



H.B. 115
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(As Introduced)

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BILL SUMMARY

- Generally increases the amounts of certain property interests and rights that are exempt from execution, garnishment, attachment, or sale to satisfy a judgment or order.
- Exempts the listed property interests and rights from the imposition of a judgment lien.
- Specifies the applicability of the exemptions of listed property interests and rights in bankruptcy proceedings involving Ohio residents.
- Repeals the separate exemption of property used as a residence if a judgment or order is for money owed for health care services rendered or health care supplies provided.
- Exempts a person's interest up to a certain amount in a life or endowment insurance contract or an annuity that is not subject to the current exemption.
- Creates a presumption with respect to the purpose of a deposit of assets in certain retirement accounts, annuities, or plans made during a certain period of time as not to evade the payment of any debt.
- Modifies other provisions in the Exemptions Law.

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CONTENT AND OPERATION

Exemptions Law

General overview of bill's changes

The bill generally increases the amounts of certain property interests that are exempt from execution, garnishment, attachment, or sale to satisfy a judgment or order, exempts the listed property interests from the imposition of a judgment lien, specifies the applicability of the exempted property interests in bankruptcy proceedings, creates a presumption relative to the purpose of a deposit of assets in certain retirement accounts, annuities, or plans, and modifies other provisions in the Exemptions Law.

Exempt interests and rights--generally

Under the existing Exemptions Law, every person who is domiciled in Ohio may hold certain property exempt from execution, garnishment, attachment, or sale to satisfy a judgment or order.

Under the bill, *except as otherwise provided in the bill and in R.C. 2329.661* (see 'Existing law--claims not affected by exemptions; nonwaiver,' below), every person who is domiciled in Ohio *is entitled* to hold the property *interests* described in the Exemptions Law, as modified by the bill, exempt from execution, garnishment, attachment, or sale to satisfy a judgment or order *and exempt from the imposition of a judgment lien* (added by the bill). The bill states that in accordance with the opt-out provisions of R.C. 2329.662 (see 'Existing law--opt-out provisions,' below), every person who is domiciled in Ohio is entitled to hold the property interests described in the Exemptions Law, as modified by the bill, exempt in bankruptcy proceedings. (R.C. 2329.66(A).)

Exempt interests and rights--specifically

The following property interests are exempt as specified above under existing law and under the bill (R.C. 2329.66(A)(1) to (18)):

<i>Existing law</i>	<i>Operation of the bill</i>
(1)(a) <i>In the case of a judgment or order regarding money owed for health care services rendered or health</i>	(1) The bill repeals the specific provisions described in (1)(a) in <u>'Existing law,'</u> and exempts the

<i>Existing law</i>	<i>Operation of the bill</i>
<p><i>care supplies provided to the person or person's dependent, one parcel or item of real or personal property that the person or a dependent uses as a residence. This exemption does not preclude, affect, or invalidate the creation of a judgment lien upon the exempted property but only delays the enforcement of the lien until the property is sold or otherwise transferred by the owner or in accordance with other applicable laws to a person or entity other than the judgment debtor's surviving spouse or surviving minor children. Every person who is domiciled in Ohio may hold exempt from a judgment lien created pursuant to the preceding sentence the person's interest, not to exceed \$5,000, in the exempted property. (R.C. 2329.66(A)(1)(a).)</i></p> <p><i>(b) In the case of all other judgments and orders, the person's interest, not to exceed \$5,000, in one parcel or item of real or personal property that the person or person's dependent uses as a residence (R.C. 2329.66(A)(1)(b)).</i></p>	<p>person's interest, not to exceed \$12,500, in one parcel or item of real or personal property that the person or the person's dependent uses as a residence (R.C. 2329.66(A)(1)).</p>
<p>(2) The person's interest, not to exceed \$1,000, in one motor vehicle (R.C. 2329.66(A)(2)).</p>	<p>(2) The person's interest, not to exceed \$2,500, in one motor vehicle (R.C. 2329.66(A)(2)).</p>
<p>(3) The person's interest: (a) not to exceed \$200 in any particular item, in wearing apparel, beds, and bedding, and (b) not to exceed \$300 in each item, in one cooking unit and one refrigerator or other food preservation unit (R.C. 2329.66(A)(3)).</p>	<p>(3) The person's interest not to exceed \$250 in any particular item described in (3)(a), and not to exceed \$350 in each item described in (3)(b) in "<u>Existing law</u>" (R.C. 2329.66(A)(3)).</p>
<p>(4) The person's interest, not to exceed \$400, in cash on hand, money</p>	<p>(4) The person's interest, not to exceed \$800, in cash or money</p>

