

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE BILL NO. 1039
(Legislative Council)
(Judicial Process Committee)

AN ACT to amend and reenact sections 28-22-01, 28-22-02, 28-22-03, 28-22-03.1, 28-22-05, 28-22-07, 28-22-15, 47-18-01, 47-18-04, 47-18-14, and 47-18-16 of the North Dakota Century Code, relating to exemptions from process and the homestead exemption; and to repeal section 28-22-04 of the North Dakota Century Code, relating to alternative exemptions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-22-01 of the North Dakota Century Code is amended and reenacted as follows:

28-22-01. Property exempt from all process. Except as otherwise provided, the property mentioned in this chapter is exempt to the head of a family, as defined by section 28-22-01.1, from attachment, prejudgment, or other mesne process and from levy and sale upon execution and from any other final process issued from any court.

SECTION 2. AMENDMENT. Section 28-22-02 of the North Dakota Century Code is amended and reenacted as follows:

28-22-02. Absolute exemption. The property mentioned in this section is absolutely exempt from all process, levy, or sale:

1. All family pictures.
2. A pew or other sitting in any house of worship.
3. A lot or lots in any burial ground.
4. ~~The One family Bible or other family primary religious text and all schoolbooks used by the family and all other books used as a part of the family library not exceeding in value one hundred dollars.~~
5. All wearing apparel, not exceeding five thousand dollars in value, and all clothing of the debtor and the debtor's family.
6. The in-kind provisions for the debtor and the debtor's family necessary for one year's supply, either provided or growing, or both, and in-kind fuel necessary for heating the debtor's home or operating the debtor's motor vehicle for one year.
7. The homestead as created, defined, and limited by law.
8. All crops and grain, both threshed and unthreshed, raised by the debtor on not to exceed one hundred sixty acres [64.75 hectares] of land in one tract occupied by the debtor, either as owner or tenant, as the debtor's home, but the provisions of this subsection in no way affect seed, thresher, or landlord liens, and if the debtor takes advantage of this subsection the debtor may not take any additional alternative exemptions provided under this chapter.
9. All insurance benefits resulting from insurance covering any or all of the absolute exemptions if the insurance benefits are in cash or have been invested in other property capable of exemption under this chapter.

10. Any In lieu of the homestead, and subject to the same value limitations that exist with respect to the homestead exemption, any house trailer or mobile home occupied as a residence by the debtor or the debtor's family, except that it is not exempt from process, levy, or sale for taxes levied on it pursuant to chapter 57-55. This section does not preclude the debtor from claiming a mobile home as a dwelling house as part of the homestead.

SECTION 3. AMENDMENT. Section 28-22-03 of the North Dakota Century Code is amended and reenacted as follows:

28-22-03. Additional exemption for head of a family. In addition to the absolute exemptions mentioned in section 28-22-02, except in subsection 8 thereof, the head of a family, personally or by that person's agent, may select from that person's other personal property, any goods, chattels, merchandise, money, and other personal property not exceeding in value the sum of ~~five~~ seven thousand ~~five hundred~~ dollars, which also is exempt from all attachment or mesne process, levy and sale upon execution, and any other final process issued from any court. The exemption under this section may not be used to exempt a real estate interest of any kind.

SECTION 4. AMENDMENT. Section 28-22-03.1 of the North Dakota Century Code is amended and reenacted as follows:

28-22-03.1. Additional exemptions for residents. In addition to the exemptions from all attachment or process, levy and sale upon execution, and any other final process issued from any court, otherwise provided by law, a resident of the state may select:

1. In lieu of the homestead exemption, up to seven thousand five hundred dollars. This exemption is not available if the resident exemption claimant, the spouse of the resident exemption claimant, or other head of the family of the resident exemption claimant has chosen the homestead exemption provided for under subsection 7 of section 28-22-02.
2. A motor vehicle exemption in one vehicle not to exceed ~~one~~ two thousand ~~two~~ nine hundred ~~fifty~~ dollars in value over security interests and liens upon that vehicle, or a motor vehicle exemption in one vehicle not to exceed thirty-two thousand dollars for a motor vehicle that has been modified at a cost of not less than one thousand five hundred dollars to accommodate an individual with a permanent physical disability who is the owner of that motor vehicle.
3. ~~Pensions, annuity policies or plans, and life insurance policies that, upon the death of the insured, would be payable to the spouse, children, or any relative of the insured dependent, or likely to be dependent, upon the insured for support and which have been in effect for a period of at least one year; individual retirement accounts; Keogh plans, Roth individual retirement accounts under section 408A of the Internal Revenue Code [Pub. L. 105-34; 111 Stat. 825; 26 U.S.C. 408A], and simplified employee pension plans; and all other plans qualified under section 401 of the Internal Revenue Code [Pub. L. 83-591; 68A Stat. 134; 26 U.S.C. 401], and section 408 of the Internal Revenue Code [Pub. L. 93-406; 88 Stat. 959; 26 U.S.C. 408], and pension or retirement plans sponsored by nonprofit corporations or associations organized and operated exclusively for one or more of the purposes specified in 26 U.S.C. 501(c)(3), and proceeds, surrender values, payments, and withdrawals from such pensions, policies, plans, and accounts, up to one hundred thousand dollars for each pension, policy, plan, and account with an aggregate limitation of two hundred thousand dollars for all pensions, policies, plans, and accounts. The debtor's aggregate interest, not to exceed one thousand five hundred dollars in value, in any tools, implements, or professional books of the trade of the debtor or the trade of a dependent of the debtor.~~
4. Any unmaturing life insurance contract owned by the debtor, other than a credit life insurance contract.

