

1 SB427
2 159496-1
3 By Senator Ward
4 RFD: Finance and Taxation General Fund
5 First Read: 04-MAR-14

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8 SYNOPSIS: SYNOPSIS: Under existing law, surviving
9 spouses of decedents domiciled in the state are
10 entitled to a six thousand dollars (\$6,000)
11 homestead allowance and personal property valued at
12 three thousand five hundred dollars (\$3,500) in
13 excess of any security interests in furniture,
14 automobiles, furnishings, appliances, and personal
15 effects.

16 Existing law also provides that if there is
17 no surviving spouse, each minor child and dependent
18 child of the decedent is entitled to an equal share
19 of that allowance.

20 Existing law also provides that an
21 individual Alabama debtor is entitled to a
22 homestead exemption of \$5,000 and a personal
23 property exemption of \$3,000, a married couple is
24 entitled to the homestead exemption and the
25 personal property exemption.

1 Existing law also prohibits an Alabama
2 debtor filing bankruptcy from protecting property
3 in accordance with federal exemption limits.

4 This bill would have the effect of
5 increasing the homestead exemption to \$30,000 and
6 the personal property exemption to \$10,000 for
7 surviving spouses and an individual debtor.

8 This bill would also allow debtors filing
9 bankruptcy the option of exempting homestead and
10 personal property in accordance with federal
11 bankruptcy law.

12 This bill would provide for an assessment
13 and reasonable adjustments, by the State Treasurer
14 every three years, of allowable exemption rates
15 based on the federal Consumer Price Index.

16 This bill would restrict the amount of
17 income that may be levied to a portion of
18 disposable income of an individual.

19
20 A BILL

21 TO BE ENTITLED

22 AN ACT

23
24 To amend Sections 6-10-2, 6-10-6, 6-10-7, 6-10-11,
25 43-8-110, 43-8-111, 43-8-113, and 43-8-115, Code of Alabama
26 1975, to increase permissible exemptions available to a
27 surviving spouse to thirty thousand dollars (\$30,000) for

1 homestead and ten thousand dollars (\$10,000) for personal
2 property; to increase an Alabama debtor's individual homestead
3 exemption to thirty thousand dollars (\$30,000) and an
4 individual's personal property exemption to ten thousand
5 dollars (\$10,000), to provide debtors filing bankruptcy
6 options of additional exemptions allowable under federal
7 bankruptcy law; to restrict the amount of income that may be
8 levied to a portion of disposable income; and to add Sections
9 6-10-12 and 43-8-116 to the Code of Alabama 1975, to provide
10 for an assessment and reasonable adjustment of allowable
11 exemption rates, by the State Treasurer every three years,
12 based on the federal Consumer Price Index.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Sections 6-10-2, 6-10-6, 6-10-7, 6-10-11,
15 43-8-110, 43-8-111, 43-8-113 and 43-8-115, Code of Alabama
16 1975, are amended to read as follows:

17 "§6-10-2.

18 "The homestead of every resident of this state, with
19 the improvements and appurtenances, not exceeding in value
20 ~~\$5,000~~ thirty thousand dollars (\$30,000) and in area 160
21 acres, shall be, to the extent of any interest he or she may
22 have therein, whether a fee or less estate or whether held in
23 common or in severalty, exempt from levy and sale under
24 execution or other process for the collection of debts during
25 his or her life and occupancy and, if he or she leaves
26 surviving him or her a spouse and a minor child, or children,
27 or either, during the life of the surviving spouse and

1 minority of the child, or children, but the area of the
2 homestead shall not be enlarged by reason of any encumbrance
3 thereon or of the character of the estate or interest owned
4 therein by him or her. When a husband and wife jointly own a
5 homestead each is entitled to claim separately the exemption
6 provided herein, to the same extent and value as an unmarried
7 individual. For purposes of this section and Sections 6-10-38
8 and 6-10-40, a mobile home or similar dwelling if the
9 principal place of residence of the individual claiming the
10 exemption shall be deemed to be a homestead.

11 "§6-10-6.

