



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 1437 (as introduced 9-30-04)
Sponsor: Senator Alan L. Cropsey
Committee: Judiciary

Date Completed: 10-5-04

CONTENT

The bill would amend Chapter 60 (Enforcement of Judgments) of the Revised Judicature Act to revise the list of property of a debtor and the debtor's dependents that is exempt from levy and sale under an execution. The dollar amounts included in the exemptions would have to be adjusted every three years. Also, the bill provides that property held jointly by a husband and wife as a tenancy of the entirety is exempt from execution under a judgment entered against only one spouse.

Currently, the following property is exempt from levy and sale under any execution:

- All family pictures; all arms and accoutrements required by law to be kept by an person; all wearing apparel of every person or family; and provisions and fuel for comfortable subsistence of each householder and his or her family for six months.
- All household goods, furniture, utensils, books, and appliances, up to \$1,000 in value.
- A seat, pew, or slip occupied by the judgment debtor or his or her family in any house or place of public worship, and all cemeteries, tombs, and rights of burial while in use as repositories of the dead of the judgment debtor's family or kept for burial of the judgment debtor.
- To each householder, 10 sheep, two cows, five swine, 100 hens, five roosters, and a sufficient quantity of hay and grain, growing or otherwise, for properly keeping the animals and poultry for six months.
- The tools, implements, materials, stock, apparatus, team vehicle, motor vehicle, horses, harness, or other things to enable a person to carry on the profession, trade, occupation or business in which he or she is principally engaged, up to \$1,000 in value.
- Any money or other benefits paid, provided, or allowed to be paid, provided, or allowed by any stock or mutual life, health, or casualty insurance company because of the disability due to injury or sickness of an insured person, whether the debt or liability of the person or beneficiary was incurred before or after the accrual of benefits under the insurance policy or contract. (This exemption does not apply to actions to recover for necessities contracted for after the accrual of the benefits.)
- The shares held by any member who is a householder of any association incorporated under the Savings and Loan Act, up to \$1,000 in shares at par value. (This exemption does not apply to a person who has a homestead exempted under the general laws of the State.)
- A homestead of up to 40 acres of land and the dwelling house and appurtenances on that homestead, and not included in any recorded plat, city, or village, or, instead and at the owner's option, a quantity of land up to one lot within a recorded town plat, city, or

- village and the dwelling house and appurtenances on that land, owned and occupied by any Michigan resident, up to \$3,500 in value (subject to the exceptions described below).
- An equity of redemption.
 - The homestead of a family, after the death of the homestead's owner, from the payment of his or her debts in all cases during the minority of his or her children.
 - An individual retirement account (IRA) or individual retirement annuity as defined in the Internal Revenue Code (IRC), and the payments or distributions from those accounts or annuities (subject to exceptions described below).
 - The right or interest of a person in a pension, profit-sharing, stock bonus, or other plan qualified under Section 401 of the IRC, or a 403(b) annuity contract, if the plan or annuity is subject to the Federal Employee Retirement Income Security Act (ERISA) (subject to exceptions described below).

(The homestead exemption is available to any person owning and occupying any house on land not his or her own and that the person claims as a homestead. The exemption, however, does not apply to any lawfully obtained mortgage on the homestead, except that the mortgage is not valid without the signature of a married judgment debtor's spouse unless the mortgage is given to secure the payment of the purchase money for a portion of the purchase money or the mortgage is recorded in the office of the register of deeds in the county where the property is located, for a period of 25 years, and no notice of a claim of invalidity is filed during the 25 years following the recording of the mortgage.

The Act specifies that the exemption for IRAs and annuity contracts applies to the operation of Section 522(b)(2) of the Federal Bankruptcy Code (11 USC 522), which allows an individual debtor to exempt from property of the estate either property listed in the Code or property listed as exempt under state or local law. This exemption does not apply, however, to the portion of an IRA or annuity that is subject to a court order pursuant to a judgment of divorce or separate maintenance or a court order concerning child support; or the portion of an IRA or annuity that was attributable to contributions to the IRA or premiums on the annuity, including earnings or benefits from the contributions or premiums that, in the tax year made or paid, exceeded the deductible amount allowed under the IRC. This limitation does not apply to a rollover of a pension, profit-sharing, stock bonus plan, or other plan that is a qualified trust under Section 401 of the IRC or annuity contracts purchased by a nonprofit organization or public school under Section 403(b) of the Code.

