

HOUSE BILL 122

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

Daymon Ely

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~~

.216403.3

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 not
12 exceeding twenty-five thousand dollars (\$25,000) in aggregate
13 per person;

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

16 (3) a person's interest in jewelry held
17 primarily for the use of the person, the person's spouse or any
18 dependent of the person, not exceeding four thousand five
19 hundred dollars (\$4,500) in aggregate;

20 (4) a person's aggregate interest in real
21 property, not to exceed two thousand five hundred dollars
22 (\$2,500) in value, plus up to twenty-two thousand five hundred
23 dollars (\$22,500) of any unused amount of the homestead
24 exemption pursuant to Section 42-10-9 NMSA 1978;

25 (5) implements, professional books, equipment

.216403.3

underscored material = new
[bracketed material] = delete

1 or other tools of the trade primarily for the use of the person
2 in any trade of the person, the person's spouse or any
3 dependent of the person, not exceeding seven thousand five
4 hundred dollars (\$7,500) in aggregate;

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

6 (a) social security benefits;

7 (b) veteran's benefits;

8 (c) disability, illness, unemployment or
9 workers' compensation benefits;

10 (d) public benefits such as medicaid,
11 food stamps or other aid from a government public assistance
12 program;

13 (e) alimony, family or domestic support,
14 or separate maintenance to the extent reasonably necessary for
15 the support of the person or any dependent of the person; and

16 (f) payment pursuant to a stock bonus,
17 pension, profit-sharing, annuity or similar plan or contract on
18 account of illness, disability, death or length of service, to
19 the extent reasonably necessary for the support of the person
20 or any dependent of the person, unless such plan or contract
21 does not qualify pursuant to Section 401(a), 403(a), 403(b) or
22 408 of the Internal Revenue Code of 1986;

23 (7) retirement funds to the extent that those
24 funds are in a fund or account that is exempt from taxation
25 pursuant to Section 401, 403, 408, 408A, 414, 457 or 501(a) of

.216403.3

underscored material = new
[bracketed material] = delete

1 the Internal Revenue Code of 1986;

2 (8) an interest in or proceeds from a pension
3 or retirement fund of a person supporting another person; and

4 (9) refundable federal and state tax credits.

5 B. Property exempted pursuant to the provisions of
6 this section shall be valued at the market value of used
7 chattels.

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

12 (1) furniture;

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

16 (3) clothing;

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

21 (5) kitchenware, cookware, dishes, utensils,
22 silverware, china and glasses;

23 (6) linens;

24 (7) musical instruments;

25 (8) educational materials and equipment;

.216403.3

underscored material = new
[bracketed material] = delete

1 (9) medical equipment, supplies and
2 professionally prescribed health aids;

3 (10) personal effects, including wedding
4 rings, toys, games and sports, hobby and craft equipment and
5 supplies;

6 (11) books; and

7 (12) two firearms.

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

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

.216403.3

underscored material = new
[bracketed material] = delete

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

3 SECTION 3. Section 42-10-9 NMSA 1978 (being Laws 1971,
4 Chapter 215, Section 6, as amended) is amended to read:

5 "42-10-9. HOMESTEAD EXEMPTION.--~~[Each person shall have~~
6 ~~exempt a homestead in a dwelling house and land occupied by the~~
7 ~~person or in a dwelling house occupied by the person although~~
8 ~~the dwelling is on land owned by another, provided that the~~
9 ~~dwelling is owned, leased or being purchased by the person~~
10 ~~claiming the exemption. Such a person has a homestead of sixty~~
11 ~~thousand dollars (\$60,000) exempt from attachment, execution or~~
12 ~~foreclosure by a judgment creditor and from any proceeding of~~
13 ~~receivers or trustees in insolvency proceedings and from~~
14 ~~executors or administrators in probate. If the homestead is~~
15 ~~owned jointly by two persons, each joint owner is entitled to~~
16 ~~an exemption of sixty thousand dollars (\$60,000).]~~

17 A. A person shall have a homestead exemption in a
18 domicile or land owned by the person that is the primary
19 residence of the person. That homestead is exempt from
20 attachment, execution or foreclosure by a judgment creditor and
21 from any proceeding of receivers or trustees in insolvency
22 proceedings and from executors or administrators in probate.