<i>Existing law</i>	<i>Operation of the bill</i>
<p>due and payable, money to become due within 90 days, tax refunds, and money on deposit with a bank, savings and loan association, credit union, public utility, landlord, or other person. This exemption applies only in bankruptcy proceedings and may include the portion of personal earnings that is not exempt under the provision exempting certain portions of personal earnings as described below in (19). (R.C. 2329.66(A)(4)(a).)</p>	<p>described in "<i>Existing law</i>" (R.C. 2329.66(A)(4)(a)).</p>
<p>(5) The person's interest, not to exceed \$200 in any particular item, in household furnishings, household goods, appliances, books, animals, crops, musical instruments, firearms, and hunting and fishing equipment, that are held primarily for the personal, family, or household use of the person, but excluding items of personal property listed above in (3) (R.C. 2329.66(A)(4)(b) and (d)).</p>	<p>(5) The person's interest, not to exceed \$250, in any particular item described in "<i>Existing law</i>" (R.C. 2329.66(A)(4)(b) and (d)).</p>
<p>(6) The person's interest in one or more items of jewelry, not to exceed \$400 in one item of jewelry and not to exceed \$200 in every other item of jewelry, but excluding items of personal property listed above in (3) (R.C. 2329.66(A)(4)(c) and (d)).</p>	<p>(6) No change.</p>
<p>(7)(a) If the person does <u>not</u> claim an exemption for property used as a residence as described above in (1), the total exemption claimed as described above in (5) is added to the total exemption claimed as described above in (6), and the total must not exceed \$2,000.</p> <p>(b) If the person <u>claims</u> an exemption for property used as a</p>	<p>(7)(a) If the person does <u>not</u> claim an exemption for property used as a residence, the total of the exemptions claimed as described in (a) in "<i>Existing law</i>" must not exceed \$4,000.</p> <p>(b) If the person <u>claims</u> an exemption for property used as a</p>

<i>Existing law</i>	<i>Operation of the bill</i>
residence, the total exemption claimed as described above in (5) is added to the total exemption claimed as described above in (6), and the total must not exceed \$1,500. (R.C. 2329.66(A)(4), last par.)	residence, the total of the exemptions claimed as described in (b) in " <u>Existing law</u> " must not exceed \$2,500. (R.C. 2329.66(A)(4), last par.)
(8) The person's interest, not to exceed an aggregate of \$750, in all implements, professional books, or tools of the person's profession, trade, or business, including agriculture (R.C. 2329.66(A)(5)).	(8) The person's interest, not to exceed an aggregate of \$1,250, in all items described in " <u>Existing law</u> " (R.C. 2329.66(A)(5)).
(9) The person's interest in: (a) a beneficiary fund set apart, appropriated, or paid by a benevolent association or society, (b) <i>contracts of life or endowment insurance or annuities</i> (see COMMENT 1), (c) a policy of group insurance or the proceeds of a policy of group insurance, (d) money, benefits, charity, relief, or aid to be paid, provided, or rendered by a fraternal benefit society, and (e) the portion of benefits under policies of sickness and accident insurance and in lump-sum payments for dismemberment and other losses insured under those policies, as all of those interests are exempted under specified sections of law dealing with those types of funds, contracts, or policies. (R.C. 2329.66(A)(6)(a) to (e).)	(9) The bill adds to this list of exemptions <i>the person's interest, not to exceed \$2,500, in a contract of life or endowment insurance, or in an annuity, upon the person's life that is not subject to the exemption described in (b) in "<u>Existing law</u>"</i> (R.C. 2329.66(A)(6)(f)).
(10) The person's professionally prescribed or medically necessary health aids (R.C. 2329.66(A)(7)).	(10) No change.
(11) The person's interest in a burial lot (R.C. 2329.66(A)(8)).	(11) No change.
(12) The person's interest in: (a) moneys paid or payable for living	(12) No change.

