

HOUSE BILL No. 4835

May 24, 2007, Introduced by Reps. Constan, Young, Scott, Polidori, Hammel, Vagnozzi, Clemente, Melton, Clack, Meadows, Coulouris, Espinoza, Lemmons, Donigan and Gaffney and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending sections 5201 and 5205 (MCL 600.5201 and 600.5205) and by adding section 5202; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5201. (1) ~~All assignments~~ **AN ASSIGNMENT** commonly called **A**
2 common law ~~assignments~~ **ASSIGNMENT** for the benefit of creditors are
3 **IS** void unless ~~the same are~~ **ALL OF THE FOLLOWING APPLY:**

4 **(A) THE ASSIGNMENT IS** without preferences as between ~~such~~ **THE**
5 creditors. ~~and are~~

6 **(B) THE ASSIGNMENT IS** of all the property of the assignor not
7 exempt ~~from execution, and the~~ **UNDER SECTION 5202.**

8 **(C) WITHIN 10 DAYS AFTER THE ASSIGNMENT IS MADE, ALL OF THE**

1 FOLLOWING ARE FILED WITH THE CLERK OF THE CIRCUIT COURT FOR THE
 2 COUNTY IN WHICH THE ASSIGNOR RESIDES OR, IF THE ASSIGNOR DOES NOT
 3 RESIDE IN THIS STATE, FOR THE COUNTY WHERE THE ASSIGNED PROPERTY IS
 4 PRINCIPALLY LOCATED:

5 (i) ~~THE~~ instrument of assignment, ~~(or a duplicate thereof), a~~
 6 OR A DUPLICATE OF THE INSTRUMENT.

7 (ii) A list of creditors of the assignor. ~~and a~~

8 (iii) A bond for the faithful performance of the trust by the
 9 assignee. ~~are filed in the office of the clerk of the circuit court~~
 10 ~~where said assignor resides, or if he is not a resident of the~~
 11 ~~state, then of the county where the assigned property is~~
 12 ~~principally located, within 10 days after the making thereof.~~

13 (2) ~~No such AN~~ assignment is effectual to **UNDER THIS SECTION**
 14 **DOES NOT** convey the title to the property to the assignee until
 15 ~~such A~~ bond **AS REQUIRED BY SUBSECTION (1)** is filed with and
 16 approved by ~~said THE~~ clerk.

17 (3) ~~No AN~~ attachment or execution levied upon any assigned
 18 property of ~~such THE~~ assignor after ~~such AN~~ assignment **UNDER THIS**
 19 **SECTION** and before the expiration of the time ~~provided herein for~~
 20 filing ~~such A~~ bond **UNDER THIS SECTION**, is **NOT** valid, and does not
 21 create any ~~A~~ lien upon ~~such ON THE~~ property.

22 (4) ~~Such AN~~ assignment **UNDER THIS SECTION** shall be
 23 acknowledged before ~~some AN~~ officer authorized to take
 24 acknowledgments. ~~Such AN~~ inventory shall be **PREPARED CONTAINING** a
 25 detailed statement ~~as near as may be~~ of the general description,
 26 value, and location of all the property and rights assigned ~~and,~~
 27 ~~in cases of persons~~ **IF THE ASSIGNOR IS** engaged in business,

1 specifying the original cost of any goods, wares, merchandise,
 2 fixtures, and furniture. ~~Such~~ **THE** list of creditors **REQUIRED UNDER**
 3 **SUBSECTION (1)** shall ~~, as far as the assignor can state the same,~~
 4 contain the name and post office address of each creditor, the
 5 amount due ~~as near as may be~~ over and above all defenses, the
 6 actual consideration for the debt, when contracted, and all
 7 securities and the value thereof **OF THE SECURITIES** held by each
 8 creditor. ~~Such~~ **THE** inventory and list of creditors shall be sworn
 9 by the assignor to be full, true, and correct to the best of ~~his~~
 10 **THE ASSIGNOR'S** knowledge, information, and belief.

11 (5) ~~Such~~ **THE** bond **REQUIRED UNDER SUBSECTION (1)** shall be to
 12 the assignor for the joint and several use and benefit of ~~himself~~
 13 **THE ASSIGNOR** and each, any, and all of the creditors of ~~such~~ **THE**
 14 assignor in a penal sum at least double the value of the assigned
 15 property as shown by ~~such~~ **THE** inventory **REQUIRED UNDER SUBSECTION**
 16 **(4)**, ~~and~~ conditioned for the prompt and faithful administration of
 17 the trust by the assignee, and ~~shall be~~ signed by the assignee and
 18 sufficient surety or sureties, who shall, under oath endorsed on
 19 ~~said~~ **THE** bond, testify that they are worth in the aggregate over
 20 and above all exemptions, incumbrances, and debts, the penal sum of
 21 ~~said~~ **THE** bond.

