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**FINAL REPORT  
OF THE  
SENATE HOMESTEAD EXEMPTIONS FOR  
PURPOSES OF BANKRUPTCY STUDY COMMITTEE**

**The Honorable Ed Tarver, Chairman**  
**Senator, 22<sup>nd</sup> District**

**The Honorable John Wiles**  
**Senator, 37<sup>th</sup> District**

**The Honorable David Adelman**  
**Senator, 42<sup>nd</sup> District**

**The Honorable Bill Cowsert**  
**Senator, 46<sup>th</sup> District**

**The Honorable Renee Unterman**  
**Senator, 45<sup>th</sup> District**

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## **INTRODUCTION**

The Senate Homestead Exemptions for Purposes of Bankruptcy Study Committee was created by Senate Resolution 1289 during the 2008 Legislative Session. The purpose of the Committee is to research the current Georgia homestead exemption for debtors in bankruptcy and receive information regarding possible adjustments to the exemption with adequate, non-discriminatory protections for debtors, creditors and related industries.<sup>1</sup>

On October 8, 2008, Lieutenant Governor Casey Cagle appointed the following five members to serve on the Committee: Senator Ed Tarver as Chairman; Senator John Wiles; Senator David Adelman; Senator Bill Cowsert; and Senator Renee Unterman.

## **STUDY COMMITTEE MEETINGS AND PRESENTATIONS**

The Committee convened on November 25, 2008 in Room 108 of the State Capital. Chairman Ed Tarver made opening comments reflecting the main goal of the first meeting of the committee; to examine the conditions and needs related to the current homestead exemption policy by gathering information and informed opinions from all interested and affected parties. Witnesses for the first meeting included bankruptcy scholars from local law schools; debtors' attorneys representing underprivileged and elderly clients; elderly individuals in Chapter 13 bankruptcy desiring to convert to a Chapter 7 bankruptcy while remaining in their homes; a representative from the Atlanta Legal Aid Home Defense Project; representatives from the banking industry and a Chapter 7 Trustee speaking on behalf of the Georgia Chapter 7 Trustees. The goal of the second and final study committee meeting on December 18, 2008 was to receive input from the Georgia mortgage bankers, a Chapter 13 Trustee, entities who are often unsecured creditors and the leadership of the State Bar of Georgia, Bankruptcy Law Section.

## **BACKGROUND**

The United States Constitution authorizes Congress to adopt "uniform laws" on bankruptcy. The federal bankruptcy law has two goals: to obtain fair treatment for creditors and to obtain a fresh start for debtors involved in bankruptcy proceedings.

Chapter 7 and Chapter 13 are the two bankruptcy chapters most often used by individual debtors, who are often referred to as consumer debtors. Other chapters of the Federal Bankruptcy Code provide debt relief for businesses, family farmers, fisherman, municipalities and non-US debtors.

Chapter 7 offers an orderly, court-supervised procedure by which a trustee takes over the assets of the debtor's estate, reduces them to cash and makes distributions to creditors, subject to the debtor's right to retain certain exempt property. In most Chapter 7 cases, the debtor receives a discharge that releases him or her from personal liability for certain dischargeable debts within a few months after the petition is filed.

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<sup>1</sup> [HTTP://WWW.LEGIS.GA.GOV/LEGIS/2007\\_08/SUM/SR1289.HTM](http://www.legis.ga.gov/legis/2007_08/SUM/SR1289.HTM)

In 2005 major changes to federal bankruptcy law passed including a "means test," which is a formula to determine whether or not the consumer would have enough money available to make some minimal payments to creditors in a Chapter 13 bankruptcy plan. An individual must pass the means test to be eligible for Chapter 7 relief.

Chapter 13 allows a person to keep and use all property, whether exempt or not, and to pay some or all debts according to a plan approved by the court. Unlike Chapter 7, the debtor does not receive an immediate discharge of debts. The debtor must complete the payments required under the plan before receiving the discharge. While the differences between Chapters 7 and 13 are relevant to the discussion of Georgia's exemptions, any changes to Georgia's homestead exemption or bankruptcy exemptions in general will not affect the conducting of Chapter 13 proceedings in the Federal Bankruptcy Courts of Georgia.

Federal bankruptcy law governs bankruptcy proceedings, except when Congress has chosen to defer to state law. Exemptions are the one place where bankruptcy law varies from state to state. Congress creates a set of exemptions in the federal code, which are adjusted periodically based on the consumer price index (CPI), but allows each state to opt-out of those exemptions in favor of state exemptions. Sixteen states allow debtors to elect the Federal Bankruptcy Code exemptions. In those states, debtors get their choice between the federal exemptions and those in the laws of their state. For the balance of the states, the state exemptions are the only option available to the debtor. States creating their own exemptions are dependent on their legislatures to recalculate and adjust the bankruptcy exemptions on an as needed basis or provide state statutory provisions for the adjustment of the exemptions. Georgia is one of 34 states that elected to "opt-out" of the federal exemptions. See State Opt Out Table, Appendix A.

Exempt property is not subject to the claims of unsecured creditors and may be kept by an individual, subject to the rights of secured creditors and lien holders. Also, an individual must own an interest in the property to claim the property as exempt. An individual may exempt the equity value interest (the difference between what the property is worth and what is owed on it) in property that remains after liens and other creditors' interests are considered. However, any equity value interest in property above the exemption amount may be subject to the claims of unsecured creditors.

For example, an individual owns a home that he or she lives in. The fair market value of the home is \$150,000 and there is a \$135,000 mortgage on the house. This means that the individual's equity or value that this individual has in the house is \$15,000 ( $\$150,000 - \$135,000 = \$15,000$ ). If a homestead exemption of \$15,000 (or any amount greater than \$15,000) exists, the entire equity in the house may be claimed as exempt.

In regard to personal residences, a possible homestead exemption applies if the debtor has equity in the home. If there is no equity in the house (today's value less costs of sale, less payoff balances on all liens and mortgages), the trustee in a Chapter 7 bankruptcy will abandon the house to the debtor and they can choose to remain in the home if they are able to make the mortgage payments.

## BANKRUPTCY EXEMPTIONS IN GEORGIA

In Georgia, debtors in Chapter 7 bankruptcy must generally use the Georgia exemptions; however, special rules apply as to which state or federal exemptions may be used if an individual's domicile has not been continuously located in Georgia for the two-year period prior to filing a bankruptcy petition.

Georgia's bankruptcy exemptions were last modified on July 1, 2001. Prior to being modified by House Bill 373 during the 2001 Session of the General Assembly, the last modification occurred in 1981. The 2001 changes included updating the value of exemptions that debtors will be allowed in bankruptcy proceedings in several different areas to reflect the increase in cost of living since the 1980 Consumer Price Index. Also, the exemptions were modified to be more consistent with federal exemptions. The 2001 Act raised the exemptible amount of a debtors equity in their primary residence from \$5,000 to \$10,000; it also provided that in situations where the title to the property used for this homestead exemption is held in the name of only one spouse, the exemption amount is \$20,000, thereby guaranteeing a maximum \$10,000 to each spouse as a homestead exemption. The 2001 Act also raised: the exemptible value in a motor vehicle from \$1,000 to \$3,500; the maximum exemptible value of any one particular household item from \$200 to \$300; and the aggregate amount of exemptible value in household goods from \$3,500 to \$5,000. The 2001 Act raised the residual exemption amount from \$400 to \$600, plus any amount of the homestead exemption that goes unused up to \$5,000; the exemptible value in awards for a debtors pecuniary loss from \$7,500 to \$10,000; and the amount of exemptible value in tools of the trade and professional books from \$500 to \$1,500. Finally, the 2001 Act added a provision which limits the exemptible cash value of an unmaturred life insurance policy to \$2,000.<sup>2</sup>

The following is a summary of the Georgia exemptions that can be claimed to exempt both real and personal property in a bankruptcy petition.<sup>3</sup>

<u>Property</u>	<u>Limit</u>
Real Property (Homestead; Residence)	\$10,000 (\$20,000 joint case)
Automobiles	\$3,500 in one car (\$7,000)
Jewelry	\$500 (\$1,000)
Furniture; Household; Clothing	\$5,000 (\$10,000)
Prescribed Health Aids	No Limit
Tools of the Trade	\$1500 (\$3,000)
Alimony & Support	As necessary
Life Insurance Proceeds	As necessary
Workers Compensation	100%

<sup>2</sup> [HTTP://WWW.LEGIS.GA.GOV/LEGIS/2001\\_02/FULLTEXT/HB373.HTM](http://www.legis.ga.gov/legis/2001_02/fulltext/hb373.htm)

<sup>3</sup> [HTTP://WWW.GEORGIBANKRUPTCYBLOG.COM/ARCHIVES/49649-PRINT.HTML](http://www.georgiabankruptcyblog.com/archives/49649-print.html), O.C.G.A. §44-13-100

Wrongful Death Awards	As Necessary
Retirement Accounts	100% for most
Disability; Government Benefits	100%
Wildcard	\$600 per debtor plus the unused amount of the homestead exemption in any property

A complete list of Georgia Exemptions is available in Appendix B.

