



Office of the Clerk
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EXEMPTIONS

The following is provided by the Office of the Clerk, United States Bankruptcy Court for the District of New Mexico, **for general informational purposes only** as part of the court's packet of information available to self-represented bankruptcy petition filers.

Under section 522 of the United States Bankruptcy Code, each individual debtor (i.e., not a corporation or partnership) is allowed to claim certain property exempt. This means that the debtor(s) may keep the property free from the claims of any creditors except secured creditors that may hold a lien on the property. A claim of exemption has no effect on valid liens. This means that, for example, a home mortgage or a car loan is still valid when the house or car is claimed exempt.

The Bankruptcy Code allows debtors to choose their exempt property either from a federal list of exemptions or a state list of exemptions. Mixing federal and state exemptions is not permitted. In other words, the exemptions must be all state or all federal. Additionally, if husband and wife file jointly, both must claim federal exemptions or both must claim state exemptions. Exemptions are claimed on Schedule C.

To claim FEDERAL EXEMPTIONS, check the box for "11 U.S.C. §522 (b)(2)" on Schedule C. If you claim state exemptions, and you have not resided in the state for 730 days, there are provisions in Section 522 (b)(3) that apply. The federal exemptions are contained within sections 522(d)(1) through 522(d)(12) of the United States Bankruptcy Code. See list attached.

To claim STATE EXEMPTIONS, check the box for "11 U.S.C. §522 (b)(3)" on Schedule C. The New Mexico exemptions are contained in sections 42-10-1 through 42-10-13 of the New Mexico Statutes. See list attached.

Creditors, the case trustee, or other party in interest may file with the court an objection to an exemption claimed by the debtor. Objections to the list of property claimed exempt must be filed within 30 days of the conclusion of the first meeting of creditors. The Bankruptcy Code states that if no party in interest objects to the list of exempt property, it is exempt.

Go to <http://www.law.cornell.edu/uscode/html/uscode11/> for the list of federal exemptions. Select Chapter 5, then Subchapter II, then § 522.

Go to <http://www.conwaygreene.com/NewMexico.htm> for the list of New Mexico state exemptions. Click on *New Mexico* → *Search On-line Statutes* → *I agree* → *New Mexico Statutes and Court Rules* → *Statutory Chapters in New Mexico Statutes Annotated 1978* → *Search for Chapter 42, Actions and Proceedings Relating to Property* → *Article 10. Exemptions, 42-10-1 through 42-10-13.*

New Mexico Statues Annotated 1978, CHAPTER 42 ARTICLE 10, Exemptions

Section

- 42-10-1 Exemptions of married persons or heads of households.
- 42-10-2 Exemptions of persons who support only themselves.
- 42-10-3 Life, accident and health insurance benefits.
- 42-10-4 Benefits from benevolent associations.
- 42-10-5 Life insurance proceeds.
- 42-10-6 Personal property used as a security under the Uniform Commercial Code is not exempt.
- 42-10-7 Taxes and garnishment excepted.
- 42-10-8 Repealed.
- 42-10-9 Homestead exemption.
- 42-10-10 Exemption in lieu of homestead.
- 42-10-11 When homestead exemption does not apply.
- 42-10-12 Repealed.
- 42-10-13 Claim of exemption or priority.

42-10-1. Exemptions of married persons or heads of households.

Personal property in the amount of five hundred dollars (\$500), tools of the trade in the amount of fifteen hundred dollars (\$1,500), one motor vehicle in the amount of four thousand dollars (\$4,000), jewelry in the amount of twenty-five hundred dollars (\$2,500), clothing, furniture, books, medical-health equipment being used for the health of the person and not for his profession and any interest in or proceeds from a pension or retirement fund of every person supporting another person is exempt from receivers or trustees in bankruptcy or other insolvency proceedings, fines, attachment, execution or foreclosure by a judgment creditor. Property exempted shall be valued at the market value of used chattels.

42-10-2. Exemptions of persons who support only themselves.

Personal property other than money in the amount of five hundred dollars (\$500), tools of the trade in the amount of fifteen hundred dollars (\$1,500), one motor vehicle in the amount of four thousand dollars (\$4,000), jewelry in the amount of twenty-five hundred dollars (\$2,500), clothing, furniture, books, medical-health equipment being used for the health of the person and not for his profession and any interest in or proceeds from a pension or retirement fund of every person supporting only himself is exempt from receivers or trustees in bankruptcy or other insolvency proceedings, executors or administrators in probate, fines, attachment, execution or foreclosure by a judgment creditor. Property exempted shall be valued at the market value of used chattels.

42-10-3. [Life, accident and health insurance benefits.]

The cash surrender value of any life insurance policy, the withdrawal value of any optional settlement, annuity contract or deposit with any life insurance company, all weekly, monthly, quarterly, semiannual or annual annuities, indemnities or payments of every kind from any life, accident or health insurance policy, annuity contract or deposit heretofore or hereafter issued upon the life of a citizen or resident of the state of New Mexico, or made by any such insurance company with such citizen, upon whatever form and whether the insured or the person protected thereby has the right to change the beneficiary therein or not, shall in no case be liable to attachment, garnishment or legal process in favor of any creditor of the person whose life is so insured or who is protected by said contract, or who receives or is to receive the benefit thereof, nor shall it be subject in any other manner to the debts of the person whose life is so insured, or who is protected by said contract or who receives or is to receive the benefit thereof, unless such policy, contract or deposit be taken out, made or assigned in writing for the benefit of such creditor.

42-10-4. [Benefits from benevolent associations.]

Any beneficiary fund not exceeding five thousand dollars [(\$5,000)], set apart, appropriated or paid, by any benevolent association or society, according to its rules, regulations or bylaws, to the family of any deceased member, or to any member of such family, shall not be liable to be taken by any process or proceedings, legal or equitable, to pay any debts of such deceased member.

