

# State of South Dakota

SEVENTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 1997

735A0148

## SENATE ENGROSSED NO. **SB188** - 2/24/97

Introduced by: Senators Paisley and Hunhoff and Representatives Hunt, Cutler, and Haley

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

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

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

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

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

13 Any person shall have the right to select and designate a total of two hundred fifty thousand  
14 dollars and the income and distributions therefrom from the employee's benefit plans as exempt  
15 from execution, attachment, garnishment, seizure, or taking by any legal process. The exemption  
16 provided in this section is in addition to any other exemptions provided by federal law. However,

1 this exemption is subject to the right of the State of South Dakota and its political subdivisions  
2 to collect any amounts owed to them. This section permits benefits under such plan or  
3 arrangement to be payable to a spouse, former spouse, child, or other dependent of a participant  
4 in such plan to the extent expressly provided for in a qualified domestic relations order as defined  
5 in 29 U.S.C. section 1056(d) or in section 401(a)(13) of the Internal Revenue Code.

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

8 For the purposes of this Act, the term, employee benefit plan, means any plan or arrangement  
9 that is subject to the provisions of the 29 U.S.C. sections 1001 through 1461, as amended, and  
10 in effect on January 1, 1997, or that is described in sections 401(a), 403(a), 403(b), 408, or 409  
11 of the Internal Revenue Code, as amended, and in effect as of January 1, 1997. The term,  
12 employee benefit plan, does not include any employee benefit plan that is excluded from  
13 application pursuant to 29 U.S.C. section 1003(b)(1), as amended, and in effect as of January 1,  
14 1997.

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

1 **BILL HISTORY**

2 1/29/97 First read in Senate and referred to Taxation. S.J. 216

3 2/12/97 Scheduled for Committee hearing on this date.

4 2/12/97 Deferred to another day. S.J. 406

5 2/14/97 Scheduled for Committee hearing on this date.

6 2/15/97 Scheduled for Committee hearing on this date.

7 2/15/97 Taxation Do Pass Amended, Passed, AYES 8, NAYS 1. S.J. 477

8 2/19/97 Motion to Amend, Passed. S.J. 539

9 2/19/97 Senate Do Pass Amended, Passed, AYES 30, NAYS 4. S.J. 539

10 2/19/97 Senate Title Amended. S.J. 539

11 2/20/97 First read in House and referred to Taxation. H.J. 622

12 2/25/97 Scheduled for Committee hearing on this date.