

Introduced by

1 A BILL for an Act to create and enact a new section to chapter 28-22 of the North Dakota
2 Century Code, relating to exemptions from bankruptcy and other legal process; to amend and
3 reenact sections 14-05-25.1, 14-08.1-05, 26.1-33-36, 28-22-01, 28-22-15, 50-09-35, and
4 65-04-26 of the North Dakota Century Code, relating to exemptions from bankruptcy and other
5 legal process; and to repeal sections 28-22-01.1, 28-22-02, 28-22-03, 28-22-03.1, 28-22-04,
6 28-22-05, and 28-22-16 of the North Dakota Century Code, relating to exemptions from
7 bankruptcy and other legal process.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9 **SECTION 1. AMENDMENT.** Section 14-05-25.1 is amended:

10 **14-05-25.1. Money judgment to secure division of property enforceable by**
11 **contempt proceedings - Exemptions from process not available.** Failure to comply with
12 the provisions of a separation or divorce decree relating to distribution of the property of the
13 parties constitutes contempt of court. A party may also execute on a money judgment, and the
14 obligor is entitled only to ~~the absolute exemptions~~ an exemption from process set forth in
15 section 28-22-02 which does not exceed five thousand dollars of the exemption provided for in
16 section 28-22-01 and to the homestead exemption provided for under section 47-18-01.

17 **SECTION 2. AMENDMENT.** Section 14-08.1-05 is amended:

18 **14-08.1-05. Support order to be judgment.**

- 19 1. Any order directing any payment or installment of money for the support of a child
20 is, on and after the date it is due and unpaid:
- 21 a. A judgment by operation of law, with the full force, effect, and attributes of a
22 judgment of the district court, and must be entered in the judgment docket,
23 upon filing by the judgment creditor or the judgment creditor's assignee of a
24 written request accompanied by a verified statement of arrearage or certified

1 copy of the payment records maintained under section 50-09-02.1 and an
2 affidavit of identification of the judgment debtor, and otherwise enforced as a
3 judgment;

4 b. Entitled as a judgment to full faith and credit in any jurisdiction which
5 otherwise affords full faith and credit to judgments of the district court; and

6 c. Not subject to retroactive modification.

7 2. The due and unpaid payments and any judgment entered in the judgment docket
8 pursuant to this section are not subject to the statutes of limitation provided in
9 chapter 28-01. Such judgments may not be canceled pursuant to section
10 28-20-35. For such judgments, the duration of a lien under section 28-20-13 and
11 the period during which an execution may be issued are not subject to the time
12 limitations in chapters 28-20 and 28-21.

13 3. Failure to comply with the provisions of a judgment or order of the court for the
14 support of a child constitutes contempt of court. All remedies for the enforcement
15 of judgments apply. A party or the party's assignee may also execute on the
16 judgment, and the obligor is entitled only to ~~the exemptions~~ an exemption from
17 process ~~set forth in section 28-22-02~~ which does not exceed five thousand dollars
18 of the exemption provided for in section 28-22-01 and to the homestead exemption
19 provided for under section 47-18-01.

20 4. This section applies to all child support arrearages, whether accrued before or after
21 the effective date of this section.

22 **SECTION 3. AMENDMENT.** Section 26.1-33-36 is amended:

23 **26.1-33-36. Rights in life policies exempt from claims of creditors.** The surrender
24 value of any life insurance policy which, upon the death of the insured, would be payable to the
25 spouse, children, or any relative of the insured dependent, or likely to be dependent, upon the
26 insured for support, is exempt absolutely from the claims of creditors of the insured to the extent
27 provided in section ~~28-22-03.4~~ 5 of this Act. No creditor of the insured, and no court or officer
28 of a court acting for any such creditors, may elect for the insured to have the life insurance
29 policy surrendered or in anywise converted into money, and no life insurance policy or property
30 right in the policy belonging to the holder, except for the value thereof in excess of the amount

1 provided by section ~~28-22-03.1~~ 5 of this Act, may be subject to seizure under any process of
2 any court under any circumstance.

