 1953, P.L. 431, No. 95.

6. Iscovitz v. Filderman, 334 Pa. 585, 6 A.2d 270 (1939); Sterrett v. Sterrett, 401 Pa. 583, 166 A.2d 1 (1961).

estate by the entireties. Thus creditors of one spouse cannot assert a claim against entireties property because the other spouse has an interest in the undivided whole. A creditor can reach the entireties property if the husband and wife are obligated jointly on the debt.

Accordingly, in addition to the specific statutory exemptions provided by Pennsylvania law, a Pennsylvania resident who chooses the State alternative may insulate from bankruptcy creditors real and personal property owned by the tenants by the entireties. This result is specifically authorized by section 522(b)(2) which provides:

- (A) any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition . . . and
- (B) any interest in property in which the debtor had, immediately before commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law.

Impact of Federal Exemptions
on Bankruptcy Filings

Witnesses at the May 7, 1981 public hearing held by the task force suggested several reasons for the dramatic recent increase in bankruptcy in the United States. As the following data compiled by the

Administrative Office of the United States Courts demonstrate,⁷ the availability of the more generous Federal exemptions effective October 1, 1979 appears to have had considerable impact.

BANKRUPTCIES FILED FOR YEARS ENDING
JUNE 30, 1975 THROUGH JUNE 30, 1981

<u>Year ending June 30</u>	<u>Bankruptcies filed</u>	<u>Percentage change from previous year</u>
1975	245,484	--
1976	246,549	+.04%
1977	214,399	-13.1
1978	202,951	-5.4
1979	226,476	+11.6
1980	360,957	+59.4
1981	519,063	+43.8

A 1980 analysis of this data concluded that the enactment of the Federal Bankruptcy Code, "the most important change in almost 100 years, contributed to a tremendous increase in bankruptcy filings."⁸

Pennsylvania's bankruptcy rate, which ranks as one of the lowest in the nation,⁹ had been constant until

7. Federal Judicial Workload Statistics (U.S. Government Printing Office, Washington, D.C.: 1981), p. 17.

8. Ibid. (1980), p. 15.

9. In 1980-81 Pennsylvania ranked 40th of the 50 states in bankruptcies filed per 1,000 population. This was up slightly from a rank of 45th in 1979-80 and 48th in 1978-79.

1979-80 when, following enactment of the Federal Bankruptcy Code, the rate jumped substantially. This is demonstrated in the following data.

PENNSYLVANIA BANKRUPTCY RATES PER 1,000 POPULATION
BY DISTRICT DURING THE TWELVE-MONTH PERIODS
ENDING SEPTEMBER 30, 1977 THROUGH SEPTEMBER 30, 1981¹⁰

<u>Year</u>	<u>1976-77</u>	<u>1977-78</u>	<u>1978-79</u>	<u>1979-80</u>	<u>1980-81</u>
State	.41	.34	.41	.84	1.34
Eastern District	.44	.37	.48	.87	1.26
Middle District	.51	.41	.43	.81	1.30
Western District	.33	.27	.33	.84	1.46

The table on p. 13 provides the bankruptcy rate per 1,000 population for each state. An examination of the table indicates a national pattern similar to Pennsylvania's in that the rates of bankruptcies filed throughout the nation were relatively constant from 1976-77 through 1978-79 and increased substantially in 1979-80 and 1980-81 following enactment of the Bankruptcy Code.

10. Administrative Office of the United States Courts, Federal Judicial Workload Statistics. U.S. Bureau of the Census, Current Population Reports, series P-25 no. 709, "Estimates of Population of Counties and Metropolitan Areas: July 1, 1974 and 1975" and 1980 Census of Population and Housing, February 1981 (U.S. Government Printing Office, Washington, D.C.).

