



# Exemptions for Firearms in Bankruptcy

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## Summary

The U.S. Supreme Court’s decisions regarding the nature of the people’s right to “keep and bear arms,” as guaranteed in the Second Amendment to the U.S. Constitution, has focused some interest on the extent to which firearms are protected from the reach of creditors under either federal or state laws. State laws protecting certain property from creditors’ claims may be used both in and outside of the bankruptcy context. Federal law may also protect certain property from creditors’ claims in bankruptcy.

Although a number of states have provisions explicitly shielding firearms from the claims of creditors, there is currently no such provision in the U.S. Bankruptcy Code (title 11). In the 111<sup>th</sup> Congress, legislation was passed in the House (H.R. 5827) that would have provided an explicit federal exemption in bankruptcy for a debtor’s aggregate interest, up to \$3,000, “in a single rifle, shotgun, or pistol, or any combination thereof.” The bill also included the means for protecting firearms by including them—subject to the same value and type restrictions—in the definition of “household goods” for which nonpossessory, nonpurchase-money security interest liens could be avoided in bankruptcy. Similar legislation has been introduced in the 112<sup>th</sup> Congress: the Protecting Gun Owners in Bankruptcy Act of 2011 (H.R. 1181).

The Bankruptcy Code generally provides two options for claiming exemptions in bankruptcy—either the exemptions provided in 11 U.S.C. § 522(d) or the exemptions available under state law. However, debtors may only choose to use the federal exemptions in § 522(d) if their state specifically authorizes them to do so. Because the proposed federal exemption for firearms would be included in § 522(d), debtors whose states do not authorize them to use the § 522(d) exemptions would not benefit from the proposed change in exemptions. They might, however, benefit from the inclusion of firearms in the definition of household goods, because they could then have the option of freeing those firearms from liens that were based on a nonpossessory, nonpurchase-money security interest.

There is great variety in the extent of the protection from creditors the states provide for firearms. The majority of states provide no explicit protection. Among those that provide protection (17 states plus Puerto Rico and the District of Columbia), the conditions for providing that protection vary. Some states limit the exemption by both the number and value of the firearms; some do not limit the number but may limit either the value of each firearm or the aggregate value of all. Other states specify the type of firearms that can be exempted. In most states that allow an exemption for firearms, the exemption is not dependent upon the way in which the firearm is used. Several states, however, exempt only guns that are for personal use, and one state requires that the firearm be used for business purposes.

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The U.S. Supreme Court's decisions regarding the nature of the people's right to "keep and bear arms," as guaranteed in the Second Amendment to the U.S. Constitution,<sup>1</sup> has focused some interest in the extent to which firearms are protected from the reach of creditors under either federal or state laws.<sup>2</sup> State laws that protect certain property from creditors' claims generally are designed to apply in non-bankruptcy contexts, but may also be used in bankruptcy. Federal law also protects certain property from creditors' claims in bankruptcy. Additionally, a debtor in bankruptcy may be able to avoid liens against exempt property if a lien impairs the exemption and is either a judicial lien or a nonpossessory, nonpurchase-money security interest.

Recently introduced legislation,<sup>3</sup> similar to legislation passed by the House in the 111<sup>th</sup> Congress,<sup>4</sup> would allow a specific federal exemption for firearms and would include firearms in the definition of household goods whose exemptions could be protected from impairment by liens. A number of states provide their own exemptions for firearms. The provisions of these states are provided in **Table 1**.

## Federal Exemptions Under the U.S. Bankruptcy Code

Section 522 of the U.S. Bankruptcy Code<sup>5</sup> addresses the extent to which an individual debtor may elect to exempt equity in certain property from becoming part of the bankruptcy estate. Property exempted from the bankruptcy estate is not available to satisfy creditors. Among the exemptions explicitly provided in the Bankruptcy Code—the federal exemptions—are a homestead exemption in the amount of \$20,200,<sup>6</sup> a vehicle exemption in the amount of \$3,225,<sup>7</sup> and exemptions for jewelry,<sup>8</sup> tools of the trade,<sup>9</sup> and household goods.<sup>10</sup> There is also a "wildcard" exemption of \$1,075<sup>11</sup> that can also be applied to any property so long as the federal exemptions are available to the debtor.

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<sup>1</sup> *District of Columbia v. Heller*, 554 U.S. 570; 128 S. Ct. 2783 (2008); *McDonald v. Chicago*, 561 U.S. \_\_\_\_; 130 S. Ct. 3020 (2010). For additional information on these cases, see CRS Report R41750, *The Second Amendment: An Overview of District of Columbia v. Heller and McDonald v. City of Chicago*, by Vivian S. Chu. For information about gun control legislation, see CRS Report RL32842, *Gun Control Legislation*, by William J. Krouse. Please note that discussion of any possible constitutional issues involving firearms and bankruptcy is beyond the scope of this report.

<sup>2</sup> The U.S. Constitution gives Congress the right to make uniform laws concerning bankruptcy. Art. 1, § 8, cl. 4.

<sup>3</sup> H.R. 1181 (112<sup>th</sup> Congress).

<sup>4</sup> H.R. 5827 (111<sup>th</sup> Congress).

<sup>5</sup> 11 U.S.C. § 101 *et seq.*

<sup>6</sup> 11 U.S.C.A. § 522(d)(1) (West Supp. 2009). The amount as enacted was \$18,450, but it is adjusted periodically by the Judicial Conference of the United States. \$20,200 is the amount for cases filed on or after April 1, 2007. 72 Fed. Reg. 7082 (Feb. 14, 2007). See Adjustment of Dollar Amounts, 11 U.S.C.A. § 104 (West Supp. 2009).

<sup>7</sup> 11 U.S.C.A. § 522(d)(2) (West Supp. 2009). This amount is adjusted periodically by the Judicial Conference of the United States.

<sup>8</sup> 11 U.S.C.A. § 522(d)(4) (West Supp. 2009).

<sup>9</sup> 11 U.S.C.A. § 522(d)(6) (West Supp. 2009).

<sup>10</sup> 11 U.S.C.A. § 522(d)(3) (West Supp. 2009).

<sup>11</sup> 11 U.S.C.A. § 522(d)(5) (West Supp. 2009). The amount as enacted was \$975, but it is adjusted periodically by Judicial Conference of the United States. \$1,075 is the amount for cases filed on or after April 1, 2007. 72 Fed. Reg. 7082 (Feb. 14, 2007). See Adjustment of Dollar Amounts, 11 U.S.C.A. § 104 (West Supp. 2009).

To the extent allowed under state law, the Bankruptcy Code permits debtors to choose between using the federal exemptions or those available under applicable state law.<sup>12</sup> This is an “either/or” choice—debtors are not allowed to choose to use some state exemptions and some federal exemptions.<sup>13</sup> When a petition is filed jointly by husband and wife or when the individual cases of a husband and wife are ordered to be jointly administered, each spouse must choose the same set of exemptions.<sup>14</sup> However, debtors in many states have no choice to make because their state law prohibits the use of the federal exemptions.<sup>15</sup> These federal exemptions are available to debtors *only* to the extent they are not prohibited by the applicable state.<sup>16</sup> Puerto Rico, the District of Columbia, and 17 states<sup>17</sup> allow debtors to choose between federal and state exemptions.

