

2015 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2359

2015 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

SB 2359
2/3/2015
Job Number 23054

- Subcommittee
 Conference Committee

Committee Clerk Signature

Eric Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to accounts and assets exempt from judicial process and the homestead exemption

Minutes:

Attachment

Chairman Klein: Opened the hearing.

Senator Wardner: Said he is bringing the bill for a constituent that had some concerns. It has created a considerable amount of discussion. We bring issues forward discuss them and find a solution to them. This would be an exemption from the judicial process in other words bankruptcy and the assets that are being protected. In this bill the most controversial one is moving the asset protection from a hundred thousand to a million.

Joe Rothschiller: Written Testimony Attached (1) and a Market Comparison Worksheet (1b). (2:15-14:54)

Chairman Klein: Are you suggesting that North Dakota is behind are surrounding states in moving forward with this particular section of code.

Joe Rothschiller: I think we are very open to change and a progressive state and we need to look at what is happening in the state as values are going up.

Senator Poolman: Asked what would be left for them to take with all he is wanting increased.

Joe Rothschiller: If you are a farmer or rancher you have lots of land. If you are saving money in retirement and education funds you probably have money in the stock market that is at risk, your savings is at risk.

Senator Campbell: Asked if this was intended for any type of bankruptcy.

Joe Rothschiller: Yes it certainly affects those who are looking at bankruptcy. (17:55-19:44)

Senator Sinner: Asked how he could say it is a win for the lending communities and the creditors.

Joe Rothschiller: I guess what I am saying is that I am looking for a win, win in this bill. If they don't feel it's a win and why should they it is upping limits they don't like anyway. They would like to lower them.

Senator Murphy: You mentioned in your testimony that you are employed by Steffes out of Dickinson. My question is what do they do and is it germane to the heart of this bill or is it your personal experience this brought it about?

Joe Rothschiller: No my employment hasn't any thing to do with this. (20:40-23:50)

Senator Miller: Do you know when these were last changed.

Joe Rothschiller: I asked that and what I got back was the abstract from 2009 when there were some changes to the exemption laws.

Senator Sinner: Commented that the average sale price in the last six months in North Dakota is 214,515 dollars. He said that the statistics that Joe gave were misleading.

Murray Sagsveen, Chief Staff for the Chancellor in the North Dakota University System Office: In favor of part of the bill. Written Testimony Attached (2).

Marilyn Foss, North Dakota Bankers Association: Opposed. Written Testimony Attached (3). (30:00-40:03)

Senator Miller: Asked if in the first part of the bill where there is exemptions for motor vehicles and tools; is there anything in that section, in those two subsections that maybe could be adjusted it does seem quite low.

Marilyn Foss: Said that she would agree with him that they are low but would note that how the exemptions works for example is someone who was considering bankruptcy could pay up the equity in their home and claim it as an exempt asset and then sell the house and spend the money. Said that this should not be done piece meal but perhaps a study should be enacted. (40:30-43:30)

Chairman Klein: Asked if she recalled in 2009 house bill 1039 and what they did.

Marilyn Foss: Said they raised the exemption for the homestead from 80,000 to 100,000 dollars and that was equity.(45:30-46:00)

Kim Granfor, North Dakota Collector's Association: Written Testimony Attached. (4&4b) (46:30-51:51)

Kathy Schimetz, Owner of Procollect Services: Written Testimony Attached. (5) (52:15-55:15)

Barry Haugen, President of the Independent Community Banks of North Dakota:
Written Testimony Attached: (6) (55:32-56:55)

Chairman Klein: You see some issues that need to be addressed but rather than going in and looking at the auto or the tools or the homestead, we should look at the whole thing instead of section by section? Let's take a look at the whole section of code and see if it can be fixed.

Barry Haugen: If it is deemed that this needs to be looked at we think it should be looked at in its entirety.

Rick Clayburgh, CEO and President of the North Dakota Bankers Association: His membership is opposed to the bill. He commented about the issue of a study. It is important if you are going to look at the statutes to do it in its totality; however you're not hearing much from debtor attorneys. I don't think you have heard from debtor attorneys from across North Dakota that there is a problem with our current system. I don't personally think you need to study the issue if you are really focused on low income debtors. You would think their representatives would be in asking this legislature to do that.