BANKRUPTCY RATES PER 1,000 POPULATION
DURING THE TWELVE-MONTH PERIODS ENDING
SEPTEMBER 1977 THOUGH 1981

State	1976-77	1977-78	1978-79	1979-80	1980-81
Alabama	1.96	1.83	2.07	3.10	3.68
Alaska	.66	.59	1.00	1.59	1.33
Arizona	1.33	1.49	1.38	2.15	2.47
Arkansas	.74	.65	.93	1.54	1.71
California	1.44	1.23	1.48	2.45	3.09
Colorado	1.57	1.45	1.43	2.63	3.39
Connecticut	.72	.59	.65	.88	1.16
Delaware	.54	.50	.51	1.02	1.46
Florida	.65	.55	.60	.78	1.01
Georgia	1.50	1.39	1.58	2.39	2.95
Hawaii	.68	.55	.63	1.08	1.05
Idaho	1.78	1.58	2.01	3.49	3.90
Illinois	1.32	1.20	1.62	2.93	3.20
Indiana	1.59	1.50	1.82	3.03	3.57
Iowa	.97	.97	1.03	1.78	2.28
Kansas	1.73	1.59	1.75	2.69	2.82
Kentucky	1.38	1.32	1.53	2.96	3.14
Louisiana	1.22	1.13	1.21	1.58	1.84
Maine	1.09	.89	.94	1.26	1.32
Maryland	.39	.45	.56	1.14	1.69
Massachusetts	.56	.45	.45	.66	.81
Michigan	.65	.64	.87	1.79	2.21
Minnesota	.86	.80	.92	1.57	2.00
Mississippi	1.13	1.00	1.12	2.10	2.96
Missouri	1.09	1.02	1.08	2.02	2.32
Montana	1.03	1.00	1.15	1.87	2.57
Nebraska	1.26	1.38	1.38	2.60	2.62
Nevada	2.51	1.92	1.96	3.56	4.72
New Hampshire	.61	.57	.59	1.06	1.31
New Jersey	.53	.46	.46	.91	1.44
New Mexico	1.20	1.01	1.13	1.63	1.69
New York	.73	.65	.75	1.50	1.90
North Carolina	.71	.71	.82	1.80	2.15
North Dakota	.73	.76	.94	1.19	1.38
Ohio	1.21	1.19	1.51	3.03	3.69
Oklahoma	1.38	1.31	1.46	2.12	2.14
Oregon	1.55	1.27	1.51	2.66	3.32
Pennsylvania	.41	.34	.41	.84	1.34
Rhode Island	.52	.46	.48	1.40	1.51
South Carolina	.16	.16	.17	.42	.91
South Dakota	.61	.76	.80	1.45	1.53
Tennessee	1.93	1.58	2.04	3.64	4.31
Texas	.37	.32	.40	.76	1.11
Utah	1.01	.92	1.08	2.44	4.00
Vermont	.59	.49	.44	.70	.74
Virginia	1.31	1.27	1.55	2.14	2.56
Washington	1.29	1.10	1.28	2.56	3.12
West Virginia	.89	.81	.70	1.13	1.80
Wisconsin	.87	.82	.89	1.38	1.89
Wyoming	1.37	.97	.87	1.44	1.87

SOURCE: Administrative Office of the United States Courts, Federal Judicial Workload Statistics. U.S. Bureau of the Census, Current Population Reports, series P-25 no. 709, "Estimates of Population of Counties and Metropolitan Areas: July 1, 1974 and 1975" and 1980 Census of Population and Housing, February 1981 (U.S. Government Printing Office, Washington, D.C.).

Exemptions of Other States

As of January 1982 approximately two-thirds of the states had foreclosed the use of the Federal exemptions. An examination of selected states which have opted out of the Federal exemptions reveals that the typical approach is to compromise between outmoded state exemption provisions and those of the Federal law.

Maryland exempts all tools of the trade, insurance proceeds, household goods in an amount up to \$500, benefits received from health and accident policies, \$3,000 in any property and, in bankruptcy proceedings, \$4,500 in a residence.¹¹

Under Ohio law,¹² a debtor may claim a homestead with an equity of \$5,000, a motor vehicle with an equity of \$1,000, clothing and bedding up to \$200 in each item, cooking equipment up to \$300 in each item, a refrigerator, \$400 in cash, \$200 per item in other furnishings, one item of jewelry up to \$400 and up to \$200 in other items of jewelry. If the homestead is claimed, an overall limitation of \$1,500 is placed on personal property; if a homestead is not claimed, the overall limitation is \$2,000. In addition, \$750 in tools of the trade are

11. Md. Cts. & Jud. Proc. Code Ann. § 11-504 (1981).

12. Ohio Rev. Code Ann. § 2329.66 (Baldwin 1980).

exempt, as are pensions, life insurance, health aids, a burial lot, loss compensation payments and future income.

