

2009 HOUSE JUDICIARY

HB 1039

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1039

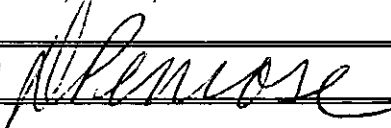
House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: January 12, 2009

Recorder Job Number: 6801, 6804, 6813

Committee Clerk Signature



Minutes:

**Chairman DeKrey:** We will open the hearing on HB 1039.

**Rep. Shirley Meyer:** Sponsor, Chair of Judicial Process Interim Committee. This bill deals with allowable exemptions. Many of the exemptions needed to be updated and clarified.

**Vonette Richter, LC:** Explained the bill (attachment).

**Rep. Delmore:** What if I have a settlement for my child, is that something that is exempt.

**Ms. Richter:** I believe that is addressed on page 5, wrongful death is capped at \$18,450 on a personal injury.

**Rep. Delmore:** If my son was injured and we had a settlement for \$300,000, the only part of that we would be able to keep was \$18,450 even though I may have to continually take care of that child in the future.

**Ms. Richter:** That doesn't include punitive or compensation for actual pecuniary losses, those would be exempt.

**Rep. Boehning:** On page 3, lines 25-27, can you explain the \$2500 for tools, etc.

**Ms. Richter:** The section that is being repealed, that was the part that was being moved to this section. There are numerous additional exemptions for the family exemptions. It can't be used for real estate, you can't add those amounts to your homestead exemption.

**Rep. Boehning:** If you are filing bankruptcy and these tools are your sole source of income, would you have to sell all the tools over that limit?

**Ms. Richter:** You can use the \$7500 added to that, in addition to your \$1500 exemption.

**Rep. Boehning:** If you are in a sole proprietorship, that's not a lot of money for tools. I think we should raise the exemption to \$5,000 or something. Without tools, you wouldn't be able to work.

**Ms. Richter:** I don't know, that would be up to the Committee.

**Rep. Klemin:** To respond to Rep. Boehning and what you said about not making enough money to pay back creditors. If you are filing bankruptcy in Chapter 7, you are liquidating your assets basically and you're not paying anybody back at all. Now if you go into a Chapter 11 reorganization or as a Chapter 13 wage earner type, there are some differences that would apply. I think when you are talking about exempting things here, you're not paying people back in bankruptcy, you're not talking about liquidation, you're talking about something else. You can combine some of these exemptions to get higher dollar amounts.

**Rep. Wolf:** These are rummage sale values not retail values, correct.

**Ms. Richter:** I believe there is an appraisal process that you go through.

**Rep. Koppelman:** On page 2, under #9, can you explain the original language. It sounds like you are trying to exempt what you spend on additional revenues.

**Ms. Richter:** This is to ensure that you are not using insurance proceeds to buy a snowmobile.

**Rep. Koppelman:** If someone had a fire, and was paid cash for the settlement, and they didn't fix up that property and kept the money, in other words, you could buy a snowmobile.

**Ms. Richter:** I don't recall the reason for that section. It was brought forward by Mike Wagner.

**Rep. Klemin:** This talks about absolute exemptions only; not other kinds of exemptions. The absolute exemptions are listed on this bill. This section only applies to those kinds of exemptions.

**Rep. Koppelman:** Why are we adding language that says if we use the money for this it's okay but not for that.

**Rep. Klemin:** This is a clarification of that language, that's all it is.

**Ms. Richter:** The cash that you get from the insurance settlement is a different exemption, differing from a house or car exemption.

**Rep. Koppelman:** It talks about the homestead exemption. What if you had a fire or water damage to your library. Under the existing law, #9 says "all insurance benefits resulting from insurance covering any or all of the absolute exemptions"; so under current law if that happens and you decide I'm not going to fix that damage; you get to keep the funds.

**Ms. Richter:** I can't answer that.

**Chairman DeKrey:** Thank you. Further testimony in support of HB 1039. Further testimony in support. Testimony in opposition. We will take action.

**Rep. Klemin:** I move a Do Pass.

**Rep. Griffin:** Second.

**13 YES 0 NO 0 ABSENT**

**DO PASS**

**CARRIER: Rep. Wolf**

Date: 1/12/09  
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1039

**HOUSE JUDICIARY COMMITTEE**

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☒ DP ☐ DNP ☐ DP AS AMEND ☐ DNP AS AMEND

Motion Made By Rep. Klemin Seconded By Rep. Griffin

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------|-----|----|-----------------|-----|----|
| Ch. DeKrey      | ✓   |    | Rep. Delmore    | ✓   |    |
| Rep. Klemin     | ✓   |    | Rep. Griffin    | ✓   |    |
| Rep. Boehning   | ✓   |    | Rep. Vig        | ✓   |    |
| Rep. Dahl       | ✓   |    | Rep. Wolf       | ✓   |    |
| Rep. Hatlestad  | ✓   |    | Rep. Zaiser     | ✓   |    |
| Rep. Kingsbury  | ✓   |    |                 |     |    |
| Rep. Koppelman  | ✓   |    |                 |     |    |
| Rep. Kretschmar | ✓   |    |                 |     |    |
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Total (Yes) 13 No 0

Absent 0

Floor Carrier: Rep. Wolf

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

**REPORT OF STANDING COMMITTEE (410)**  
January 12, 2009 12:04 p.m.

**Module No: HR-05-0170**  
**Carrier: Wolf**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1039: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS**  
(13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1039 was placed on the  
Eleventh order on the calendar.

