

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 36

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Daymon Ely and Katy Duhigg

AN ACT

RELATING TO ACTIONS AFFECTING PROPERTY; IDENTIFYING AND
LIMITING EXEMPTIONS IN CERTAIN LEGAL PROCEEDINGS; PROVIDING FOR
COST-OF-LIVING ADJUSTMENTS; AMENDING, REPEALING AND ENACTING
SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 42-10-1 NMSA 1978 (being Laws 1971,
Chapter 215, Section 1, as amended) is amended to read:

"42-10-1. EXEMPTIONS [~~OF MARRIED PERSONS OR HEADS OF
HOUSEHOLDS~~].--~~[Personal property in the amount of five hundred
dollars (\$500), tools of the trade in the amount of fifteen
hundred dollars (\$1,500), one motor vehicle in the amount of
four thousand dollars (\$4,000), jewelry in the amount of
twenty-five hundred dollars (\$2,500), clothing, furniture,
books, medical health equipment being used for the health of~~

underscored material = new
~~[bracketed material] = delete~~

underscored material = new
[bracketed material] = delete

1 ~~the person and not for his profession and any interest in or~~
2 ~~proceeds from a pension or retirement fund of every person~~
3 ~~supporting another person is exempt from receivers or trustees~~
4 ~~in bankruptcy or other insolvency proceedings, fines,~~
5 ~~attachment, execution or foreclosure by a judgment creditor.~~
6 ~~Property exempted shall be valued at the market value of used~~
7 ~~chattels.]~~

8 A. The following shall be exempt from receivers or
9 trustees in bankruptcy or other insolvency proceedings, fines,
10 attachment, execution or foreclosure by a judgment creditor:

11 (1) household goods and furnishings;

12 (2) a person's aggregate interest in motor
13 vehicles, not exceeding ten thousand dollars (\$10,000) in
14 value;

15 (3) a person's interest in jewelry held
16 primarily for the use of the person, the person's spouse or any
17 dependent of the person, not exceeding five thousand dollars
18 (\$5,000) in the aggregate;

19 (4) a person's aggregate interest in any
20 personal property, not exceeding fifteen thousand dollars
21 (\$15,000);

22 (5) tools, implements, professional books,
23 instruments, inventory, supplies and materials reasonably
24 necessary for use in the person's trade, profession, business
25 or occupation, or that of the person's spouse, not exceeding

.218195.5

underscored material = new
[bracketed material] = delete

1 fifteen thousand dollars (\$15,000) in the aggregate;

2 (6) the person's right to receive:

3 (a) social security benefits;

4 (b) veteran's benefits;

5 (c) disability, illness, unemployment or
6 workers' compensation benefits;

7 (d) public benefits such as medicaid,
8 food stamps or other aid from a government public assistance
9 program;

10 (e) alimony, family or domestic support
11 or separate maintenance to the extent reasonably necessary for
12 the support of the person or any dependent of the person; and

13 (f) payment pursuant to a stock bonus,
14 pension, profit-sharing, annuity or similar plan or contract on
15 account of illness, disability, death or length of service, to
16 the extent reasonably necessary for the support of the person
17 or any dependent of the person, unless such plan or contract
18 does not qualify pursuant to Section 401(a), 403(a), 403(b) or
19 408 of the Internal Revenue Code of 1986;

20 (7) retirement funds to the extent that those
21 funds are in a fund or account that is exempt from taxation
22 pursuant to Section 401, 403, 408, 408A, 414, 457 or 501(a) of
23 the Internal Revenue Code of 1986;

24 (8) an interest in or proceeds from a pension
25 or retirement fund; and

.218195.5

underscored material = new
[bracketed material] = delete

1 (9) refundable federal and state tax credits.

2 B. Property exempted pursuant to the provisions of
3 this section shall be valued at the market value of used
4 chattels.

