

1 HB396
2 166215-2
3 By Representative Hill (J)
4 RFD: Judiciary
5 First Read: 02-APR-15

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

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

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

25 Existing law also prohibits an Alabama
26 debtor filing bankruptcy from protecting property
27 in accordance with federal exemption limits.

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

5 This bill would also allow debtors filing
6 bankruptcy the option of exempting homestead and
7 personal property in accordance with federal
8 bankruptcy law.

9 This bill would restrict the amount of
10 income that may be levied to a portion of
11 disposable income of an individual.

12
13 A BILL
14 TO BE ENTITLED
15 AN ACT

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17 To amend Sections 6-10-2, 6-10-6, 6-10-11, 43-8-110,
18 43-8-111, 43-8-113, and 43-8-115, Code of Alabama 1975, to
19 increase permissible exemptions available to a surviving
20 spouse to thirty thousand dollars (\$30,000) for homestead and
21 ten thousand dollars (\$10,000) for personal property; to
22 increase an Alabama debtor's individual homestead exemption to
23 thirty thousand dollars (\$30,000) and an individual's personal
24 property exemption to ten thousand dollars (\$10,000), to
25 provide debtors filing bankruptcy options of additional
26 exemptions allowable under federal bankruptcy law.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 6-10-2, 6-10-6, 6-10-11,
2 43-8-110, 43-8-111, 43-8-113, and 43-8-115, Code of Alabama
3 1975, are amended to read as follows:

4 "§6-10-2.

5 "The homestead of every resident of this state, with
6 the improvements and appurtenances, not exceeding in value
7 ~~\$5,000~~ thirty thousand dollars (\$30,000) and in area 160
8 acres, shall be, to the extent of any interest he or she may
9 have therein, whether a fee or less estate or whether held in
10 common or in severalty, exempt from levy and sale under
11 execution or other process for the collection of debts during
12 his or her life and occupancy and, if he or she leaves
13 surviving him or her a spouse and a minor child, or children,
14 or either, during the life of the surviving spouse and
15 minority of the child, or children, but the area of the
16 homestead shall not be enlarged by reason of any encumbrance
17 thereon or of the character of the estate or interest owned
18 therein by him or her. When a husband and wife jointly own a
19 homestead each is entitled to claim separately the exemption
20 provided herein, to the same extent and value as an unmarried
21 individual. For purposes of this section and Sections 6-10-38
22 and 6-10-40, a mobile home or similar dwelling if the
23 principal place of residence of the individual claiming the
24 exemption shall be deemed to be a homestead.

25 "§6-10-6.

26 "The personal property of such resident, except for
27 wages, salaries, or other compensation, to the extent of the

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

10 "§6-10-11.

11 "In cases instituted under the provisions of Title
12 11 of the United States Code entitled "Bankruptcy," there
13 shall be exempt from the property of the estate of an
14 individual debtor only that property and income which is
15 exempt under the laws of the State of Alabama and under
16 ~~federal laws other than~~ Subsection (d) of Section 522 of ~~said~~
17 Title 11 of the United States Code.

18 "§43-8-110.

19 "(a) A surviving spouse of a decedent who was
20 domiciled in this state is entitled to a homestead allowance
21 of ~~\$6,000.00~~ thirty thousand dollars (\$30,000). If there is no
22 surviving spouse, each minor child and each dependent child of
23 the decedent is entitled to a homestead allowance amounting to
24 ~~\$6,000.00~~ thirty thousand dollars (\$30,000) divided by the
25 number of minor and dependent children of the decedent. The
26 homestead allowance is exempt from and has priority over all
27 claims against the estate. Homestead allowance is in addition

1 to any share passing to the surviving spouse or minor or
2 dependent child by the will of the decedent unless otherwise
3 provided in the will, by intestate succession or by way of
4 elective share.

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

11 "§43-8-111.

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

1 exempt property have priority over all claims against the
2 estate, except that the right to any assets to make up a
3 deficiency of exempt property shall abate as necessary to
4 permit prior payment of homestead allowance and family
5 allowance. These rights are in addition to any benefit or
6 share passing to the surviving spouse or children by the will
7 of the decedent unless otherwise provided, by intestate
8 succession, or by way of elective share.

9 "§43-8-113.

10 "If the estate is otherwise sufficient, property
11 specifically devised is not used to satisfy rights to
12 homestead and exempt property. Subject to this restriction,
13 the surviving spouse, the guardians of the minor children, or
14 children who are adults may select property of the estate as
15 homestead allowance and exempt property. The personal
16 representative may make these selections if the surviving
17 spouse, the children or the guardians of the minor children
18 are unable or fail to do so within a reasonable time or if
19 there are no guardians of the minor children. The personal
20 representative may execute an instrument or deed of
21 distribution to establish the ownership of property taken as
22 homestead allowance or exempt property. He may determine the
23 family allowance in a lump sum not exceeding ~~\$6,000.00~~ thirty
24 thousand (\$30,000) or in periodic installments not exceeding
25 \$500.00 per month ~~for one year~~, and may disburse funds of the
26 estate in payment of the family allowance and any part of the
27 homestead allowance payable in cash. The personal

1 representative or any interested person aggrieved by any
2 selection, determination, payment, proposed payment, or
3 failure to act under this section may petition the court for
4 appropriate relief, which relief may provide a family
5 allowance larger or smaller than that which the personal
6 representative determined or could have determined.

7 "§43-8-115.

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

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

23 Section 2. This act shall become effective
24 immediately following its passage and approval by the
25 Governor, or its otherwise becoming law.