22 **SEC. 5202. (1) ALL OF THE FOLLOWING PROPERTY IS EXEMPT FROM**
 23 **ASSIGNMENT UNDER SECTION 5201 OR IN OTHER LIQUIDATION OR**
 24 **REORGANIZATION PROCEEDINGS:**

25 (A) FAMILY PICTURES.

26 (B) ARMS AND ACCOUTREMENTS REQUIRED BY LAW TO BE KEPT BY A
 27 PERSON.

1 (C) WEARING APPAREL, EXCLUDING FURS.

2 (D) CEMETERIES, TOMBS, AND RIGHTS OF BURIAL IN USE AS
3 REPOSITORIES FOR THE DEAD OF THE DEBTOR'S FAMILY OR KEPT FOR BURIAL
4 OF THE DEBTOR.

5 (E) PROFESSIONALLY PRESCRIBED HEALTH AIDS.

6 (F) PROVISIONS AND FUEL FOR COMFORTABLE SUBSISTENCE OF EACH
7 HOUSEHOLDER AND HIS OR HER FAMILY FOR 6 MONTHS.

8 (G) THE INTEREST, NOT TO EXCEED A VALUE OF \$475.00 IN EACH
9 ITEM AND AN AGGREGATE VALUE OF \$3,200.00, IN HOUSEHOLD GOODS,
10 FURNITURE, UTENSILS, BOOKS, APPLIANCES, AND JEWELRY.

11 (H) THE INTEREST, NOT TO EXCEED \$525.00 IN VALUE, IN A SEAT,
12 PEW, OR SLIP OCCUPIED BY THE DEBTOR OR THE DEBTOR'S FAMILY IN A
13 HOUSE OR PLACE OF PUBLIC WORSHIP.

14 (I) THE INTEREST, NOT TO EXCEED \$2,125.00 IN VALUE, IN CROPS,
15 FARM ANIMALS, AND FEED FOR THE FARM ANIMALS.

16 (J) THE INTEREST, NOT TO EXCEED \$525.00 IN VALUE, IN HOUSEHOLD
17 PETS.

18 (K) THE INTEREST, NOT TO EXCEED \$2,950.00 IN VALUE, IN 1 MOTOR
19 VEHICLE.

20 (L) THE INTEREST, NOT TO EXCEED \$525.00 IN VALUE, IN 1 COMPUTER
21 AND ITS ACCESSORIES.

22 (M) THE INTEREST, NOT TO EXCEED \$2,125.00 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 (N) MONEY OR OTHER BENEFITS PAID, PROVIDED, OR ALLOWED TO BE
27 PAID, PROVIDED, OR ALLOWED, BY A STOCK OR MUTUAL LIFE, HEALTH, OR

1 CASUALTY INSURANCE COMPANY BECAUSE OF THE DISABILITY DUE TO INJURY
2 OR SICKNESS OF AN INSURED PERSON, WHETHER THE DEBT OR LIABILITY OF
3 THE INSURED PERSON OR BENEFICIARY WAS INCURRED BEFORE OR AFTER THE
4 ACCRUAL OF BENEFITS UNDER THE INSURANCE POLICY OR CONTRACT, EXCEPT
5 THAT THIS EXEMPTION DOES NOT APPLY TO ACTIONS TO RECOVER FOR
6 NECESSITIES CONTRACTED FOR AFTER THE ACCRUAL OF THE BENEFITS.

7 (O) THE INTEREST, NOT EXCEEDING \$1,075.00 IN PAR VALUE, IN
8 SHARES HELD BY A MEMBER, WHO IS A HOUSEHOLDER, OF AN ASSOCIATION
9 INCORPORATED UNDER THE SAVINGS AND LOAN ACT OF 1980, 1980 PA 307,
10 MCL 491.102 TO 491.1202, EXCEPT THAT THIS EXEMPTION DOES NOT APPLY
11 TO A PERSON WHO HAS A HOMESTEAD EXEMPTED UNDER THE GENERAL LAWS OF
12 THIS STATE.