12 "The personal property of such resident, except for
13 wages, salaries, or other compensation, to the extent of the
14 resident's interest therein, to the amount of ~~\$3,000~~ ten
15 thousand dollars \$(10,000) in value, to be selected by him or
16 her, and, in addition thereto, all necessary and proper
17 wearing apparel for himself or herself and family, all family
18 portraits or pictures and all books used in the family shall
19 also be exempt from levy and sale under execution or other
20 process for the collection of debts. No wages, salaries, or
21 other compensation shall be exempt except as provided in
22 Section 5-19-15 or Section 6-10-7.

23 "§6-10-7.

24 "(a) The wages, salaries, or other compensation of
25 laborers or employees, residents of this state, for personal
26 services, shall be exempt from levy under writs of garnishment
27 or other process for the collection of debts contracted or

1 judgments entered in tort, as follows: ~~in an amount equal to~~
2 ~~75 percent of such wages, salaries, or other compensation due~~
3 ~~or to become due to such laborers or employees, and the levy~~
4 ~~as to such percentage of their wages, salaries, or other~~
5 ~~compensation shall be void. The court issuing the writ or levy~~
6 ~~shall show thereon the amount of the claim of the plaintiff~~
7 ~~and the court costs in the proceedings. If at any time during~~
8 ~~the pendency of the proceedings in the court a judgment is~~
9 ~~entered for a different amount, then the court shall notify~~
10 ~~the garnishee of the correct amount due by the defendant under~~
11 ~~the writ or levy. The garnishee shall retain 25 percent of the~~
12 ~~wages, salaries, or other compensation of the laborer or~~
13 ~~employee during the period of time as is necessary to~~
14 ~~accumulate a sum equal to the amount shown as due by the court~~
15 ~~on the writ or levy.~~

16 "(1) A debtor's disposable earnings for any week
17 that are less than 80 times the greater of federal or
18 applicable state minimum hourly wage prescribed by Section
19 206(a)(1) of Title 29 of the United States Code in effect at
20 the time are exempt and not subject to garnishment.

21 "a. For the purposes of this section, "disposable
22 earnings" means that part of the earnings of any individual
23 remaining after the deduction from those earnings of any
24 amounts required by law to be withheld such as taxes, Social
25 Security or alternative pension and Medicare withholdings, and
26 after further deduction of up to 15 percent of the remainder

1 for contributions for health insurance, a medical expense
2 account, a pension, or a retirement account.

3 "b. This exemption shall be adjusted pro rata for
4 any pay period other than weekly.

5 "(2) If the debtor's disposable earnings exceed the
6 amount provided by the preceding subsection, no more than 10
7 percent of disposable income in excess of the amount exempt
8 under the preceding subsection shall be subject to garnishment
9 unless the weekly disposable earnings of the debtor exceed one
10 thousand two hundred dollars (\$1,200), in which case no more
11 than 15 percent of disposable income is subject to
12 garnishment. The amount not subject to garnishment is exempt.

13 "(3) Nothing in this section is intended to
14 supersede laws governing the amount of income subject to
15 garnishment for the support of a person.

16 "(4) If more than one garnishment is served on a
17 garnishee with respect to the same debtor, the garnishment
18 served earliest shall take priority, except that a garnishment
19 for support of a person shall take priority over any other
20 garnishment regardless of the date of service. If a
21 garnishment with greater priority consumes the disposable
22 income that is available for garnishment under the preceding
23 subsection, then no part of the debtor's disposable earnings
24 shall be garnished pursuant to the garnishment with lower
25 priority.

26 "(5) The protections for earnings set forth in this
27 section apply to all debtors whose physical place of

1 employment is in this state, notwithstanding that the debtor's
2 employer may have corporate offices or other places of
3 business located outside this state.

4 "(b) Should the employment of the defendant for any
5 reason be terminated with the garnishee, then the garnishee
6 shall not later than 15 days after the termination of
7 employment, report the termination to the court and pay into
8 court all sums withheld from the defendant's wages, salaries,
9 or other compensation.