## COMMITTEE FINDINGS

### A. Demographics & Statistics

#### 1. Who Files Bankruptcy?

Professor Marjorie Girth of Georgia State University’s College of Law stated prior to this decade, the typical personal bankruptcy petitioners were overwhelmingly married couples in their thirties with children, whose income as wage earners did not keep up with the increased expenses of a growing family or who experienced an unexpected loss of income. In this decade, the demographics of personal bankruptcy petitioners are varied with new identifiable groups joining the pre-existing dominant category. Consumer bankruptcy debtors are now often (1) households headed by a single woman; (2) military personnel whose income and job status have been interrupted by repeated deployments; and (3) senior citizens when their current incomes proved insufficient to manage their debts effectively, possibly because of prescription drug costs that exceed insurance coverage or because the assets on which they had relied upon for their incomes have dramatically lost value.

During Ms. Sarah Bolling of the Atlanta Legal Aid Society’s testimony, she cited to Elizabeth Warren’s 2001 book, *The Fragile Middle Class: Americans in Debt*, which states the following about filers of consumer bankruptcy:

- The average age of a bankruptcy filer is 38;
- Couples filing jointly make-up 44% of all bankruptcy filings;
- Another 30% of the filers are women filing bankruptcy alone;
- Most bankruptcy filers are slightly better educated than the general population;
- Half of all bankruptcy filers have experienced a serious health problem;
- 91% of bankruptcy filers have suffered a job loss, medical event or divorce;
- 40% of bankruptcies result from medical crises, unemployment or divorces;
- 90% of these filers have two car payments, a house payment, and an average of \$2,500 in credit card debt; and
- 10% of filers were delinquent only 5 to 29 days before bankruptcy<sup>45</sup>

<sup>4</sup>ELIZABETH WARREN ET AL., *THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT* (2001)

<sup>5</sup> These numbers have not been recalculated to reflect either the change in the CPI since 2001 (see Appendix C) or the 2005 federal changes, which require a “Means Test” in order to file Chapter 7 Bankruptcy.

## 2. Georgia's Bankruptcy Statistics & Causes

Nationally, 60% of all cases are filed under chapter 7; whereas, in Georgia the percentage is about 40%. Instead, in Georgia, Chapter 13 cases comprise about 60% of all those filed in 2006 and 2007. Additionally, in Georgia, there were 11.9 bankruptcies per 1000 households in 2006 and 14.6 in 2007. These percentages are more than double the national averages. Georgia has usually been right at or near the top of all states in terms of the total number of Chapter 13 cases filed, and the Northern<sup>®</sup> District of Georgia is almost always in the nation's top three filing districts for Chapter 13 cases.

There are a number of reasons, identical to the reason for Chapter 13 filings, why the total filings are high in this state:

(1) Georgia has non-judicial foreclosure that enables the lender to foreclose in about 30-35 days of declaring the loan in default and accelerating the balance. Georgia typically is in the top five states for the number of foreclosures. This drives up the total number of bankruptcy cases and Chapter 13 as well.<sup>6</sup> This is the method most often employed by those wanting to keep their homes or simply delay having to vacate the home. If a debtor wants to keep the home, they usually file Chapter 13. If they change their minds later, the case might be converted to Chapter 7 or simply dismissed.

(2) The Northern District of Georgia, in particular, has been a high employment district until recently and regular income is required for eligibility under Chapter 13.<sup>7</sup>

(3) The Northern District of Georgia attracts many entrepreneurs who run small businesses, which are sole proprietorships- that experience cash flow problems and file bankruptcy, usually Chapter 13 if they want to continue to operate, and Chapter 7 if they are closing the business.<sup>8</sup>

(4) Chapter 13 attorneys in the Northern District of Georgia are paid far more for filing a Chapter 13 case than a Chapter 7: \$5,000 versus an average of around \$1,250. This gives the attorney an incentive to try for Chapter 13.<sup>9</sup>

## 3. Asset v. Non-Asset Cases

Assets in a bankruptcy estate may be real estate, personal injury claims, vehicles, promissory notes, or almost anything that has value. If a Chapter 7 trustee determines there is an asset to be liquidated with equity over and above the secured debt and exemption, the trustee proceeds to liquidate it through the appropriate means. The administration of an asset case may take anywhere from six months to several years, depending upon the nature of the asset, whether litigation is required and the complexity of the case in general.

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<sup>6</sup> Statements regarding non-judicial foreclosure being a cause of Georgia's high rate of bankruptcy were made by Professors Laura Spitz and Marjorie Girth, Attorney Sarah Bolling, Attorney Howard Rothbloom, Chapter 7 Trustee Neil Gordon and Chapter 13 Trustee Nancy Whaley.

<sup>7</sup> Testimony of Chapter 7 Trustee Neil Gordon

<sup>8</sup> Id.

<sup>9</sup> Testimony of Chapter 7 Trustee Neil Gordon & Chapter 13 Trustee Nancy Whaley.

If there are no assets to be liquidated, the Chapter 7 trustee files a "Report of No Distribution," and their involvement with the case ends. The vast majority of filings are these "no asset" cases. In most circumstances, the Chapter 7 trustees are paid \$60.00 per case, sometimes less or none, depending on whether the debtor paid the filing fee to the Clerk of Court. Because of the exemption scheme in Georgia<sup>10</sup>, only a small fraction of the Chapter 7 cases filed in Georgia contain assets (not necessarily a home) that a trustee can liquidate for the benefit of creditors who are then paid by the trustee from the proceeds he or she has collected. The Georgia Chapter 7 trustees estimate that somewhere around 2-5% of all the cases filed are asset cases.

In Georgia, there were 40,290 Chapter 7 cases filed in 2006. Asset cases where funds were distributed and closed during that same period were approximately 1,130, a figure which illustrates the small number of asset cases. Other states with different exemption schemes may have different percentages of asset cases. The Georgia Chapter 7 trustees provided some numbers comparing some of the divisions in Region 21 of the U.S. Trustee system, which contains Georgia and Florida. The difference in asset case percentages is clear in the comparison of the numbers for asset cases closed in Florida compared to the Georgia numbers. In Orlando alone the number of asset cases closed between July 1, 2007 and June 30, 2008 was 2392 compared to 449 in Atlanta, because of the difference in the state exemption schemes.<sup>11</sup>

## **B. Comparison of Exemptions**

A majority of the states have opted out of the federal exemptions and have embraced markedly different policies for determining the extent of a debtor's fresh start. The diverse policies have produced disparate treatment of the homestead exemption in federal bankruptcy.<sup>12</sup> Homestead exemptions range from \$5,000 to an unlimited amount. The largest homestead exemptions exist in Kansas, Florida, Iowa, and Texas, which provide an unlimited dollar value homestead exemption. States with a \$5,000 homestead exemption include Alabama, Maryland, Ohio, Tennessee, and Virginia. See Appendix D.

The following is a comparison of property exemptions in states surrounding Georgia:

### **ALABAMA:**

- Homestead exemption: not exceeding \$5,000 in value and 160 acres in area
- Unlimited cemetery lots
- Personal property: \$3,000
- Partnership property: unlimited
- Life insurance: entire cash value, and all proceeds paid upon death
- Crime victims compensation: unlimited
- Disability insurance: up to \$250 a month
- Annuity contracts: up to \$250 a month
- Unemployment compensation benefits: unlimited
- Workers compensation benefits and employees contributions: unlimited

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<sup>10</sup> O.C.G.A. Section 44-13-100,

<sup>11</sup> BARBARA STALZER, THE BANKRUPTCY PROCESS, EXEMPTIONS AND THE ROLE OF THE CHAPTER 7 TRUSTEE FOR THE SENATE BANKING STUDY COMMITTEE ON GEORGIA'S HOMESTEAD EXEMPTION FOR BANKRUPTCY PURPOSES (2008), See Appendix E.

