

# MAINE STATE LEGISLATURE

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(New Draft of: H. P. 630, L. D. 711)  
FIRST REGULAR SESSION

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ONE HUNDRED AND TENTH LEGISLATURE

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**Legislative Document**

**No. 1642**

H. P. 1530

House of Representatives, May 21, 1981

Reported by Representative Brannigan from the Committee on Business  
Legislation. Printed under Joint Rules No. 2.

EDWIN H. PERT, Clerk

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

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**AN ACT to Specify the Exemptions which will Apply in Bankruptcy Cases.**

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Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 14 MRSA c. 507, sub-c. II, Art. 6, as amended, is repealed.

Sec. 2. 14 MRSA c. 507, sub-c. II, Art. 7 is enacted to read:

**ARTICLE 7. EXEMPTIONS**

**§ 4421. Definitions**

As used in this article, unless the context otherwise indicates, the following words have the following meanings.

1. **Dependent.** "Dependent" includes a spouse, whether or not actually dependent.

2. **Value.** "Value" means fair market value as of the date of the attachment or, in a proceeding under the United States Code, Title 11, the date of the filing of the petition.

**§ 4422. Exempt property**

The following property is exempt from attachment and execution.

1. **Residence.** The debtor's aggregate interest, not to exceed \$7,500 in value, in real or personal property that the debtor or a dependent of the debtor uses as a

residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor, provided that if the debtor's interest is held jointly with any other person or persons, the exemption shall not exceed in value the lesser of \$7,500 or the product of the debtor's fractional share times \$15,000.

2. Motor vehicle. The debtor's interest, not to exceed \$1,200 in value, in one motor vehicle.

3. Clothing; furniture; appliances; and similar items. The debtor's interest, not to exceed \$200 in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments, that are held primarily for the personal, family or household use of the debtor or a dependent of the debtor.

4. Jewelry. The debtor's aggregate interest, not to exceed \$500 in value, in jewelry held primarily for the personal, family or household use of the debtor or a dependent of the debtor and the debtor's interest in a wedding ring and an engagement ring.

5. Tools of the trade. The debtor's aggregate interest, not to exceed \$1,000 in value, in any implements, professional books or tools of the trade of the debtor or the trade of a dependent of the debtor, including but not limited to, power tools, materials and stock designed and procured by him and necessary for carrying on his trade or business and intended to be used or wrought therein.

6. Furnaces, stoves and fuel. The debtor's interest in the following items held primarily for the personal, family or household use of the debtor or a dependent of the debtor;

A. One cooking stove;

B. All furnaces or stoves used for heating; and

C. All cooking and heating fuel not to exceed 10 cords of wood, 5 tons of coal, 1,000 gallons of petroleum products or its equivalent.

7. Food, produce and animals. The debtor's interest in the following items held primarily for the personal, family or household use of the debtor or a dependent of the debtor:

A. All food provisions, whether raised or purchased, reasonably necessary for 6 months;

B. All seeds, fertilizers, feed and other material reasonably necessary to raise and harvest food through one growing season; and

C. All tools and equipment reasonably necessary for raising and harvesting food.

8. Farm equipment. The debtor's interest in one of every type of farm implement reasonably necessary for the debtor to raise and harvest agricultural

products commercially, including any personal property incidental to its maintenance and operation.

9. **Fishing boat.** The debtor's interest in one boat, not exceeding 5 tons burden, used by the debtor primarily for commercial fishing.

10. **Life insurance contract.** Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

11. **Life insurance dividends, interest and loan value.** The debtor's aggregate interest, not to exceed in value \$4,000 less any amount of property of the estate transferred in the manner specified in the United States Code, Title 11, Section 542 (d), in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is dependent.

12. **Health aids.** Professionally prescribed health aids for the debtor or a dependent of the debtor.

