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H.B. 674: Ohio Opt's Out of the Federal Bankruptcy Exemptions and Revises Its Exemption Laws

Gregory Keith Todd
University of Dayton

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H. B. 674: OHIO OPTS OUTS OF THE FEDERAL BANKRUPTCY EXEMPTIONS AND REVISES ITS EXEMPTION LAWS

I. INTRODUCTION

After a creditor has obtained a judgment against a debtor, the creditor must normally initiate some action in order to receive money¹ or goods² to satisfy the claim. States generally recognize that certain items belonging to the debtor are not available to the creditor for the satisfaction of the judgment.³ Generally referred to as exemption statutes, these provisions bring into focus the legislature's concern for balancing the right of a creditor to have what he deserves against the debtor's need to maintain a subsistence level in society.⁴

In order to effectuate this balance, several purposes for exemption statutes have been identified. Exemption statutes should protect the debtor,⁵ the debtor's dependents,⁶ and the family unit.⁷ Exemption statutes should also aid in the education and rehabilitation of the debtor⁸ to avoid the reoccurrence of the situation, and direct the debtor back

1. The standard procedure for receiving money is by using a *garnishment* order against the debtor's employer (conceptually, anyone holding money or property for the benefit of the debtor). This forces the employer to withhold a specified amount from the debtor's paycheck and turn it over to the court, which will then be made available to the creditor. *Holly v. Dayton View Terrace Improvement Corp.*, 25 Ohio Misc. 57, 61, 263 N.E.2d 337, 343 (Montgomery County C. P. 1970). For a general survey of the history of garnishment in Ohio and the legislative history of the early garnishment statutes, see *Morris Plan Bank v. Viona*, 122 Ohio St. 28, 170 N.E. 650 (1930). See generally Countryman, *The Bill of Rights and the Bill Collector*, 15 ARIZ. L. REV. 521 (1973); 32 OHIO ST. L.J. 856 (1971).

2. Although sometimes confused with a garnishment proceeding, a levy is an action to seize the property of the debtor, sell the property, then distribute the proceeds of sale to the creditor. The distinctions are conceptually important because a garnishment is against a third person holding property or money of the debtor while a levy is against the debtor himself. *Morgan v. Kinney*, 38 Ohio St. 610 (1883).

3. *Clark v. Nirenbaum*, 8 F.2d 451, 452 (5th Cir. 1925), *cert. denied*, 270 U.S. 649 (1926); *Chilote v. Conley*, 36 Ohio St. 545, 548 (1881).

4. The right of subsistence has been developed by society's refusal to tolerate bargains of last resort such as indentured servitude, or usury, see generally A. OKUM, EQUALITY AND EFFICIENCY THE BIG TRADEOFF (1975), and imprisonment for debt, see Ford, *Imprisonment for Debt*, 25 MICH. L. REV. 24, 32 (1926). See also Comment, *Personal Property Exemptions and the Uniform Exemptions Act*, 1978 B.Y.U. L. REV. 462, 467-68 (1978).

5. Vukowich, *Debtors' Exemption Rights*, 62 GEO. L.J. 779, 785 (1974).

6. *Id.* See, e.g., *Elof v. Riesch*, 14 Wis. 2d 419, 424, 111 N.W.2d 578, 581 (1961).

7. Vukowich, *supra* note 5, at 785.

8. *Cleveland Arcade Co. v. Talcott*, 22 Ohio App. 516, 517, 154 N.E. 62, 63 (1926).

into productive society. Exemption statutes also help the debtor avoid social aid,⁹ and bankruptcy.¹⁰

In 1979, both Congress and the Ohio Legislature revised their exemption laws. Congress revised the exemption laws which apply to debtors in bankruptcy,¹¹ but allowed each state to specifically reject the federal exemptions and replace them with the state's exemptions.¹² Ohio has exercised this option. H.B. 674¹³ provides exemptions for Ohio debtors in bankruptcy court as well as in state court for the execution of judgments.¹⁴

This analysis will examine the specific provisions of Ohio's new exemption laws and compare these with Ohio's former laws, the federal exemptions,¹⁵ and the Uniform Exemptions Act.¹⁶ Ohio's new provisions will also be scrutinized in light of the general purposes of exemption laws.

