

SENATE BILL No. 104

February 6, 2001, Introduced by Senators GOSCHKA and HAMMERSTROM and referred to the Committee on Families, Mental Health and Human Services.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending section 2162 (MCL 600.2162), as amended by 2000 PA
182.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2162. (1) In a civil action or administrative proceed-
2 ing, a husband shall not be examined as a witness for or against
3 his wife without her consent or a wife for or against her husband
4 without his consent, except as provided in subsection (3).

5 (2) In a criminal prosecution, a husband shall not be
6 examined as a witness for or against his wife without his consent
7 or a wife for or against her husband without her consent, except
8 as provided in subsection (3).

1 (3) The spousal privileges established in subsections (1)
2 and (2) and the confidential communications privilege established
3 in subsection (7) do not apply in any of the following:

4 (a) In a suit for divorce.

5 (b) In a prosecution for bigamy.

6 (c) In a prosecution for a crime committed against a child
7 of either or both or a crime committed against an individual who
8 is younger than 18 years of age.

9 (d) In a cause of action that grows out of a personal wrong
10 or injury done by one to the other or that grows out of the
11 refusal or neglect to furnish the spouse or children with suit-
12 able support.

13 (e) In a case of desertion or abandonment.

14 ~~(f) In a case arising under section 6 of 1846 RS 83, MCL~~
15 ~~551.6, relating to marriage.~~

16 (F) ~~(g)~~ In a case in which the husband or wife is a party
17 to the record in a suit, action, or proceeding if the title to
18 the separate property of the husband or wife called or offered as
19 a witness, or if the title to property derived from, through, or
20 under the husband or wife called or offered as a witness, is the
21 subject matter in controversy or litigation in the suit, action,
22 or proceeding, in opposition to the claim or interest of the
23 other spouse, who is a party to the record in the suit, action,
24 or proceeding. In all such cases, the husband or wife who makes
25 the claim of title, or under or from whom the title is derived,
26 shall be as competent to testify in relation to the separate
27 property and the title to the separate property without the

1 consent of the husband or wife, who is a party to the record in
2 the suit, action, or proceeding, as though the marriage relation
3 did not exist.

4 (4) Except as otherwise provided in subsections (5) and (6),
5 a married person or a person who has been married previously
6 shall not be examined in a civil action or administrative pro-
7 ceeding as to any communication made between that person and his
8 or her spouse or former spouse during the marriage.

9 (5) A married person may be examined in a civil action or
10 administrative proceeding, with his or her consent, as to any
11 communication made between that person and his or her spouse
12 during the marriage regarding a matter described in subsection
13 ~~-(3)(a) to (g)-~~ (3).

14 (6) A person who has been married previously may be examined
15 in a civil action or administrative proceeding, with his or her
16 consent, as to any communication made between that person and his
17 or her former spouse during the marriage regarding a matter
18 described in subsection ~~-(3)(a) to (g)-~~ (3).

19 (7) Except as otherwise provided in subsection (3), a mar-
20 ried person or a person who has been married previously shall not
21 be examined in a criminal prosecution as to any communication
22 made between that person and his or her spouse or former spouse
23 during the marriage without the consent of the person to be
24 examined.

25 (8) In an action or proceeding instituted by the husband or
26 wife, in consequence of adultery, the husband and wife ~~shall~~
27 ARE not ~~be~~ competent to testify.