

**REPORT PREPARED FOR THE JUNE 13, 2008 COUNCIL MEETING
BY THE DEBTOR/CREDITOR RIGHTS COMMITTEE**

1. Next Scheduled Meeting of the Committee

Next scheduled meeting of the Committee is September 17, 2008, with dinner at 6:00 p.m. and the meeting beginning at 6:30 p.m.

2. Council Approval

The Committee is seeking Council approval to revise the wording of the language of the proposed amendment to MCLA 600.6023, Michigan's primary exemption statutes from that previously approved by the Council on June 3, 2006.

Tom Morris and Charles Bullock are working on behalf of the Committee with Karoub & Associates to lobby for the amendment, and believe some clarifications are needed. See attached memoranda. The proposed wording continues to evolve and we need guidance on how to handle such changes. Mr. Morris and Mr. Bullock plan to attend the Council meeting in person to address these concerns.

3. Membership

The Committee uses its list serv to send information about matters of interest to bankruptcy practitioners. We receive regular requests from lawyers to be added as a member. Several members have volunteered to be involved in Committee projects. Eleven members attended the May 13, 2008 meeting.

4. Accomplishments Toward Committee Objectives

We believe the Committee is accomplishing its goals. Our membership is active and energized, and volunteers to work on Committee projects.

5. Meetings and Programs

The Committee held a dinner meeting on May 13, 2008 at the offices of Jaffe Raitt. Eleven members attended.

The seminar on amendments to the Local Bankruptcy Rules of the Eastern District of Michigan co-sponsored by the Committee on April 11, 2008 was a huge success, with over 250 members of the bar paying to attend.

The Committee continues to work on obtaining wireless internet access and a business center at the Bankruptcy Court at 211 W. Fort in Detroit for the use of the bar. The next step is to survey our membership on their willingness to pay for use of the center to fund it.

6. Publications

Under the leadership of Tom Morris, the Committee submitted five articles for the March 2008 edition of the Michigan Business Law Journal.

Some of the speakers of the Committee's Alternatives to Bankruptcy Seminar on February 11, 2008 adopted their course materials to be articles for the November 2008 edition of the Michigan Business Law Journal.

The Committee's NewsMag has not come out for almost a year. Charles Bullock and former bankruptcy Judge Ray Reynolds Graves agreed to try to revive the NewsMag.

7. Legislative/Judicial/Administrative Developments

Charles Bullock and Tom Morris, on behalf of the Committee, are working with Joe Palamara of Karoub & Associates on amending the recent Michigan exemption legislation.

Judy B. Calton, co-chair
Judith Greenstone Miller, co-chair

PROPOSED AMENDMENT TO MICHIGAN EXEMPTIONS
MCL 600.6023 AND MCL 600.5451

Reasons for the amendment and background of work on it. With the passage in December, 2004 of an act which added MCL 600.5451, the state legislature created a separate statute for state-law exemptions in bankruptcy cases. Although the resulting modernization of exemptions was long overdue, the separate bankruptcy-exemption statute has created several problems. These include rulings by the bankruptcy courts that such "bankruptcy-specific" state legislation is unconstitutional, confusion resulting from the possibility that exemptions under MCL 600.6023 continue to be available in bankruptcy, and encouraging bankruptcy filings by Michigan residents by affording more-generous exemptions to debtors who file bankruptcy.

The Council of the Business Law Section previously approved proposed language for an amendment which would merge sections 5451 and 6023. This proposed language was returned to the Debtor/Creditor Rights Committee and in early 2008 a subcommittee comprised of Charles Bullock and Thomas R. Morris took on the task of reviewing it and working with a lobbyist retained by the Council for the purpose of promoting its passage. The attached blacklined language shows additional changes from that prior version.

[also provide 6023 showing all changes]

Mr. Bullock and Mr. Morris reviewed the proposed language and met with the lobbyist, Joseph Palmara of Karoub Associates, and also with State Senator Glenn Anderson, a sponsor of SB 1200. Senate Bill 1200 would provide, for the first time, an exemption for education savings accounts.

