



# *State of Tennessee*

## **PUBLIC CHAPTER NO. 326**

**SENATE BILL NO. 1000**

**By Niceley**

Substituted for: House Bill No. 1093

By Armstrong, Timothy Hill

AN ACT to amend Tennessee Code Annotated, Title 26, Chapter 2, relative to homestead exemption.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 26-2-301, is amended by adding the following new subsection:

(g) The Tennessee advisory commission on intergovernmental relations shall study the current homestead exemption amounts allowed pursuant to this section to determine whether the exemptions should be increased to accurately reflect the cost of living and shall submit a written report to the members of the general assembly no later than January 1, 2016. The report shall detail the various categories of homestead exemptions and compare each category to the exemptions of other states.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

SENATE BILL NO. 1000

PASSED: April 13, 2015



RON RAMSEY  
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 28<sup>th</sup> day of April 2015



BILL HASLAM, GOVERNOR

**Research Plan: Public Chapter 326, Acts of 2015, Homestead Exemption**

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Lead Research Associate: Tyler Carpenter

Support: Stan Chervin

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Deputy Executive Director Approval: Initial:  Date: 5/21/15

Executive Director Approval: Initial:  Date: 5/22/2015

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**Purpose**

Public Chapter 326, Acts of 2015, directs the Commission to study the current homestead exemption amounts allowed pursuant to Section 26-2-301 to determine whether the exemptions should be increased to accurately reflect the cost of living and to submit a written report to the members of the General Assembly no later than January 1, 2016. The report must detail the various categories of homestead exemptions and compare each category to the exemptions of other states.

**Background**

The homestead exemption allows individuals to retain some of their equity when a judge orders the sale of their principle residence. Under current law, there are six forms of homestead exemption:

- \$5,000 for individuals,
- \$7,500 to be divided equally between joint owners,
- \$12,500 for individuals over the age of 62,
- \$20,000 for married couples with one person age 62 or older,
- \$25,000 for married couples who are both age 62 or older, and
- \$25,000 for individuals with a minor child in their custody.

These exemptions may not be combined; however, the exemption for individuals with minor children may be doubled to \$50,000 for married couples with joint custody.

The homestead exemption is commonly used during bankruptcy proceedings but can also be used during judicial foreclosures or other civil and criminal enforcement proceedings. The homestead exemption may not be invoked during non-judicial proceedings, and it cannot be used to avoid paying a mortgage, tax lien, or a lien for improvements or repairs to the property. Further, individuals can waive the protection of the homestead exemption when they contract for other debts.

Tennessee's homestead exemption may not be adequate to keep people in their homes or to encourage economic activity by providing a fresh start for individuals and entrepreneurs. In Tennessee, the individual exemption of \$5,000 and joint exemption of \$7,500 protects only a negligible amount of equity in homes that may be worth hundreds of thousands of dollars. Although federal law would provide greater protection to some individuals in bankruptcy, Tennessee is one of 31 states that have chosen to opt out of the federal bankruptcy exemptions. Of those 31 states, Tennessee is one of eight that offer basic exemptions less than that offered by the federal exemption. Furthermore, while federal exemptions are adjusted every three years for inflation, there is no such adjustment requirement for Tennessee's exemptions. Homestead exemptions for individuals and joint homeowners have not changed since 1979 and 1980, respectively. However, creditors face a higher risk of debtors filing bankruptcy in states with high or unlimited homestead exemptions. Under these circumstances, debtors may choose to protect their assets in the equity of their home and relieve their debt, while leaving little or nothing to repay creditors.

### **Step 1. Define the Problem**

To what extent, if any, should the homestead exemption be increased to more adequately protect homeowners without overburdening lenders?

### **Step 2. Assemble Some Evidence**

- Review Tennessee Code Annotated, Section 26-2-301, and related statutes.
- Review current case law.
- Review committee hearings on the legislation that became Public Chapter 326, and summarize comments and concerns of committee members, the bill sponsors, and others speaking for or against the bill.
  - Interview the sponsors, bill proponents, and other stakeholders to determine what is driving this issue.
  - Review the fiscal note. Consult with Fiscal Review Committee staff and follow up with agencies submitting support forms to determine the estimated cost and the method and rationale for the estimates.
- Review similar bills from the past several general assemblies to identify related issues.
- Review laws and options in other states.
- Review relevant federal statutes and regulations.
- Review literature and seek opinions of subject matter experts.

### **Step 3. Construct Alternatives**

Alternatives will be based on

- current law

- proposed changes in the current law, and
- any additional alternatives drawn from the research and analysis in Step 2.

Each alternative will be described specifically enough to project outcomes in Step 5.

#### **Step 4. Select Criteria**

- Cost to
  - homeowners,
  - lenders or creditors,
  - recipients of court judgments (judgment lienholders)
- Fairness to
  - homeowners,
  - lenders or creditors,
  - recipients of court judgments (judgment lienholders)
- Constitutionality
- Estimate receptiveness of
  - homeowners,
  - lenders or creditors,
  - recipients of court judgments (judgment lienholders)

#### **Step 5. Project Outcomes**

- Estimate cost
- Estimate effectiveness
- Evaluate questions of fairness
- Evaluate constitutional issues
- Estimate the acceptability to lenders, property owners, legislators, and others..

#### **Step 6. Confront Trade-offs**

- How will the current law and the other alternatives balance the interests of debtors and creditors?
- What are the pros and cons of the potential solutions?

### **Step 7. Decide which alternatives to present to the Commission**

Based on the results of Step 6, choose the alternatives that most practically and realistically resolve the problem

### **Step 8. Produce the Draft Report**

- Develop and present a draft for review and comment to the Commission

### **Revisit Steps 5 through 8.**

- Respond to feedback from Commission regarding outcome projections, trade-offs, and selection of alternatives
- Revise and edit the draft to reflect comments of the Commission
- Submit final report to the Commission for approval



