

A Comparative Analysis of the Michigan Constitution

Volumes II

Articles XIV



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XIV EXEMPTIONS

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1. Personal Property Exemptions

Article XIV: Section 1. The personal property of every resident of this state, to consist of such property only as shall be designated by law, shall be exempted to the amount of not less than five hundred dollars from sale on execution or other final process of any court.

Constitutions of 1835 and 1850

The 1835 constitution did not have a provision of this type. The 1850 constitution (Article XVI, Section 1) originated this provision. The 1850 provision was the same as the present provision, except that a comma was placed where the period now stands and an additional explanatory and limiting clause followed it—“issued for the collection of any debt contracted after the adoption of this constitution.”

Constitution of 1908

In the convention of 1907-08, the last clause of the 1850 provision, quoted above, was eliminated. Mr. Burton urged that it be removed because “there are judgments that are not issued for debt” to which the exemption should also apply.¹ Except for this change, the provision was otherwise carried over from the 1850 constitution. It has not been amended.

Statutory Implementation

Detailed statutes deal with the definition of personal property under the constitutional exemption and the processes relating to this matter.²

Judicial Interpretation

Many judicial opinions deal with this provision and statutory details pursuant thereto. This provision and statutes under it are intended to prevent a debtor from being made completely destitute and unable to recover from the loss of all property and means of livelihood.³

¹ Proceedings and Debates, p. 177.

² M.S.A. 27.1543-27.1556.

³ One of the basic cases in this area is *Rosenthal v. Scott*, 41 Mich. 632. See also cases cited under M.S.A. 27.1543-27.1556.

Other State Constitutions

The constitutions of 10 states, including Michigan, provide a specific amount of exemption of personal property alone or in conjunction with the homestead exemption. Under nine other state constitutions this matter is to be determined by law.⁴

Comment

If the \$500 exemption specified in 1908 was a prudent and reasonable amount, its relative loss in purchasing power over the years might indicate that it is now not fully adequate. Monetary stability may be no greater in the future than it has been in the past. If a provision of this type is to be retained, greater flexibility might be gained by specifying an amount in the constitution which may be changed by law, by leaving the amount to be determined by law, or, if the matter is considered of sufficient import, by leaving the amount to be determined or changed by extraordinary vote of the legislature.

2. Homestead Exemptions

Article XIV: Section 2. Every homestead of not exceeding 40 acres of land and the dwelling house thereon and the appurtenances to be selected by the owner thereof and not included in any town plat, city or village; or instead thereof, at the option of the owner, any lot in any city, village or recorded town plat, or such parts of lots as shall be equal thereto, and the dwelling house thereon and its appurtenances, owned and occupied by any resident of the state, not exceeding in value \$2,500.00 shall be exempt from forced sale on execution or any other final process from a court. Such exemption shall not extend to any mortgage thereon lawfully obtained, but such mortgage or other alienation of such land by the owner thereof, if a married man, shall not be valid without the signature of his wife to the same: Provided, That, notwithstanding anything in this section to the contrary, such mortgage or other alienation of such land shall be valid without the signature of said wife, after 25 years unless within said 25 years from the date of the recording thereof in the office of the register of deeds of the county or counties wherein the property is located, there is filed in said office notice of claim of the invalidity of such mortgage or alienation under this section, excepting that in case of every mortgage or alienation recorded prior to January 1, 1920, said notice of claim may be filed prior to January 1, 1950.

⁴ Index Digest, pp. 475-477.

Constitutions of 1835 and 1850

The 1835 constitution had no provision of this type. The 1850 constitution (Article XVI, Section 2) originated this provision providing for a \$1,500 homestead exemption.

Constitution of 1908

This provision was carried over from the 1850 constitution with only minor change of phraseology and punctuation.

Amendment in 1943. An amendment proposed by the legislature and adopted, in April, 1943, by a vote of 169,736 to 126,164 changed Section 2 to its present form. The value of the homestead exemption was raised from \$1,500 to \$2,500. The words starting with "Provided, That" to the end of the provision were added by the same amendment in order to validate mortgages or other alienations not having the wife's signature if not contested within 25 years.

Judicial Interpretation

Many supreme court decisions have dealt with the subject matter of Section 2. This provision, however, is clearly expressed and most of these judicial opinions merely restate its application to particular instances. Alienation of a homestead by a married owner is invalid without the wife's signature. In order to determine if the value of the homestead exceeds the constitutional exemption, the amount of mortgage encumbrance on the homestead must be deducted.⁵

Other State Constitutions

The constitutions of approximately one-half of the states have provisions similar to Section 2. In several of these the amount of the exemption is to be determined bylaw. The amount set varies from \$1,000 to \$5,000 in those provisions which specify an amount. The Michigan provision in its protection of the interest of the owner's wife is not unusual among state constitutions.⁶

Comment

The increase in the amount of homestead exemption from \$1,500 to \$2,500 by amendment in 1943 reflects the difficulty inherent in fixing a particular amount of money for this or other purposes in the constitution. In view of the historical lack of any long-range monetary stability, consideration might be given, if a provision of this type is retained, to fixing an amount in the constitution which may be changed by law or perhaps by a law requiring an extraordinary vote for passage.

⁵ Ter Keurst v. Zinkewicz, 253 Mich. 383; Bartold v. Lewandowska, 304 Mich. 450.

⁶ Index Digest, pp. 474-476, 480-481.

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3. Exemption of Decedent's Homestead During Minority of Children

Article XIV: Section 3. The homestead of a family, after the death of the owner thereof, shall be exempt from the payment of his debts in all cases during the minority of his children.

Constitutions of 1835 and 1850

The 1835 constitution had no provision of this type. The 1850 constitution (Article XVI, Section 3) originated the substance of the present provision. As set forth in the 1850 provision, the homestead was exempt from the payment of the owner's debts "contracted after the adoption of this constitution."

Constitution of 1908

This provision was carried over from the 1850 constitution, but the words "contracted after the adoption of this constitution" relating to the owner's debts were deleted. This provision has not been amended. The binding force of this provision has been restated in opinions of the state supreme court.⁷

Other State Constitutions

The constitutions of approximately nine states including Michigan have similar provisions.⁸

Comment

If this provision is retained, it would appear to present little difficulty or need for revision. This provision might be combined with Article XIV, Section 4, if the substance of both provisions is retained.

4. Homestead Exemption; Death Without Surviving Children

Article XIV: Section 4. If the owner of a homestead die, leaving a widow but no children, such homestead shall be exempt, and the rents and profits thereof shall accrue to her benefit during the time of her widowhood, unless she be the owner of a homestead in her own right.

⁷ Sowers v. Robinson, 43 Mich. 502; Kraft v. Kraft, 102 Mich. 439.

⁸ Index Digest, pp. 474-47.

Constitutions of 1835 and 1850

This provision originated in the 1850 constitution and was carried over into the present constitution virtually unchanged.

Constitution of 1908

In the convention of 1907-08 one change was made in the phraseology of the section. The words “the same” appeared after the word “children” in the 1850 section and were replaced by the words “such homestead” in the revised constitution of 1908. This section has not been amended since the adoption of the present constitution and it has presented no serious problem of interpretation.

Other State Constitutions

The constitutions of Alabama, Arkansas and North Carolina contain a provision of this type. Texas provides that the property descend and vest in the same manner as other real property unless surviving widow (or children) elect to occupy property as homestead.

Comment

Should the section be retained, some consideration might be given to combining the subject matter of Sections 3 and 4 into a single section of the revised constitution.

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