

DEBTOR/CREDITOR RIGHTS COMMITTEE

REPORT PREPARED FOR THE MARCH 8, 2012 COUNCIL MEETING

1. Next Scheduled Meeting of the Committee

Next scheduled meeting of the Committee: Educational event on March 21, 2012 from 11:30 a.m. to 1:30 p.m. at the Atheneum Hotel, Detroit.

2. Council Approval

None at this time.

3. Membership

The Committee communicates regularly with its membership through its list serv, with announcements of Committee events, case law alerts, and announcements of events of interest to bankruptcy and insolvency law practitioners. This increases the Committee's profile. We regularly receive inquiries from bar members about joining the Committee and respond immediately to reach out to the individuals. In addition, holding regular meetings and events increases the interest of the bar in becoming members.

4. Accomplishments Toward Committee Objectives

See below.

5. Meetings and Programs

The Committee held a dinner meeting on January 11, 2012 attended by ten members. Arrangements were made for telephonic participation.

The Committee is co-sponsoring an event with the Federal Bar Association – Eastern District of Michigan Chapter, Bankruptcy Committee on March 21, 2012 at 11:30 a.m. in the Atheneum in Detroit, where the Honorable Steven W. Rhodes will speak on his new book, *The Ponzi Book: A Legal Resource for Unraveling Ponzi Schemes*. This event is being held in conjunction with the FBA because both organizations wanted a program on Judge Rhodes' new book. By having the event together, the Committee should be able to attract new members.

The next meeting of the Committee, which is tentatively scheduled for April or May 2012, will feature an educational event on imposing liability under a carve out guarantee.

6. Publications

The Committee is responsible for the March 2013 edition of the Michigan Business Law Journal. We discussed articles at our January 11, 2012 meeting and plan to

discuss the topic again at the next meeting. We have already had an expression of interest in an article.

Member Kal Goren, who provided a case law alert for the Committee, wrote an article on that issue, published by *Laches* (the publication of the Oakland County Bar Association), "But I Thought my IRA was Protected from My Creditors."

7. **Methods of Monitoring Legislative/Judicial Administrative Developments and Recommended Action**

Our members are active in informing us about legal developments so that they or one of the co-chairs can draft and send case law alerts on the list serv to the membership. Also, the co-chairs individually and through bar groups monitor new developments to discuss at our meetings or for the basis of case law alerts.

Our Committee has been advocating that the Michigan Legislature amend Michigan's exemption laws to correct both the problem of pre-emption by federal and the confusion of having two paralleled but inconsistent exemption statutes. Finally, bills have been introduced in both the Senate, Senate Bill No. 895, and the House, House Bill No. 5427, to address these problems. See attached. House Bill No. 5427 more closely resembles the Committee's proposed bill. Thomas Morris is already in contact with the sponsors of Senate Bill No. 895, about the issues omitted from the Senate Bill.

8. **Miscellaneous**

Not applicable.

Judy B. Calton
Judith Greenstone Miller
Co-chairs

SENATE BILL No. 895

January 18, 2012, Introduced by Senators GREEN, KAHN, BRANDENBURG, MARLEAU and WALKER and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending section 6023 (MCL 600.6023), as amended by 1998 PA 61.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 6023. (1) The following property of ~~the~~ A JUDGMENT debtor
2 and the JUDGMENT debtor's dependents ~~shall be~~ IS exempt from levy
3 and sale under ~~any~~ AN 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~~ AND HIS OR HER family, and provisions and fuel for
7 comfortable subsistence of each householder and his or her family
8 for 6 months.

9 (b) All household goods, furniture, utensils, books, and
10 appliances, not exceeding in value \$1,000.00.

11 (c) A seat, pew, or slip occupied by the judgment debtor or

1 the judgment debtor's family in ~~any~~^A house or place of public
2 worship, and all cemeteries, tombs, and rights of burial while in
3 use as repositories of the dead of the judgment debtor's family or
4 kept for burial of the judgment debtor.

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

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

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

23 (g) The shares held by ~~any member, being a~~ householder ~~, WHO~~
24 **IS A MEMBER** of ~~any~~^{AN} association incorporated under ~~the provisions~~
25 ~~of the~~ savings and loan act of 1980, 1980 PA 307, MCL 491.102 to
26 491.1202, to the amount of \$1,000.00 in ~~such~~ shares, at par value,
27 except that this exemption does not apply to any person who has a

1 homestead exempted under the general laws of this state.