Chairman Klein: Closed the hearing.

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Eva Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to accounts and assets exempt from judicial process and the homestead exemption

Minutes:

No Attachment

Chairman Klein: Called the meeting to order.

Senator Sinner: Moved a do not pass.

Senator Poolman: Seconded the motion.

Roll Call Vote: Yes-6 No-0 Absent-1

Senator Sinner will carry the bill.

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2359**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Senator Sinner Seconded By Senator Poolman

| Senators | Yes | No | Senators | Yes | No |
|------------------------|-----|----|----------------|-----|----|
| Chairman Klein | x | | Senator Murphy | x | |
| Vice Chairman Campbell | x | | Senator Sinner | x | |
| Senator Burckhard | x | | | | |
| Senator Miller | - | | | | |
| Senator Poolman | x | | | | |
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Total (Yes) 6 No 0

Absent 1

Floor Assignment Senator Sinner will carry the bill

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2359: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2359 was placed on the Eleventh order on the calendar.

2015 TESTIMONY

SB 2359

Senate Bill SB2359

#1

Joe Rothschiller Testimony

2015 Legislative Assembly – Senate IBL Committee

February 3rd, 2015

Good Morning Chairman Klein and Senate IBL committee members.

Thank you, Majority Leader Senator Rich Wardner for introducing this Bill.

My name is Joe Rothschiller; I am a resident of ND and am employed by Steffes Corporation in Dickinson, ND. I come before you as a Citizen of ND with ND values and work ethic.

Nine (9) months ago, I became aware of the Asset Protection and exemption laws in ND and other States. I became concerned that our exemption limits on lawsuits (especially personal injury lawsuits) were not keeping pace with real property values and therefore not protecting North Dakotans with the basic necessities of life, so that debtors will not be left destitute and public charges of the state. And, North Dakota laws were not comparable to surrounding states and left our citizen with significant risk of loss for the basic necessities, we strive to obtain in life.

Asset Protection is not Estate Planning. Estate Planning is for when you die (what happens to your stuff). Asset Protection is for while you are alive (how do you protect what you have earned).

SB2359 is intended to further the work of the 2009 Legislative Assembly's House Bill 1039.

Taken from the Abstract of that legislation, I quote:

“Although House Bill 1039 made greatly needed updates and clarifications to North Dakota’s exemption scheme, there still remains much room for reform.”

Exemption laws serve a variety of purposes. One of the primary reasons for exemption laws is to protect the family unit from impoverishment, relieve Society of the burden of supplying subsidized housing, and provides debtors with a means to survive.

Exemptions:

1. Help us protect what we have earned by providing the debtor with property necessary for his or her, as well as their families, physical survival.
2. To enable the debtor to rehabilitate him or herself financially, earn income in the future and encourage repayment of debts.
3. To protect the debtor's family from adverse consequences of impoverishment.
4. Help some debtors avoid bankruptcy.

SB2359 is intended to increase some exemption limits, which I feel need updating due to current economic values and to add some exemptions, I feel should be protected from a creditor. In addition to the changes outlined in the bill, I would like to walk through the bill and point out other possible amendments to be considered by the committee.

Summary of Exemption and Amendment changes:

1. Page one: under additional exemptions for residents, line 19, number 2: refers to a one vehicle exemption of a value not to exceed \$2950. I feel this is hardly a "reliable" priced vehicle today and suggest an increase to \$15,000. **This would be an additional amendment to the bill.**
2. Page two: line one: allows for a \$1500 exemption for tools of trade, which I feel should also be at least \$15,000 and would be an **additional amendment to the bill.**
3. Page two: line 4, number 4: expands the definition of life insurance policies and adds the debtor's spouse, child and other dependent to the exemption list for life insurance. According to the Presser Law Firm website, www.assetprotectionattorneys.com, 44% of all states have a 100% exemption on life insurance.
4. Page two, line 15, number 7: adds section 409 of the Internal Revenue code of 1986, which is Nonqualified Deferred Compensation Plan. As I reviewed other states, this was the one section the ND law's did not exempt in relation to retirement accounts.

