

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1981

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HOUSE BILL 313
Proposed Committee Substitute PCS4056

Short Title: Money Judgments; Part 3.

(Public)

Sponsors: Representative

Referred to: Judiciary III.

February 26, 1981

A BILL TO BE ENTITLED

1
2 AN ACT TO IMPROVE THE LAWS RELATING TO THE COLLECTION OF MONEY
3 JUDGMENTS AND THE EXEMPTIONS, PART 3, EXEMPTIONS.

4 The General Assembly of North Carolina enacts:

5 Section 1. The following Article is added to Chapter 1C
6 of the General Statutes:

7 "ARTICLE 16.

8 "EXEMPT PROPERTY.

9 "§ 1C-1601. Exempt property.--(a) Exempt property. A resident
10 of this State who is a debtor is entitled to retain free of the
11 enforcement of the claims of his creditors:

12 (1) a residence consisting of the principal dwelling of
13 the individual, whether it consists of real or
14 personal property, and the tract of land upon which
15 it is located, together with reasonable access to
16 it. The tract of land is limited to a lot or tract
17 not to exceed one acre (whether or not acquired at
18 the same time), except that if there are ordinances,
19 subdivision restrictions, restrictive covenants or
20 the like not permitting reduction to one acre, the
21

1 dependent by another debtor, may not be
2 considered in computing the amount provided in
3 this subdivision;

4 b. health aids reasonably necessary to enable the
5 individual or a dependent to work or to
6 sustain health;

7 c. the debtor's aggregate interest, not to exceed
8 five hundred dollars (\$500.00), in any
9 implements, professional books, or tools, of
10 the trade of the debtor or the trade of a
11 dependent of the debtor.

12 (5) a burial plot for the individual and his family.

13 (b) Waiver. The court may not permit waiver of the exemptions
14 provided in this Article to the extent the exemptions are
15 necessary to ensure the reasonable support needs of the judgment
16 debtor's dependents. The exemptions provided in this Article
17 cannot otherwise be waived except by:

18 (1) transfer of property allocated as exempt (and in
19 that event only as to the specific property
20 transferred), or

21 (2) written waiver, after judgment, approved by the
22 court. The court must find that the waiver is made
23 freely, voluntarily, and with full knowledge of the
24 debtor's rights to exemptions and that he is not
25 required to waive them;

26 (3) failure to assert the exemption after notice to do
27 so pursuant to G.S. 1C-1603, if the court finds
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1 that the debtor was capable of asserting the
2 exemption. The court may relieve such a waiver
3 made by reason of mistake, surprise or excusable
4 neglect, to the extent that the rights of innocent
5 third parties are not affected.

6 (c) Exceptions. The exemptions provided in this Article are
7 inapplicable to claims

- 8 (1) of the United States or its agencies as provided by
9 federal law;
- 10 (2) of the State or its subdivisions for taxes or
11 appearance bonds;
- 12 (3) of lien by a laborer for work done and performed
13 for the person claiming the exemption, but only as
14 to the specific property affected;
- 15 (4) of lien by a mechanic for work done on the
16 premises, but only as to the specific property
17 affected;
- 18 (5) for payment of obligations contracted for the
19 purchase of the specific property affected;
- 20 (6) for the repair or improvement of the specific
21 property affected;
- 22 (7) for contractual security interests in the specific
23 property affected; provided, that the exemptions
24 shall apply to the debtor's household goods
25 notwithstanding any contract for a nonpossessory,
26 nonpurchase money security interest in any such
27 goods;
- 28

1 smallest permissible unit is applicable. If the
2 debtor elects to take the \$1,000 homestead
3 exemption provided in Article X, Section 2 of the
4 Constitution of North Carolina in property other
5 than the principal dwelling, then the exemption
6 provided by this subdivision shall not apply. The
7 court may by appropriate order sever and divide
8 property in excess of the amount provided or
9 property related to business purposes;

10 (2) life insurance as provided in Article X, Section 5
11 of the Constitution of North Carolina;

12 (3) compensation for personal injury, or for the death
13 of a person upon whom the debtor is dependent for
14 support, but such compensation is not exempt from
15 claims for funeral, legal, medical, dental,
16 hospital, and health care charges related to the
17 accident or injury giving rise to the compensation;

18 (4) personal property as follows:

19 a. the sum of one thousand dollars (\$1,000) in
20 money or property for the debtor, and the
21 additional sum of five hundred dollars
22 (\$500.00) for each person dependent upon the
23 debtor for support, after deducting from the
24 value of such property the amount of valid
25 security interests or liens against it other
26 than judicial liens. A person claiming a
27 separate exemption, or who is claimed as a
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1 (8) for statutory liens, on the specific property
2 affected, other than judicial liens;

3 (9) for child support or alimony order pursuant to
4 Chapter 50 of the General Statutes.

5 (d) Federal Bankruptcy Act. The exemptions provided in The
6 Bankruptcy Act, 11 U.S.C. § 522(d), are not applicable to
7 residents of this State. The exemptions provided by this Article
8 shall apply for purposes of The Bankruptcy Act, 11 U.S.C. §
9 522(b.).

10 "§ 1C-1602. Alternative exemptions.--If the allocation of
11 amounts provided in this Article is insufficient to meet
12 constitutionally mandated exemptions, the court may upon motion
13 of the debtor assign as exempt the additional property required
14 to satisfy those requirements. The exemptions provided in this
15 Article shall not be construed so as to affect the personal
16 property and homestead exemptions granted by Article X of the
17 Constitution of North Carolina.

18 "§ 1C-1603. Procedure for setting aside exempt property.--(a)
19 Motion or Petition; Notice.

20 (1) A judgment debtor may have his exempt property
21 designated in a separate action, by a motion or
22 request in a pending case, or in a proceeding
23 relating to the enforcement of a money judgment.

24 (2) A judgment creditor may have the exempt property of
25 the debtor designated upon motion in a proceeding
26 to enforce a money judgment.

27 (3) In a proceeding for the enforcement of a money
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1 judgment the court may determine that particular
2 property is not qualified as exempt even though
3 there has been no proceeding to designate the
4 exemption.

5 (4) If it appears in a proceeding under this Chapter
6 that exempt property may be affected and there has
7 been no allocation of exempt property, the court
8 must cause notice to be served upon the judgment
9 debtor advising him of his rights. The notice must
10 be substantially in the following form:

11	NORTH CAROLINA		IN THE GENERAL COURT OF JUSTICE
12	_____ COUNTY		DISTRICT COURT DIVISION
13			CvD
14	_____)		
15	Judgment Creditor)		NOTICE OF PETITION
16)		(OR MOTION)
17	vs.)		TO SET OFF DEBTOR'S
18	_____)		EXEMPT PROPERTY
19	Judgment Debtor)		

20 GREETINGS:
21 You have been named as a 'judgment debtor' in a proceeding
22 initiated by a 'judgment creditor'. A 'judgment debtor' is a
23 person who a court has declared owes money to another, the
24 'judgment creditor'. The purpose of this proceeding is to make
25 arrangements to collect that debt from you personally or from
26 property you own.

27 It is important that you respond to this notice no later than
28

1 twenty (20) days after you receive it because you may lose
2 valuable rights if you do nothing. If you do not understand what
3 is required of you in this proceeding, contact

4 _____ (NAME) _____, _____ (ADDRESS) _____, _____ (TELEPHONE) _____,

5 who is responsible to the court for making sure you have
6 assistance in understanding and completing the form which is
7 attached to this notice. You may wish to consider hiring an
8 attorney to help you with this proceeding to make certain that
9 you receive all the protections to which you are entitled under
10 the North Carolina Constitution and laws.

11 (b) Contents of motion or petition. The motion or petition
12 must:

- 13 (1) name the judgment debtor;
- 14 (2) name the judgment creditors of the debtor insofar
15 as they are known to the movant;
- 16 (3) if it is a motion to modify a previously allocated
17 exemption, describe the change of condition and the
18 modification desired.

19 (c) Statement by the debtor. When proceedings are instituted,
20 the debtor must file with the court a schedule of:

- 21 (1) his assets, including their location;
- 22 (2) his debts and the names and addresses of his
23 creditors;
- 24 (3) the property which he desires designated as exempt.

25 The form for the statement must be substantially as follows:

26 NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

27 _____ COUNTY

DISTRICT COURT DIVISION

28

CvD

1 Judgment Creditor)
 2) SCHEDULE OF DEBTOR'S
 3) PROPERTY AND
 4 vs.) REQUEST TO SET ASIDE
 5) EXEMPT PROPERTY
 6 Judgment debtor)

7 I, (fill in your name), being duly sworn do depose and
 8 say:

9 1. That I am a citizen and resident of _____
 10 County, North Carolina;

11 2. That I was born on (date of birth);

12 3. That I am (married to (spouse's name)) (not
 13 married);

14 4. That the following persons live in my household and
 15 are in substantial need of my support:

16 NAME	RELATIONSHIP TO DEBTOR	AGE
17 _____	_____	_____
18 _____	_____	_____
19 _____	_____	_____
20 _____	_____	_____

21 (Use additional space, as necessary)

22 5. That (I own) (I am purchasing) (I rent) choose
 23 one; mark out the other choices a (house) (trailer) (apartment)
 24 (choose one; mark out the other choices) located at (address,
 25 city, zip code) which is my residence.

26 6. That I (do) (do not) own any other real property. If
 27 other real property is owned, list that property on the following
 28 lines; if no other real property is owned, mark 'not applicable'

1 on the first line.

2 -----
 3 -----
 4 -----
 5 -----

6 7. That the following persons are, so far as I am
 7 able to tell, all of the persons or companies to whom I owe
 8 money:

9 -----
 10 -----

11 8. That I wish to claim the following residence,
 12 which is my principal dwelling, as exempt from the claims of
 13 my creditors:

14 Address -----
 15 Names of Owners of Record -----
 16 Number of Acres -----

17 9. That I wish to claim the following life insurance
 18 policies whose sole beneficiaries are (my wife) (my wife and
 19 children) as exempt:

<u>Name of Insurer</u>	<u>Policy Number</u>	<u>Face Value</u>	<u>Beneficiary(ies)</u>
21 -----	-----	-----	-----
22 -----	-----	-----	-----

23 10. That I wish to claim the following items of health
 24 care aid necessary for (myself) (my dependents) to work or
 25 sustain health:

<u>Item</u>	<u>Purpose</u>	<u>Person using item</u>
27 -----	-----	-----
28 -----	-----	-----

1 -----
 2 11. That I wish to claim the following implements,
 3 professional books, or tools (not to exceed (\$500), of my trade
 4 or the trade of my dependent:

<u>Item</u>	<u>Estimated Value</u>
-----	-----
-----	-----
-----	-----

9 12. That I wish to claim the following burial plots
 10 for myself and/or my dependents as exempt:

<u>Number of plots</u>	<u>Cemetery Name</u>	<u>Location</u>
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13 13. That I wish to claim the following personal
 14 property as exempt from the claims of my creditors and that I
 15 understand that I am entitled to the sum of \$1,000 worth of
 16 personal property for myself and the sum of \$500 for each person
 17 dependent upon me for support, computed after deduction from the
 18 value of such property any valid liens or purchase money
 19 security interests.

<u>Item of Property</u>	<u>Location</u>	<u>Estimated value</u>
(or class of property)		
-----	-----	-----
-----	-----	-----
-----	-----	-----
-----	-----	-----

26 14. That the following is a complete listing of all of
 27 my assets which I have not claimed as exempt under any of the
 28

1 preceding paragraphs:

2	<u>Item</u>	<u>Location</u>	<u>Estimated value</u>
3			
4	-----	-----	-----
5	-----	-----	-----

6 This the ___ day of _____, 19__.

7 _____
 8 Judgment Debtor

9
 10 Sworn to and Subscribed before
 11 me this ___ day of _____, 19__.