2 (h) A homestead of not ~~exceeding~~ **MORE THAN** 40 acres of land
3 and the dwelling house and appurtenances on that homestead ~~and~~
4 **THAT IS** not included in ~~any~~ **A** recorded plat, city, or village, or,
5 ~~instead, and~~ at the option of the owner, a quantity of land **THAT**
6 **CONSISTS OF** not ~~exceeding in amount~~ **MORE THAN** 1 lot ~~being~~ **THAT IS**
7 within a recorded town plat, city, or village, and the dwelling
8 house and appurtenances on that land, owned and occupied by any
9 resident of this state, not exceeding in value \$3,500.00. This
10 exemption ~~extends to any person owning and occupying~~ **APPLIES TO** any
11 house **THAT IS OWNED, OCCUPIED, AND CLAIMED AS A HOMESTEAD BY A**
12 **PERSON BUT THAT IS** on land not ~~his or her own and which the person~~
13 ~~claims as a homestead~~ **OWNED BY THE PERSON**. However, this exemption
14 does not apply to ~~any~~ **A** mortgage on the homestead ~~that is~~
15 lawfully obtained. ~~except that the~~ **A** mortgage is not valid **FOR**
16 **PURPOSES OF THIS SUBDIVISION** without the signature of a married
17 judgment debtor's spouse unless either of the following occurs:

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

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

25 (i) An equity of redemption as described in section 6060.

26 (j) The homestead of a family, after the death of the owner of
27 the homestead, from the payment of his or her debts in all cases

1 during the minority of his or her children.

2 (k) An individual retirement account or individual retirement
3 annuity as defined in section 408 or 408a of the internal revenue
4 code of 1986, 26 USC 408 AND 408A, and the payments or
5 distributions from ~~such an~~ THE account or annuity. This exemption
6 applies to the operation of the federal bankruptcy code as
7 permitted by section 522(b)(2) of ~~title 11 of the United States~~
8 ~~Code, 11 U.S.C. THE BANKRUPTCY CODE, 11 USC 522.~~ This exemption
9 does not apply to any amounts contributed to ~~an~~ THE individual
10 retirement account or individual retirement annuity if the
11 contribution occurs within 120 days before the debtor files for
12 bankruptcy. This exemption does not apply to an individual
13 retirement account or individual retirement annuity to the extent
14 that any of the following occur:

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

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

20 (iii) Contributions to the individual retirement account or
21 premiums on the individual retirement annuity, including the
22 earnings or benefits from those contributions or premiums, exceed,
23 in the tax year made or paid, the deductible amount allowed under
24 section 408 of the internal revenue code of 1986, 26 USC 408. This
25 limitation on contributions does not apply to a rollover of a
26 pension, profit-sharing, stock bonus, ~~plan~~ or other plan that is
27 qualified under section 401 of the internal revenue code of 1986,

1 26 USC 401, or an annuity contract under section 403(b) of the
 2 internal revenue code of 1986, 26 USC 403.

3 (I) The right or interest of a person in a pension, profit-
 4 sharing, stock bonus, or other plan that is qualified under section
 5 401 of the internal revenue code of 1986, 26 USC 401, or an annuity
 6 contract under section 403(b) of the internal revenue code of 1986,
 7 26 USC 403, ~~which-IF THE~~ plan or annuity is subject to the employee
 8 retirement income security act of 1974, Public Law 93-406, 88 Stat.
 9 829. This exemption applies to the operation of the federal
 10 bankruptcy code, as permitted by section 522(b)(2) of ~~title 11 of~~
 11 ~~the United States Code, 11 U.S.C. THE BANKRUPTCY CODE, 11 USC 522.~~
 12 This exemption does not apply to any amount contributed to a
 13 pension, profit-sharing, stock bonus, or other qualified plan or a
 14 403(b) annuity if the contribution occurs within 120 days before
 15 the debtor files for bankruptcy. This exemption does not apply to
 16 the right or interest of a person in a pension, profit-sharing,
 17 stock bonus, or other qualified plan or a 403(b) annuity to the
 18 extent that the right or interest in the plan or annuity is subject
 19 to ~~any~~ **EITHER** of the following:

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

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

23 (M) **ANY INTEREST IN THE FOLLOWING:**

24 (i) **A TRUST, FUND, OR ADVANCE TUITION PAYMENT CONTRACT**
 25 **ESTABLISHED UNDER THE MICHIGAN EDUCATION TRUST ACT, 1986 PA 316,**
 26 **MCL 390.1421 TO 390.1442.**

27 (ii) **AN ACCOUNT ESTABLISHED UNDER THE MICHIGAN EDUCATION**

1 SAVINGS PROGRAM ACT, 2000 PA 161, MCL 390.1471 TO 390.1486.

2 (iii) AN ACCOUNT IN A QUALIFIED TUITION PROGRAM OR EDUCATIONAL
3 SAVINGS TRUST UNDER SECTION 529 OR 530 OF THE INTERNAL REVENUE CODE
4 OF 1986, 26 USC 529 AND 530.