In addition, line 18 increases the retirement fund exemption from \$100K to \$500K and up to \$1 million in aggregate for all accounts. **Keep in mind this is a retirement account built over YEARS of a person's life, with yearly limitations and MUST have been in effect for at least a year to be exempt.**

According to the Presser Law Firm website, www.assetprotectionattorneys.com, 66% of all states have a 100% exemption on retirement accounts held for at least one year, 72% if held for at least 3 years.

Keep in mind, these are typically not your dead beat debtors, not paying their bills, these are hard working North Dakotan's trying to provide for themselves when the opportunity to retire presents itself.

- 5. Page 3, line 17: I would ask to insert 409, after 408, to include this section of the Internal Revenue Code of 1986, as stated before. **This would be an amendment to the bill.**
- 6. Page 4, lines 6-18: adds a new section to Century Code exempting assets in education, medical savings, and health savings accounts. I also wish to **add an amendment** to line 11, number 1: insert after the words saving account: "that has been in effect for at least one year". This would prevent someone from dumping a large sum of money into such an account after the debtor becomes aware of the claim. In other words, the money was never intended to be used for education purposes.
- 7. Lastly, page 4, line 25 and page 5 line 16 & 23; changes the Homestead exemption from \$100k to \$1 million over and above liens or encumbrances or both.

Comments:

- a. **Home** and **Land** values in ND have risen significantly in the last 6 years.
- b. According to REALTOR.COM the average home price in North Dakota is \$400,307 vs. \$199,187 in the U.S.
- c. If the average home is excluded at \$400k, leaving \$600k for contiguous land at \$2,000/acre = 300 acres or approx. 1/2 section of land for a farmstead. Hardly enough to make a living on but enough to start over.
- d. Homestead exemptions for bordering states:
 - MN – up to 160 acres, \$750K rural, \$300k urban
 - SD – unlimited for 160 acres rural or 1 acre urban, one homestead dwelling.
 - MT - \$250k single, \$500K for a couple

Chairman Klein and IBL committee members thank you for listening to my testimony and I hope you see the need, as I do, to update North Dakota's exemption laws, as spelled out in SB2359 and the amendments I have suggested.

Questions?

Work papers.

| | Retirement Accounts Exemption | Homestead Exemption | Life Insurance Exemption | Annuity (Non-IRA/ERISA) Cash Value Exemption |
|----------|-----------------------------------|---|--|---|
| Alabama | 100% | \$5,000 | 100% for insurance on self or spouse payable to self, spouse or children <i>held for more than 1 year</i> | A judgment debtor can exempt up to \$250/month in annuity payments (aggregate). Anything over 250/month, the court may order debtor to pay the judgment creditor. |
| Alaska | 100% | May not exceed \$54,000 | Creditor may obtain order for debtor to pay on for any dividends and loan values available to the individual that exceed \$10,000. | Creditor may obtain order for debtor to pay on for any dividends and loan values available to the individual that exceed \$10,000. |
| Arizona | 100% | \$150,000, may not be doubled by husband and wife. | 100% — cash value is 100% protected, however, death benefits paid or payable to surviving Spouse or child are limited to \$20,000. | 100% |
| Arkansas | First 20,000 IRA's are protected. | Generally 100 percent protection depending on the size of the homestead -AK offers two options based on the size of the property: 1.A married person or the head of a family may exempt an unlimited amount of value in his or her home or other property covered by the homestead exemption if the property is ¼ acre or less in a city, town, or village, or 80 acres or less anywhere else. 2.If the property is between ¼ acre and 1 acre in a city, town, or village, or between 80 acres and 160 acres elsewhere, then the additional homestead exemption is \$2,500. Total Acreage limit: 1 acre or less in a city, town, or village, or 160 acres elsewhere. 4.No doubling allowed for married couples. | 100% | 100% |

