

SENATE BILL No. 352

March 10, 2009, Introduced by Senators ANDERSON, BASHAM and PRUSI and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending sections 5451 and 6023 (MCL 600.5451 and 600.6023), section 5451 as added by 2004 PA 575 and section 6023 as amended by 1998 PA 61.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5451. (1) A debtor in bankruptcy under the bankruptcy
2 code, 11 USC 101 to ~~1330~~1532, may exempt from property of the
3 estate property that is exempt under federal law or, under 11 USC
4 522(b)(2), the following property:
5 (a) All of the following:
6 (i) Family pictures.
7 (ii) Arms and accoutrements required by law to be kept by a
8 person.

1 (iii) Wearing apparel, excluding furs.

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

5 (v) Professionally prescribed health aids.

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

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

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

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

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

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

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

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

26 (j) Money or other benefits paid, provided, or allowed to be
27 paid — OR provided, or allowed, by a stock or mutual life, health,

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

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

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

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

27 (ii) The portion of an individual retirement account or

1 individual retirement annuity that is subject to an order of a
2 court concerning child support.

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

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

27 (i) An order of a court pursuant to a judgment of divorce or

1 separate maintenance.

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

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

8 (o) Property described in section 1 of 1927 PA 212, MCL
9 557.151, or real property, held jointly by a husband and wife as a
10 tenancy by the entirety, except that this exemption does not apply
11 with regard to a claim based on a joint debt of the husband and
12 wife.

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

18 **(Q) ANY INTEREST IN THE FOLLOWING:**

19 **(i) A TRUST, FUND, OR ADVANCE TUITION PAYMENT CONTRACT**
20 **ESTABLISHED UNDER THE MICHIGAN EDUCATION TRUST ACT, 1986 PA 316,**
21 **MCL 390.1421 TO 390.1442.**

22 **(ii) AN ACCOUNT ESTABLISHED UNDER THE MICHIGAN EDUCATION**
23 **SAVINGS PROGRAM ACT, 2000 PA 161, MCL 390.1471 TO 390.1486.**

24 **(iii) AN ACCOUNT IN A QUALIFIED TUITION PROGRAM OR EDUCATIONAL**
25 **SAVINGS TRUST UNDER SECTION 529 OR 530 OF THE INTERNAL REVENUE**
26 **CODE, 26 USC 529 AND 530.**

27 (2) An exemption under this section does not apply to a

1 mortgage, lien, or security interest in the exempt property that is
2 consensually given or lawfully obtained unless the lien is obtained
3 by judgment, attachment, levy, or similar legal process in
4 connection with a court action or proceeding against the debtor.

5 (3) If property that is exempt under this section is sold,
6 damaged, destroyed, or acquired for public use, the right to
7 receive proceeds or, if the owner receives proceeds and holds them
8 in a manner that makes them identifiable as proceeds, the proceeds
9 received are exempt from the property of a federal bankruptcy
10 estate in the same manner and amount as the exempt property. An
11 exemption under this subsection may be claimed up to 1 year after
12 the receipt of the proceeds by the owner.

13 (4) On March 1, 2005 and at the end of each 3-year period
14 after 2005, the state treasurer shall adjust each dollar amount in
15 this section or, for each adjustment after March 1, 2005, each
16 adjusted amount, by an amount determined by the state treasurer to
17 reflect the cumulative change in the consumer price index for the
18 3-year period ending on the December 31 preceding the adjustment
19 date and rounded to the nearest \$25.00. The state treasurer shall
20 publish the adjusted amounts. The adjusted amounts apply to cases
21 filed on or after April 1 following the adjustment date.

22 (5) As used in this section:

23 (a) "Consumer price index" means the consumer price index for
24 all urban consumers in the area of Detroit-Ann Arbor-Flint,
25 Michigan, published by the United States department of labor or, if
26 the United States department of labor ceases publishing that index,
27 the most similar index available.

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

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

7 (i) Sale of the property.

8 (ii) Insurance or other indemnification for damage or
9 destruction of the property.

10 (iii) Compensation for the acquisition for public use of the
11 property.

12 (d) "Homestead" means 1 of the following owned or being
13 purchased under an executory contract by the debtor that the debtor
14 or a dependent of the debtor occupies as his or her principal
15 residence:

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

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

22 (iii) A residential dwelling situated on land not owned by the
23 debtor.