5 (2) The exemptions provided in this section ~~shall~~ DO not
6 extend to any lien ~~thereon~~ ON THE EXEMPT PROPERTY THAT IS excluded
7 from exemption by law.

8 (3) If the owner of a homestead dies, leaving a surviving
9 spouse but no children, the homestead ~~shall be~~ IS exempt, and the
10 rents and profits of the homestead shall accrue to the benefit of
11 the surviving spouse before his or her remarriage, unless the
12 surviving spouse is the owner of a homestead in his or her own
13 right.

HOUSE BILL No. 5427

February 22, 2012, Introduced by Reps. Constan, Heise, Santana, Tlaib, Kandrevas, Hobbs, Womack, Meadows, Cavanagh, Darany, Stapleton and Jackson and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending section 6023 (MCL 600.6023), as amended by 1998 PA 61;
and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 6023. (1) The following property of ~~the~~ A JUDGMENT debtor
2 and the debtor's dependents ~~shall be~~ IS exempt from GARNISHMENT,
3 ATTACHMENT, levy and sale under ~~any~~ AN execution, OR OTHER PROCESS
4 FOR SATISFACTION OF A JUDGMENT:

5 (a) ~~All family~~ FAMILY pictures. ~~all arms~~

6 (B) ARMS and accouterments required by law to be kept by ~~any~~ A
7 person. ~~all wearing~~

8 (C) WEARING apparel, ~~of every person or family, and provisions~~
9 EXCLUDING FURS.

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

4 (E) PROFESSIONALLY PRESCRIBED HEALTH AIDS.

5 (F) PROVISIONS and fuel for comfortable subsistence of each
6 householder and his or her family for 6 months.

7 (G) ~~(b) All~~ THE INTEREST, NOT TO EXCEED A VALUE OF \$525.00 FOR
8 EACH ITEM AND AN AGGREGATE VALUE OF \$3,450.00, IN household goods,
9 furniture, utensils, books, and appliances, ~~not exceeding in value~~
10 ~~\$1,000.00 AND JEWELRY.~~

11 (H) ~~(e) A~~ THE INTEREST, NOT TO EXCEED \$575.00 IN VALUE, IN A
12 seat, pew, or slip occupied by the ~~judgment~~ debtor or the ~~judgment~~
13 debtor's family in ~~any~~ A house or place of public worship. ~~and~~
14 ~~all cemeteries, tombs, and rights of burial while in use as~~
15 ~~repositories of the dead of the judgment debtor's family or kept~~
16 ~~for burial of the judgment debtor.~~

17 ~~—— (d) To each householder, 10 sheep, 2 cows, 5 swine, 100 hens,~~
18 ~~5 roosters, and a sufficient quantity of hay and grain, growing or~~
19 ~~otherwise, for properly keeping the animals and poultry for 6~~
20 ~~months.~~

21 (I) THE INTEREST, NOT TO EXCEED \$2,300.00 IN VALUE, IN CROPS,
22 FARM ANIMALS, AND FEED FOR THE FARM ANIMALS.

23 (J) THE INTEREST, NOT TO EXCEED \$575.00 IN VALUE, IN HOUSEHOLD
24 PETS.

25 (K) THE INTEREST, NOT TO EXCEED \$3,175.00 IN VALUE, IN 1 MOTOR
26 VEHICLE.

27 (L) THE INTEREST, NOT TO EXCEED \$575.00 IN VALUE, IN 1 COMPUTER

1 AND ITS ACCESSORIES.

2 (M) ~~(e) The~~ THE INTEREST, NOT TO EXCEED \$2,300.00 IN VALUE, IN
3 THE tools, implements, materials, stock, apparatus, ~~team, vehicle,~~
4 ~~motor vehicle, horses, harness, or~~ other things to enable a person
5 to carry on the profession, trade, occupation, or business in which
6 the person is principally engaged. ~~, not exceeding in value~~
7 ~~\$1,000.00.~~

8 (N) ~~(f) Any money~~ MONEY or other benefits paid, provided, or
9 allowed to be paid, provided, or allowed, by ~~any~~ A stock or mutual
10 life, ~~or~~ health, or casualty insurance company ~~, on account~~ OR A
11 VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATION UNDER SECTION
12 501(C)(9) OF THE INTERNAL REVENUE CODE OF 1986, 26 USC 501, BECAUSE
13 of the disability due to injury or sickness of ~~any~~ AN insured
14 person, whether the debt or liability of ~~such~~ THE insured person or
15 beneficiary was incurred before or after the accrual of benefits
16 under the insurance policy or contract, except that the exemption
17 UNDER THIS SUBDIVISION does not apply to actions to recover for
18 necessities contracted for after the accrual of the benefits.