SB 2359 2/13/2015

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|--------------------------|---|---|---|---|
| <p>California</p> | <p>Exempt only to the extent that the court determines the property sought to be applied to the satisfaction of a judgment is used for child, family, or spousal support.</p> | <p>1. Individual: Seventy-five thousand dollars (\$75,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead. 2. Lives with one family member who doesn't have interest in house: One hundred thousand dollars (\$100,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor. 3. 65 and over or physically or mentally disabled: One hundred seventy-five thousand dollars (\$175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any of the following:</p> | <p>\$9,700 single / \$19,400 married (each spouse is entitled to an amount of 9,700).</p> | <p>\$9,700 single / \$19,400 married (each spouse is entitled to an amount of 9,700).</p> |
| <p>Colorado</p> | <p>100%</p> | <p>\$60,000 if homestead is occupied by homeowner or homeowner's family and \$90,000 if homestead is occupied as a home by an elderly (60 and over) or disabled owner, an elderly or disabled spouse of an owner, or an elderly or disabled dependent of an owner. No doubling for marriage is allowed.</p> | <p>100%</p> | <p>Annuities are afforded no protection in Colorado. Consider moving or using an ERISA qualified plan in Colorado rather than annuities for exemption planning.</p> |
| <p>Conneticut</p> | <p>100 % — There is high protection afforded by the Statute: Trust or retirement income and certain retirement, education and medical savings accounts unavailable to creditors.</p> | <p>\$75,000 or \$125,000 if protecting from a hospital bill-- **Homestead protection was introduced in October 1, 1993 so the debt must have been incurred after that date to allow the homestead protection to apply.</p> | <p>\$4,000.00</p> | <p>100%</p> |
| <p>Delaware</p> | <p>100 % (Unlimited).</p> | <p>\$125,000.00</p> | <p>100%</p> | <p>350/Month</p> |

#16

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|----------------------|---|--|--|---|
| District of Columbia | 100% | 100% | 100% | Available to the extent reasonably necessary for support of the debtor and any dependent of debtor. |
| Florida | 100% | 100% for 160 acres rural or 1/2 acre urban. | 100% | 100% |
| Georgia | 100% | \$10,000 single / \$20,000 married. | 1. Un-matured: 100% 2.Proceeds: 100% 3.Un-Matured Dividends: \$2000/\$4000 Max. | 100% |
| Hawaii | 100% for funds deposited at least 3 years prior. | \$20,000 for a person / \$30,000 for head of household or over 65. | 100% | 100% |
| Idaho | 100 % needs of the individual and his dependents. | \$100,000.00 | 100% | \$1,250/month. |
| Illinois | 100% | \$15,000 | 100 % for policy payable to spouse or dependent. | 100 % for annuity payable to spouse or dependent. |
| Indiana | 100% | \$15,000 | 100% | 100% |
| Iowa | 100% | 100 % for 40 acres rural, 1/2 acre urban. | 100% for policy payable to spouse, child or dependent for insurance policy obtained more than two years. The exemption becomes limited to \$10,000 for policies obtained within two years. | None |
| Kansas | 100% | Unlimited for 160 acres rural or 1 acre urban. | 100 % policy held for more than 1 year. | 100% if policy held for more than 1 year. |
| Kentucky | 100% | \$5,000 | 100% | \$350/month. |
| Louisiana | 100% | \$35,000, limited to five acres inside a municipality (urban) and 200 acres outside of a municipality. | 100% protected. Limited to \$35,000 if issued within 9 months. | 100% protected. Limited to \$35,000 if issued within 9 months. |
| Maine | Limited to the sum of \$15,000 or to the extent reasonably necessary for support (which ever is greater). | \$47,500 / \$95,000 if minor dependents. | Interest of beneficiary in proceeds and avails 100% protected. Interest of owner protected up to \$4,000. | \$450/month. |
| Maryland | 100% | Owner occupied residential property or condo or co-op to \$21,625. | 100% | 100% |
| Massachusetts | Limited to deposits equal to 7% of debtor's total income in preceding 5 years (though limitation likely not applicable to rollover IRAs). | \$500,000 or aggregated to \$1,000,000 for person's age 62+ or disabled. | 100% | None |

