S T A T E O F N E W Y O R K

7034

I N S E N A T E

March 9, 2010

Introduced by Sen. SCHNEIDERMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to increasing the property values which are exempt from the satisfaction of a money judgment; and to amend the debtor and creditor law, in relation to increasing the exemptions in bankruptcy

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision (a) of section 5205 of the civil practice law and rules, the opening paragraph as amended by chapter 129 of the laws of 1976 and paragraph 5 as amended by chapter 697 of the laws of 1976, is amended to read as follows:

(a) Exemption for personal property. The following personal property when owned by any person is exempt from application to the satisfaction of a money judgment except where the judgment is for the purchase price of the exempt property or was recovered by a domestic, laboring person or mechanic for work performed by that person in such capacity:

1. all stoves AND HOME HEATING EQUIPMENT kept for use in the judgment debtor's dwelling house and necessary fuel therefor for [sixty] ONE HUNDRED TWENTY days; one sewing machine with its appurtenances;

2. [the family bible] RELIGIOUS TEXTS, family pictures AND PORTRAITS, and school books used by the judgment debtor or in the family; and other books, not exceeding [fifty] FIVE HUNDRED dollars in value, kept and used as part of the family or judgment debtor's library;

3. a seat or pew occupied by the judgment debtor or the family in a place of public worship;

4. domestic animals with the necessary food for those animals for [sixty] ONE HUNDRED TWENTY days, provided that the total value of such animals and food does not exceed [four hundred fifty] ONE THOUSAND dollars; all necessary food actually provided for the use of the judgment debtor or his family for [sixty] ONE HUNDRED TWENTY days;

5. all wearing apparel, household furniture, one mechanical, gas or electric refrigerator, one radio receiver, one television set, ONE COMPUTER AND ASSOCIATED EQUIPMENT, ONE CELLPHONE, crockery, tableware

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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and cooking utensils necessary for the judgment debtor and the family; ALL PRESCRIBED HEALTH AIDS;

6. a wedding ring; a watch, JEWELRY AND ART not exceeding [thirty-five] ONE THOUSAND dollars in value; [and]

7. TOOLS OF TRADE, necessary working tools and implements, including those of a mechanic, farm machinery, team, professional instruments, furniture and library, not exceeding [six hundred] THREE THOUSAND dollars in value, together with the necessary food for the team for [sixty] ONE HUNDRED TWENTY days, provided, however, that the articles specified in this paragraph are necessary to the carrying on of the judgment debtor's profession or calling[.];

8. ONE MOTOR VEHICLE NOT EXCEEDING FOUR THOUSAND DOLLARS IN VALUE ABOVE LIENS AND ENCUMBRANCES OF THE DEBTOR; IF SUCH VEHICLE HAS BEEN EQUIPPED FOR USE BY A DISABLED DEBTOR, THEN TEN THOUSAND DOLLARS IN VALUE ABOVE LIENS AND ENCUMBRANCES OF THE DEBTOR; PROVIDED, HOWEVER, THAT THIS EXEMPTION FOR ONE MOTOR VEHICLE SHALL NOT APPLY IF THE DEBT ENFORCED IS FOR CHILD SUPPORT, SPOUSAL SUPPORT, MAINTENANCE OR ALIMONY; AND

9. IF NO HOMESTEAD EXEMPTION IS CLAIMED, THEN ONE THOUSAND DOLLARS IN PERSONAL PROPERTY, BANK ACCOUNT OR CASH.

S 2. Section 5206 of the civil practice law and rules, as amended by chapter 181 of the laws of 1977, subdivisions (a), (d) and (e) as amended by chapter 623 of the laws of 2005, is amended to read as follows:

S 5206. Real property exempt from application to the satisfaction of money judgments. (a) Exemption of homestead. Property of one of the following types, not exceeding ONE HUNDRED fifty thousand dollars FOR THE COUNTIES OF KINGS, QUEENS, NEW YORK, BRONX, RICHMOND, NASSAU, SUFFOLK, ROCKLAND, WESTCHESTER AND PUTNAM; ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS FOR THE COUNTIES OF DUTCHESS, ALBANY, COLUMBIA, ORANGE, SARATOGA AND ULSTER; AND SEVENTY-FIVE THOUSAND DOLLARS FOR THE REMAINING COUNTIES OF THE STATE in value above liens and encumbrances, owned and occupied as a principal residence, is exempt from application to the satisfaction of a money judgment, unless the judgment was recovered wholly for the purchase price thereof:

1. a lot of land with a dwelling thereon,

2. shares of stock in a cooperative apartment corporation,

3. units of a condominium apartment, or

4. a mobile home.