13 (P) ALL INDIVIDUAL RETIREMENT ACCOUNTS, INCLUDING ROTH IRAS,
14 OR INDIVIDUAL RETIREMENT ANNUITIES AS DEFINED IN SECTION 408 OR
15 408A OF THE INTERNAL REVENUE CODE, 26 USC 408 AND 408A, AND THE
16 PAYMENTS OR DISTRIBUTIONS FROM THOSE ACCOUNTS OR ANNUITIES. THIS
17 EXEMPTION DOES NOT APPLY TO THE AMOUNT CONTRIBUTED TO AN INDIVIDUAL
18 RETIREMENT ACCOUNT OR INDIVIDUAL RETIREMENT ANNUITY WITHIN 120 DAYS
19 BEFORE THE ASSIGNMENT OR COMMENCEMENT OF PROCEEDINGS. THIS
20 EXEMPTION DOES NOT APPLY TO ANY OF THE FOLLOWING:

21 (i) THE PORTION OF AN INDIVIDUAL RETIREMENT ACCOUNT OR
22 INDIVIDUAL RETIREMENT ANNUITY THAT IS SUBJECT TO AN ORDER OF A
23 COURT PURSUANT TO A JUDGMENT OF DIVORCE OR SEPARATE MAINTENANCE.

24 (ii) THE PORTION OF AN INDIVIDUAL RETIREMENT ACCOUNT OR
25 INDIVIDUAL RETIREMENT ANNUITY THAT IS SUBJECT TO AN ORDER OF A
26 COURT CONCERNING CHILD SUPPORT.

27 (iii) THE PORTION OF AN INDIVIDUAL RETIREMENT ACCOUNT OR

1 INDIVIDUAL RETIREMENT ANNUITY THAT IS ATTRIBUTABLE TO CONTRIBUTIONS
2 TO THE INDIVIDUAL RETIREMENT ACCOUNT OR PREMIUMS ON THE INDIVIDUAL
3 RETIREMENT ANNUITY, INCLUDING THE EARNINGS OR BENEFITS FROM THOSE
4 CONTRIBUTIONS OR PREMIUMS, THAT, IN THE TAX YEAR MADE OR PAID,
5 EXCEEDED THE DEDUCTIBLE AMOUNT ALLOWED UNDER SECTION 408 OF THE
6 INTERNAL REVENUE CODE, 26 USC 408. THIS LIMITATION ON CONTRIBUTIONS
7 DOES NOT APPLY TO A ROLLOVER OF A PENSION, PROFIT-SHARING, STOCK
8 BONUS PLAN, OR OTHER PLAN THAT IS QUALIFIED UNDER SECTION 401 OF
9 THE INTERNAL REVENUE CODE, 26 USC 401, OR AN ANNUITY CONTRACT UNDER
10 SECTION 403(B) OF THE INTERNAL REVENUE CODE, 26 USC 403.

11 (Q) THE RIGHT OR INTEREST OF A PERSON IN A PENSION, PROFIT-
12 SHARING, STOCK BONUS, OR OTHER PLAN THAT IS QUALIFIED UNDER SECTION
13 401 OF THE INTERNAL REVENUE CODE, 26 USC 401, OR AN ANNUITY
14 CONTRACT UNDER SECTION 403(B) OF THE INTERNAL REVENUE CODE, 26 USC
15 403, IF THE PLAN OR ANNUITY IS SUBJECT TO THE EMPLOYEE RETIREMENT
16 INCOME SECURITY ACT OF 1974, PUBLIC LAW 93-406, 88 STAT. 829. THIS
17 EXEMPTION DOES NOT APPLY TO ANY AMOUNT CONTRIBUTED TO A PENSION,
18 PROFIT-SHARING, STOCK BONUS, OR OTHER QUALIFIED PLAN OR A 403(B)
19 ANNUITY IF THE CONTRIBUTION OCCURS WITHIN 120 DAYS BEFORE THE
20 ASSIGNMENT OR COMMENCEMENT OF PROCEEDINGS. THIS EXEMPTION DOES NOT
21 APPLY TO THE RIGHT OR INTEREST OF A PERSON IN A PENSION, PROFIT-
22 SHARING, STOCK BONUS, OR OTHER QUALIFIED PLAN OR A 403(B) ANNUITY
23 TO THE EXTENT THAT THE RIGHT OR INTEREST IS SUBJECT TO EITHER OF
24 THE FOLLOWING:

25 (i) AN ORDER OF A COURT PURSUANT TO A JUDGMENT OF DIVORCE OR
26 SEPARATE MAINTENANCE.