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| Michigan | 100% | \$35,300 / \$52,950 if 65+ or disabled (1 lot in town, village, city, or 40 acres elsewhere). | 100% | 100% |
| Minnesota | ERISA protection is limited to \$66,000. IRA protection limited to \$69,000 | Up to 160 acres. \$750,000 rural; \$300,000 urban. | Life insurance proceeds to \$46,000, if beneficiary is spouse or child of insured, plus \$11,500 per dependent. Unmatured life insurance contract dividends, interest, or loan value to \$8,800 if insured is debtor or person debtor depends on. | All proceeds are protected. Monies going to surviving spouse or children is limited to \$20,000 with \$5,000 additional per dependent. |
| Mississippi | 100% | \$75,000 for 160 acres. | Interest of beneficiary in proceeds and avails 100% protected. Limited to \$50,000 if issued within 12 months. | Policy proceeds are exempt as long as the contract has a spendthrift clause. |
| Missouri | Limited to the extent reasonably necessary for support. | \$15,000, Mobile home only affords \$5,000. | Proceeds are exempt. | None |
| Montana | 100% | \$250,000, \$500,000 for couples | 100% | \$350 Per Month. |
| Nebraska | Limited to the extent reasonably necessary for support. | \$60,000 for head of household or unmarried and over the age of 65. | \$100,000 for cash value attributable to premiums paid at least three years prior. | \$100,000 for cash value attributable to premiums paid at least three years prior. |
| Nevada | Limited to a present value of \$500,000. | \$550,000 | 100% | 100% |
| New Hampshire | 100% | \$100,000 | Life insurance proceeds but not cash value. | 100% |
| New Jersey | 100% | None | Generally Exempt. | \$500/month. |
| New Mexico | 100% | \$60,000.00 | 100% | 100% |
| New York | 100% | 1. The exemption amount is \$150,000 if the property is in the counties of Kings, Queens, New York, Bronx, Richmond, Nassau, Suffolk, Rockland, Westchester, or Putnam. 2. The exemption amount is \$125,000 if the property is in the counties of Dutchess, Albany, Columbia, Orange, Saratoga or Ulster. 3. The exemption amount is \$75,000 if the property is in any other county in the state | 100% | |
| North Carolina | 100% | \$35,000 / \$70,000 married or \$60,000 for those aged 65 and older. | 100% | 100% |

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|-----------------------|---|--|---|---|
| North Dakota | \$100,000 per account / \$200,000 max unless reasonably necessary for support. | \$100,000.00 | \$100,000 per policy / \$200,000 max for policies payable to a dependent and which have been in effect for at least one year. | \$100,000 per policy / \$200,000 max. for contracts payable to a dependent and which have been in effect for at least one year. |
| Ohio | Limited to the extent reasonably necessary for support. | \$125,000 as of March 2013. | 100% for policies payable to spouse, children or dependent | 100% |
| Oklahoma | 100% | Unlimited for 160 acres rural, 1 acre urban. \$5,000 limit if more than 25% of total sq. ft. area used for business purposes; okay to rent homestead as long as no other residence is acquired. | 100% | 100% |
| Oregon | 100% | \$40,000 or \$50,000 for Married Couples. | 100% so long as owner's estate is not beneficiary. | \$500/mo aggregate. |
| Pennsylvania | 100%, except for amounts (1) contributed within 1 year (not including rollovers), (2) contributed in excess of \$15,000 in a one-year period, or (3) deemed to be fraudulent conveyances. | None. | Income or return of \$100/month. | \$100/month. |
| Puerto Rico | None. | \$15,000.00 | 100% if beneficiary is spouse legal representative of insured. | \$250/month. |
| Rhode Island | 100% | \$300,000.00 | 100 % if there is a clause that prohibits proceeds from being used to pay beneficiary's creditors. | Proceeds are exempt if stated in policy documents. |
| South Carolina | 100% | \$56,150 single/\$112,275 married. | Limited to the extent reasonably necessary for support. | 100% |
| South Dakota | 100% | Unlimited for 160 acres rural, 1 acre urban. | \$20,000.00 | \$250/month. |
| Tennessee | 100% | 1. \$5,000 Single/ \$7,500 married. 2. Individual with minor children may exempt up to \$25,000 of their primary residence. 3. Unmarried and 62+ may claim up to \$12,500. 4. Married where one spouse is older than 62 and one is younger may claim up to \$20,000. 5. Married where both spouses are older than 62 may claim up to \$25,000. | 100% | 100% |
| Texas | 100% | Unlimited. | 100% | 100% |