But no exempt homestead shall be exempt from taxation or from sale for non-payment of taxes or assessments.

(b) Homestead exemption after owner's death. The homestead exemption continues after the death of the person in whose favor the property was exempted for the benefit of the surviving spouse and surviving children until the majority of the youngest surviving child and until the death of the surviving spouse.

(c) Suspension of occupation as affecting homestead. The homestead exemption ceases if the property ceases to be occupied as a residence by a person for whose benefit it may so continue, except where the suspension of occupation is for a period not exceeding one year, and occurs in consequence of injury to, or destruction of, the dwelling house upon the premises.

(d) Exemption of homestead exceeding ONE HUNDRED fifty thousand dollars in value FOR THE COUNTIES OF KINGS, QUEENS, NEW YORK, BRONX, RICHMOND, NASSAU, SUFFOLK, ROCKLAND, WESTCHESTER AND PUTNAM; ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS FOR THE COUNTIES OF DUTCHESS, ALBANY,

COLUMBIA, ORANGE, SARATOGA AND ULSTER; AND SEVENTY-FIVE THOUSAND DOLLARS FOR THE REMAINING COUNTIES OF THE STATE. The exemption of a homestead is not void because the value of the property exceeds ONE HUNDRED fifty thousand dollars FOR THE COUNTIES OF KINGS, QUEENS, NEW YORK, BRONX, RICHMOND, NASSAU, SUFFOLK, ROCKLAND, WESTCHESTER AND PUTNAM; ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS FOR THE COUNTIES OF DUTCHESS, ALBANY, COLUMBIA, ORANGE, SARATOGA AND ULSTER; AND SEVENTY-FIVE THOUSAND DOLLARS FOR THE REMAINING COUNTIES OF THE STATE but the lien of a judgment attaches to the surplus.

(e) Sale of homestead exceeding ONE HUNDRED fifty thousand dollars FOR THE COUNTIES OF KINGS, QUEENS, NEW YORK, BRONX, RICHMOND, NASSAU, SUFFOLK, ROCKLAND, WESTCHESTER AND PUTNAM; ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS FOR THE COUNTIES OF DUTCHESS, ALBANY, COLUMBIA, ORANGE, SARATOGA AND ULSTER; AND SEVENTY-FIVE THOUSAND DOLLARS FOR THE REMAINING COUNTIES OF THE STATE in value. A judgment creditor may commence a special proceeding in the county in which the homestead is located against the judgment debtor for the sale, by a sheriff or receiver, of a homestead exceeding ONE HUNDRED fifty thousand dollars FOR THE COUNTIES OF KINGS, QUEENS, NEW YORK, BRONX, RICHMOND, NASSAU, SUFFOLK, ROCKLAND, WESTCHESTER AND PUTNAM; ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS FOR THE COUNTIES OF DUTCHESS, ALBANY, COLUMBIA, ORANGE, SARATOGA AND ULSTER; AND SEVENTY-FIVE THOUSAND DOLLARS FOR THE REMAINING COUNTIES OF THE STATE in value. The court may direct that the notice of petition be served upon any other person. The court, if it directs such a sale, shall so marshal the proceeds of the sale that the right and interest of each person in the proceeds shall correspond as nearly as may be to his right and interest in the property sold. Money, not exceeding ONE HUNDRED fifty thousand dollars FOR THE COUNTIES OF KINGS, QUEENS, NEW YORK, BRONX, RICHMOND, NASSAU, SUFFOLK, ROCKLAND, WESTCHESTER AND PUTNAM; ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS FOR THE COUNTIES OF DUTCHESS, ALBANY, COLUMBIA, ORANGE, SARATOGA AND ULSTER; AND SEVENTY-FIVE THOUSAND DOLLARS FOR THE REMAINING COUNTIES OF THE STATE, paid to a judgment debtor, as representing his interest in the proceeds, is exempt for one year after the payment, unless, before the expiration of the year, he acquires an exempt homestead, in which case, the exemption ceases with respect to so much of the money as was not expended for the purchase of that property; and the exemption of the property so acquired extends to every debt against which the property sold was exempt. Where the exemption of property sold as prescribed in this subdivision has been continued after the judgment debtor's death, or where he dies after the sale and before payment to him of his portion of the proceeds of the sale, the court may direct that portion of the proceeds which represents his interest be invested for the benefit of the person or persons entitled to the benefit of the exemption, or be otherwise disposed of as justice requires.

