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PROPERTY Homestead and Exemptions: Change the Provisions Relating to Exemptions for Purposes of Bankruptcy and Intestate Insolvent Estates; Change the Amounts of Certain Exemptions; Provide for Calculation of the Amounts of Certain Exemptions and the Standards, Practices, and Procedures Connected Therewith; Provide for the Duties of the Administrator of the Governor's Office of Consumer Affairs

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PROPERTY

Homestead and Exemptions: Change the Provisions Relating to Exemptions for Purposes of Bankruptcy and Intestate Insolvent Estates; Change the Amounts of Certain Exemptions; Provide for Calculation of the Amounts of Certain Exemptions and the Standards, Practices, and Procedures Connected Therewith; Provide for the Duties of the Administrator of the Governor's Office of Consumer Affairs

CODE SECTION:	O.C.G.A. § 44-13-100 (amended)
BILL NUMBER:	HB 373
ACT NUMBER:	220
GEORGIA LAWS:	2001 Ga. Laws 745
SUMMARY:	<p>This Act raises the amount of exemptible value that bankrupt debtors will be able to insulate from unsecured creditor claims. The Act raises these amounts in multiple specific categories. The Act raises the exemptible amount of a debtor's interest in their primary residence from \$5000 to \$10,000. The Act also provides that in situations where the title to the property used for this homestead exemption is held in the name of only one of two spouses, the exemption amount shall be \$20,000, thereby guaranteeing that each spouse will be able to use their \$10,000 homestead exemption. The Act raises the exemptible value in a motor vehicle from \$1000 to \$3500. The Act raises the maximum exemptible value of any one particular household item from \$200 to \$300. The Act raises the aggregate amount of exemptible value in household goods from \$3500 to \$5000. The Act raises the residual exemption amount from \$400 to \$600, plus any amount of the homestead exemption that went unused up to \$5000. The Act raises the amount of exemptible value in tools of the trade and professional</p>

books from \$500 to \$1500. The Act adds a provision which limits the exemptible cash value of an unmatured life insurance policy to \$2000. The Act raises the exemptible value in awards for a debtor's pecuniary loss from \$7500 to \$10,000.

EFFECTIVE DATE: July 1, 2001

History

In 1978 the United States Congress enacted the current version of the Bankruptcy Code.¹ Part of the debate surrounding the Code concerned whether or not the new Bankruptcy Code would eliminate the old method of allowing each state to determine its own exemptions.² The debate resulted in a compromise whereby the federal Bankruptcy Code would provide exemptions; however, each of the states would have an opportunity to "opt out" of the Bankruptcy Code's exemption amounts.³ In 1980 Georgia took advantage of section 522(b)(1) of the federal Bankruptcy Code and opted out of the federal exemption provisions.⁴ In doing so, Georgia also established its own set of exemptions.⁵ All but one of those exemption amounts had remained unchanged since their enactment in 1980.⁶ The effect that inflation had on the 1980 exemption amounts is dramatic.⁷ According to Consumer Price Index figures, the 1980 exemption values are worth less than half of what they were worth

1. See William Houston Brown, *Political and Ethical Considerations of Exemption Limitations: The "Opt-Out" As Child of the First and Parent of the Second*, 71 AM. BANKR. L. J. 149, 159 (1997); see also 11 U.S.C. § 522 (1994).

2. See Brown, *supra* note 1, at 159.

3. See *id.* at 159-60. The provision of the Bankruptcy Code which allows states to opt out of the federal exemption plan is 11 U.S.C. § 522(b)(1). *Id.*

4. See 1980 Ga. Laws 952, § 1, at 952.

5. *Id.* § 2, at 953-55.

6. See Audio Recording of House Proceedings, Mar. 1, 2001 (remarks by Rep. Stephanie Stuckey), at <http://www.state.ga.us/services/leg/audio/2001archive.html> [hereinafter House Audio]. Compare 1980 Ga. Laws 952, § 2, at 953, with 1981 Ga. Laws 626, § 2, at 630. The change made to the exemption amounts in 1981 was an increase in the value of the motor vehicle exemption from \$800 to \$1000; all of the other exemption amounts have remained unchanged since the 1980 opt-out. Compare 1980 Ga. Laws 952, § 2, at 953, with 1981 Ga. Laws 626, § 2, at 630.

