

SENATE BILL No. 1437

September 30, 2004, Introduced by Senator CROPSEY and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending sections 6023 and 6027 (MCL 600.6023 and 600.6027), section 6023 as amended by 1998 PA 61.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 6023. (1) The following property of ~~the~~ a debtor and
2 the debtor's dependents ~~shall be~~ is exempt from levy and sale
3 under ~~any~~ an execution:

4 (a) All ~~family pictures, all arms and accouterments required~~
5 ~~by law to be kept by any person, all wearing apparel of every~~
6 ~~person or family, and provisions~~ 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.

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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) ~~(b) All~~ The interest, not to exceed a value of \$450.00
8 in each item and an aggregate value of \$3,000.00, in household
9 goods, furniture, utensils, books, ~~and~~ appliances, ~~not~~
10 ~~exceeding in value \$1,000.00 and jewelry.~~

11 (d) ~~(e) A~~ The interest, not to exceed \$500.00 in value, in
12 a seat, pew, or slip occupied by the judgment debtor or the
13 judgment debtor's family in ~~any~~ a house or place of public
14 worship. ~~, and all cemeteries, tombs, and rights of burial while~~
15 ~~in use as repositories of the dead of the judgment debtor's~~
16 ~~family or kept for burial of the judgment debtor.~~

17 ~~—— (d) To each householder, 10 sheep, 2 cows, 5 swine, 100 hens,~~
18 ~~5 roosters, and a sufficient quantity of hay and grain, growing~~
19 ~~or otherwise, for properly keeping the animals and poultry for 6~~
20 ~~months.~~

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

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

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

27 (h) The interest, not to exceed \$500.00 in value, in 1

1 computer and its accessories.

2 (i) ~~(e)~~ The interest, not to exceed \$2,000.00 in value, in
 3 the tools, implements, materials, stock, apparatus, ~~team,~~
 4 vehicle, motor vehicle, horses, harness, or other things to
 5 enable a person to carry on the profession, trade, occupation, or
 6 business in which the person is principally engaged. ~~, not~~
 7 exceeding in value \$1,000.00.

8 (j) ~~(f)~~ ~~Any money~~ Money or other benefits paid, provided,
 9 or allowed to be paid, provided, or allowed, by ~~any~~ a stock or
 10 mutual life, ~~or~~ health, or casualty insurance company ~~, on~~
 11 account because of the disability due to injury or sickness of
 12 ~~any~~ an insured person, whether the debt or liability of ~~such~~
 13 the insured person or beneficiary was incurred before or after
 14 the accrual of benefits under the insurance policy or contract,
 15 except that ~~the~~ this exemption does not apply to actions to
 16 recover for necessities contracted for after the accrual of the
 17 benefits.

18 (k) ~~(g)~~ The interest, not exceeding \$1,000.00 in par value,
 19 in shares held by ~~any~~ a member, ~~being~~ who is a householder,
 20 of ~~any~~ an association incorporated under ~~the provisions of~~
 21 the savings and loan act of 1980, 1980 PA 307, MCL 491.102 to
 22 491.1202, ~~to the amount of \$1,000.00 in such shares, at par~~
 23 value, except that this exemption does not apply to ~~any~~ a
 24 person who has a homestead exempted under the general laws of
 25 this state.

26 ~~(h)~~ A homestead of not exceeding 40 acres of land and the
 27 dwelling house and appurtenances on that homestead, and not

~~1 included in any recorded plat, city, or village, or, instead, and~~
~~2 at the option of the owner, a quantity of land not exceeding in~~
~~3 amount 1 lot, being within a recorded town plat, city, or~~
~~4 village, and the dwelling house and appurtenances on that land,~~
~~5 owned and occupied by any resident of this state, not exceeding~~
~~6 in value \$3,500.00. This exemption extends to any person owning~~
~~7 and occupying any house on land not his or her own and which the~~
~~8 person claims as a homestead. However, this exemption does not~~
~~9 apply to any mortgage on the homestead, lawfully obtained, except~~
~~10 that the mortgage is not valid without the signature of a married~~
~~11 judgment debtor's spouse unless either of the following occurs:~~
~~12 ——— (i) The mortgage is given to secure the payment of the~~
~~13 purchase money or a portion of the purchase money.~~
~~14 ——— (ii) The mortgage is recorded in the office of the register~~
~~15 of deeds of the county in which the property is located, for a~~
~~16 period of 25 years, and no notice of a claim of invalidity is~~
~~17 filed in that office during the 25 years following the recording~~
~~18 of the mortgage.~~
~~19 ——— (i) An equity of redemption as described in section 6060.~~
~~20 ——— (j) The homestead of a family, after the death of the owner~~
~~21 of the homestead, from the payment of his or her debts in all~~
~~22 cases during the minority of his or her children.~~
~~23 (l) —(k) An~~ **All individual retirement** ~~—account—~~ **accounts,**
~~24 including Roth IRAs,~~ or individual retirement ~~—annuity—~~ **annuities**
~~25 as defined in section 408 or 408a of the internal revenue code,~~
~~26 —of 1986—~~ **26 USC 408 and 408a,** and the payments or distributions
~~27 from —such an account or annuity—~~ **those accounts or annuities.**

1 This exemption applies to the operation of the federal bankruptcy
2 code as permitted by section 522(b)(2) of ~~title 11 of the United~~
3 ~~States Code, 11 U.S.C. 522~~ **the bankruptcy code, 11 USC 522.**

