

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5838

(As amended December 13, 2012)

[A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending section 5451 (MCL 600.5451), section 5451 as added
by 2004 PA 575.]

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

1 person.

2 (iii) Wearing apparel, excluding furs.

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

6 (v) Professionally prescribed health aids.

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

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

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

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

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

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

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

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

27 (j) Money or other benefits paid, provided, ~~or~~ allowed to be

1 paid ~~—OR~~ provided, or allowed, by a stock or mutual life, health,
2 or casualty insurance company because of the disability due to
3 injury or sickness of an insured person, whether the debt or
4 liability of the insured person or beneficiary was incurred before
5 or after the accrual of benefits under the insurance policy or
6 contract, except that this exemption does not apply to actions to
7 recover for necessities contracted for after the accrual of the
8 benefits.

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

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

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

1 (ii) The portion of an individual retirement account or
2 individual retirement annuity that is subject to an order of a
3 court concerning child support.

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

15 (I) ~~(m)~~—The right or interest of a person in a pension, profit-
16 sharing, stock bonus, or other plan that is qualified under section
17 401 of the internal revenue code, 26 USC 401, or an annuity
18 contract under section 403(b) of the internal revenue code, 26 USC
19 403, if the plan or annuity is subject to the employee retirement
20 income security act of 1974, Public Law 93-406, 88 Stat. 829. This
21 exemption does not apply to any amount contributed to a pension,
22 profit-sharing, stock bonus, or other qualified plan or a 403(b)
23 annuity if the contribution occurs within 120 days before the
24 debtor files for bankruptcy. This exemption does not apply to the
25 right or interest of a person in a pension, profit-sharing, stock
26 bonus, or other qualified plan or a 403(b) annuity to the extent
27 that the right 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 (M) ~~(n)~~—The interest of the debtor, the codebtor, if any, and
5 the debtor's dependents, not to exceed \$30,000.00 in value or, if
6 the debtor or a dependent of the debtor at the time of the filing
7 of 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 (N) ~~(o)~~—Property described in section 1 of 1927 PA 212, MCL
10 557.151, or real property, held jointly by a husband and wife as a
11 tenancy by the entirety, except that this exemption does not apply
12 with regard to a claim based on a joint debt of the husband and
13 wife.

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

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

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

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

5 (4) On March 1, 2005 and at the end of each 3-year period
6 after 2005, the state treasurer shall adjust each dollar amount in
7 this section or, for each adjustment after March 1, 2005, each
8 adjusted amount, by an amount determined by the state treasurer to
9 reflect the cumulative change in the consumer price index for the
10 3-year period ending on the December 31 preceding the adjustment
11 date and rounded to the nearest \$25.00. The state treasurer shall
12 publish the adjusted amounts. The adjusted amounts apply to cases
13 filed on or after April 1 following the 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, if
18 the United States department of labor ceases publishing that index,
19 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)~~ **1382C(A)(3)(A)** and (C).

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

26 (i) Sale of the property.

27 (ii) Insurance or other indemnification for damage or

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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 debtor
6 or a dependent of the debtor occupies as his or her principal
7 residence:

8 (i) If the land is located outside of a recorded plat, city, or
9 village, a residential dwelling and appurtenances and the land on
10 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 the
15 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.

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11 Enacting section 1. This amendatory act takes effect December
12 31, 2012.

13 Enacting section 2. This amendatory act does not take effect
14 unless House Bill No. 5835 of the 96th Legislature is enacted into
15 law.