<i>Existing law</i>	<i>Operation of the bill</i>
<p>maintenance or rights, (b) workers' compensation, (c) unemployment compensation benefits, (d) cash assistance payments under the Ohio Works First Program, and (e) disability assistance payments, as all of those interests are exempted under specified sections of law dealing with those types of payments or benefits (R.C. 2329.66(A)(9)).</p>	
<p>(13) With certain exceptions (see COMMENT 2), the person's rights: (a) to a pension, benefit, annuity, retirement allowance, or accumulated contributions, (b) to a participant account in any deferred compensation program offered by the Ohio Public Employees Deferred Compensation Board, a government unit, or a municipal corporation, or the person's other accrued or accruing rights, as exempted by applicable laws dealing with public retirement systems and pension funds, volunteer firefighters' dependents fund, and public employee deferred compensation program, and (c) to benefits from the Ohio Public Safety Officers Death Benefit Fund (R.C. 2329.66(A)(10)(a)).</p>	<p>(13) No change.</p>
<p>(14) With certain exceptions (see COMMENT 3), the person's right to receive a payment under any pension, annuity, or similar plan or contract, <u>not including</u> a payment from a stock bonus or profit-sharing plan, a payment as described above in (13), or a payment under a contract of life or endowment insurance or annuity, on account of illness, disability, death, age, or length of service, <i>to the extent reasonably</i></p>	<p>(14) Under the bill, this particular exemption does <u>not</u> include a payment as described above in (9).</p> <p>The bill also removes the provision that the exempted payment as described in "<i>Existing law</i>," as modified by the bill, is <i>to the extent reasonably necessary for the support of the person and any of the person's</i></p>

<i>Existing law</i>	<i>Operation of the bill</i>
<p><i>necessary for the support of the person and any of the person's dependents, except</i> if all of the following apply: (a) the plan or contract was established by or under the auspices of an "insider" (see COMMENT 4) that employed the person at the time the person's rights under the plan or contract arose, (b) the payment is on account of age or length of service, <u>and</u> (c) the plan or contract is not qualified under the Internal Revenue Code. (R.C. 2329.66(A)(10)(b).)</p>	<p><i>dependents.</i> (R.C. 2329.66(A)(10)(b).)</p>
<p>(15) Except for any portion of the assets that were deposited for the purpose of evading the payment of any debt and certain other exceptions (see COMMENT 3), the person's right in the assets held in, or to receive any payment under, any individual retirement account, individual retirement annuity, "Roth IRA," or education individual retirement account that provides benefits by reason of illness, disability, death, or age, to the extent that those assets, payments, or benefits are attributable to any of the following (R.C. 2329.66(A)(10)(c)):</p> <p>(a) Contributions of the person that were less than or equal to the applicable limits on deductible contributions to an individual retirement account or individual retirement annuity in the year that the contributions were made, whether or not the person was eligible to deduct the contributions on the person's federal tax return for the year in which the contributions were made;</p> <p>(b) Contributions of the person that were less than or equal to the</p>	<p>(15) No change.</p>

