

# HOUSE BILL NO. 5236

July 01, 2021, Introduced by Reps. Breen and Rabhi and referred to the Committee on Government Operations.

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending sections 1410, 2005, 2162, 2807, 3344, 5451, 6023a, and 6131 (MCL 600.1410, 600.2005, 600.2162, 600.2807, 600.3344, 600.5451, 600.6023a, and 600.6131), section 2162 as amended by 2001 PA 11, section 2807 as added by 2004 PA 136, section 5451 as amended by 2012 PA 451, and section 6023a as added by 2004 PA 575.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

**1**           Sec. 1410. If 2 ~~person~~**individuals** have lived together as

1 ~~husband and wife,~~ **spouses** and a legal impediment existed to the  
2 marriage of either of the ~~persons,~~ **individuals**, their issue and the  
3 ~~person~~ **individual** that entered the relation in the ~~good faith~~ **good-**  
4 **faith** belief that the marriage was lawful are entitled to the same  
5 damages in a civil action as though no such impediment existed,  
6 ~~when if~~ the other of ~~such persons~~ **the individuals** or their issue is  
7 injured or dies as a result of the negligent act or omission of  
8 another.

9       Sec. 2005. ~~No~~ **A** suit may **not** be brought against ~~husband and~~  
10 ~~wife,~~ **an individual and the individual's spouse**, jointly, or  
11 against the ~~husband~~ **spouse** alone, for any tort of the ~~wife,~~  
12 **individual**, unless ~~such~~ **the** tort was committed under such  
13 circumstances as to render them both liable.

14       Sec. 2162. (1) In a civil action or administrative proceeding,  
15 a ~~husband~~ **spouse may** not be examined as a witness for or  
16 against his ~~wife~~ **or her spouse** without ~~her~~ **the spouse's** consent, ~~or~~  
17 ~~a wife for or against her husband without his consent,~~ except as  
18 provided in subsection (3).

19       (2) In a criminal prosecution, a ~~husband~~ **spouse may** not  
20 be examined as a witness for or against his ~~wife~~ **or her spouse**  
21 without ~~his~~ **the spouse's** consent, ~~or a wife for or against her~~  
22 ~~husband without her consent,~~ except as provided in subsection (3).

23       (3) The spousal privileges established in subsections (1) and  
24 (2) and the confidential communications privilege established in  
25 subsection (7) do not apply in any of the following:

26       (a) In a suit for divorce, separate maintenance, or annulment.

27       (b) In a prosecution for bigamy.

28       (c) In a prosecution for a crime committed against a child of  
29 either or both or a crime committed against an individual who is

1 younger than 18 years of age.

2 (d) In a cause of action that grows out of a personal wrong or  
3 injury done by one to the other or that grows out of the refusal or  
4 neglect to furnish the spouse or children with suitable support.

5 (e) In a case of desertion or abandonment.

6 (f) In a case in which the ~~husband or wife~~ **spouse** is a party  
7 to the record in a ~~suit,~~ **an** action, ~~or~~ proceeding if the title to  
8 the separate property of the ~~husband or wife~~ **spouse** called or  
9 offered as a witness, or if the title to property derived from,  
10 through, or under the ~~husband or wife~~ **spouse** called or offered as a  
11 witness, is the subject matter in controversy or litigation in the  
12 ~~suit,~~ action, ~~or~~ proceeding, in opposition to the claim or  
13 interest of the other spouse, who is a party to the record in the  
14 ~~suit,~~ action, ~~or~~ proceeding. In all such cases, the ~~husband or~~  
15 ~~wife~~ **spouse** who makes the claim of title, or under or from whom the  
16 title is derived, ~~shall be~~ **is** as competent to testify in relation  
17 to the separate property and the title to the separate property  
18 without the consent of the ~~husband or wife,~~ **other spouse**, who is a  
19 party to the record in the ~~suit,~~ action, ~~or~~ proceeding, as though  
20 the marriage relation did not exist.

21 (4) Except as otherwise provided in subsections (5) and (6), a  
22 married ~~person~~ **individual** or a ~~person~~ **an individual** who has been  
23 married previously ~~shall~~ **may** not be examined in a civil action or  
24 administrative proceeding as to any communication made between that  
25 ~~person~~ **individual** and his or her spouse or former spouse during the  
26 marriage.

27 (5) A married ~~person~~ **individual** may be examined in a civil  
28 action or administrative proceeding, with his or her consent, as to  
29 any communication made between that ~~person~~ **individual** and his or

1 her spouse during the marriage regarding a matter described in  
2 subsection (3).

