

SENATE BILL REPORT

HB 1233

As Reported By Senate Committee On:
Judiciary, April 1, 1999

Title: An act relating to the net value of a homestead exemption.

Brief Description: Determining the net value of a homestead exemption.

Sponsors: Representatives Edmonds, Sheahan and Constantine.

Brief History: Passed House 2/26/99, 96-0.

Committee Activity: Judiciary: 4/1/99 [DPA].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended.

Signed by Senators Heavey, Chair; Kline, Vice Chair; Costa, Goings, Hargrove, Haugen, Johnson, Long, McCaslin, Roach, Thibaudeau and Zarelli.

Staff: Dick Armstrong (786-7460)

Background: A homestead, the property an owner uses as a residence, is exempt from attachment, execution, and forced sale for the debts of an owner up to \$30,000. Judgments against a homestead owner that are greater than \$30,000 become liens on the value of the homestead in excess of the homestead exemption. In order to execute against the homestead, the judgment creditor must apply to the superior court of the county where the homestead is located for the appointment of an appraiser. The application for an appraiser must show: (1) an execution has been levied upon the homestead, (2) the name of the owner of the homestead property, and (3) that the net value of the homestead exceeds the amount of the homestead exemption. Net value is defined as market value less "all liens and encumbrances." The time at which net value should be calculated is not specified.

In *Robin Miller Construction Co. (RMC) v. Coltran*, a 1997 Washington Court of Appeals case, the questions of whether a judgment could be executed against a homestead turned on the time at which the net value of the homestead was calculated. If the net value was calculated at the time the judgment was recorded, the net value would exceed the homestead exemption. If the net value was calculated at the time the judgment was executed, the net value would not exceed the homestead exemption, due to additional encumbrances incurred by the owner after the judgment was recorded. The court of appeals affirmed the trial court decision to calculate net value at the latter time. The court interpreted the phrase "all liens and encumbrances" in the homestead law to include encumbrances incurred after the judgment was recorded, as well as the specific judgment being executed.

Summary of Amended Bill: Net value of a homestead is calculated at the time the judgment is executed. All liens and encumbrances are included in the calculation except that

the specific judgment being executed upon, and all encumbrances junior to that judgment, are excluded from the calculation.

Amended Bill Compared to Original Bill: Technical change only to carry out the intent of the sponsors.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill makes the law read the way everyone thought a homestead was calculated. The court case made a radical interpretation of the statute. The court case allows a person to accumulate judgments in a way that unfairly penalizes creditors and is contrary to the way the law has been interpreted for many years. There is no opposition to the bill and it is supported by the Bar Association. The amendment is technical in nature.

Testimony Against: None.

Testified: Charles P. Helm, Daniel Brink, WSBA (pro).