

HOUSE BILL No. 5838

August 15, 2012, Introduced by Rep. Huuki and referred to the Committee on Banking and Financial Services.

A bill to amend 1961 PA 236, entitled "Revised judiciary 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, **FORMER** 1980 PA
11 307, ~~MCL 491.102 to 491.1202,~~ except that this exemption does not
12 apply to a person who has a homestead exempted under the general
13 laws of 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 (2) An exemption under this section does not apply to a
19 mortgage, lien, or security interest in the exempt property that is
20 consensually given or lawfully obtained unless the lien is obtained
21 by judgment, attachment, levy, or similar legal process in
22 connection with a court action or proceeding against the 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 them
26 in a manner that makes them identifiable as proceeds, the proceeds
27 received are exempt from the property of a federal bankruptcy

1 estate in the same manner and amount as the exempt property. An
2 exemption under this subsection may be claimed up to 1 year after
3 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 in
6 this section or, for each adjustment after March 1, 2005, each
7 adjusted amount, by an amount determined by the state treasurer to
8 reflect the cumulative change in the consumer price index for the
9 3-year period ending on the December 31 preceding the adjustment
10 date and rounded to the nearest \$25.00. The state treasurer shall
11 publish the adjusted amounts. The adjusted amounts apply to cases
12 filed on or after April 1 following the adjustment date.

13 (5) As used in this section:

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

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

23 (c) "Proceeds" means money payable or paid as a result of 1 or
24 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 debtor
5 or a dependent of the debtor occupies as his or her principal
6 residence:

7 (i) If the land is located outside of a recorded plat, city, or
8 village, a residential dwelling and appurtenances and the land on
9 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 the
14 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. 6023. (1) The following property of ~~the~~**A JUDGMENT** debtor
22 and the **JUDGMENT** debtor's dependents ~~shall be~~**IS** exempt from levy
23 and sale under ~~any~~**AN** execution:

24 (a) All family pictures, all arms and accouterments required
25 by law to be kept by any person, all wearing apparel of every
26 ~~person or~~**INDIVIDUAL AND HIS OR HER** family, and provisions and fuel
27 for comfortable subsistence of each householder and his or her

1 family for 6 months.

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

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

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

13 (e) The tools, implements, materials, stock, apparatus, team,
14 vehicle, motor vehicle, horses, harness, or other things to enable
15 a person to carry on the profession, trade, occupation, or business
16 in which the person is principally engaged, not exceeding in value
17 \$1,000.00.

18 (f) Any money or other benefits paid, provided, or allowed to
19 be paid, provided, or allowed, by any stock or mutual life or
20 health or casualty insurance company, on account of the disability
21 due to injury or sickness of ~~any~~**THE** insured person, whether the
22 debt or liability of such insured person or beneficiary was
23 incurred before or after the accrual of benefits under the
24 insurance policy or contract, except that the exemption **UNDER THIS**
25 **SUBDIVISION** does not apply to actions to recover for necessities
26 contracted for after the accrual of the benefits.

27 (g) The shares held by ~~any member, being~~ a householder ~~, of~~

1 ~~any~~ **WHO IS A MEMBER OF AN** association incorporated under the
 2 ~~provisions of the~~ savings and loan act of 1980, **FORMER** 1980 PA 307,
 3 ~~MCL 491.102 to 491.1202,~~ to the amount of \$1,000.00 in such ~~such~~ **THOSE**
 4 shares, at par value, except that this exemption does not apply to
 5 any person who has a homestead exempted under the general laws of
 6 this state.

7 (h) A homestead of not ~~exceeding~~ **MORE THAN** 40 acres of land
 8 and the dwelling house and appurtenances on that homestead, ~~and~~
 9 **THAT IS** not included in ~~any~~ **A** recorded plat, city, or village, or,
 10 ~~instead, and~~ at the option of the owner, a quantity of land ~~not~~
 11 ~~exceeding in amount~~ **THAT CONSISTS OF NOT MORE THAN** 1 lot, ~~being~~
 12 **THAT IS** within a recorded town plat, city, or village, and the
 13 dwelling house and appurtenances on that land, owned and occupied
 14 by any resident of this state, not exceeding in value \$3,500.00.
 15 This exemption ~~extends to any person owning and occupying~~ **APPLIES**
 16 **TO** any house **THAT IS OWNED, OCCUPIED, AND CLAIMED AS A HOMESTEAD BY**
 17 **A PERSON BUT THAT IS LOCATED** on land **THAT IS** not ~~his or her own and~~
 18 ~~which the person claims as a homestead.~~ **OWNED BY THE PERSON.**
 19 However, this exemption does not apply to ~~any~~ **A** mortgage on the
 20 homestead, ~~that is~~ **lawfully obtained.** ~~except that the~~ **A** mortgage
 21 is not valid **FOR PURPOSES OF THIS SUBDIVISION** without the signature
 22 of a married judgment debtor's spouse unless either of the
 23 following occurs:

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

26 (ii) The mortgage is recorded in the office of the register of
 27 deeds of the county in which the property is located, for a period

1 of 25 years, and no notice of a claim of invalidity is filed in
2 that office during the 25 years following the recording of the
3 mortgage.

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

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

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

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

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

26 (iii) Contributions to the individual retirement account or
27 premiums on the individual retirement annuity, including the

1 earnings or benefits from those contributions or premiums, exceed,
2 in the tax year made or paid, the deductible amount allowed under
3 section 408 of the internal revenue code of 1986, **26 USC 408**. This
4 limitation on contributions does not apply to a rollover of a
5 pension, profit-sharing, stock bonus, ~~plan~~ or other plan that is
6 qualified under section 401 of the internal revenue code of 1986,
7 **26 USC 401**, or an annuity contract under section 403(b) of the
8 internal revenue code of 1986, **26 USC 403**.

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

House Bill No. 5838 as amended September 27, 2012

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

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

5 (3) If the owner of a homestead dies, leaving a surviving
6 spouse but no children, the homestead ~~shall be~~**IS** exempt, and the
7 rents and profits of the homestead shall accrue to the benefit of
8 the surviving spouse before his or her remarriage, unless the
9 surviving spouse is the owner of a homestead in his or her own
10 right.

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 law.
15]