

Legislative Analysis



EXEMPTIONS FROM BANKRUPTCY AND CREDITOR CLAIMS

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bills 5763, 5765-5766, and 5780-5781
Sponsor: Rep. Alexander C. Lipsey

House Bill 5764
Sponsor: Jim Howell

Committee: Judiciary

Complete to 4-26-04

A SUMMARY OF HOUSE BILLS 5763-5766 AS INTRODUCED 4-1-04 AND HOUSE BILLS 5780-5781 AS INTRODUCED 4-21-04

As a package, the bills would amend various acts to protect certain types of property, death benefits from life insurance policies, structured settlements, and workers' compensation benefits from bankruptcy proceedings and creditors' claims. Specifically, the bills would do the following:

House Bill 5763 would amend the Revised Judicature Act (MCL 600.23 and 600.27) to revise the list of types of property that would be exempt in bankruptcy proceedings from levy and sale under an execution and to adjust for inflation the dollar amounts of the interest in a property that can be exempted. Some obsolete provisions would be deleted or revised and the value of the interest that could be exempted would be increased for a number of types of property.

Under the bill, the following property of a debtor and his or her dependents would be exempt from levy and sale under an execution:

- Family pictures; arms and accoutrements required by law to be kept by a person; wearing apparel (excluding furs); cemeteries, tombs, and rights of burial in use as repositories for the dead of the judgment debtor's family or kept for burial of the judgment debtor; and professionally prescribed health aids.
- Six months worth of provisions and fuel;
- The interest, not to exceed a value of \$450 in each item and an aggregate value of \$3,000, in household goods, furniture, utensils, books, and jewelry.
- The interest, not to exceed \$500 in value, in a seat, pew, or slip occupied by the judgment debtor or his or her family in a house or place of worship.
- The interest, not to exceed \$2,000 in value, in crops, farm animals, and animal feed.
- The interest in one motor vehicle up to \$2,775 in value.

- Up to \$500 in value in one computer and its accessories.
- The interest, not to exceed \$2,000 in value, in tools, materials, stock, etc. to enable a person to carry on his or her trade, occupation, profession, or business.
- Disability benefits paid by an insurance company regardless of whether the debt or liability was incurred before or after the accrual of benefits under the insurance policy or contract, with the exception of actions to recover for necessities contracted for after the accrual of the benefits.
- Except for homesteads exempted under the general laws of the state, the interest, not exceeding \$1,000 in par value, in shares held by a member of a savings and loan.
- With certain specified exceptions, all individual retirement accounts, including Roth IRAs, and the payments or annuities from those accounts as allowed under federal bankruptcy laws.
- With certain exceptions, the right or interest of a person in a pension, profit-sharing, stock bonus, or other plan qualified under federal law.

The interest of a debtor and the debtor's dependents in a homestead, not to exceed \$30,000 in value or, if the debtor or a dependent of the debtor were 65 years of age or older or disabled, not to exceed \$45,000 in value, would be exempt from levy and sale under an execution. Property held jointly by a husband and wife as a tenancy by the entirety would also be exempt from execution under a judgment entered against only one spouse.

Exemptions under Section 6023 would not apply to a mortgage, lien, or security interest in the exempt property that was consensually given or lawfully obtained unless the lien was obtained by judgment, attachment, levy, or similar legal process in connection with a court action or proceeding against the debtor. If property exempted under this provision were sold, damaged, destroyed, or acquired for public use, the right to receive proceeds or, if the owner received proceeds and held them in a manner that made them identifiable as proceeds, the proceeds received would be exempt from levy and sale under an execution in the same manner and amount as the exempt property. Exemption under this provision could be claimed up to one year after the receipt of the proceeds by the owner.

Beginning on March 1, 2005 and at the end of each three-year period after 2005, the state treasurer would have to adjust each dollar amount in Section 6023 (or each adjusted amount after March 1, 2005) for inflation as specified in the bill. The adjusted amounts would have to be published. Adjusted amounts would apply to cases filed on or after April 1 following the adjustment date.