As a result of these discussions and consideration given to the draft approved by the council, a revised version, in the form of a blacklined re-write of MCL 600.6023, was prepared by Mr. Morris. The proposed amendment would repeal MCL 600.5451. It would clarify the law and remedy defects in the statute. It would also modernize state exemptions such as by adding an exemption for education savings accounts. But the reform represented by this proposal would be cautious rather than bold, since a complete re-write of the exemptions would be a vast undertaking and less certain of prompt enactment.

The proposed amendment is attached. Comments on its specific provisions are below.

1. **Introduction, application.** The present language in MCL 600.6023 states that the exemptions apply to make designated property exempt from "levy and sale under any execution." The proposed amendments would broaden this language so that it is clear from the statute that the exemptions apply in the case of any judicial process. This is consistent with current practice and the case law. Subsection 2, which provides that the exemptions are not applicable to consensual liens, has been retained.

2. **Terminology.** MCL 600.6023 refers in some instances to the "debtor" and in other instances to the "judgment debtor". Because the exemptions are intended to apply either to a debtor in bankruptcy or to a judgment debtor, the term "debtor" is used throughout.

3. **Adjustment of dollar amounts.** MCL 600.5451, when it was enacted in 2005, provided for an adjustment every three years of dollar amounts. The exemption provisions of the United States Bankruptcy Code, 11 U.S.C. §522 (and in some instances, 11 U.S.C. §541) are also adjusted automatically. The adjustment of dollar amounts provision found in MCL 600.5451 has been

retained. Because the last adjustment took place on March 1, 2008, the proposed amendment provides for the next adjustment to take place on March 1, 2011.

4. **Capitalization of names of federal and state acts and codes.** MCL 600.5451 failed to capitalize the proper names of several federal acts, codes and departments. This has been corrected.

5. **Changes to treatment of interests in Retirement Funds.** The provisions of MCL 600.6023 and MCL 600.5451 regarding tax-qualified retirement accounts (to be defined as "Retirement Funds") are consistent with one another. Proposed changes are as follows:

a. **"Retirement Funds" defined.** At present, both 600.5451 and 600.6023 use long descriptions of the types of retirement accounts which are protected. The definition of a single term ("Retirement Funds") used to refer to these accounts is intended to simplify the statute. The definition is to be placed in MCL 600.6023(5), the definitional subsection. Possible alternative definition from 11 USC 522: *funds "in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986." (subject to rules stated in 522 (b)(4))*

b. **Deletion of limitation for contributions made within 120 days.** The present versions of both MCL 600.5451 and MCL 600.6023 provide that contributions to Retirement Funds made within 120 days before the debtor files for bankruptcy are not exempt. This language is not effective, because in a bankruptcy 11 U.S.C. § 522(b)(3)(c) makes retirement funds (to the extent that they are exempt from taxation) exempt without regard to whether there was a contribution within 120 days prior to the bankruptcy case. Further, even absent this exemption under §522, other federal law makes most interests in accounts regulated under ERISA (i.e. all Retirement Funds other than IRAs) fully exempt. Therefore, the proposal is to delete the 120-day limitation with respect to Retirement Funds. See also note 9, below.

6. **Addition of tenancy-by-the-entirety property.** Proposed language would become MCL 600.6023(1)(s). Similar language is contained in MCL 600.5451. A reference to MCL 450.4504 (which allows for a jointly-owned interest in a limited liability company to be held in a tenancy by the entirety) is also added.

Because this exemption is intended as a codification of the common-law treatment of the tenancy by the entirety (which, strictly speaking is not a statutory "exemption" but a peculiar tenancy with a complex historical origin), reference is made to the limitations and attributes developed in the common law

7. **Education savings accounts.** This provision is new. Under present law, there is no state-law exemption for property held in Education Savings Accounts (as defined in the proposed bill). The Bankruptcy Code provides for such accounts to be excluded from property of the estate (and, in effect, exempt), subject to certain limitations.

