

Date Issued: March 30, 1984 (AGO 84-17)

Requested by: Gail Hagerty
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- QUESTION PRESENTED -

Whether the exemptions under section 28-22-03.1 of the North Dakota Century Code are exemptions available to nonbankrupt debtors.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the exemptions under section 28-22-03.1, N.D.C.C., are not exemptions available to nonbankrupt debtors.

- ANALYSIS -

The 1981 North Dakota Legislative Assembly enacted Section 1, Chapter 335 of the North Dakota Session Laws, codified as sections 28-22-17 and 28-22-03.1, N.D.C.C., which are quoted as follows:

28-22-17. NONAVAILABILITY OF FEDERAL BANKRUPTCY EXEMPTIONS. In accordance with the provisions of section 522(b) of the Bankruptcy Reform Act of 1978 >Pub. L. 95-598; 92 Stat. 2586; 11 U.S.C. 522(b)!, residents of this state shall not be entitled to the federal exemptions provided in section 522(d) of the Bankruptcy Reform Act of 1978. The residents of this state shall be limited to claiming those exemptions allowable by North Dakota law.

28-22-03.1. ADDITIONAL BANKRUPTCY EXEMPTIONS FOR RESIDENTS. In addition to the exemptions provided herein, a resident of the state may select:

1. In lieu of the homestead exemption, up to seven thousand five hundred dollars.
2. A motor vehicle exemption not to exceed one thousand two hundred dollars.
3. Accrued dividend, interest, or cash value of an unmatured life insurance policy not to exceed four thousand dollars.
4. The debtor's right to receive, or property that is traceable to:
 - a. A payment, not to exceed seven thousand five hundred dollars, on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.
 - b. A payment, not to exceed seven thousand five hundred dollars, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.

c. A social security benefit.

The purpose of the 1981 legislative enactments quoted above was to limit bankruptcy exemptions to those provided for under state law. The Bankruptcy Code adopted by Congress in 1978 provided that a debtor could elect either exemptions set forth under applicable state law or federal exemptions set forth in the Bankruptcy Code. The legislative history supporting the enactment of sections 28-22-17 and 28-22-03.1, N.D.C.C., discloses that the banking industry supported a limitation on a bankrupt's exemptions to those provided under state law. As a compromise to the bankrupt's interest, the Legislature enacted additional bankruptcy exemptions. Section 28-22-17, N.D.C.C., makes federal bankruptcy exemptions unavailable to a North Dakota bankrupt. Section 28-22-03.1, N.D.C.C., entitled "Additional bankruptcy exemptions" in the 1981 Supplement to the North Dakota Century Code, incorporated several specific federal exemptions and made them available to a North Dakota bankrupt.

Subsequently, and as part of the revision to the 1983 Supplement, the title of section 28-22-03.1, N.D.C.C., was changed by the Legislative Council code revisor to read: "Additional exemptions for residents." This change was prompted by inquiries from private attorneys as to whether the exemptions listed in section 28-22-03.1, N.D.C.C., were also available to nonbankrupt judgment debtors. Presumably, the Legislative Council determined that section 28-22-03.1, N.D.C.C., applied in nonbankruptcy situations. The revision by the Legislative Council code revisor to the title to section 28-22-03.1, N.D.C.C., was made after the 1983 Legislative Assembly adjourned. The Legislature neither made nor tacitly approved the revision.

Although the title to a statute is not part of the law (see section 1-02-12, N.D.C.C.), the title to a statute enacted by the Legislature is part of its legislative history. Therefore, it may be considered in determining the intention of the Legislature. See section 1-02-39, N.D.C.C. However, a title adopted by the Legislative Council does not reflect legislative history.

Therefore, it is clear that the North Dakota Legislature intended to make the additional exemptions in section 28-22-03.1, N.D.C.C., only available to the bankrupt debtors for the following reasons:

1. The North Dakota Legislature entitled the section as "Additional bankruptcy exemptions."
2. 1981 N.D. Session Laws, Chapter 335, Section 1 was itself entitled "Bankruptcy Exemptions."
3. The additional exemptions found in section 28-22-03.1, N.D.C.C., were adopted as a compromise between the interests of creditors who favored restricting exemptions and the interests of bankruptcy debtors who needed additional exemptions to get a "fresh start."

The North Dakota Legislature did not intend through the enactment of section 28-22-03.1, N.D.C.C., to make such exemptions available to nonbankruptcy debtors.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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