

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/HB 265 Value of Motor Vehicles Exempt from Legal Process  
**SPONSOR(S):** Civil Justice & Property Rights Subcommittee, Gottlieb and others  
**TIED BILLS:**           **IDEN./SIM. BILLS:** CS/SB 528

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**FINAL HOUSE FLOOR ACTION:** 107 Y's      0 N's            **GOVERNOR'S ACTION:** Vetoed

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### SUMMARY ANALYSIS

CS/HB 265 passed the House on February 25, 2022, and subsequently passed the Senate on March 8, 2022.

Bankruptcy filings create an estate comprised of all property in which a debtor has an interest. Federal law exempts certain types of property, but also permits states to opt out of federal exemptions and instead establish state exemptions. Florida has exercised this option by creating Chapter 222, Florida Statutes.

In Florida, a debtor has a constitutional right to exempt his or her homestead from creditors' claims as long as the property is used as a primary residence. If a debtor does not have a homestead, state law permits the debtor to exempt \$4,000 of personal property in a bankruptcy proceeding.

Additional state exemptions include wages earned as a head of household, the cash surrender value of life insurance policies and annuity contracts, pension funds and exempt retirement accounts, and up to \$1,000 of the debtor's interest in a motor vehicle.

The bill increases the maximum value of a motor vehicle that may be exempted from legal process in a bankruptcy case from \$1,000 to \$5,000.

The bill does not appear to have a fiscal impact on state or local governments.

The effective date of this bill was July 1, 2022; however, this bill was vetoed by the Governor on May 20, 2022.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Background

Filing bankruptcy can help a person obtain a fresh start by discharging debt or adopting a repayment plan. As a matter of public policy, the debtor is allowed to retain sufficient property so the debtor has basic necessities and is not left entirely destitute.<sup>1</sup>

All bankruptcy cases are handled in federal courts under rules outlined in the U.S. Bankruptcy Code.<sup>2</sup> The filing of a bankruptcy petition operates as an automatic stay on most legal actions against a debtor, including a foreclosure.<sup>3</sup> The automatic stay is in effect from the time the petition is filed until discharge of the debtor, unless it is lifted sooner by the bankruptcy court.

There are two primary forms of bankruptcy an individual may file.<sup>4</sup> In a proceeding under Chapter 7 of the Bankruptcy Code, the debtor surrenders his or her assets to a trustee who then liquidates the assets and distributes proceeds to the creditors.<sup>5</sup> A petition filed pursuant to Chapter 7 of the Bankruptcy Code is used when the rehabilitative chapters of the code would not be applicable, such as when there is no nonexempt property to protect.<sup>6</sup> A Chapter 13 petition allows the debtor to stay creditor actions and propose a plan to pay creditors, rehabilitating the debtor financially.<sup>7</sup>

#### Florida Exemptions for Debtors

Cases commenced under the federal Bankruptcy Code create an estate which is comprised of all the property in which the debtor has a legal or equitable interest as of the date of the petition filing.<sup>8</sup>

Federal law includes exemptions for certain assets, but states may opt out of the federal exemptions and limit their residents to those exemptions provided under state law.<sup>9</sup> Florida has exercised this option by creating chapter 222, F.S. Therefore, citizens of Florida are entitled only to those exemptions enumerated in the Article X, section IV of the Florida Constitution and exemptions created by state law.<sup>10</sup>

#### *Constitutional Exemptions*

The Florida Constitution allows a debtor to exempt a homestead property, regardless of value, from the claims of creditors as long as the property is used as a residence. Debtors may also exempt up to \$1,000 in personal property.<sup>11</sup>

#### *Other Asset Exemptions*

Section 222.25(1), F.S., allows an exemption up to \$1,000 of a debtor's interest in a motor vehicle.<sup>12</sup>

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<sup>1</sup> 9 Am Jur 2d Bankruptcy s. 5.

<sup>2</sup> 11 U.S.C. s. 101, et seq.

<sup>3</sup> 11 U.S.C. s. 362(a)(4).

<sup>4</sup> An individual can file a petition under Chapter 11, but it is rare.

<sup>5</sup> 11 U.S.C. ss. 704 & 726.

<sup>6</sup> 9 Am Jur 2d Bankruptcy s. 68.

<sup>7</sup> 9 Am Jur 2d Bankruptcy s. 72.

<sup>8</sup> 11 U.S.C. s. 541(a).

<sup>9</sup> 11 U.S.C. s. 522(b).