Debtors in Illinois may exempt up to \$10,000 in a homestead, \$1,000 if married and \$300 if single, clothing, books valued up to \$100, a Bible, pictures, intangibles, life insurance, disability benefits, pensions, loss compensation and future earnings.¹³

Although California has not opted out, spouses filing jointly may not select different exemption alternatives; both spouses must choose either the state or the Federal exemptions.¹⁴

Some states which have not opted out, such as Michigan, have exemptions less generous than those provided by the Federal law. Michigan has an urban homestead exemption of \$3,500 and a rural exemption of 40 acres. Also exempt are family pictures, wearing apparel, food and fuel for six months, household goods up to \$1,000 in value, a pew, certain farm animals, disability benefits, a motor vehicle used for business purposes, pensions and life insurance proceeds.¹⁵ New Jersey's

13. Ill. Rev. Stat. Ch. 52, § 13 (1981).

14. Cal. Civ. Pro. Code, § 690 (West 1981).

15. Mich. Stat. Ann. § 27A.6023 (Callaghan 1981).

exemptions include wearing apparel, property selected by the debtor up to \$1,000 in value, payments for loss compensation, life insurance and certain pensions.¹⁶

In New York, a debtor may exempt a homestead in an amount up to \$10,000. He also may exempt a stove and fuel for 100 days, guide dogs, a sewing machine, Bibles and books, a pew, domestic animals, wearing apparel, general household furnishings, wedding rings, a watch in an amount up to \$35, tools of the trade up to \$100 and a security deposit.¹⁷

Some states which have not opted out provide exemptions more generous than the Federal exemptions. For example, in Texas a debtor who is the head of a household may exempt 200 acres if his homestead is rural while an unmarried debtor may exempt 100 acres if his homestead is rural. If the homestead is urban it may be claimed as exempt up to \$10,000 in value. In addition, a single debtor may exempt up to \$15,000 in personal property while a head of a household may exempt personal property up to \$30,000.¹⁸

16. N.J. Rev. Stat. § 2A:17-19 (West 1981).

17. N.Y. Civ. Prac. Law § 5205 (Consol. 1978).

18. Tex. Rev. Civ. Stat. Ann. arts. 3833-3836 (Vernon 1982).

Proposed Legislation

Summary

The proposed legislation amends subchapter B of Chapter 81, Title 42, Pennsylvania Consolidated Statutes, known as the Judicial Code, by adding a new section 8128 which forecloses the use of the Federal bankruptcy exemptions. The proposed statute, along with source notes and official comments, is presented on pp. 21 to 27.

The current Pennsylvania exemptions in Chapter 81 of Title 42 apply to executions as well as to bankruptcy. The proposed legislation does not affect the application of these exemptions to executions. New section 8128 applies only to bankruptcy proceedings. Amendments to section 8121(a) and new section 8128(a) make this differentiation clear.

Section 8121(b) provides that a debtor may exempt his interest in personal property not to exceed an aggregate amount in value of \$5,000. This exemption

was adopted in lieu of the specific categories of personal property under Federal law--e.g., household goods, motor vehicles, jewelry, tools of the trade--to give the debtor more flexibility in selecting property to be exempted. In addition to the value of personal property exempt under subsection (b), other subsections provide for exemption of specific types of personal property without dollar limitations. Subsection (d) provides for exemption of professionally prescribed health aids. This exemption is not available under current Pennsylvania law but is included in the Federal exemptions. Subsection (e) permits a debtor to exempt uniforms as provided in 51 Pa.C.S. § 4103. This exemption is available under current Pennsylvania law.

Subsection (f) allows exemption of certain retirement funds and accounts and subsection (g) provides for exemption of certain insurance proceeds. Both of these subsections are included in proposed section 8128 without change from current Pennsylvania law except for the addition of paragraph (9) to subsection (f). Consequently, case law interpreting these provisions would apply for bankruptcy purposes.

While exempt under current Pennsylvania law, unemployment compensation has not previously been included

in Chapter 81. The legislation permits exemption of unemployment compensation for bankruptcy proceedings as subsection (h) of proposed section 8128.

Subsection (i) provides for exemption of future income and subsection (j) for exemption of loss compensation. Both of these provisions were suggested by the Federal exemptions. However, the Federal statute permits exemption of property traceable to these types of income. Difficulties inherent in tracing are avoided by not including the Federal language on this point. In addition, the Federal language pertaining to exemption of pension and similar payments was rejected in favor of including current Pennsylvania law. It should be noted that under the proposed legislation, unlike the Federal statute, compensation for pain and suffering is specifically included in the personal injury payment exemption.