<sup>12</sup> RYAN P. RIVERA, REAL PROPERTY, PROBATE AND TRUST JOURNAL (SPRING 2004).

## FLORIDA:

- Homestead exemption: 160 acres of contiguous land and improvements thereon outside a municipality; within a municipality one-half (1/2) acre of contiguous land. There is no dollar limit to the amount that can be exempted, although the Bankruptcy Code changes limit the Florida exemption in certain cases to a cap of \$125,000.
- Life insurance policies: cash surrender value is exempt; proceeds of a life insurance policy are generally exempt from the claims of the insured's creditors. Various benefits such as crime victims' compensation, public assistance, veterans and disability income are all unlimited exemptions.
- Partnership property: exempt
- Motor vehicles: not to exceed \$1,000.
- Professionally prescribed health aides: unlimited for debtor and dependents.
- Personal property: not to exceed \$1,000.
- Educational benefits: pre-purchase contracts for the payment of college registration and dormitory costs that are paid out of the pre-paid post secondary education expense trust fund are exempt.
- Workers compensation benefits: unlimited.
- Funeral, direct consumer protection trust fund monies are exempt.
- Annuity contracts: cash surrender value or proceeds of an annuity contract are exempt.
- Wild card exemption (personal property) : \$1,000

## NORTH CAROLINA

- Homestead: \$18,500 \$37,000 joint. In certain circumstances, an unmarried debtor who is 65 years of age or older is entitled to retain an aggregate interest in the property not to exceed \$37,000.
- Motor vehicle: \$3,500.
- Tools of trade: \$2,000.
- Household furnishings: household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for personal, family, or household use up to \$5,000 for the debtor plus \$1,000 for each dependent, not exceeding \$4,000 in total, for the dependents.
- Burial plots up to \$18,500, in lieu of homestead.
- Health aids: unlimited.
- Motor vehicle: Up to \$3,500.
- Personal injury recoveries.
- Wrongful death recoveries.
- Wild Card: \$5,000 less any amount claimed for homestead or burial exemption, of any property

## SOUTH CAROLINA:

- Homestead exemption: \$50,000, joint 100,000 (effective on 7/1/ 2007).
- Motor vehicle: \$1,200.
- Personal property: \$2,500.
- Jewelry: \$500.



- Cash and other liquid assets: \$1,000.
- Tools of the trade: \$750.
- Unmatured life insurance contract: unlimited.
- Dividend interest or loan value of unmaturred life insurance contract: \$4,000.
- Professionally prescribed health aides: unlimited.
- Debtor's right to receive property traceable to an award under a victim's reparation law, for personal injury, life insurance payments which insure the life of an individual upon whom the debtor was dependent, unlimited.
- All proceeds in cash surrender value from an individual life insurance policy with the benefit of the insured's spouse, children or dependents, all proceeds of group life insurance policies, all benefits from accidental disability insurance contracts, workers compensation, public aid and assistance, crime victims reparation and partnership property.

#### TENNESSEE:

- Homestead: \$5,000 to \$25,000, depending upon age; aggregate exemption for jointly owned property cannot exceed \$7500.00.
- Family cemeteries and plots: limited to one acre.
- Personal property: \$4,000 (including money and funds on deposit with a bank).
- Personal clothing and family memorabilia: unlimited.
- Insurance benefits: health, accident or disability insurance proceeds are fully exempt.
- Life insurance: cash surrender value is exempt. If the insured dies with any sum of money payable at the time of death is also exempt.
- Workers compensation: unlimited.
- Criminal victims reparations (\$5,000.00), personal injury (\$7500.00) and wrongful death payments (for death of person upon whom debtor is dependent) (\$10,000), with a \$15,000 aggregate limit, are exempt.
- Payment for loss of future earnings: to the extent reasonably necessary for the support of the Debtor and any dependents.
- Trade implements: \$1,900.
- Health care aides: unlimited.
- Liquid assets, stocks or bonds are exempt only to the extent of the amount of any obligations owed by the Debtor pursuant to any final court order or judgment for child support and those funds must be immediately deposited into a court by the debtor.
- Partnership property: not liable for individual debts.<sup>13</sup>

Professor Laura Spitz of Emory University's Law School explained that the Georgia exemptions track the language of the federal exemptions, but the values for the Georgia exemptions are lower than the federal exemptions. The federal exemptions are adjusted periodically based on the CPI.<sup>14</sup> The reason that some states choose to do the exemptions in a way that tracks the federal

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<sup>13</sup> BARBARA STALZER, THE BANKRUPTCY PROCESS, EXEMPTIONS AND THE ROLE OF THE CHAPTER 7 TRUSTEE FOR THE SENATE BANKING STUDY COMMITTEE ON GEORGIA'S HOMESTEAD EXEMPTION FOR BANKRUPTCY PURPOSES (2008)

<sup>14</sup> See Appendix C.

language, but provide different amounts is because state legislatures decide that they are best able to determine the economic needs and conditions of creditors and debtors in their individual states relative to cost of living figures, property values and other state laws governing commercial transactions.

When Georgia exemptions were recalculated in 2001, the federal and Georgia exemption amounts were very similar with the exception of Georgia having a much higher amount for automobiles, \$3,500.<sup>15</sup> At that time, both sets of exemptions contained a \$10,000 homestead exemption for single debtors and a \$20,000 homestead exemption for joint debtors. Although the federal homestead exemptions based on the CPI have since been adjusted to \$20,200 for single debtors and \$40,400 for joint debtors, all of Georgia's exemptions have remained unchanged. A link between O.C.G.A. §44-13-100 and 11 U.S.C. §104 could allow the General Assembly to avoid revisiting the amount of exemptions as frequently, and could avoid the unintentional "erosion" of exemption amounts by inflation.

Attorney Sarah Bolling of the Atlanta Legal Aid Society addressed the recent changes in the South Carolina laws, which are similar to legislation proposed by Senator Tarver during the 2008 Session prior to the decision to conduct the study committee. South Carolina raised their homestead exemption from \$5,000 to \$50,000 for single debtors, and \$100,000 for joint debtors. Ms. Bolling provided the Committee with a statistical chart showing a 7% increase in bankruptcy filing between the 3rd and 4th quarter of 2006 when South Carolina implemented the revised homestead exemption. Since that time, South Carolina has seen 47% increase in the number of bankruptcy filings. However, due to economic conditions bankruptcy filings have increased in every state since 2006. Even with Georgia's relatively low homestead exemption we have experienced a 67% increase in the number of bankruptcy filings.

Attorney Terry Leiden stated the homestead exemption should be increased across the board in Georgia, not just for bankruptcy purposes. Mr. Leiden referred to his January 2008 letter supporting Senator Tarver's legislation which explains that South Carolina amended its homestead exemption to allow homeowners to protect \$50,000 of equity in real estate. The primary rationale for the increase in the exemption, among many others, was protection of military families and dependents. The increased exemption also had the residual effect of making the state of South Carolina attractive to retirees, whose purchase of a residence is their most significant financial investment.<sup>16</sup>

Florida's unlimited bankruptcy homestead exemption was mentioned multiple times during both meetings of the Committee. Trustee Neil Gordon explained that in Florida, the results of bankruptcy are very different than in Georgia. Trustees do not sell homesteads, but they collect enormous amounts of personal property for sale. Florida's \$1,000 exemption allows them to intercept even small tax refund and bank balances. He cited instances of moving vans going from

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<sup>15</sup> Senator Wiles pointed out that Georgia's exemption amount of \$3,500 is still higher than the federal amount for automobiles of \$3,225.

<sup>16</sup> Senator Wiles went on to explain that in 2001, the law was changed in order to prevent both spouses from being forced in to bankruptcy. The idea behind the change in the law was because sometimes when people marry late in life they can be in an extremely good or extremely bad situation from 50 years of different financial habits. Senator Wiles also explained that the federal mandate in 2005 forced a doubling of minimum payments, which placed a heavy burden on individuals with credit card debt that was not caused by Georgia's Legislature.

debtor home to debtor home collecting the furnishings and other personal property for the trustee to sell, and returning \$1,000 to the debtor.