2009 SENATE JUDICIARY

HB 1039

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1039

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 3/2/09

Recorder Job Number: 9942

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

**Relating to exemptions from process**

**Vonette Richter** – Legislative Council – See written testimony. Judicial Process Committee final report.

**Senator Schneider** – Asks her to broadly discuss the difference between Federal exemptions and ND exemptions.

**Richter** – There is a Federal Homestead Exemption of \$125,000. ND is \$80,000 which is above liens and encumbrances.

**Representative Shirley Meyer** – District 36 – See written testimony.

**Senator Lyson** – Asks why it only allows for one family bible.

**Rep. Meyer** – Responds, she is not sure.

**Senator Fiebiger** – He remembers when they talked about it. It probably would go under libraries.

Close the hearing on 1039.

**Senator Fiebiger** hands out a proposed amendment raising the Homestead limits to \$200,000.



## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1039

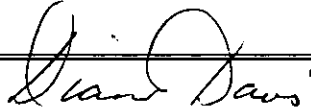
Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 3/2/09

Recorder Job Number: 9947

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Committee Work

**Senator Fiebiger** mentions he has called several people to see how they feel about this.

The amendment on the Homestead limit would raise from \$80 to \$200. Some discussion

follows on what the max limit should be.

**Senator Fiebiger** moves the amendment

**Senator Schneider** seconds

**Senator Olafson** wants to be sure the amendment only raises the limit from \$80 to \$200 and nothing else.

**Senator Fiebiger** says that is his understanding.

**Senator Nelson** asks if this amendment was submitted to the house.

**Senator Fiebiger** said it didn't make to the House.

**Senator Lyson** – Said he remembers talking of this last summer in the interim committee and thought he remembered this being too high.

**Senator Nelson** – Asks what the average price of a house is now. She thinks \$200 seems high.

**Senator Fiebiger** – Says, Iowa, SD, Kansas have no limit and Mn has a \$200 limit

**Senator Lyson** thinks \$200 is too much and \$80 is too little. He has no problem with \$200 because it is a maximum.

**Senator Nething** says this would be in line with other states.

Verbal vote on the amendment, all yes

**Senator Fiebiger** motions do pass as amended

**Senator Schneider** seconds

Vote – 6-0

**Senator Fiebiger** will carry

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1039

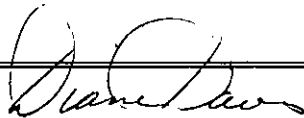
Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 3/17/09

Recorder Job Number: 11124

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Committee work

Committee discusses the Homestead exemption. The committee had passed but made a motion to reconsider, a verbal vote, all yes.

**Senator Schneider** – Said that he has talked with several bankers and it sounded like there would be no opposition if the amount were raised to \$100,000.

**Senator Nething** – Said he thought we were talking \$125,000.

Committee discusses that the \$125,000 seems reasonable.

**Senator Fiebiger** motions to move the amendment to \$125,000

**Senator Lyson** seconds

Verbal Vote on the amendment all yes

**Senator Fiebiger** moves do pass as amended

**Senator Lyson** seconds

Vote -6-0

Senator Fiebiger will carry

JB  
3-2-9  
1 of 2

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1039

Page 1, line 2, after the fourth comma insert "47-18-04, 47-18-14,"

Page 1, line 3, after "process" insert "and the homestead exemption"

Page 7, line 21, overstrike "person" and insert immediately thereafter "individual"

Page 7, line 22, overstrike "shall consist" and insert immediately thereafter "consists"

Page 7, line 25, overstrike "eighty" and insert immediately thereafter "two hundred"

Page 7, line 27, overstrike "In no case shall the" and insert immediately thereafter "The" and after "homestead" insert "may not"

Page 7, line 28, overstrike "they" and insert immediately thereafter "the lots or tracts of land"

Page 7, after line 30, insert:

**"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 two 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 two 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 two 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

2062  
spouse as did the original homestead premises whether paid directly to the claimant or to the husband and wife jointly."

Renumber accordingly

Date: 2/2  
Roll Call Vote #: 1

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO.**

Senate **JUDICIARY**

Committee

☐ Check here for Conference Committee

**Legislative Council Amendment Number**

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Sen. Fubiger Seconded By Sen. Schneider

[illegible]

Total (Yes) \_\_\_\_\_ (N) \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Verbal all yes

Date: 3/2  
Roll Call Vote #: 2

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO.**

1039

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended

Motion Made By Sen Giebig Seconded By Sen Schneider

[illegible]

Total (Yes) 10 (N) 0

Absent \_\_\_\_\_

Floor Assignment Den. Fiebigler

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

**REPORT OF STANDING COMMITTEE**

**HB 1039: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1039 was placed on the Sixth order on the calendar.

Page 1, line 2, after the fourth comma insert "47-18-04, 47-18-14,"

Page 1, line 3, after "process" insert "and the homestead exemption"

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either spouse as did the original homestead premises whether paid directly to the claimant or to the husband and wife jointly."

Renumber accordingly

Date: 3/17  
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

1039

Reconsider  
Committee

Senate JUDICIARY

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Olafson Seconded By Schneider

| Senators                        | Yes | No | Senators            | Yes | No |
|---------------------------------|-----|----|---------------------|-----|----|
| Sen. Dave Nething – Chairman    | 1   |    | Sen. Tom Flebiger   | 1   |    |
| Sen. Curtis Olafson – V. Chair. |     |    | Sen. Carolyn Nelson |     |    |
| Sen. Stanley W. Lyson           |     |    | Sen. Mac Schneider  |     |    |
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Total (Yes) \_\_\_\_\_ (N) \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Verbal yes

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1039

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disposition by either spouse as did the original homestead premises whether paid directly to the claimant or to the husband and wife jointly."

Renumber accordingly

Date: 2/1/20  
Roll Call Vote #: 2

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO.**

NR 1039  
Amendment

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Sean Grebner Seconded By Sean Lyson

[illegible]

Total (Yes) \_\_\_\_\_ (N) \_\_\_\_\_

Absent \_\_\_\_\_

**Floor Assignment** \_\_\_\_\_

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

125,000 instead of 200,000

Verbal yes

114  
e #: 3  
1039

1039

☐ Check here for Conference Committee

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended

[illegible]

Absent \_\_\_\_\_

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

**REPORT OF STANDING COMMITTEE**

**HB 1039: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1039 was placed on the Sixth order on the calendar.

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disposition by either spouse as did the original homestead premises whether paid directly to the claimant or to the husband and wife jointly."

Renumber accordingly



2009 HOUSE JUDICIARY

CONFERENCE COMMITTEE

HB 1039

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1039

House Judiciary Committee

☒ Check here for Conference Committee

Hearing Date: 4/15/09

Recorder Job Number: 11859

Committee Clerk Signature

*D. Penrose*

Minutes:

**Rep. Klemin:** We will call the conference committee on HB 1039 to order.

**Attendance:** All present.

**Rep. Klemin:** The House did not concur with the Senate amendments. Please explain your amendments and the rationale.

**Sen. Lyson:** The whole amendment, or just the ones that you aren't opposed to.

**Rep. Klemin:** All of them related to the homestead exemption.

**Sen. Fiebiger:** When it came to us, I think the rationale behind it was that the current \$80,000 homestead exemption hadn't been changed since 1979. A lot of neighboring states have increased theirs, specifically, MN has an exemption of \$200,000. Some states have no limit on that amount. The \$125,000 was the number we arrived at; which was a compromise, because we originally talked about \$200,000. The \$125,000 homestead exemption is equal to the federal exemption.

**Sen. Nething:** Originally we talked about raising it to \$200,000. Then it came down to \$125,000, after talking about it with some of the other parties, including creditors. The federal exemption is \$125,000 as well. This actually came out of the Interim Committee and this was barely talked about.

**Rep. Klemin:** This was talked about.

**Sen. Nothing:** I don't believe that we took any action.

**Rep. Klemin:** Did anyone testify on this during the Senate hearing on this bill.

**Sen. Nothing:** No.

**Rep. Klemin:** There is nothing in the record of your hearing to support the reason for this change.

**Sen. Nothing:** I don't recall, I don't think so. A representative came over and said that this was an oversight, that we missed it, we should have put it in. It seemed logical because it hadn't been raised since 1979. Then when we went to \$200,000, there was quite an uproar.

**Rep. Klemin:** Who told you that it was an oversight.

**Sen. Nothing:** Well a friend of ours.

**Rep. Klemin:** This is news to me.

**Sen. Nothing:** It doesn't surprise me, because I think he couldn't get it in time for the hearing.

**Rep. Klemin:** Did you talk to lenders, mortgage lenders.

**Sen. Nothing:** Yes.

**Rep. Klemin:** Well, of course, they are not affected by this whatsoever, anyway, because it says that the exemption is over and above liens and encumbrances. Of course, it's quite clear that it doesn't have an effect on liens and encumbrances anyway. So what does that have to do with it.

**Sen. Nothing:** We were told they were affected by it.

**Rep. Klemin:** To me it's very clear, that a mortgage on a homestead is not affected by the exemptions, the law says that in one of the other sections. I just wanted to go back to the

Interim study on this subject, I have an excerpt here that, I assume, was presented at the Senate hearing, because it was presented to the House hearing by Legislative Council. The

excerpt from the final report of Legislative Council on the Judicial Process Committee. In this excerpt, as those of you on the Judicial Process committee know that we had a number of experts in the area of exemptions that appeared at the committee meeting on this and who were attorneys who practiced in the area of debtor/creditor and bankruptcy law, bankruptcy trustee, and a law professor. From the report of that committee; the testimony indicated ND's homestead exemption is fairly liberal. The homestead exemption law in ND limits a homestead to \$80,000 equity over liens and encumbrances. The federal bankruptcy code of 2005 was amended to limit homestead exemptions to \$125,000. It was noted that the exemptions in ND seemed to allow most debtors to stay in their homes. So it was discussed.

**Sen. Fiebiger:** I was on the committee and I guess looking at the testimony, most of the testimony we received was from individuals who typically represent creditors, and the bankruptcy trustee, the university professor who teaches debtor/creditor law, who admittedly represents primarily creditors, so I think that's a piece of this as well that needs to be considered in terms of people talking about whether they thought it was liberal or reasonable or not. I think the bankruptcy amount in federal bankruptcies is \$125,000. What's the objection to the \$125,000; that seems reasonable.

**Rep. Klemin:** First of all, we had considerable testimony from a debtor attorney, who practices extensively in bankruptcy here in Bismarck. He didn't have a problem with the existing exemption as far as I recall. I think we covered all aspects of that issue in the interim committee and no one thought that it needed to be increased. I guess my problem with it is basically that it is going to be of the most benefit to fairly wealthy debtors who are seeking to put assets into something that is exempt, so that judgment creditors can't get at them.

Judgment creditors would not include anything but secured debts obviously, unless there is sufficiency. Secured debts are secured by collateral. It would include things like family home,

other unsecured debts, personal injury judgments that are entered against somebody could be sheltered through this means. My concern is with the finding by the interim committee that we have a fairly liberal exemption right now, and that it's not a problem for most debtors to increase it by something like 55-60% seems to be too high.

**Sen. Fiebiger:** In looking at the real estate market, if you owned a home in 1979, and today's market, I don't think that an increase from \$80,000 to \$125,000 is all that significant. If you think about what homes were at in 1979 vs. what the real estate market is today. From my experience, it seems fairly reasonable. Also consider what our neighboring states are doing, that was also talked about.

**Sen. Nething:** I don't know from 1979 to present what percentage that would be of an increase in value. Maybe we can agree that there should be some increase because values have changed.

**Rep. Klemin:** Well it starts with the presumption that I agree that there should be some change.

**Sen. Nething:** I guess since it hasn't been changed in the past 30 years, doesn't it seem logical that perhaps this is something could be looked at, should be looked at. Would you have an amount that would fall into some category.

**Rep. Klemin:** Well, based on our interim study on this whole issue in my mind, I guess we didn't find that to be a problem in the interim that it stay the same at \$80,000.

**Sen. Nething:** Does that mean that we are ruled by the interim committee finding that we didn't need an increase.

**Rep. Klemin:** I'm concerned that 1) this wasn't an issue that was raised in the House hearing on this bill; 2) it wasn't an issue that was raised in the Senate hearing on this bill; 3) it wasn't found to be an issue on the interim study on the exemptions. Now we have an increase of 55-

60% in it that seems to be supported only by comparison to other states. The issue with bankers or lenders, I don't know what their issue would be because this has no effect on mortgages. MN sounds like a fairly high number, I'm not sure what the rationale is for that, but it seems like property values are quite a bit higher too.

**Sen. Lyson:** So you are not going to change it at all.

**Rep. Klemin:** I don't know if I am or not. I'm trying to discuss this and get a feeling for why it was done this way.

**Sen. Nething:** What do you think about trying to find out what the increase has been since 1979. I think there is also a reason to protect the property owners too. It isn't just the creditors that have to be protected. It seems to me that there should be a balance. Why don't we try and figure out what the figures have increased from 1979 to present, and try and come up with a number that is acceptable.

**Rep. Klemin:** That starts with a premise that I think \$80,000 in 1979 wasn't too high then. It could have been on the high side at that time.

**Sen. Nething:** The legislature must have thought it needed to be changed.

**Rep. Wolf:** In the early '90s when I worked for a law firm, we always used the ND exemptions. When people file bankruptcy in ND, can they use the federal exemptions or are we stuck with ND exemptions.

**Rep. Klemin:** That was an option that the state had to use either the federal or the state, and for whatever reason the Legislature chose to use the state exemptions.

**Rep. Wolf:** Is that still the same.

**Rep. Klemin:** That was one of the things that we looked at too during the interim study, should we be using the federal exemptions. We decided to keep using the ND exemptions.

**Sen. Fiebiger:** Aren't there a variety of different ones too to take into consideration such as inflation, this would be consistent to change with that in the homestead area with what we give to the rest of the bill.

**Rep. Klemin:** We have the banking association here. Can you tell us how this exemption affects mortgages.

**Marilyn Foss, ND Bankers Association:** I think in our conversations with the Senate Judiciary committee, we were quite clear that if you are taking a mortgage it does not affect you, but it does as a matter of fact lessen the exemption, it affects the ability and willingness of a lender to make unsecured loans and the higher the exemption is, the ability of the lender to make the loans lessens.

**Rep. Klemin:** So the higher exemption would be worse from the bank's standpoint, then what it is now.

**Marilyn Foss:** We did resist the \$200,000. We did a survey members on our legislative committee and they thought that amount was too high. There were a number of them that thought \$100,000 would be tolerable, all of them told us that it, nonetheless, would impact their ability to do unsecured lending because it raises the risk that you won't be able to collect an unsecured loan.

**Rep. Klemin:** Or won't make the unsecured loan.

**Marilyn Foss:** Correct, it would impact their willingness to make home equity loans, etc.

**Rep. Klemin:** So from that standpoint, would you say then that increasing this exemption would be detrimental to the ability of borrowers to get unsecured loans.

**Marilyn Foss:** As I said, it will reduce the ability of getting an unsecured loan.

**Rep. Wolf:** I haven't ever been able to get an unsecured loan, even for a couple thousand dollars, and we have perfect credit and hardly any debt. How many banks give unsecured loans, what is their average, 3%, 5% of loans that are unsecured.

**Marilyn Foss:** I tried to find out if there was a report that had that information, but no information was available. All I can tell you is that our members don't really have any reason not to be honest with me, they said it will reduce their willingness to do unsecured lending.

**Sen. Fiebiger:** With the bank crisis, and things like that, aren't interest rates for mortgages lower, to entice people to refinance.

**Marilyn Foss:** Mortgage interest rates are at low levels. They range anywhere between 4.5%-5.5%.

**Sen. Fiebiger:** So banks are working to get people to borrow money right now, correct.

**Marilyn Foss:** I think that banks are being pressured at the federal level, particularly to demonstrate their willingness to lend. I wouldn't say that they are working to cause people to borrow money. With reduced rates in mortgage lending, there is a renewed interest in refinancing mortgage loans.

**Rep. Klemin:** Thank you. Anyone else want to contribute on this subject.

**Rep. Wolf:** I would like to find out what the cost of living adjustment would be for 1979, because I'm curious to see what has happened from 1979 to the present with the \$80,000 exemption.

**Rep. Klemin:** We will look into that information and meet again. We are in recess.



## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1039

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 4/20/09

Recorder Job Number: 11962

Committee Clerk Signature



Minutes:

**Rep. Klemin:** Call to order.

**Attendance:** All present.

**Rep. Dahl:** I move that the Senate recede from its amendments and adopt amendment 90155.0203 and change the amount from \$80,000 to \$100,000 for the homestead exemption.

**Sen. Nething:** Second.

**Sen. Fiebiger:** For purposes of discussion I handed out some information regarding the inflation index that we talked about at our last meeting. From Feb 1979 to Feb 2009 there were two different figures. The first set of figures showed that \$80,000 in 1979 would be \$249,120. The second set of figures show the \$80,000 in 1979 would be \$224,390.08 in 2009. So either way we are well over the \$125,000 that we had amended it in the Senate.

**Rep. Klemin:** Further discussion, roll call vote.

**5 YES 1 NO 0 ABSENT**

**MOTION CARRIED**

**Rep. Klemin:** The conference committee will be adjourned.

**REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE)**

Bill Number 1039 (, as (re)engrossed):

Date: 4/15/09

Your Conference Committee HJnd

**For the Senate:**

**For the House:**

|             | YES / NO |  |            | YES / NO |  |
|-------------|----------|--|------------|----------|--|
| Sen Lyson   |          |  | Rep Klemin |          |  |
| Sen Nething |          |  | Rep Dahl   |          |  |
| Sen Fibiger |          |  | Rep Wolf   |          |  |

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) \_\_\_\_\_ - \_\_\_\_\_

\_\_\_\_, and place \_\_\_\_\_ on the Seventh order.

\_\_\_\_, adopt (further) amendments as follows, and place \_\_\_\_\_ on the Seventh order:

\_\_\_\_, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar.

DATE: \_\_\_\_\_

CARRIER: \_\_\_\_\_

|                                   |                |
|-----------------------------------|----------------|
| LC NO. _____                      | of amendment   |
| LC NO. _____                      | of engrossment |
| Emergency clause added or deleted |                |
| Statement of purpose of amendment |                |

MOTION MADE BY: \_\_\_\_\_

SECONDED BY: \_\_\_\_\_

VOTE COUNT    YES    NO    ABSENT

Revised 4/1/05

*No Action Taken -  
All Present*

✓  
4/20/09  
182

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1039

That the Senate recede from its amendments as printed on page 1044 of the House Journal and pages 807 and 808 of the Senate Journal and that House Bill No. 1039 be amended as follows:

Page 1, line 2, after the fourth comma insert "47-18-04, 47-18-14,"

Page 1, line 3, after "process" insert "and the homestead exemption"

Page 7, line 21, overstrike "person" and insert immediately thereafter "individual"

Page 7, line 22, overstrike "shall consist" and insert immediately thereafter "consists"

Page 7, line 25, overstrike "eighty" and insert immediately thereafter "one hundred"

Page 7, line 27, overstrike "In no case shall the" and insert immediately thereafter "The" and after "homestead" insert "may not"

Page 7, line 28, overstrike "they" and insert immediately thereafter "the lots or tracts of land"

Page 7, after line 30, insert:

**"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 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 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 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."

Renumber accordingly

**REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE)**

Bill Number 1039 (, as (re)engrossed):

Date: 4/20/09

Your Conference Committee H. Jud

**For the Senate:**

**For the House:**

|              | YES / NO                            |                          |            | YES / NO                            |                                     |
|--------------|-------------------------------------|--------------------------|------------|-------------------------------------|-------------------------------------|
| Sen Lyson    | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Rep Klemin | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Sen Nething  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Rep Dahl   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Sen Fiebiger | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Rep Wolf   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 1044 --

\_\_\_\_, and place \_\_\_\_\_ on the Seventh order.

X, adopt (further) amendments as follows, and place 1039 on the Seventh order:

\_\_\_\_, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) 1039 was placed on the Seventh order of business on the calendar.

DATE: 4/20/09

CARRIER: Rep Klemin

|                                   |                |
|-----------------------------------|----------------|
| LC NO.                            | of amendment   |
| LC NO.                            | of engrossment |
| Emergency clause added or deleted |                |
| Statement of purpose of amendment |                |

MOTION MADE BY: Rep Dahl

SECONDED BY: Sen Nething

OTE COUNT 5 YES 1 NO 0 ABSENT

**REPORT OF CONFERENCE COMMITTEE**

**HB 1039:** Your conference committee (Sens. Lyson, Nething, Fiebiger and Reps. Klemin, Dahl, Wolf) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 1044, adopt amendments as follows, and place HB 1039 on the Seventh order:

That the Senate recede from its amendments as printed on page 1044 of the House Journal and pages 807 and 808 of the Senate Journal and that House Bill No. 1039 be amended as follows:

Page 1, line 2, after the fourth comma insert "47-18-04, 47-18-14,"

Page 1, line 3, after "process" insert "and the homestead exemption"

Page 7, line 21, overstrike "person" and insert immediately thereafter "individual"

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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 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 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 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."

Renumber accordingly

HB 1039 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

HB 1039



**EXCERPT FROM THE 2009 LEGISLATIVE COUNCIL  
FINAL REPORT  
Judicial Process Committee  
House Bill No. 1039**

*Same testimony  
given to  
House.*

**EXEMPTIONS FROM JUDICIAL PROCESS STUDY**

Section 1 of House Bill No. 1213 directed the Legislative Council to study the current state exemptions for bankruptcy and the desirability of updating these exemptions. Section 2 of Senate Bill No. 2284 directed the Legislative Council to study the exemption provisions found in NDCC Chapter 28-22, including determining whether the exemptions in the current form continue to serve the historical purposes of protecting debtors from creditors and providing debtors with the basic necessities of life, so that debtors will not be left destitute and public charges of the state. Because of the similarity in the studies directed by these two bills, the two studies were combined into one comprehensive study.

**Background  
Federal Bankruptcy Laws**

Section 8 of Article 1 of the Constitution of the United States United States Constitution authorizes Congress to enact "uniform Laws on the subject of Bankruptcies throughout the United States." Congress has exercised this authority several times since 1801, most recently by adopting the Bankruptcy Reform Act of 1978, codified in Title 11 of the United States Code, commonly referred to as the Bankruptcy Code. The Bankruptcy Code has been amended several times since 1978, most recently in extensive amendments in 2005 through the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

While bankruptcy cases are always filed in United States bankruptcy court, which are units of the United States district courts, and federal law procedurally governs bankruptcy cases, state laws are often applied when determining property rights. For example, law governing the validity of liens or rules protecting certain property from creditors, known as exemptions, are derived from state law.

**North Dakota Law Regarding Exemptions**

Section 522 of the federal Bankruptcy Code, which provides for the property that is exempt, permits a state to opt out of the federal exemptions. North Dakota opted out of the federal bankruptcy exemption scheme in 1981. North Dakota Century Code Section 28-22-17 provides,

in part, that "...residents of this state are not entitled to the federal exemptions provided in section 522(d) of the Bankruptcy Reform Act of 1978. The residents of this state are limited to claiming those exemptions allowable by North Dakota law." Consequently, a North Dakota resident is restricted to those exemptions created in North Dakota law. The primary exemptions relating to judicial process and bankruptcy are contained in North Dakota Century Code Chapter 28-22 and Section 47-18-01. Other exemptions are contained throughout the Century Code.

#### **Chapter 28-22 - Exemptions**

As previously mentioned, NDCC Chapter 28-22 sets forth the property that is exempt from process in North Dakota. The "process" to which this chapter refers includes attachment, levy and sale upon execution, bankruptcy, and any other final process issued from any court. Chapter 28-22 includes exemptions that can be divided into two categories.

The first set of exemptions specifically describes items of property and classes of exempt property. For example, Section 28-22-02 exempts as "absolute exemptions": family pictures, a family pew, the family bible, school books, the family library, wearing apparel and clothing, food and fuel, the homestead as defined and limited by law, a certain amount of crops and grain, insurance benefits resulting from insurance covering the absolute exemptions, and any house trailer or mobile home occupied as a residence by the debtor. In addition, Section 28-22-03.1 provides for a motor vehicle exemption, not to exceed \$1,200, annuities, retirement plans, life insurance, and payments traceable to wrongful death and personal injury awards, a Social Security benefit, and veteran's disability pension benefits. Section 28-22-04 provides exemptions for miscellaneous books and musical instruments, not exceeding \$1,000 in value; household and kitchen furniture, not exceeding \$1,000 in value; livestock and farm implements not exceeding \$4,500 in value; the tools and implements of any mechanic not exceeding \$1,000 in value; and the library and instruments of any professional person, not exceeding \$1,000 in value. Section 28-22-19 exempts from liability for debts of the person "all pensions or annuities or retirement, disability, death, or other benefits paid or payable by, or amounts received as a return of contributions and interest from, a retirement system established pursuant to state law by the state except as provided by sections 15-39.1-12.2, 39-03.1-14.2, 54-52-17.6, and 54-52.2-03.3, a state agency, a political subdivision of the state, or a firefighters relief association for retirement, annuity, pension, disability benefit, or death benefit purposes."

The other set of exemptions applies to any property the debtor seeks to exempt. These exemptions set a dollar value limit on property that the debtor is permitted to shelter. These

include Section 28-22-03, which allows a debtor, as head of a family, to take a \$5,000 exemption in any property. Section 28-22-02 allows a single person to take a \$2,500 exemption in any property. Section 28-22-03.1(1) permits an additional \$7,500 in any other property if the debtor does not use the homestead exemption. Section 28-22-16 provides that in addition to the absolute exemptions against process, the debtor may take a \$500 exemption on property of any kind.

#### **Section 47-18-01 - Homestead Exemption**

North Dakota Century Code Section 47-18-01 provides for the homestead exemption. This section provides that the homestead of any person residing in this state consists of the land upon which the person 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 thousand dollars in value, over and above liens or encumbrances or both." This section also provides that the homestead is exempt from judgment lien and from execution or forced sale, except as otherwise provided in this chapter. According to this section, the homestead may not include different lots or tracts of land unless they are contiguous.

#### **Testimony and Committee Considerations**

To address the issues related to the state's exemptions from judicial process, the committee sought the testimony and recommendations of several experts in the area of exemptions and bankruptcy law. These individuals included several attorneys who practice in the area of debtor, creditor, and bankruptcy law, a bankruptcy trustee, and a law professor.

The testimony from these individuals indicated that some of the exemptions contained in North Dakota law are archaic and others need to be updated. For example, the testimony noted that the mobile home exemption is vague and needs clarification and there is a need for clarification of the annuities exemption.

The committee's deliberations centered on the changes that were recommended to the state's exemption scheme. To address the recommended changes, the committee considered four bill drafts.

#### **The Need for Clarification and Updating of Exemptions**

The committee received testimony that recommended a number of changes to the exemptions contained in NDCC Chapter 28-22. The testimony recommended several changes to Section 28-22-02, which provides for absolute exemptions. According to the testimony, several of the absolute exemptions should be updated and clarified. For example, this section provides for an exemption for the family Bible. It was recommended that this section be

changed to provide for an exemption for "one family Bible or other family primary religious text." The testimony also noted that Section 28-22-02 contains an exemption for wearing apparel and clothing. It was noted that because clothing is specifically mentioned, wearing apparel has been interpreted to refer to something other than clothing, such as jewelry. According to the testimony, this exemption is in need of clarification. Subsection 6 of Section 28-22-02 allows for an exemption of fuel necessary for one year. The testimony indicated that courts have held that the fuel must be "in kind" and actually on the debtor's property. The debtor cannot have money in an account that is designated as money for fuel. It was also noted that it is also not clear if the fuel exemption applies to fuel to heat a home or fuel to propel a vehicle or both.

North Dakota Century Code Section 28-22-02 exempts a house trailer or mobile home occupied as a residence by the debtor or the debtor's family. The testimony noted that a house trailer or mobile home may exceed \$80,000 in retail or market value. Because this statute does not have a dollar limit, it was noted that it may be possible for someone living in a mobile home to get more benefit from the exemption of a than someone living in a stick-built home using the \$80,000 homestead exemption. It was recommended that the house trailer or mobile home value be limited to the \$80,000 like the regular stick-built homestead exemption. Section 28-22-03 allows for an additional exemption of \$5,000 in personal property. The testimony indicated that although this statute is fairly clear about being limited to personal property, there have been numerous attempts by debtors to try to spread this wild card exemption onto real estate. It was recommended that it may be appropriate to add language that clarifies that the exemption cannot be used to exempt a real estate interest of any kind.

