

AN ACT

ENTITLED, An Act to revise the procedure for the discharge of civil judgments against a person who has received a discharge of debt pursuant to the United States Code, Title 11.

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

Section 1. That chapter 15-16 be amended by adding thereto a NEW SECTION to read as follows:

Any person who has secured a discharge of a civil judgment debt pursuant to United States Code, Title 11, and any person interested in real property to which the judgment attaches may submit an application for a discharge of the judgment to the clerk of court in which the judgment was entered or transcribed.

Section 2. That chapter 15-16 be amended by adding thereto a NEW SECTION to read as follows:

An application under section 1 of this Act shall identify each judgment to be discharged, shall be accompanied by a certified copy of the judgment debtor's bankruptcy discharge, shall state the time the judgment creditor has to object as specified in section 3 of this Act and the grounds for objection as specified in section 4 of this Act and shall be served at the expense of the applicant on each judgment creditor either:

- (1) In the manner provided for the service of a summons in a civil action accompanied by an affidavit of service; or
- (2) By certified mail to the judgment creditor's last known address as it appears in the court record accompanied by an affidavit of mailing.

Section 3. That chapter 15-16 be amended by adding thereto a NEW SECTION to read as follows:

The clerk, without further notice or hearing, shall discharge each judgment except a judgment

in favor of a judgment creditor who has filed an objection to discharge of the judgment within ten days after service of the application on the judgment creditor. Service shall be deemed effective from the date deposited in the U.S. mail or from the date of actual service. An objection to discharge of a judgment shall be served on the judgment debtor in the same manner as an answer in a civil action.

Section 4. That chapter 15-16 be amended by adding thereto a NEW SECTION to read as follows:

If a judgment creditor objects to the discharge of a judgment, on motion of the judgment debtor, the judgment creditor, or other interested party, the court shall order the judgment discharged except to the extent that the debt represented by the judgment was not discharged by the bankruptcy discharge.

Section 5. That chapter 15-16 be amended by adding thereto a NEW SECTION to read as follows:

The application shall be in substantially the following form:

APPLICATION FOR DISCHARGE OF JUDGEMENT(S)

In the Matter of the Application of:

[Judgment Debtor(s)]

PLEASE NOTICE, the undersigned, acting for the judgement debtor(s) applies for the discharge of the following judgment(s) entered in [Name of County]:

[List judgments, including case number, creditor(s), date of docketing, and amount.]

A certified copy of the judgment debtor's bankruptcy discharge and an affidavit of service for each judgment creditor is attached.

Creditors Please Note: Pursuant to §§ [...], the clerk will discharge the judgment(s) listed within ten days after service of this application unless an objection to discharge is served on the judgment debtor(s) and filed with the clerk.

Creditors may object to discharge if the debt represented by the judgment was not discharged by the bankruptcy discharge.

Dated:

[Signature]

Judgment Debtor,

Person Interested in Real Property

or Attorney for Debtor or Person

Section 6. That chapter 15-16 be amended by adding thereto a NEW SECTION to read as follows:

Upon the discharge of a judgment by the clerk pursuant to section 3 of this Act, a judgment shall cease to be a lien on any real property that the person discharged in bankruptcy owns or later acquires.

Section 7. That chapter 15-16 be amended by adding thereto a NEW SECTION to read as follows:

Nothing contained in sections 2 to 7, inclusive, of this Act, however, may be construed to apply to any judgment which constituted a valid lien upon any specific property of such judgment debtor, as distinguished from the general judgment lien on real property.

Section 8. That § 15-16-20 be repealed.

Section 9. That § 15-16-21 be repealed.

Section 10. That § 15-16-22 be repealed.

Section 11. That § 15-16-23 be repealed.

Section 12. That § 15-16-24 be repealed.

Section 13. That § 15-16-25 be repealed.

Section 14. That § 15-16-26 be repealed.

Section 15. That § 15-16-27 be repealed.

An Act to revise the procedure for the discharge of civil judgments against a person who has received a discharge of debt pursuant to the United States Code, Title 11.

=====

I certify that the attached Act originated in the

HOUSE as Bill No. 1095

Chief Clerk

=====

Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1095
File No. _____
Chapter No. _____

=====

Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

=====

The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

=====

STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State