3 (6) ~~A person~~**An individual** who has been married previously may  
4 be examined in a civil action or administrative proceeding, with  
5 his or her consent, as to any communication made between that  
6 ~~person~~**individual** and his or her former spouse during the marriage  
7 regarding a matter described in subsection (3).

8 (7) Except as otherwise provided in subsection (3), a married  
9 ~~person~~**individual** or a ~~person~~**an individual** who has been married  
10 previously ~~shall~~**may** not be examined in a criminal prosecution as  
11 to any communication made between that ~~person~~**individual** and his or  
12 her spouse or former spouse during the marriage without the consent  
13 of the ~~person~~**individual** to be examined.

14 (8) In an action or proceeding instituted by ~~the husband or~~  
15 ~~wife,~~**a spouse** in consequence of adultery, the ~~husband and wife~~  
16 **spouses** are not competent to testify.

17 Sec. 2807. (1) A judgment lien does not attach to an interest  
18 in real property owned as tenants by the entirety unless the  
19 underlying judgment is entered against both ~~the husband and~~  
20 ~~wife.~~**spouses.**

21 (2) With the following exceptions, a judgment lien has  
22 priority over a lien recorded with the register of deeds after the  
23 notice of judgment lien is recorded:

24 (a) A purchase money mortgage.

25 (b) A mortgage to the extent that proceeds of the mortgage are  
26 used to pay 1 or more of the following:

27 (i) Purchase money mortgage debt.

28 (ii) A subsequent refinancing of purchase money mortgage debt.

29 (iii) A nonpurchase money mortgage recorded before attachment of

1 the judgment lien.

2 (c) A lien that secures an advance made under a previously  
3 recorded future-advance mortgage.

4 (d) A lien that has or acquires priority by operation of law.

5 (e) A claim of lien recorded with the register of deeds under  
6 section 111 of the construction lien act, 1980 PA 497, MCL  
7 570.1111.

8 (f) A lien for unpaid assessments or charges due to a  
9 condominium association, homeowners' association, or property  
10 owners' association that arises from or pursuant to recorded  
11 restrictions that run with the land.

12 (g) A state or federal tax lien.

13 (3) If property subject to a judgment lien recorded under this  
14 chapter is sold or refinanced, proceeds of the sale or refinancing  
15 due to a judgment creditor are limited to the judgment debtor's  
16 equity in the property at the time of the sale or refinancing after  
17 all liens senior to the judgment lien, property taxes, and costs  
18 and fees necessary to close the sale or refinancing are paid or  
19 extinguished.

20 Sec. 3344. ~~Any~~**A** married ~~woman~~**individual** may release ~~her~~**the**  
21 **individual's** right, interest, or estate to ~~her husband~~**the**  
22 **individual's spouse** and lawfully acknowledge this release. If the  
23 release is executed outside of this state it ~~shall~~**must** be  
24 executed, acknowledged, and certified as the laws of this state  
25 require for the execution, acknowledgment, and certification of  
26 deeds in any other state, territory, or district of the United  
27 States. ~~Upon~~**On** the release, the shares of the sale arising from  
28 ~~her~~**the individual's** contingent interest ~~shall~~**must** be paid to ~~her~~.  
29 **the individual**. This release ~~shall be~~**is** a bar to ~~her~~**the**

1 **individual's** right, estate, or claim.

2           Sec. 5451. (1) A debtor in bankruptcy under the bankruptcy  
3 code, 11 USC 101 to 1532, may exempt from property of the estate  
4 property that is exempt under federal law or, under 11 USC  
5 522(b)(2), the following property:

6           (a) All of the following:

7           (i) Family pictures.

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

10           (iii) Wearing apparel, excluding furs.

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

14           (v) Professionally prescribed health aids.

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

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

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

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

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

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

29           (h) The interest, not to exceed \$500.00 in value, in 1

1 computer and its accessories.

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

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

14 (k) All individual retirement accounts, including Roth IRAs,  
15 or individual retirement annuities as defined in section 408 or  
16 ~~408a~~**408A** of the internal revenue code **of 1986**, 26 USC 408 and  
17 ~~408a~~**408A**, and the payments or distributions from those accounts  
18 or annuities. This exemption applies to the operation of the  
19 federal bankruptcy code as permitted by section 522(b)(2) of the  
20 bankruptcy code, 11 USC 522. This exemption does not apply to the  
21 amount contributed to an individual retirement account or  
22 individual retirement annuity within 120 days before the debtor  
23 files for bankruptcy. This exemption does not apply to any of the  
24 following:

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

28 (ii) The portion of an individual retirement account or  
29 individual retirement annuity that is subject to an order of a

1 court concerning child support.

