

**SUBSTITUTE FOR
HOUSE BILL NO. 5763**

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
(MCL 600.101 to 600.9947) by adding chapter 54a and section
6023a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER 54A. BANKRUPTCY

2 Sec. 5451. (1) A debtor in bankruptcy under the bankruptcy
3 code, 11 USC 101 to 1330, may exempt from property of the estate
4 property that is exempt under federal law or, under 11 USC
5 522(b)(2), the following property:

6 (a) All of the following:

7 (i) Family pictures.

8 (ii) Arms and accoutrements required by law to be kept by a
9 person.

10 (iii) Wearing apparel, excluding furs.

1 (iv) Cemeteries, tombs, and rights of burial in use as
2 repositories for the dead of the judgment debtor's family or kept
3 for burial of the judgment debtor.

4 (v) Professionally prescribed health aids.

5 (b) Provisions and fuel for comfortable subsistence of each
6 householder and his or her family for 6 months.

7 (c) The interest, not to exceed a value of \$450.00 in each
8 item and an aggregate value of \$3,000.00, in household goods,
9 furniture, utensils, books, appliances, and jewelry.

10 (d) The interest, not to exceed \$500.00 in value, in a seat,
11 pew, or slip occupied by the judgment debtor or the judgment
12 debtor's family in a house or place of public worship.

13 (e) The interest, not to exceed \$2,000.00 in value, in crops,
14 farm animals, and feed for the farm animals.

15 (f) The interest, not to exceed \$500.00 in value, in
16 household pets.

17 (g) The interest, not to exceed \$2,775.00 in value, in 1
18 motor vehicle.

19 (h) The interest, not to exceed \$500.00 in value, in 1
20 computer and its accessories.

21 (i) The interest, not to exceed \$2,000.00 in value, in the
22 tools, implements, materials, stock, apparatus, or other things
23 to enable a person to carry on the profession, trade, occupation,
24 or business in which the person is principally engaged.

25 (j) Money or other benefits paid, provided, or allowed to be
26 paid, provided, or allowed, by a stock or mutual life, health, or
27 casualty insurance company because of the disability due to

1 injury or sickness of an insured person, whether the debt or
2 liability of the insured person or beneficiary was incurred
3 before or after the accrual of benefits under the insurance
4 policy or contract, except that this exemption does not apply to
5 actions to recover for necessities contracted for after the
6 accrual of the benefits.

7 (k) The interest, not exceeding \$1,000.00 in par value, in
8 shares held by a member, who is a householder, of an association
9 incorporated under the savings and loan act of 1980, 1980 PA 307,
10 MCL 491.102 to 491.1202, except that this exemption does not
11 apply to a person who has a homestead exempted under the general
12 laws of this state.

13 (l) All individual retirement accounts, including Roth IRAs,
14 or individual retirement annuities as defined in section 408 or
15 408a of the internal revenue code, 26 USC 408 and 408a, and the
16 payments or distributions from those accounts or annuities. This
17 exemption applies to the operation of the federal bankruptcy code
18 as permitted by section 522(b)(2) of the bankruptcy code, 11 USC
19 522. This exemption does not apply to the amount contributed to
20 an individual retirement account or individual retirement annuity
21 within 120 days before the debtor files for bankruptcy. This
22 exemption does not apply to any of the following:

23 (i) The portion of an individual retirement account or
24 individual retirement annuity that is subject to an order of a
25 court pursuant to a judgment of divorce or separate maintenance.

26 (ii) The portion of an individual retirement account or
27 individual retirement annuity that is subject to an order of a

1 court concerning child support.

2 (iii) The portion of an individual retirement account or
3 individual retirement annuity that is attributable to
4 contributions to the individual retirement account or premiums on
5 the individual retirement annuity, including the earnings or
6 benefits from those contributions or premiums, that, in the tax
7 year made or paid, exceeded the deductible amount allowed under
8 section 408 of the internal revenue code, 26 USC 408. This
9 limitation on contributions does not apply to a rollover of a
10 pension, profit-sharing, stock bonus plan, or other plan that is
11 qualified under section 401 of the internal revenue code, 26 USC
12 401, or an annuity contract under section 403(b) of the internal
13 revenue code, 26 USC 403.