10 "(c) If the plaintiff in garnishment contests the
11 answer of the garnishee, as now provided by law in such cases,
12 and proves to the court the deficiency or untruth of the
13 garnishee's answer, the court shall enter judgment against the
14 garnishee for such amount as would have been subject to the
15 order of condemnation had the sum not been released to the
16 defendant.

17 "~~(b)~~ (d) The garnishee shall, after a period of 30
18 days from the first retention of any sum from the defendant's
19 wages, salaries, or other compensation, commence paying the
20 funds into court, as they are deducted or withheld and
21 continue to do so on a monthly or more frequent basis until
22 the full amount is withheld. Upon receipt by the court of a
23 written request by the plaintiff, the court may enter an order
24 of condemnation of said funds received and thereupon disburse
25 the same to the plaintiff.

26 "(e) A debtor's interest in a joint bank or similar
27 account is based on the debtor's contributions to the account

1 in order to protect the non-debtor's interest in the account.
2 Each person with an interest in property has his or her own
3 right to the full exemption allowable under the law.
4 Notwithstanding other provisions of law, all wages directly
5 deposited into the debtor's bank account are exempt in
6 accordance with this section, whether or not other funds are
7 present in the account.

8 "(f) Where a depository institution or other entity
9 is holding funds belonging to a judgment debtor and is
10 maintaining the account in this state, the judgment creditor
11 may not evade the protections provided by this section by
12 servng a garnishment order on an out-of-state office or
13 branch of the depository institution or other entity.

14 "§6-10-11.

15 "In cases instituted under the provisions of Title
16 11 of the United States Code entitled "Bankruptcy," there
17 shall be exempt from the property of the estate of an
18 individual debtor only that property and income which is
19 exempt under the laws of the State of Alabama and under
20 ~~federal laws other than~~ Subsection (d) of Section 522 of ~~said~~
21 Title 11 of the United States Code.

22 "§43-8-110.

23 "(a) A surviving spouse of a decedent who was
24 domiciled in this state is entitled to a homestead allowance
25 of ~~\$6,000.00~~ thirty thousand dollars (\$30,000). If there is no
26 surviving spouse, each minor child and each dependent child of
27 the decedent is entitled to a homestead allowance amounting to

1 ~~\$6,000.00~~ thirty thousand dollars (\$30,000) divided by the
2 number of minor and dependent children of the decedent. The
3 homestead allowance is exempt from and has priority over all
4 claims against the estate. Homestead allowance is in addition
5 to any share passing to the surviving spouse or minor or
6 dependent child by the will of the decedent unless otherwise
7 provided in the will, by intestate succession or by way of
8 elective share.

9 "(b) The value of any constitutional right of
10 homestead in the family home received by a surviving spouse or
11 child shall be charged against that spouse or child's
12 homestead allowance to the extent that the family home is part
13 of the decedent's estate or would have been but for the
14 homestead provision of the Constitution.

15 "§43-8-111.

16 "If the decedent was domiciled in this state at the
17 time of death the surviving spouse is entitled to receive, in
18 addition to the homestead allowance, property of a value not
19 exceeding ~~\$3,500.00~~ ten thousand dollars (\$10,000) in excess
20 of any security interests therein in household furniture,
21 automobiles, furnishings, appliances and personal effects. If
22 there is no surviving spouse, children of the decedent are
23 entitled jointly to the same value. If encumbered chattels are
24 selected and if the value in excess of security interests,
25 plus that of other exempt property, is less than ~~\$3,500.00~~ ten
26 thousand dollars (\$10,000), or if there is not ~~\$3,500.00~~ ten
27 thousand dollars (\$10,000) worth of exempt property in the

1 estate, the spouse or children are entitled to other assets of
2 the estate, if any, to the extent necessary to make up the
3 ~~\$3,500.00~~ ten thousand dollars (\$10,000) value. Rights to
4 exempt property and assets needed to make up a deficiency of
5 exempt property have priority over all claims against the
6 estate, except that the right to any assets to make up a
7 deficiency of exempt property shall abate as necessary to
8 permit prior payment of homestead allowance and family
9 allowance. These rights are in addition to any benefit or
10 share passing to the surviving spouse or children by the will
11 of the decedent unless otherwise provided, by intestate
12 succession, or by way of elective share.