The Act specifies that the exemption for a 401 plan or 403(b) annuity contract applies to the operation of Section 522(b)(2) of the Bankruptcy Code. The exemption does not apply, however, to any amount contributed to such a plan or annuity within 120 days before the debtor filed for bankruptcy. It also does not apply to the right or interest of a person in a 401 plan or a 403(b) annuity to the extent that the right or interest is subject to a court order pursuant to a judgment of divorce or separate maintenance or concerning child support.)

The bill would revise the list of exemptions by doing all of the following:

- Excluding furs from the exemption for wearing apparel.
- Exempting professionally prescribed health aids.
- Including jewelry in the exemption for household goods, furniture, utensils, books, and appliances; increasing the maximum value of the exempt items from \$1,000 to \$3,000; and establishing a maximum value of \$450 for each item.
- Limiting the exemption for a seat, pew, or slip in a house of public worship to \$500 in value.
- Deleting the exemption for particular numbers and types of livestock.
- Exempting the interest in crops, farm animals, and feed for the farm animals, up to \$2,000 in value, and the interest in household pets, up to \$500 in value.
- Exempting the interest in one computer and its accessories, up to \$500 in value.

- Deleting a team vehicle, motor vehicle, and horses and harness from the exemption for tools of a profession or trade, and increasing the maximum value of that exemption from \$1,000 to \$2,000.
- Exempting the interest in one motor vehicle, up to \$2,775 in value.
- Deleting the exemption for a homestead.
- Including Roth IRAs in the exemption for IRAs and annuities.

Under the bill, the interest of a debtor and his or her dependents in a homestead would be exempt from levy and sale under execution, up to \$30,000 in value or, if the debtor or a dependent were 65 years of age or older or disabled, up to \$45,000 in value. ("Disabled" would refer to a person unable to engage in substantial gainful activity as a result of a physical or mental impairment and receiving Supplemental Security Income under Federal law.)

In addition, the Act provides that, if a debtor's homestead is appraised at a value of more than \$3,500 and cannot be divided, the debtor still may claim the exemption, but the levying officer must deliver a notice, attached to a copy of the appraisal, to the debtor that unless he or she pays the amount above \$3,500 or the amount due on the execution within 60 days, the premises will be sold. The bill refers to the amount exceeding the available exemption for a homestead, rather than \$3,500.

Also, property held jointly by a husband and wife as a tenancy by the entirety would be exempt from execution under a judgment entered against only one spouse. ("Tenancy by the entirety" refers to a type of joint ownership available only to a husband and wife, where each owns the entire property and, after the death of one, the survivor takes the whole property without probate.)

The bill also would delete a provision under which the listed exemptions do not extend to any lien on the exempted property that is excluded from exemption by law. The bill specifies, instead, that an exemption would not apply to a mortgage, lien, or security interest in the exempt property that was consensually given or lawfully obtained, unless the lien was obtained by judgment, attachment, levy, or similar legal process in connection with a court action or proceeding against the debtor.

If exempt property were sold, damaged, destroyed, or acquired for public use, the right to receive proceeds or, if the owner received proceeds and held them in a manner that made them identifiable as proceeds, the proceeds received would be exempt from the property of a Federal bankruptcy estate in the same manner and amount as the exempt property. An exemption under this provision could be claimed up to one year after the owner received the proceeds. ("Proceeds" would mean money payable or paid as a result of sale of property; insurance or other indemnification for damage or destruction of property; and/or compensation for the acquisition for public use of the property.)

On March 1, 2005, and at the end of each subsequent three-year period, the State Treasurer would have to adjust each dollar amount in the exemptions or, for each adjustment after March 1, 2005, each adjusted amount, by an amount determined to reflect the cumulative change in the consumer price index for the three-year period ending on the preceding December 31 and rounded to the nearest \$25. The State Treasurer would have to publish the adjusted amounts, which would apply to cases filed on or after April 1 following the adjustment date.

The bill would define "homestead" as one of the following owned or being purchased under an executory contract by the debtor that the debtor or debtor's dependent occupied as his or her principal residence:

- A residential dwelling and appurtenances and the land on which they were situated, up to 40 acres, if the land were located outside of a recorded plat, city, or village.

- A residential dwelling and appurtenances and the land on which they were situated, up to one lot or parcel, if the land were located within a recorded plat, city, or village.
- A residential dwelling situated on land not owned by the debtor.
- A condominium unit.
- A unit in a cooperative.
- A motor home.
- A boat or other watercraft.

"Residential dwelling" would include a house or a manufactured or mobile home.

MCL 600.6023 & 600.6027

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

By increasing the allowable monetary value of property exempt from levy or sale under an execution, the bill could decrease revenue to the State or local governments to the extent that they were among the parties owed.

Fiscal Analyst: Bethany Wicksall

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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.