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|---------------|---|---|--|---|
| Utah | 100% for amounts contributed passed one year. | \$20,000 single / \$40,000 married. | 100% excluding any payments made on the contract during previous year. | None. |
| Vermont | 100% except for amounts contributed to self-directed plans within 1 year. | \$125,000 Single / \$250,000 Married. | 100% | \$350/month. |
| Virginia | 100% | \$5,000, \$10,000 for anyone 65 and older. | 100% | None |
| Washington | 100% | \$125,000.00 | 100% | \$3,000/month. |
| West Virginia | Limited the extent reasonably necessary for support. | \$25,000.00 | \$8,000.00 | Limited the extent reasonably necessary for support. |
| Wisconsin | 100% | \$75,000 Single / \$150,000 Married. | \$150,000 (but \$4000 for policies issued within 2 years). | \$150,000 cash value (but \$4,000 for contracts issued within 2 years). |
| Wyoming | 100% | \$10,000 Single / \$20,000 Married, \$6,000 for Mobile Homes. | 100% | \$350/month. |

Retirement Accts Homestead Life Ins. Annuities

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|---------------------------|-----------------|----------------------------|-----|-----|
| Summary | | | | |
| 100% exemption | 66% | 14% | 44% | 36% |
| 3 year or less limitation | 72% | | | |
| <i>\$250-500K</i> | | 24% | | |
| Average home price in ND | | \$400,307 | | |
| | <i>options:</i> | <i>500k when *1m Rural</i> | | |

*Steffes Plan 24yrs.
rest Value 20yr
15yr
10yr*

*\$370K
\$220K
\$104K*

\$400 or \$800

North Dakota Market Comparison

| | North Dakota | United States |
|---|------------------|---------------|
| Average Home Price | \$400,307 | \$199,187 |
| Average Home Price/sqft | \$199 | \$112 |
| % New Listings | 14% | 9% |
| % Reduced Listings | 27% | 32% |
| % Foreclosed Listings | N/A | 2% |
| % of All Homes For Sale | 1% | 2% |
| % of All Homes Recently Sold (last 6 months) | 2% | 1% |
| Average Sale Price | \$213,655 | \$293,839 |
| Average Sale Price/sqft | \$118 | \$155 |

Bordering States:

| | | | | |
|---------------------|---|--|---|--|
| Minnesota | ERISA protection is limited to \$66,000. IRA protection limited to \$69,000 | Up to 160 acres. \$750,000 rural; \$300,000 urban. | Life insurance proceeds to \$46,000, if beneficiary is spouse or child of insured, plus \$11,500 per dependent. Unmatured life insurance contract dividends, interest, or loan value to \$8,800 if insured is debtor or person debtor depends on. | All proceeds are protected. Monies going to surviving spouse or children is limited to \$20,000 with \$5,000 additional per dependent. |
| Montana | 100% | \$250,000, \$500,000 for couples | 100% | \$350 Per Month. |
| South Dakota | 100% | Unlimited for 160 acres rural, 1 acre urban. | \$20,000.00 | \$250/month. |

Many States, like ND, haven't updated their laws based on current economic prosperity



THE NDUS *EDGE*

SB 2359

Senate Industry, Business and Labor Committee

February 3, 2015

Murray Sagsveen, Chief of Staff

701.328.1499 | murray.sagsveen@ndus.edu

I am Murray Sagsveen, Chief of Staff for the Chancellor in the North Dakota University System Office. I appear in support Senate Bill 2359 on behalf of the State Board of Higher Education, which voted to support this bill during its meeting on January 29, 2015.

The State Board of Higher Education specifically supports section 2 of this bill, which would not allow a creditor to seize education savings accounts established by parents (or grandparents) for their children (or grandchildren).