3 **SECTION 4. AMENDMENT.** Section 28-22-01 is amended:

4 **28-22-01. Property exempt from all process.** ~~Except as otherwise provided, the~~
5 ~~property mentioned in this chapter~~ In addition to property that is exempt to the head of a family,
6 ~~as defined by section 28-22-01.1,~~ from attachment or mesne process ~~and from,~~ levy and sale
7 upon execution, ~~and from~~ any other final process issued from any court by other provisions of
8 state law or by federal law, a debtor may exempt property, in any form, not exceeding in value
9 the sum of forty thousand dollars.

10 **SECTION 5.** A new section to chapter 28-22 is created:

11 **Additional exemptions for debtor.**

12 1. In addition to the exemptions provided for in section 28-22-01, a debtor may claim
13 as exempt:

14 a. The homestead as created, defined, and limited by law.

15 b. Professionally prescribed health aids for the debtor or a dependent of the
16 debtor.

17 c. A motor vehicle, not to exceed thirty-two thousand dollars in value, which has
18 been modified at a cost of not less than one thousand five hundred dollars, to
19 accommodate an individual with a permanent physical disability and the
20 individual is the debtor or a dependent of the debtor.

21 d. Any unmaturing life insurance contract owned by the debtor, other than a
22 credit life insurance contract.

23 e. The debtor's aggregate interest, not to exceed in value eight thousand dollars
24 less any amount of property transferred in the manner specified in 11 U.S.C.
25 542(d), in any accrued dividend or interest under, or loan value of, any
26 unmaturing life insurance contract owned by the debtor under which the
27 insured is the debtor or an individual of whom the debtor is a dependent.

28 f. Retirement funds that have been in effect for at least one year, to the extent
29 those funds are in a fund or account that is exempt from taxation under
30 section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue
31 Code of 1986. The value of those assets exempted may not exceed one

1 hundred thousand dollars for any one account or two hundred thousand
2 dollars in aggregate for all accounts. The dollar limit does not apply to the
3 extent this property is reasonably necessary for the support of the resident
4 and that resident's dependents. Retirement funds are not exempt from
5 enforcement of any order to pay spousal support or child support, or a
6 qualified domestic relations order under sections 15-39.1-12.2, 39-03.1-14.2,
7 and 54-52-17.6. As used in this subsection, "reasonably necessary for the
8 support" means required to meet present and future needs, as determined by
9 the court after consideration of the resident's responsibilities and all the
10 present and anticipated property and income of the resident, including that
11 which is exempt.

12 g. The debtor's right to receive:

- 13 (1) A social security benefit, except that the benefit is not exempt for
14 enforcement of any order for the support of a dependent child.
- 15 (2) Veteran's disability pension benefits, not including military retirement
16 pay, except that the benefits are not exempt from process levy or sale
17 for enforcement of any order for the support of a dependent child.
- 18 (3) A disability, illness, or unemployment benefit.
- 19 (4) Alimony, support, or separate maintenance, but not property
20 settlements, to the extent reasonably necessary for the support of the
21 debtor and any dependent of the debtor.
- 22 (5) A payment under a stock bonus, pension, profit-sharing, annuity, or
23 similar plan or contract on account of illness, disability, death, age, or
24 length of service, to the extent reasonably necessary for the support of
25 the debtor and any dependent of the debtor, unless that plan or contract
26 was established by or under the auspices of an insider that employed
27 the debtor at the time the debtor's rights under that plan or contract
28 arose; that payment is on account of age or length of service; and that
29 plan or contract does not qualify under section 401(a), 403(a), 403(b),
30 or 408 of the Internal Revenue Code of 1986.

31 h. The debtor's right to receive, or property that is traceable to:

- 1 (1) An award under a crime victim's reparation law.
2 (2) A payment on account of the wrongful death of an individual of whom
3 the debtor was a dependent, to the extent reasonably necessary for the
4 support of the debtor and any dependent of the debtor.

- 5 2. A debtor who does not claim a homestead exemption as provided for in section
6 47-18-01 may exempt an additional fifteen thousand dollars of property in any
7 form. If the debtor is married, the debtor and the debtor's spouse may claim either
8 the homestead exemption or the additional fifteen thousand dollars of property in
9 any form provided for under this subsection, but not both.