24 (iv) A condominium unit.

25 (v) A unit in a cooperative.

26 (vi) A motor home.

27 (vii) A boat or other watercraft.

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

3 Sec. 6023. (1) The following property of ~~the~~**A JUDGMENT** debtor
4 and the **JUDGMENT** debtor's dependents ~~shall be~~**IS** exempt from levy
5 and sale under ~~any~~**AN** execution:

6 (a) All family pictures, all arms and accouterments required
7 by law to be kept by any person, all wearing apparel of every
8 person ~~or~~**AND HIS OR HER** family, and provisions and fuel for
9 comfortable subsistence of each householder and his or her family
10 for 6 months.

11 (b) All household goods, furniture, utensils, books, and
12 appliances, not exceeding in value \$1,000.00.

13 (c) A seat, pew, or slip occupied by the judgment debtor or
14 the judgment debtor's family in ~~any~~**A** house or place of public
15 worship, and all cemeteries, tombs, and rights of burial while in
16 use as repositories of the dead of the judgment debtor's family or
17 kept for burial of the judgment debtor.

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

22 (e) The tools, implements, materials, stock, apparatus, team,
23 vehicle, motor vehicle, horses, harness, or other things to enable
24 a person to carry on the profession, trade, occupation, or business
25 in which the person is principally engaged, not exceeding in value
26 \$1,000.00.

27 (f) Any money or other benefits paid, provided, or allowed to

1 be paid, provided, or allowed, by any stock or mutual life or
2 health or casualty insurance company, on account of the disability
3 due to injury or sickness of ~~any~~**THE** insured person, whether the
4 debt or liability of such insured person or beneficiary was
5 incurred before or after the accrual of benefits under the
6 insurance policy or contract, except that the exemption **UNDER THIS**
7 **SUBDIVISION** does not apply to actions to recover for necessities
8 contracted for after the accrual of the benefits.

9 (g) The shares held by ~~any member, being a~~ householder ~~, WHO~~
10 **IS A MEMBER** of ~~any~~**AN** association incorporated under the provisions
11 ~~of~~ the savings and loan act of 1980, 1980 PA 307, MCL 491.102 to
12 491.1202, to the amount of \$1,000.00 in ~~such~~ shares, at par value,
13 except that this exemption does not apply to any person who has a
14 homestead exempted under the general laws of this state.

15 (h) A homestead of not ~~exceeding~~**MORE THAN** 40 acres of land
16 and the dwelling house and appurtenances on that homestead ~~, and~~
17 **THAT IS** not included in ~~any~~**A** recorded plat, city, or village, or,
18 ~~instead, and~~ at the option of the owner, a quantity of land **THAT**
19 **CONSISTS OF** not ~~exceeding in amount~~**MORE THAN** 1 lot ~~, being~~**THAT IS**
20 within a recorded town plat, city, or village, and the dwelling
21 house and appurtenances on that land, owned and occupied by any
22 resident of this state, not exceeding in value \$3,500.00. This
23 exemption ~~extends to any person owning and occupying~~**APPLIES TO** any
24 house **THAT IS OWNED, OCCUPIED, AND CLAIMED AS A HOMESTEAD BY A**
25 **PERSON BUT THAT IS** on land not ~~his or her own and which the person~~
26 ~~claims as a homestead~~**OWNED BY THE PERSON**. However, this exemption
27 does not apply to ~~any~~**A** mortgage on the homestead ~~, THAT IS~~

1 lawfully obtained. ~~, except that the~~ **A** mortgage is not valid **FOR**
2 **PURPOSES OF THIS SUBDIVISION** without the signature of a married
3 judgment debtor's spouse unless either of the following occurs:

4 (i) The mortgage is given to secure the payment of the purchase
5 money or a portion of the purchase money.

6 (ii) The mortgage is recorded in the office of the register of
7 deeds of the county in which the property is located, for a period
8 of 25 years, and no notice of a claim of invalidity is filed in
9 that office during the 25 years following the recording of the
10 mortgage.

11 (i) An equity of redemption as described in section 6060.

12 (j) The homestead of a family, after the death of the owner of
13 the homestead, from the payment of his or her debts in all cases
14 during the minority of his or her children.

