

Introduced by

1 A BILL for an Act to amend and reenact sections 28-22-01, 28-22-02, 28-22-03, 28-22-03.1,  
2 28-22-05, 28-22-07, 28-22-15, and 47-18-01 of the North Dakota Century Code, relating to  
3 exemptions from process.

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

5 **SECTION 1. AMENDMENT.** Section 28-22-01 is amended:

6 **28-22-01. Property exempt from all process.** Except as otherwise provided, the  
7 property mentioned in this chapter is exempt to the head of a family, as defined by section  
8 28-22-01.1, from attachment, prejudgment, or other mesne process and from levy and sale  
9 upon execution and from any other final process issued from any court.

10 **SECTION 2. AMENDMENT.** Section 28-22-02 is amended:

11 **28-22-02. Absolute exemption.** The property mentioned in this section is absolutely  
12 exempt from all process, levy, or sale:

- 13 1. All family pictures.
- 14 2. A pew or other sitting in any house of worship.
- 15 3. A lot or lots in any burial ground.
- 16 4. ~~The~~ One family Bible or other family primary religious text and all schoolbooks  
17 used by the family and all other books used as a part of the family library not  
18 exceeding in value one hundred dollars.
- 19 5. All wearing apparel, not exceeding five thousand dollars in value, and all clothing  
20 of the debtor and the debtor's family.
- 21 6. The in-kind provisions for the debtor and the debtor's family necessary for one  
22 year's supply, either provided or growing, or both, and in-kind fuel necessary for  
23 heating the debtor's home or operating the debtor's motor vehicle for one year.
- 24 7. The homestead as created, defined, and limited by law.

8. All crops and grain, both threshed and unthreshed, raised by the debtor on not to exceed one hundred sixty acres [64.75 hectares] of land in one tract occupied by the debtor, either as owner or tenant, as the debtor's home, but the provisions of this subsection in no way affect seed, thresher, or landlord liens, and if the debtor takes advantage of this subsection the debtor may not take any additional alternative exemptions provided under this chapter.

9. All insurance benefits resulting from insurance covering any or all of the absolute exemptions if the insurance benefits are in cash or have been invested in other property capable of exemption under this chapter.

10. Any housetrailer or mobile home, not to exceed eighty thousand dollars in value, over liens and encumbrances, occupied as a residence by the debtor or the debtor's family, except that it is not exempt from process, levy, or sale for taxes levied on it pursuant to chapter 57-55.

**SECTION 3. AMENDMENT.** Section 28-22-03 is amended:

**28-22-03. Additional exemption for head of a family.** In addition to the absolute exemptions mentioned in section 28-22-02, except in subsection 8 thereof, the head of a family, personally or by that person's agent, may select from that person's other personal property, any goods, chattels, merchandise, money, and other personal property not exceeding in value the sum of five thousand dollars, which also is exempt from all attachment or mesne process, levy and sale upon execution, and any other final process issued from any court. The exemption under this section may not be used to exempt a real estate interest of any kind.

**SECTION 4. AMENDMENT.** Section 28-22-03.1 is amended:

**28-22-03.1. Additional exemptions for residents.** In addition to the exemptions from all attachment or process, levy and sale upon execution, and any other final process issued from any court, otherwise provided by law, a resident of the state may select:

1. In lieu of the homestead exemption, up to seven thousand five hundred dollars. This 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 provided for under subsection 7 of section 28-22-02.

- 1           2.   A motor vehicle exemption not to exceed one thousand two hundred dollars in  
2           value over security interests and liens upon that vehicle, or a motor vehicle  
3           exemption not to exceed thirty-two thousand dollars for a motor vehicle that has  
4           been modified at a cost of not less than one thousand five hundred dollars to  
5           accommodate an individual with a permanent physical disability who is the owner  
6           of that motor vehicle.
- 7           3.   Pensions, annuity policies or plans, and life insurance policies that, upon the death  
8           of the insured, would be payable to the spouse, children, or any relative of the  
9           insured dependent, or likely to be dependent, upon the insured for support and  
10          which have been in effect for a period of at least one year; individual retirement  
11          accounts; Keogh plans, Roth individual retirement accounts under section 408A of  
12          the Internal Revenue Code [Pub. L. 105-34; 111 Stat. 825; 26 U.S.C. 408A], and  
13          simplified employee pension plans; and all other plans qualified under section 401  
14          of the Internal Revenue Code [Pub. L. 83-591; 68A Stat. 134; 26 U.S.C. 401], and  
15          section 408 of the Internal Revenue Code [Pub. L. 93-406; 88 Stat. 959; 26 U.S.C.  
16          408], and pension or retirement plans sponsored by nonprofit corporations or  
17          associations organized and operated exclusively for one or more of the purposes  
18          specified in 26 U.S.C. 501(c)(3), and proceeds, surrender values, payments, and  
19          withdrawals from such pensions, policies, plans, and accounts, up to one hundred  
20          thousand dollars for each pension, policy, plan, and account with an aggregate  
21          limitation of two hundred thousand dollars for all pensions, policies, plans, and  
22          accounts. The dollar limit does not apply to the extent this property is reasonably  
23          necessary for the support of the resident and that resident's dependents, except  
24          that the pensions, policies, plans, and accounts or proceeds, surrender values,  
25          payments, and withdrawals are not exempt from enforcement of any order to pay  
26          spousal support or child support, or a qualified domestic relations order under  
27          sections 15-39.1-12.2, 39-03.1-14.2, and 54-52-17.6. As used in this subsection,  
28          "reasonably necessary for the support" means required to meet present and future  
29          needs, as determined by the court after consideration of the resident's  
30          responsibilities and all the present and anticipated property and income of the  
31          resident, including that which is exempt. Any contributions made by the resident to