<i>Existing law</i>	<i>Operation of the bill</i>
<p>applicable limits on contributions to a Roth IRA or education individual retirement account in the year that the contributions were made;</p> <p>(c) Contributions of the person that are within the applicable limits on rollover contributions under the Internal Revenue Code.</p>	
<p>(16) Except for any portion of the assets that were deposited for the purpose of evading the payment of any debt and certain other exceptions (see COMMENT 3), the person's right in the assets held in, or to receive any payment under, any Keogh or "H.R. 10" plan that provides benefits by reason of illness, disability, death, or age, <i>to the extent reasonably necessary for the support of the person and any of the person's dependents</i> (R.C. 2329.66(A)(10)(d)).</p>	<p>(16) The bill removes the provision that the exempted right or payment is <i>to the extent reasonably necessary for the support of the person and any of the person's dependents</i> (R.C. 2329.66(A)(10)(d)).</p> <p>The bill also specifies that if a person who claims the exemption described in (15) and (16) in "<i>Existing law</i>," as modified by the bill, establishes in a bankruptcy court or an Ohio court that all or a specified portion of the assets held in an individual retirement account, individual retirement annuity, "Roth IRA," education individual retirement account, or Keogh or "H.R. 10" plan that provides benefits by reason of illness, disability, death, or age were deposited in the account, annuity, or plan more than 180 days prior to the date of the person's filing a petition with the bankruptcy court commencing a case under Title 11 of the United States Code or prior to the date of the entry of the judgment or order against the person pursuant to the Civil Rules, both of the following apply in connection with the person's claim of the exemption (R.C. 2329.66(A)(10)(e)):</p>

<i>Existing law</i>	<i>Operation of the bill</i>
	<p>(a) The bankruptcy court or the Ohio court must consider the amount of the assets deposited in the account, annuity, or plan more than 180 days prior to the relevant date to have been deposited for a purpose <i>other than</i> evading the payment of any of the person's debts and must find the person's right in those assets or right to receive a payment under the account, annuity, or plan from those assets to be exempt <i>except as provided in R.C. 2929.181, 3111.23, or 3113.21</i> (see COMMENT 5).</p> <p>(b) The bankruptcy court or the Ohio court must not require the person to submit additional proof to that court relative to the issue of whether the amount of the assets deposited in the account, annuity, or plan more than 180 days prior to the relevant date were deposited for a purpose other than evading the payment of any of the person's debts.</p>
<p>(17) The person's right to receive spousal support, child support, an allowance, or other maintenance to the extent reasonably necessary for the support of the person and any of the person's dependents (R.C. 2329.66(A)(11)).</p>	<p>(17) No change.</p>
<p>(18) The person's right to receive, or moneys received during the preceding 12 calendar months from, any of the following (R.C. 2329.66(A)(12)(a) to (d)):</p>	<p>(18) The bill removes from item (c) in "<u><i>Existing law</i></u>" the provision relative to personal bodily injury as <i>not including pain and suffering or compensation for actual pecuniary loss</i>,</p>

<i>Existing law</i>	<i>Operation of the bill</i>
<p>(a) An award of reparations under the Reparation Awards to Victims of Crime Law, to the extent exempted by that Law;</p> <p>(b) A payment on account of the wrongful death of an individual of whom the person was a dependent on the date of the individual's death, to the extent reasonably necessary for the support of the person and any of the person's dependents;</p> <p>(c) Except in cases in which the person who receives the payment is an inmate and in which the payment resulted from a civil action or appeal against a government entity or employee, a payment, not to exceed \$5,000, on account of personal bodily injury, <i>not including pain and suffering or compensation for actual pecuniary loss, of the person or an individual for whom the person is a dependent</i>;</p> <p>(d) A payment in compensation for loss of future earnings of the person or an individual of whom the person is or was a dependent, to the extent reasonably necessary for the support of the debtor and any of the debtor's dependents.</p>	<p><i>of the person or an individual for whom the person is a dependent</i> (R.C. 2329.66(A)(12)(c)).</p>
<p>(19) With certain exceptions (see COMMENT 3), personal earnings of the person owed to the person for services in an amount equal to the greater of the following amounts: (a) if paid weekly, 30 times the current federal minimum hourly wage; if paid biweekly, 60 times the current federal minimum hourly wage; if paid semimonthly, 65 times the current federal minimum hourly wage; or if</p>	<p>(19) No change.</p>