19 ~~—— (g) The shares held by any member, being a householder, of any~~
20 ~~association incorporated under the provisions of the savings and~~
21 ~~loan act of 1980, 1980 PA 307, MCL 491.102 to 491.1202, to the~~
22 ~~amount of \$1,000.00 in such shares, at par value, except that this~~
23 ~~exemption does not apply to any person who has a homestead exempted~~
24 ~~under the general laws of this state.~~

25 ~~—— (h) A homestead of not exceeding 40 acres of land and the~~
26 ~~dwelling house and appurtenances on that homestead, and not~~
27 ~~included in any recorded plat, city, or village, or, instead, and~~

1 ~~at the option of the owner, a quantity of land not exceeding in~~
2 ~~amount 1 lot, being within a recorded town plat, city, or village,~~
3 ~~and the dwelling house and appurtenances on that land, owned and~~
4 ~~occupied by any resident of this state, not exceeding in value~~
5 ~~\$3,500.00. This exemption extends to any person owning and~~
6 ~~occupying any house on land not his or her own and which the person~~
7 ~~claims as a homestead. However, this exemption~~

8 (O) MONEY IN A MEDICAL SAVINGS ACCOUNT OR HEALTH SAVINGS
9 ACCOUNT UNDER SECTION 220 OR 223 OF THE INTERNAL REVENUE CODE OF
10 1986, 26 USC 220 AND 223, BUT EXCLUDING EXCESS CONTRIBUTIONS AS
11 DEFINED IN THOSE SECTIONS.

12 (P) ALL RETIREMENT FUNDS, EXCEPT THAT THE EXEMPTION UNDER THIS
13 SUBDIVISION DOES NOT APPLY IF THE APPLICATION WOULD EXEMPT THE
14 RETIREMENT FUNDS FROM THE OPERATION OF AN ORDER OF A COURT PURSUANT
15 TO A JUDGMENT OF DIVORCE OR SEPARATE MAINTENANCE OR CONCERNING
16 CHILD SUPPORT.

17 (Q) THE INTEREST OF THE DEBTOR, ANY CODEBTOR, AND THE DEBTOR'S
18 DEPENDENTS, NOT TO EXCEED, IN THE AGGREGATE, \$34,450.00 IN VALUE
19 OR, IF THE DEBTOR OR A DEPENDENT OF THE DEBTOR AT THE TIME OF THE
20 EXECUTION IS 65 YEARS OF AGE OR OLDER OR DISABLED, NOT TO EXCEED,
21 IN THE AGGREGATE, \$51,650.00 IN VALUE, IN A HOMESTEAD.

22 (R) A HOMESTEAD AFTER THE DEATH OF THE OWNER OF THE HOMESTEAD
23 FOR EITHER OF THE FOLLOWING PERIODS:

24 (i) IF THE HOMESTEAD IS THE HOMESTEAD OF THE OWNER'S FAMILY,
25 DURING THE MINORITY OF THE OWNER'S CHILDREN.

26 (ii) IF THE OWNER LEAVES A SURVIVING SPOUSE BUT NO CHILDREN, IF
27 THE SURVIVING SPOUSE DOES NOT OWN A HOMESTEAD IN HIS OR HER OWN

1 RIGHT, AND IF THE SURVIVING SPOUSE ELECTS TO EXEMPT THE HOMESTEAD
 2 AND THE RENTS AND PROFITS OF THE HOMESTEAD, UNTIL THE SURVIVING
 3 SPOUSE REMARRIES.

4 (S) REAL PROPERTY OR PROPERTY DESCRIBED IN SECTION 1 OF 1927
 5 PA 212, MCL 557.151, OR IN SECTION 504 OF THE MICHIGAN LIMITED
 6 LIABILITY COMPANY ACT, 1993 PA 23, MCL 450.4504, HELD JOINTLY BY A
 7 HUSBAND AND WIFE IN A TENANCY BY THE ENTIRETY, EXCEPT THAT THE
 8 EXEMPTION UNDER THIS SUBDIVISION IS SUBJECT TO THE LIMITATIONS AND
 9 ATTRIBUTES DEVELOPED IN THE COMMON LAW, INCLUDING NONAPPLICATION TO
 10 A CLAIM BASED ON A JOINT DEBT OF THE HUSBAND AND WIFE.