II. ANALYSIS

The majority of Ohio's former exemptions were over one hundred years old.¹⁷ The homestead exemption, for example, was originally set

9. Compare Vukowich, *supra* note 5, at 786, with Note, *Bankruptcy Exemptions: Critique and Suggestions*, 68 YALE L.J. 1459, 1498 (1959), which argues that welfare is a more efficient method of distribution than making a single creditor suffer the loss.

10. Vukowich, *supra* note 5, at 787.

11. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, § 101, 92 Stat. 2549 (1978) (codified in 11 U.S.C. §§ 101-151326 (Supp. II 1978)) (enacted November 6, 1978, effective October 1, 1979). This is the first major revision of the bankruptcy laws for individuals since the Nelson Act, ch. 542, 30 Stat. 544 (1898).

12. 11 U.S.C. § 522(b)-(b)(1) (Supp. II 1978) provides: "an individual debtor may exempt . . . property [from bankruptcy] . . . that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor . . . does not so authorize . . ."

13. Am. Sub. H.B. 674, 113th Ohio General Assembly (1979), codified in OHIO REV. CODE ANN. §§ 1311.06, .34, 1313.18, .36, 1775.24, 1911.33, 2127.26, 2323.09, 2329.66, .661, .662, .67, .68, .69, .72, 2715.11, 3113.21, 3923.19, 4399.04, 5309.70, 5719.08 (Page Supp. 1979).

14. H.B. 674 will control the exemptions of both bankruptcy and state actions for execution of judgment. This creates a very unusual situation of state law superseding federal law, albeit by congressional grace, in a situation where the Constitution has specifically authorized Congress to act. U.S. CONST. art. I, § 8: "The Congress shall have the power . . . [t]o establish . . . uniform [l]aws on the subject of [b]ankruptcies throughout the United States."

This anomaly can be partially explained away by the doctrine of *local concern*. Cf. *Cooley v. Bd. of Port Wardens*, 53 U.S. (12 How.) 299 (1851) (involving the commerce clause and its limitations). Certain features of American life, like the debtor-creditor relationship, are of such local nature because of varying social conditions. See L. TRIBE, *AMERICAN CONSTITUTIONAL LAW*, 325 (1978).

15. 11 U.S.C. § 522(d) (Supp. II 1978).

16. UNIFORM EXEMPTIONS ACT [hereinafter as UEA].

17. Testimony on H.B. 674 before the Ohio House Judiciary Committee by Richard C. Irvin, Attorney for the Columbus Legal Aid Society, June 28, 1979 (copy on file in the Ohio Legislative Service Commission Library).

at \$500 in 1850.¹⁸ It was raised to \$1,000 in 1900,¹⁹ and remained at this value until the enactment of H.B. 674 in 1979 when it was raised to \$5,000.²⁰ Both H.B. 674 and the Federal Bankruptcy Reform Act exemptions are coupled to specific monetary amounts.²¹ The UEA, however, uses an economic indicator to adjust the values of its exemptions.²² This alleviates some of the problems of obsolescence because of inflation. Although a concern for the revision of outdated exemption provisions²³ was expressed as one of the major purposes of H.B. 674, the absence of any political influence by debtors and any self-executing adjustments to the amounts for exemption, and the effect of inflation will quickly lead to the same situation of obsolete law which H.B. 674 was enacted to abort.

The major revisions of Ohio's exemption laws are embodied in section 2329.66 of the Ohio Revised Code. These changes include alteration of the amounts and types of property as well as changes in the substantive provisions of the section. The major substantive change is the consolidation of all debtors under one section, and the elimination of the head-of-household requirement from the exemption laws.²⁴ Thus, Ohio has recognized that the debtor is the primary concern of its exemption statutes.²⁵ This follows the UEA.²⁶ But in raising the individual debtor to the plane of debtors with families, the Ohio law fails to sufficiently differentiate between the needs of these two types of debtors. This may be somewhat inequitable to the family members of a debtor because the financial needs of a single debtor are significantly less than the needs of even the nuclear family.

