

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

355P0163

SENATE BILL NO. 102

Introduced by: Senators Turbak Berry, Garnos, Jerstad, McNenny, and Olson (Ed) and
Representatives Cutler, Deadrick, Engels, Faehn, Feinstein, Gillespie,
Glenski, and Kirkeby

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the homestead
2 exemption, personal property exemptions, and insurance and annuity exemptions.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 43-31-2 be amended to read as follows:

5 43-31-2. The homestead must embrace the house used as a home by the owner thereof, being
6 either, real property or a mobile home ~~as hereinafter defined~~, and if he or she has two or more
7 houses or mobile homes ~~thus~~ used at different times and places, such owner may select which
8 he or she will retain as a homestead.

9 ~~It must~~ The homestead may not embrace more than one dwelling house or any other
10 buildings except such as are properly appurtenant to the homestead ~~as such; but.~~ However, a
11 shop, store, or other building situated on real property and ~~really~~ used or occupied by the owner
12 in the prosecution of his or her own ordinary business may be deemed appurtenant to such
13 homestead.

14 If a husband or wife is required to leave the homestead, either pursuant to a protection order



1 obtained by his or her spouse, or otherwise to preserve peace in the home, the absence from the
2 homestead does not cause a waiver or abandonment of his or her interest in the homestead.

3 If the homestead is divided by court order pursuant to § 25-4-44 and a lien is imposed upon
4 the homestead for the benefit of the nonresident spouse pursuant to § 25-4-42, absence from the
5 homestead and loss of title to the homestead pursuant to the court order, does not constitute
6 forfeiture of the homestead, and homestead protection shall attach to the judicial lien.

7 ~~Mobile homes shall include~~ For the purposes of this section, a mobile home includes any
8 vehicle without motive power which can provide adequate, comfortable, all season quarters for
9 the purpose of making a residence thereof and ~~which vehicle~~ is larger than two hundred forty
10 square feet, measuring at the base thereof. Such mobile home must be registered in South
11 Dakota at least six months prior to the claim of exemption.

12 Section 2. That § 43-45-2 be amended to read as follows:

13 43-45-2. The property mentioned in this section is absolutely exempt from all such process,
14 levy, or sale, except as otherwise provided by law:

- 15 (1) All family pictures;
- 16 (2) A pew or other sitting in any house of worship;
- 17 (3) A lot or lots in any burial ground;
- 18 (4) The family Bible and all schoolbooks used by the family, and all other books used
19 as a part of the family library, not exceeding in value two hundred dollars;
- 20 (5) All wearing apparel and clothing of the debtor and his family;
- 21 (6) The provisions for the debtor and his family necessary for one year's supply, either
22 provided or growing, or both, and fuel necessary for one year;
- 23 (7) All property in this state of the judgment debtor if the judgment is in favor of any
24 state for failure to pay that state's income tax on benefits received from a pension or

1 other retirement plan while the judgment debtor was a resident of this state;

2 (8) One vehicle per person, not exceeding in value six thousand dollars;

3 (9) An award settlement, or judgment, not to exceed the sum of five hundred thousand
4 dollars, for injury to the person, to compensate the person, the person's spouse, or any
5 dependent of the person, for pain and suffering, disability, impairment,
6 disfigurement, or other physical or mental injury, and for loss of income, earning
7 capacity, or other economic damage.

8 Section 3. That § 43-45-3 be amended to read as follows:

9 43-45-3. A homestead:

10 (1) As defined and limited in chapter 43-31, is absolutely exempt; or

11 (2) ~~In the event such~~ If a homestead is sold under the provisions of chapter 21-19, ~~or is~~
12 ~~sold by the owner voluntarily, or is divided by court order pursuant to § 25-4-44 and~~
13 ~~a lien is imposed upon the homestead for the benefit of the nonresident spouse~~
14 ~~pursuant to § 25-4-42, the proceeds of such sale, or the value of such lien, not~~
15 ~~exceeding the sum of thirty~~ seventy-five thousand dollars, is absolutely exempt for
16 a period of one year after the receipt of such proceeds by the owner or lien holder
17 under § 25-4-42. Such exemption ~~shall be~~ is limited to one hundred seventy thousand
18 dollars for a homestead of a person seventy years of age or older or the unremarried
19 surviving spouse of such person so long as it continues to possess the character of a
20 homestead.