42-10-5. [Life insurance proceeds.]

The proceeds of any life insurance are not subject to the debts of the deceased, except by special contract or arrangement, to be made in writing.

42-10-6. Personal property used as a security under the Uniform Commercial Code is not exempt.

A secured creditor who has personal property of the debtor as security as provided by the Uniform Commercial Code [Chapter 55 NMSA 1978] may proceed according to the terms of the security instrument and the Uniform Commercial Code. The debtor cannot exempt personal property given to a secured creditor as security unless there be more property than is necessary to pay the debt to the secured creditor. The debtor may claim an exemption out of the surplus.

42-10-7. Taxes and garnishment excepted.

This article is not applicable to taxes or garnishment.

42-10-8. Repealed.

42-10-9. Homestead exemption.

Each person shall have exempt a homestead in a dwelling house and land occupied by the person or in a dwelling house occupied by the person although the dwelling is on land owned by another, provided that the dwelling is owned, leased or being purchased by the person claiming the exemption. Such a person has a homestead of sixty thousand dollars (\$60,000) exempt from attachment, execution or foreclosure by a judgment creditor and from any proceeding of receivers or trustees in insolvency proceedings and from executors or administrators in probate.

If the homestead is owned jointly by two persons, each joint owner is entitled to an exemption of sixty thousand dollars (\$60,000).

42-10-10. Exemption in lieu of homestead.

A. Any resident of this state who does not own a homestead shall in addition to other exemptions hold exempt real or personal property in the amount of five thousand dollars (\$5,000) in lieu of the homestead exemption.

B. If the resident does not own a homestead, the sheriff or any other person or officer seeking to attach, execute or foreclose by judgment on property shall provide the resident with written notification of the resident's right to exemption in lieu of homestead as described in Subsection A of this section, together with a simple form by which the resident may designate that the resident is aware of the exemption and does or does not desire to claim the exemption. If the resident refuses to make the election provided for in this section, the sheriff, other person or officer shall proceed to attach, execute or foreclose on the resident's property. If the resident claims the exemption in lieu of homestead, the sheriff, other person or officer making attachment, execution or foreclosure by judgment shall file as part of the return a description, including the resident's stated value, of the property claimed as exempt, bearing the resident's signature witnessed by the sheriff, other person or officer seeking to attach, execute or foreclose.

42-10-11. When homestead exemption does not apply.

The provisions of this article [42-10-9 to 42-10-12 NMSA 1978] do not apply or extend to taxes, garnishment, recorded liens of mortgagees or lessors or recorded liens of laborers or materialmen for labor or materials furnished for the construction or repair of the dwelling house.

42-10-12. Repealed.

42-10-13. Claim of exemption or priority.

Any person desiring to claim that property is exempt from execution or is subject to execution only after other property is used to satisfy a debt under the provisions of Sections 40-3-10 and 40-3-11 NMSA 1978 shall file his claim of exemption or priority in the appropriate court, or the right to claim such exemption is waived as between a spouse and the creditor.

Title 11 United States Code

Section 522

NB: This unofficial compilation of the U.S. Code is current as of Jan. 2, 2006 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

TITLE 11 - BANKRUPTCY

CHAPTER 5 - CREDITORS, THE DEBTOR, AND THE ESTATE

SUBCHAPTER II - DEBTORS DUTIES AND BENEFITS

§ 522. Exemptions

(a) In this section—

(1) “dependent” includes spouse, whether or not actually dependent; and

(2) “value” means fair market value as of the date of the filing of the petition or, with respect to property that becomes property of the estate after such date, as of the date such property becomes property of the estate.

(b) (1) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (2) or, in the alternative, paragraph (3) of this subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, one debtor may not elect to exempt property listed in paragraph (2) and the other debtor elect to exempt property listed in paragraph (3) of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (2), where such election is permitted under the law of the jurisdiction where the case is filed.

(2) Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize.

(3) Property listed in this paragraph is—

(A) subject to subsections (o) and (p), 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 at the place in which the debtor’s domicile has been located for the 730 days immediately preceding the date of the filing of the petition or if the debtor’s domicile has not been located at a single State for such 730-day period, the place in which the debtor’s domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place;

(B) any interest in property in which the debtor had, immediately before the 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; and

(C) retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986. If the effect of the domiciliary requirement under subparagraph (A) is to render the debtor ineligible for any exemption, the debtor may elect to exempt property that is specified under subsection (d).

(4) For purposes of paragraph (3)(C) and subsection (d)(12), the following shall apply:

(A) If the retirement funds are in a retirement fund that has received a favorable determination under section 7805 of the Internal Revenue Code of 1986, and that determination is in effect as of the date of the filing of the petition in a case under this title, those funds shall be presumed to be exempt from the estate.

(B) If the retirement funds are in a retirement fund that has not received a favorable determination under such section 7805, those funds are exempt from the estate if the debtor demonstrates that—

(i) no prior determination to the contrary has been made by a court or the Internal Revenue Service; and

(ii) **(I)** the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986; or

(II) the retirement fund fails to be in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986 and the debtor is not materially responsible for that failure.

(C) A direct transfer of retirement funds from 1 fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986, under section 401(a)(31) of the Internal Revenue Code of 1986, or otherwise, shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of such direct transfer.

(D) **(i)** Any distribution that qualifies as an eligible rollover distribution within the meaning of section 402(c) of the Internal Revenue Code of 1986 or that is described in clause (ii) shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of such distribution.

(ii) A distribution described in this clause is an amount that—

(I) has been distributed from a fund or account that is exempt from taxation under section 401, 403, 408, 408A,

414, 457, or 501(a) of the Internal Revenue Code of 1986;
and

(II) to the extent allowed by law, is deposited in such a fund or account not later than 60 days after the distribution of such amount.