8. **Deletion of bankruptcy-specific language.** Subsections 3 and 4 are altered to delete bankruptcy-specific references. In subsection 3 the phrase "exempt from the property of a federal

bankruptcy estate” is changed to “exempt.” This is intended to make the subsection applicable both to bankruptcy and non-bankruptcy situations (i.e., the enforcement of a judgment). Subsection 4 includes a similar change so that dollar amounts are adjusted generally, and not just with respect to bankruptcy exemptions. (See Note 2) The reasons for making provision generally applicable rather than bankruptcy-specific are:

a. Bankruptcy-specific provisions such as these have been held to be unconstitutional or pre-empted by the United States Bankruptcy Code. See, e.g. *In re Wallace*, 347 B.R. 626 (Bankr. W.D. Mich. 2006); *In re Vinson*, 337 B.R. 147 (Bankr. E.D. Mich. 2006), *rev'd*, 347 B.R. 620 (E.D. Mich. 2006).

b. To afford more favorable treatment to a debtor who files bankruptcy encourages bankruptcy filings and may cause a person to file bankruptcy when that person could otherwise avoid bankruptcy.

9. **Treatment of fraudulent transfer claims.** Article X, section 3 of the Michigan Constitution of 1963 provides the following with respect to exemptions: “A homestead in the amount of not less than \$3,500 and personal property of every resident of this state in the amount of not less than \$750, as defined by law, shall be exempt from forced sale on execution or other process of any court. Such exemptions shall not extend to any lien thereon excluded from exemption by law.” The Michigan Supreme Court has held that a homestead exemption, because it is guaranteed by the Michigan Constitution, is not subject to avoidance or other challenge under statutory or common law unless the constitution so provides. *Kleinert v. Lefkowitz*, 271 Mich. 79 (1935); see also *Havaco of America, Ltd. v. Hill*, 790 So.2d 1018 (Fla. 2001) (similar recent decision under Florida law).

Michigan law does not preclude a challenge to the acquisition of an annuity or insurance policy on the basis that the policy or annuity was acquired by means of a transfer by the debtor made with the intent to hinder, delay or defraud a creditor. However, such a challenge appears to be limited to the recovery of premiums paid with the intent to defraud creditors, plus interest thereon. MCL 500.2207(b). Nor does the law place a debtor’s interest in real property owned in a tenancy by the entirety beyond the reach of creditors when the property was acquired by means of a transfer avoidable under fraudulent-transfer law. *Glazer v. Beer*, 343 Mich 495 (1955). It is the opinion of this writer that the attributes of the tenancy by the entirety which makes property held in such a tenancy not available for execution to satisfy a debt of one spouse, is not an “exemption” in a strict sense.

Consideration was given to a provision which would recognize the application of the Michigan Uniform Fraudulent Transfer Act (“MUFTA”) to “transfers” which result in the conversion by a debtor of a non-exempt asset into an exempt asset. Such a provision is not contained in this proposal for several reasons. First, it is not clear that the MUFTA applies to the exchange or conversion by a debtor of his or her property to property of a different type. Cases from other jurisdictions have applied the UFTA to asset exchanges, but the Michigan courts have not addressed the issue [citation]The approach of the Florida legislature to this issue was to pass a statute specifically addressing “fraudulent conversion” of assets by a debtor..See, Florida Statutes 222.29. See also *In re*

Kravitz, 255 B.R. 515 (Bankr. D. Mass 1998) (discussion of "fraudulent conversion" and exemption planning).

10. No preemption. Subsection 7 is new. It is intended to indicate that MCL 600.6023 is not an exclusive list of exemptions afforded by Michigan and federal law. (Other exemptions are found throughout the Michigan statutes, and other exemptions are afforded by federal law.) Subsection 6 also includes a savings clause intended to prevent MCL 600.6023 from being invalidated in its entirety in the event of a conflict with federal law.

