

Introduced by

Senator Wardner

1 A BILL for an Act to create and enact a new section to chapter 28-22 of the North Dakota  
2 Century Code, relating to the exemption from judicial process of assets in college and education  
3 savings accounts, health savings accounts, and medical savings accounts; and to amend and  
4 reenact sections 28-22-03.1, 47-18-01, 47-18-04, and 47-18-14 of the North Dakota Century  
5 Code, relating to accounts and assets exempt from judicial process and the homestead  
6 exemption.

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

8 **SECTION 1. AMENDMENT.** Section 28-22-03.1 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **28-22-03.1. Additional exemptions for residents.**

11 In addition to the exemptions from all attachment or process, levy and sale upon execution,  
12 and any other final process issued from any court, otherwise provided by law, a resident of the  
13 state may select:

- 14 1. In lieu of the homestead exemption, up to seven thousand five hundred dollars. This  
15 exemption is not available if the resident exemption claimant, the spouse of the  
16 resident exemption claimant, or other head of the family of the resident exemption  
17 claimant has chosen the homestead exemption provided for under subsection 7 of  
18 section 28-22-02.
- 19 2. A motor vehicle exemption in one vehicle not to exceed two thousand nine hundred  
20 fifty dollars in value over security interests and liens upon that vehicle, or a motor  
21 vehicle exemption in one vehicle not to exceed thirty-two thousand dollars for a motor  
22 vehicle that has been modified at a cost of not less than one thousand five hundred  
23 dollars to accommodate an individual with a permanent physical disability who is the  
24 owner of that motor vehicle.

- 1       3.    The debtor's aggregate interest, not to exceed one thousand five hundred dollars in  
2            value, in any tools, implements, or professional books of the trade of the debtor or the  
3            trade of a dependent of the debtor.
- 4       4.    Any unmatured life insurance contract owned by the debtor or the debtor's spouse,  
5            other than a credit life insurance contract, and the cash surrender value of life  
6            insurance policies and annuity contracts owned by the debtor or the debtor's spouse  
7            which have been in effect for at least one year and which are payable to the debtor,  
8            the debtor's spouse, child, or other dependent.
- 9       5.    The debtor's aggregate interest, not to exceed in value eight thousand dollars less any  
10           amount of property transferred in the manner specified in 11 U.S.C. 542(d), in any  
11           accrued dividend or interest under, or loan value of, any unmatured life insurance  
12           contract owned by the debtor under which the insured is the debtor or an individual of  
13           whom the debtor is a dependent.
- 14      6.    Professionally prescribed health aids for the debtor or a dependent of the debtor.
- 15      7.    Retirement funds that have been in effect for at least one year, to the extent those  
16           funds are in a fund or account that is exempt from taxation under section 401, 403,  
17           408, 408A, 409, 414, 457, or 501(a) of the Internal Revenue Code of 1986. The value  
18           of those assets exempted may not exceed ~~one~~five hundred thousand dollars for any  
19           one account or ~~two hundred thousand~~one million dollars in aggregate for all accounts.  
20           The dollar limit does not apply to the extent this property is reasonably necessary for  
21           the support of the resident and that resident's dependents. Retirement funds are not  
22           exempt from enforcement of any order to pay spousal support or child support, or a  
23           qualified domestic relations order under sections 15-39.1-12.2, 39-03.1-14.2, and  
24           54-52-17.6. As used in this subsection, "reasonably necessary for the support" means  
25           required to meet present and future needs, as determined by the court after  
26           consideration of the resident's responsibilities and all the present and anticipated  
27           property and income of the resident, including that which is exempt.
- 28      8.    The debtor's right to receive:
  - 29           a.    A social security benefit, except that the benefit is not exempt for enforcement of  
30                any order for the support of a dependent child.