Further, if the value of a homestead of a debtor exceeded the available exemption and cannot be divided, the debtor could still claim the exemption. However, the levying officer would have to deliver a notice, attached to a copy of the appraisal, to the debtor or a member of his or her family of suitable age to understand the notice, that unless the debtor paid the officer the amount that exceeded the exemption or the amount due on the execution within 60 days of the notice, the premises would be sold.

House Bills 5764 and 5766 would amend provisions of the Insurance Code (MCL 500.2209 and 500.2207, respectively) that currently allow a married woman to insure her husband for any duration or for a term of life and a husband to insure his own life and that protect the benefits payable upon death from creditors. The bills would delete the current provisions and replace them with language applicable to any married individual.

House Bill 5764 would amend Section 2209, which currently allows a married woman to insure the life of her husband or other person. Instead, the bill would specify that a married individual, in his or her own name or in the name of any third person as trustee, could insure the life of a spouse or any other person for any definite period or the term of the person's natural life.

A life insurance policy or its proceeds payable to the individual insured or the designated beneficiary would not be subject to legal or equitable process to satisfy the liability of a person who had a right under the policy. Further, the proceeds of a life insurance policy that were not payable to a named beneficiary or third person under a facility-of-payment clause would not be an asset of the estate of the individual insured for purposes of paying claims of creditors.

House Bill 5766 would amend Section 2207 of the Insurance Code, which currently pertains to a husband insuring his own life for the benefit of his wife or children and which protects the proceeds of the life insurance policy from claims of creditors. The bill would instead allow an individual to insure his or her own life for the benefit of a spouse or child. In addition, the bill would place the same new language in Section 2207 that House Bill 5764, as described above, would place in Section 2209.

Further, the bill would specify that if a life insurance policy were effected by a person on his or her own life or on the life of another in favor of a person other than the person who had effected the policy who had an insurable interest in the policy, or had made payable by assignment, change of beneficiary, or other means to a third person, the beneficiary of the policy or the third person (other than the person who had effected the policy or his or her legal representatives) would be entitled to the proceeds of the policy against the creditors or representative of the person who had effected the policy.

House Bills 5765 and House Bill 5780 would both amend the Structured Settlement Protection Act.

House Bill 5780 would amend Section 2 of the act (MCL 691.1192) to revise the definition of "structured settlement". A structured settlement is an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim (the bill would delete the term "tort") and does not include an arrangement or periodic payments in settlement of a worker's compensation claim. The bill would revise this definition by specifying that a structured settlement would not include a payment under the Worker's Disability Compensation Act. Further, the bill would specify that structured settlement would include an arrangement for periodic payments as the result of or following the redemption of a worker's compensation claim.

The bill is tie-barred to House Bill 5781.

House Bill 5765 would amend the title of and add a new section to the Structured Settlement Protection Act (MCL 691.1194a). The bill would specify that a structured settlement right would be exempt from execution, garnishment, or other similar legal process as well as claims of creditors of the payee or his or her dependent. However, the exemption would not apply to a legal process to enforce child support payments, a written transfer agreement or one that satisfied requirements of Section 3 of the act, or a debt for necessities contracted by the payee after the structured settlement payment right accrued.

House Bill 5781 would amend the Worker's Disability Compensation Act (MCL 418.821). Under Section 821, a payment under the act is not assignable or subject to attachment or garnishment and cannot be held liable in any way for a debt. However, this provision does not apply to or affect the validity of an assignment made to an insurance company, HMO, or Blue Cross Blue Shield of Michigan which makes an advance or payments to an employee under a group disability or group hospitalization insurance policy that provides that benefits are not payable under the policy for a period of disability or hospitalization resulting from accidental bodily injury or sickness arising out of in the course of employment.

The bill would add that Section 821 would also not apply to the assignment of payments made under a structured settlement that was part of or made under a redemption agreement.

The bill is tie-barred to House Bill 5780.

FISCAL IMPACT:

There would be no fiscal impact on state or local units of government by House Bills 5764-5766 or House Bills 5780-5781.

Fiscal information is not yet available on House Bill 5763.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Steve Stauff

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.