Thomas R. Morris
Silverman & Morris, P.L.L.C.
Morris@SilvermanMorris.com
May 11, 2008

AN ACT TO AMEND AND CLARIFY MICHIGAN EXEMPTIONS

1. MCL 600.6023 is amended to state the following:

(1) The following property of the debtor and the debtor's dependents shall be exempt from garnishment, attachment, levy and sale under any execution or any other process for satisfaction of a judgment:

(a) Family pictures.

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

(c) Wearing apparel, excluding furs.

(d) 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.

(e) Professionally prescribed health aids.

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

(g) The interest, not to exceed a value of \$525.00 in each item and an aggregate value of \$3,450.00, in household goods, furniture, utensils, books, appliances, and jewelry.

(h) The interest, not to exceed \$575.00 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.

(i) The interest, not to exceed \$2,300.00 in value, in crops, farm animals, and feed for the farm animals.

(j) The interest, not to exceed \$575.00 in value, in household pets.

(k) The interest, not to exceed \$3,175.00 in value, in 1 motor vehicle.

(l) The interest, not to exceed \$575.00 in value, in 1 computer and its accessories.

(m) The interest, not to exceed \$2,300.00 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.

(n) Money or other benefits paid, provided, or allowed to be paid, 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.

(o) The interest, not exceeding \$1,150.00 in par value, in shares held by a member, who is a householder, of an association incorporated under the Savings and Loan Act of 1980, 1980 PA 307, MCL 491.102 to 491.1202, except that this exemption does not apply to a person who has a homestead exempted under the general laws of this state.

(p) All Retirement Funds as defined in this section, but subject to the following limitations:

(i) This exemption does not apply to the right or interest of a person in any Retirement Funds so as to exempt it from the operation of an order of a court pursuant to a judgment of divorce or separate maintenance, or an order of a court concerning child support.

(q) The interest of the debtor, the co-debtor, if any, and the debtor's dependents, not to exceed, in the aggregate, \$34,450.00 in value or, if the debtor or a dependent of the debtor at the time of the execution is 65 years of age or older or disabled, not to exceed, in the aggregate, \$51,650.00 in value, in a homestead.

(r) 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.

(s) Property described in section 1 of 1927 PA 212, MCL 557.151; 2002 PA 686, MCL 450.4504, or real property, held jointly by a husband and wife in a tenancy by the entirety, except that this exemption shall remain subject to the limitations and attributes developed in the common law, including non-application to a claim based on a joint debt of the husband and wife,

(t) Any interests in any Education Savings Account as defined in this section.

(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 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, 2011 and at the end of each 3-year period after 2011, the state treasurer shall adjust each dollar amount in this section or, for each adjustment after March 1, 2011, 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 beginning on 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 1382(a)(3)(A) and (C).

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(c) "Education Savings Account" means:

(i) a trust, fund or advance tuition payment contract established under the Michigan Education Trust Act, 1986 PA 316, MCL 390.1421 to 390.1442.

(ii) an account established under the Michigan Education Savings Program Act, 2000 PA 161, MCL 390.1471 to 390.1486.

(iii) an account in a qualified tuition program or educational savings trust under section 529 or 530 of the Internal Revenue Code, 26 USC 529 and 530.

(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.

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

(e) "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.

(f) "Retirement Funds" means:

(i) 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.

(ii) 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.

(iii) The term "Retirement Funds" does not include the portion of an individual retirement account or individual retirement annuity that is attributable to contributions to the

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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 Roth IRA or similar plan or device to the extent that such contributions were permitted under the Internal Revenue Code, or 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.

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

(6) This section does not preempt any other exemption provided by law, nor shall it be construed so as to be inconsistent with any provision of federal law. In the event that one or more provisions of this section are determined to be invalid, the balance of this section shall remain in force.