11 (T) ALL INTERESTS IN AN EDUCATION SAVINGS ACCOUNT.

12 (2) AN EXEMPTION UNDER THIS SECTION does not apply to any-A
 13 mortgage, ~~on the homestead, LIEN, OR SECURITY INTEREST IN THE~~
 14 EXEMPT PROPERTY THAT IS CONSENSUALLY GIVEN OR lawfully obtained
 15 UNLESS THE MORTGAGE, LIEN, OR SECURITY INTEREST IS OBTAINED BY
 16 JUDGMENT, ATTACHMENT, LEVY, OR SIMILAR LEGAL PROCESS IN CONNECTION
 17 WITH A COURT ACTION OR PROCEEDING AGAINST THE DEBTOR. ~~except that~~
 18 ~~the mortgage is not valid without the signature of a married~~
 19 ~~judgment debtor's spouse unless either of the following occurs:~~
 20 ~~—— (i) The mortgage is given to secure the payment of the purchase~~
 21 ~~money or a portion of the purchase money.~~
 22 ~~—— (ii) The mortgage is recorded in the office of the register of~~
 23 ~~deeds of the county in which the property is located, for a period~~
 24 ~~of 25 years, and no notice of a claim of invalidity is filed in~~
 25 ~~that office during the 25 years following the recording of the~~
 26 ~~mortgage.~~
 27 ~~—— (i) An equity of redemption as described in section 6060.~~

1 ~~(j) The homestead of a family, after the death of the owner of~~
2 ~~the homestead, from the payment of his or her debts in all cases~~
3 ~~during the minority of his or her children.~~

4 ~~(k) An individual retirement account or individual retirement~~
5 ~~annuity as defined in section 408 or 408a of the internal revenue~~
6 ~~code of 1986 and the payments or distributions from such an account~~
7 ~~or annuity. This exemption applies to the operation of the federal~~
8 ~~bankruptcy code as permitted by section 522(b)(2) of title 11 of~~
9 ~~the United States Code, 11 U.S.C. 522. This exemption does not~~
10 ~~apply to any amounts contributed to an individual retirement~~
11 ~~account or individual retirement annuity if the contribution occurs~~
12 ~~within 120 days before the debtor files for bankruptcy. This~~
13 ~~exemption does not apply to an individual retirement account or~~
14 ~~individual retirement annuity to the extent that any of the~~
15 ~~following occur:~~

16 ~~(i) The individual retirement account or individual retirement~~
17 ~~annuity is subject to an order of a court pursuant to a judgment of~~
18 ~~divorce or separate maintenance.~~

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

21 ~~(iii) Contributions to the individual retirement account or~~
22 ~~premiums on the individual retirement annuity, including the~~
23 ~~earnings or benefits from those contributions or premiums, exceed,~~
24 ~~in the tax year made or paid, the deductible amount allowed under~~
25 ~~section 408 of the internal revenue code of 1986. This limitation~~
26 ~~on contributions does not apply to a rollover of a pension, profit-~~
27 ~~sharing, stock bonus plan or other plan that is qualified under~~

1 ~~section 401 of the internal revenue code of 1986, or an annuity~~
2 ~~contract under section 403(b) of the internal revenue code of 1986.~~
3 ~~----- (1) The right or interest of a person in a pension, profit~~
4 ~~sharing, stock bonus, or other plan that is qualified under section~~
5 ~~401 of the internal revenue code of 1986, or an annuity contract~~
6 ~~under section 403(b) of the internal revenue code of 1986, which~~
7 ~~plan or annuity is subject to the employee retirement income~~
8 ~~security act of 1974, Public Law 93-406, 88 Stat. 829. This~~
9 ~~exemption applies to the operation of the federal bankruptcy code,~~
10 ~~as permitted by section 522(b) (2) of title 11 of the United States~~
11 ~~Code, 11 U.S.C. 522. This exemption does not apply to any amount~~
12 ~~contributed to a pension, profit sharing, stock bonus, or other~~
13 ~~qualified plan or a 403(b) annuity if the contribution occurs~~
14 ~~within 120 days before the debtor files for bankruptcy. This~~
15 ~~exemption does not apply to the right or interest of a person in a~~
16 ~~pension, profit sharing, stock bonus, or other qualified plan or a~~
17 ~~403(b) annuity to the extent that the right or interest in the plan~~
18 ~~or annuity is subject to any of the following:~~
19 ~~----- (i) An order of a court pursuant to a judgment of divorce or~~
20 ~~separate maintenance.~~
21 ~~----- (ii) An order of a court concerning child support.~~
22 ~~----- (2) The exemptions provided in this section shall not extend~~
23 ~~to any lien thereon excluded from exemption by law.~~
24 ~~----- (3) If the owner of a homestead dies, leaving a surviving~~
25 ~~spouse but no children, the homestead shall be exempt, and the~~
26 ~~rents and profits of the homestead shall accrue to the benefit of~~
27 ~~the surviving spouse before his or her remarriage, unless the~~

