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BILL ANALYSIS

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House Bill 5763 (Substitute H-2 as passed by the House)
Sponsor: Representative Alexander C. Lipsey
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 9-28-04

CONTENT

The bill would add Chapter 54a (Bankruptcy) to the Revised Judicature Act to allow a debtor in bankruptcy under the Federal Bankruptcy Code to exempt from the bankruptcy estate either property that is exempt under Federal law or (under Section 522 of the Code) property identified in the bill.

The bill also would amend Chapter 60 (Enforcement of Judgments) of the Act to specify that real 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.)

Under the Bankruptcy Code (11 USC 522(b)(2)), an individual debtor may exempt from property of the estate either property listed in the Code or property listed as exempt under state or local law.

Under the bill, a debtor in bankruptcy could exempt from property of the estate any property that is exempt under Federal law or the following property:

- All of the following: family pictures; arms and accoutrements required by law to be kept by a person; wearing apparel, excluding furs; cemeteries, tombs, and rights of burial in use as repositories for the dead of the judgment debtor's family or kept for burial of the judgment debtor; and professionally prescribed health aids.
- Provisions and fuel for comfortable subsistence of each householder and his or her family for six months.
- The interest in household goods, furniture, utensils, books, appliances, and jewelry, up to \$450 interest in each item and an aggregate value of \$3,000.
- The interest in a seat, pew, or slip occupied by the judgment debtor or his or her family in a house or place of public worship, up to \$500 in value.
- The interest in crops, farm, animals, and feed for the animals, up to \$2,000 in value.
- The interest in household pets, up to \$500 in value.
- The interest in one motor vehicle, up to \$2,775 in value.
- The interest in one computer and its accessories, up to \$500 in value.
- The interest in the tools, implements, materials, stock, apparatus, 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 \$2,000 in value.

- Money or other benefits paid, provided, or allowed to be paid, provided, or allowed, by a stock or mutual life, health, or casualty insurance company because of the disability due to injury or sickness of an insured person, whether the insured person's or beneficiary's debt or liability was incurred before or after the accrual of benefits under the insurance policy or contract. (This exemption would not apply to actions to recover for necessities contracted for after the accrual of benefits.)
- The interest in shares held by a member, who is a householder, of an association incorporated under the Savings and Loan Act, up to \$1,000 in par value. (This exemption would not apply to a person who has a homestead exempted under the general laws of this State.)
- All individual retirement accounts (IRAs), including Roth IRAs, or individual retirement annuities 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 plan, or other plan qualified under Section 401 of the IRC, or a 403(b) annuity contract, if the plan or annuity were subject to the Federal Employee Retirement Income Security Act (ERISA) (subject to exceptions described below).
- The interest of the debtor, the codebtor if any, and the debtor's dependents in a homestead, up to \$30,000 in value or, if the debtor or dependent were 65 years of age or older or disabled at the time of the filing of the bankruptcy petition, up to \$45,000 in value.
- Real property held jointly by a husband and wife as a tenancy by the entirety, unless both were debtors in bankruptcy.

If the owner of a homestead died, leaving a surviving spouse but no children, the surviving spouse before his or her remarriage, unless he or she were the owner of a homestead in his or her own right, could exempt the homestead and the rents and profits of the homestead.

(The exemption for IRAs would not apply to the portion of an IRA or annuity that was subject to a court order pursuant to a judgment of divorce or separate maintenance; the portion of an IRA or annuity that was subject to 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 would not apply to a rollover of a pension, profit-sharing, stock bonus plan, or other plan that was 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 exemption for a 401 plan or 403(b) annuity contract would not apply to any amount contributed to such a plan or annuity within 120 days before the debtor filed for bankruptcy. It also would 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 was subject to a court order pursuant to a judgment of divorce or separate maintenance or concerning child support.)

An exemption under the bill 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.

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 bill 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.

Under the bill, "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.

"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.

"Homestead" would mean 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.

Proposed MCL 600.5451 & 600.6023a

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate impact on the State and local units of government, depending on the extent to which they would be a party in a bankruptcy case.

Fiscal Analyst: Bill Bowerman

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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.