

**Sixtieth Legislative Assembly of North Dakota
In Regular Session Commencing Wednesday, January 3, 2007**

SENATE BILL NO. 2221
(Senator Holmberg)

AN ACT to create and enact a new section to chapter 28-20 of the North Dakota Century Code, relating to the effect of bankruptcy on a judgment lien; to amend and reenact section 47-18-18 of the North Dakota Century Code, relating to declaration of a homestead; and to repeal sections 28-20-30, 28-20-31, and 28-20-32 of the North Dakota Century Code, relating to cancellation of judgment against bankrupts, service in bankruptcy proceedings, and affidavits in bankruptcy proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 28-20 of the North Dakota Century Code is created and enacted as follows:

Effect of bankruptcy on judgment lien.

1. If a judgment lien appears on a judgment debtor's real property and the debtor is later the subject of bankruptcy proceedings in which the judgment lien is avoided or set aside, the judgment lien may be terminated of record by filing a certified copy of the bankruptcy court lien avoidance judgment.
2. A prebankruptcy petition judgment does not create a lien on real property that is acquired by the judgment debtor after the filing of the bankruptcy petition which may be established by filing a copy of the discharge.
3. A copy of the discharge may be filed to remove a judgment lien as a cloud on the homestead set aside to the bankruptcy debtor.
4. Subsection 2 does not apply if the judgment creditor files a certified copy of an order or a judgment of the bankruptcy court which declares the debt is nondischargeable. A judgment creditor may record lis pendens stating the judgment creditor has filed a nondischargability action in bankruptcy court. This section does not apply to debts automatically excepted from discharge under section 523 of the United State Bankruptcy Code [11 U.S.C. 523].
5. As used in this section, "files" or "filing" means a filing with the clerk of district court in the county in which the judgment is docketed or transcribed.

SECTION 2. AMENDMENT. Section 47-18-18 of the North Dakota Century Code is amended and reenacted as follows:

47-18-18. Declaration of homestead - How executed and acknowledged. In order to select a homestead the claimant ~~must~~ shall execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead, and file the declaration for record.

A ~~finding claim~~ of a homestead ~~exemption by the bankruptcy court on behalf of a person discharged from debts pursuant to the Act of the Congress of the United States known as "an act to establish a uniform system of bankruptcy throughout the United States, approved July 1, 1898", as amended [ch. 541, 30 Stat. 544], shall be~~ a debtor who received a discharge is a declaration of homestead.

Filing for record in the recorder's office of the county where the homestead is located a certified copy with the legal description of the ~~bankrupt's discharge of bankruptcy~~ constitutes notice that the property ~~has been found to be~~ is a homestead and exempt from ~~those judgments determined by the bankruptcy court to be discharged.~~

SECTION 3. REPEAL. Sections 28-20-30, 28-20-31, and 28-20-32 of the North Dakota Century Code are repealed.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixtieth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2221.

Senate Vote: Yeas 46 Nays 0 Absent 1

House Vote: Yeas 92 Nays 0 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2007.

Approved at _____ M. on _____, 2007.

Governor

Filed in this office this _____ day of _____, 2007,

at _____ o'clock _____ M.

Secretary of State