The testimony indicated North Dakota's homestead exemption is fairly liberal. The homestead exemption law in North Dakota limits the homestead to \$80,000 equity over liens and encumbrances. The federal Bankruptcy Code of 2005 was amended to limit homestead exemptions to \$125,000. It was noted that the exemptions in North Dakota seem to allow most debtors to stay in their homes.

North Dakota Century Code Section 28-22-03.1 raises the issue of whether the term "resident" is different from the term "head of family." This section allows a resident to take, in lieu of the homestead exemption, an additional exemption of up to \$7,500. The North Dakota Supreme Court has not dealt with this but the bankruptcy court has refused to allow this exemption to a North Dakota resident if that resident's spouse has already chosen the homestead exemption under Section 28-22-02. The testimony noted that bankruptcy court approach to this makes sense and it is probably what the Legislative Assembly intended. It was noted, however, that an argument by a debtor could be made that if one person in a married

couple makes himself or herself the head of family, that leaves the other person still a resident. The head of family could choose the homestead while the other person, who is a resident, could choose the "in lieu of homestead" exemption. It was suggested that this statute could be clarified to provide that the 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.

North Dakota Century Code Section 28-22-03.1 provides for a motor vehicle exemption of \$1,200. According to the testimony, this has been interpreted to mean \$1,200 in equity over and above liens and encumbrances. It was suggested that this statute could be amended to clarify that point. Section 28-22-03.1, which addresses pensions, annuities, and life insurance policies, provides for a \$100,000 per account or \$200,000 maximum exemption. This section provides that individual retirement accounts (IRAs), such as the Roth IRA and 401K accounts are totally exempt. It was noted that there is a concern that a debtor might try to convert nonexempt property into exempt property in the face of a threatened judgment execution by, for example, selling a lake cabin that does not qualify as a homestead and putting the money into an exempt IRA. It was suggested that limiting language could be added which provides that any contributions to any of the plans made within one year before the issuance of the execution and which contributions are more than the amounts allowed by the governmental regulation to be tax-exempt for the year of contribution are not exempt from process.

The committee considered two bill drafts that attempted to clarify and update the state's exemptions from judicial process. The first bill draft would provide clarification of some of the exemptions contained in NDCC Chapter 28-22. The bill draft would clarify several of the absolute exemptions; limit the use of the exemption that is available in lieu of the homestead exemption; clarify that certain exemptions are available only to the head of household; clarify the motor vehicle exemption; and for the purposes of claiming an account as exempt, limit the time period within which an individual may contribute to a retirement account.

Testimony in support of this bill draft indicated that changes made in this bill draft would be useful in interpreting and understanding the state's exemptions. The testimony indicated that the changes would provide much needed clarification of NDCC Chapter 28-22.

The second bill draft considered by the committee would remove the \$100 limit placed on the value of family books that are exempt; allow an exemption for a house trailer or mobile home to be taken in lieu of the homestead exemption; remove the "in lieu of" homestead exemption of \$7,500; increase the additional exemption for head of a family from \$5,000 to \$7,500; increase the motor vehicle allowance from \$1,200 to \$2,950; clarify the exemptions for pensions, annuity

policies, and life insurance; and increase or eliminate the maximum amount of compensation that may be claimed as exempt on account of the debtor's right to receive or property that is traceable to wrongful death or personal bodily injury.

Testimony regarding the second bill draft indicated that the bill draft provides some much needed updating of the current exemptions. The testimony, however, did not support the repeal of the in lieu of the homestead exemption. The testimony expressed support for the proposed change that would allow the debtor to claim a mobile home as a dwelling house as part of the homestead.

Upon consideration of these two bill drafts, the committee elected to merge the two bill drafts into a single bill draft. With the exception of the "in lieu of" homestead exemption, the merged bill draft included all the changes proposed in the two previously considered bill drafts.

Testimony in support of the merged bill draft indicated that changes would go a long way to address many concerns and uncertainties that have arisen in bankruptcy cases over the years. It was noted that one issue that may need to be addressed is whether both spouses may claim an exemption as head of household. According to the testimony, there may need to be a clarification that only one spouse can be the head of household and therefore entitled to the exemption. It was also noted that the United States Supreme Court has held that Employee Retirement Income Security Act (ERISA)-qualified plans are not property that is subject to claims in bankruptcy. According to the testimony, although the bill draft provides that the retirement funds must have been in effect for at least one year, there may need to be more clarification that the funds have been on deposit for at least one year. The testimony also indicated that in light of a United States Supreme Court decision, the limits on the amounts in the retirement accounts are likely to be preempted by the decision, but the timing of the fund may not be preempted.

In response to this concern, the committee amended the merged bill draft to remove the language relating to the property of family members.

#### **Single Exemption Theory**

Although the Constitution of North Dakota indicates that certain exemptions are a right and are necessary to provide for the comforts and necessities of life, the testimony received by the committee indicated that the constitution does not specify what the exact exemptions should be but indicates that "all heads of families" should be entitled to a homestead the value of which is to be limited and defined by law. The constitution also provides that a reasonable amount of personal property must be exempt. The kind and value of both the homestead and personal

property exemptions are to be fixed by law. According to the testimony, an interpretation of that provision is that there is no requirement that the Legislative Assembly provide real estate as an exemption. It was noted that this is further evidenced by the "in lieu of" homestead exemption that has been codified in NDCC Section 28-22-03.1(1).

It was recommended that the Legislative Assembly establish one exemption of a fixed dollar amount. According to the testimony, providing one exemption of a fixed dollar amount would eliminate the need for the Legislative Assembly to pigeonhole exemptions into specific areas. For example, if the fixed dollar amount was \$80,000, the debtor could choose to use the entire sum toward the exemption of a homestead, or instead could choose to exempt personal property, whether it is cash, farm machinery, motor vehicles, or retirement plans. Providing one exemption would also eliminate the need for debtors to move assets from one form to another just to claim the assets as exempt. It was argued that a single claim exemption would eliminate disputes, such as the items that constitute "wearing apparel."