H.B. 674 makes no distinction between state actions for satisfying a judgment or a proceeding in bankruptcy. One of the goals of state exemption statutes is to avoid bankruptcy for the benefit of both the creditor, by allowing him complete satisfaction, and the debtor, by avoiding the stigma of bankruptcy.²⁷ H.B. 674 fails to differentiate to

18. *Id.*

19. *Id.*

20. OHIO REV. CODE ANN. § 2329.66(A)(1) (Page Supp. 1979).

21. *Id.* § 2329.66(A); 11 U.S.C. § 522 (d) (Supp. II 1978).

22. UEA § 2(a) connects the adjustment to the Consumer Price Index.

23. Am. Sub. H.B. 674, 113th Ohio General Assembly (1979). The bill's enacting clause states: "A Bill . . . to revise this state's statutes governing exemptions from execution, garnishment and attachment . . ."

24. The former provisions divided debtors into two types: individuals, OHIO REV. CODE ANN. § 2329.62 (Page 1954) (repealed 1979), and heads of households, which included the primary providers for the family, persons paying alimony or support payments, and widows, *id.* § 2329.66 (amended 1979).

25. See Vukowich, *supra* note 5, at 785.

26. UEA § 4.

27. See Vukowich, *supra* note 5, at 787.

any significant degree between the two procedures and may, therefore, promote bankruptcy.²⁸

Section 2329.66 also enumerates the various exempt interests and the conditions for exemption.

A. Homestead

Under the former Ohio law, families were permitted to exempt property worth no more than \$1,000 in value for use as the family residence.²⁹ After H.B. 674, a person is permitted to exempt his interest in real or personal property used as the debtor's residence or for the debtor's dependents to the amount of \$5,000.³⁰ The term "interest" is defined to mean the value of the property minus any liens on the property.³¹ This allows the debtor to exempt his interest in the property rather than its fair market value.³² The federal bankruptcy law, however, exempts a homestead interest of \$7,500.³³ The UEA exempts \$10,000.³⁴

The Ohio exemption law recognizes real and personal property for

28. *Id.* If the debtor has a choice of proceedings, the logical decision would be for bankruptcy because it would extinguish the debt even if it is not satisfied. In a state proceeding, the judgment would remain until satisfied.

29. OHIO REV. CODE ANN. § 2329.66 (Page 1954) (amended 1979).

30. OHIO REV. CODE ANN. § 2329.66(A)(1) (Page Supp. 1979).

31. *Id.* § 2329.66(C).

32. The switch from "value" to "interest" nullifies *In re Johnson*, 15 Ohio Misc. 207 (S.D. Ohio 1968). In *Johnson*, Referee Kelleher held that the debtor could not exempt his equity in encumbered property. The debtor must claim the fair market value of any real estate for his homestead. Referee Kelleher was bound under *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938), to follow Ohio case law because it was on point, see *Schumacher v. Ohio Sav. & Trust Co.*, 121 Ohio St. 446, 169 N.E. 442 (1929); *Biddinger v. Pratt*, 50 Ohio St. 719, 35 N.E. 795 (1893); *Bartran v. McCracken*, 41 Ohio St. 377 (1884). He was tempted, however, to hold for the debtor but "resisted, as an unwarranted judicial invasion into the province of the Legislature." 15 Ohio Misc. at 214.

Referee Kelleher admonished the legislature by warning that the "temptation to be liberal in the application of the exemption statutes of Ohio is great. They are almost a century old without any significant revision. They are not only outdated by time, but are completely outmoded in concept, miserably failing in their supposed purpose." *Id.* at 213-14. Although not entirely objective, he accurately summed up Ohio's homestead exemption as a law which exempts "a family homestead not exceeding one thousand dollars in value." How very generous! With to-days' [sic] land values and building costs only a squalid hovel on a spit of the wonderful world of Ohio would qualify." *Id.* at 214. The Ohio Legislature responded eleven years later with H.B. 674.

Now a debtor is able to exempt his equity in property as a homestead. Although limited to \$5,000, H.B. 674 allows the debtor to hold a substantial amount of property, albeit encumbered, as compared to only \$1,000 in value under the former statute. OHIO REV. CODE ANN. § 2329.66(A)(1) (Page Supp. 1979).

33. 11 U.S.C. § 522(d)(1) (Supp. II 1978).

34. UEA § 4(a).

the homestead exemption. This would probably include mobile homes. The probate provision,³⁵ however, omits the term "personal property." An argument that the specific probate provision limits the general exemption provision would lead a court to reasonably conclude that mobile homes should be available to satisfy the debts of the estate and should not be protected by the homestead exemption.

The limitation on the general exemption, and the low amount in comparison with the Bankruptcy Act and the UEA, indicate Ohio's concern that the homestead exemption not be enlarged too far. This is well founded in light of the movement away from a land-dependent agrarian society toward an urban society. There is less reason for the debtor to depend on his land for support. The growth in acceptance of apartments as housing alternatives also supports a decreased emphasis on the homestead exemption.

B. Motor Vehicle

No exemption was allowed for motor vehicles under Ohio's former law unless the debtor could demonstrate a business purpose for the vehicle.³⁶ Now an Ohio debtor may exempt a motor vehicle where his interest does not exceed \$1,000.³⁷ This is a significant increase over the former provision, but \$200 less than that allowed by the bankruptcy laws.³⁸ This provision is a step forward in promoting the rehabilitation of the debtor by allowing him to retain a mode of transportation to and from work. The legislature was very specific, however, in allowing only one vehicle for exemption. The debtor may not exempt two vehicles worth \$500 or any other combination. This would allow the creditor to levy against the second car but that may be particularly harsh on the family of the debtor especially if the spouse is also employed.

35. OHIO REV. CODE ANN. § 2127.26 (Page Supp. 1979). This provision has been revised only for internal consistency. It provides a specific exemption for the widow and dependents of the deceased debtor when a sale is necessary to satisfy the debts of the estate. *Id.* § 2127.02 (Page 1976). See generally Bratt, *Cooperative Apartments: A Survey of Legal Treatment and an Argument for Homestead Protection*, 1978 U. ILL. L.F. 761, 801 (1978); Curry, *Intestate Succession and Wills: A Comparative Analysis of Article II of the Uniform Probate Code and the Law of Ohio*, 34 OHIO ST. L.J. 114, 149 n.220 (1973); Roberts, *How the Family Fares: A Comparison of the Uniform Probate Code and the Ohio Probate Reform Act*, 37 OHIO ST. L.J. 321, 323 (1976).

36. OHIO REV. CODE ANN. § 2329.66(E) (Page 1954) (amended 1979). The debtor (if he was the chief supporter of a family) would have to make an argument that his vehicle was a tool needed for his trade or business. Even then the exempt value was limited to \$200.

37. OHIO REV. CODE ANN. § 2329.66(A)(2) (Page Supp. 1979).

38. 11 U.S.C. § 522(d)(2) (Supp. II 1978).

C. *Personal Property*

All wearing apparel, beds, and bedding for the debtor and his family were exempt under the former law.³⁹ This exempted mink as well as flannel, silk as well as cotton, and was inequitable to the creditor. For single debtors with no dependents only \$300 worth of wearing apparel was exempted.⁴⁰ The new provision combines and modifies these two laws by exempting all wearing apparel, goods and furnishings but limits the value of any particular item to \$200.⁴¹ The Bankruptcy Act is very similar, but goes further in enumerating the various types of items exempt.⁴² The Bankruptcy Act also includes a restriction in that the items exempted must be for the personal use of the debtor or his dependents.⁴³ The UEA provides exemptions for personal property with a value limitation of \$500 on any one item.⁴⁴ The UEA divides this property into three descriptive categories — furnishings and appliances for one household, wearing apparel and personalty, and heirlooms.⁴⁵ Both the UEA and H.B. 674 avoid the problem of legislative enumeration of specific items.⁴⁶ This permits the debtor to maintain some control over his future by allowing him to choose what to exempt in light of his own circumstances.