2 (iii) The portion of an individual retirement account or  
3 individual retirement annuity that is attributable to contributions  
4 to the individual retirement account or premiums on the individual  
5 retirement annuity, including the earnings or benefits from those  
6 contributions or premiums, that, in the tax year made or paid,  
7 exceeded the deductible amount allowed under section 408 of the  
8 internal revenue code **of 1986**, 26 USC 408. This limitation on  
9 contributions does not apply to a rollover of a pension, profit-  
10 sharing, stock bonus plan, or other plan that is qualified under  
11 section 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**, 26 USC 403.

14 (l) 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 **of 1986**, 26 USC 401, or an annuity  
17 contract under section 403(b) of the internal revenue code **of 1986**,  
18 26 USC 403, if the plan or annuity is subject to the employee  
19 retirement income security act of 1974, Public Law 93-406. ~~7-88~~  
20 ~~Stat. 829.~~ This exemption does not apply to any amount contributed  
21 to a pension, profit-sharing, stock bonus, or other qualified plan  
22 or a 403(b) annuity if the contribution occurs within 120 days  
23 before the debtor files for bankruptcy. This exemption does not  
24 apply to the right or interest of a person in a pension, profit-  
25 sharing, stock bonus, or other qualified plan or a 403(b) annuity  
26 to the extent that the right or interest is subject to either of  
27 the following:

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



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

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

7           (n) Property described in section 1 of 1927 PA 212, MCL  
8 557.151, or real property, held jointly by ~~a husband and wife~~  
9 **spouses** as a tenancy by the entirety, except that this exemption  
10 does not apply with regard to a claim based on a joint debt of the  
11 ~~husband and wife~~.**spouses**.

12           (o) 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 from the property of a federal bankruptcy  
27 estate in the same manner and amount as the exempt property. An  
28 exemption under this subsection may be claimed up to 1 year after  
29 the receipt of the proceeds by the owner.

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

11           (5) As used in this section:

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

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

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

24           (i) Sale of the property.

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

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

29           (d) "Homestead" means 1 of the following owned or being

1 purchased under an executory contract by the debtor that the debtor  
2 or a dependent of the debtor occupies as his or her principal  
3 residence:

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

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

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

12 (iv) A condominium unit.

13 (v) A unit in a cooperative.

14 (vi) A motor home.

15 (vii) A boat or other watercraft.

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

18 Sec. 6023a. Property described in section 1 of 1927 PA 212,  
19 MCL 557.151, or real property, held jointly by ~~a husband and wife~~  
20 **spouses** as a tenancy by the entirety is exempt from execution under  
21 a judgment entered against only 1 spouse.

22 Sec. 6131. (1) ~~The~~ **In proceedings under this chapter, the**  
23 complainant shall make a prima facie case by introducing in  
24 evidence the judgment against the principal defendant and proof of  
25 the conveyance complained of. The burden of proof is then on the  
26 judgment debtor, the person claiming through ~~him,~~ **the judgment**  
27 **debtor**, or the person whom it is claimed holds the property in  
28 trust for ~~him,~~ **the judgment debtor**, to show that the transaction is  
29 in all respects bona fide or that the person is not holding as

1 trustee of the judgment debtor.

2 (2) ~~In case of~~ **If there is** a levy on the equitable interest of  
 3 a judgment debtor, the judgment creditor, may, before the sale on  
 4 execution, institute proceedings under this chapter to ascertain  
 5 and determine the rights and equities of the judgment debtor in the  
 6 property levied on. ~~Where no such~~ **If** proceedings **under this chapter**  
 7 are **not** instituted ~~prior to~~ **before** the sale on execution, they must  
 8 be instituted within 1 year ~~thereafter~~ **after the sale**.

9 (3) ~~Where~~ **If** it appears that the judgment debtor, at a time  
 10 within 1 year ~~prior to~~ **before** the date of the commencement of the  
 11 action in which the judgment is entered, has had title to or has  
 12 paid the purchase price of any real or personal property to which  
 13 at the time of the examination his ~~wife~~, **or her spouse**, or a  
 14 relative or a person on confidential terms with the judgment  
 15 debtor, may claim title or right of possession, the burden of proof  
 16 ~~shall be upon~~ **is on** the judgment debtor, or **the** person claiming  
 17 title or right of possession, to establish that the transfer or  
 18 gift from ~~him~~ **the judgment debtor** was not made for the purpose of  
 19 delaying, hindering, and defrauding creditors.

20 Enacting section 1. This amendatory act does not take effect  
 21 unless Senate Joint Resolution \_\_\_\_ or House Joint Resolution \_\_\_\_  
 22 (request no. 02344'21) of the 101st Legislature becomes a part of  
 23 the state constitution of 1963 as provided in section 1 of article  
 24 XII of the state constitution of 1963.