(c) Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except—

(1) a debt of a kind specified in paragraph (1) or (5) of section 523 (a) (in which case, notwithstanding any provision of applicable nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in section 523 (a)(5));

(2) a debt secured by a lien that is—

(A) **(i)** not avoided under subsection (f) or (g) of this section or under section 544, 545, 547, 548, 549, or 724 (a) of this title; and
(ii) not void under section 506 (d) of this title; or

(B) a tax lien, notice of which is properly filed;

(3) a debt of a kind specified in section 523 (a)(4) or 523 (a)(6) of this title owed by an institution-affiliated party of an insured depository institution to a Federal depository institutions regulatory agency acting in its capacity as conservator, receiver, or liquidating agent for such institution; or

(4) a debt in connection with fraud in the obtaining or providing of any scholarship, grant, loan, tuition, discount, award, or other financial assistance for purposes of financing an education at an institution of higher education (as that term is defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)).

(d) The following property may be exempted under subsection (b)(2) of this section:

(1) The debtor's aggregate interest, not to exceed \$15,000 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 \$2,400 in value, in one motor vehicle.

(3) The debtor's interest, not to exceed \$400 in value in any particular item or \$8,000 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 \$1,000 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 any property, not to exceed in value \$800 plus up to \$7,500 of any unused amount of the exemption provided under paragraph (1) of this subsection.

(6) The debtor's aggregate interest, not to exceed \$1,500 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 \$8,000 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), or 408 of the Internal Revenue Code of 1986.

- (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 \$15,000, 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.

(12) Retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.

(e) A waiver of an exemption executed in favor of a creditor that holds an unsecured claim against the debtor is unenforceable in a case under this title with respect to such claim against property that the debtor may exempt under subsection (b) of this section. A waiver by the debtor of a power under subsection (f) or (h) of this section to avoid a transfer, under subsection (g) or (i) of this section to exempt property, or under subsection (i) of this section to recover property or to preserve a transfer, is unenforceable in a case under this title.

(f) **(1)** Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—

- (A)** a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523 (a)(5); or
- (B)** a nonpossessory, nonpurchase-money security interest in any—
 - (i)** household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;
 - (ii)** implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or
 - (iii)** professionally prescribed health aids for the debtor or a dependent of the debtor.

- (2) (A)** For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of—
- (i)** the lien;
 - (ii)** all other liens on the property; and
 - (iii)** the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens.
- (B)** In the case of a property subject to more than 1 lien, a lien that has been avoided shall not be considered in making the calculation under subparagraph (A) with respect to other liens.
- (C)** This paragraph shall not apply with respect to a judgment arising out of a mortgage foreclosure.
- (3)** In a case in which State law that is applicable to the debtor—
- (A)** permits a person to voluntarily waive a right to claim exemptions under subsection (d) or prohibits a debtor from claiming exemptions under subsection (d); and
 - (B)** either permits the debtor to claim exemptions under State law without limitation in amount, except to the extent that the debtor has permitted the fixing of a consensual lien on any property or prohibits avoidance of a consensual lien on property otherwise eligible to be claimed as exempt property; the debtor may not avoid the fixing of a lien on an interest of the debtor or a dependent of the debtor in property if the lien is a nonpossessory, nonpurchase-money security interest in implements, professional books, or tools of the trade of the debtor or a dependent of the debtor or farm animals or crops of the debtor or a dependent of the debtor to the extent the value of such implements, professional books, tools of the trade, animals, and crops exceeds \$5,000.
- (4) (A)** Subject to subparagraph (B), for purposes of paragraph (1)(B), the term "household goods" means—
- (i)** clothing;
 - (ii)** furniture;
 - (iii)** appliances;
 - (iv)** 1 radio;
 - (v)** 1 television;
 - (vi)** 1 VCR;
 - (vii)** linens;
 - (viii)** china;
 - (ix)** crockery;
 - (x)** kitchenware;
 - (xi)** educational materials and educational equipment primarily for the use of minor dependent children of the debtor;
 - (xii)** medical equipment and supplies;

- (xiii)** furniture exclusively for the use of minor children, or elderly or disabled dependents of the debtor;
- (xiv)** personal effects (including the toys and hobby equipment of minor dependent children and wedding rings) of the debtor and the dependents of the debtor; and
- (xv)** 1 personal computer and related equipment.

(B) The term “household goods” does not include—

- (i)** works of art (unless by or of the debtor, or any relative of the debtor);
- (ii)** electronic entertainment equipment with a fair market value of more than \$500 in the aggregate (except 1 television, 1 radio, and 1 VCR);
- (iii)** items acquired as antiques with a fair market value of more than \$500 in the aggregate;
- (iv)** jewelry with a fair market value of more than \$500 in the aggregate (except wedding rings); and
- (v)** a computer (except as otherwise provided for in this section), motor vehicle (including a tractor or lawn tractor), boat, or a motorized recreational device, conveyance, vehicle, watercraft, or aircraft.

(g) Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the trustee recovers under section 510 (c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if—

- (1)** **(A)** such transfer was not a voluntary transfer of such property by the debtor; and
- (B)** the debtor did not conceal such property; or
- (2)** the debtor could have avoided such transfer under subsection (f)(1)(B) of this section.

(h) The debtor may avoid a transfer of property of the debtor or recover a setoff to the extent that the debtor could have exempted such property under subsection (g)(1) of this section if the trustee had avoided such transfer, if—

- (1)** such transfer is avoidable by the trustee under section 544, 545, 547, 548, 549, or 724 (a) of this title or recoverable by the trustee under section 553 of this title; and
- (2)** the trustee does not attempt to avoid such transfer.

(i) **(1)** If the debtor avoids a transfer or recovers a setoff under subsection (f) or (h) of this section, the debtor may recover in the manner prescribed by, and subject to the limitations of, section 550 of this title, the same as if the trustee had avoided such transfer, and may exempt any property so recovered under subsection (b) of this section.