23 B. The amount of the homestead exemption is:

24 (1) one hundred ninety-five thousand dollars
25 (\$195,000) unless the person or spouse of the person who

.216403.3

underscored material = new
[bracketed material] = delete

1 resides in the homestead is a person described in Paragraph (2)
2 or (3) of this subsection;

3 (2) three hundred ninety thousand dollars
4 (\$390,000) if the homestead is owned jointly by:

5 (a) a person and the person who owns or
6 resides in the homestead; or

7 (b) a spouse of the person who owns or
8 resides in the homestead; or

9 (3) four hundred twenty-five thousand dollars
10 (\$425,000) if the person or spouse of the person who owns or
11 resides in the homestead is:

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

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

14 with: 1) a gross annual income of not more than twenty-five
15 thousand dollars (\$25,000); or 2) if the person is married, a
16 gross annual income, including the gross annual income of the
17 person's spouse, of not more than fifty thousand dollars
18 (\$50,000); or

19 (c) physically or mentally disabled and
20 who, as a result of that disability, is unable to engage in
21 substantial gainful employment. There is a rebuttable
22 presumption affecting the burden of proof that a person
23 receiving disability insurance benefit payments under Title II
24 of the federal Social Security Act or supplemental security
25 income payments under Title XVI of the federal Social Security

.216403.3

underscored material = new
[bracketed material] = delete

1 Act satisfies the requirements of this subparagraph as to the
2 person's inability to engage in substantial gainful employment.

3 C. The combined homestead exemptions of spouses
4 shall not exceed the amount specified in Paragraph (2) or (3)
5 of Subsection B of this section, whichever is applicable,
6 regardless of whether the spouses are jointly obligated on the
7 judgment and regardless of whether the homestead consists of
8 community or separate property or both.

9 D. If both spouses are entitled to a homestead
10 exemption, the exemption of proceeds of the homestead shall be
11 apportioned between the spouses on the basis of their
12 proportionate interests in the homestead."

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

15 "42-10-10. EXEMPTION IN LIEU OF HOMESTEAD.--

16 A. Any resident of this state who does not own a
17 homestead shall in addition to other exemptions hold exempt
18 real or personal property in the amount of [~~five thousand~~
19 ~~dollars (\$5,000)~~] twenty-five thousand dollars (\$25,000) in
20 lieu of the homestead exemption.

21 B. If the resident does not own a homestead, the
22 sheriff or any other person or officer seeking to attach,
23 execute or foreclose by judgment on property shall provide the
24 resident with written notification of the resident's right to
25 exemption in lieu of homestead as described in Subsection A of

.216403.3

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

1 this section, together with a simple form by which the resident
2 may designate that the resident is aware of the exemption and
3 does or does not desire to claim the exemption. If the
4 resident refuses to make the election provided for in this
5 section, the sheriff, other person or officer shall proceed to
6 attach, execute or foreclose on the resident's property. If
7 the resident claims the exemption in lieu of homestead, the
8 sheriff, other person or officer making attachment, execution
9 or foreclosure by judgment shall file as part of the return a
10 description, including the resident's stated value, of the
11 property claimed as exempt, bearing the resident's signature
12 witnessed by the sheriff, other person or officer seeking to
13 attach, execute or foreclose."

14 SECTION 5. A new Section 42-10-14 NMSA 1978 is enacted to
15 read:

16 "42-10-14. [NEW MATERIAL] COST-OF-LIVING ADJUSTMENTS.--

17 A. On July 1, 2022, and at each two-year interval
18 ending on July 1 thereafter, each dollar amount provided for in
19 Sections 42-10-1, 42-10-4, 42-10-9 and 42-10-10 NMSA 1978 shall
20 be adjusted to reflect the change in the consumer price index
21 for all urban consumers as published by the United States
22 department of labor for the most recent two-year period ending
23 immediately before such January 1 preceding such July 1. The
24 dollar amount shall be adjusted to the twenty-five-dollar
25 (\$25.00) increment nearest to the dollar amount that represents

.216403.3

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

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

such change.

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

SECTION 6. REPEAL.--Section 42-10-2 NMSA 1978 (being Laws 1971, Chapter 215, Section 2, as amended) is repealed.

SECTION 7. APPLICABILITY.--The provisions of this act apply to actions filed on or after July 1, 2020.

SECTION 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2020.