

HOUSE BILL No. 4127

February 1, 2005, Introduced by Rep. Mortimer 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
3 any 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
18 life, ~~— or~~ health, or casualty insurance company, on account of the
19 disability due to injury or sickness of any insured person, whether
20 the debt or liability of ~~— such —~~ **THE** insured person or beneficiary
21 was incurred before or after the accrual of benefits under the
22 insurance policy or contract. ~~—, except that the —~~ **HOWEVER, THIS**
23 exemption does not apply to actions to recover for necessities
24 contracted for after the accrual of the benefits.

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

1 amount of \$1,000.00 in ~~such~~ **THE** shares, at par value, except that
2 this exemption does not apply to any person who has a homestead
3 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
15 exemption does not apply to ~~any amounts~~ **THE AMOUNT** contributed to
16 an individual retirement account or individual retirement ~~annuity~~
17 ~~if the contribution occurs~~ within 120 days before the debtor files
18 for 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**.

4 This 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
12 annuity contract under section 403(b) of the internal revenue code,
13 ~~of 1986, which~~ **26 USC 403, IF THE** plan or annuity is subject to
14 the employee retirement income security act of 1974, Public Law 93-
15 406, 88 Stat. 829. This exemption applies to the operation of the
16 ~~federal~~ bankruptcy code, as permitted by section 522(b)(2) of
17 ~~title 11 of the United States Code, 11 U.S.C. 522~~ **THE BANKRUPTCY**
18 **CODE, 11 USC 522**. This exemption does not apply to any amount
19 contributed to a pension, profit-sharing, stock bonus, or other
20 qualified plan or a 403(b) annuity if the contribution occurs
21 within 120 days before the debtor files for bankruptcy. This
22 exemption does not apply to the right or interest of a person in a
23 pension, profit-sharing, stock bonus, or other qualified plan or a
24 403(b) annuity to the extent that the right or interest ~~in the~~
25 ~~plan or annuity~~ is subject 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
4 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 (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**
7 **EXEMPTION UNDER SECTION 6023** and cannot be divided, the debtor
8 ~~shall not for that reason lose the benefit of~~ **MAY STILL CLAIM** the
9 exemption, ~~;~~ but ~~in such cases~~ the **LEVYING** officer shall
10 deliver a notice, attached to a copy of the appraisal, to the
11 debtor or ~~to some of his~~ **A MEMBER OF THE DEBTOR'S** family of
12 suitable age to understand the ~~nature thereof~~ **THE NOTICE**, that
13 unless the debtor ~~pay~~ **PAYS** the officer the ~~surplus over and~~
14 ~~above the \$3,500.00,~~ **AMOUNT THAT EXCEEDS THE EXEMPTION** or the
15 amount due on the execution within 60 days ~~thereafter~~ **AFTER THE**
16 **DELIVERY OF THE NOTICE**, the premises will be sold.