<i>Existing law</i>	<i>Operation of the bill</i>
paid monthly, 130 times the current federal minimum hourly wage that is in effect at the time the earnings are payable, as prescribed by the Fair Labor Standards Act of 1938, <u>or</u> (b) 75% of the disposable earnings owed to the person. (R.C. 2329.66(A)(13).)	
(20) The person's right in specific partnership property, as exempted by the Uniform Partnership Law (R.C. 2329.66(A)(14)).	(20) No change.
(21) A seal and official register of a notary public, as exempted by the Notaries Public Law (R.C. 2329.66(A)(15)).	(21) No change.
(22) The person's interest in a tuition credit or a payment pursuant to a tuition credit contract, as exempted by the College Savings Program Law (R.C. 2329.66(A)(16)).	(22) No change.
(23) Any other property that is specifically exempted from execution, attachment, garnishment, or sale by federal statutes <u>other than</u> the Bankruptcy Reform Act of 1978 (R.C. 2329.66(A)(17)).	(23) Any other property that is specifically exempted from execution, attachment, garnishment, or sale <i>to satisfy a judgment or order by, that is specifically exempted from the imposition of a judgment lien by, or that is specifically exempted in connection with bankruptcy proceedings by</i> (added by the bill), federal statutes <u>other than</u> the Bankruptcy Reform Act of 1978 (R.C. 2329.66(A)(17)).
(24) The person's interest, not to exceed \$400, in any property, except that this exemption applies only in bankruptcy proceedings (R.C. 2329.66(A)(18)).	(24) The person's interest, not to exceed \$800, in any property, except that this exemption applies only in bankruptcy proceedings (R.C. 2329.66(A)(18)).

Existing law--claims not affected by exemptions; nonwaiver

Under the Exemptions Law, the exemption of a person's interest in property used as a residence as described above under "**Exempt interests and rights--specifically**" (item (1) under "**Existing law**" in the table) does not do any of the following:

(1) Extend to a judgment rendered on a mortgage executed, or security interest given on real or personal property by a debtor or to a claim for less than \$400 for manual work or labor;

(2) Impair the lien, by mortgage or otherwise, of the vendor for the purchase money of real or personal property that the debtor or debtor's dependent uses as a residence, the lien of a mechanic or other person, under an Ohio statute, for materials furnished or labor performed in the erection of a dwelling house on real property, or a lien for the payment of taxes due on real property;

(3) Affect or invalidate any mortgage on any real property, or any lien created by that type of mortgage.

Existing law precludes any promise, agreement, or contract from being made or entered into that would waive the exemption laws of Ohio. Every promise, agreement, or contract insofar as it seeks to waive those exemption laws is void. The Exemptions Law does not affect or invalidate any sale, contract of sale, conditional sale, security interest, or pledge of any personal property, or any lien created thereby. (R.C. 2329.661--not in the bill.)

Existing law--opt-out provisions

Current law states that pursuant to the Bankruptcy Reform Act of 1978, the state of Ohio specifically does not authorize debtors who are domiciled in Ohio to exempt the property specified in that Act (R.C. 2329.662--not in the bill).

Existing law--determination of "interest"

For purposes of the exempt interests and rights as described above, "interest" is determined as follows:

(1) In bankruptcy proceedings, as of the date a petition is filed with the bankruptcy court commencing a case under Title 11 of the United States Code;

(2) In all cases other than bankruptcy proceedings, as of the date of an appraisal, if necessary under applicable law, or the issuance of a writ of execution.

An interest determined as described above does not include the amount of any lien otherwise valid pursuant to the provisions described above in "Existing law--claims not affected by exemptions; nonwaiver." (R.C. 2329.66(C).)

