

# SENATE BILL REPORT

## ESSB 5408

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As Amended by House, 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:** Law & Justice: 2/11/21, 2/15/21 [DPS, w/oRec].

**Floor Activity:** Passed Senate: 3/2/21, 46-2.

Passed House: 4/8/21, 95-3; 4/16/21, 94-3.

**Brief Summary of Engrossed First Substitute Bill**

- Changes the homestead exemption to the greater of \$125,000 or the county median sale price of a single family home.
- Defines a forced sale to include any sale of the homestead property in a bankruptcy proceeding.
- 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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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 5408 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Darneille, Kuderer, Salomon and Wagoner.

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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.*

**Minority Report:** That it be referred without recommendation.

Signed by Senators Padden, Ranking Member; McCune, Assistant Ranking Member; Holy.

**Staff:** Tim Ford (786-7423)

**Background:** A creditor who obtains a judgment against a delinquent debtor often can force the debtor to sell property to repay those obligations. The homestead exemption protects from a forced sale, a debtor's equity in the real or personal property the debtor uses or plans to use as a principal home for the owner, including a house or mobile home, appurtenant buildings, and the related land even if unimproved.

The homestead exemption amount shall not exceed the lesser of:

- the total net value of the lands, manufactured homes, mobile home, improvements, and other personal property, or
- \$125,000 in the case of lands, manufactured homes, mobile home, and improvements, or \$15,000 in the case of other personal property.

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.

The homestead is exempt from attachment and from execution or forced sale for the debts of the owner up to the amount specified. The proceeds of a voluntary sale of the homestead in good faith for the purpose of acquiring a new homestead, and proceeds from insurance covering destruction of homestead property held for use in restoring or replacing the homestead property, up to the amount specified, are likewise exempt for one year from receipt, and also the new homestead acquired with the proceeds.

A judgment against the owner of a homestead may be recorded as a lien on the value of the homestead property in excess of the homestead exemption. If the sale is made, the proceeds must be applied in the following order:

- to the amount of the homestead exemption, to be paid to the judgment debtor;
- up to the amount of the execution, to be applied to the satisfaction of the execution; and
- the balance to be paid to the judgment debtor.

Wilson v. Rigby. In the bankruptcy case *Wilson v. Rigby*, the 9th Circuit Court of Appeals held that the 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 the bankruptcy case *In re Good*, the U.S. bankruptcy court 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.

In re the Bankruptcy Petition of Wieber. In the bankruptcy case of *In re Wieber*, the Washington State supreme court held that Washington residents may not claim a homestead exemption for property in other states.

**Summary of Engrossed First Substitute Bill:** Homestead includes real or personal property a dependent of the owner uses as a residence. A dependent has the same meaning as in federal bankruptcy code.

A forced sale is defined to include any sale of the homestead property in a bankruptcy proceeding. The reinvestment provisions do not apply to the proceeds. This adopts the holding of the court in the decision of *In re Good*.

The homestead exemption amount is the greater of \$125,000 or the county median sale price of a single family home in the preceding calendar year. A court shall accept data on the county median sale price of a single family home from the Runstad Department of Real Estate, University of Washington, or if the Runstad department no longer provides the data, a 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. This language is to address the case of *Wilson v. Rigby*.

For homestead exemptions claimed under statute the guarantor may claim up to \$125,000.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: We are facing a difficult economic crisis during these times, especially small businesses who may be using their homes as collateral for a business loan. We need to raise this exemption so families can keep their homes.

I filed bankruptcy because of my student loan debt. After filing my bankruptcy petition the case dragged on for a year and I finally abandoned it because my house continued to appreciate and I was worried the trustee would do a forced sale of my home, and I would lose it.

I was fired from my job due to COVID-19. I had to file bankruptcy and my home value exceeded the limit for the exemption under law. To avoid a forced sale of my home and losing my home, I had to sell my 401K.

My family owned a spa that employed 20 people that was shut down due to the pandemic. I will have to declare bankruptcy and I was shocked when I learned how low our state exemption is at \$125,000. It does not reflect the incredible economic burden of purchasing and owning a home in this state. If this law is not changed we lose our home of 17 years, and thousands of people will lose their homes and never be able to purchase a home again.

Small business lending will still go forward. Consensual liens will not be affected by this bill. There are other ways to collect on consumer debts and business loans other than forcing the sale of a home. California and other states have higher homestead exemptions and people can still get small business loans.

CON: The median sale price of a single family home in King County in 2020 was \$724,950. This bill represents about a 600 percent increase for that area. Small business lenders will help people get a business started by taking a personal guarantee or pledging their home as collateral. If the homestead exemption were raised that high many people would be ineligible for loans because the exemption makes it so that the home is not effective collateral.

**Persons Testifying:** PRO: Senator Derek Stanford, Prime Sponsor; Christina Henry; Mark Fredrich; Latife Neu, Latife Neu, Attorney at Law PLLC; Alicia Arzate; Jacob Blackmon; Jessica Schultz, Northwest Justice Project.

CON: Brad Tower, Community Bankers of Washington.

**Persons Signed In To Testify But Not Testifying:** No one.

#### **EFFECT OF HOUSE AMENDMENT(S):**

- Clarifies that a dependent of a homeowner is not required to sign off on any documents needed to transfer the property.
- Changes the entity compiling the value of single-family homes from the Runstad Department of Real Estate to the Washington Center for Real Estate Research.
- Adds an emergency clause.