1 ~~surviving spouse is the owner of a homestead in his or her own~~
2 ~~right.~~

3 (3) IN DETERMINING WHETHER RETIREMENT FUNDS ARE EXEMPT UNDER
4 THIS SECTION, A COURT SHALL APPLY THE FOLLOWING RULES:

5 (A) IF THE RETIREMENT FUNDS ARE IN A FUND THAT HAS RECEIVED A
6 FAVORABLE DETERMINATION UNDER REGULATIONS PROMULGATED UNDER SECTION
7 7805 OF THE INTERNAL REVENUE CODE OF 1986, 26 USC 7805, AND THAT
8 DETERMINATION IS IN EFFECT, THE FUNDS ARE PRESUMED TO BE EXEMPT.

9 (B) IF SUBDIVISION (A) DOES NOT APPLY, THE FUNDS ARE EXEMPT IF
10 THE DEBTOR DEMONSTRATES BOTH OF THE FOLLOWING:

11 (i) THAT A PRIOR DETERMINATION TO THE CONTRARY HAS NOT BEEN
12 MADE BY A COURT OR THE INTERNAL REVENUE SERVICE.

13 (ii) EITHER OF THE FOLLOWING APPLIES:

14 (A) THE RETIREMENT FUND IS IN SUBSTANTIAL COMPLIANCE WITH THE
15 APPLICABLE REQUIREMENTS OF THE INTERNAL REVENUE CODE OF 1986, 26
16 USC 1 TO 9834.

17 (B) THE RETIREMENT FUND HAS FAILED TO BE IN SUBSTANTIAL
18 COMPLIANCE WITH THE APPLICABLE REQUIREMENTS OF THE INTERNAL REVENUE
19 CODE OF 1986, 26 USC 1 TO 9834, BUT THE DEBTOR IS NOT MATERIALLY
20 RESPONSIBLE FOR THAT FAILURE.

21 (C) A DIRECT TRANSFER OF RETIREMENT FUNDS FROM 1 FUND OR
22 ACCOUNT THAT IS EXEMPT FROM TAXATION UNDER SECTION 401, 403, 408,
23 408A, 414, 457, OR 501(A) OF THE INTERNAL REVENUE CODE OF 1986, 26
24 USC 401, 403, 408, 408A, 414, 457, OR 501, INCLUDING UNDER SECTION
25 401(A)(31) OF THE INTERNAL REVENUE CODE OF 1986, 26 USC 401, OR
26 OTHERWISE DOES NOT CEASE TO QUALIFY THE FUNDS FOR EXEMPTION BY
27 REASON OF THE DIRECT TRANSFER.

1 (D) A DISTRIBUTION DOES NOT CEASE TO QUALIFY FOR EXEMPTION BY
2 REASON OF THE DISTRIBUTION IF EITHER OF THE FOLLOWING APPLIES:

3 (i) THE DISTRIBUTION QUALIFIES AS AN ELIGIBLE ROLLOVER
4 DISTRIBUTION UNDER SECTION 402(C) OF THE INTERNAL REVENUE CODE OF
5 1986, 26 USC 402.

6 (ii) BOTH OF THE FOLLOWING APPLY:

7 (A) THE DISTRIBUTION WAS FROM A FUND OR ACCOUNT THAT IS EXEMPT
8 FROM TAXATION UNDER SECTION 401, 403, 408, 408A, 414, 457, OR
9 501(A) OF THE INTERNAL REVENUE CODE OF 1986, 26 USC 401, 403, 408,
10 408A, 414, 457, OR 501.

11 (B) TO THE EXTENT ALLOWED BY LAW, NOT LATER THAN 60 DAYS AFTER
12 THE DISTRIBUTION, THE MONEY DISTRIBUTED IS DEPOSITED IN A FUND OR
13 ACCOUNT THAT IS EXEMPT FROM TAXATION UNDER SECTION 401, 403, 408,
14 408A, 414, 457, OR 501(A) OF THE INTERNAL REVENUE CODE OF 1986, 26
15 USC 401, 403, 408, 408A, 414, 457, OR 501.