## States’ Exemptions for Firearms

The conditions for exempting firearms vary among the relevant states. Some states specify the number of firearms that may be exempted without regard to the value of the firearms.<sup>18</sup> Other states limit the exemption to one firearm and further limit the claimed exemption by either the value of the firearm<sup>19</sup> or the aggregate value of the statutorily exempt property in which the firearm is included.<sup>20</sup> Oregon allows an exemption for one pistol as well as one rifle or shotgun, but limits the total exemption value of the two firearms to no more than \$1,000.<sup>21</sup> Several states put no limit on the number of firearms that may be exempted so long as the total value of the firearms, when aggregated with the value of certain other property is less than a specific amount.<sup>22</sup> In these states, there is generally a limit to the value of each firearm. One state, Oklahoma, allows an unlimited number of firearms to be exempted so long as the total value of the firearms, alone, is no more than \$2,000.<sup>23</sup>

In most of the states, the exemption is not controlled by the way in which the firearm is used. Several states, however, exempt only guns that are for personal use. Three of these specify that

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<sup>12</sup> 11 U.S.C. § 522(b)(1)-(2).

<sup>13</sup> However, when a debtor uses the exemptions available under state law, an exemption for many retirement funds, as well as some property owned in tenancy by the entirety or joint tenancy, is also available even if not provided under state law. 11 U.S.C. § 522(d)(3)(B)-(C).

<sup>14</sup> 11 U.S.C. § 522(b)(1).

<sup>15</sup> For a table of states’ provisions restricting a debtor’s use of federal exemptions, see CRS Report R40891, *Homestead Exemptions in Bankruptcy After the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA)*, by Carol A. Pettit and Julia Taylor.

<sup>16</sup> 11 U.S.C. § 522(b)(2). In applying this provision, the District of Columbia and Puerto Rico are each treated as states. 11 U.S.C. § 101(52).

<sup>17</sup> Alaska, Arkansas, Connecticut, Hawaii, Kentucky, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New Mexico, Pennsylvania, Rhode Island, Texas, Vermont, Washington, and Wisconsin.

<sup>18</sup> Mont. Code Ann. § 25-13-613(1)(b); Nev. Rev. Stat. Ann. § 21.090(1)(i); Tex. Prop. Code Ann. § 42.002(a)(7).

<sup>19</sup> Idaho Code Ann. § 11-605(7) (2009); La. Rev. Stat. Ann. § 13.3881(A)(2)(e) (2009).

<sup>20</sup> Miss. Code Ann. § 85-6-1(a) (2009).

<sup>21</sup> Or. Rev. Stat. § 18.362 (2007).

<sup>22</sup> Mont. Code Ann. § 25-13-609(1) (2009) (explicitly allowing exemption of firearms in addition to the one exempted under § 25-13-613(1)(b)); Ohio Rev. Code Ann. §2329.66 (2010); Wis. Stat. § 815.18 (2009).

<sup>23</sup> Okla. Stat. tit. 31, § 1(a)(14) (2009).

the firearms are to be “held primarily for the personal, family, or household use of [the debtor].”<sup>24</sup> Oregon law specifies that the firearms must be “for the own use and defense of the citizen.”<sup>25</sup> Only one state, Louisiana, requires that the exempted firearm be used for business purposes.<sup>26</sup> Both Montana and Nevada exempt “all arms ... required by law to be kept by any person”<sup>27</sup> in addition to the one gun, selected by the debtor, that each allows.

## Proposed Legislation

H.R. 1181, the Protecting Gun Owners in Bankruptcy Act of 2011, was introduced on March 17, 2011, in the 112<sup>th</sup> Congress. The bill parallels an earlier bill<sup>28</sup> passed by the House in the 111<sup>th</sup> Congress, but not voted on by the Senate. The bill would provide a firearms exemption that could be used in bankruptcy by a debtor who opted to use federal rather than state exemptions and was allowed to do so by the relevant state’s law.

The bill would amend § 522(d) of the Bankruptcy Code to add an exemption for the debtor’s aggregate interest—up to a total value of \$3,000—“in a single rifle, shotgun, or pistol or any combination thereof.”<sup>29</sup> The addition of this exemption would not reduce the amount allowed for any other type of exemption under § 522.