7. See Marjorie Girth, John Dyer & Gregory Jones, *Exhibit for the House Judiciary Committee Hearing on HB 373* (2001) (on file with the *Georgia State University Law Review*).

when originally created.⁸ For example, the \$5000 homestead exemption passed in 1980 would have had to have been increased to \$10,600 in 2000 in order to bring the year 2000 exemption value up to the 1980 level.⁹

Representative Ray Holland of the 157th District introduced a similar bill during the 2000 legislative session.¹⁰ That bill passed the House but died in the Senate because of some bankers' concerns.¹¹

HB 373

Introduction

Representatives Stephanie Stuckey, Ray Holland, Arnold Ragas, Nan Orrock, and Jim Martin of the 67th, 157th, 64th, 56th, and 47th Districts, respectively, sponsored HB 373.¹² HB 373 was introduced on the House floor on February 2, 2001.¹³ The House assigned the bill to the Judiciary Committee.¹⁴ The Judiciary Committee favorably reported the bill as substituted on February 26, 2001.¹⁵ Representatives Stuckey and Holland then worked together with Representative Wiles of the 34th District to create a floor substitute.¹⁶ Representative Stuckey presented the House with the floor substitute, which the House passed on March 1, 2001.¹⁷ HB 373 was introduced in the Senate on March 2, 2001.¹⁸ The bill was referred to the Senate Special Judiciary Committee, which favorably reported the bill on March 13, 2001.¹⁹ Senator Charlie Tanksley of the 32nd District presented the bill to the Senate on

8. *Id.*

9. *Id.*

10. See Notations of Remarks at the House Judiciary Committee Hearing on HB 373 (Feb. 22, 2001) (on file with the *Georgia State University Law Review*) [hereinafter House Committee Notes]; House Audio, *supra* note 6 (remarks by Rep. Stephanie Stuckey).

11. See House Audio, *supra* note 6 (remarks by Rep. Stephanie Stuckey).

12. See HB 373, as introduced, 2001 Ga. Gen. Assem.

13. See State of Georgia Final Composite Status Sheet, HB 373, Mar. 21, 2001.

14. See *id.*

15. See *id.*

16. See Telephone Interview with Rep. Stephanie Stuckey, House District No. 67 (May 23, 2001) [hereinafter Stuckey Interview].

17. See Georgia House of Representatives Voting Record, HB 373 (Mar. 1, 2001).

18. See State of Georgia Final Composite Status Sheet, HB 373, Mar. 21, 2001.

19. See *id.*

March 19, 2001, and the Senate passed HB 373 the same day.²⁰ Governor Roy Barnes signed the bill into law on April 26, 2001.²¹

Consideration by the House Judiciary Committee

HB 373 was introduced on February 2, 2001 and referred to the House Judiciary Committee.²² The Committee favorably reported the bill as substituted on February 26, 2001.²³ The House Committee substitute reworded Code section 44-13-100 (1)(a)(1) of the bill as introduced.²⁴ As introduced, that section of the bill allowed married people who owned their home in just one spouse's name to take advantage of the other spouse's right to a homestead exemption despite the fact that, technically, the other spouse did not have an ownership interest in the home.²⁵ The language in the bill as introduced provided that when a married couple jointly files for bankruptcy, and only one spouse has title to their home property, the couple will be treated as if they owned the property jointly. Accordingly, both can take advantage of the homestead exemption even though only one party actually owns the property.²⁶ Apparently, there was some concern in the Committee over whether the language in the bill as introduced would allow a married couple in such a situation to take the amount of homestead exemption that would be allocated to the non-owning spouse and use it to create exemption values in other property.²⁷ Thus, the Judiciary Committee substitute changed the language to create a deemed joint ownership for purposes of the bankruptcy proceeding.²⁸

20. See Audio Recording of Senate Proceedings, Mar. 19, 2001 (remarks by Sen. Charlie Tanksley), at <http://www.state.ga.us/services/leg/audio/2001archive.html>; Georgia Senate Voting Record, HB 373 (Mar. 19, 2001); State of Georgia Final Composite Status Sheet, HB 373, Mar. 21, 2001.