14 (m) The right or interest of a person in a pension,
15 profit-sharing, stock bonus, or other plan that is qualified
16 under section 401 of the internal revenue code, 26 USC 401, or an
17 annuity contract under section 403(b) of the internal revenue
18 code, 26 USC 403, if the plan or annuity is subject to the
19 employee retirement income security act of 1974, Public Law
20 93-406, 88 Stat. 829. This exemption does not apply to any
21 amount contributed to a pension, profit-sharing, stock bonus, or
22 other qualified plan or a 403(b) annuity if the contribution
23 occurs within 120 days before the debtor files for bankruptcy.
24 This exemption does not apply to the right or interest of a
25 person in a pension, profit-sharing, stock bonus, or other
26 qualified plan or a 403(b) annuity to the extent that the right
27 or interest is subject to either of the following:

1 (i) An order of a court pursuant to a judgment of divorce or
2 separate maintenance.

3 (ii) An order of a court concerning child support.

4 (n) The interest of the debtor, the codebtor, if any, and the
5 debtor's dependents, not to exceed \$30,000.00 in value or, if the
6 debtor or a dependent of the debtor at the time of the filing of
7 the bankruptcy petition is 65 years of age or older or disabled,
8 not to exceed \$45,000.00 in value, in a homestead.

9 (o) Real property held jointly by a husband and wife as a
10 tenancy by the entirety, unless both the husband and wife are
11 debtors in bankruptcy.

12 (p) If the owner of a homestead dies, leaving a surviving
13 spouse but no children, the surviving spouse before his or her
14 remarriage, unless the surviving spouse is the owner of a
15 homestead in his or her own right, may exempt the homestead and
16 the rents and profits of the homestead.

17 (2) An exemption under this section does not apply to a
18 mortgage, lien, or security interest in the exempt property that
19 is consensually given or lawfully obtained unless the lien is
20 obtained by judgment, attachment, levy, or similar legal process
21 in connection with a court action or proceeding against the
22 debtor.

23 (3) If property that is exempt under this section is sold,
24 damaged, destroyed, or acquired for public use, the right to
25 receive proceeds or, if the owner receives proceeds and holds
26 them in a manner that makes them identifiable as proceeds, the
27 proceeds received are exempt from the property of a federal

1 bankruptcy estate in the same manner and amount as the exempt
2 property. An exemption under this subsection may be claimed up
3 to 1 year after the receipt of the proceeds by the owner.

4 (4) On March 1, 2005 and at the end of each 3-year period
5 after 2005, the state treasurer shall adjust each dollar amount
6 in this section or, for each adjustment after March 1, 2005, each
7 adjusted amount, by an amount determined by the state treasurer
8 to reflect the cumulative change in the consumer price index for
9 the 3-year period ending on the December 31 preceding the
10 adjustment date and rounded to the nearest \$25.00. The state
11 treasurer shall publish the adjusted amounts. The adjusted
12 amounts apply to cases filed on or after April 1 following the
13 adjustment date.

14 (5) As used in this section:

15 (a) "Consumer price index" means the consumer price index for
16 all urban consumers in the area of Detroit-Ann Arbor-Flint,
17 Michigan, published by the United States department of labor or,
18 if the United States department of labor ceases publishing that
19 index, the most similar index available.

20 (b) "Disabled" means unable to engage in substantial gainful
21 activity, as defined by 42 USC 1382c(a)(3)(E), as a result of a
22 physical or mental impairment and receiving supplemental security
23 income under 42 USC 1382(a)(3)(A) and (C).

24 (c) "Proceeds" means money payable or paid as a result of 1
25 or more of the following:

26 (i) Sale of the property.

27 (ii) Insurance or other indemnification for damage or

1 destruction of the property.

2 (iii) Compensation for the acquisition for public use of the
3 property.

4 (d) "Homestead" means 1 of the following owned or being
5 purchased under an executory contract by the debtor that the
6 debtor or a dependent of the debtor occupies as his or her
7 principal residence:

8 (i) If the land is located outside of a recorded plat, city,
9 or village, a residential dwelling and appurtenances and the land
10 on which they are situated, not exceeding 40 acres.

11 (ii) If the land is located within a recorded plat, city, or
12 village, a residential dwelling and appurtenances and the land on
13 which they are situated, not exceeding 1 lot or parcel.

14 (iii) A residential dwelling situated on land not owned by
15 the debtor.

16 (iv) A condominium unit.

17 (v) A unit in a cooperative.

18 (vi) A motor home.

19 (vii) A boat or other watercraft.

20 (e) "Residential dwelling" includes, but is not limited to, a
21 house or a manufactured or mobile home.

22 CHAPTER 60. ENFORCEMENT OF JUDGMENTS

23 Sec. 6023a. Real property held jointly by a husband and
24 wife as a tenancy by the entirety is exempt from execution under
25 a judgment entered against only 1 spouse.