Additionally, the bill would amend § 522(f)(4)(A) to include firearms in the definition of “household goods.” As with the exemption for firearms, this provision would apply to any number or combination of rifles, shotguns, and pistols so long as the aggregate value was no more than \$3,000. Inclusion of firearms in the definition of household goods would not increase the exemption available for firearms, but it would allow debtors to avoid liens that are nonpossessory, nonpurchase-money security interests on those firearms, under § 522(f)(1)(B), as they are currently able to avoid such liens on other household goods. The bill would not change the maximum value of household goods whose liens could be avoided in bankruptcy.

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<sup>24</sup> Ohio Rev. Code Ann. § 2329.66(A)(4)(a); Okla.Stat. tit. 31, § 1(A)(14); Wis. Stat. § 815.18(3)(d).

<sup>25</sup> Or. Rev. Stat. § 18.362.

<sup>26</sup> La. Rev. Stat. Ann. § 13:3881(A)(2)(e) (2009) (“property necessary to the exercise of a trade, calling, or profession by which [the debtor] earns his livelihood”).

<sup>27</sup> Mont. Code Ann. § 25-13-613(1)(b); Nev. Rev. Stat. Ann. § 21.090(1)(i).

<sup>28</sup> H.R. 5827 (111<sup>th</sup> Congress). The bill reported out of committee and passed by the House differed from the introduced version of the bill, which would have exempted a single rifle, shotgun, or pistol of any value, but which would have limited the aggregate value of multiple firearms to \$1,500.

<sup>29</sup> H.R. 1181 § 2 (adding 11 U.S.C. § 522(d)(13)).

Table I. State Exemptions for Firearms

State	Statutory Text
<p><b>Arizona</b></p>	<p><b>Ariz. Rev. Stat. § 33-1125 (2011). Personal items.</b></p> <p>The following property of a debtor used primarily for personal, family or household purposes shall be exempt from process:</p> <p>7. One typewriter, one bicycle, one sewing machine, a family bible, a lot in any burial ground, one shotgun or one rifle or one pistol, not in excess of an aggregate fair market value of five hundred dollars.</p>
<p><b>Idaho</b></p>	<p><b>Idaho Code Ann. § 11-605 (2011). Exemptions of personal property and disposable earnings subject to value limitations.</b></p> <p>(8) An individual is entitled to exemption of one (1) firearm valued at less than seven hundred fifty dollars (\$750), or less.</p>
<p><b>Iowa</b></p>	<p><b>Iowa Code § 627.6 (2010). General exemptions.</b></p> <p>A debtor who is a resident of this state may hold exempt from execution the following property:</p> <p>2. One shotgun, and either one rifle or one musket.</p>
<p><b>Louisiana</b></p>	<p><b>La. Rev. Stat. Ann. § 13:3881 (2011). General exemptions from seizure.</b></p> <p>A. The following income or property of a debtor is exempt from seizure under any writ, mandate, or process whatsoever, except as otherwise herein provided:</p> <p>(2) That property necessary to the exercise of a trade, calling, or profession by which he earns his livelihood, which shall be limited to the following:</p> <p>(e) One firearm with a maximum value of five hundred dollars.</p>
<p><b>Mississippi</b></p>	<p><b>Miss. Code Ann. § 85-3-1 (2010). Property exempt from seizure under execution or attachment.</b></p> <p>There shall be exempt from seizure under execution or attachment:</p> <p>(a) Tangible personal property of the following kinds selected by the debtor, not exceeding Ten Thousand Dollars (\$10,000.00) in cumulative value:</p> <p>(i) Household goods, wearing apparel, books, animals or crops;</p> <p>Household goods, as used in this paragraph (a), means clothing, furniture, appliances, one (1) radio and one (1) television, one (1) firearm, one (1) lawnmower, linens, china, crockery, kitchenware, and personal effects (including wedding rings) of the debtor and his dependents; however, works of art, electronic entertainment equipment (except one (1) television and one (1) radio), jewelry (other than wedding rings), and items acquired as antiques are not included within the scope of the term "household goods." This paragraph (a) shall not apply to distress warrants issued for collection of taxes due the state or to wages described in Section 85-3-4.</p>