(2) Notwithstanding section 551 of this title, a transfer avoided under section 544, 545, 547, 548, 549, or 724 (a) of this title, under subsection (f) or (h) of this section, or property recovered under section 553 of this title, may be preserved for the benefit of the debtor to the extent that the debtor may exempt such property under subsection (g) of this section or paragraph (1) of this subsection.

(j) Notwithstanding subsections (g) and (i) of this section, the debtor may exempt a particular kind of property under subsections (g) and (i) of this section only to the extent that the debtor has exempted less property in value of such kind than that to which the debtor is entitled under subsection (b) of this section.

(k) Property that the debtor exempts under this section is not liable for payment of any administrative expense except—

(1) the aliquot share of the costs and expenses of avoiding a transfer of property that the debtor exempts under subsection (g) of this section, or of recovery of such property, that is attributable to the value of the portion of such property exempted in relation to the value of the property recovered; and

(2) any costs and expenses of avoiding a transfer under subsection (f) or (h) of this section, or of recovery of property under subsection (i)(1) of this section, that the debtor has not paid.

(l) The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. If the debtor does not file such a list, a dependent of the debtor may file such a list, or may claim property as exempt from property of the estate on behalf of the debtor. Unless a party in interest objects, the property claimed as exempt on such list is exempt.

(m) Subject to the limitation in subsection (b), this section shall apply separately with respect to each debtor in a joint case.

(n) For assets in individual retirement accounts described in section 408 or 408A of the Internal Revenue Code of 1986, other than a simplified employee pension under section 408(k) of such Code or a simple retirement account under section 408(p) of such Code, the aggregate value of such assets exempted under this section, without regard to amounts attributable to rollover contributions under section 402(c), 402(e)(6), 403(a)(4), 403(a)(5), and 403(b)(8) of the Internal Revenue Code of 1986, and earnings thereon, shall not exceed \$1,000,000 in a case filed by a debtor who is an individual, except that such amount may be increased if the interests of justice so require.

(o) For purposes of subsection (b)(3)(A), and notwithstanding subsection (a), the value of an interest in—

(1) real or personal property that the debtor or a dependent of the debtor uses as a residence;

(2) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence;

(3) a burial plot for the debtor or a dependent of the debtor; or

- (4)** real or personal property that the debtor or a dependent of the debtor claims as a homestead; shall be reduced to the extent that such value is attributable to any portion of any property that the debtor disposed of in the 10-year period ending on the date of the filing of the petition with the intent to hinder, delay, or defraud a creditor and that the debtor could not exempt, or that portion that the debtor could not exempt, under subsection (b), if on such date the debtor had held the property so disposed of.
- (p)** **(1)** Except as provided in paragraph (2) of this subsection and sections 544 and 548, as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that was acquired by the debtor during the 1215-day period preceding the date of the filing of the petition that exceeds in the aggregate \$125,000 in value in—
- (A)** real or personal property that the debtor or a dependent of the debtor uses as a residence;
 - (B)** a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence;
 - (C)** a burial plot for the debtor or a dependent of the debtor; or
 - (D)** real or personal property that the debtor or dependent of the debtor claims as a homestead.
- (2)** **(A)** The limitation under paragraph (1) shall not apply to an exemption claimed under subsection (b)(3)(A) by a family farmer for the principal residence of such farmer.
- (B)** For purposes of paragraph (1), any amount of such interest does not include any interest transferred from a debtor's previous principal residence (which was acquired prior to the beginning of such 1215-day period) into the debtor's current principal residence, if the debtor's previous and current residences are located in the same State.
- (q)** **(1)** As a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) which exceeds in the aggregate \$125,000 if—
- (A)** the court determines, after notice and a hearing, that the debtor has been convicted of a felony (as defined in section 3156 of title 18), which under the circumstances, demonstrates that the filing of the case was an abuse of the provisions of this title; or
 - (B)** the debtor owes a debt arising from—
 - (i)** any violation of the Federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws;
 - (ii)** fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 or

under section 6 of the Securities Act of 1933;
(iii) any civil remedy under section 1964 of title 18; or
(iv) any criminal act, intentional tort, or willful or reckless
misconduct that caused serious physical injury or death to another
individual in the preceding 5 years.

(2) Paragraph (1) shall not apply to the extent the amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) is reasonably necessary for the support of the debtor and any dependent of the debtor.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2586; Pub. L. 98–353, title III, §§ 306, 453, July 10, 1984, 98 Stat. 353, 375; Pub. L. 99–554, title II, § 283(i), Oct. 27, 1986, 100 Stat. 3117; Pub. L. 101–647, title XXV, § 2522(b), Nov. 29, 1990, 104 Stat. 4866; Pub. L. 103–394, title I, § 108(d), title III, §§ 303, 304 (d), 310, title V, § 501(d)(12), Oct. 22, 1994, 108 Stat. 4112, 4132, 4133, 4137, 4145; Pub. L. 106–420, § 4, Nov. 1, 2000, 114 Stat. 1868; Pub. L. 109–8, title II, §§ 216, 224 (a), (e)(1), title III, §§ 307, 308, 313 (a), 322 (a), Apr. 20, 2005, 119 Stat. 55, 62, 65, 81, 87, 96.)

Historical and Revision Notes **legislative statements**

Section 522 of the House amendment represents a compromise on the issue of exemptions between the position taken in the House bill, and that taken in the Senate amendment. Dollar amounts specified in section 522(d) of the House bill have been reduced from amounts as contained in H.R. 8200 as passed by the House. The States may, by passing a law, determine whether the Federal exemptions will apply as an alternative to State exemptions in bankruptcy cases.

Section 522 (c)(1) tracks the House bill and provides that dischargeable tax claims may not be collected out of exempt property.

Section 522 (f)(2) is derived from the Senate amendment restricting the debtor to avoidance of nonpossessory, nonpurchase money security interests.

