

**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Rep. Huuki

ENROLLED HOUSE BILL No. 5838

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of the courts, and of the judges and other officers of the courts; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in the courts; pleading, evidence, practice, and procedure in civil and criminal actions and proceedings in the courts; to provide for the powers and duties of certain state governmental officers and entities; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts," by amending section 5451 (MCL 600.5451), as added by 2004 PA 575.

The People of the State of Michigan enact:

Sec. 5451. (1) A debtor in bankruptcy under the bankruptcy code, 11 USC 101 to 1532, may exempt from property of the estate property that is exempt under federal law or, under 11 USC 522(b)(2), the following property:

(a) All of the following:

(i) Family pictures.

(ii) Arms and accoutrements required by law to be kept by a person.

(iii) Wearing apparel, excluding furs.

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

(v) Professionally prescribed health aids.

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

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

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

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

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

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

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

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

(j) Money or other benefits paid, provided, allowed to be paid or provided, or allowed, by a stock or mutual life, health, or casualty insurance company because of the disability due to injury or sickness of an insured person, whether the debt or liability of the insured person or beneficiary was incurred before or after the accrual of benefits under the insurance policy or contract, except that this exemption does not apply to actions to recover for necessities contracted for after the accrual of the benefits.

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) As used in this section:

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

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

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

(i) Sale of the property.

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

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

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

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

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

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

(iv) A condominium unit.

(v) A unit in a cooperative.

(vi) A motor home.

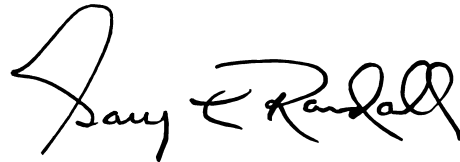
(vii) A boat or other watercraft.

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

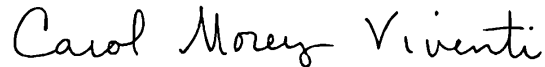
Enacting section 1. This amendatory act takes effect December 31, 2012.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor