

State of South Dakota

EIGHTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2014

562V0391

HOUSE ENGROSSED NO. **HB 1169** - 02/12/2014

Introduced by: Representatives Hickey, Craig, and Ecklund and Senator Kirkeby

1 FOR AN ACT ENTITLED, An Act to protect certain homestead exemption interests during sale
2 of homestead or separation of owners.

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

4 Section 1. That § 43-31-1 be amended to read as follows:

5 43-31-1. The homestead of every family, resident in this state, as hereinafter defined, so long
6 as it continues to possess the character of a homestead is exempt from judicial sale, from
7 judgment lien, and from all mesne or final process from any court, to the extent and as provided
8 by statute, including a homestead listed for sale. However, a creditor or lien holder of a mobile
9 home classified as a homestead under § 43-31-2 prior to January 1, 1973, may not be cut off and
10 is not subject to a homestead exemption. In addition, a homestead with a value of less than one
11 hundred seventy thousand dollars of a person seventy years of age or older, and the unmarried
12 surviving spouse of such person, is exempt from sale for taxes for so long as it continues to
13 possess the character of a homestead.

14 Section 2. That § 43-31-2 be amended to read as follows:

15 43-31-2. The homestead ~~must~~ may embrace the house used as a home by the owner thereof,



1 being either, real property or a mobile home as hereinafter defined, and if he or she has two or
2 more houses or mobile homes thus used at different times and places, such owner ~~may~~ shall
3 select which he or she will retain as a homestead.

4 It ~~must~~ may not embrace more than one dwelling house or any other buildings except such
5 as are properly appurtenant to the homestead as such; but a shop, store, or other building
6 situated on real property and really used or occupied by the owner in the prosecution of his or
7 her own ordinary business may be deemed appurtenant to such homestead.

8 Mobile homes shall include any vehicle without motive power which can provide adequate,
9 comfortable, all season quarters for the purpose of making a residence thereof and which vehicle
10 is larger than two hundred forty square feet, measuring at the base thereof. Such mobile home
11 must be registered in South Dakota at least six months prior to the claim of exemption.

12 If an owner is required to leave a homestead pursuant to a protection order obtained by the
13 owner's spouse or to otherwise preserve peace in the home, the owner's absence from the
14 homestead may not be considered a waiver or abandonment of the owner's interest in the
15 homestead, unless there is evidence to the contrary. If the court orders the division of the
16 homestead pursuant to § 25-4-44 and imposes a lien for the benefit of the nonoccupant owner
17 pursuant to § 25-4-42, the owner's absence from the homestead, unless there is evidence to the
18 contrary, may not be considered a forfeiture of the homestead exemption and any proceeds
19 secured by the judicial lien for a period of one year from the date of receipt of the proceeds is
20 exempt.