- 1           b. Veteran's disability pension benefits, not including military retirement pay, except  
2           that the benefits are not exempt from process levy or sale for enforcement of any  
3           order for the support of a dependent child.
- 4           c. A disability, illness, or unemployment benefit.
- 5           d. Alimony, support, or separate maintenance, but not property settlements, to the  
6           extent reasonably necessary for the support of the debtor and any dependent of  
7           the debtor.
- 8           e. A payment under a stock bonus, pension, profit-sharing, annuity, or similar plan  
9           or contract on account of illness, disability, death, age, or length of service, to the  
10          extent reasonably necessary for the support of the debtor and any dependent of  
11          the debtor, unless:
- 12           (1) That plan or contract was established by or under the auspices of an insider  
13           that employed the debtor at the time the debtor's rights under that plan or  
14           contract arose;
- 15           (2) That payment is on account of age or length of service; and
- 16           (3) That plan or contract does not qualify under section 401(a), 403(a), 403(b),  
17           or 408 of the Internal Revenue Code of 1986.
- 18          9. The debtor's right to receive, or property that is traceable to:
- 19           a. An award under a crime victim's reparation law.
- 20           b. A payment on account of the wrongful death of an individual of whom the debtor  
21           was a dependent, to the extent reasonably necessary for the support of the  
22           debtor and any dependent of the debtor.
- 23           c. A payment under a life insurance contract that insured the life of an individual of  
24           whom the debtor was a dependent on the date of that individual's death, to the  
25           extent reasonably necessary for the support of the debtor and any dependent of  
26           the debtor.
- 27           d. A payment, not to exceed eighteen thousand four hundred fifty dollars, on  
28           account of personal bodily injury, not including pain and suffering or  
29           compensation for actual pecuniary loss, of the debtor or an individual of whom  
30           the debtor is a dependent.

- 1 e. A payment in compensation of loss of future earnings of the debtor or an  
2 individual of whom the debtor is or was a dependent, to the extent reasonably  
3 necessary for the support of the debtor and any dependent of the debtor.

4 **SECTION 2.** A new section to chapter 28-22 of the North Dakota Century Code is created  
5 and enacted as follows:

6 **Exemption of assets in education and medical savings accounts.**

7 Moneys paid into or out of, the assets of, and the income of any of the following accounts  
8 are exempt from all attachment or process, levy and sale upon execution, and any other final  
9 process issued from any court in favor of any creditor of or claimant against any program  
10 participant, purchaser, owner or contributor, or program beneficiary:

- 11 1. A qualified prepaid tuition or college savings account created in accordance with  
12 section 529 of the Internal Revenue Code of 1986, as amended [26 U.S.C. 529];  
13 2. A Coverdell education savings account created in accordance with section 530 of the  
14 Internal Revenue Code of 1986, as amended [26 U.S.C. 530];  
15 3. A health savings account created in accordance with section 223 of the Internal  
16 Revenue Code of 1986, as amended [26 U.S.C. 223]; or  
17 4. A medical savings account created in accordance with section 220 of the Internal  
18 Revenue Code of 1986, as amended [26 U.S.C. 220].

19 **SECTION 3. AMENDMENT.** Section 47-18-01 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21 **47-18-01. Homestead exemption - Area and value.**

22 The homestead of any individual, whether married or unmarried, residing in this state  
23 consists of the land upon which the claimant resides, and the dwelling house on that land in  
24 which the homestead claimant resides, with all its appurtenances, and all other improvements  
25 on the land, the total not to exceed one hundred thousand ~~thousand~~ million dollars in value, over and  
26 above liens or encumbrances or both. The homestead shall be exempt from judgment lien and  
27 from execution or forced sale, except as otherwise provided in this chapter. The homestead  
28 may not embrace different lots or tracts of land unless the lots or tracts of land are contiguous.  
29 For purposes of this section, "contiguous" means two or more tracts of real property which  
30 share a common point or which would share a common point but for an intervening road or right  
31 of way.

1       **SECTION 4. AMENDMENT.** Section 47-18-04 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **47-18-04. When homestead subject to execution.**

4       A homestead is subject to execution or forced sale in satisfaction of judgments obtained in  
5 the following cases:

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

17      **SECTION 5. AMENDMENT.** Section 47-18-14 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19      **47-18-14. Proceeds of sale exempt - Disposition.**

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