

Regular Session, 2008

SENATE BILL NO. 139

BY SENATOR QUINN

SEIZURES/SALES. Provides for an increase in the amount of the homestead exemption from seizure and sale and a special waiver of homestead exemption in certain circumstances. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 20:1(A)(2) and (D), relative to the exemption from seizure and  
3 sale of a homestead; to provide for an increase in the amount of the homestead  
4 exemption; to provide for a waiver of homestead exemption from seizure and sale;  
5 to provide for an effective date; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 20:1(A)(2) and (D) are hereby amended and reenacted to read as  
8 follows:

9 §1. Declaration of homestead; exemption from seizure and sale; debts excluded  
10 from exemption; waiver; certain proceeds from property insurance  
11 exempted

12 A.(1) \* \* \*

13 (2) The homestead is exempt from seizure and sale under any writ, mandate,  
14 or process whatsoever, except as provided by Subsections C and D of this Section.  
15 This exemption extends to ~~twenty-five~~ **two hundred fifty** thousand dollars in value  
16 of the homestead, except in the case of obligations arising directly as a result of a  
17 catastrophic or terminal illness or injury, in which case the exemption shall apply to

1 the full value of the homestead based upon its value one year before such seizure.  
 2 This homestead exemption from seizure and sale shall extend automatically to the  
 3 proceeds from any property insurance policy received as a result of damage caused  
 4 by a gubernatorially declared disaster to a homestead and that are held separately in  
 5 an escrow account identified as insurance proceeds paid from the damage of a  
 6 homestead for its repair or replacement.

7 \* \* \*

8 D. The right to sell voluntarily any property that is exempt as a homestead  
 9 shall be preserved, but no sale shall destroy or impair any rights of creditors thereon.

10 E.(1) Any person entitled to a homestead may waive same, in whole or in  
 11 part, by signing a written waiver thereof; a copy of such waiver shall be provided to  
 12 the homeowner; however,

13 (a) if **If** the person is married, and not separated from bed and board from the  
 14 other spouse, then the waiver shall not be effective unless signed by the latter, and

15 (b) ~~at~~ **All** such waivers shall be recorded in the mortgage records of the  
 16 parish where the homestead is situated. However, if the homestead is the separate  
 17 property of one of the spouses, the homestead exemption may be waived by that  
 18 spouse alone in any mortgage granted on the homestead, without the necessity of  
 19 obtaining a waiver from the non-owning spouse.

20 (2) The waiver may be either general or special and shall have effect from  
 21 the time of recording.

22 (3) The waiver shall not be required or permitted for the rendering of  
 23 medical treatment, medical services, or hospitalization.

24 (4) Notwithstanding any other provision of law to the contrary, a waiver of  
 25 exemption from seizure as to an exempted homestead shall automatically include  
 26 insurance for that property to the extent subject to the creditor's mortgage or security  
 27 interest.

28 (5) **In the following circumstances, unless the homestead exemption is**  
 29 **reserved in writing and recorded in the mortgage office of the parish where the**

1           **homestead is located, a special waiver of homestead exemption in favor of the**  
 2           **original creditor is presumed, and recordation thereof is unnecessary and**  
 3           **dispensed with by operation of law for all amounts in excess of twenty-five**  
 4           **thousand dollars of the homestead's value:**

5                   **(a) In the case of a personal guarantee by a home owner to a national or**  
 6                   **state-chartered bank as a condition of the making of a commercial loan or**  
 7                   **extending a commercial line of credit to the homeowner or a third-party; or**

8                   **(b) In every closed-end transaction governed by the Louisiana**  
 9                   **Consumer Credit Law, R.S. 9:3510 et seq., between a home owner and a**  
 10                   **licensed finance company supervised by the Louisiana Office of Financial**  
 11                   **Institutions.**

12           Section 2. This Act shall become effective upon signature by the governor or, if not  
 13           signed by the governor, upon expiration of the time for bills to become law without signature  
 14           by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 15           vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 16           effective on the day following such approval.

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The original instrument was prepared by Angela Lockett De Jean. The following digest, which does not constitute a part of the legislative instrument, was prepared by Camille Sebastien Perry.

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#### DIGEST

Quinn (SB 139)

Present law provides that the homestead is exempt from seizure and sale under any writ, mandate, or process whatsoever, except as provided by present law. This exemption extends to \$25,000 in value of the homestead, except in the case of obligations arising directly as a result of a catastrophic or terminal illness or injury, in which case the exemption shall apply to the full value of the homestead based upon its value one year before such seizure.

Proposed law retains present law and increases the homestead exemption from \$25,000 to \$250,000.

Present law provides that any person entitled to a homestead may waive same, in whole or in part, by signing a written waiver thereof; a copy of such waiver shall be provided to the homeowner; however, if the person is married, and not separated from bed and board from the other spouse, then the waiver shall not be effective unless signed by the latter, and all such waivers shall be recorded in the mortgage records of the parish where the homestead is situated. However, if the homestead is the separate property of one of the spouses, the homestead exemption may be waived by that spouse alone in any mortgage granted on the homestead, without the necessity of obtaining a waiver from the non-owning spouse. The waiver may be either general or special and shall have effect from the time of recording. The

waiver shall not be required or permitted for the rendering of medical treatment, medical services, or hospitalization.

Present law provides that a waiver of exemption from seizure as to an exempted homestead shall automatically include insurance for that property to the extent subject to the creditor's mortgage or security interest.

Proposed law retains present law but also provides that unless the homestead exemption is reserved in writing and recorded in the mortgage office of the parish where the homestead is located, a special waiver of homestead exemption in favor of the original creditor is presumed, and recordation thereof is unnecessary and dispensed with by operation of law for all amounts in excess of \$25,000 of the homestead's value in the following circumstances:

- (1) In the case of a personal guarantee by a home owner to a national or state-chartered bank as a condition of the making of a commercial loan or extending a commercial line of credit to the homeowner or a third-party; or
- (2) In every closed-end transaction governed by the Louisiana Consumer Credit Law, between a home owner and a licensed finance company supervised by the Louisiana Office of Financial Institutions.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 20:1(A)(2) and (D))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill.

1. Provides for the presumption of a special waiver of homestead exemption in favor of the original creditor and dispenses with recordation by operation of law for all amounts in excess of \$25,000 of the homestead's value in certain circumstances unless the exemption is reserved in writing and recorded.