TESTIMONY OF MARILYN FOSS
NORTH DAKOTA BANKERS ASSOCIATION
OPPOSING SB 2359

- Public Policy concerns – laws should encourage people to behave responsibly and to meet their obligations, SB 2359 encourages evasion of obligations by people who are very well to do. On its face the bill provides a road map of how to keep literally millions and millions of dollars from a judgment creditor or unsecured creditor in bankruptcy. (At the same time, state laws, N.D.C.C. 28-22-18 and 32-09.1-03) strictly limit exemptions for wage earners who are facing garnishment; that technique for judgment collection can take all wages above minimum wage).
- North Dakota actual law doesn't require very much of a business owner, or attorney, or CPA, or doctor who wants to protect and shield personal assets from business obligations - the basic requirement is for the shareholder to pay for shares (or whatever type of financial interest represents paid in capital for the entity). Statutes to shield business owners from personal liability for business liabilities apply to corporations, LLCs, limited partnership, LLLPs, etc.
- A creditor who is trying to collect a judgment against a business owner by going after the owner's personal assets is trying to "pierce the veil" of limited liability. North Dakota law only allows this to happen under very limited circumstances, including the business has failed to adequately insure itself against foreseeable liability, or business owners have failed to keep business assets separate from personal assets or have actually engaged in other types of financial chicanery or financial wrongdoing in their handling of business finances.
- North Dakota has also protected businesses and their owners from unwarranted ruinous liability by adopting tort reform to limit punitive damage awards and joint and several liability. Where

are the examples of misguided, huge judgments that have been awarded against an innocent business and collected from an innocent business owner? By the time a typical judgment is at the collection stage, the judgment has been considered and upheld by at least two, separate courts.

- This bill actually shifts the obligations of the negligent (or worse) business owner to the injured person (all while encouraging the judgment debtor to sock away millions of dollars that won't be used to pay those obligations) and, possibly, the state, if an injured person can't bear the costs of the injury.
- I'd like to close by addressing how this bill affects bank lending. Banks are in the business of risk management. If this bill is adopted it adds additional risks to lending for business because, in effect, the bill says the state of North Dakota thinks it's perfectly acceptable for a debtor not to pay debts and, indeed, that the state wants to help certain debtors to not pay their debts.
- But, banks can adjust. They will do so by reflecting the new law in their loan policies and practices. If the state wants to help people not to pay their loans, it will be harder and more expensive to collect those loans. Accordingly, credit will be made tighter, the conditions for being eligible to get a loan will be more stringent and unsecured lending will, at best, be less available and may be unavailable. We think that very predictable result is bad policy, bad for North Dakota businesses and business owners who do meet their obligations, and bad for the North Dakota economy. That why NDBA urges to give SB 2359 a resounding DO NOT PASS.



North Dakota Collectors Association

an association of collection specialists

TESTIMONY IN OPPOSITION OF SB 2359 SENATE IBL

Chairman Klein and members of the Senate IBL committee, my name is Kim Granfor and I represent the ND American Collector's Association.

The ND ACA is an association made up of collection agencies in the state of ND. We are affiliated with the International Collector's Association.

We oppose this bill in its entirety.

What SB 2359 provides is an avenue for debtor's to not pay for a service or product that they received. Who do we protect? The medical facility or the patient who has the money to pay but simply doesn't want to. Do we protect the credit card company who provided credit in good faith or the person who ran their credit card up to the max and now doesn't want to pay? These businesses are not there to provide their product or service for free? Someone has to pay. If this bill passes and becomes law, you and I will be paying for these products and services via higher prices.

The current law provides exemptions that are reasonable. We have no issues with a homestead exemption of \$100,000. No issues with a vehicle exemption of \$2950 or tool exemption of \$1500 and so on. No issues with a retirement fund of \$200,000. The current law on exemptions works and there is no need to raise the amounts.

The Homestead exemption in other states varies from \$5,000 to unlimited. The average appears to be around \$125,000 (excluding the few states where the exemption is unlimited).

Raising the exemptions to the amount proposed to avoid paying a debt that is owed is simply wrong. Why would the ND law allow for someone to live in a million dollar home and live off a million dollar retirement fund, yet not be made to pay their debt. Our ND businesses cannot afford to give services or products away. Someone has to pay to keep the doors open.

Do not give someone the opportunity to shelter assets and thwart attempts by businesses to recover the money that is due and owing.

