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BILL ANALYSIS

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House Bill 4010 (as reported without amendment)

Sponsor: Representative Michael J. Griffin

House Committee: Judiciary

Senate Committee: Judiciary

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RATIONALE

The Revised Judicature Act (RJA) exempts various sorts of property from levy and sale to enforce a judgment such as one rendered in bankruptcy proceedings. While an individual retirement account (IRA) is specifically protected, other forms of retirement plans are not. As a result, a person who declares bankruptcy can lose funds set aside for old age, and his or her family can also suffer from the loss of those retirement assets. Some believe that the law should be amended to protect these retirement plans from bankruptcy proceedings and other judgments.

CONTENT

The bill would amend the Revised Judicature Act to exempt certain retirement plan assets of a debtor or a debtor's dependents from bankruptcy proceedings and from execution for the enforcement of a judgment. The exemption would cover a person's interest in a pension, profit-sharing, stock bonus, annuity, or other retirement plan subject to the Federal Employee Retirement Income Security Act (ERISA). The exemption would not apply to contributions made within 120 days before the debtor filed for bankruptcy, nor would it apply in the execution of court orders for divorce or child support.

The 120-day restriction and the divorce and child support exclusion also would be extended to the existing exemption for an IRA. In addition, the bill would protect amounts

deposited in an IRA that were "rollovers" from the other retirement plans protected by the bill. (Ordinarily, IRA contributions in a given year in excess of the amount for which one can claim an income tax deduction are not protected from levy and sale to enforce a judgment.)

MCL 600.6203

FISCAL IMPACT

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

ARGUMENTS**Supporting Argument**

The bill would allow hard-earned retirement assets to be preserved and undue hardship for a debtor and his or her family to be avoided. Such protection is especially important for medical professionals whose vulnerability to malpractice judgments can leave them exposed to the loss of their retirement funds. Although some may fear that the bill would allow an inept professional to shelter and have access to large sums of money, that is not the case. By limiting the exemption's application to certain Federally-qualified retirement plans, the bill would ensure that Federal limits on contributions and benefit payments would also apply.

Response: The bill threatens to leave deserving injured parties without means to

collect malpractice awards. Even with Federal limitations, it is possible for contributions to retirement plans to total thousands of dollars per year and still be exempt from enforcement of a judgment. In essence, the bill would offer shrewd professionals the opportunity to forego malpractice insurance by shielding their money in retirement accounts.

Opposing Argument

The bill could actually decrease protection of IRA contributions. Since the IRA exemption in State law was enacted prior to the 1986 Federal tax reforms, contributions up to the deductible amount allowed under the Internal Revenue Code in 1984 (when the IRA exemption was enacted in Michigan law) are exempt from an execution. If the IRA exemption provision of the RJA were amended, however, the exemption would apply only up to the amount that the contributor could deduct at the time of amendment. (Generally, under the 1986 Federal tax reforms, IRA contributions are deductible only for those contributors who are not covered by another qualified retirement plan.) In addition, the bill would exempt from execution rollovers to IRAs from other protected plans, but would not address rollovers from other IRAs. Reportedly, courts are treating IRA-to-IRA rollovers as exempt now, but would not necessarily continue to do so if the bill were enacted.

Further, the bill need not specify that its proposed exemptions for retirement plan assets would apply to the Federal Bankruptcy Code. Simply listing the retirement plan assets would make those assets exempt "from levy and sale under any execution" (emphasis added). Citing the Bankruptcy Code only in the IRA and retirement assets exemptions, could lead courts to believe that the RJA's other exemptions did not apply to bankruptcy proceedings.

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