State	Statutory Text
<b>Montana</b>	<p><b>Mont. Code Ann. § 25-13-609 (2010). Personal property exempt subject to value limitations.</b></p> <p>A judgment debtor is entitled to exemption from execution of the following:</p> <p>(1) the judgment debtor's interest, not to exceed \$4,500 in aggregate value, to the extent of a value not exceeding \$600 in any item of property, in household furnishings and goods, appliances, jewelry, wearing apparel, books, firearms and other sporting goods, animals, feed, crops, and musical instruments;</p> <p><b>Mont. Code Ann. § 25-13-613 (2010). Property necessary to carry out governmental functions.</b></p> <p>(1) In addition to the property mentioned in 25-13-609(1), the following property is exempt from all judgment debtors:</p> <p>(b) all arms, uniforms, and accouterments required by law to be kept by any person and one gun to be selected by the debtor.</p>
<b>Nevada</b>	<p><b>Nev. Rev. Stat. Ann. § 21.090 (2011). Property exempt from execution.</b></p> <p>I. The following property is exempt from execution, except as otherwise specifically provided in this section or required by federal law:</p> <p>(i) All arms, uniforms and accouterments required by law to be kept by any person, and also one gun, to be selected by the debtor.</p>
<b>Ohio</b>	<p><b>Ohio Rev. Code Ann. § 2329.66 (2011). Exempted interests and rights.</b></p> <p>(A) Every person who is domiciled in this state may hold property exempt from execution, garnishment, attachment, or sale to satisfy a judgment or order, as follows:</p> <p>(4) (a) The person's interest, not to exceed five hundred twenty-five dollars in any particular item or ten thousand seven hundred seventy-five dollars in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, firearms, and hunting and fishing equipment that are held primarily for the personal, family, or household use of the person.</p>
<b>Oklahoma</b>	<p><b>Okla. Stat. tit. 31, § 1 (2011). Property exempt from attachment, execution or other forced sale—Bankruptcy proceedings.</b></p> <p>A. Except as otherwise provided in this title and notwithstanding subsection B of this section, the following property shall be reserved to every person residing in the state, exempt from attachment or execution and every other species of forced sale for the payment of debts, except as herein provided:</p> <p>14. Guns, not to exceed Two Thousand Dollars (\$2,000.00) in aggregate value, that are held primarily for the personal, family or household use of such person or a dependent of such person, provided that nothing in this subsection shall be construed to allow a person to exempt guns which are used mainly as an investment or nonpersonal, family or household use.</p>



State	Statutory Text
Oregon	<b>Or. Rev. Stat. § 18.362 (2010). Exemption for firearms.</b> Every citizen of this state above the age of 16 years shall be entitled to have, hold and keep, for the own use and defense of the citizen and shall have exempt from execution one rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt under this section may not exceed \$1,000.
Texas	<b>Tex. Prop. Code Ann. § 42.002 (2010). Personal Property.</b> (a) The following personal property is exempt under Section 42.001 (a): (7) two firearms.
Wisconsin	<b>Wis. Stat. § 815.18 (2011). Property exempt from execution.</b> (3) Exempt property. The debtors interest in or right to receive the following property is exempt, except as specifically provided in this section and ss. 70.20 (2), 71.91 (5m) and (6), 74.55 (2) and 102.28 (5):  (d) Consumer goods. Household goods and furnishings, wearing apparel, keepsakes, jewelry and other articles of personal adornment, appliances, books, musical instruments, firearms, sporting goods, animals, or other tangible personal property held primarily for the personal, family or household use of the debtor or a dependent of the debtor, not to exceed \$12,000 in aggregate value.

**Source:** LexisNexis State Codes Database.

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