Exemptions: Section 522(c)(1) of the House amendment adopts a provision contained in the House bill that dischargeable taxes cannot be collected from exempt assets. This changes present law, which allows collection of dischargeable taxes from exempt property, a rule followed in the Senate amendment. Nondischargeable taxes, however, will continue to be collectable out of exempt property. It is anticipated that in the next session Congress will review the exemptions from levy currently contained in the Internal Revenue Code [title 26] with a view to increasing the exemptions to more realistic levels.

senate report no. 95–989

Subsection (a) of this section defines two terms: “dependent” includes the debtor’s spouse, whether or not actually dependent; and “value” means fair market value as of the date of the filing of the petition.

Subsection (b) tracks current law. It permits a debtor the exemptions to which he is entitled under other Federal law and the law of the State of his domicile. Some of the items that may be exempted under Federal laws other than title 11 include: Foreign Service Retirement and Disability payments, 22 U.S.C. 1104; 1 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; 2 Civil service retirement benefits, 5 U.S.C. 729, 2265; 3 Longshoremen's and Harbor Workers' Compensation Act death and disability benefits, 33 U.S.C. 916; Railroad Retirement Act annuities and pensions, 45 U.S.C. 228 (L); 4 Veterans benefits, 45 U.S.C. 352 (E); 5 Special pensions paid to winners of the Congressional Medal of Honor, 38 U.S.C. 3101; 6 and Federal homestead lands on debts contracted before issuance of the patent, 43 U.S.C. 175. He may also exempt an interest in property in which the debtor had an interest as a tenant by the entirety or joint tenant to the extent that interest would have been exempt from process under applicable nonbankruptcy law.

Under proposed section 541, all property of the debtor becomes property of the estate, but the debtor is permitted to exempt certain property from property of the estate under this section. Property may be exempted even if it is subject to a lien, but only the unencumbered portion of the property is to be counted in computing the "value" of the property for the purposes of exemption.

As under current law, the debtor will be permitted to convert nonexempt property into exempt property before filing a bankruptcy petition. The practice is not fraudulent as to creditors, and permits the debtor to make full use of the exemptions to which he is entitled under the law.

Subsection (c) insulates exempt property from prepetition claims other than tax claims (whether or not dischargeable), and other than alimony, maintenance, or support claims that are excepted from discharge. The bankruptcy discharge does not prevent enforcement of valid liens. The rule of *Long v. Bullard*, 117 U.S. 617 (1886), is accepted with respect to the enforcement of valid liens on nonexempt property as well as on exempt property. Cf. *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 583 (1935).

Subsection (c)(3) permits the collection of dischargeable taxes from exempt assets. Only assets exempted from levy under Section 6334 of the Internal Revenue Code [title 26] or under applicable state or local tax law cannot be applied to satisfy these tax claims. This rule applies to prepetition tax claims against the debtor regardless of whether the claims do or do not receive priority and whether they are dischargeable or nondischargeable. Thus, even if a tax is dischargeable vis-a-vis the debtor's after-acquired assets, it may nevertheless be collectible from exempt property held by the estate. (Taxes incurred by the debtor's estate which are collectible as first priority administrative expenses are not collectible from the debtor's estate which are collectible as first priority administrative expenses are not collectible from the debtor's exempt assets.)

Subsection (d) protects the debtor's exemptions, either Federal or State, by making unenforceable in a bankruptcy case a waiver of exemptions or a waiver of the debtor's avoiding powers under the following subsections.

Subsection (e) protects the debtor's exemptions, his discharge, and thus his fresh start by permitting him to avoid certain liens on exempt property. The debtor may avoid a judicial lien on any property to the extent that the property could have been exempted in the absence of the lien, and may similarly avoid a nonpurchase-money security interest in certain household and personal goods. The avoiding power is independent of any waiver of exemptions.

Subsection (f) gives the debtor the ability to exempt property that the trustee recovers under one of the trustee's avoiding powers if the property was involuntarily transferred away from the debtor (such as by the fixing of a judicial lien) and if the debtor did not conceal the property. The debtor is also permitted to exempt property that the trustee recovers as the result of the avoiding of the fixing of certain security interests to the extent that the debtor could otherwise have exempted the property.

Subsection (g) provides that if the trustee does not exercise an avoiding power to recover a transfer of property that would be exempt, the debtor may exercise it and exempt the property, if the transfer was involuntary and the debtor did not conceal the property. If the debtor wishes to preserve his right to pursue any action under this provision, then he must intervene in any action brought by the trustee based on the same cause of action. It is not intended that the debtor be given an additional opportunity to avoid a transfer or that the transferee should have to defend the same action twice. Rather, the section is primarily designed to give the debtor the rights the trustee could have, but has not, pursued. The debtor is given no greater rights under this provision than the trustee, and thus, the debtor's avoiding powers under proposed sections 544, 545, 547, and 548, are subject to proposed 546, as are the trustee's powers.

These subsections are cumulative. The debtor is not required to choose which he will use to gain an exemption. Instead, he may use more than one in any particular instance, just as the trustee's avoiding powers are cumulative.

Subsection (h) permits recovery by the debtor of property transferred by an avoided transfer from either the initial or subsequent transferees. It also permits preserving a transfer for the benefit of the debtor. In either event, the debtor may exempt the property recovered or preserved.

Subsection (i) makes clear that the debtor may exempt property under the avoiding subsections (f) and (h) only to the extent he has exempted less property than allowed under subsection (b).

Subsection (j) makes clear that the liability of the debtor's exempt property is limited to the debtor's aliquot share of the costs and expenses recovery of property that the trustee recovers and the debtor later exempts, and any costs and expenses of avoiding

a transfer by the debtor that the debtor has not already paid.