Based upon this recommendation, the committee considered a bill draft that would provide for a lump sum exemption of \$40,000. Under this bill draft, this exemption would replace many of the separate exemptions that are now available. The bill draft provided, however, that in addition to the lump sum exemption, a debtor could still claim the homestead exemption; professionally prescribed health aids; an unmatured life insurance contract owned by the debtor; the debtor's interest in certain retirement plans; and certain benefits, including Social Security benefits, veterans' disability pension benefits, disability, illness, or unemployment benefits, alimony, support, or separate maintenance. The bill draft would also exempt payments received on account of the wrongful death of an individual of whom the debtor was a dependent.

It was suggested that going to a single exemption concept would reduce litigation because there would be no need to move assets around to fit into a scheme of exemptions. It was noted that a single exemption would prevent hiding assets. It was also noted that because more people own a computer than a church pew, a single exemption amount would allow a family to determine what is important to them.

Testimony regarding the bill draft indicated that if the state adopted a single exemption concept, the exemption should be limited to necessities. It was suggested that luxury items should not be permitted as exempted property.

Other testimony regarding this bill draft indicated that the change to a single exemption amount would be a radical change from the current exemption scheme. It was noted that a number of states have gone to the lump sum exemption method. According to the testimony, it would be very difficult to determine the appropriate amount for the lump sum exemption. The

testimony also indicated that whether the homestead exemption is used or a single exemption amount, there will still be ongoing litigation.

The committee concluded that bill draft relating to a single exemption amount should not be recommended to the Legislative Council.

#### **Federal Exemptions Option**

North Dakota Century Code Section 28-22-17 provides that North Dakota has chosen to opt out of the federal exemptions, which allow for a broader range of exemptions. According to the testimony, the Minnesota system functions more efficiently because Minnesota allows debtors to claim either the federal exemptions or the state exemptions.

Based upon this recommendation, the committee considered a bill draft that would give North Dakota residents, when filing a petition for bankruptcy, the option of claiming either the federal exemptions or the applicable exemptions allowable by state law.

Testimony in opposition to this bill draft indicated that adding the option of claiming the federal exemptions adds complications to the current system. According to the testimony, this bill draft would allow the federal government to dictate the state's exemptions. It was noted that bankruptcy under this bill draft would be more expensive and more complex.

The committee concluded that this bill draft, which related to an option of using federal exemptions or state exemptions, should not be recommended to the Legislative Council.

#### **Recommendation**

The committee recommends House Bill No. 1039 relating to the exemptions from judicial process. The bill clarifies and revises several of the absolute exemptions, including family books, clothing and wearing apparel, and fuel; clarifies that certain exemptions are available only to the head of household; increases and clarifies the motor vehicle exemption; allows an exemption for a house trailer or mobile home to be taken in lieu of the homestead exemption; for the purpose of claiming an account as exempt, limits the time period within which an individual may contribute to a retirement account; increases the additional exemption for head of a family from \$5,000 to \$7,500; clarifies the exemptions for pensions, annuity policies, and life insurance; and increases or eliminates the maximum amount of compensation that may be claimed as exempt on account of the debtor's right to receive or property that is traceable to wrongful death or personal bodily injury.



## Testimony on HB 1039

### Exemptions from Judicial Process

Chairman Nething and members of the Senate Judiciary Committee for the record my name is Shirley Meyer and I represent District 36.

HB 1039 comes to you from the Interim Judicial Process Committee and our studies of North Dakota bankruptcy laws.

While bankruptcy cases are filed in United States bankruptcy court, state laws are often applied when determining property rights. For example, law governing the validity of liens or rules protecting certain property from creditors, known as exemptions, are derived from state law.

A debtor who wants to keep property from creditors and the bankruptcy trustee has the right to claim certain items of property exempt from process. The Constitution of North Dakota as well as various North Dakota Statutes provide for a debtor's right to exemptions.

In addition to the statutory and constitutional provisions, federal and state courts have held that there are public policy reasons for providing exemptions. Exemption statutes have two major objectives:

1. To provide a fresh start to the debtor who is being sued and
2. To aid society by reducing the number of debtors who need public assistance.

To address the issues related to the state's exemptions from judicial process, the committee sought the testimony and recommendations of several experts in the area of exemptions and bankruptcy law. These individuals included several attorney's who practice in the area of debtor, creditor, and bankruptcy law, a bankruptcy trustee, and a law professor.

The testimony from these individuals indicated that some of the exemptions contained in ND law are archaic and others need to be updated. For example, the testimony noted that the mobile home exemption is vague and needs clarification, and there is a need for clarifications of the annuities exemption.

HB 1039 is a bill that clarifies and revises several of the absolute exemptions, including family books, clothing and wearing apparel, and fuel. It clarifies that only one spouse can be head of a family. It increases and clarifies the motor vehicle exemptions, and allows an exemption for a trailer house or mobile home to be taken in lieu of the homestead exemption.

In addition, HB 1039 limits the time period an individual may contribute to a retirement account, and increases the

additional exemption for a head of family from \$5,000 to \$7,500.

Finally, it increases or eliminates the maximum amount of compensation that may be claimed as exempt on account of the debtor's right to receive or property that is traceable to wrongful death or personal bodily injury.

Sen Fiebigler  
HB1039

1. inflationdata.com

211.43%

$\$80,000 \times 2.1143 = \$169,144$

$\$80,000 + \$169,144 = \underline{\$249,120}$

For Feb 1979 to Feb 2009

2. BLS.gov (Bureau of Labor Statistics)

$\$80,000$  using the CPI inflation calculator based on the Consumer Price Index =  $\$224,390.08$