13 "§43-8-113.

14 "If the estate is otherwise sufficient, property
15 specifically devised is not used to satisfy rights to
16 homestead and exempt property. Subject to this restriction,
17 the surviving spouse, the guardians of the minor children, or
18 children who are adults may select property of the estate as
19 homestead allowance and exempt property. The personal
20 representative may make these selections if the surviving
21 spouse, the children or the guardians of the minor children
22 are unable or fail to do so within a reasonable time or if
23 there are no guardians of the minor children. The personal
24 representative may execute an instrument or deed of
25 distribution to establish the ownership of property taken as
26 homestead allowance or exempt property. He may determine the
27 family allowance in a lump sum not exceeding ~~\$6,000.00~~ thirty

1 thousand (\$30,000) or in periodic installments not exceeding
2 \$500.00 per month ~~for one year~~, and may disburse funds of the
3 estate in payment of the family allowance and any part of the
4 homestead allowance payable in cash. The personal
5 representative or any interested person aggrieved by any
6 selection, determination, payment, proposed payment, or
7 failure to act under this section may petition the court for
8 appropriate relief, which relief may provide a family
9 allowance larger or smaller than that which the personal
10 representative determined or could have determined.

11 "§43-8-115.

12 "(a) Whenever an employee of another shall die
13 intestate and there shall be due him or her any sum as wages
14 or salary the debtor may discharge himself from liability
15 therefor by paying such amount to the surviving spouse of the
16 deceased employee or, if there is no surviving spouse to the
17 person having the legal custody and control of his or her
18 minor child or children, or either as the case may be, who may
19 commence an action for and recover the same as part of the
20 property or allowance exempted to them.

21 "(b) Any sums paid in accordance with the provisions
22 of subsection (a) of this section shall be considered as part
23 of the exempt property, as defined in section 43-8-111; and,
24 if the sums exceed ~~\$3,500.00~~ ten thousand dollars (\$10,000)
25 the excess shall be considered part of the family allowance,
26 as defined in section 43-8-112."

1 Section 2. Section 6-10-12 is added to Article 1,
2 Division 1, Chapter 10, Title 6, of the Code of Alabama 1975,
3 to read as follows:

4 §6-10-12.

5 On July 1, 2016, and at the end of each three-year
6 period thereafter, the State Treasurer shall adjust each
7 dollar amount in this chapter or, for each adjustment after
8 July 1, 2016, each adjusted amount, by an amount determined by
9 the State Treasurer to reflect the cumulative change in the
10 Consumer Price Index, as published by the United States
11 Department of Labor, or, if that index is no longer published,
12 a generally available comparable index, for the three-year
13 period ending on the December 31 preceding the adjustment date
14 and rounded to the nearest twenty-five dollars (\$25). The
15 State Treasurer shall publish the adjusted amounts. The
16 adjusted amounts shall apply to cases filed on or after April
17 1 following the adjustment date.

18 Section 3. Section 43-8-116 is added to Article 6,
19 Chapter 8, Title 43, of the Code of Alabama 1975, to read as
20 follows:

21 §43-8-116.

22 On July 1, 2016, and at the end of each three-year
23 period thereafter, the State Treasurer shall adjust each
24 dollar amount in this chapter or, for each adjustment after
25 July 1, 2016, each adjusted amount, by an amount determined by
26 the State Treasurer to reflect the cumulative change in the
27 Consumer Price Index, as published by the United States

1 Department of Labor, or, if that index is no longer published,
2 a generally available comparable index, for the three-year
3 period ending on the December 31 preceding the adjustment date
4 and rounded to the nearest twenty-five dollars (\$25). The
5 State Treasurer shall publish the adjusted amounts. The
6 adjusted amounts apply to cases filed on or after April 1
7 following the adjustment date.

8 Section 4. This act shall become effective on the
9 first day of the third month following its passage and
10 approval by the Governor, or its otherwise becoming law.