27 (ii) AN ORDER OF A COURT CONCERNING CHILD SUPPORT.

1 (R) THE INTEREST OF THE DEBTOR, OR OF A CODEBTOR, IF ANY, AND
2 THE DEBTOR'S DEPENDENTS, NOT TO EXCEED \$31,900.00 IN VALUE OR, IF
3 THE DEBTOR OR A DEPENDENT OF THE DEBTOR AT THE TIME OF THE
4 ASSIGNMENT OR COMMENCEMENT OF PROCEEDINGS IS 65 YEARS OF AGE OR
5 OLDER OR DISABLED, NOT TO EXCEED \$47,825.00 IN VALUE, IN A
6 HOMESTEAD.

7 (S) PROPERTY DESCRIBED IN SECTION 1 OF 1927 PA 212, MCL
8 557.151, OR REAL PROPERTY, HELD JOINTLY BY A HUSBAND AND WIFE AS A
9 TENANCY BY THE ENTIRETY, EXCEPT THAT THIS EXEMPTION DOES NOT APPLY
10 WITH REGARD TO A CLAIM BASED ON A JOINT DEBT OF THE HUSBAND AND
11 WIFE.

12 (T) IF THE OWNER OF A HOMESTEAD DIES, LEAVING A SURVIVING
13 SPOUSE BUT NO CHILDREN, THE SURVIVING SPOUSE BEFORE HIS OR HER
14 REMARRIAGE, UNLESS THE SURVIVING SPOUSE IS THE OWNER OF A HOMESTEAD
15 IN HIS OR HER OWN RIGHT, MAY EXEMPT THE HOMESTEAD AND THE RENTS AND
16 PROFITS OF THE HOMESTEAD.

17 (2) AN EXEMPTION UNDER THIS SECTION DOES NOT APPLY TO A
18 MORTGAGE, LIEN, OR SECURITY INTEREST IN THE EXEMPT PROPERTY THAT IS
19 CONSENSUALLY GIVEN OR LAWFULLY OBTAINED UNLESS THE LIEN IS OBTAINED
20 BY JUDGMENT, ATTACHMENT, LEVY, OR SIMILAR LEGAL PROCESS IN
21 CONNECTION WITH A COURT ACTION OR PROCEEDING AGAINST THE DEBTOR.

22 (3) IF PROPERTY THAT IS EXEMPT UNDER THIS SECTION IS SOLD,
23 DAMAGED, DESTROYED, OR ACQUIRED FOR PUBLIC USE, THE RIGHT TO
24 RECEIVE PROCEEDS OR, IF THE OWNER RECEIVES PROCEEDS AND HOLDS THEM
25 IN A MANNER THAT MAKES THEM IDENTIFIABLE AS PROCEEDS, THE PROCEEDS
26 RECEIVED ARE EXEMPT IN THE SAME MANNER AND AMOUNT AS THE EXEMPT
27 PROPERTY. AN EXEMPTION UNDER THIS SUBSECTION MAY BE CLAIMED UP TO 1

1 YEAR AFTER THE RECEIPT OF THE PROCEEDS BY THE OWNER.

2 (4) ON MARCH 1, 2008 AND AT THE END OF EACH 3-YEAR PERIOD
3 AFTER 2008, THE STATE TREASURER SHALL ADJUST EACH DOLLAR AMOUNT IN
4 THIS SECTION OR, FOR EACH ADJUSTMENT AFTER MARCH 1, 2008, EACH
5 ADJUSTED AMOUNT, BY AN AMOUNT DETERMINED BY THE STATE TREASURER TO
6 REFLECT THE CUMULATIVE CHANGE IN THE CONSUMER PRICE INDEX FOR THE
7 3-YEAR PERIOD ENDING ON THE DECEMBER 31 PRECEDING THE ADJUSTMENT
8 DATE AND ROUNDED TO THE NEAREST \$25.00. THE STATE TREASURER SHALL
9 PUBLISH THE ADJUSTED AMOUNTS. THE ADJUSTED AMOUNTS APPLY TO CASES
10 FILED ON OR AFTER APRIL 1 FOLLOWING THE ADJUSTMENT DATE.

11 (5) AS USED IN THIS SECTION:

12 (A) "CONSUMER PRICE INDEX" MEANS THE CONSUMER PRICE INDEX FOR
13 ALL URBAN CONSUMERS IN THE AREA OF DETROIT-ANN ARBOR-FLINT,
14 MICHIGAN, PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR OR, IF
15 THE UNITED STATES DEPARTMENT OF LABOR CEASES PUBLISHING THAT INDEX,
16 THE MOST SIMILAR INDEX AVAILABLE.