D. *Jewelry*

Although jewelry was not mentioned in Ohio's former exemption statute, both H.B. 674 and the Bankruptcy Act specifically provide for the exemption of jewelry. The new Ohio provision permits exemption of one piece of jewelry worth no more than \$400 and other pieces worth no more than \$200.⁴⁷ The UEA follows a pattern similar to the bankruptcy law; \$750 worth of personal jewelry is exempt by the UEA.⁴⁸ The UEA allows some additional flexibility, however, by permitting the debtor to exempt some jewelry as heirlooms through the personal property exemption.⁴⁹

39. OHIO REV. CODE ANN. § 2329.66(A) (Page 1954) (amended 1979).

40. *Id.* § 2329.62(A).

41. *Id.* § 2329.66(A)(3) (Page Supp. 1979).

42. 11 U.S.C. § 522(d)(3) (Supp. II 1978).

43. *Id.*

44. UEA § 8.

45. *Id.*

46. *See generally* Comment, *Personal Property Exemptions and the Uniform Exemptions Act*, 1978 B.Y.U. L. REV. 462, 472 (1978).

47. OHIO REV. CODE ANN. § 2329.66(A)(4)(c) (Page Supp. 1979). *But see* § 2329.66(A)(4)(d) which requires the debtor to add his interests in household furnishings, and jewelry. The total amount of the interests may not exceed \$2,000. This amount is reduced to \$1,500 if the debtor has claimed a homestead exemption. *Id.*

48. *Compare* UEA § 8(b) with 11 U.S.C. § 522(d)(2) (Supp. II 1978).

49. UEA § 8(a).

E. Other Property

In the specific instance of a bankruptcy proceeding, H.B. 674 allows for \$400 in cash for the debtor.⁵⁰ Ohio also allows for \$400 worth of other property not already exempted.⁵¹ This generally follows the scheme of the Bankruptcy Act's exemption of \$400 in cash plus the remainder of the debtor's unused homestead exemption,⁵² but makes Ohio's provision quantitatively more restrictive than the federal law.

F. Tools of Trade

Ohio increased its exemption for tools of trade and other income producing equipment from \$150 to \$750.⁵³ This is equivalent to the federal bankruptcy law's exemption.⁵⁴ Both permit the debtor to rehabilitate himself by allowing him to maintain his mode of employment if he is self-employed. The UEA provides a \$1,000 exemption for tools of trade.⁵⁵ This is more generous than either H.B. 674 or the Bankruptcy Act and reflects a real concern for allowing the debtor to return to productive society. The UEA has also included the term "implements"⁵⁶ which could include personal tools for home or automobile maintenance. This term is used in H.B. 674 but is modified by "profession, trade, or business,"⁵⁷ which would limit those items to income producing tools or implements. It would be difficult to fit such personal tools under the personal property exemption⁵⁸ because the enumeration there would arguably exclude those not mentioned.

G. Health Aids

Health aids were not recognized exemptions under the former Ohio law, but section 2329.66(A)(7) now recognizes an exemption for all professionally prescribed or medically necessary health aids of the debtor.⁵⁹ The description may create an issue whether an aid can be medically necessary without being professionally prescribed. This

50. OHIO REV. CODE ANN. § 2329.66(A)(4)(a) (Page Supp. 1979). "This division applies only in bankruptcy proceedings." *Id.*

51. *Id.* § 2329.66(A)(17).

52. 11 U.S.C. § 522(d)(5) (Supp. II 1978). This could mean as much as \$7,900 in cash is exempted if the bankrupt debtor does not have, or claim, a homestead exemption.

53. OHIO REV. CODE ANN. § 2329.66(A)(5) (Page Supp. 1979) (amending and renumbering § 2329.66(E) (Page 1954)).

54. 11 U.S.C. § 522(d)(6) (Supp. II 1978).

55. UEA § 8(c).

56. *Id.*

57. OHIO REV. CODE ANN. § 2329.66(A)(5) (Page Supp. 1979).

58. *Id.* § 2329.66(A)(3).

