

HOUSE BILL No. 5682

January 31, 2008, Introduced by Rep. Caul 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 debtor and the
2 debtor's dependents ~~shall be~~ **IS** exempt from levy and sale under any
3 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 and fuel for comfortable
7 subsistence of each householder and his or her family for 6 months.

8 (b) All household goods, furniture, utensils, books, and

1 appliances, not exceeding in value \$1,000.00.

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

7 (d) To each householder, 10 sheep, 2 cows, 5 swine, 100 hens,
8 5 roosters, and a sufficient quantity of hay and grain, growing or
9 otherwise, for properly keeping the animals and poultry for 6
10 months.

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

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

25 (g) The shares held by any member, ~~being~~ **WHO IS** a householder,
26 of any association incorporated under ~~the provisions of the~~ savings
27 and loan act of 1980, 1980 PA 307, MCL 491.102 to 491.1202, ~~to the~~

1 amount of **NOT EXCEEDING** \$1,000.00 in such shares, at par value,
2 except that this exemption does not apply to any person who has a
3 homestead exempted under the general laws of this state.

4 ~~—— (h) A homestead of not exceeding 40 acres of land and the
5 dwelling house and appurtenances on that homestead, and not
6 included in any recorded plat, city, or village, or, instead, and
7 at the option of the owner, a quantity of land not exceeding in
8 amount 1 lot, being within a recorded town plat, city, or village,
9 and the dwelling house and appurtenances on that land, owned and
10 occupied by any resident of this state, not exceeding in value
11 \$3,500.00. This exemption extends to any person owning and
12 occupying any house on land not his or her own and which the person
13 claims as a homestead. However, this exemption does not apply to
14 any mortgage on the homestead, lawfully obtained, except that the
15 mortgage is not valid without the signature of a married judgment
16 debtor's spouse unless either of the following occurs:~~

17 ~~—— (i) The mortgage is given to secure the payment of the purchase
18 money or a portion of the purchase money.~~

19 ~~—— (ii) The mortgage is recorded in the office of the register of
20 deeds of the county in which the property is located, for a period
21 of 25 years, and no notice of a claim of invalidity is filed in
22 that office during the 25 years following the recording of the
23 mortgage.~~

24 **(H) SUBJECT TO SUBSECTION (4), A HOMESTEAD, LIMITED TO THE**
25 **FOLLOWING:**

26 **(i) IF THE DEBTOR OR THE DEBTOR'S SPOUSE IS 65 YEARS OF AGE OR**
27 **OLDER, 100% OF THE HOMESTEAD'S VALUE THAT IS \$150,000.00 OR LESS**

1 AND 75% OF THE HOMESTEAD'S VALUE THAT EXCEEDS \$150,000.00.

2 (ii) IF SUBPARAGRAPH (i) DOES NOT APPLY, THE HOMESTEAD'S VALUE
3 THAT DOES NOT EXCEED \$3,500.00.

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 **DESCRIBED IN SECTION** 408a of
10 the internal revenue code, ~~of 1986-26 USC 408 AND 408A~~, and the
11 payments or distributions from such an account or annuity. This
12 exemption applies to the operation of the ~~federal~~ bankruptcy code
13 as permitted by section 522(b)(2) of ~~title 11 of the United States~~
14 ~~Code, 11 U.S.C. 522~~ **THE BANKRUPTCY CODE, 11 USC 522**. This exemption
15 does not apply to ~~any amounts~~ **THE AMOUNT** contributed to an
16 individual retirement account or individual retirement annuity ~~if~~
17 ~~the 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~~ **1 OR MORE** of the following ~~occur~~ **APPLY**:

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~~
13 ~~1986, which~~ **26 USC 403**, **IF THE** plan or annuity is subject to the
14 employee retirement income security act of 1974, Public Law 93-406,
15 88 Stat. 829. This exemption applies to the operation of the
16 ~~federal~~ bankruptcy code, as permitted by section 522(b)(2) of ~~title~~
17 ~~11 of the United States Code, 11 U.S.C. 522~~ **THE BANKRUPTCY CODE, 11**
18 **USC 522**. This exemption does not apply to any amount contributed to
19 a pension, profit-sharing, stock bonus, or other qualified plan or
20 a 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~~ **1 OR BOTH** of the following:

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

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 PROPERTY** excluded from exemption
4 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 (4) **THE HOMESTEAD EXEMPTION UNDER SUBSECTION (1) (H) DOES NOT**
12 **APPLY TO A LAWFULLY OBTAINED MORTGAGE ON THE HOMESTEAD. HOWEVER, IF**
13 **THE DEBTOR IS MARRIED AND THE DEBTOR'S SPOUSE DID NOT SIGN THE**
14 **MORTGAGE, THE EXEMPTION APPLIES TO THE MORTGAGE UNLESS 1 OR BOTH OF**
15 **THE FOLLOWING APPLY:**

16 (A) THE MORTGAGE WAS GIVEN TO SECURE THE PAYMENT OF ALL OR A
17 PORTION OF THE PURCHASE MONEY FOR THE HOMESTEAD.

18 (B) THE MORTGAGE HAS BEEN RECORDED IN THE OFFICE OF THE
19 REGISTER OF DEEDS OF THE COUNTY IN WHICH THE HOMESTEAD IS LOCATED
20 FOR 25 YEARS OR MORE AND NOTICE OF A CLAIM OF INVALIDITY HAS NOT
21 BEEN FILED IN THAT OFFICE DURING THE 25 YEARS FOLLOWING THE
22 RECORDING OF THE MORTGAGE.

23 (5) AS USED IN THIS SECTION, "HOMESTEAD" MEANS THE FOLLOWING:

24 (A) LAND, LIMITED TO THE FOLLOWING SIZE, AND THE HOUSE AND
25 APPURTENANCES ON IT OWNED AND OCCUPIED BY A RESIDENT OF THIS STATE:

26 (i) IF THE HOMESTEAD IS NOT LOCATED IN A RECORDED PLAT, CITY,
27 OR VILLAGE, 40 ACRES OR LESS.

1 (ii) IF THE HOMESTEAD IS LOCATED IN A RECORDED PLAT, CITY, OR
2 VILLAGE, 1 LOT OR A FRACTION OF A LOT.

3 (B) A HOUSE OWNED AND OCCUPIED BY A RESIDENT OF THIS STATE
4 THAT IS ON LAND NOT OWNED BY THE RESIDENT.

5 Sec. 6027. If the homestead of any debtor is appraised at a
6 value ~~of more than \$3,500.00,~~ **THAT EXCEEDS THE AVAILABLE EXEMPTION**
7 **UNDER SECTION 6023** and cannot be divided, the debtor ~~shall not for~~
8 ~~that reason lose the benefit of~~ **MAY STILL CLAIM** the exemption, +
9 but ~~in such cases the~~ **LEVYING** officer shall deliver a notice,
10 attached to a copy of the appraisal, to the debtor or ~~to some of~~
11 ~~his~~ **A MEMBER OF THE DEBTOR'S** family of suitable age to understand
12 the nature thereof ~~OF THE NOTICE~~, that unless the debtor ~~pay~~ **PAYS**
13 the officer the ~~surplus over and above the \$3,500.00,~~ **AMOUNT THAT**
14 **EXCEEDS THE EXEMPTION** or the amount due on the execution within 60
15 days ~~thereafter~~ **AFTER THE DELIVERY OF THE NOTICE**, the premises will
16 be sold.