As for real property, a "homestead-like" exemption is recommended. Under current Pennsylvania law, property held by a husband and wife as tenants by the entirety cannot be reached by creditors of one spouse. While this result is not changed in the proposed legislation, the task force considered it necessary to protect the debtor who owns his primary residence but not as a

tenant by the entirety. Subsection (c) provides that a debtor may exempt his aggregate interest (i.e., his equity) up to \$5,000 in real property (or personal property such as a mobile home) used as his primary residence.

Potentially the most important exemption for a married debtor not filing a joint petition is the common law entireties exclusion. Under section 541(a) of the Bankruptcy Code, the debtor's estate includes all his legal and equitable interests in property at the commencement of the case. Although a married debtor filing an individual petition has only an equitable interest--such as an expectancy or right of survivorship--in the entireties property, his interest is includable in the estate.¹⁹ Thus Pennsylvania's exemption law has two components--property exempt by statute and property immune from process. The latter is made exempt by the specific provisions of 11 U.S.C. § 522(b)(2)(B). Of course, a husband and wife filing as joint debtors would not have the tenancy by the entireties exemption. However, each would have available the \$5,000 exemptions for his, her or their personal property and their residence owned as tenants by the entireties.

19. In re Barsotti, 7 Bankr. 205, 210 (W.D.Pa. 1980).

PROPOSED LEGISLATION WITH NOTES AND COMMENTS

AN ACT

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for exemptions in bankruptcy proceedings.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 8121(a) of Title 42, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, is amended to read:

§ 8121. Scope of subchapter.

(a) General rule.--Except as provided by subsection (b) the exemptions from execution specified in this subchapter are in addition to any other exemptions from execution granted by any other statute. Section 8128 (relating to exemptions available in bankruptcy proceedings) is applicable only to proceedings arising under 11 United States Code (relating to bankruptcy).

* * *

Comment: Sections 8122 through 8127 apply only in execution proceedings. Section 8128 applies only in bankruptcy proceedings.

Section 2. Title 42 is amended by adding a section to read:

§ 8128. Exemptions available in bankruptcy proceedings.

Source: New.

Comment: For the purposes of this section a debtor's interest in property shall be his equity in the property.

(a) Nonavailability of Federal bankruptcy exemptions.--In any bankruptcy proceeding a debtor shall not be entitled to the Federal exemptions provided in 11 United States Code § 522(d) (relating to exemptions) or to any exemptions provided elsewhere in this subchapter or in any other statute. The debtor shall be limited to the exemptions provided in this section.

Source: New.

Comment: 11 U.S.C. § 522(b)(1) provides that a debtor may elect the exemptions provided in section 522(d) unless State law "specifically does not so authorize."

(b) Personal property.--A debtor may exempt his interest in any property, excluding any property otherwise exempt pursuant to this section, in an aggregate amount not to exceed \$5,000 in value.

Source: New.

Comment: Rather than specifying categories of personal property from which the debtor may claim certain items, this subsection establishes a dollar limit on the amount of personal property not otherwise exempt which may be claimed. This was done to give the debtor more flexibility in selecting the personal property to be exempt as well as to establish a dollar limitation for personal property exempted under this subsection.

(c) Homestead.--A debtor may exempt his aggregate interest, not to exceed \$5,000 in value, in real or personal property the debtor or a dependent of the debtor uses as his primary residence.

Source: New.

Comment: This subsection enables a debtor who does not own his home as a tenant by the entirety to exempt his equity interest in his home up to \$5,000. Under 11 U.S.C. § 522(b)(2)(B) property held as tenants by the entirety is immune from process as provided for in state nonbankruptcy law. In Pennsylvania, property held as tenants by the entirety is not subject to the individual debts of either spouse. Iscovit v. Filderman, 334 Pa. 585, 6 A.2d 270 (1939); Sterrett v. Sterrett, 401 Pa. 583, 166 A.2d 1 (1961). The residence is termed as the "primary" residence to exclude second homes, vacation homes, etc.

(d) Health aids.--A debtor may exempt professionally prescribed health aids for the debtor or his dependent.

Source: 11 U.S.C. § 522(d)(9).

(e) Uniforms.--A debtor may exempt his interest in uniforms and accoutrements as provided in 51 Pa.C.S. § 4103 (relating to exemption of uniforms and equipment).

Source: 42 Pa.C.S. § 8124(a)(4).

(f) Retirement funds and accounts.--A debtor may exempt the following money or other property:

(1) Certain amounts payable under the Public School Employees' Retirement Code as provided by 24 Pa.C.S. § 8533 (relating to taxation, attachment and assignment of funds).