5. The debtor's aggregate interest, not to exceed in value eight thousand dollars less any amount of property transferred in the manner specified in 11 U.S.C. 542(d), in any accrued dividend or interest under, or loan value of, any unmaturing life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.
 6. Professionally prescribed health aids for the debtor or a dependent of the debtor.
 7. Retirement funds that have been in effect for at least one year, to the extent those funds are 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. The value of those assets exempted may not exceed one hundred thousand dollars for any one account or two hundred thousand dollars in aggregate for all accounts. The dollar limit does not apply to the extent this property is reasonably necessary for the support of the resident and that resident's dependents, except that the pensions, policies, plans, and accounts or proceeds, surrender values, payments, and withdrawals. Retirement funds are not exempt from enforcement of any order to pay spousal support or child support, or a qualified domestic relations order under sections 15-39.1-12.2, 39-03.1-14.2, and 54-52-17.6. As used in this subsection, "reasonably necessary for the support" means required to meet present and future needs, as determined by the court after consideration of the resident's responsibilities and all the present and anticipated property and income of the resident, including that which is exempt.
4. ~~8.~~ The debtor's right to receive, or property that is traceable to:
- a. ~~A payment, not to exceed fifteen thousand dollars, on account of the wrongful death of an individual of whom the debtor was a dependent.~~
 - b. ~~A payment, not to exceed fifteen thousand dollars, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.~~
 - e. A social security benefit, except that the benefit is not exempt for enforcement of any order for the support of a dependent child.
 - ~~d.~~ b. Veteran's disability pension benefits, not including military retirement pay, except that the benefits are not exempt from process levy or sale for enforcement of any order for the support of a dependent child.
 - c. A disability, illness, or unemployment benefit.
 - d. Alimony, support, or separate maintenance, but not property settlements, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.
 - e. A payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless:
 - (1) That plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under that plan or contract arose;
 - (2) That payment is on account of age or length of service; and
 - (3) That plan or contract does not qualify under section 401(a), 403(a), 403(b), or 408 of the Internal Revenue Code of 1986.

9. The debtor's right to receive, or property that is traceable to:
 - a. An award under a crime victim's reparation law.
 - b. A payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.
 - c. A payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of that individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.
 - d. A payment, not to exceed eighteen thousand four hundred fifty dollars, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.
 - e. A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

SECTION 5. AMENDMENT. Section 28-22-05 of the North Dakota Century Code is amended and reenacted as follows:

28-22-05. Exemptions of a single an unmarried person without dependents. In addition to the absolute exemptions mentioned in section 28-22-02, except in subsection 8 thereof, a single an unmarried person without any dependents, in person or by that person's agent, may select from that person's other personal property, goods, chattels, merchandise, money, or other personal property not exceeding in value the sum of ~~two~~ three thousand ~~five~~ seven hundred ~~fifty~~ dollars, which is exempt.

SECTION 6. AMENDMENT. Section 28-22-07 of the North Dakota Century Code is amended and reenacted as follows:

28-22-07. How exemptions claimed - Appraisal. All property claimed as exempt must be selected by the debtor or the debtor's agent or attorney regardless of whether levy has been made yet on the property by the sheriff or levying officer. Failure to claim all exempt property at the time exemptions are claimed renders the unclaimed property nonexempt for purposes of this chapter. The value thereof, when material, must be determined by an appraisal made under the direction of the sheriff or other officer. Whenever any debtor, against whom an execution, writ of attachment, or other process has been issued, desires to claim the benefit of section 28-22-03, such debtor or the debtor's agent or attorney, shall make a schedule of all of the debtor's personal property of every kind and character, including money on hand and debts due and owing to the debtor, and shall deliver the same to the officer having the execution, writ of attachment, or other process. The schedule must be subscribed and sworn to by the debtor or the debtor's agent or attorney, and any property owned by the debtor and not included in such schedule is not exempt. No claim for exemptions may be disallowed for insufficiency as to form unless three days' notice in writing has been given first of the insufficiency by the party in interest claiming such insufficiency to the person making the claim for exemptions, and specifying in apt language the defect complained of. The person claiming the exemption thereupon may amend the same to conform to the objections made within three days, if that person desires so to do, by serving upon the proper person an amended claim for exemptions.