21 Section 4. That § 43-45-4 be amended to read as follows:

22 43-45-4. In addition to the property provided for in §§ 43-45-2 and 43-45-3, ~~the~~ each debtor;
23 ~~if the head of a family~~; may, personally, or by agent or attorney, select from all ~~other~~ of the
24 debtor's other personal property, not absolutely exempt, goods, chattels, merchandise, money,

1 or other personal property not to exceed in the aggregate ~~six ten~~ ten thousand dollars in value; ~~and,~~
2 if not the head of a family, property as aforesaid of the value of four thousand dollars, which
3 is also exempt, ~~and,~~ which shall be chosen and appraised as provided by law.

4 Section 5. That § 43-45-6 be amended to read as follows:

5 43-45-6. The proceeds of any insurance upon the life of any person residing in this state, ~~at~~
6 ~~the time of his death and~~ who leaves a surviving ~~widow, husband,~~ spouse or minor child or
7 children, payable upon ~~his~~ the person's death to ~~his~~ the person's estate, executor, or
8 administrator, and not assigned to any other person, shall, to any amount not exceeding ~~ten one~~
9 hundred thousand dollars, inure to the use of such surviving ~~widow, husband,~~ spouse or minor
10 child or children; ~~and such.~~ Such amount ~~shall is~~ is not be subject to the payment of any debt of
11 such decedent, or of such surviving ~~widow, husband,~~ spouse or minor child or children.
12 Whenever the proceeds of such insurance become payable and the insurer makes payment
13 thereof to the administrator or executor of the estate of such person, such payment ~~shall~~ fully
14 ~~discharge~~ discharges the insurer from all claims under the policy or contract, and such insurer
15 need not follow the distribution of such payment.

16 Section 6. That § 58-12-4 be amended to read as follows:

17 58-12-4. The proceeds of a policy of life or health insurance to the total amount of ~~twenty~~
18 one hundred thousand dollars only, in the absence of any agreement or assignment to the
19 contrary, shall inure to the separate use of the insured, ~~his~~ the insured's surviving spouse, or
20 children, as the case may be, independently of the creditors of any of them and ~~shall is~~ is not be
21 subject to the payment of the debts of any one or all of such persons, notwithstanding that the
22 proceeds may be payable directly to the insured or surviving spouse or children as the named
23 beneficiary or beneficiaries or otherwise; ~~and the.~~ The proceeds of an endowment policy,
24 payable to the insured on attaining a certain age, to the extent of ~~twenty one hundred~~ one hundred thousand

1 dollars shall at all times be exempted from the debts of such spouse or children of the insured;
2 ~~and the avails.~~ The proceeds of any life or health insurance or other sum of money not
3 exceeding ~~twenty one hundred~~ thousand dollars made payable by any mutual aid or benevolent
4 society to any member or beneficiary spouse or children or both shall likewise be exempt.

5 Section 7. That § 58-12-8 be amended to read as follows:

6 58-12-8. The total exemption under § 58-12-6 of benefits presently due and payable to any
7 annuitant periodically or at stated times under all annuity contracts under which he or she is an
8 annuitant, ~~shall may~~ not at any time exceed ~~two hundred and fifty~~ two thousand five hundred
9 dollars per month for the length of time represented by such installments;
10 ~~and such.~~ Any periodic payments in excess of ~~two hundred and fifty~~ two thousand five hundred
11 dollars per month ~~shall be~~ is subject to levy in the manner provided by law and the rules of
12 court.

13 Section 8. That § 58-12-9 be amended to read as follows:

14 58-12-9. If the total benefits presently due and payable to any annuitant under all annuity
15 contracts under which he or she is an annuitant, ~~shall~~ at any time exceed payment at the rate of
16 ~~two hundred and fifty~~ two thousand five hundred dollars per month, then the court may order
17 such annuitant to pay to a judgment creditor or apply on the judgment, in installments, such
18 portion of such excess benefits as ~~to the court may appear~~ finds just and proper, after due regard
19 for the reasonable requirements of the judgment debtor and ~~his~~ the debtor's family, if dependent
20 upon ~~him~~ the debtor, as well as any payments required to be made by the annuitant to other
21 creditors under prior court orders.