(2) Certain amounts payable under the State Employees' Retirement Code as provided by 71 Pa.C.S. § 5953 (relating to taxation, attachment and assignment of funds).

(3) The retirement allowance provided for in the act of May 24, 1993 (P.L.129, No.82).

(4) Compensation or pension provided for in the act of

May 20, 1915 (P.L.566, No.242).

(5) Compensation or pension provided for in the act of May 28, 1915 (P.L.596, No.259).

(6) The retirement allowance, contributions and returned contributions under the act of February 1, 1974 (P.L.34, No.15), known as the "Pennsylvania Municipal Retirement Law."

(7) Any pension or annuity, whether by way of a gratuity or otherwise, granted or paid by any private corporation or employer to a retired employee under a plan or contract which provides that the pension or annuity shall not be assignable.

(8) Any retirement or annuity fund of any self-employed person to the extent of payments thereto made while solvent, but not exceeding the amount actually excluded or deducted as retirement funding for Federal income tax purposes, and the appreciation thereon, the income therefrom and the benefits or annuity payable thereunder.

(9) Retirement funds and accounts exempted by Federal law.

Source: 42 Pa.C.S. § 8124(b);
paragraph (9) is new.

(g) Insurance proceeds.--A debtor may exempt the following property or other rights:

(1) Certain amounts paid, provided or rendered by a fraternal benefit society as provided by 40 Pa.C.S. § 6531 (relating to benefits not attachable).

(2) Claims and compensation payments under the act of June 2, 1915 (P.L.736, No.338), known as "The Pennsylvania Workmen's Compensation Law," except as otherwise provided in the act.

(3) Any policy or contract of insurance or annuity issued to a solvent insured who is the beneficiary thereof, except any part thereof exceeding an income or return of \$100 per month.

(4) Any amount of proceeds retained by the insurer at maturity or otherwise under the terms of an annuity or policy of life insurance if the policy or a supplemental agreement provides that such proceeds and the income therefrom shall not be assignable.

(5) Any policy of group insurance or the proceeds thereof.

(6) The net amount payable under any annuity contract or policy of life insurance made for the benefit of or assigned to the spouse, children or dependent relative of the insured, whether or not the right to change the named beneficiary is reserved by or permitted to the insured. This paragraph shall not be applicable to the extent the debtor is such spouse, child or other relative.

(7) The net amount payable under any accident or disability insurance.

(8) Certain amounts paid, provided or rendered by a fraternal benefit society as provided by section 305 of the act of July 29, 1977 (P.L.105, No.38), known as the "Fraternal Benefit Society Code."

Source: 42 Pa.C.S. § 8124(c).

(h) Unemployment compensation.--A debtor may exempt compensation payments as provided by the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the "Unemployment Compensation Law."

Source: Act of December 5, 1936 (2nd Sp. Sess., 1937 P.L. 2897, No. 1) (see 43 P.S. § 863).

(i) Benefits and support.--A debtor may exempt his right to receive:

(1) A social security benefit or a public assistance benefit.

(2) A veteran's benefit.

(3) Alimony and support to the extent reasonably necessary for the support of the debtor and his dependent.

Source: 11 U.S.C. § 522(d)(10)(A), (B), (C) and (D).

(j) Loss compensation.--A debtor may exempt his right to receive:

(1) An award under a crime victim's compensation program.

(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 his dependent.

(3) A payment, not to exceed \$7,500, on account of the pain and suffering from the bodily injury of the debtor or an individual of whom the debtor is a dependent.

(4) 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 his dependent.

Source: 11 U.S.C. § 522(d)(11)(A), (B), (D), and (E).

Section 3. This act shall take effect immediately and shall apply to all bankruptcy proceedings initiated by the filing of a petition for bankruptcy on or after the effective date.

Appendix A

Persons Contributing to Study of Task Force on Bankruptcy Exemptions

PAUL A. ADAMS, ESQ.
Chief Counsel
Department of Banking

KAREN BALL
Dilworth, Paxson, Kalish & Levy

JOHN T. BARBER, ESQ.
Barley, Snyder, Cooper & Barber

DONALD R. CALAIARO, ESQ.*
Saldamarco & Calaiaro

RICHARD S. CONKLIN*
Management Information Systems Manager
Danks Department Store

JOHN H. DORAN, ESQ.
Doran & Nowalis

MICHAEL EDMISTON, ESQ.
Pennsylvania Legal Services

LEON S. FORMAN, ESQ.
Wexler, Weisman, Forman & Shapiro

GLENN Y. FORNEY
President and Chief Executive Officer
Security Bank and Trust Company of
Stroudsburg
Chairman
Pennsylvania Bankers Association
Task Force on Bankruptcy