### **C. Effects of Georgia's Homestead Exemption on Consumers**

#### **1. Testimony by Attorneys Representing Debtors Facing Home Loss**

**Attorney Sarah Bolling of the Atlanta Legal Aid Society's Home Defense Project**  
**Attorney Howard Rothbloom of Marietta, Consumer Debtor Attorney**

Mr. Rothbloom explained the process for home valuation. He places the value of the home on the worksheets required for filing bankruptcy in Chapter 7 cases after determining what the homeowner paid for the home at the time of purchase, tax assessment value and the assessment of comparable homes in the area. He further explained that in a Chapter 7 case, the debtor records the value of their home, then the Chapter 7 Trustee sends a real estate agent to evaluate the home. The Trustee can possibly object to the value recorded by the debtor. In a Chapter 13 scenario, the debtor records the value of the home on the schedule with no opposing party, only the threat of federal perjury charges if they are dishonest.

When Mr. Rothbloom evaluates a home he considers a 10% cost of sale for the trustee. If there is non-exempt equity that could be used, the Chapter 7 trustee will sell the home. The massive 2005 changes to the federal bankruptcy code forces the debtors to pass a means test that prevents abuse of the Chapter 7 process. It is now much harder for debtors to qualify for Chapter 7 relief. An increase in the homestead exemption would help people who qualify for Chapter 7, but are forced into Chapter 13 because of the large amount of equity in their home. These debtors have difficulty making their payments to the bankruptcy court for the non-exempt equity, therefore allowing them to keep their home. Typically, this is a low income individual and filing Chapter 7 would not be an abuse. This would also help debtors who do not pass the means test and are forced into Chapter 13, who cannot afford to repay the non-exempt equity to the bankruptcy court, and forced to sell their home due to lack of ability to make the payments. This scenario often applies to elderly and low-income individuals, especially widows and widowers who would have qualified for a higher exemption prior to the death of a spouse. Also, the neighborhood, children of the debtors and the taxpayers benefit by keeping low-income individuals in their homes. Individuals who lose their homes are more likely to require public assistance.

Ms. Bolling followed Mr. Rothbloom's testimony by describing her elderly clients at Atlanta Legal Aid who paid their mortgage for years, did not take out a second mortgage and have built up substantial equity. Often Ms. Bolling's client's live solely on Social Security and occasionally have a small pension.

A client of Ms. Bolling's who would benefit from raising the homestead exemption gave permission for the facts of his case to be shared with the Committee. Mr. Smith is a 76 year old veteran of the Korean War. He worked in trucking and purchased a home in 1975. His home had a 30-year mortgage which is fully paid. His income is \$902 a month and he has \$42,000 of unsecured debt due to everyday expenses and medical bills since his retirement 10 years ago. Legal Aid advised him that he was not able to file bankruptcy in Georgia because Chapter 7 would allow the trustee to seize his home as an asset of the bankruptcy estate. In a Chapter 13

bankruptcy, he would not be able to make payments substantial enough to prevent his creditors from forcing him into Chapter 7 bankruptcy, allowing the trustee to seize his home.

## **2. Augusta Attorneys & Consumer Debtors Facing Possible Home Loss**

**Attorney Terry Leiden of Augusta**  
**Attorney Evita Paschall of Augusta**  
**Mrs. Joanne D. Brigdon of Augusta**  
**Mrs. Muriel Ray of Harlem**  
**Mrs. Merlease Mathis of Wrens**

Mr. Terry Leiden began his presentation by introducing his client, Mrs. Joanne Brigdon. Mrs. Brigdon is 71 years old, retired and living on Social Security income (SSI) of approximately \$1,300 a month. Mrs. Brigdon is confined to a wheelchair due to her physical impairments. Mrs. Brigdon lives in a modest home valued at \$34,500. She has lived in the home for 59 years and has no mortgage. Recently, she had a roof placed on her house by the First Presbyterian Church in Augusta and she needs a new floor in her home. Mrs. Brigdon is in a Chapter 13 bankruptcy and owes approximately \$11,000 in her bankruptcy case, which includes credit card debt of \$8,500 and hospital bills of \$3,000. Her Chapter 13 payments are \$251 per month with the remainder of income going towards her bills. If the homestead exemption was increased to \$50,000, Mrs. Brigdon could convert her case to a Chapter 7 without the fear of losing her home and erase her debt.

Mr. Leiden's next client, Mrs. Muriel Ray, lives in Harlem, a small suburb of Augusta. She lives in a modest home valued at \$53,000. Mrs. Ray is 80 years old and receives approximately \$1,099 a month in Social Security, \$100 from her late husband's pension and her children assist her with approximately \$100 per month. Mrs. Ray owes a remainder of approximately \$11,000 in a Chapter 13 case with payments of approximately \$329 per month. The debt in the case consists of one medical bill and two credit cards. One credit card is for approximately \$11,838 and a second credit card is for \$2,956. The credit cards got to that sum after she fell behind and the credit card companies escalated the interest rates to 26% and 29%. Mrs. Ray worries that if she cannot meet the heavy obligation of her Chapter 13 plan, she will lose her home to her creditors and be forced to move in with relatives or seek public housing. If the homestead exemption was higher, Mrs. Ray would convert her case to a Chapter 7 case and remain in her home, receiving a fresh start and erasing her debt.

Ms. Evita Paschall presented testimony from her client, Mrs. Merlease Mathis of Wrens, Georgia. Ms. Mathis is 65 years old and lives on her Social Security of \$566.00 and her deceased husband's Social Security of \$457 per month. Prior to his death, her husband was a steel worker and earned extra money by doing yard work. She lives in a home that she owns worth \$28,000 according to the tax assessment. She paid for her house with the insurance proceeds when she experienced a partial house fire. Mrs. Mathis's home is in significant disrepair from the unrepaired fire damage. She has experienced serious illnesses, including cancer and osteoarthritis, which have resulted in shoulder surgeries, a hip replacement and several hospitalizations in recent years. She takes approximately 18 prescription pills per day. Mrs. Mathis owes approximately \$8,850 in her Chapter 13 case. Her creditors consist of the Medical College of Georgia, health invoices in the amount of \$285.56, 9 invoices from physicians' practices in the amount of \$112.07 and four miscellaneous medical creditors in the amount of \$3,505.20. She owes \$13,967 on a repossessed vehicle and \$8,000 on another repossessed

vehicle. Mrs. Mathis has only one secured debt, which is a furniture bill for \$1,382.92. This is her second Chapter 13 because her first Chapter 13 case was dismissed for failure to pay her \$150.00 monthly plan payments and she missed her plan confirmation hearing due to illness. Mrs. Mathis believes an increase in the equity exemption would allow her to stay in her home, and have the debt relief offered by a Chapter 7.

Ms. Paschall presented testimony on the story of Ms. Winn of Augusta, who was unable to attend the hearing. Ms. Winn was referred to Ms. Paschall by Georgia Legal Services because of her need for debt relief. She is in her 80's, and lives on a meager Social Security income. Unfortunately, Ms. Winn was unable to file a Chapter 7 because the equity in her home was valued at \$55,000, according to the tax assessor's records. She was not able to file a Chapter 13 case because of her inability to make payments on any type of repayment plan. Ms. Paschall stated that she has numerous clients in the same situation as the debtors who testified before the Committee<sup>17</sup>

#### **D. Perspectives from Georgia's Financial Industries**

##### **1. Collaborative Comments from Georgia's Banks, Community Banks and Credit Unions**

Mr. Joe Brannen of the Georgia Bankers Association presented the collaborative comments on behalf of Georgia's 550 thrifts, banks and credit unions.<sup>18</sup> Lenders in Georgia understand that debtors use bankruptcy most often as a means of last resort when facing large medical bills, death of a spouse or divorce. Usually, the institutions represented by the three organizations have collateralized loans and therefore have a completely secured interest. It was the recommendation of the three organizations that the Committee seek input from the industrial loan industry and the Georgia Mortgage Bankers Association.

Mr. Brannen offered observations and several predictions of possible harm that could be caused by raising Georgia's homestead exemption:

- Georgia is not currently an outlying state in regard to the exemption amount. Our exemption amount is in the middle of amounts around the southeast.
- Significant increases to the exemption would increase the risk that lenders would not be paid back the full amount of their loan.
- Assumptions based on basic banking principles dictate that an increase in the homestead exemption could have a negative impact on all sorts of consumer loans including: mortgages; credit cards; car loans; and small personal loans. A move to increase the exemption at this time would further hurt the stability of an already shaky credit market.

