

# HOUSE BILL REPORT

## ESSB 5408

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### As Passed House - Amended:

April 16, 2021

**Title:** An act relating to the homestead exemption.

**Brief Description:** Concerning the homestead exemption.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senators Stanford, Das, Dhingra, Hasegawa, Kuderer, Lovelett, Nguyen, Randall, Robinson, Rolfes, Saldaña and Wellman).

### Brief History:

#### Committee Activity:

Civil Rights & Judiciary: 3/17/21, 3/19/21 [DPA];

Finance: 3/29/21, 3/31/21 [DPA(FIN w/o CRJ)].

#### Floor Activity:

Passed House: 4/16/21, 94-3.

### Brief Summary of Engrossed Substitute Bill (As Amended By House)

- Changes the homestead exemption amount to the greater of \$125,000, or the county median sale price of a single-family home.
- Allows appreciation of the property to be included in the exemption after a bankruptcy filing, even if it exceeds the statutory limit.

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## HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

**Majority Report:** Do pass as amended. Signed by 13 members: Representatives Hansen, Chair; Simmons, Vice Chair; Graham, Assistant Ranking Minority Member; Davis, Entenman, Goodman, Kirby, Klippert, Orwall, Peterson, Thai, Valdez and Walen.

**Minority Report:** Without recommendation. Signed by 4 members: Representatives

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Abbarno and Ybarra.

**Staff:** Ingrid Lewis (786-7289).

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## HOUSE COMMITTEE ON FINANCE

**Majority Report:** Do pass as amended by Committee on Finance and without amendment by Committee on Civil Rights & Judiciary. Signed by 14 members: Representatives Frame, Chair; Berg, Vice Chair; Walen, Vice Chair; Orcutt, Ranking Minority Member; Chase, Chopp, Harris-Talley, Morgan, Orwall, Ramel, Springer, Thai, Vick and Wylie.

**Minority Report:** Without recommendation. Signed by 2 members: Representatives Dufault, Assistant Ranking Minority Member; Stokesbary.

**Staff:** Tracey O'Brien (786-7152).

### **Background:**

A creditor may seek enforcement of a debt owed by a debtor through execution, attachment, or garnishment of the debtor's property. A homestead, which is the property an owner uses as a residence, is exempted from attachment and from execution or forced sale for the owner's unsecured debts up to \$125,000.

The homestead exemption amount is limited to the lesser of: (1) \$125,000 if the homestead consists of real property, or \$15,000 if the homestead consists of personal property; or (2) the total net value of the homestead property. The homestead property includes land, manufactured homes, mobile home, and improvements. Net value is defined as the market value of the property less all liens and encumbrances that are senior to the judgment being executed upon.

Judgments that are greater than \$125,000 become liens on the value of the homestead in excess of the homestead exemption. The exemption also applies, for one year, to proceeds of the voluntary sale of a homestead for the purpose of acquiring a new homestead, and to proceeds from insurance covering destruction of homestead property held for use in restoring or replacing the homestead property.

The homestead exemption is not available against an execution or forced sale to satisfy certain kinds of judgments, including: judgments on mortgages or deeds of trust on the property; construction liens, laborer's liens, and other liens arising out of and against the particular property; child support or spousal maintenance obligations; debts owed to the state for the recovery of medical assistance costs; or condominium or homeowners' association liens; or for sales and use taxes that are collected and held in trust by the property owner but not remitted to the Department of Revenue.

Wilson v. Rigby.

In *Wilson v. Rigby*, the 9th Circuit Court of Appeals held that the homestead exemption amount is fixed at the date of the filing of the petition, and could not be amended for a greater exemption amount due to post-filing appreciation of the homestead property.

In re Good.

In *In re Good*, the United States Bankruptcy Appellate Panel for the 9th Circuit held while the Washington law on homestead exemptions does not define a forced sale, bankruptcy sales are forced sales. It also held that the one-year reinvestment requirement does not apply to forced sales of a homestead.

**Summary of Amended Bill:**

The definition of homestead is expanded to include real or personal property that the dependent of an owner uses as a residence. "Dependent" has the same meaning given in the federal bankruptcy code.

A "forced sale" is defined to include any sale of a homestead property in a bankruptcy proceeding. Reinvestment provisions do not apply to the proceeds.

The homestead exemption amount is increased to the greater of:

- \$125,000; or
- the county median sale price of a single-family home in the preceding calendar year.

The county median sale price of a single-family home in the preceding year shall be determined by using data from the Washington Center for Real Estate Research, or any successor entity designated by the Office of Financial Management.

In a bankruptcy case, the debtor's exemption shall be determined on the date the bankruptcy petition is filed. If the value of the debtor's interest in homestead property on the petition date is less than or equal to the amount that can be exempted under the homestead law, then the debtor's entire interest in the property, including the debtor's right to possession and interests of no monetary value, is exempt. Any appreciation in the value of the debtor's exempt interest in the property during the bankruptcy case is also exempt, even if it exceeds the statutory limit.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony (Civil Rights & Judiciary):**

(In support) Many families are facing bankruptcy. Many think that the family home is protected, but the Washington homestead exemption is too small for those homes. The current exemption does not reflect the economic burden of purchasing and owning a home. The COVID-19 pandemic has impacted many business owners and thousands will lose their homes and will never be able to afford one again. Appreciation in the value of the home should be exempted.

The bill increases the homestead exemption from \$125,000 to the county median price of a single-family home. This will allow families to stay in their homes and have a chance to get back on their feet. The bill will bring clarity to individuals thinking of filing for bankruptcy.

(Opposed) None.

(Other) The bill should clarify that dependents do not need to sign on to a mortgage. The definition of dependent is problematic because it does not expand protections to family members other than spouses or domestic partners. It does not include children, parents, or other family members.

**Staff Summary of Public Testimony (Finance):**

(In support) The COVID-19 pandemic has shown us that an unprecedented emergency can impact families. Homes reflect families' generational wealth, their retirement savings, and their place of safety. While businesses and families continue to struggle with the new economic realities of the past year, unsecured debt is rising. Many will be facing bankruptcy. The low homestead exemption does not reflect owning or buying a home in Washington. Bankruptcy trustees are keeping cases open in anticipation of capturing property value increases. The homestead exemption is failing to do what it is designed to do. It must prevent people from losing their homes. With a bankruptcy on their record, people are prevented from purchasing a home ever again. A homestead exemption tied to county median home values will foster small business development, entrepreneurship, and business lending. Families and small businesses need this help now before they lose their homes.

(Opposed) None.

**Persons Testifying (Civil Rights & Judiciary):** (In support) Senator Stanford, prime sponsor; Christina Henry, Northwest Consumer Law Center; Sarah Nagy, Columbia Legal Services; Carol Porter; Elizabeth Jones; and Mark Fredrich.

(Other) Sean Holland, Washington Land Title Association.

**Persons Testifying (Finance):** Carol Porter; Mark Fredrich; Latife Neu; and Christina Henry.

**Persons Signed In To Testify But Not Testifying (Civil Rights & Judiciary):** None.

**Persons Signed In To Testify But Not Testifying (Finance):** None.