Subsection (k) requires the debtor to file a list of property that he claims as exempt from property of the estate. Absent an objection to the list, the property is exempt. A dependent of the debtor may file it and thus be protected if the debtor fails to file the list.

Subsection (l) provides the rule for a joint case.

house report no. 95-595

Subsection (a) of this section defines two terms: "dependent" includes the debtor's spouse, whether or not actually dependent; and "value" means fair market value as of the date of the filing of the petition.

Subsection (b), the operative subsection of this section, is a significant departure from present law. It permits an individual debtor in a bankruptcy case a choice between exemption systems. The debtor may choose the Federal exemptions prescribed in subsection (d), or he may choose the exemptions to which he is entitled under other Federal law and the law of the State of his domicile. If the debtor chooses the latter, some of the items that may be exempted under other Federal laws include:

- Foreign Service Retirement and Disability payments, 22 U.S.C. 1104; 7
- 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. 729, 2265; 8
- Longshoremen's and Harbor Workers' Compensation Act death and disability benefits, 33 U.S.C. 916;
- Railroad Retirement Act annuities and pensions, 45 U.S.C. 228 (I); 9
- Veterans benefits, 45 U.S.C. 352 (E); 10
- Special pensions paid to winners of the Congressional Medal of Honor, 38 U.S.C. 3101; 11 and
- Federal homestead lands on debts contracted before issuance of the patent, 43 U.S.C. 175.

He may also exempt an interest in property in which the debtor had an interest as a tenant by the entirety or joint tenant to the extent that interest would have been exempt from process under applicable nonbankruptcy law. The Rules will provide for the situation where the debtor's choice of exemption, Federal or State, was improvident and should be changed, for example, where the court has ruled against the debtor with respect to a major exemption.

Under proposed 11 U.S.C. 541, all property of the debtor becomes property of the estate, but the debtor is permitted to exempt certain property from property of the estate under this section. Property may be exempted even if it is subject to a lien, but only the unencumbered portion of the property is to be counted in computing the "value" of the property for the purposes of exemption. Thus, for example, a residence worth \$30,000 with a mortgage of \$25,000 will be exemptable [sic] to the extent of \$5,000. This follows current law. The remaining value of the property will be dealt with in the bankruptcy

case as is any interest in property that is subject to a lien.

As under current law, the debtor will be permitted to convert nonexempt property into exempt property before filing a bankruptcy petition. See Hearings, pt. 3, at 1355–58. The practice is not fraudulent as to creditors and permits the debtor to make full use of the exemptions to which he is entitled under the law.

Subsection (c) insulates exempt property from prepetition claims, except tax and alimony, maintenance, or support claims that are excepted from discharge. The bankruptcy discharge will not prevent enforcement of valid liens. The rule of *Long v. Bullard*, 117 U.S. 617 (1886) [6 S.Ct. 917, 29 L.Ed. 1004], is accepted with respect to the enforcement of valid liens on nonexempt property as well as on exempt property. Cf. *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 583 (1935) [55 S.Ct. 854].

Subsection (d) specifies the Federal exemptions to which the debtor is entitled. They are derived in large part from the Uniform Exemptions Act, promulgated by the Commissioners of Uniform State Laws in August, 1976. Eleven categories of property are exempted. First is a homestead to the extent of \$10,000, which may be claimed in real or personal property that the debtor or a dependent of the debtor uses as a residence. Second, the debtor may exempt a motor vehicle to the extent of \$1500. Third, the debtor may exempt household goods, furnishings, clothing, and similar household items, held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

“Animals” includes all animals, such as pets, livestock, poultry, and fish, if they are held primarily for personal, family or household use. The limitation for third category items is \$300 on any particular item. The debtor may also exempt up to \$750 of personal jewelry.

Paragraph (5) permits the exemption of \$500, plus any unused amount of the homestead exemption, in any property, in order not to discriminate against the nonhomeowner. Paragraph (6) grants the debtor up to \$1000 in implements, professional books, or tools, of the trade of the debtor or a dependent. Paragraph (7) exempts a life insurance contract, other than a credit life insurance contract, owned by the debtor. This paragraph refers to the life insurance contract itself. It does not encompass any other rights under the contract, such as the right to borrow out the loan value. Because of this provision, the trustee may not surrender a life insurance contract, which remains property of the debtor if he chooses the Federal exemptions. Paragraph (8) permits the debtor to exempt up to \$5000 in loan value in a life insurance policy owned by the debtor under which the debtor or an individual of whom the debtor is a dependent is the insured. The exemption provided by this paragraph and paragraph (7) will also include the debtor’s rights in a group insurance certificate under which the insured is an individual of whom the debtor is a dependent (assuming the debtor has rights in the policy that could be exempted) or the debtor. A trustee is authorized to collect the entire loan value on every life insurance policy owned by the debtor as property of the estate. First, however, the debtor will choose which policy or policies under which the loan value will be exempted. The \$5000 figure is reduced by

the amount of any automatic premium loan authorized after the date of the filing of the petition under section 542 (d). Paragraph (9) exempts professionally prescribed health aids.

Paragraph (10) exempts certain benefits that are akin to future earnings of the debtor. These include social security, unemployment compensation, or public assistance benefits, veteran's benefits, disability, illness, or unemployment benefits, alimony, support, or separate maintenance (but only to the extent reasonably necessary for the support of the debtor and any dependents of the debtor), and benefits under a certain stock bonus, pension, profitsharing, annuity or similar plan based on illness, disability, death, age or length of service. Paragraph (11) allows the debtor to exempt certain compensation for losses. These include crime victim's reparation benefits, wrongful death benefits (with a reasonably necessary for support limitation), life insurance proceeds (same limitation), compensation for bodily injury, not including pain and suffering (\$10,000 limitation), and loss of future earnings payments (support limitation). This provision in subparagraph (D)(11) is designed to cover payments in compensation of actual bodily injury, such as the loss of a limb, and is not intended to include the attendant costs that accompany such a loss, such as medical payments, pain and suffering, or loss of earnings. Those items are handled separately by the bill.

