

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

328T0367

HOUSE BILL NO. 1095

Introduced by: Representatives Hunt, Abdallah, Feinstein, and Gosch and Senators Cutler
and Nygaard

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

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

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

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

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

13 An application under section 1 of this Act shall identify each judgment to be discharged,
14 shall be accompanied by a certified copy of the judgment debtor's bankruptcy discharge, shall
15 state the time the judgment creditor has to object as specified in section 3 of this Act and the



1 grounds for objection as specified in section 4 of this Act and shall be served at the expense of
2 the applicant on each judgment creditor either:

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

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

9 The clerk, without further notice or hearing, shall discharge each judgment except a
10 judgment in favor of a judgment creditor who has filed an objection to discharge of the
11 judgment within ten days after service of the application on the judgment creditor. Service shall
12 be deemed effective from the date deposited in the U.S. mail or from the date of actual service.
13 An objection to discharge of a judgment shall be served on the judgment debtor in the same
14 manner as an answer in a civil action.

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

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

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

23 The application shall be in substantially the following form:

24 APPLICATION FOR DISCHARGE OF JUDGEMENT(S)

1 In the Matter of the Application of:

2 [Judgment Debtor(s)]

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

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

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

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

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

13 Dated: [Signature]

14 Judgment Debtor,

15 Person Interested in Real Property

16 or Attorney for Debtor or Person

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

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

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

24 Nothing contained in sections 2 to 7, inclusive, of this Act, however, may be construed to

1 apply to any judgment which constituted a valid lien upon any specific property of such
2 judgment debtor, as distinguished from the general judgment lien on real property.

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

4 ~~—15-16-20. Any person discharged in bankruptcy may file in the office of each clerk of court
5 in which a judgment has been rendered or a transcript thereof filed against him, a certified copy
6 of any bankruptcy court order specifying any judgment discharged in bankruptcy. The clerk shall
7 enter the discharge order in the judgment docket and the entry shall discharge the judgment
8 specified from and after that date.~~

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

10 ~~—15-16-21. Any person interested in securing the discharge of any judgment under the
11 provisions of § 15-16-20 shall present his application therefor to the court having jurisdiction
12 of the matter. The application shall be entitled the same as the action in which the judgment was
13 rendered and shall be filed as one of the records in such action unless it is filed in the county in
14 which the judgment has been docketed by transcript only. In such case it shall be filed as an
15 original proceeding in such county. The application shall describe the judgment sought to be
16 discharged and also identify the adjudication in bankruptcy by date of the final discharge and
17 other data sufficient to indicate the court which rendered the discharge in bankruptcy and the
18 office where it was originally filed.~~

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

20 ~~—15-16-22. Upon the filing of an application pursuant to § 15-16-21, the court shall make an
21 order directing that notice of hearing thereof be given in such manner and for such time as the
22 court may deem reasonable in each particular case except that the time for hearing shall not be
23 less than thirty days after the completed service of such notice.~~

24 ~~—The notice shall be served upon the judgment creditor, his personal representatives, or~~

1 assigns, and upon the attorney of record of such judgment creditor if he is a resident of the state.
2 ~~Such service shall be made in the manner provided for the service of the summons in civil~~
3 ~~actions except that in case the judgment creditor, or his personal representatives, or assigns, or~~
4 ~~his attorney of record shall not reside within the state, the court shall direct such manner of~~
5 ~~service upon any of them as it may deem reasonable and necessary, and may dispense with~~
6 ~~service upon the attorney if he is not a resident of the state.~~

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

8 ~~— 15-16-23. At the time fixed for the hearing on an application pursuant to § 15-16-21, proof~~
9 ~~of service of the notice shall first be made and the court shall then proceed to hear and determine~~
10 ~~the matter and at which hearing any person interested may appear and be heard in person or by~~
11 ~~attorney and the proceedings shall be the same as the hearing of a civil action tried to the court~~
12 ~~excepting that no findings of fact or conclusions of law shall be necessary and the court shall~~
13 ~~make its decision in the form of an order or judgment according to its determination of the~~
14 ~~matter.~~

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

16 ~~— 15-16-24. The original order or judgment of the court rendered under § 15-16-23, in the~~
17 ~~event it shall direct the discharge of the judgment, shall be filed in the office of the clerk of the~~
18 ~~court who shall thereupon enter the discharge in the docket entry of said judgment and such~~
19 ~~judgment and docket entry thereof shall thereafter have no force nor effect as a judgment or lien~~
20 ~~except as provided in § 15-16-26.~~

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

22 ~~— 15-16-25. A certified copy of said original order or judgment may be filed in the office of~~
23 ~~any clerk of courts or register of deeds in this state and thereupon shall have the effect of~~
24 ~~discharging of record such judgment or any transcript, docket entry, or record of such judgment.~~

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

2 ~~— 15-16-26. Nothing contained in §§ 15-16-20 to 15-16-25, inclusive, however shall be~~
3 ~~construed to apply to any judgment which constituted a valid lien upon any specific property of~~
4 ~~such judgment debtor, as distinguished from the general judgment lien on real estate prior to~~
5 ~~execution, upon the date of the filing of the petition that such person be adjudged bankrupt~~
6 ~~under said act of Congress.~~

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

8 ~~— 15-16-27. Appeals from the order or judgment of the court, made pursuant to § 15-16-23~~
9 ~~shall be allowed only pursuant to the provisions of §§ 15-26-9 to 15-26-12, inclusive.~~