

NO FRESH START IN 2019

HOW STATES STILL ALLOW DEBT COLLECTORS TO PUSH FAMILIES INTO POVERTY

<http://bit.ly/rpt-no-fresh-start>

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APPENDIX F

THE RATING SYSTEM FOR THIS REPORT

State exemption laws differ in their approach. Some provide a list of property that debtors can preserve from their creditors, with a dollar cap for each category. Others provide a “wildcard” exemption of a certain dollar amount. Then the debtor chooses what specific items to protect. Some wildcards are limited to certain kinds of property, and some are available only if the debtor does not take advantage of some other exemption, usually the homestead exemption. Many states’ exemption schemes combine both a list of earmarked exemptions and a wildcard. Some exemptions are available only to the head of a household, and some states increase certain exemptions if the debtor is supporting children.

In order to treat these states uniformly, so that their results for debtors can be compared on a state-by-state basis, this report has employed certain assumptions. We assume that, if a wildcard is available, the debtor will apply it first to preserve a car worth up to \$15,000, since for so many debtors a working car is necessary to keep a job, buy groceries, and get health care. However, if the wildcard exemption is at least \$3,000 and the state does not offer an earmarked exemption for a bank account or household goods, we reserve \$1,000 of the wildcard for those purposes. If any amount of a wildcard remains after applying it to preserve a car worth up to \$15,000, we apply it next to a bank account, if the state allows it to be used for this purpose and if the state did not provide an earmarked exemption for a bank account. If any amount remains after preserving up to \$3,000 in a bank account, we apply the remainder to the debtor’s household goods. The reason for applying it last to household goods despite their importance for the debtor’s daily life is that they often have so little resale value that the creditor will only threaten to seize them, so a debtor who has no other options may decide to run that risk.

In some states, a wildcard is available only if the debtor does not claim some other exemption, typically a homestead exemption. For purposes of our ratings of the state’s protection of a car, a bank account, and household goods, we have assumed that the debtor has not claimed a homestead exemption. A few states offer a wildcard in the amount of any unused portion of certain earmarked exemptions for types of personal property. In these states, we have assumed that the debtor has not used an exemption for tools of the trade or crops, but has used the full exemption for a car, a bank account, and household goods.

Some states allow married debtors to “stack” their exemptions. For example, if a state allowed a \$2,000 exemption for a car, each spouse might be able to exempt that amount and save a car worth \$4,000. The figures in this report are based on the individual exemption amounts unless otherwise stated.

Some states provide higher exemption amounts for debtors who are elderly or disabled. In this report we have not used these higher amounts. When states provide a higher exemption amount for a person who is the head of a family, however, we have used that amount in our ratings. A few states also provide small increases in their protection of wages or property when the debtor has dependent children. In those states, we have assumed that the debtor has two children.

When there are ambiguities in state exemption laws, we have interpreted them in favor of a broader rather than a narrower exemption. For example, some states are not very clear about whether the state’s protection of the debtor’s wages continues after the wages have been paid and deposited in the debtor’s bank account. If the statute is worded in a way that suggests that the protection might apply to deposited wages, for example by applying the exemption to wages that are “paid or payable,” we looked for court decisions addressing this question. If we found cases that provided any indication that the protection could be used to protect deposited wages, we rated the state as allowing this. Similarly, some states’ exemption laws are not clear about whether a wildcard exemption can be used to protect a bank account. For example, the statute may provide that the wildcard exemption applies to “any real or personal property.” If we could find any cases that treated such a wildcard as available to protect a bank account, we treated it as available. If we have overlooked any decisions or statutes that address these or other questions, please bring them to our attention.

Interpreting ambiguous exemption laws broadly is in line with the general principle that state exemption laws are to be interpreted liberally in favor of the debtor. But it also means that, even in states that we rate highly, the exemption law may need improvements to make it clear that the broader reading is correct.

In calculating the amount of wages protected from garnishment, we have assumed that the debtor is working full-time at minimum wage and is the head of a four-person household that includes two dependent children. If the state law explicitly requires the state minimum wage rather than the federal minimum wage to be used in a particular calculation, we have done so. In the few states that provide that a calculation is to be based on the larger of the state or local minimum wage, we have used the state minimum. In New York, the state minimum wage varies based on the size and location of the employer, and in California it varies based on the size of the employer. In both cases we have used the highest minimum wage.

Our rating of the state’s protection of the debtor’s home is based on the extent to which the state’s homestead exemption protects a median-priced home in the state. Median

home values are based on census figures.¹ In New York, where the exempt amount ranges from \$85,400 to \$170,825 depending on the county, we have chosen the exemption amount (\$170,825) that applies to the ten most populous counties. The average of those 10 counties' median home values is \$535,640.² For the Virgin Islands, a 2010 figure³ is the latest available. It appears to still be in use in that jurisdiction. For example, the Virgin Islands Housing Finance Authority refers to that number in two recent documents.⁴ Some states make a homestead exemption dependent in whole or in part on filing of a document declaring that the home is the consumer's homestead. In those states, we have assumed that the debtor has filed the required declaration.

Several jurisdictions provide an exemption for a car only if the debtor uses it to get to work. Since this exemption would be available for the typical working family, we have included those exemptions in this report. In some other states, an exemption for "tools of the trade" may apply to a car, but often the cases require the car to be used for more than just getting to and from work. In this report we have assumed that any exemption for tools of the trade is not interpreted to be flexible enough to exempt a car that is used for commuting.

¹https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_17_1YR_B25077&prodType=table.

²See median home value estimates for New York counties (2017): https://factfinder.census.gov/bkmk/table/1.0/en/ACS/17_1YR/B25077/0400000US36.05000.

³https://factfinder.census.gov/bkmk/table/1.0/en/DEC/10_VISF/HBG61/0400000US78

⁴U.S. Virgin Islands Disaster Recovery Action Plan (March 2019); Community Development Block Grant: Disaster Recovery Program Action Plan (2018).