5 C. As used in this section, "household goods and
6 furnishings" means items primarily used by or for the support
7 and maintenance of the household of the person or the person's
8 spouse, family and dependents, including:

9 (1) furniture;

10 (2) appliances such as a refrigerator, stove,
11 oven, freezer, clothes washer, clothes dryer, dishwasher,
12 microwave, coffee maker, toaster and vacuum cleaner;

13 (3) clothing and personal effects, including
14 wedding rings;

15 (4) electronic equipment such as televisions,
16 radios, cellular telephones, computers, computer equipment,
17 digital or compact disc players and other electronic consumer
18 devices;

19 (5) kitchenware, cookware, dishes, utensils,
20 silverware, china and glasses;

21 (6) linens;

22 (7) musical instruments, not exceeding four
23 thousand dollars (\$4,000) in the aggregate;

24 (8) educational materials and equipment;

25 (9) medical equipment, supplies and

.218195.5

underscored material = new
[bracketed material] = delete

1 professionally prescribed health aids reasonably necessary for
2 the care and support of the person or any dependent of the
3 person;

4 (10) toys, games, sports, hobby and craft
5 equipment, materials and supplies, not exceeding two thousand
6 five hundred dollars (\$2,500) in the aggregate;

7 (11) books; and

8 (12) two firearms.

9 D. As used in this section, "household goods and
10 furnishings" does not include:

11 (1) works of art or artwork, unless by or of
12 the person or any relative of the person, not exceeding two
13 thousand five hundred dollars (\$2,500) in the aggregate; and

14 (2) electronic entertainment equipment with a
15 fair market value of more than one thousand five hundred
16 dollars (\$1,500) per item."

17 **SECTION 2.** Section 42-10-4 NMSA 1978 (being Laws 1887,
18 Chapter 37, Section 7, as amended) is amended to read:

19 "42-10-4. BENEVOLENT ASSOCIATIONS--BENEFITS.--~~[SEC. 5.]~~
20 Any beneficiary fund not exceeding ~~[five thousand dollars]~~
21 fifty thousand dollars (\$50,000) set apart, appropriated or
22 paid by any benevolent association or society, according to its
23 rules, regulations or bylaws, to the family of any deceased
24 member or to any member of ~~[such]~~ the deceased member's family,
25 shall not be liable to be taken by any process or proceedings,

.218195.5

underscored material = new
[bracketed material] = delete

1 legal or equitable, to pay any debts of [~~such~~] the deceased
2 member."

3 SECTION 3. Section 42-10-7 NMSA 1978 (being Laws 1971,
4 Chapter 215, Section 4) is amended to read:

5 "42-10-7. TAXES [~~AND GARNISHMENT~~] EXCEPTED.--[~~This~~
6 ~~article~~] Chapter 42, Article 10 NMSA 1978 is not applicable to
7 taxes [~~or garnishment~~]."

8 SECTION 4. Section 42-10-9 NMSA 1978 (being Laws 1971,
9 Chapter 215, Section 6, as amended) is amended to read:

10 "42-10-9. HOMESTEAD EXEMPTION.--[~~Each person shall have~~
11 ~~exempt a homestead in a dwelling house and land occupied by the~~
12 ~~person or in a dwelling house occupied by the person although~~
13 ~~the dwelling is on land owned by another, provided that the~~
14 ~~dwelling is owned, leased or being purchased by the person~~
15 ~~claiming the exemption. Such a person has a homestead of sixty~~
16 ~~thousand dollars (\$60,000) exempt from attachment, execution or~~
17 ~~foreclosure by a judgment creditor and from any proceeding of~~
18 ~~receivers or trustees in insolvency proceedings and from~~
19 ~~executors or administrators in probate. If the homestead is~~
20 ~~owned jointly by two persons, each joint owner is entitled to~~
21 ~~an exemption of sixty thousand dollars (\$60,000).]~~

22 A. A person shall have a homestead exemption in a
23 domicile or land owned by the person that is the primary
24 residence of the person. Such homestead is exempt from
25 attachment, execution or foreclosure by a judgment creditor and

.218195.5

underscored material = new
[bracketed material] = delete

1 from any proceeding of receivers or trustees in insolvency or
2 bankruptcy proceedings and from executors or administrators in
3 probate.