16 (4) IF PROPERTY THAT IS EXEMPT UNDER THIS SECTION IS SOLD,
17 DAMAGED, DESTROYED, OR ACQUIRED FOR PUBLIC USE, THE RIGHT TO
18 RECEIVE PROCEEDS OR, IF THE OWNER RECEIVES PROCEEDS AND HOLDS THEM
19 IN A MANNER THAT MAKES THEM IDENTIFIABLE AS PROCEEDS, THE PROCEEDS
20 RECEIVED ARE EXEMPT IN THE SAME MANNER AND AMOUNT AS THE EXEMPT
21 PROPERTY. AN EXEMPTION UNDER THIS SUBSECTION MAY BE CLAIMED UP TO 1
22 YEAR AFTER THE RECEIPT OF THE PROCEEDS BY THE OWNER.

23 (5) ON MARCH 1, 2012 AND ON MARCH 1 OF EVERY THIRD YEAR AFTER
24 MARCH 1, 2012, THE STATE TREASURER SHALL ADJUST EACH DOLLAR AMOUNT
25 IN THIS SECTION OR, FOR EACH ADJUSTMENT AFTER MARCH 1, 2012, EACH
26 ADJUSTED AMOUNT, BY AN AMOUNT DETERMINED BY THE STATE TREASURER TO
27 REFLECT THE CUMULATIVE CHANGE IN THE CONSUMER PRICE INDEX FOR THE

1 3-YEAR PERIOD ENDING ON THE DECEMBER 31 PRECEDING THE ADJUSTMENT
2 DATE AND ROUNDED TO THE NEAREST \$25.00. THE STATE TREASURER SHALL
3 PUBLISH THE ADJUSTED AMOUNTS. THE ADJUSTED AMOUNTS APPLY BEGINNING
4 ON APRIL 1 FOLLOWING THE ADJUSTMENT DATE.

5 (6) THIS SECTION DOES NOT PREEMPT OR AFFECT THE VALIDITY OF
6 ANY OTHER EXEMPTION PROVIDED BY LAW, INCLUDING EXEMPTIONS FOR ANY
7 OF THE FOLLOWING:

8 (A) CRIME VICTIMS' COMPENSATION, AS PROVIDED IN SECTION 12 OF
9 1976 PA 223, MCL 18.362.

10 (B) VETERANS' BENEFITS, AS PROVIDED UNDER SECTION 6 OF THE
11 VETERANS' MILITARY PAY ACT, 1947 PA 12, MCL 35.926, SECTION 7 OF
12 THE KOREAN VETERANS' MILITARY PAY FUND ACT OF 1955, 1955 PA 8, MCL
13 35.977, OR SECTION 7 OF THE VIETNAM VETERAN ERA BONUS ACT, 1974 PA
14 370, MCL 35.1027.

15 (C) PUBLIC EMPLOYEE RETIREMENT BENEFITS, AS PROVIDED UNDER
16 SECTION 3 OF THE PUBLIC EMPLOYEE RETIREMENT BENEFIT PROTECTION ACT,
17 2002 PA 100, MCL 38.1683, INCLUDING JUDGE'S RETIREMENT BENEFITS AS
18 PROVIDED UNDER SECTION 308 OF THE JUDGES RETIREMENT ACT OF 1992,
19 1992 PA 234, MCL 38.2308.

20 (D) FAMILY SUPPORT SUBSIDY PAYMENTS, AS PROVIDED UNDER SECTION
21 158A OF THE MENTAL HEALTH CODE, 1974 PA 258, MCL 330.1158A.

22 (E) PUBLIC ASSISTANCE, AS PROVIDED UNDER SECTION 63 OF THE
23 SOCIAL WELFARE ACT, 1939 PA 280, MCL 400.63.

24 (F) WORKER'S DISABILITY COMPENSATION BENEFITS, AS PROVIDED
25 UNDER SECTION 821 OF THE WORKER'S DISABILITY COMPENSATION ACT OF
26 1969, 1969 PA 317, MCL 418.821.

27 (G) UNEMPLOYMENT BENEFITS, AS PROVIDED UNDER SECTION 30 OF THE

1 MICHIGAN EMPLOYMENT SECURITY ACT, 1936 (EX SESS) PA 1, MCL 421.30.

2 (H) FRATERNAL BENEFIT SOCIETY BENEFITS, AS PROVIDED UNDER
3 SECTION 8181 OF THE INSURANCE CODE OF 1956, 1956 PA 218, MCL
4 500.8181.