10 **SECTION 6. AMENDMENT.** Section 28-22-15 is amended:

11 **28-22-15. When only ~~absolute~~ certain exemptions allowed.** Only ~~absolute~~
12 ~~exemptions~~ an exemption that does not exceed five thousand dollars of the exemption provided
13 for in section 28-22-01 and the homestead exemption provided for under section 47-18-01 may
14 be allowed against process:

- 15 1. For the wages of a laborer or mechanic;
16 2. Upon a debt incurred for property obtained under false pretenses;
17 3. For fines, penalties, or costs of criminal prosecutions;
18 4. Against a corporation for profit or limited liability company;
19 5. Against a nonresident;
20 6. Against a debtor who is in the act of removing with the debtor's family from the
21 state; or
22 7. Against a debtor who has absconded, taking the debtor's family along.

23 **SECTION 7. AMENDMENT.** Section 50-09-35 is amended:

24 **50-09-35. Child support deduction order.**

- 25 1. The state agency, directly or through agents, may issue an order requiring an
26 income payer to deduct the amount identified in the order from the portion of any
27 lump sum payment to an obligor that has been withheld under section 14-09-09.34.
28 2. The state agency, directly or through agents, may issue an order requiring a
29 financial institution to deduct the amount identified in the order from any account of
30 the obligor maintained in the financial institution.

- 1 3. The state agency shall serve the order on the income payer or financial institution
2 in the manner provided for service of a summons in a civil action or in any other
3 manner agreed to by the income payer or financial institution. The state agency
4 shall serve a copy of the order upon the obligor by first-class mail to the obligor's
5 last-known address, along with a notice of the obligor's right to claim ~~that the~~
6 ~~property is~~ the homestead exemption provided for under section 47-18-01 and up
7 to five thousand dollars of the exemption provided for in section 28-22-01 as
8 exempt from legal process ~~under section 28-22-02~~, the right to request an informal
9 review by the state agency within ten days of the date of the notice, and the right of
10 the obligor and any other aggrieved person to a review by a court under section
11 50-09-14. If an informal review is requested under this subsection, the time for
12 requesting a review by a court under section 50-09-14 does not expire until thirty
13 days after the informal review is completed.
- 14 4. The income payer or financial institution shall deduct the amount identified in the
15 order or the balance of the account, whichever is less, and transmit the funds to
16 the state disbursement unit within seven business days of the date the order is
17 served.
- 18 5. An order issued under this section has priority over any other legal process against
19 the same account, except to the extent necessary to satisfy any right of setoff
20 which exists in connection with an account, payment orders that were made by the
21 obligor before the financial institution was served with the order, or other
22 obligations of the obligor based upon written agreements or instruments made or
23 issued by the obligor before the financial institution was served with the order.
- 24 6. An income payer or financial institution may also withhold and retain an additional
25 sum of three dollars from the obligor's account or from the amount retained under
26 section 14-09-09.34 to cover expenses involved in transmitting payment.
- 27 7. An income payer or financial institution receiving an order under this section is
28 subject to the same duties and liabilities as an income payer under section
29 14-09-09.3 unless the context indicates otherwise and is immune from suit or
30 liability for complying with an order under this section.

31 **SECTION 8. AMENDMENT.** Section 65-04-26 is amended:

1 **65-04-26. Lien priority and filing - Remedies available in action for delinquent**
2 **premiums - Exemptions restricted.** The claim of the organization in bankruptcy, probate,
3 insolvency, and receivership proceedings for premiums in default and penalties is a lien with the
4 same priority as prior income tax liens, except that this lien is not enforceable against a
5 purchaser (including a lien creditor) of real estate or personal property for valuable
6 consideration without notice. Notice of this lien must be filed in the place and manner provided
7 for in section 57-38-49. A certificate of the organization that premiums and penalties are due
8 for the period stated in the certificate is prima facie evidence of this fact. In any action brought
9 for the recovery of premiums in default and penalties, the remedies of garnishment or
10 attachment, or both, are available. ~~No~~ Except for an exemption that does not exceed five
11 thousand dollars of the exemption provided for in section 28-22-01 and for the homestead
12 exemption provided for under section 47-18-01, no exemptions ~~except absolute exemptions~~
13 ~~under section 28-22-02~~ may be allowed against any levy under execution pursuant to judgment
14 recovered in the action.

15 **SECTION 9. REPEAL.** Sections 28-22-01.1, 28-22-02, 28-22-03, 28-22-03.1,
16 28-22-04, 28-22-05, and 28-22-16 are repealed.