2. MCL 600.5451 is deleted.

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AN ACT TO AMEND AND CLARIFY MICHIGAN EXEMPTIONS

1. MCL 600.6023 is amended to state the following:

(1) The following property of the debtor and the debtor's dependents shall be exempt from garnishment, attachment, levy and sale under any execution or any other process for satisfaction of a judgment:

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(a) Family pictures.

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

(c) Wearing apparel, excluding furs.

(d) 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.

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(e) Professionally prescribed health aids.

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

(g) The interest, not to exceed a value of \$525.00 in each item and an aggregate value of \$3,450.00, in household goods, furniture, utensils, books, appliances, and jewelry.

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(h) The interest, not to exceed \$575.00 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.

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(i) The interest, not to exceed \$2,300.00 in value, in crops, farm animals, and feed for the farm animals.

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(k) The interest, not to exceed \$3,175.00 in value, in 1 motor vehicle.

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(l) The interest, not to exceed \$575.00 in value, in 1 computer and its accessories.

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(m) The interest, not to exceed \$2,300.00 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.

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(n) Money or other benefits paid, provided, or allowed to be paid, 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.

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(o) The interest, not exceeding \$1,150.00 in par value, in shares held by a member, who is a householder, of an association incorporated under the Savings and Loan Act of 1980, 1980 PA 307, MCL 491.102 to 491.1202, except that this exemption does not apply to a person who has a homestead exempted under the general laws of this state.

Deleted: 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.

(p) All Retirement Funds as defined in this section, but subject to the following limitations:

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~~(i) This exemption does not apply to the right or interest of a person in any Retirement Funds so as to exempt it from the operation of an order of a court pursuant to a judgment of divorce or separate maintenance, or an order of a court concerning child support.~~

~~(g) The interest of the debtor, the co-debtor, if any, and the debtor's dependents, not to exceed, in the aggregate, \$34,450.00 in value or, if the debtor or a dependent of the debtor at the time of the execution is 65 years of age or older or disabled, not to exceed, in the aggregate, \$51,650.00 in value, in a homestead.~~

~~(r) 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.~~

~~(s) Property described in section 1 of 1927 PA 212, MCL 557.151; 2002 PA 686, MCL 450.4504, or real property, held jointly by a husband and wife in a tenancy by the entirety, except that this exemption shall remain subject to the limitations and attributes developed in the common law, including non-application to a claim based on a joint debt of the husband and wife.~~

~~(t) Any interests in any Education Savings Account as defined in this section.~~

(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 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, 2011 and at the end of each 3-year period after 2011, the state treasurer shall adjust each dollar amount in this section or, for each adjustment after March 1, 2011, 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 beginning on 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.

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Deleted: 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 ... [1]

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(ii) an account established under the Michigan Education Savings Program Act, 2000 PA 161, MCL 390.1471 to 390.1486.

(iii) an account in a qualified tuition program or educational savings trust under section 529 or 530 of the Internal Revenue Code, 26 USC 529 and 530.

(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.

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(i) Sale of the property.¶
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(iv) A condominium unit.

(v) A unit in a cooperative.

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

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(i) 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.

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408a, and the payments or distributions from those accounts or annuities.

(iii) The term "Retirement Funds" does not include 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 Roth IRA or similar plan or device to the extent that such contributions were permitted under the Internal Revenue Code, or 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.

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

(6) This section does not preempt any other exemption provided by law, nor shall it be construed so as to be inconsistent with any provision of federal law. In the event that one or more provisions of this section are determined to be invalid, the balance of this section shall remain in force.

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

Deleted: (6) This section does
not preempt any other
exemption provided by law.¶

2. MCL 600.5451 is deleted.

Deleted: © 2006 Legislative
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DETROIT.2147788.4 (redlined term 5.14.08)

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.

(q) 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 or a judgment is entered against the debtor.

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) A

(t) 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.