Subsection (e) protects the debtor's exemptions, either Federal or State, by making unenforceable in a bankruptcy case a waiver of exemptions or a waiver of the debtor's avoiding powers under the following subsections.

Subsection (f) protects the debtor's exemptions, his discharge, and thus his fresh start by permitting him to avoid certain liens on exempt property. The debtor may avoid a judicial lien on any property to the extent that the property could have been exempted in the absence of the lien, and may similarly avoid a nonpurchase-money security interest in certain household and personal goods. The avoiding power is independent of any waiver of exemptions.

Subsection (g) gives the debtor the ability to exempt property that the trustee recovers under one of the trustee's avoiding powers if the property was involuntarily transferred away from the debtor (such as by the fixing of a judicial lien) and if the debtor did not conceal the property. The debtor is also permitted to exempt property that the trustee recovers as the result of the avoiding of the fixing of certain security interests to the extent that the debtor could otherwise have exempted the property.

If the trustee does not pursue an avoiding power to recover a transfer of property that would be exempt, the debtor may pursue it and exempt the property, if the transfer was involuntary and the debtor did not conceal the property. If the debtor wishes to preserve his right to pursue an action under this provision, then he must intervene in any action brought by the trustee based on the same cause of action. It is not intended that the debtor be given an additional opportunity to avoid a transfer or that the transferee have to defend the same action twice. Rather, the section is primarily designed to give the debtor the rights the trustee could have pursued if the trustee chooses not to pursue them. The debtor is given no greater rights under this provision than the trustee, and

thus the debtor's avoiding powers under proposed 11 U.S.C. 544, 545, 547, and 548, are subject to proposed 11 U.S.C. 546, as are the trustee's powers.

These subsections are cumulative. The debtor is not required to choose which he will use to gain an exemption. Instead, he may use more than one in any particular instance, just as the trustee's avoiding powers are cumulative.

Subsection (i) permits recovery by the debtor of property transferred in an avoided transfer from either the initial or subsequent transferees. It also permits preserving a transfer for the benefit of the debtor. Under either case the debtor may exempt the property recovered or preserved.

Subsection (k) makes clear that the debtor's aliquot share of the costs and expenses [for] recovery of property that the trustee recovers and the debtor later exempts, and any costs and expenses of avoiding a transfer by the debtor that the debtor has not already paid.

Subsection (l) requires the debtor to file a list of property that he claims as exempt from property of the estate. Absent an objection to the list, the property is exempted. A dependent of the debtor may file it and thus be protected if the debtor fails to file the list.

Subsection (m) requires the clerk of the bankruptcy court to give notice of any exemptions claimed under subsection (l), in order that parties in interest may have an opportunity to object to the claim.

Subsection (n) provides the rule for a joint case: each debtor is entitled to the Federal exemptions provided under this section or to the State exemptions, whichever the debtor chooses.

References in Text

The Federal Rules of Bankruptcy Procedure, referred to in subsec. (b)(1), are set out in the Appendix to this title.

The Internal Revenue Code of 1986, referred to in subsecs. (b)(3)(C), (4), (d)(10)(E)(iii), (12), and (n), is classified generally to Title 26, Internal Revenue Code.

Sections 3(a)(47), 12, and 15(d) of the Securities Exchange Act of 1934, referred to in subsec. (q)(1)(B)(i), (ii), are classified to sections 78c (a)(47), 78l, and 78o (d), respectively, of Title 15, Commerce and Trade.

Section 6 of the Securities Exchange Act of 1933, referred to in subsec. (q)(1)(B)(ii), is classified to section 77f of Title 15, Commerce and Trade.

Amendments

2005—

Subsec. (b). Pub. L. 109–8, § 224(a)(1)(B)–(F), designated introductory provisions of subsec. (b) as par. (1), substituted “paragraph (3)” for “paragraph (2)” in two places and “paragraph (2)” for “paragraph (1)” wherever appearing, struck out “Such property is—” after “case is filed.”, and struck out former par. (1) which read: “property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (2)(A) of this subsection specifically does not so authorize; or, in the alternative,”.

Subsec. (b)(2). Pub. L. 109–8, § 224(a)(1)(B), added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(2)(C). Pub. L. 109–8, § 224(a)(1)(A)(i)–(iii), added subpar. (C).

Subsec. (b)(3). Pub. L. 109–8, § 307(2), inserted “If the effect of the domiciliary requirement under subparagraph (A) is to render the debtor ineligible for any exemption, the debtor may elect to exempt property that is specified under subsection (d).” at end.

Pub. L. 109–8, § 224(a)(1)(A)(iv), redesignated par. (2) as (3) and inserted introductory provisions.

Subsec. (b)(3)(A). Pub. L. 109–8, § 308(1), inserted “subject to subsections (o) and (p),” before “any property”.

Pub. L. 109–8, § 307(1), substituted “730 days” for “180 days” and “or if the debtor’s domicile has not been located at a single State for such 730-day period, the place in which the debtor’s domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place” for “, or for a longer portion of such 180-day period than in any other place”.

Subsec. (b)(4). Pub. L. 109–8, § 224(a)(1)(G), added par. (4).

Subsec. (c)(1). Pub. L. 109–8, § 216(1), added par. (1) and struck out former par. (1) which read as follows: “a debt of a kind specified in section 523 (a)(1) or 523 (a)(5) of this title;”.

Subsec. (d). Pub. L. 109–8, § 224(a)(2)(A), substituted “subsection (b)(2)” for “subsection (b)(1)” in introductory provisions.

Subsec. (d)(12). Pub. L. 109–8, § 224(a)(2)(B), added par. (12).