17 (B) "DISABLED" MEANS UNABLE TO ENGAGE IN SUBSTANTIAL GAINFUL
18 ACTIVITY, AS DEFINED BY 42 USC 1382C(A)(3)(E), AS A RESULT OF A
19 PHYSICAL OR MENTAL IMPAIRMENT AND RECEIVING SUPPLEMENTAL SECURITY
20 INCOME UNDER 42 USC 1382(A)(3)(A) AND (C).

21 (C) "PROCEEDS" MEANS MONEY PAYABLE OR PAID AS A RESULT OF 1 OR
22 MORE OF THE FOLLOWING:

23 (i) SALE OF THE PROPERTY.

24 (ii) INSURANCE OR OTHER INDEMNIFICATION FOR DAMAGE OR
25 DESTRUCTION OF THE PROPERTY.

26 (iii) COMPENSATION FOR THE ACQUISITION FOR PUBLIC USE OF THE
27 PROPERTY.

1 (D) "HOMESTEAD" MEANS 1 OF THE FOLLOWING OWNED OR BEING
 2 PURCHASED UNDER AN EXECUTORY CONTRACT BY THE DEBTOR THAT THE DEBTOR
 3 OR A DEPENDENT OF THE DEBTOR OCCUPIES AS HIS OR HER PRINCIPAL
 4 RESIDENCE:

5 (i) IF THE LAND IS LOCATED OUTSIDE OF A RECORDED PLAT, CITY, OR
 6 VILLAGE, A RESIDENTIAL DWELLING AND APPURTENANCES AND THE LAND ON
 7 WHICH THEY ARE SITUATED, NOT EXCEEDING 40 ACRES.

8 (ii) IF THE LAND IS LOCATED WITHIN A RECORDED PLAT, CITY, OR
 9 VILLAGE, A RESIDENTIAL DWELLING AND APPURTENANCES AND THE LAND ON
 10 WHICH THEY ARE SITUATED, NOT EXCEEDING 1 LOT OR PARCEL.

11 (iii) A RESIDENTIAL DWELLING SITUATED ON LAND NOT OWNED BY THE
 12 DEBTOR.

13 (iv) A CONDOMINIUM UNIT.

14 (v) A UNIT IN A COOPERATIVE.

15 (vi) A MOTOR HOME.

16 (vii) A BOAT OR OTHER WATERCRAFT.

17 (E) "RESIDENTIAL DWELLING" INCLUDES, BUT IS NOT LIMITED TO, A
 18 HOUSE OR A MANUFACTURED OR MOBILE HOME.

19 Sec. 5205. Such ~~AN~~ assignment shall be deemed to convey ~~UNDER~~
 20 SECTION 5201 CONVEYS to the assignee all property of the assignor
 21 not exempt from execution ~~UNDER SECTION 5202~~, and all rights legal
 22 or equitable of said ~~THE~~ assignor. The assignee shall also be
 23 trustee of the estate of the debtor for the benefit of his ~~THE~~
 24 DEBTOR'S creditors and may recover all property or rights or
 25 equities in property which ~~THAT~~ might be recovered by any creditor.
 26 ~~When~~ ~~IF~~ more than 1 assignee is appointed, the debts and property
 27 of the assignor may be collected and received by 1 of them and ~~when~~

1 **IF** there are more than 2 assignees, every power and authority of
2 the whole may be exercised by any 2 of them. The survivor or
3 survivors of ~~any assignees shall have~~ **AN ASSIGNEE HAVE** all their
4 **THE** powers and rights ~~and all~~ **OF THE ASSIGNEE. ALL** property in the
5 ~~hands~~ **POSSESSION** of ~~any~~ **THE** assignee at the time of ~~his~~ **THE**
6 **ASSIGNEE'S** death, removal, or incapacity, shall be delivered to the
7 remaining assignee or assignees if there ~~be~~ **ARE** any, or to the
8 successor of the ~~one so dying,~~ **ASSIGNEE WHO DIED OR WAS** removed or
9 incapacitated. ~~, who~~ **A SUCCESSOR WHO IS ENTITLED TO POSSESSION OF**
10 **PROPERTY** may demand and sue for **POSSESSION OF** the ~~same~~ **PROPERTY.**

11 Enacting section 1. Chapter 54a of the revised judicature act
12 of 1961, 1961 PA 236, MCL 600.5451, is repealed.