59. *Id.* § 2329.66(A)(7).

could give rise to unnecessary litigation because "medically necessary" is not defined in the statute. Only those aids professionally prescribed are exempted under the federal law.⁶⁰ There is also no mention of health aids for the debtor's dependents in the Ohio law. This could be very harsh on the family unit of the debtor, and may force him to seek government aid to defray the cost of his family's medical needs. This problem was recognized in the Bankruptcy Act and the UEA which exempt health aids for both the debtor and his dependents.⁶¹

H. Garnishment

Ohio's garnishment laws were preempted in 1971,⁶² and were substantially revised in 1973⁶³ to incorporate the federal standards.⁶⁴ H.B. 674 reenacts these provisions and consolidates them for all debtors.⁶⁵ The current law provides for the exemption of either 75% of a debtor's weekly, biweekly, semimonthly, or monthly minimum wage;⁶⁶ on 75% of the debtor's disposable earnings,⁶⁷ whichever is greater.⁶⁸ H.B. 674 defines the term "disposable earnings" as the employee's net earnings after the employer has subtracted state and federal taxes and FICA.⁶⁹

I. Other Provisions

H.B. 674 borrows some provisions from the Bankruptcy Act. These include an exemption of retirement pensions unless three conditions apply: (1) the plan was created by an insider;⁷⁰ (2) the pension payment is on account of age or length of service;⁷¹ and (3) it does not qualify under the Internal Revenue Code.⁷² This is identical to the

60. 11 U.S.C. § 522(d)(9) (Supp. II 1978).

61. *Id.*; UEA § 5(2).

62. *Hodgson v. Cleveland Mun. Ct.*, 326 F. Supp. 419 (N.D. Ohio 1971). For an analysis of this case and garnishment procedures in Ohio, see generally Note, *Garnishment in Ohio: Where Is It Now?*, 32 OHIO ST. L.J. 856, 856-58 (1971).

63. OHIO REV. CODE ANN. §§ 2329.62(C), 2329.66(G) (Page Supp. 1978) (repealed and amended 1979).

64. 29 U.S.C. § 206(2)(1) (1976); 15 U.S.C. § 1693 (1976). See generally Hawkland, *Federal Restrictions on Garnishments of Earnings: Herein of Title III of the Consumer Credit Protection Act*, 75 COM. L.J. 213, 215-17 (1970); Shuchman & Jantscher, *Effects of the Federal Minimum Exemption from Wage Garnishment on Nonbusiness Bankruptcy Rates*, 77 COM. L.J. 360 (1972); 50 N.D. L. REV. 762 (1974).

65. OHIO REV. CODE ANN. § 2329.66(A)(13) (Page Supp. 1979).

66. *Id.* § 2329.66(A)(13)(a).

67. *Id.* § 2329.66(A)(13)(b).

68. *Id.* § 2329.66(A)(13).

69. *Id.* § 2329.66(B)(1).

70. *Id.* § 2329.66(A)(10)(b)(i).

71. *Id.* § 2329.66(A)(10)(b)(ii).

72. *Id.* § 2329.66(A)(10)(b)(iii). The Internal Revenue Code establishes certain criteria for a pension, profit-sharing, or stock bonus plan. I.R.C. §§ 401-409A. Ohio

bankruptcy provisions for the exemption of pension plans.⁷³ H.B. 674's definition of the term "insider" is almost identical to the Bankruptcy Act's definition.⁷⁴ The Ohio federal courts should use federal interpretations of that term in bankruptcy proceedings to make Ohio's exemption statutes uniform with the federal provisions.

Ohio also borrowed the Bankruptcy Act's exemption for wrongful death awards.⁷⁵ Ohio restricts this exemption by requiring that the award be within the preceeding twelve months,⁷⁶ and the debtor must have been dependent on the deceased at the time of death.⁷⁷ Ohio reduces the federal standard of \$7,500, for awards for personal injury,⁷⁸ to only \$5,000.⁷⁹ The 33% reduction of the amount follows Ohio's general reduction scheme.⁸⁰ The rest of the provision's language follows the federal exemption. Ohio also permits an exemption of amounts received for the loss of future earnings,⁸¹ as does the bankruptcy law.⁸²

Both laws contain provisions qualifying application "to the extent *reasonably necessary* for the support of the debtor and any dependent of the debtor."⁸³ This phrase, undefined,⁸⁴ begs litigation for interpretation of the ambiguity.⁸⁵ It would permit the judge to consider the

has given deference to the Internal Revenue Code for determining the qualification of employee trusts, I.R.C. § 401(a), the taxation of employee annuities, I.R.C. § 408, and retirement bonds, I.R.C. § 409. Because the Ohio requirements for nonexemption are conjunctive, the plan can meet the insider and length of service criteria and still qualify for exemption if it qualifies under the Internal Revenue Code. See OHIO REV. CODE ANN. § 2329.66(A)(10)(b) (Page Supp. 1979).