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<sup>17</sup> Senator Wiles questioned Mr. Leiden about possibly reducing the tax assessor's evaluation of the home for bankruptcy purposes. Ms. Paschall explained that there was no money for the appraisal of the home and the Chapter 7 Trustee is not going to agree in a dramatic swing from an assessment \$50,000 to an amount as low \$20,000. Mr. Leiden usually asks his clients to take pictures if they are unable to get an assessment.

<sup>18</sup> Mr. Joe Brannen, President and CEO of the Georgia Bankers Association, Mr. Steve Bridges, and President of the Georgia Community Bankers Association, Mr. Michael Culbertson, and Chief Advocacy Officer of the Georgia Credit Union Affiliates appeared before the Committee.

- Any move to increase the bankruptcy exemptions could be seen as move to increase the risk of lending and increase the cost of credit for both consumers and businesses.
- Interest rate hikes are the result of creditors being concerned about increased risk.
- Stricter underwriting standards would make credit less available to both consumers and businesses seeking loans.
- A larger homestead exemption could unintentionally create an incentive to file bankruptcy because it would be more financially advantageous. This happened in Texas and Florida.

## **2. Statement from Representatives of Georgia's Unsecured Lending Industry**

In a letter dated December 18, 2008, the Georgia Financial Services Association, which represents unsecured lenders in Georgia, provided the following commentary from its members:

- By raising the exemption to \$50,000 for single debtors and \$100,000 for joint debtors, the amount of funds available for paying unsecured creditors would be significantly reduced when a loan is in default.
- An increase in the exemption amount would have a pronounced chilling effect on lenders' willingness to loan to consumers and small businesses because of the ease by which borrowers would be able to avoid repayment of legitimate unsecured obligations in the future.
- Many mortgage lenders are currently acting to defer foreclosure and to seek alternative plans with borrowers. This approach is a far more effective way than bankruptcy to keep people in their homes and keep lenders from suffering huge losses in their loan portfolios.
- Raising the homestead exemption in Georgia may encourage bankruptcy filings even though such action would not be in the consumers' best long term interest.
- A change in Georgia law may discourage trustees from aggressively working liquidation cases because the proposal eliminates a possible major asset from those cases.

## **3. Comments provided by the Georgia Mortgage Bankers Association**

Regina Thomas of the law firm of McCalla Reymer, who is a former Chapter 13 trustee, testified how her clients would be affected as a result of an increase in the homestead exemption. They are primarily Georgia mortgage bankers and servicers. She stated:

- Upon speaking with others in the industry and looking at recent changes in other jurisdictions, an increase in the homestead exemption would not have a measurable impact on mortgage related industries.

- The effect in South Carolina to mortgage creditors was nominal according to colleagues in the mortgage industry. However, there has been a decrease in the number of properties sold by South Carolina Chapter 7 trustees.
- Approximately 15 states have exemptions lower or equal than to Georgia's exemption.
- The culture within in the state drives what type of bankruptcy is filed. Southern states tend to have many more Chapter 13 filings.
- High homestead exemptions rarely serve to prevent high foreclosure rates. Examples of this include Florida, Nevada and Ohio, which rank within the top nine states for foreclosure.
- A raised exemption for older debtors may give a benefit to debtors who are not typical debtors in their ability to repay debt due to fixed incomes and/or possible health problems.

## **E. Opinions and Facts from Chapter 7 and Chapter 13 Trustees**

### **1. Mr. Neil Gordon, Northern District of Georgia Chapter 7 Panel**

During the November 25th meeting, Mr. Neil Gordon testified on behalf of the Georgia Chapter 7 trustees and provided the following information:

- In fiscal years 2006 and 2007, Chapter 7 trustees nationally distributed to creditors a total of \$5.43 billion.
- In the five-year reporting period ending on June 30, 2008, Chapter 7 trustees in Georgia distributed \$329,059,529. Of that amount, \$21,563,229 was returned to debtors to satisfy their claims of exemption or as surplus property.
- If a Georgia trustee sells a homestead, it must be sold for enough to clear: any mortgage; ad valorem real property taxes; other liens; real estate commissions and other costs of sale; the debtor's exemption claim; and still have a sufficient amount remaining to pay the costs of administration and make a meaningful distribution to creditors. This very rarely happens.
- Most of the properties are worth less than the first mortgage but sometimes they will have two or three mortgages. There are few buyers and virtually none in the markets where Georgia debtors proliferate—such as Clayton County.
- In some cases, bankruptcy is filed primarily to stop non-judicial foreclosure process. With the exemptions at present levels, the Chapter 7 trustee can represent to the court that they can sell the home for enough to pay all liens and exemptions and have funds to administer for creditors. Based upon that representation, the court will allow the trustee

time to sell the home and make the mortgage holder wait a few months before coming back to court. If the exemptions are increased as proposed, this will become unlikely.

- The Georgia Chapter 7 trustees, in a discussion with the South Carolina Chapter 7 trustees, learned that they no longer bother with individual asset cases resulting in homes being foreclosed. This was a direct result of the exemption increases in that state. Debtors and creditors lose and the mortgage company loses. The mortgage company has to incur the cost of a foreclosure and the subsequent maintenance costs thereafter instead of having a trustee sell the property and payoff the mortgage.
- The Georgia Chapter 7 trustees surveyed trustees statewide and found little to no evidence that any active duty soldier's home had been sold. In fact, most tend to live in base housing. National Guardsmen present a different issue. Until recently, they were rarely activated for long overseas duties. Although the trustees are not aware of the home of a National Guardsman being sold while on active duty, it is possible that it has happened once or twice and was not reported in the survey.
- The elderly sometimes find themselves in bankruptcy, usually due to assisting their children and grandchildren. If they have an unencumbered home or one with significant equity, they file Chapter 13 and family members make the plan payments because they stand to inherit the home and its equity. They are essentially protecting their own investment.
- If the elderly debtor files a Chapter 7, trustees often work with them to obtain a reverse mortgage so they will never have to make a mortgage payment and never lose the home. The reverse mortgage company pays the loan to the trustee and the creditors are also paid.

## **2. Ms. Nancy Whaley, Standing Chapter 13 Trustee of Northern District of Georgia**

Ms. Nancy Whaley testified to the Committee and presented the following facts:

- Chapter 13 Bankruptcy typically lasts from 3-5 years for debtors.
- Very little home equity exists for most debtors currently filing bankruptcy due to plummeting real estate prices.
- Congress is looking at mortgage modification through Chapter 13 bankruptcy for lowering mortgage debt for homes where there is more debt than the home is worth. If legislation of this nature is passed, the number of bankruptcies will drastically increase.
- If there is legislation increasing the exemption amount, it should be a targeted amount for specific classes, such as North Carolina's exemption for the elderly because of their unique circumstances.



- Ms. Whaley stated that going from \$10,000/\$20,000 exemption amount to \$50,000/\$100,000 exemption amount is a large jump and could have unintended consequences. A smaller increase may be appropriate considering the exemptions have not been adjusted since 2001.
- Ms. Whaley supported the 2001 changes to the Georgia exemptions; however, since that time she has heard many complaints that the exemption amount is too low.

## **F. Issues Surrounding an Exemption Increase**

### **1. Constitutionality of the Creation of Separate Classes**

Mr. Ward Stone, Chairman of the Bankruptcy Section of the State Bar of Georgia, addressed the constitutionality of creating different or special exemptions for Georgia residents who have reached the age of 65.<sup>19</sup> It is the opinion of the Bankruptcy Section of the State Bar, both Article 1, Sec. 1, Para. 2 of the Georgia Constitution (equal protection clause) and the 14<sup>th</sup> Amendment of the Federal Constitution permit such a special classification of debtors:

“When and only when the basis of such classification bears direct and real relation to the object or purpose of the legislation, and when thus classified, uniformity upon all those coming within the class satisfies the Constitution. A statutory discrimination will not be set aside as a denial of equal protection of the laws if any state of facts reasonably may be conceived to justify it.”<sup>20</sup>

More recently, the Georgia Supreme Court articulated the standard when no fundamental right or a suspect classification is involved, as

“An equal protection challenge to a legislative classification is examined under the ‘rational basis’ test. Under the Rational Basis Test, a court will uphold the statute if, under any conceivable set of facts, the classification is drawn in the statute where a rational relationship to a legitimate end of government not prohibited after the Constitution. Those challenging the statute bear the responsibility to convince the court that the legislative facts for which a classification is apparently based could not reasonably be conceived to be true by the government decision maker. It is fundamental that no equal protection violation exists unless legislation treats similarly situated individuals differently.”<sup>21</sup>

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<sup>19</sup> Mr. Stone was authorized to appear as Chairman of the Bankruptcy Section of the State Bar of Georgia for the general purpose of commenting on the form of proposed legislation and not for the purpose of commenting on the amount proposed or currently provided for exempt property under O.C.G.A. § 44-13-100. Any comment on legislation actually proposed as a result of the study committee will be subject to standing board policy 100 adopted by the Board of Governors of the State Bar of Georgia on June 14, 1986, as amended June 20, 1992 and June 18, 1994, which is to say that any final position of the State Bar of Georgia must follow the Bar’s review and comment on any specific bill. Any formal comment from the Bar will be in writing and will be communicated to the General Assembly through the Board of Governors.