<sup>10</sup> *In re Haning*, 252 B.R. 799 (Bankr. M.D. Fla. 2000), citing *In re Barker*, 168 B.R. 773, 775–76 (Bankr. M.D. Fla. 1994) (discussing extent of Florida exemptions).

<sup>11</sup> Art. X, s. 4, Fla. Const.

<sup>12</sup> S. 222.25(1), F.S.

Moreover, s. 222.25(4), F.S., provides that if a debtor does not claim or receive the benefits of the homestead exemption allowed by the Constitution, the debtor may instead choose to exempt up to \$4,000 in personal property.<sup>13</sup> If a debtor does not claim a homestead exemption, such debtor may elect to stack the \$4,000 personal property exemption with the \$1,000 exemption for the value of the motor vehicle, creating a combined exemption of \$5,000 in a motor vehicle.<sup>14</sup>

Chapter 222, F.S., also protects the following assets from legal process:

- Funds held in an individual retirement account and other tax-exempt accounts;<sup>15</sup>
- Proceeds of a life insurance policy;<sup>16</sup>
- The cash surrender value of a life insurance policy or annuity;<sup>17</sup>
- Funds held in qualified tuition programs and medical, Coverdell education, or hurricane savings accounts;<sup>18</sup>
- Disability income benefits;<sup>19</sup>
- Wages, unless the debtor agrees to waive the exemption in writing;<sup>20</sup>
- Any professionally prescribed health aides for the debtor or a dependent;<sup>21</sup>
- A refund or credit under the Internal Revenue Code, unless the debtor owes money for child support or spousal support;<sup>22</sup>
- Social security benefits; unemployment compensation, or public assistance benefits; veterans' benefits; alimony, support, or separate maintenance; and stock or pension plans under specified circumstances.<sup>23</sup>

### *Liens and other Judgments*

Historically, exempt assets have remained out of a creditor's reach unless specifically pledged in a security agreement.<sup>24</sup> During the bankruptcy proceeding, the court determines whether property is exempt from process under non-bankruptcy law.<sup>25</sup>

If a creditor has a judgment against the debtor's interest in a motor vehicle, the debtor may not avail himself or herself of the \$1,000 exemption.<sup>26</sup> Unsecured debts do not prevent a debtor from claiming the exemption.<sup>27</sup>

### **Effect of the Bill**

The bill amends section 222.25, F.S., to increase the maximum value for a single exempt motor vehicle from \$1,000 to \$5,000 in bankruptcy actions filed on or after July 1, 2022.

The effective date of this bill was July 1, 2022; however, this bill was vetoed by the Governor on May 20, 2022.

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<sup>13</sup> S. 222.25(4), F.S. (this exemption is not applicable to a debt owed for child support or spousal support).

<sup>14</sup> See, e.g., *In re Haffner*, 383 B.R. 350 (Bankr. N. D. Fla. 2008); *In re Rutter*, 247 B.R. 334 (Bankr. M.D. 2000).

<sup>15</sup> S. 222.21, F.S.

<sup>16</sup> S. 222.13, F.S.

<sup>17</sup> S. 222.14, F.S.

<sup>18</sup> S. 222.22, F.S.

<sup>19</sup> S. 222.18, F.S.

<sup>20</sup> Ss. 222.11 and 225.15, F.S.

<sup>21</sup> S. 222.25(2), F.S.

<sup>22</sup> S. 222.25(3), F.S.

<sup>23</sup> S. 222.201, F.S.

<sup>24</sup> Real Property, Probate, and Trust Law Section of the Florida Bar ("RPPTL"), *White Paper* (Jan. 26, 2021); see, e.g., *Havoco of Am. Ltd. v. Hill*, 790 So. 2d 1018 (Fla. 2001); *Connor v. Seaside Nat'l Bank*, 135 So. 3d 508 (Fla. 5th DCA 2014); *Killian v. Lawson*, 387 So. 2d 960 (Fla. 1980).

<sup>25</sup> 11 U.S.C. s. 522(b)(2)(B).

<sup>26</sup> *In re Campbell*, 214 B.R. 411 (Bankr. M.D. Fla. 1997).

<sup>27</sup> *In re Juergens*, 176 B.R. 275 (Bankr. M.D. Fla. 1995).

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill allows a debtor in a bankruptcy case to exempt a motor vehicle up to \$5,000 in value, which may have an impact on transactions involving vehicle liens and other related matters.

### D. FISCAL COMMENTS:

None.