(f) Exemption of burying ground. Land, set apart as a family or private burying ground, is exempt from application to the satisfaction of a money judgment, upon the following conditions only:

1. a portion of it must have been actually used for that purpose;

2. it must not exceed in extent one-fourth of an acre; and

3. it must not contain any building or structure, except one or more vaults or other places of deposit for the dead, or mortuary monuments.

S 3. Subdivision 1 of section 282 of the debtor and creditor law, as added by chapter 540 of the laws of 1982, is amended to read as follows:

1. Bankruptcy exemption of a motor vehicle. One motor vehicle not exceeding [twenty-four hundred] FOUR THOUSAND dollars in value above liens and encumbrances of the debtor; PROVIDED, HOWEVER, IF SUCH VEHICLE

HAS BEEN EQUIPPED FOR USE BY A DISABLED DEBTOR, THEN TEN THOUSAND DOLLARS IN VALUE ABOVE LIENS AND ENCUMBRANCES OF THE DEBTOR.

S 4. Section 283 of the debtor and creditor law, as added by chapter 540 of the laws of 1982, is amended to read as follows:

S 283. Aggregate individual bankruptcy exemption for certain annuities and personal property. 1. General application. The aggregate amount the debtor may exempt from the property of the estate for personal property exempt from application to the satisfaction of a money judgment under subdivision (a) of section fifty-two hundred five of the civil practice law and rules and for benefits, rights, privileges, and options of annuity contracts described in the following sentence shall not exceed [five] TEN thousand dollars. Annuity contracts subject to the foregoing limitation are those that are: (a) initially purchased by the debtor within six months of the debtor's filing a petition in bankruptcy, (b) not described in any paragraph of section eight hundred five (d) of the Internal Revenue Code of nineteen hundred fifty-four, and (c) not purchased by application of proceeds under settlement options of annuity contracts purchased more than six months before the debtor's filing a petition in bankruptcy or under settlement options of life insurance policies.

2. Contingent alternative bankruptcy exemption. Notwithstanding section two hundred eighty-two of this article, a debtor, who (a) does not elect, claim, or otherwise avail himself of an exemption described in section fifty-two hundred six of the civil practice law and rules; (b) utilizes to the fullest extent permitted by law as applied to said debtor's property, the exemptions referred to in subdivision one of this section which are subject to the [five] TEN thousand dollar aggregate limit; and (c) does not reach such aggregate limit, may exempt cash in the amount by which [five] TEN thousand dollars exceeds the aggregate of his OR HER exemptions referred to in subdivision one of this section or in the amount of [two] FIVE thousand [five hundred] dollars, whichever amount is less. For purposes of this subdivision, cash means currency of the United States at face value, savings bonds of the United States at face value, the right to receive a refund of federal, state and local income taxes, and deposit accounts in any state or federally chartered depository institution.

S 5. The debtor and creditor law is amended by adding a new section 285 to read as follows:

S 285. ALTERNATIVE FEDERAL EXEMPTIONS. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF LAW, AN INDIVIDUAL DEBTOR MAY OPT TO EXEMPT FROM PROPERTY OF THE ESTATE SUCH PROPERTY AS IS PERMITTED TO BE EXEMPTED PURSUANT TO SECTION FIVE HUNDRED TWENTY-TWO OF TITLE ELEVEN OF THE UNITED STATES CODE IN LIEU OF SUCH PROPERTY AS IS PERMITTED TO BE EXEMPTED PURSUANT TO THE APPLICABLE PROVISIONS OF THIS ARTICLE.