73. 11 U.S.C. § 522(d)(10)(E) (Supp. II 1978).

74. Compare OHIO REV. CODE ANN. § 2329.66(B)(2) (Page Supp. 1979) with 11 U.S.C. § 101(25) (Supp. II 1978). The difference is in format, not content.

75. 11 U.S.C. § 522(d)(11)(B) (Supp. II 1978). The state and federal provisions are almost identical. OHIO REV. CODE ANN. § 2329.66(A)(12)(b) (Page Supp. 1979).

76. OHIO REV. CODE ANN. § 2329.66(A)(12)(b) (Page Supp. 1979).

77. *Id.*

78. 11 U.S.C. § 522(d)(11)(D) (Supp. II 1978).

79. OHIO REV. CODE ANN. § 2329.66(A)(12)(c) (Page Supp. 1979). "It is not, and never has been, the policy of the law to coin into money for the profit of his creditors the bodily pain, mental anguish, or outraged feelings of a bankrupt." *Sibley v. Nason*, 196 Mass. 125, 130, 81 N.E. 887, 889 (1907). This was quoted in *In re Schmelzer*, 350 F. Supp. 429, 434 (S.D. Ohio 1972), *aff'd*, 480 F.2d 1074 (6th Cir. 1973).

80. See, e.g., text accompanying notes 32-34, 51-52 *supra*.

81. OHIO REV. CODE ANN. § 2329.66(A)(12)(d) (Page Supp. 1979).

82. 11 U.S.C. § 522(d)(11)(E) (Supp. II 1978).

83. *Id.* § 522(d)(10)(D), (E), (11)(B), (C), (E) (emphasis added); OHIO REV. CODE ANN. § 2329.66(A)(10)(b), (11), (12)(b) (Page Supp. 1979) ("support of the person and any of his dependents").

84. Cf. Comment, *Personal Property Exemption and the Uniform Exemptions Act*, 1978 B.Y.U. L. REV. 462, 473 (1978) (although the author refers to the UEA, the phrase is identical).

85. See, e.g., *Independence Bank v. Heller*, 275 Cal. App. 2d 84, 79 Cal. Rptr. 868 (1969).

social condition of the debtor and his dependents to determine how comfortably they can live on the various exemptions regulated by this provision. This can also protect the creditor by allowing him access to assets beyond those needed to support the debtor. The UEA establishes criteria for use by courts in this context,⁸⁶ by employing a subjective analysis of the present condition of the debtor and his present responsibilities.⁸⁷

III. CONCLUSION

The Ohio Legislature, with the enactment of H.B. 674, has made sincere efforts at modernizing the exemption laws in this state. Nevertheless, in their efforts to avoid the generous nature of the federal bankruptcy laws, they have failed to sufficiently differentiate between proceedings in bankruptcy and state proceedings in aid of the execution of judgments against Ohio's debtors. H.B. 674 moves Ohio debtors into the twentieth century by providing strong support for debtors and their dependents. This provides that quality of mercy long absent from Ohio's exemption statutes while, at the same time, defending creditor's expectations by insuring that they can receive some or all of what they bargained for, but not more.

Gregory Keith Todd

Code Sections Affected: 2329.66⁸⁸

Effective Date: September 29, 1979

Chief Sponsor: McClaskey

Committee: Judiciary (H&S)

86. UEA § 6(b).

87. *Id.*

88. Sections 1311.06, 1311.34, 1313.18, 1313.36, 1775.24, 1911.33, 2127.26, 2323.09, 2329.66, 2329.67, 2329.68, 2329.69, 2329.72, 2715.11, 3113.21, 3923.19, 4399.04, 5309.70 and 5719.08 were amended. § 2329.72 was renumbered to § 2329.661. § 2329.662 was enacted. Sections 521.09, 741.16, 741.47, 2329.62, 2329.621, 2329.76, 2329.77, 2329.78 and 2329.79 were repealed by H.B. 674.