Subsec. (f)(1)(A). Pub. L. 109–8, § 216(2), substituted “a debt of a kind that is specified in section 523 (a)(5); or ”for “a debt— “(i) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of

record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement; and “(ii) to the extent that such debt— “(I) is not assigned to another entity, voluntarily, by operation of law, or otherwise; and “(II) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.; or”.

Subsec. (f)(4). Pub. L. 109–8, § 313(a), added par. (4).

Subsec. (g)(2). Pub. L. 109–8, § 216(3), substituted “subsection (f)(1)(B)” for “subsection (f)(2)”.

Subsec. (n). Pub. L. 109–8, § 224(e)(1), added subsec. (n).

Subsec. (o). Pub. L. 109–8, § 308(2), added subsec. (o).

Subsecs. (p), (q). Pub. L. 109–8, § 322(a), added subsecs. (p) and (q).

2000— Subsec. (c)(4). Pub. L. 106–420 added par. (4).

1994—

Subsec. (b). Pub. L. 103–394, § 501(d)(12)(A), substituted “Federal Rules of Bankruptcy Procedure” for “Bankruptcy Rules”.

Subsec. (d)(1) to (6). Pub. L. 103–394, § 108(d)(1)–(6), substituted “\$15,000” for “\$7,500” in par. (1), “\$2,400” for “\$1,200” in par. (2), “\$400” and “\$8,000” for “\$200” and “\$4,000”, respectively, in par. (3), “\$1,000” for “\$500” in par. (4), “\$800” and “\$7,500” for “\$400” and “\$3,750”, respectively, in par. (5), and “\$1,500” for “\$750” in par. (6).

Subsec. (d)(8). Pub. L. 103–394, § 108(d)(7), substituted “\$8,000” for “\$4,000”.

Subsec. (d)(10)(E)(iii). Pub. L. 103–394, § 501(d)(12)(B), substituted “or 408” for “408, or 409” and “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954 (26 U.S.C. 401 (a), 403 (a), 403 (b), 408, or 409)”.

Subsec. (d)(11)(D). Pub. L. 103–394, § 108(d)(8), substituted “\$15,000” for “\$7,500”.

Subsec. (f)(1). Pub. L. 103–394, §§ 303(3), 310 (1), designated existing provisions as par. (1) and inserted “but subject to paragraph (3)” after “waiver of exemptions” in introductory provisions. Former par. (1) redesignated subpar. (A) of par. (1).

Subsec. (f)(1)(A). Pub. L. 103–394, §§ 303(2), 304 (d), redesignated par. (1) as subpar. (A) of par. (1) and inserted “, other than a judicial lien that secures a debt— “(i) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement; and “(ii) to the extent that such debt— “(I) is not assigned to another entity, voluntarily, by

operation of law, or otherwise; and “(II) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.”

Subsec. (f)(1)(B). Pub. L. 103–394, § 303(1), redesignated par. (2) as subpar. (B) of par. (1) and subpars. (A) to (C) of par. (2) as cls. (i) to (iii), respectively, of subpar. (B) of par. (1).

Subsec. (f)(2). Pub. L. 103–394, § 303(4), added par. (2). Former par. (2) redesignated subpar. (B) of par. (1).

Subsec. (f)(3). Pub. L. 103–394, § 310(2), added par. (3).

1990—Subsec. (c)(3). Pub. L. 101–647 added par. (3).

1986—

Subsec. (h)(1). Pub. L. 99–554, § 283(i)(1), substituted “553 of this title” for “553 of this tittle”.

Subsec. (i)(2). Pub. L. 99–554, § 283(i)(2), substituted “this” for “his” after “subsection (g) of”.

1984—

Subsec. (a)(2). Pub. L. 98–353, § 453(a), inserted “or, with respect to property that becomes property of an estate after such date, as of the date such property becomes property of the estate”.

Subsec. (b). Pub. L. 98–353, § 306(a), inserted provision that in joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Bankruptcy Rules, one debtor may not elect to exempt property listed in paragraph (1) and the other debtor elect to exempt property listed in paragraph (2) of this subsection, but that if the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (1), where such election is permitted under the law of the jurisdiction where the case is filed.

Subsec. (c). Pub. L. 98–353, § 453(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such claim had arisen before the commencement of the case, except— “(1) a debt of a kind specified in section 523 (a)(1) or section 523 (a)(5) of this title; or “(2) a lien that is— “(A) not avoided under section 544, 545, 547, 548, 549, or 724 (a) of this title; “(B) not voided under section 506 (d) of this title; or “(C)(i) a tax lien, notice of which is properly filed; and “(ii) avoided under section 545 (2) of this title.”

Subsec. (d)(3). Pub. L. 98–353, § 306(b), inserted “or \$4,000 in aggregate value”.

Subsec. (d)(5). Pub. L. 98–353, § 306(c), amended par. (5) generally. Prior to amendment, par. (5) read as follows: “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.”

Subsec. (e). Pub. L. 98–353, § 453(c), substituted “an exemption” for “exemptions”.

Subsec. (m). Pub. L. 98–353, § 306(d), substituted “Subject to the limitation in subsection (b), this section shall apply separately with respect to each debtor in a joint case” for “This section shall apply separately with respect to each debtor in a joint case”.

Effective Date of 2005 Amendment

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, with amendments by sections 216, 224(a), (e)(1), 307, and 313(a) of Pub. L. 109–8 not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, and amendments by sections 308 and 322(a) of Pub. L. 109–8 applicable with respect to cases commenced under this title on or after Apr. 20, 2005, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of this title.

Effective Date of 1994 Amendment

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of this title.

Effective Date of 1986 Amendment

Amendment by Pub. L. 99–554 effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99–554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98–353, set out as a note under section 101 of this title.

Adjustment of Dollar Amounts

For adjustment of dollar amounts specified in subsec. (d)(1) to (6), (8), (11)(D) of this section by the Judicial Conference of the United States, see notes set out under section 104 of this title.