<sup>20</sup> See: C&S NATIONAL BANK V. MANN, 234 GA. 884, 218 S.E.2D 593 (1975).

<sup>21</sup> GEORGIA DEPARTMENT OF HUMAN RESOURCES V. SWEAT, 276 GA. 627, 580 S.E.2D, 206 (2003).

The United States Supreme Court has cautioned, however, that although articulation of legislative intent is not required in this statute, a statement of the purpose of the classification contained in the Act will facilitate a finding that the classification provided in the statute is constitutionally appropriate.<sup>22</sup>

Accordingly, the Bankruptcy Section of the State Bar of Georgia sees no *per se* constitutional problem with setting up special or different exemptions for a specific class of citizens, such as those who have reached the age of 65, however, as has been the case with recent Georgia legislation, if a separate classification is created for any group, the statute should contain a recital of the legislative purpose for creating the classification. A statutory discrimination will not be set aside as a denial of equal protection under the Georgia or Federal Constitution if any state of facts reasonably may be conceived to justify it.<sup>23</sup>

## **2. Modernization of Georgia's Debtor Exemptions to Prevent Incentivizing Chapter 7 Bankruptcy**

According to Professor Marjorie Girth and Mr. Stone, the General Assembly may wish to consider modernization (or elimination) of the non-bankruptcy state exemptions from levy and sale currently codified in O.C.G.A. § 44-13-1 through 44-13-87. The current non-bankruptcy homestead exemptions are limited to \$5,000 and involve a fairly archaic procedure that is rarely used in the legal community opposed to the much higher and attractive bankruptcy exemption, which is \$10,000 for single debtors and \$20,000 for joint filers.

As situated, O.C.G.A. § 44-13-100 actually encourages the filing of bankruptcy because the exemptions are much more favorable under bankruptcy than they are outside of bankruptcy. Professor Girth stated, "...if the Georgia Legislature were to move the \$10,000 to \$20,000 or \$25,000 and leave the \$5,000 [exemption] alone, obviously the differential would be even larger and more of a concern to creditors. It would create an obvious incentive to file a bankruptcy proceeding if you're already in financial trouble and if you have any equity in your home."

Conforming the Georgia exemptions from levy and sale outside of a bankruptcy to the exemptions allowed in bankruptcy under O.C.G.A. § 44-13-100, could encourage debtors not to file bankruptcy, if the same property interests will be exempted in all debt collection proceedings whether or not the debtor files a petition for bankruptcy.

## **G. Legislation Needed Beyond Changes to the Exemptions to Conform Georgia's Code to Recent Changes to the Federal Bankruptcy Code**

Mr. Stone addressed changes needed to the Georgia Code so it does not conflict with federal bankruptcy law. Currently, bankruptcy judges are in a position to handle the conflicting laws from the bench in favor of the federal law. These changes to the Georgia Code would not be difficult to implement because they are currently being used in Georgia's Federal Bankruptcy Courts. 11 U.S.C. § 522 has been amended a number of

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<sup>22</sup> NORDLINGER V. HAHN, 505 U.S. 1, 112 S.Ct. 2326, 120 L.Ed. 2D 1 (1992).

<sup>23</sup> THE CITIZENS & SOUTHERN NATIONAL BANK V. MANN, 234 GA. 884, 218 S.E.2D, 593 (1975).

times, most recently in 2005. The amendments have resulted in some inconsistencies with O.C.G.A. §44-13-100, which should be corrected if changes are made.

Some rough examples of recommended technical amendments follow:

- O.C.G.A. § 44-13-100(a)(1) allows debtors to exempt an interest in real or personal property constituting their residence or in a burial plot. The Code Section was modeled after § 522(d)(1), which also uses the term or. However, § 522 is subject to 11 U.S.C. § 102, which provides that the term “or” is not exclusive – in other words – “or” can be interpreted as “and” under the federal statute. On the other hand, Georgia’s rule of statutory construction is set out in O.C.G.A. § 1-3-1, which does not specifically address use of the word “or”. In the Georgia Supreme Court case of *Gearinger v. Lee*, 266 Ga. 167, 465 S.E.2d 440 (1996), the Supreme Court held “use of the word “or” in a statute can be interpreted as a disjunctive term or a re-iterative term, but where the legislative decision is phased and disjunctive, it must be so construed absent a clear indication that disjunctive construction is contrary to legislative intent.”

In Georgia, “or” usually means “or” and not “and”. In light of the possible inconsistency between O.C.G.A. § 1-3-1 and 11 U.S.C. § 102, the word “or” in O.C.G.A. § 44-13-100(a) should be changed to “and.” The change would not result in any increase in exemption under the sub-section, but simply make it clear that debtors could exempt both residential property and a burial plot, up to the aggregate amount of exemption allowed under the subsection.

- O.C.G.A. §44-13-100(a)(2.1)(C). § 44-13-100 (a) 2.1 (C) is intended to allow Georgia residents to exempt balances in qualified retirement accounts to the extent such accounts are exempt under “the bankruptcy laws of the United States.” The provision of the bankruptcy laws of the United States that allows such accounts to be exempt is 11 U.S.C. §522 (d)(10)(E). The problem is that O.C.G.A. § 44-13-100 (b) prohibits Georgia residents from “applying or utilizing 11 U.S.C. Section 522(d) in connection with exempting property from his or her estate.” This slight inconsistency (if any) is technical and easily corrected.
- O.C.G.A. 44-13-100(b). Section 44-13-100(b) is in substantial need of redrafting in order to coordinate with the more recent amendments to 11 U.S.C. § 522 in regard to domicile prior to filing bankruptcy.

§ 44-13-100(b) requires all individuals domiciled in Georgia for 180 days immediately prior to the date of filing bankruptcy must use the Georgia Exemption Statute. § 522(b)(3)(A) now looks to where the debtor was domiciled for the 730 days immediately preceding the date of the filing of the petition or if the debtor’s domicile has not been located in a single state for such 730-day period, the place in which the debtor’s domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of

such 180-day period – in other words, if a debtor has been residing in Georgia for more than 180 but less than 730 days before bankruptcy, he would be prohibited by § 522 from using the Georgia exemption. On the other hand, subsection (b) of § 44-13-100 would require that he or she use the Georgia exemption. Anticipating such a conflict, § 522 was further amended to provide that if a conflict between the amendment and state law resulted in the debtor being ineligible for any exemption, the debtor may elect to exempt property that is specified under the federal statute. Accordingly, the General Assembly should consider whether debtors who fall under this 730-day rule should be allowed to use the exemption required under the new federal rule under §522 (probably the individual's last State of residency prior to moving to Georgia) or (by simply doing nothing) kick those debtors back into eligibility to elect the exemptions provided under 11 U.S.C. §522(d) (that provides higher exemptions than the Georgia Statute).

The reference in O.C.G.A. § 44-13-100(b) to 11 U.S.C. §522(b)(2)(A) and (B), should be updated to refer to 11 U.S.C. §522(b)(3)(A) and (B).

## COMMITTEE RECOMMENDATIONS

The Committee heard testimony from a variety of individuals who are personally and professionally affected by Georgia's homestead exemption for bankruptcy purposes as well as individuals in the academic community. Unfortunately, the current economic climate where many homes have a larger mortgage than its actual market value is a major problem for many Georgians, especially those in financial distress considering bankruptcy. While the Committee is sympathetic to this issue, it realizes raising the homestead exemption will not solve the lack of equity issue nor will it end the foreclosure crisis. However, modest changes to the homestead exemption would help the individuals who have been good stewards of their financial resources, who have equity in their homes, and would not cause unfair results to creditors or difficulties for Chapter 7 Trustees attempting to administer the bankruptcy estate.