1           any of the foregoing plans within one year before the issuance of execution and  
2           which contributions are more than the amounts allowed by governmental regulation  
3           to be tax-exempt for the year of contribution are not exempt for purposes of this  
4           chapter.

5           4. The debtor's right to receive, or property that is traceable to:

- 6           a. A payment, not to exceed fifteen thousand dollars, on account of the wrongful  
7           death of an individual of whom the debtor was a dependent.
- 8           b. A payment, ~~not to exceed fifteen thousand dollars,~~ on account of personal  
9           bodily injury, ~~not including~~ for pain and suffering or compensation for actual  
10          pecuniary loss, of the debtor or an individual of whom the debtor is a  
11          dependent.
- 12          c. A social security benefit, except that the benefit is not exempt for enforcement  
13          of any order for the support of a dependent child.
- 14          d. Veteran's disability pension benefits, not including military retirement pay,  
15          except that the benefits are not exempt from process levy or sale for  
16          enforcement of any order for the support of a dependent child.

17          **SECTION 5. AMENDMENT.** Section 28-22-05 is amended:

18          **28-22-05. Exemptions of ~~a single~~ an unmarried person without dependents.** In  
19          addition to the absolute exemptions mentioned in section 28-22-02, except in subsection 8  
20          thereof, ~~a single~~ an unmarried person without any dependents, in person or by that person's  
21          agent, may select from that person's other personal property, goods, chattels, merchandise,  
22          money, or other personal property not exceeding in value the sum of two thousand five hundred  
23          dollars, which is exempt.

24          **SECTION 6. AMENDMENT.** Section 28-22-07 is amended:

25          **28-22-07. How exemptions claimed - Appraisal.** All property of the judgment debtor  
26          and the debtor's family to be claimed as exempt must be selected by the debtor or the debtor's  
27          agent or attorney regardless of whether levy has been made yet on the property by the sheriff  
28          or levying officer. Failure to claim all exempt property at the time exemptions are claimed  
29          renders the unclaimed property nonexempt for purposes of this chapter. The value thereof,  
30          when material, must be determined by an appraisal made under the direction of the sheriff  
31          or other officer. Whenever any debtor, against whom an execution, writ of attachment, or other

process has been issued, desires to claim the benefit of section 28-22-03, such debtor or the debtor's agent or attorney, shall make a schedule of all of the debtor's personal property of every kind and character, including money on hand and debts due and owing to the debtor, and shall deliver the same to the officer having the execution, writ of attachment, or other process. The schedule must be subscribed and sworn to by the debtor or the debtor's agent or attorney, and any property owned by the debtor and not included in such schedule is not exempt. No claim for exemptions may be disallowed for insufficiency as to form unless three days' notice in writing has been given first of the insufficiency by the party in interest claiming such insufficiency to the person making the claim for exemptions, and specifying in apt language the defect complained of. The person claiming the exemption thereupon may amend the same to conform to the objections made within three days, if that person desires so to do, by serving upon the proper person an amended claim for exemptions.

**SECTION 7. AMENDMENT.** Section 28-22-15 is amended:

**28-22-15. When only absolute exemptions allowed.** Only absolute exemptions may be allowed against process:

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

**SECTION 8. AMENDMENT.** Section 47-18-01 is amended:

**47-18-01. Homestead exemption - Area and value.** The homestead of any person, whether married or unmarried, residing in this state shall consist of the land upon which the claimant 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. The homestead shall be exempt from judgment lien and from execution or forced sale, except as

- 1 otherwise provided in this chapter. In no case shall the homestead embrace different lots or
- 2 tracts of land unless they are contiguous. For purposes of this section, "contiguous" means two
- 3 or more tracts of real property which share a common point or which would share a common
- 4 point but for an intervening road or right of way.