We urge you to vote no on SB 2359 and not make ND a debtor haven.

| State | Homestead Exemption | if married |
|--------------------|---------------------------|------------|
| | | |
| Federal Bankruptcy | 22,975 | |
| | | |
| Alabama | \$5,000.00 | 10,000.00 |
| Alaska | \$70,200.00 | 70,200.00 |
| Arizona | \$150,000.00 | |
| California | \$75,000.00 | |
| Colorado | \$60,000.00 | |
| Kansas | unlimited | |
| Louisiana | \$35,000.00 | |
| Massachusetts | \$125,000.00 | |
| Minnesota | \$390,000.00 | 390,000.00 |
| Montana | \$250,000.00 | 500,000.00 |
| Nebraska | \$60,000.00 | |
| New York | \$75,000.00 | 150,000.00 |
| Oregon | \$40,000.00 | 50,000.00 |
| South Dakota | unlimited | |
| | Less than 1 acre in town | |
| | less than 160 acres rural | |
| Texas | unlimited | |
| Wisconsin | \$75,000.00 | 150,000.00 |
| Wyoming | \$20,000.00 | 40,000.00 |

TESTIMONY IN OPPOSITION OF
SB 2359
SENATE IBL

Chairman Klein and members of the Senate IBL committee, my name is Kathy Schimetz, I am the owner of Procollect Services in Minot, ND. My company collects all types of debt for our clients, including medical accounts, utilities, property management accounts, NSF checks, subrogation accounts and deficiency balances for financial institutions.

SB 2359 will negatively impact each type of collections that we do. This will impact our clients getting paid for the services and products that they provided. We collect from a wide range of income levels. There are those that simply do not have the ability to pay and then there are those that have the ability and chose not to pay. They want to live in the million dollar house and put money into their retirement to a startling million dollars plus – which this is of course easy when you don't have to pay your bills.

The current law is sufficient for the Homestead claim of exemptions. This \$100,000 claim of exemption is equity – not the value of the home. In conducting my own research on the current value of homes in ND, I find according to Zillow.com –the median home value in is \$190,000 with the current median price of homes in ND is \$242,900. Realtor.com shows the average sold price is \$214,349. According to Minot and Ward County Economy at a Glance, from the Minot area Chamber of Commerce, shows the average sale price for Minot as of December 2014 year to date average sale price was \$235,084. Obviously a million dollar exemption is not necessary.

The other section of SB 2359 that is excessive - is raising the retirement fund exemption to \$1,000,000. Why would anyone need an exemption this high? Exemption laws are there for the purpose of protecting a person so they can survive. I don't believe anyone needs to have a million dollar retirement fund just to survive.

I kindly request that you give a do not pass vote on SB 2359 and allow businesses to be paid.

February 3, 2015

SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE
SB 2359

Chairman Klein and members of the committee:

Good morning. My name is Barry Haugen and I am President of the Independent Community Banks of North Dakota (ICBND). Our membership totals about 60 independent community banks throughout North Dakota.

We oppose this bill and view the bill as an opportunity for debtors to inappropriately shield millions of dollars from debt repayment. The intent of the bill may be to protect business owner's assets in case of a lawsuit, but that can already effectively be accomplished through the appropriate business incorporation structure and securing adequate business liability insurance.

The temptation for debtors to shield assets from debt repayment via this bill is just too great. The maximum dollar amount thresholds that are proposed are very extreme as compared to current law. The bill also creates newly exempt classes of assets. It wouldn't take a great deal of planning or time to develop a fairly lucrative bankruptcy plan given the new classes of exempt assets and the dramatically high maximum exemptions proposed.

Let me give you an example. \$269,000 per child is the maximum contribution limit for a 529 account in North Dakota. But there are no rules for an individual to establish 529 accounts in other states which each have their own contribution limits. And, just because 529's are designed as college savings plans that doesn't mean those funds can't be accessed otherwise. An account owner simply pays federal income tax and an additional 10-percent penalty tax, but only **on the earnings portion** of any "nonqualified" withdrawal. After taxes and penalties, it might not be the wisest investment, but it can certainly be an effective shelter created by this bill. Millions could be shielded in 529's, health savings accounts, annuity contracts and cash surrender value of life insurance policies. On top of this, the bill proposes to increase the homestead exemption tenfold.

Simply put, we should not put laws in place which have the potential to incentivize debtors to shield assets because the exemptions are so lucrative.

We recommend a do not pass on this bill. Thanks for the opportunity to testify.