

1 SB275
2 166215-1
3 By Senator Ward
4 RFD: Finance and Taxation General Fund
5 First Read: 18-MAR-15

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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 restrict the amount of
13 income that may be levied to a portion of
14 disposable income of an individual.

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16 A BILL
17 TO BE ENTITLED
18 AN ACT
19

20 To amend Sections 6-10-2, 6-10-6, 6-10-11, 43-8-110,
21 43-8-111, 43-8-113, and 43-8-115, Code of Alabama 1975, to
22 increase permissible exemptions available to a surviving
23 spouse to thirty thousand dollars (\$30,000) for homestead and
24 ten thousand dollars (\$10,000) for personal property; to
25 increase an Alabama debtor's individual homestead exemption to
26 thirty thousand dollars (\$30,000) and an individual's personal
27 property exemption to ten thousand dollars (\$10,000), to

1 provide debtors filing bankruptcy options of additional
2 exemptions allowable under federal bankruptcy law.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 6-10-2, 6-10-6, 6-10-11,
5 43-8-110, 43-8-111, 43-8-113 and 43-8-115, Code of Alabama
6 1975, are amended to read as follows:

7 "§6-10-2.

8 "The homestead of every resident of this state, with
9 the improvements and appurtenances, not exceeding in value
10 ~~\$5,000~~ thirty thousand dollars (\$30,000) and in area 160
11 acres, shall be, to the extent of any interest he or she may
12 have therein, whether a fee or less estate or whether held in
13 common or in severalty, exempt from levy and sale under
14 execution or other process for the collection of debts during
15 his or her life and occupancy and, if he or she leaves
16 surviving him or her a spouse and a minor child, or children,
17 or either, during the life of the surviving spouse and
18 minority of the child, or children, but the area of the
19 homestead shall not be enlarged by reason of any encumbrance
20 thereon or of the character of the estate or interest owned
21 therein by him or her. When a husband and wife jointly own a
22 homestead each is entitled to claim separately the exemption
23 provided herein, to the same extent and value as an unmarried
24 individual. For purposes of this section and Sections 6-10-38
25 and 6-10-40, a mobile home or similar dwelling if the
26 principal place of residence of the individual claiming the
27 exemption shall be deemed to be a homestead.

1 "§6-10-6.

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

13 "§6-10-11.

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

21 "§43-8-110.

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

1 number of minor and dependent children of the decedent. The
2 homestead allowance is exempt from and has priority over all
3 claims against the estate. Homestead allowance is in addition
4 to any share passing to the surviving spouse or minor or
5 dependent child by the will of the decedent unless otherwise
6 provided in the will, by intestate succession or by way of
7 elective share.

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

14 "§43-8-111.

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

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

12 "§43-8-113.

13 "If the estate is otherwise sufficient, property
14 specifically devised is not used to satisfy rights to
15 homestead and exempt property. Subject to this restriction,
16 the surviving spouse, the guardians of the minor children, or
17 children who are adults may select property of the estate as
18 homestead allowance and exempt property. The personal
19 representative may make these selections if the surviving
20 spouse, the children or the guardians of the minor children
21 are unable or fail to do so within a reasonable time or if
22 there are no guardians of the minor children. The personal
23 representative may execute an instrument or deed of
24 distribution to establish the ownership of property taken as
25 homestead allowance or exempt property. He may determine the
26 family allowance in a lump sum not exceeding ~~\$6,000.00~~ thirty
27 thousand (\$30,000) or in periodic installments not exceeding

1 \$500.00 per month ~~for one year~~, and may disburse funds of the
2 estate in payment of the family allowance and any part of the
3 homestead allowance payable in cash. The personal
4 representative or any interested person aggrieved by any
5 selection, determination, payment, proposed payment, or
6 failure to act under this section may petition the court for
7 appropriate relief, which relief may provide a family
8 allowance larger or smaller than that which the personal
9 representative determined or could have determined.

10 "§43-8-115.

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

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

1 Section 2. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.