SECTION 7. AMENDMENT. Section 28-22-15 of the North Dakota Century Code is amended and reenacted as follows:

28-22-15. When only absolute exemptions allowed. Only absolute exemptions may be allowed against process:

1. For the wages of a laborer or mechanic who is, or had been, employed by the judgment debtor;

2. Upon a debt incurred for property obtained under false pretenses;
3. For fines, penalties, or costs of criminal prosecutions;
4. ~~Against a corporation for profit or limited liability company;~~
5. Against a nonresident;
6. ~~5.~~ Against a debtor who is in the act of removing with the debtor's family from the state; or
7. ~~6.~~ Against a debtor who has absconded, taking the debtor's family along.

SECTION 8. AMENDMENT. Section 47-18-01 of the North Dakota Century Code is amended and reenacted as follows:

47-18-01. Homestead exemption - Area and value. The homestead of any ~~person~~ individual, whether married or unmarried, residing in this state ~~shall consist~~ consists of the land upon which the claimant resides, and the dwelling house on that land in which the homestead claimant resides, with all its appurtenances, and all other improvements on the land, the total not to exceed ~~eighty one~~ eighty one hundred thousand dollars in value, over and above liens or encumbrances or both. The homestead shall be exempt from judgment lien and from execution or forced sale, except as otherwise provided in this chapter. ~~In no case shall the~~ The homestead may not embrace different lots or tracts of land unless they the lots or tracts of land are contiguous. For purposes of this section, "contiguous" means two or more tracts of real property which share a common point or which would share a common point but for an intervening road or right of way.

SECTION 9. AMENDMENT. Section 47-18-04 of the North Dakota Century Code is amended and reenacted as follows:

47-18-04. When homestead subject to execution. A homestead is subject to execution or forced sale in satisfaction of judgments obtained in the following cases:

1. On debts secured by mechanics' or laborers' liens for work or labor done or performed or material furnished exclusively for the improvement of the same.
2. On debts secured by mortgage on the premises executed and acknowledged by both husband and wife, or an unmarried claimant.
3. On debts created for the purchase thereof and for all taxes accruing and levied thereon.
4. On all other debts when, upon an appraisal as provided by section 47-18-06, it appears that the value of ~~said~~ the homestead is more than ~~eighty one~~ eighty one hundred thousand dollars over and above liens or encumbrances thereon, and then only to the extent of any value in excess of the sum total of ~~such~~ the liens and encumbrances plus said ~~eighty one~~ eighty one hundred thousand dollars.

SECTION 10. AMENDMENT. Section 47-18-14 of the North Dakota Century Code is amended and reenacted as follows:

47-18-14. Proceeds of sale exempt - Disposition. If the sale of a homestead is made as provided in section 47-18-13, the proceeds thereof to the amount of the homestead exemption must be paid to the claimant and the residue applied to the satisfaction of the execution. When the execution is against a married claimant whose spouse is living, the court may direct that the ~~eighty one~~ eighty one hundred thousand dollars be deposited in court to be paid out only on the joint receipt of the husband and wife, and it shall possess all the protection against legal process and voluntary disposition by either spouse as did the original homestead premises whether paid directly to the claimant or to the husband and wife jointly.

SECTION 11. AMENDMENT. Section 47-18-16 of the North Dakota Century Code is amended and reenacted as follows:

47-18-16. Proceeds of sale exempt. If a homestead is conveyed as provided in section 47-18-05 or sold for the satisfaction of any lien mentioned in section 47-18-04, the price thereof or the proceeds of the sale beyond the amount necessary to satisfy such lien, and not exceeding in either case the amount of the homestead exemption, ~~shall be~~ for a period of one year from the date of the conveyance, is entitled thereafter to the same protection against legal process as the law gives to the homestead.

SECTION 12. REPEAL. Section 28-22-04 of the North Dakota Century Code is repealed.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1039.

House Vote: Yeas 93 Nays 0 Absent 1

Senate Vote: Yeas 44 Nays 0 Absent 3

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,

at _____ o'clock _____ M.

Secretary of State