LAWRENCE G. FRANK, ESQ.*

CHRISTOPHER N. GIULIANA*
Director
Legal Services Program
United Auto Workers

JOHN R. HAINES
Government Affairs Officer
American Bank and Trust Company of
Pennsylvania

NANCY M. HUDSON
Manager
Lancaster Belltel Federal Credit
Union

DEBORAH A. HUGHES, ESQ.*

BRUCE JOHNSON*
Director of Governmental Affairs
Pennsylvania Retailers'
Associations

ROGER KELLEY*
Legislative Information Specialist
Pennsylvania Credit Union League

HILLARD KREIMER, ESQ.
McCrary, Kreimer, Ravick & Bonistalli

*Testified at May 7, 1981 public hearing of Task Force on Bankruptcy Exemptions.

BRETT K. KUNIN, ESQ.
Assistant Counsel
Provident National Bank

WILLIAM M. LOAR*
Vice President
Bank of Hanover

WILLIAM H. MARKUS, ESQ.*
Counsel for Pennsylvania Savings League

EDWARD A. MIHALIK, ESQ.
House Consumer Affairs Committee
Minority Staff

MITCHELL W. MILLER, ESQ.*
Miller & Miller

JAMES MURPHY
Pennsylvania Bar Association

HERBERT B. NEWBERG, ESQ.
Barrack, Rodos & McMahon

DAVID A. SCHOLL, ESQ.
Community Legal Services

PROFESSOR W. EDWARD SELL
University of Pittsburgh School
of Law

BRUCE A. SENFT
Assistant Executive Director
Independent Bankers of Pennsylvania

PROFESSOR PHILLIP SHUCHMAN*
University of Connecticut School
of Law

GEOFFREY SHUFF, ESQ.
Chief Counsel
Department of Commerce

KENNETH P. SIMON, ESQ.
Reed, Smith, Shaw & McClay

KENNETH B. SKELLY, ESQ.
Fox, Farr & Cunningham

JAMES L. SMITH III
Executive Director
Allegheny County Bar Association

CLAIR A. SNYDER
Executive Vice President
American Bank and Trust Company
of Pennsylvania

HENRY J. SOMMER, ESQ.*
Community Legal Services, Inc.

DEBORAH M. SUDER*
Legislative Staff Assistant
Pennsylvania Retailers'
Associations

MICHAEL J. SYMONS
Chairman
Legislative Committee
Pennsylvania Credit Union League

JOHN TAYLOR*
Director
Pennsylvania State Council
United Auto Workers

MICHAEL L. TEMIN, ESQ.
Wolf, Block, Schorr &
Solis-Cohen

JEANNINE TURGEON, ESQ.
Nauman, Smith, Shissler & Hall

JOEL WEISBERG, ESQ.*

BARRY WICKES
Assistant Vice President
Pennsylvania Savings League

WILLIAM WOOD, ESQ.
Keefer, Wood, Allen & Rahal

**Exemptions under Section 522(d)
of Federal Bankruptcy Code**

§ 522. Exemptions

(d) The following property may be exempted under subsection (b)(1) of this section:

(1) The debtor's aggregate interest, not to exceed \$7,500 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.

(2) The debtor's interest, not to exceed \$1,200 in value, in one motor vehicle.

(3) The debtor's interest, not to exceed \$200 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.

(4) The debtor's aggregate interest, not to exceed \$500 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, not to exceed in value \$400 plus any unused amount of the exemption provided under paragraph (1) of this subsection, in any property.

(6) The debtor's aggregate interest, not to exceed \$750 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) Any unmaturred life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed in value \$4,000 less any amount of property of the estate transferred in the manner specified in section 542(d) of this title, in any accrued dividend or interest under, or loan value of, any unmaturred life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

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

(10) The debtor's right to receive—

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

(B) a veterans' benefit;

(C) a disability, illness, or unemployment benefit;

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

(E) a payment under a stock bonus, pension, profitsharing, 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, unless—

(i) 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;

(ii) such payment is on account of age or length of service; and

(iii) such plan or contract does not qualify under section 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue Code of 1954 (26 U.S.C. 401(a), 403(a), 403(b), 408, or 409).

(11) 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 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;

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

(D) a payment, not to exceed \$7,500, 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; or

(E) 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.