21. See 2001 Ga. Laws 745, § 2, at 747.

22. See State of Georgia Final Composite Status Sheet, HB 373, Mar. 21, 2001.

23. See *id.*

24. Compare HB 373, as introduced, 2001 Ga. Gen. Assem., with HB 373 (HCS), 2001 Ga. Gen. Assem.

25. See HB 373, as introduced, 2001 Ga. Gen. Assem.

26. See *id.* The language which was changed stated that "[i]n the event title to property used for the exemption provided under this paragraph is in one of two spouses filing jointly, the unused portion of the exemption provided by this paragraph as if such property had been owned jointly by both spouses shall also be allowed." *Id.*

27. See House Committee Notes, *supra* note 10. Compare HB 373, as introduced, 2001 Ga. Gen. Assem., with HB 373 (HCS), 2001 Ga. Gen. Assem.

28. Compare HB 373, as introduced, 2001 Ga. Gen. Assem., with HB 373 (HCS), 2001 Ga. Gen. Assem. The Committee substitute changed the language in Code section 44-13-100 (1)(a)(1) to state that "[i]n the event title to property used for the exemption provided under this paragraph is in one of two spouses filing jointly, it shall be treated as though it were in the names of both spouses for purposes of

There was also some concern expressed over the provision in the bill that would have created an automatic recalculation and adjustment of the exemption amounts which would have been repeated every three years.²⁹ The Governor's Office of Consumer Affairs was to calculate those amounts based on all relevant available data, including the Consumer Price Index figures for all urban consumers.³⁰ Representative Wiles in particular expressed concern about handing over legislative duties to a bureaucratic department.³¹ However, these concerns were not addressed in the Committee substitute.³²

From the House Committee Substitute to the House Floor Substitute

The House never voted on the Committee substitute; rather, Representatives Stuckey and Holland worked with Representative Wiles to create a floor substitute.³³ The creation of the floor substitute was, in part, an effort to address Representative Wiles' concerns and thereby prevent any floor debate.³⁴

The floor substitute changed two of the Committee substitute's provisions.³⁵ First, the floor substitute further clarified section 44-13-100(1)(a)(1).³⁶ The floor substitute stated a specific dollar amount that a debtor couple filing jointly for bankruptcy could claim as a homestead exemption, when only one spouse held title to their home.³⁷ Unlike the Committee substitute, the floor substitute stated exactly what the dollar amount of the exemption would be rather than creating guidelines as to how that figure should be determined.³⁸

determining the amount of the exemption hereunder." *Id.*

29. See Stuckey Interview, *supra* note 16.

30. See *id.*

31. See House Committee Notes, *supra* note 10.

32. Compare HB 373, as introduced, 2001 Ga. Gen. Assem., with HB 373 (HCS), 2001 Ga. Gen. Assem.

33. See Stuckey Interview, *supra* note 16.

34. See *id.*

35. Compare HB 373 (HCS), 2001 Ga. Gen. Assem., with HB 373 (HFS), 2001 Ga. Gen. Assem.

36. Compare HB 373 (HCS), 2001 Ga. Gen. Assem., with HB 373 (HFS), 2001 Ga. Gen. Assem.

37. See HB 373 (HFS), 2001 Ga. Gen. Assem.

38. Compare HB 373 (HCS), 2001 Ga. Gen. Assem., with HB 373 (HCSFS), 2001 Ga. Gen. Assem. The floor substitute language in section 44-13-100(1)(a)(1) stated that "[i]n the event title to property used for the exemption provided under this paragraph is in one of two spouses who is a debtor, the amount of the exemption hereunder shall be \$20,000.00." HB 373 (HFS), 2001 Ga. Gen. Assem.

