

House Bill 549

In The House

January 28, 1981

Introduced and referred
to Committee on Taxation.

February 13, 1981

Committee recommend bill
do not pass.

1 HOUSE BILL NO. 549
2 INTRODUCED BY Arlyn Roth Sales

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
5 LAW ON THE HOMESTEAD EXEMPTION; ALLOWING THE DECLARATION OF
6 HOMESTEAD TO BE MADE AFTER A JUDGMENT IS ENTERED AND
7 REQUIRING THE COURT TO SELECT A HOMESTEAD BEFORE ISSUING A
8 WRIT OF EXECUTION IF ONE HAS NOT ALREADY BEEN SELECTED;
9 REVISING QUANTITY LIMITATIONS ON SELECTION OF A HOMESTEAD;
10 AND REMOVING THE VALUE LIMITATION ON THE HOMESTEAD
11 EXEMPTION; AMENDING SECTIONS 70-32-104 THROUGH 70-32-106,
12 AND 70-32-202, MCA; REPEALING SECTIONS 70-32-203 THROUGH
13 70-32-215, MCA."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. Section 70-32-104, MCA, is amended to read:

17 "70-32-104. Limitations on quantity and value which
18 may be selected. (1) Homesteads may be selected and claimed*

19 ~~to~~ consisting of:

20 (a) any a quantity of land not exceeding 320 acres
21 used for agricultural purposes and the dwelling house
22 thereon and its appurtenances and not included in any town
23 plot, city, or village; or

24 (b) a quantity of land not exceeding in--amount
25 one-fourth--of--an 2 acre acres being-within-a-town-plot*

1 city, or village not used for agricultural or commercial
2 purposes and the dwelling house thereon and its
3 appurtenances.

4 (2) ~~Such homesteady in either case shall not exceed~~
5 ~~in value the sum of \$20,000. However in any proceedings~~
6 ~~instituted to determine the value of such homesteady the~~
7 ~~assessed value of such land with included appurtenances, if~~
8 ~~any, and of such dwelling house as appears on the last~~
9 ~~completed assessment roll preceding the institution of such~~
10 ~~proceedings shall be prima facie evidence of the value of~~
11 ~~the property claimed as a homestead. The homestead selected~~
12 ~~is not limited to any value."~~

13 Section 2. Section 70-32-105, MCA, is amended to read:

14 "70-32-105. Mode of selection -- declaration required
15 by head of a family -- selection by court. (1) The head of a
16 family may select a homestead. In order to select a
17 homestead, the head of a family must execute and
18 acknowledge, in the same manner as a grant of real property
19 is acknowledged, a declaration of homestead and file the
20 same for record.

21 (2) The court, before issuing a writ of execution,
22 shall select a homestead for the judgment debtor if one has
23 not already been selected."

24 Section 3. Section 70-32-106, MCA, is amended to read:

25 "70-32-106. Contents of declaration. The A declaration

-2- INTRODUCED BILL
HB 549

1 of homestead ~~executed by the head of a family~~ must contain:

2 (1) a statement showing that the person making it is
3 the head of a family. If both spouses join in the
4 declaration, this fact shall be stated.

5 (2) a statement that the person making it is residing
6 on the premises and claims them as a homestead;

7 (3) a description of the premises;

8 ~~(4) an estimate of their actual cash value."~~

9 Section 4. Section 70-32-202, MCA, is amended to read:

10 "70-32-202. Execution allowed under certain judgments.
11 The homestead is subject to execution or forced sale in
12 satisfaction of judgments obtained:

13 (1) before July 1, 1981, and before the declaration of
14 homestead was filed for record and which constitute liens
15 upon the premises;

16 (2) on debts secured by mechanics' or vendors' liens
17 upon the premises;

18 (3) on debts secured by ~~purchase-money~~ mortgages on
19 the premises, executed and acknowledged by the husband and
20 wife or by an unmarried claimant;

21 (4) on debts secured by mortgages on the premises,
22 executed and recorded ~~before the declaration of homestead~~
23 ~~was filed for record, the husband or wife or the unmarried~~
24 ~~claimant acquired an interest in the premises;~~

25 (5) on debts secured by nonpurchase-money mortgages on

1 ~~the premises for which waivers of homestead exemption~~
2 ~~provided for in [section 5] have been executed."~~

3 NEW SECTION. Section 5. Waiver of homestead exemption
4 -- nonpurchase-money mortgage. (1) The homestead exemption
5 may be waived for nonpurchase-money mortgages by executing a
6 homestead exemption waiver in substantially the following
7 form:

8 WAIVER OF HOMESTEAD EXEMPTION
9 FROM EXECUTION AND FORCED SALE

10 I waive my homestead exemption. I do this knowing that
11 my homestead generally could not otherwise be taken to
12 satisfy my debts. Upon signing this agreement I realize that
13 my homestead may now be sold by forced sale to pay the debt
14 I am now incurring with (name of mortgagee).

15 I voluntarily and knowingly waive the exemption of my
16 homestead from execution and forced sale for the following
17 consideration \$..... (amount of loan).

18 The description of the homestead property mortgaged is:
19
20
21
22 Mortgagor

23 (2) The waiver must be printed on a separate piece of
24 paper and is to contain no other provision.

25 (3) If the head of a family is married, both spouses

LC 2014/01

1 must sign the waiver.

2 Section 6. Codification instruction. Section 5 is
3 intended to be codified as an integral part of Title 70,
4 chapter 32, and the provisions of Title 70, chapter 32,
5 apply to section 5.

6 Section 7. Repealer. Sections 70-32-203 through
7 70-32-215, MCA, are repealed.

-End-

March 17, 1981

SENATE STANDING COMMITTEE REPORT
(Business and Industry)

That House Bill No. 550 be amended as follows:

1. Title, line 5

Following: "~~\$40,000~~"

Insert: "INCREASING THE EXEMPTION TO \$40,000;"

2. Page 2, line 19

Following: "\$40,000"

Strike: "\$20,000"

Insert: "\$40,000"