COMMENT

1. This exemption refers to contracts of life or endowment insurance or annuities, as exempted by R.C. 3911.10, which provides in part that all contracts of life or endowment insurance or annuities upon the life of any person, or any interest in those contracts, that may hereafter mature and have been taken out for the benefit of, or made payable by change of beneficiary, transfer, or assignment to, the spouse or children, any persons dependent upon that person, a certain type of institution or entity, or any creditor, or to a trustee for the benefit of such spouse, children, dependent persons, institution or entity, or creditor, must be held, together with the proceeds or avails of those contracts, subject to a change of beneficiary if desired, free from all claims of the creditors of that insured person or annuitant.

2. These exceptions are cases in which the person was convicted of or pleaded guilty to theft in office and in which an order for the withholding of restitution from payments was issued or cases in which an order for withholding of restitution from government deferred compensation or public retirement system payments to certain sex offenders was issued, and only to the extent provided in the order. Other exceptions are as provided in the laws (R.C. 3105.171, 3105.63, 3119.80, 3119.81, 3121.02, 3121.03, and 3123.06) governing the division of property in divorce or dissolution of marriage, the withholding or deduction from the income or assets of a child support obligor, and the withholding or deduction requirements to enforce a court child support order.

3. These exceptions are as provided in the laws (R.C. 3119.80, 3119.81, 3121.02, 3121.03, and 3123.06) governing the withholding or deduction from the income or assets of a child support obligor and the withholding or deduction requirements to enforce a court child support order.

4. The Exemptions Law defines "insider" as follows (R.C. 2329.66(B)(2)):

(2) "Insider" means:

(a) If the person who claims an exemption is an individual, a relative of the individual, a relative of a general partner of the individual, a partnership in which the individual is a general partner, a general partner of the individual, or a corporation of which the individual is a director, officer, or in control;

(b) If the person who claims an exemption is a corporation, a director or officer of the corporation; a person in control of the corporation; a partnership in which the corporation is a general partner; a general partner of the corporation; or a relative of a general partner, director, officer, or person in control of the corporation;

(c) If the person who claims an exemption is a partnership, a general partner in the partnership; a general partner of the partnership; a person in control of the partnership; a partnership in which the partnership is a general partner; or a relative in, a general partner of, or a person in control of the partnership;

(d) An entity or person to which or whom any of the following applies:

(i) The entity directly or indirectly owns, controls, or holds with power to vote, twenty per cent or more of the outstanding voting securities of the person who claims an exemption, unless the entity holds the securities in a fiduciary or agency capacity without sole discretionary power to vote the securities or holds the securities solely to secure to debt and the entity has not in fact exercised the power to vote.

(ii) The entity is a corporation, twenty per cent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the person who claims an exemption or by an entity to which division (B)(2)(d)(i) of this section applies.

(iii) A person whose business is operated under a lease or operating agreement by the person who claims an exemption, or a person substantially all of whose business is operated under an operating agreement with the person who claims an exemption.

(iv) The entity operates the business or all or substantially all of the property of the person who

claims an exemption under a lease or operating agreement.

(e) An insider, as otherwise defined in this section, of a person or entity to which division (B)(2)(d)(i), (ii), (iii), or (iv) of this section applies, as if the person or entity were a person who claims an exemption;

(f) A managing agent of the person who claims an exemption.

5. R.C. 2929.181, which related to the determination of a criminal offender's ability to pay and to withholding and deduction orders, was repealed in 1996. It appears that the current applicable laws are R.C. 2929.18 pertaining to financial sanctions and restitution in felony cases and R.C. 2929.21 pertaining to restitution in misdemeanor cases.

Under recently enacted Am. Sub. S.B. 180 of the 123rd General Assembly, the relevant provisions in former R.C. 3111.23 and 3113.21 are now found in R.C. 3119.80, 3119.81, 3121.02, 3121.03, and 3123.06.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-22-01	p. 172

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