

AN ACT

ENTITLED, An Act to revise the property exempt from execution, attachment, garnishment, seizure, or taking by any legal process and to provide certain exceptions.

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

Section 1. That chapter 43-45 be amended by adding thereto a NEW SECTION to read as follows:

The Legislature of the State of South Dakota hereby declares that this Act is for the purpose of absolutely exempting certain retirement benefits in a reasonable amount from all process, levy, or sale pursuant to the South Dakota Constitution, Article XXI, § 4. The Legislature hereby finds this Act is necessary to insure that a debtor enjoys the comforts and necessities of life during retirement years.

Section 2. That chapter 43-45 be amended by adding thereto a NEW SECTION to read as follows:

Any person shall have the right to select and designate a total of two hundred fifty thousand dollars and the income and distributions therefrom from the employee's benefit plans as exempt from execution, attachment, garnishment, seizure, or taking by any legal process. This exemption is subject to the right of the State of South Dakota and its political subdivisions to collect any amounts owed to them. This section permits benefits under such plan or arrangement to be payable to a spouse, former spouse, child, or other dependent of a participant in such plan to the extent expressly provided for in a qualified domestic relations order as defined in 29 U.S.C. section 1056(d) or in section 401(a)(13) of the Internal Revenue Code.

Section 3. That chapter 43-45 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this Act, the term, employee benefit plan, means any plan or arrangement that is subject to the provisions of the 29 U.S.C. sections 1001 through 1461, as amended, and in effect on January 1, 1997, or that is described in sections 401(a), 403(a), 403(b), 408, or 409 of the Internal

Revenue Code, as amended, and in effect as of January 1, 1997. The term, employee benefit plan, does not include any employee benefit plan that is excluded from application pursuant to 29 U.S.C. section 1003(b)(1), as amended, and in effect as of January 1, 1997.

Section 4. In the event that any court of South Dakota finds the exemption provided in section 2 of this Act is excessive, the court is hereby directed to determine the amount of the exemption permissible under the South Dakota Constitution, Article XXI, § 4.

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I certify that the attached Act originated in the

SENATE as Bill No. 188

Secretary of the Senate

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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 188
File No. _____
Chapter No. _____

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Received at this Executive Office this ____ day of _____ ,

19__ at ____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 19__

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 19__
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State