4 This exemption does not apply to ~~any amounts~~ **the amount**
5 contributed to an individual retirement account or individual
6 retirement annuity ~~if the contribution occurs~~ within 120 days
7 before the debtor files for bankruptcy. This exemption does not
8 apply to ~~an individual retirement account or individual~~
9 ~~retirement annuity to the extent that any of the following occur~~
10 **either of the following:**

11 (i) The **portion of an** individual retirement account or
12 individual retirement annuity **that** is subject to an order ~~of a~~
13 ~~court pursuant to a judgment of divorce or separate maintenance~~
14 **for child support.**

15 ~~(ii) The individual retirement account or individual~~
16 ~~retirement annuity is subject to an order of a court concerning~~
17 ~~child support.~~

18 (ii) ~~(iii) Contributions~~ **The portion of an individual**
19 **retirement account or individual retirement annuity that is**
20 **attributable to contributions** to the individual retirement
21 account or premiums on the individual retirement annuity,
22 including the earnings or benefits from those contributions or
23 premiums, ~~exceed~~ **that**, in the tax year made or paid, **exceeded**
24 the deductible amount allowed under section 408 of the internal
25 revenue code, ~~of 1986~~ **26 USC 408.** This limitation on
26 contributions does not apply to a rollover of a pension,
27 profit-sharing, stock bonus plan, or other plan that is qualified

1 under section 401 of the internal revenue code, ~~of 1986~~ **26 USC**
2 **401**, or an annuity contract under section 403(b) of the internal
3 revenue code, ~~of 1986~~ **26 USC 403**.

4 **(m)** ~~(l)~~ The right or interest of a person in a pension,
5 profit-sharing, stock bonus, or other plan that is qualified
6 under section 401 of the internal revenue code, ~~of 1986~~ **26 USC**
7 **401**, or an annuity contract under section 403(b) of the internal
8 revenue code, ~~of 1986, which~~ **26 USC 403**, **if the** plan or annuity
9 is subject to the employee retirement income security act of
10 1974, Public Law 93-406, 88 Stat. 829. This exemption applies to
11 the operation of the federal bankruptcy code, as permitted by
12 section 522(b)(2) of ~~title 11 of the United States Code, 11~~
13 ~~U.S.C. 522~~ **the bankruptcy code, 11 USC 522**. This exemption does
14 not apply to any amount contributed to a pension, profit-sharing,
15 stock bonus, or other qualified plan or a 403(b) annuity if the
16 contribution occurs within 120 days before the debtor files for
17 bankruptcy. This exemption does not apply to the right or
18 interest of a person in a pension, profit-sharing, stock bonus,
19 or other qualified plan or a 403(b) annuity to the extent that
20 the right or interest ~~in the plan or annuity~~ is subject to
21 ~~any~~ **either** of the following:

22 **(i)** An order of a court pursuant to a judgment of divorce or
23 separate maintenance.

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

25 **(2)** ~~The exemptions provided in this section shall not extend~~
26 ~~to any lien thereon excluded from exemption by law.~~ **The interest**
27 **of a debtor and the debtor's dependents, not to exceed \$30,000.00**

1 in value or, if the debtor or a dependent of the debtor is 65
2 years of age or older or disabled, not to exceed \$45,000.00 in
3 value, in a homestead is exempt from levy and sale under an
4 execution.

5 (3) Property held jointly by a husband and wife as a tenancy
6 by the entirety is exempt from execution under a judgment entered
7 against only 1 spouse.

8 (4) ~~(3)~~ If the owner of a homestead dies, leaving a
9 surviving spouse but no children, the homestead ~~shall be~~ is
10 exempt from levy and sale under an execution, and the rents and
11 profits of the homestead shall accrue to the benefit of the
12 surviving spouse before his or her remarriage, unless the
13 surviving spouse is the owner of a homestead in his or her own
14 right.

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

21 (6) If property that is exempt under this section is sold,
22 damaged, destroyed, or acquired for public use, the right to
23 receive proceeds or, if the owner receives proceeds and holds
24 them in a manner that makes them identifiable as proceeds, the
25 proceeds received are exempt from levy and sale under an
26 execution in the same manner and amount as the exempt property.
27 An exemption under this subsection may be claimed up to 1 year

1 after the receipt of the proceeds by the owner.

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

12 (8) As used in this section:

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

18 (b) "Disabled" means unable to engage in substantial gainful
19 activity, as defined by 42 USC 1382c(a)(3)(E), as a result of a
20 physical or mental impairment that would meet the disability
21 requirements for supplemental security income under 42 USC
22 1382(a)(3)(A) and (C).

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

25 (i) Sale of the property.

26 (ii) Insurance or other indemnification for damage or
27 destruction of the property.

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

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

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

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

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

15 (iv) A condominium unit.

16 (v) A unit in a cooperative.

17 (vi) A motor home.

18 (vii) A boat or other watercraft.

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

21 Sec. 6027. If the homestead of ~~any~~ a debtor is appraised
22 at a value ~~of more than \$3,500.00,~~ that exceeds the available
23 exemption under section 6023 and cannot be divided, the debtor
24 ~~shall not for that reason lose the benefit of~~ may still claim
25 the exemption, ~~—~~ but ~~in such cases~~ the levying officer shall
26 deliver a notice, attached to a copy of the appraisal, to the
27 debtor or ~~to some of his~~ a member of the debtor's family of

1 suitable age to understand the ~~nature thereof~~ **notice**, that
2 unless the debtor ~~pay~~ **pays** the officer the ~~surplus over and~~
3 ~~above the \$3,500.00,~~ **amount that exceeds the exemption** or the
4 amount due on the execution within 60 days ~~thereafter~~ **of the**
5 **notice**, the premises will be sold.