5 (I) LIFE INSURANCE PROCEEDS, AS PROVIDED UNDER SECTION 2207 OF
6 THE INSURANCE CODE OF 1956, 1956 PA 218, MCL 500.2207.

7 (7) THIS SECTION SHALL NOT BE CONSTRUED SO AS TO BE
8 INCONSISTENT WITH FEDERAL LAW.

9 (8) AS USED IN THIS SECTION:

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

15 (B) "DISABLED" MEANS UNABLE TO ENGAGE IN SUBSTANTIAL GAINFUL
16 ACTIVITY, AS DETERMINED UNDER CRITERIA CONTAINED IN REGULATIONS
17 PROMULGATED UNDER 42 USC 1382C(A)(3)(E), AS A RESULT OF A PHYSICAL
18 OR MENTAL IMPAIRMENT AND RECEIVING SUPPLEMENTAL SECURITY INCOME
19 UNDER 42 USC 1381 TO 1383F.

20 (C) "EDUCATION SAVINGS ACCOUNT" MEANS ANY OF THE FOLLOWING:

21 (i) A TRUST, FUND, OR ADVANCE TUITION PAYMENT CONTRACT
22 ESTABLISHED UNDER THE MICHIGAN EDUCATION TRUST ACT, 1986 PA 316,
23 MCL 390.1421 TO 390.1442.

24 (ii) AN ACCOUNT ESTABLISHED UNDER THE MICHIGAN EDUCATION
25 SAVINGS PROGRAM ACT, 2000 PA 161, MCL 390.1471 TO 390.1486.

26 (iii) ANY OTHER INTEREST IN A QUALIFIED TUITION PROGRAM OR
27 COVERDELL EDUCATION SAVINGS ACCOUNT UNDER SECTION 529 OR 530 OF THE

1 INTERNAL REVENUE CODE OF 1986, 26 USC 529 AND 530.

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

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

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

14 (iii) A RESIDENTIAL DWELLING SITUATED ON LAND NOT OWNED BY THE
15 DEBTOR.

16 (iv) A CONDOMINIUM UNIT.

17 (v) A UNIT IN A COOPERATIVE.

18 (vi) A MOTOR HOME.

19 (vii) A BOAT OR OTHER WATERCRAFT.

20 (viii) AN EQUITY OF REDEMPTION AS DESCRIBED IN SECTION 6060.

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

3 (G) "RETIREMENT FUNDS" MEANS AN INTEREST IN A FUND OR ACCOUNT
4 THAT IS EXEMPT FROM TAXATION UNDER SECTION 401, 403, 408, 408A,
5 414, 457, OR 501(A) OF THE INTERNAL REVENUE CODE OF 1986, 26 USC
6 401, 403, 408, 408A, 414, 457, AND 501. RETIREMENT FUNDS DO NOT
7 INCLUDE THE PORTION OF AN INDIVIDUAL RETIREMENT ACCOUNT OR
8 INDIVIDUAL RETIREMENT ANNUITY THAT IS ATTRIBUTABLE TO CONTRIBUTIONS
9 TO THE INDIVIDUAL RETIREMENT ACCOUNT OR PREMIUMS ON THE INDIVIDUAL
10 RETIREMENT ANNUITY, INCLUDING THE EARNINGS OR BENEFITS FROM THOSE
11 CONTRIBUTIONS OR PREMIUMS, THAT, IN THE TAX YEAR MADE OR PAID,
12 EXCEEDED THE DEDUCTIBLE AMOUNT ALLOWED UNDER SECTION 408 OF THE
13 INTERNAL REVENUE CODE OF 1986, 26 USC 408. THIS LIMITATION ON
14 CONTRIBUTIONS DOES NOT APPLY TO A ROTH IRA OR SIMILAR PLAN OR
15 DEVICE TO THE EXTENT THAT THE CONTRIBUTIONS WERE PERMITTED UNDER
16 THE INTERNAL REVENUE CODE, TO A ROLLOVER OF A PENSION, PROFIT-
17 SHARING, OR STOCK BONUS PLAN OR OTHER PLAN THAT IS QUALIFIED UNDER
18 SECTION 401 OF THE INTERNAL REVENUE CODE OF 1986, 26 USC 401, OR TO
19 AN ANNUITY CONTRACT UNDER SECTION 403(B) OF THE INTERNAL REVENUE
20 CODE OF 1986, 26 USC 403.

21 Enacting section 1. Sections 5451 and 6023a of the revised
22 judicature act of 1961, 1961 PA 236, MCL 600.5451 and 600.6023a,
23 are repealed.