Additionally, the Committee recognizes that certain changes are necessary in order to disincentivize bankruptcy in Georgia. There are also certain technical problems in Georgia's code that have resulted from changes in the federal bankruptcy law.

Therefore, the Committee recommends:

### Homestead Exemption

- Evaluating Georgia's homestead exemption with regard to the rise of the Consumer Price index.
- Evaluating periodically, Georgia's bankruptcy exemptions to consider the consumer price index, the federal adjustments, and the state's economic climate.
- Increasing Georgia's homestead exemption to conform to the current federal homestead exemption of \$20,200 for single and \$40,400 for joint filers.

### Wildcard

- Allowing stacking of a limited unused portion of the homestead exemption in the amount of \$10,000 onto the wildcard exemption. Allowing unlimited stacking of the unused portion of a homestead exemption would not further the goal of providing a benefit to individuals with equity in their home.

### Prevention of Bankruptcy Incentives


- Adjustment of non-bankruptcy state homestead exemptions for levy and sale currently codified in O.C.G.A. § 44-13-1 through 44-13-87, which are currently limited to \$5,000 to equal the homestead exemption available in bankruptcy.

### Conforming Georgia's Code to Federal Law

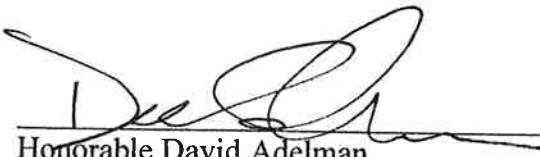
- Making technical changes to the Georgia Code as mentioned by the State Bar of Georgia to fix disjunctive construction problems regarding real property and burial plots, which would not make any change to the actual exemption amount.
- Making technical changes to the Georgia Code as mentioned by the State Bar to conform domicile provisions that were changed in the Federal Bankruptcy Code in 2005, which would not make any change to any actual exemption amount.

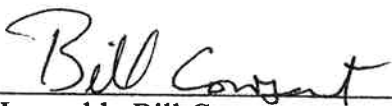
- Addressing the slight technical inconsistency between the Georgia Code and Federal Bankruptcy Code regarding exempt balances in qualified retirement accounts.

Respectfully Submitted,

  
Honorable Ed Tarver, Chairman  
22<sup>nd</sup> District

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Honorable John Wiles  
37<sup>th</sup> District

  
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Honorable David Adelman  
42<sup>nd</sup> District

  
\_\_\_\_\_  
Honorable Bill Cowser  
46<sup>th</sup> District

  
\_\_\_\_\_  
Honorable Renee Unterman  
45<sup>th</sup> District

Appendix A

**State Opt-Out Table**

<b><u>State</u></b>	<b><u>Exemptions Allowed</u></b>
Alabama	State Only
Alaska	State Only
Arizona	State Only
Arkansas	Federal or State
California	State Only
Colorado	State Only
Connecticut	Federal or State
Delaware	State Only
District of Columbia	Federal or State
Florida	State Only
Georgia	State Only
Hawaii	Federal or State
Idaho	State Only
Illinois	State Only
Indiana	State Only
Iowa	State Only
Kansas	State Only
Kentucky	State Only
Louisiana	State Only
Maine	State Only
Maryland	State Only
Massachusetts	Federal or State
Michigan	Federal or State
Minnesota	Federal or State
Mississippi	State Only
Missouri	State Only
Montana	State Only
Nebraska	State Only
Nevada	State Only
New Hampshire	Federal or State
New Jersey	Federal or State



New Mexico	Federal or State
New York	State Only
North Carolina	State Only
North Dakota	State Only
Ohio	State Only
Oklahoma	State Only
Oregon	State Only
Pennsylvania	Federal or State
Rhode Island	Federal or State
South Carolina	State Only
South Dakota	State Only
Tennessee	State Only
Texas	Federal or State
Utah	State Only
Vermont	Federal or State
Virginia	State Only
Washington	Federal or State
West Virginia	State Only
Wisconsin	Federal or State
Wyoming	State Only

## APPENDIX B

Description	Exempt Amount Single/Joint filing	Official Code of Georgia Annotated
Household Goods and Furnishings, Personal effects, limit \$300 per item	\$5,000/\$10,000	§44-13-100(a)(4)
Motor Vehicles	\$3,500/\$7,000	§44-13-100(a)(3)
Jewelry	\$500/\$1,000	§44-13-100(a)(5)
Tools of Trade	\$1,500/\$3,000	§44-13-100(a)(7)
<b>Wildcard</b>	<b>\$600 per debtor plus the unused amount of the homestead exemption in any property</b>	<b>§44-13-100(a)(6), §44-13-100(a)(1)</b>
Disposable earnings	Greater of 75% of earnings per week or 30 times the Federal minimum wage	§18-4-20
<b>Real or personal property-homestead or burial plot</b>	<b>\$10,000/\$20,000</b>	<b>§44-13-100(a)(1)</b>
Government benefits; social security, unemployment compensation, public assistance	100%	§44-13100(a)(2)(A)
Veterans' benefits	100%	§44-13100(a)(2)(B)
Disability, illness or unemployment benefit	100%	§44-13100(a)(2)(C)
Proceeds of accident/sickness insurance	\$250 per month	§33-29-15, 33-30-10
Group/blanket accident and sickness insurance	\$250 per month	§33-30-10
Wages of deceased state employee	\$2,500/\$5,000	§34-7-4
Worker's compensation	100%	§34-9-84, 49-4-84
Pensions of public employees	100%	§§47-2-332, 18-4-22, 44- 13-100(a)(2)(E)
Produce, rents or profits from exempt property		§44-13-18
Retirement benefits and pension funds – same as earnings		§18-4-22
Retirement benefits – State, county, city employees		§§47-2-332, 47-5-71
Retirement benefits – Teachers, public school employees		§§47-3-28, 47-4-120, 47- 3-26
Retirement benefits –Legislators		§47-6-100
Retirement benefits – Firemen		§47-7-122
Retirement – Judges/court employees		§§47-11-91, 47-14-91

APPENDIX C

**Bankruptcy Filings per Thousand Population\***  
**Total, Chapter 7 and Chapter 13 Bankruptcy Filings**  
**Year Ended September 30, 2008<sup>24</sup>**

State/Territory	All Chapters		Chapter 7		Chapter 13	
	Filings per 1,000 Population	Rank	Filings per 1,000 Population	Rank	Filings per 1,000 Population	Rank
<i>U.S. Total</i>	3.38		2.21		1.15	
Alabama	5.92	4	2.19	23	3.70	2
Alaska	1.24	52	1.03	48	0.18	52
Arizona	2.61	33	2.05	28	0.51	39
Arkansas	4.64	9	2.41	17	2.21	5
California	3.18	21	2.40	18	0.75	30
Colorado	3.99	13	3.40	5	0.57	37
Connecticut	2.20	39	1.65	39	0.50	40
Delaware	3.23	20	1.58	41	0.95	23
District of Columbia	1.46	49	0.74	50	0.67	31
Florida	3.32	19	2.28	20	1.00	21
Georgia	5.96	3	2.64	12	3.29	3
Guam	0.73	53	0.66	51	0.07	53
Hawaii	1.41	51	1.08	47	0.31	45
Idaho	3.10	23	2.56	14	0.52	38
Illinois	4.08	11	2.77	11	1.29	11
Indiana	5.89	5	4.14	2	1.72	8
Iowa	2.61	34	2.37	19	0.23	48
Kansas	3.10	24	2.08	27	1.00	22
Kentucky	4.79	7	3.52	4	1.25	14
Louisiana	3.56	17	1.25	44	2.28	4
Maine	2.12	42	1.72	36	0.38	43
Maryland	3.01	27	1.83	33	1.14	18
Massachusetts	2.42	36	1.78	35	0.61	34
Michigan	5.31	6	4.08	3	1.20	17
Minnesota	2.97	28	2.47	16	0.49	41
Mississippi	4.03	12	1.90	31	2.10	6
Missouri	4.13	10	2.84	9	1.28	13
Montana	1.96	44	1.62	40	0.32	44
Nebraska	3.61	16	2.57	13	1.01	20
Nevada	6.39	2	4.30	1	2.03	7
New Hampshire	2.79	32	2.10	26	0.66	32
New Jersey	2.85	30	1.90	30	0.91	25
New Mexico	2.14	41	1.92	29	0.20	51
New York	2.34	38	1.71	37	0.58	36
North Carolina	2.35	37	1.11	46	1.22	15
North Dakota	2.07	43	1.85	32	0.22	50
Northern Mariana	0.16	54	0.16	54	-	55