13. **Disability benefits; pensions.** The debtor's right to receive the following:

A. A social security benefit, unemployment compensation or a local public assistance benefit;

B. A veteran's benefit;

C. A disability, illness or unemployment benefit;

D. Alimony, support or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor; or

E. A payment under a stock bonus, pension, profitsharing, annuity or similar plan or contract on account of illness, disability, death, age or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless:

(1) The plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose;

(2) The payment is on account of age or length of service; and

(3) The plan or contract does not qualify under the United States Internal Revenue Code of 1954, Sections 401(a), 403(a), 403(b), 408 or 409.

14. **Legal awards; life insurance benefits.** The debtor's right to receive or property that is traceable to the following:

A. An award under a crime victim's reparation law;

B. A payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

C. A payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of the individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

D. A payment, not to exceed \$7,500 on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or

E. A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

15. Other property. The debtor's aggregate interest, not to exceed in value \$400, in any property, whether or not otherwise exempt under this section.

16. Unused residence exemption. The debtor's interest, equal to any unused amount of the exemption provided under subsection 1 but not exceeding \$4,500, in any property exempt under subsections 3, 5 and 14, paragraph D.

#### § 4423. Exempt property acquired within 90 days

Notwithstanding section 4402, if within 90 days of the attachment, or, in a proceeding under the United States Code, Title 11, the date of the filing of the petition, the debtor transfers his nonexempt property and as a result acquires, improves, or increases in value property otherwise exempt under section 4422, his interest shall not be exempt to the extent that the acquisition, improvement or increase in value exceeds the reasonable needs of the debtor or his dependents.

#### § 4424. Interest in excess of exemption

1. Forced sale. If the debtor's interest in any property exempt under section 4422 exceeds the exempt amount, the whole of the property may be sold.

2. Distribution of proceeds. The proceeds of a sale under subsection 1 shall be distributed in the following order:

- A. To the debtor in the amount of his exempt interest;
- B. To the creditor attaching or executing on the property; and
- C. To the debtor, the balance of the proceeds.

3. Exception for residence. With respect to a residence in which the debtor has an exempt interest, the debtor may designate as exempt from sale under subsection 1 any part of the residence having a value not in excess of the amount of his exemption.

#### § 4425. Exceptions

1. Residence. The debtor's interest in a residence shall not be exempt from claims secured by real estate mortgages on or security interests in the residence or claims of lien creditors under Title 10, chapter 603.

**2. Other property.** The debtor's interest in other property shall not be exempt from claims secured by purchase money security interests in the property, except that the debtor's interest in property otherwise exempt under section 4422, subsections 8 and 9 shall not be exempt from claims secured by security interests in the property.

**§ 4426. Exemptions in bankruptcy proceedings**

Notwithstanding anything to the contrary in the United States Code, Title 11, Section 522(b), a debtor may exempt from property of his estate under United States Code, Title 11, only that property exempt under the United States Code, Title 11, Section 522 (b)(2)(A) and (B).

**Sec. 3.** 14 MRSA c. 507, sub-c. III, Art. 3, as amended, is repealed.

**Sec. 4.** 14 MRSA c. 507, sub-c. III, Art. 4 is enacted to read:

**ARTICLE 4. EXEMPTIONS**

**§ 4561. Residence exemption**

**Exemptions with respect to residences are governed by subchapter II, Article 7.**

**STATEMENT OF FACT**

The purposes of this new draft are generally to:

1. Merge into one list the statutory property exemptions for state collection proceedings and federal bankruptcy proceedings;
2. Adopt the existing federal exemptions except where comparable state exemptions are more generous;
3. Incorporate state exemptions for which there are no federal equivalents;
4. Limit the pour-over provision adopted from federal law;
5. Limit exemptions for property acquired within 90 days of attachment or bankruptcy;
6. Incorporate most existing state provisions concerning forced sales and property subject to liens and security interests; and
7. Prohibit bankrupts from choosing the federal exemptions as an alternative.