4 B. The amount of the homestead exemption is:

5 (1) one hundred fifty thousand dollars
6 (\$150,000) unless the person or spouse of the person who
7 resides in the homestead is a person described in Paragraph (3)
8 or (4) of this subsection;

9 (2) three hundred thousand dollars (\$300,000)
10 if the spouse of the person who owns or resides in the
11 homestead is deceased, and the deceased spouse died within two
12 years prior to the date of claiming the homestead exemption;

13 (3) three hundred thousand dollars (\$300,000)
14 if the homestead is owned jointly by:

15 (a) a person and the person who owns or
16 resides in the homestead; or

17 (b) a spouse of the person who owns or
18 resides in the homestead; or

19 (4) three hundred fifty thousand dollars
20 (\$350,000) if the person or spouse of the person who owns or
21 resides in the homestead is:

22 (a) sixty-five years of age or older;

23 (b) fifty-five years of age or older

24 with: 1) a gross annual income of not more than twenty-five
25 thousand dollars (\$25,000); or 2) if the person is married, a

.218195.5

underscored material = new
[bracketed material] = delete

1 gross annual income, including the gross annual income of the
2 person's spouse, of not more than fifty thousand dollars
3 (\$50,000); or

4 (c) physically or mentally disabled and
5 who, as a result of that disability, is unable to engage in
6 substantial gainful employment. There is a rebuttable
7 presumption affecting the burden of proof that a person
8 receiving disability insurance benefit payments under Title II
9 of the federal Social Security Act or supplemental security
10 income payments under Title XVI of the federal Social Security
11 Act satisfies the requirements of this subparagraph as to the
12 person's inability to engage in substantial gainful employment.

13 C. The combined homestead exemptions of spouses
14 shall not exceed the amount specified in Paragraph (3) or (4)
15 of Subsection B of this section, whichever is applicable,
16 regardless of whether the spouses are jointly obligated on the
17 judgment and regardless of whether the homestead consists of
18 community or separate property or both.

19 D. If both spouses are entitled to a homestead
20 exemption, the exemption of proceeds of the homestead shall be
21 apportioned between the spouses on the basis of their
22 proportionate interests in the homestead."

23 SECTION 5. Section 42-10-10 NMSA 1978 (being Laws 1971,
24 Chapter 215, Section 7, as amended) is amended to read:

25 "42-10-10. EXEMPTION IN LIEU OF HOMESTEAD.--

.218195.5

underscored material = new
[bracketed material] = delete

1 A. Any resident of this state who does not own a
2 homestead shall in addition to other exemptions hold exempt
3 real or personal property in the amount of [~~five thousand~~
4 ~~dollars (\$5,000)~~] fifteen thousand dollars (\$15,000) in lieu of
5 the homestead exemption.

6 B. If the resident does not own a homestead, the
7 sheriff or any other person or officer seeking to attach,
8 execute or foreclose by judgment on property shall provide the
9 resident with written notification of the resident's right to
10 exemption in lieu of homestead as described in Subsection A of
11 this section, together with a simple form by which the resident
12 may designate that the resident is aware of the exemption and
13 does or does not desire to claim the exemption. If the
14 resident refuses to make the election provided for in this
15 section, the sheriff, other person or officer shall proceed to
16 attach, execute or foreclose on the resident's property. If
17 the resident claims the exemption in lieu of homestead, the
18 sheriff, other person or officer making attachment, execution
19 or foreclosure by judgment shall file as part of the return a
20 description, including the resident's stated value, of the
21 property claimed as exempt, bearing the resident's signature
22 witnessed by the sheriff, other person or officer seeking to
23 attach, execute or foreclose."

24 **SECTION 6.** A new Section 42-10-14 NMSA 1978 is enacted to
25 read:

.218195.5

1 "42-10-14. [NEW MATERIAL] COST-OF-LIVING ADJUSTMENTS.--

2 A. On July 1, 2023, and at each two-year interval
3 ending on July 1 thereafter, each dollar amount provided for in
4 Sections 42-10-1, 42-10-4, 42-10-9 and 42-10-10 NMSA 1978 shall
5 be adjusted to reflect the change in the consumer price index
6 for all urban consumers as published by the United States
7 department of labor for the most recent two-year period ending
8 immediately before such January 1 preceding such July 1. The
9 dollar amount shall be adjusted to the twenty-five-dollar
10 (\$25.00) increment nearest to the dollar amount that represents
11 such change.

12 B. Adjustments made in accordance with Subsection A
13 of this section shall not apply to legal proceedings commenced
14 prior to the date of such adjustments."

15 SECTION 7. REPEAL.--Section 42-10-2 NMSA 1978 (being Laws
16 1971, Chapter 215, Section 2, as amended) is repealed.

17 SECTION 8. APPLICABILITY.--The provisions of this act
18 apply to actions filed on or after July 1, 2021.

19 SECTION 9. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is July 1, 2021.