<sup>24</sup> [http://www.uscourts.gov/Press\\_Releases/2008/BankruptcyFilingsDec2008.cfm](http://www.uscourts.gov/Press_Releases/2008/BankruptcyFilingsDec2008.cfm)

Islands						
Ohio	4.76	8	3.32	6	1.43	10
Oklahoma	2.87	29	2.27	21	0.59	35
Oregon	3.06	25	2.26	22	0.80	29
Pennsylvania	2.59	35	1.69	38	0.88	26
Puerto Rico	2.19	40	0.53	53	1.62	9
Rhode Island	3.71	14	3.04	8	0.66	33
South Carolina	1.79	48	0.65	52	1.12	19
South Dakota	1.82	46	1.56	42	0.26	47
Tennessee	7.27	1	3.08	7	4.16	1
Texas	1.80	47	0.84	49	0.93	24
Utah	3.12	22	1.81	34	1.28	12
Vermont	1.86	45	1.37	43	0.48	42
Virgin Islands	0.14	55	0.09	55	0.03	54
Virginia	3.40	18	2.16	25	1.21	16
Washington	3.04	26	2.17	24	0.85	27
West Virginia	2.80	31	2.49	15	0.28	46
Wisconsin	3.61	15	2.79	10	0.81	28
Wyoming	1.46	50	1.21	45	0.22	49

\* Population as of March 31, 2008 as estimated by the Administrative Office of the United States Courts.

## Appendix C.

### Annual percent changes in the Consumer Price Index for All Urban Consumers, 2001-2008<sup>25</sup>

Expenditure Category	2001	2002	2003	2004	2005	2006	2007	2008
<b>All items</b>	1.6	2.4	1.9	3.3	3.4	2.5	4.1	0.1
Food and beverages	2.8	1.5	3.5	2.6	2.3	2.2	4.8	5.8
Housing	2.9	2.4	2.2	3.0	4.0	3.3	3.0	2.4
Apparel	-3.2	-1.8	-2.1	-.2	-1.1	.9	-.3	-1.0
Transportation	-3.8	3.8	.3	6.5	4.8	1.6	8.3	-13.3
Medical care	4.7	5.0	3.7	4.2	4.3	3.6	5.2	2.6
Recreation	1.5	1.1	1.1	.7	1.1	1.0	.8	1.8
Education and communication	3.2	2.2	1.6	1.5	2.4	2.3	3.0	3.6
Other goods and services	4.5	3.3	1.5	2.5	3.1	3.0	3.3	3.4
<b>Special indexes:</b>								
Energy	-13.0	10.7	6.9	16.6	17.1	2.9	17.4	-21.3
Energy commodities	-24.5	23.7	6.9	26.7	16.7	6.1	29.4	-40.5
Energy services	-1.5	.4	6.9	6.8	17.6	-.6	3.4	7.7
All items less energy.	2.8	1.8	1.5	2.2	2.2	2.5	2.8	2.4
Food	2.8	1.5	3.6	2.7	2.3	2.1	4.9	5.9
All items less food and energy	2.7	1.9	1.1	2.2	2.2	2.6	2.4	1.8

<sup>25</sup> [HTTP://WWW.BLS.GOV/NEWS.RELEASE/PDF/CPI.PDF](http://www.bls.gov/news.release/pdf/cpi.pdf)

APPENDIX D

Bankruptcy Homestead Exemptions by State

Rank	State	Exemption	Families	Other
1	Florida	No limit		
2	Iowa	No limit		
3	Kansas	No limit		
4	Texas	No limit		
5	Massachusetts	\$500,000		
6	Nevada	\$350,000		
7	Minnesota	\$200,000		\$500,000
8	Rhode Island	\$200,000		
9	Arizona	\$150,000		
10	Montana	\$100,000	\$200,000	
11	New Hampshire	\$100,000		
12	North Dakota	\$80,000		
13	Connecticut	\$75,000		
14	Mississippi	\$75,000		
15	Vermont	\$75,000		
16	Alaska	\$67,500		
17	California	\$50,000	\$75,000	\$150,000
18	Delaware	\$50,000		
19	Idaho	\$50,000		
20	New York	\$50,000	\$100,000	
21	South Carolina	\$50,000	\$100,000	
22	Colorado	\$45,000		
23	Washington	\$40,000		
24	Wisconsin	\$40,000		
25	Maine	\$35,000	\$70,000	\$140,000
26	New Mexico	\$30,000		
27	South Dakota	\$30,000		
28	Louisiana	\$25,000		
29	Oregon	\$25,000	\$33,000	
30	West Virginia	\$25,000		
31	Arkansas	\$20,200*		
32	Kentucky	\$20,200*		
33	Michigan	\$20,200*		
34	New Jersey	\$20,200*		
35	Pennsylvania	\$20,200*		
36	Washington DC	\$20,200*		
37	Hawaii	\$20,000	\$30,000	\$30,000
38	Utah	\$20,000		
39	North Carolina	\$18,500	\$37,000	\$37,000
40	Indiana	\$15,000		
41	Missouri	\$15,000		
42	Nebraska	\$12,500		
43	Georgia	\$10,000	\$20,000	
44	Oklahoma	\$10,000		
45	Wyoming	\$10,000		
46	Illinois	\$7,500	\$15,000	
47	Alabama	\$5,000		
48	Maryland	\$5,000		
49	Ohio	\$5,000		
50	Tennessee	\$5,000		
51	Virginia	\$5,000		\$15,000

\* These states allow debtors to choose a federal exemption of \$20,200.  
 Source: [www.bankruptcyaction.com](http://www.bankruptcyaction.com) (last visited Feb. 8, 2008).

APPENDIX E

09/24/2008

SUMMARY OF CHAPTER 7 STATISTICS  
From 07/01/2007 To 06/30/2008

RPT0130

Region: 21

Office	# Of Cases	# Of TRs	Total Disburse to Trustee/Firm Camp	ATTORNEY'S FEES			OTHER PROF. FEES			Secured Creditors	Priority Creditors	Unpaid Creditors	Other	Total Disbursements	
				Total Trustee Of Firm	Trustee Outside Of Firm	Trustee Outside Counsel	Trustee Of Firm	Trustee Outside Of Firm	Outside Prof						
ATLANTA	449	41	5,737,013	2,409,425	2,720,030	4,701,483	598,559	2,191,535	1,716,882	1,898,645	18,018,129	1,982,821	9,207,002	3,929,785	49,384,395
MACON	148	8	8,868,625	879,770	516,123	482,211	258,780	339,028	838,197	6,934	3,331,252	198,730	2,226,201	851,725	8,686,625
MIAMI	1,564	18	101,047,218	5,427,688	3,322,912	15,074,944	443,680	5,810,622	14,154,664	738,841	20,258,503	2,191,110	22,071,487	1,965,008	101,047,218
ORLANDO	2,382	19	3,835,688	3,710,143	178,604	4,027,768	48,942	1,438,481	1,820,391	238,880	5,772,680	1,542,688	15,603,272	1,733,500	36,418,847
SAN JUAN	100	8	14,350,713	819,409	782,735	134,258	339,979	2,415	784,965	433,942	6,623,142	2,273,748	1,913,731	720,028	14,350,713
SAVANNAH	102	9	10,982,240	789,877	551,683	237,014	788,949	0	527,338	58,260	5,198,444	146,024	2,842,564	308,035	10,982,240
TALLAHASSEE	533	7	4,729,835	740,810	680,070	57,659	261,623	2,831	211,533	32,280	101,481	146,024	2,842,564	308,035	4,729,835
TAMPA	2,748	18	43,445,921	5,125,088	3,998,953	1,105,786	4,321,615	891,915	2,975,044	348,271	9,720,503	1,759,682	14,432,738	3,761,149	43,445,921
Regional Total	8,094	129	288,933,538	27,420,745	18,075,000	8,227,433	30,981,251	1,118,312	23,037,343	3,753,953	78,037,484	10,301,184	88,227,727	14,758,802	288,933,538

This table reflects all Chapter 7 bankruptcies, including not just consumer bankruptcies. It also reflects business asset cases.