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BILL ANALYSIS

Senate Fiscal Agency

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Senate Bill 261 (as reported with amendments)

Sponsor: Senator Dan L. DeGrow

Committee: Judiciary

Mich. State Law Library

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RATIONALE

The Revised Judicature Act contains a list of property and assets that are considered exempt from execution to satisfy a judgment; that is, they cannot be taken from the defendant who loses a civil suit in order to satisfy the judgment. The list of items that are exempt ranges from family pictures to tools, disability income to shares in a savings and loan, and household goods to "10 sheep, 2 cows, and 5 swine . . .". The Act is silent, however, regarding pension or retirement plans. While public pension or retirement plans are exempted from execution under other State statutes, self employment retirement plans (versions of 401K retirement plans) are not exempted. This has caused great concerns among persons who have their own retirement programs, particularly persons in those professions who may, because of the nature of their work, be subjected to frequent and/or large civil lawsuits. Persons in the medical field in particular are worried: they claim that a lifetime of building assets can be threatened with the damages award of one liability suit if it is large enough to exhaust insurance protection, or if, for instance, a suit evolved after a medical professional quit or retired and dropped his or her insurance. Some people feel that persons with their own retirement plans should be allowed to have those assets exempted from execution in the same way that public retirement or pension plans are protected.

CONTENT

The bill would amend the Revised Judicature Act to exempt from levy and sale under any execution the right or interest of a person in an annuity, pension, profit sharing, or other retirement plan subject to the Federal Employee Retirement Income Security Act of 1974 (under which private employers who have a retirement plan must comply with certain requirements in order to protect the plan's assets). The bill specifies that this exemption also would apply to the operation of the Federal Bankruptcy Code (i.e., private pension plan assets could not be levied against as part of a bankruptcy estate).

The exemption would not apply to the right or interest of a person in an annuity, pension, profit sharing, or other retirement plan to the extent that the right or interest was subject to a court order pursuant to a judgment of divorce or separate maintenance, or a court order concerning child support. The exemption also would not apply to contributions to and the earnings on any retirement plans that are not "qualified retirement plans" as defined by the Internal Revenue Code (which exempts qualified retirement assets from taxation), nor would it apply to contributions made to a retirement plan within 120 days before an individual filed for bankruptcy.

Under the Act an individual retirement account or annuity is exempt from execution of a judgment unless it is a judgment of divorce or separate maintenance, or a court

order concerning child support. Contributions to an individual retirement account are also not exempt. The bill specifies that contributions up to \$2,000 annually would not be exempt.

MCL 600.6023

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

ARGUMENTS**Supporting Argument**

The size and scope of some civil liability judgments have caused alarm for many, particularly professionals in jobs that may require them to take calculated but necessary risks such as doctors. According to testimony before the Senate Judiciary Committee, large liability awards are driving doctors into bankruptcy, causing them to shy away from caring for high risk patients, and, in effect, changing the face of the medical profession. Persons who have carefully planned and saved for their retirement find themselves in confounding situations when the cost, limit, or unavailability of insurance against the normal, daily performance of their job threatens the loss of their retirement plan. It is only fair that that portion of a person's assets that has been set aside for retirement be exempt from civil liability judgments. In addition to sending a signal to people in high-risk professions that they may continue to do their job without fear of bankrupting their future, the bill would ensure that the taxpayers did not end up supporting persons who have been productive citizens but who have nothing to sustain themselves because they lost a lawsuit.

Opposing Argument

While the bill may be a product of good intentions, it could unfairly penalize plaintiffs who have been unjustly or incompetently treated by a person they had hired or to whom they had entrusted their safety. By shielding retirement assets from inclusion in civil judgments, the bill would create a shelter in which a person could dump all of their assets, and then behave with impunity because they had little to lose.

Response: Persons would find it hard to dump all of their assets into a retirement plan because of the restrictions placed on those plans by Federal law. Under most self-employment retirement plans, assets cannot be claimed by the owner until after age 60; withdrawal before that time is subject to severe penalties. A person cannot place any more than \$30,000 per year in a plan, or the plan is no longer considered qualified and thus would not be projected by the provisions of the bill. Federal law also provides that an employer with a retirement plan must

offer the same plan he or she has to any employees who are employed for more than three years, meaning that if an employer had an overly generous plan for himself or herself, the employer's contribution to the employees' plan could be prohibitively expensive.

In addition, under the bill, the exemption from execution of a judgment would not apply to contributions made to a retirement plan within 120 days before an individual filed for bankruptcy, which would help to prevent the hiding of assets in a retirement plan.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.