15 (k) An individual retirement account or individual retirement
16 annuity as defined in section 408 or 408a of the internal revenue
17 code, ~~of 1986-26 USC 408 AND 408A,~~ and the payments or
18 distributions from ~~such an~~ **THE** account or annuity. This exemption
19 applies to the operation of the federal bankruptcy code as
20 permitted by section 522(b)(2) of ~~title 11 of the United States~~
21 ~~Code, 11 U.S.C.~~ **THE BANKRUPTCY CODE, 11 USC 522.** This exemption
22 does not apply to any amounts contributed to ~~an~~ **THE** individual
23 retirement account or individual retirement annuity if the
24 contribution occurs within 120 days before the debtor files for
25 bankruptcy. This exemption does not apply to an individual
26 retirement account or individual retirement annuity to the extent
27 that any of the following occur:

1 (i) The individual retirement account or individual retirement
2 annuity is subject to an order of a court pursuant to a judgment of
3 divorce or separate maintenance.

4 (ii) The individual retirement account or individual retirement
5 annuity is subject to an order of a court concerning child support.

6 (iii) Contributions to the individual retirement account or
7 premiums on the individual retirement annuity, including the
8 earnings or benefits from those contributions or premiums, exceed,
9 in the tax year made or paid, the deductible amount allowed under
10 section 408 of the internal revenue code, ~~of 1986-26 USC 408~~. This
11 limitation on contributions does not apply to a rollover of a
12 pension, profit-sharing, stock bonus, ~~plan~~ or other plan that is
13 qualified under section 401 of the internal revenue code, ~~of 1986~~
14 **26 USC 401**, or an annuity contract under section 403(b) of the
15 internal revenue code, ~~of 1986-26 USC 403~~.

16 (l) The right or interest of a person in a pension, profit-
17 sharing, stock bonus, or other plan that is qualified under section
18 401 of the internal revenue code, ~~of 1986-26 USC 401~~, or an annuity
19 contract under section 403(b) of the internal revenue code, ~~of 1986~~
20 **26 USC 403**, ~~which~~ **IF THE** plan or annuity is subject to the employee
21 retirement income security act of 1974, Public Law 93-406, 88 Stat.
22 829. This exemption applies to the operation of the federal
23 bankruptcy code, as permitted by section 522(b)(2) of ~~title 11 of~~
24 ~~the United States Code, 11 U.S.C.~~ **THE BANKRUPTCY CODE, 11 USC 522**.
25 This exemption does not apply to any amount contributed to a
26 pension, profit-sharing, stock bonus, or other qualified plan or a
27 403(b) annuity if the contribution occurs within 120 days before

1 the debtor files for bankruptcy. This exemption does not apply to
2 the right or interest of a person in a pension, profit-sharing,
3 stock bonus, or other qualified plan or a 403(b) annuity to the
4 extent that the right or interest in the plan or annuity is subject
5 to ~~any~~**EITHER** of the following:

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

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

9 **(M) ANY INTEREST IN THE FOLLOWING:**

10 **(i) A TRUST, FUND, OR ADVANCE TUITION PAYMENT CONTRACT**
11 **ESTABLISHED UNDER THE MICHIGAN EDUCATION TRUST ACT, 1986 PA 316,**
12 **MCL 390.1421 TO 390.1442.**

13 **(ii) AN ACCOUNT ESTABLISHED UNDER THE MICHIGAN EDUCATION**
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15 **(iii) AN ACCOUNT IN A QUALIFIED TUITION PROGRAM OR EDUCATIONAL**
16 **SAVINGS TRUST UNDER SECTION 529 OR 530 OF THE INTERNAL REVENUE**
17 **CODE, 26 USC 529 AND 530.**

18 (2) The exemptions provided in this section ~~shall~~**DO** not
19 extend to any lien ~~thereon~~**ON THE EXEMPT PROPERTY THAT IS** excluded
20 from exemption by law.

21 (3) If the owner of a homestead dies, leaving a surviving
22 spouse but no children, the homestead ~~shall be~~**IS** exempt, and the
23 rents and profits of the homestead shall accrue to the benefit of
24 the surviving spouse before his or her remarriage, unless the
25 surviving spouse is the owner of a homestead in his or her own
26 right.