12 _____
 13 Notary Public My Commission Expires:

14 The court must ensure that the debtor has adequate assistance in
15 understanding and completing the form if that is necessary.

- 16 (d) Notice to persons affected.
- 17 (1) If the debtor does not initiate the proceeding, he
 18 must be served with summons and the petition,
 19 motion or notice directed by the court. He must
 20 then file the statement required by subsection (c)
 21 and may respond.
- 22 (2) Notice of the hearing must be given to each
 23 creditor scheduled by the debtor or known to the
 24 petitioner or movant.

- 25 (e) Procedure for setting aside exempt property.
- 26 (1) The court must hold a hearing for the determination
 27 of the exempt property.
 28

- 1 (2) If at the time for the hearing no objection has
2 been made by a creditor or other interested person
3 the judge may, if he finds it appropriate, enter an
4 order designating the property scheduled by the
5 debtor as exempt property.
- 6 (3) If objection is made the court must determine the
7 value of the property. The court may appoint a
8 qualified person to examine the property and report
9 its value to the court. Compensation of that
10 person is a court cost having priority over the
11 claims.
- 12 (4) If the debtor fails to file the statement required
13 by subsection (c) the court must determine whether
14 the failure is willful.
- 15 (5) The court must enter an order designating the
16 exempt property and directing any steps necessary
17 to designate it. Supplemental reports and orders
18 may be filed and entered as necessary to reflect
19 implementation of the order.
- 20 (6) The court may permit a particular item of property
21 having value in excess of the allowable exemption
22 to be retained by the debtor upon his making
23 available to creditors money or property not
24 otherwise available to them in an amount equivalent
25 to the excess value. Priorities of creditors are
26 the same in the substituted property as they were
27 in the original property. The court may provide
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1 for the sale of property having excess value and
2 appropriate distribution of the proceeds at a time
3 and in a manner fixed by the order.

4 (f) Docketing and recording of order. A copy of the order of
5 the court must be docketed and indexed by the clerk of court
6 under the name of the debtor in each county in which the debtor
7 has assets. If real property is included, a copy must be
8 recorded in the office of the register of deeds in each county in
9 which it is located.

10 (g) Modification. The debtor's exemption may be modified upon
11 a change of circumstances, by motion in the original exemption
12 proceeding, made by the debtor or anyone interested. A
13 substantial change in value may constitute changed circumstances.
14 Modification may include the substitution of different property
15 for the exempt property.

16 "§ 1C-1604. Effect of exemption.--(a) Property allocated to
17 the debtor as exempt is free of the enforcement of the claims of
18 creditors for indebtedness incurred before or after the exempt
19 property is set aside, other than claims excepted by G.S. 1C-
20 1601(c), for so long as the debtor owns it. When the property is
21 conveyed to another, the exemption ceases as to liens attaching
22 prior to the conveyance. Creation of a security interest in the
23 property does not constitute a conveyance within the meaning of
24 this section, but a transfer in satisfaction of, or for the
25 enforcement of, a security interest is a conveyance. When exempt
26 property is conveyed, the debtor may have other exemptions
27 allotted.

28

1 (b) Exempt property which passes by bequest, devise intestate
2 succession or gift to a dependent spouse, child or person to whom
3 the debtor stands in loco parentis, continues to be exempt while
4 held by that person. The exemption is terminated if the spouse
5 remarries, or, with regard to a dependent, when the court
6 determines that dependency no longer exists."

7 Sec. 2. G.S. 1-362 is amended by deleting the words
8 "(except the homestead and personal property exemptions of the
9 judgement debtor)".

10 Sec. 3. G.S. 1-369 through G.S. 1-392 are repealed.

11 Sec. 4. This act shall become effective October 1,
12 1981, and applies to all actions and proceedings initiated before
13 and after that date. If a proceeding has been initiated prior to
14 that date the court may enter appropriate transitional orders.
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