The floor substitute was also responsive to concerns over the automatic recalculation provision found in the Committee substitute.³⁹ The floor substitute eliminated the automatic recalculation provision found in section 44-13-100(1)(c) of the Committee substitute.⁴⁰ The floor substitute did not replace the recalculation provision with equivalent language in any other section.⁴¹

These two changes were significant because they were apparently sufficient to garner Representative Wiles' support of the floor substitute.⁴²

Passage by the House

Representative Stuckey presented the floor substitute to the House floor on March 1, 2001.⁴³ The floor substitute was adopted and passed the House by a vote of 144 to 7.⁴⁴

Consideration by the Senate

The House version was introduced in the Senate on March 2, 2001.⁴⁵ The bill was then referred to the Senate Special Committee on Judiciary, which favorably reported the bill, without change, on March 13, 2001.⁴⁶ Senator Tanksley handled the bill on the Senate floor, where it passed the Senate by a vote of 45 to 9.⁴⁷ Governor Roy Barnes signed the bill into law on April 26, 2001.⁴⁸

The Act

The Act amends Code section 44-13-100 by updating the value of exemptions that debtors will be allowed to keep in bankruptcy in several different areas to reflect the increase in cost of living since 1980.⁴⁹ The Act raises the exemptible amount of a debtor's interest in their primary

39. Compare HB 373 (HCS), 2001 Ga. Gen. Assem., with HB 373 (HCSFS), 2001 Ga. Gen. Assem.

40. Compare HB 373 (HCS), 2001 Ga. Gen. Assem., with HB 373 (HCSFS), 2001 Ga. Gen. Assem.

41. See HB 373 (HCSFS), 2001 Ga. Gen. Assem.

42. See Stuckey interview, *supra* note 16.

43. See House Audio, *supra* note 6 (voting results).

44. See Georgia House of Representatives Voting Record, HB 373 (Mar. 1, 2001).

45. See State of Georgia Final Composite Status Sheet, HB 373, Mar. 21, 2001.

46. See *id.*; Compare HB 373, (HFS), 2001 Ga. Gen. Assem. with HB 373, as passed, 2001 Ga. Gen. Assem.

47. See Georgia Senate Voting Record, HB 373 (Mar. 19, 2001).

48. See 2001 Ga. Laws 745, § 2, at 747.

49. Compare 1981 Ga. Laws 626, § 2, at 630 (formerly found at O.C.G.A. § 44-13-100 (Supp. 2000)), with O.C.G.A. § 44-13-100 (Supp. 2001).

residence from \$5000 to \$10,000; it also provides that in situations where the title to the property used for this homestead exemption is held in the name of only one spouse, the exemption amount shall be \$20,000, thereby guaranteeing a maximum \$10,000 to each spouse as a homestead exemption.⁵⁰ The Act also raises the exemptible value in a motor vehicle from \$1000 to \$3500 and raises the maximum exemptible value of any one particular household item from \$200 to \$300 and the aggregate amount of exemptible value in household goods from \$3500 to \$5000.⁵¹ The Act raises the residual exemption amount from \$400 to \$600, plus any amount of the homestead exemption that went unused up to \$5000 and raises the amount of exemptible value in tools of the trade and professional books from \$500 to \$1500.⁵² The Act adds a provision which limits the exemptible cash value of an unmatured life insurance policy to \$2000; it raises the exemptible value in awards for a debtor's pecuniary loss from \$7500 to \$10,000.⁵³

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50. Compare 1981 Ga. Laws 626, § 2, at 630 (formerly found at O.C.G.A. § 44-13-100 (Supp. 2000)), with O.C.G.A. § 44-13-100 (Supp. 2001).

51. Compare 1981 Ga. Laws 626, § 2, at 630 (formerly found at O.C.G.A. § 44-13-100 (Supp. 2000)), with O.C.G.A. § 44-13-100 (Supp. 2001).

52. Compare 1981 Ga. Laws 626, § 2, at 630 (formerly found at O.C.G.A. § 44-13-100 (Supp. 2000)), with O.C.G.A. § 44-13-100 (Supp. 2001).

53. Compare 1981 Ga. Laws 626, § 2, at 630 (formerly found at O.C.G.A. § 44-13-100 (Supp. 2000)), with O.C.G.A. § 44-13-100 (Supp. 2001).