S 6. The civil practice law and rules is amended by adding a new section 5253 to read as follows:

S 5253. COST OF LIVING ADJUSTMENT FOR PERSONAL AND REAL PROPERTY EXEMPT FROM APPLICATION TO THE SATISFACTION OF MONEY JUDGMENTS AND EXEMPTIONS IN BANKRUPTCY. (A) BEGINNING ON APRIL FIRST, TWO THOUSAND TWELVE, AND AT EACH THREE-YEAR INTERVAL ENDING ON APRIL FIRST THEREAFTER, THE DOLLAR AMOUNT OF THE EXEMPTION PROVIDED IN SECTIONS FIFTY-TWO HUNDRED FIVE AND FIFTY-TWO HUNDRED SIX OF THIS ARTICLE AND SECTIONS TWO HUNDRED EIGHTY-TWO AND TWO HUNDRED EIGHTY-THREE OF THE DEBTOR AND CREDITOR LAW SHALL BE ADJUSTED AS PROVIDED IN SUBDIVISION (B) OF THIS SECTION.

(B) THE SUPERINTENDENT OF BANKS SHALL DETERMINE THE AMOUNT OF THE ADJUSTMENT BASED ON THE CHANGE IN THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS, NEW YORK-NORTHERN NEW JERSEY-LONG ISLAND, NY-NJ-CT-PA, PUBLISHED BY THE U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, FOR THE MOST RECENT THREE-YEAR PERIOD ENDING ON DECEMBER THIRTY-FIRST PRECEDING THE ADJUSTMENT, WITH EACH ADJUSTED AMOUNT ROUNDED TO THE NEAREST TWENTY-FIVE DOLLARS.

(C) BEGINNING ON APRIL FIRST, TWO THOUSAND TWELVE, AND AT EACH THREE-YEAR INTERVAL ENDING ON APRIL FIRST THEREAFTER, THE SUPERINTENDENT OF BANKS SHALL PUBLISH THE CURRENT DOLLAR AMOUNT OF THE APPLICABLE EXEMPTION PROVIDED IN THIS ARTICLE, TOGETHER WITH THE DATE OF THE NEXT SCHEDULED ADJUSTMENT. THE PUBLICATION SHALL BE SUBSTANTIALLY IN THE FORM SET FORTH BELOW:

"CURRENT DOLLAR AMOUNT OF EXEMPTION FROM APPLICATION TO THE SATISFACTION OF MONEY JUDGMENTS UNDER NEW YORK CIVIL PRACTICE LAW AND RULES SECTIONS 5205 AND 5206 AND EXEMPTIONS IN BANKRUPTCY UNDER DEBTOR AND CREDITOR LAW SECTIONS 282 AND 283:

THE FOLLOWING IS THE CURRENT DOLLAR AMOUNT OF EXEMPTIONS FROM THE SATISFACTION OF MONEY JUDGMENTS UNDER CIVIL PRACTICE LAW AND RULES SECTIONS 5205 AND 5206 AND UNDER DEBTOR AND CREDITOR LAW SECTIONS 282 AND 283:

(AMOUNT)

THIS AMOUNT IS EFFECTIVE ON APRIL 1, (YEAR) AND SHALL NOT APPLY TO CASES COMMENCED BEFORE APRIL 1, (YEAR). THE NEXT ADJUSTMENT IS SCHEDULED FOR APRIL 1, (YEAR). SUCH ADJUSTMENTS SHALL NOT APPLY WITH RESPECT TO RESTRAINING NOTICES SERVED OR EXECUTIONS EFFECTED BEFORE THE DATE OF THE ADJUSTMENT. NOTHING IN THIS SECTION LIMITS THE JUDGMENT DEBTOR'S EXEMPTION RIGHTS IN THIS SECTION OR UNDER ANY OTHER LAW."

S 7. This act shall take effect on the thirtieth day after it shall have become a law and shall apply to the satisfaction of judgments on or after such date.