

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1981

HOUSE BILL 313

Committee Substitute Adopted 4/30/81

Committee Substitute #2 Adopted 5/13/81

*See Report
as amended to
Committee No 2
5/22/81*

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Short Title: Money Judgments; Part 3.

(Public)

Sponsors: Representative

Referred to: Judiciary III.

February 26, 1981

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"ARTICLE 16.

"EXEMPT PROPERTY.

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

- (1) The debtor's aggregate interest, not to exceed
seven thousand five hundred dollars (\$7,500) in
value, in real property or personal property that
the debtor or a dependent of the debtor uses as a
residence, in a cooperative that owns property that
the debtor or a dependent of the debtor uses as a
residence, or in a burial plot for the debtor or a
dependent of the debtor.

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- 1 (2) The debtor's aggregate interest in any property,
2 not to exceed two thousand five hundred dollar
3 (\$2,500) in value less any amount of the exemption
4 used under subdivision (1).
- 5 (3) The debtor's interest, not to exceed one thousand
6 dollars (\$1,000) in value, in one motor vehicle.
- 7 (4) The debtor's aggregate interest, not to exceed two
8 thousand five hundred dollars (\$2,500) in value for
9 the debtor plus five hundred dollars (\$500) for
10 each dependent of the debtor, in household
11 furnishings, household goods, wearing apparel,
12 appliances, books, animals, crops, or musical
13 instruments, that are held primarily for the
14 personal, family, or household use of the debtor or
15 a dependent of the debtor.
- 16 (5) The debtor's aggregate interest, not to exceed five
17 hundred dollars (\$500) in value, in any implements,
18 professional books, or tools of the trade of the
19 debtor or the trade of a dependent of the debtor.
- 20 (6) Life insurance as provided in Article X, Section 5
21 of the Constitution of North Carolina.
- 22 (7) Professionally prescribed health aids for the
23 debtor or a dependent of the debtor.
- 24 (8) Compensation for personal injury or compensation
25 for the death of a person upon whom the debtor was
26 dependent for support, but such compensation is not
27 exempt from claims for funeral, legal, medical
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1 dental, hospital, and health care charges related
2 to the accident or injury giving rise to the
3 compensation.

4 (b) Definition. 'Value' as used in this section means fair
5 market value of an individual's interest in property, exclusive
6 of valid liens.

7 (c) Waiver. The court may not permit waiver of the exemptions
8 provided in this Article to the extent the exemptions are
9 necessary to ensure the reasonable support needs of the judgment
10 debtor's dependents. The exemptions provided in this Article
11 cannot otherwise be waived except by:

- 12 (1) transfer of property allocated as exempt (and in
13 that event only as to the specific property
14 transferred), or
- 15 (2) written waiver, after judgment, approved by the
16 court. The court must find that the waiver is made
17 freely, voluntarily, and with full knowledge of the
18 debtor's rights to exemptions and that he is not
19 required to waive them;
- 20 (3) failure to assert the exemption after notice to do
21 so pursuant to G.S. 1C-1603, if the court finds
22 that the debtor had a reasonable opportunity to
23 assert the exemption. The court may relieve such a
24 waiver made by reason of mistake, surprise or
25 excusable neglect, to the extent that the rights of
26 innocent third parties are not affected.

27 (d) Recent purchases. The exemptions provided in subdivisions
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1 (2), (3), (4) and (5) of subsection (a) of this section are
2 inapplicable with respect to tangible personal property purchased
3 by the debtor less than 90 days preceding the initiation of
4 judgment collection proceedings or the filing of a petition for
5 bankruptcy.

6 (e) 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;

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1 (2), (3), (4) and (5) of subsection (a) of this section are
2 inapplicable with respect to tangible personal property purchased
3 by the debtor less than 90 days preceding the initiation of
4 judgment collection proceedings or the filing of a petition for
5 bankruptcy.

6 (e) 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;
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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;

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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 (f) 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. If the debtor elects to take the
15 personal property and homestead exemptions provided in Article X
16 of the Constitution of North Carolina in property other than that
17 exempted by G.S. 1C-1601, then the exemptions provided by G.S.
18 1C-1601 shall not apply and in that event the exemptions provided
19 in this Article shall not be construed so as to affect the
20 personal property and homestead exemptions granted by Article X
21 of the Constitution of North Carolina.

22 "§ 1C-1603. Procedure for setting aside exempt property.--(a)
23 Motion or Petition; Notice.

24 (1) A judgment debtor may have his exempt property
25 designated in a separate action before the clerk or
26 a district court judge, by a motion or petition in
27 a pending case (except a case before a magistrate),
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1 or in a proceeding relating to the enforcement of a
2 money judgment (including an execution or a
3 supplemental proceeding).

4 (2) A judgment creditor may have the exempt property of
5 the debtor designated in a proceeding to enforce a
6 money judgment (including an execution or a
7 supplemental proceeding).

8 (3) In a proceeding for the enforcement of a money
9 judgment (including an execution or a supplemental
10 proceeding) the court may determine that particular
11 property is not exempt even though there has been
12 no proceeding to designate the exemption.

13 (4) If it appears in a proceeding for enforcement of a
14 money judgment (including an execution or a
15 supplemental proceeding) that exempt property may
16 be affected and there has been no allocation of
17 exempt property, the court must cause notice to be
18 served upon the judgment debtor advising him of his
19 rights. The notice must be substantially in the
20 following form:

21 NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

22 _____ COUNTY

DISTRICT COURT DIVISION

23 CVD

24 _____)

25 Judgment Creditor)

NOTICE OF PETITION

26 _____)

(OR MOTION)

27 vs. _____)

TO SET OFF DEBTOR'S

28 _____)

EXEMPT PROPERTY

1 Judgment Debtor)

2 GREETINGS:

3 You have been named as a 'judgment debtor' in a proceeding
4 initiated by a 'judgment creditor'. A 'judgment debtor' is a
5 person who a court has declared owes money to another, the
6 'judgment creditor'. The purpose of this proceeding is to make
7 arrangements to collect that debt from you personally or from
8 property you own.

9 It is important that you respond to this notice no later than
10 twenty (20) days after you receive it because you may lose
11 valuable rights if you do nothing. You may wish to consider
12 hiring an attorney to help you with this proceeding to make
13 certain that you receive all the protections to which you are
14 entitled under the North Carolina Constitution and laws.

15 (b) Contents of motion or petition. The motion or petition
16 must:

- 17 (1) name the judgment debtor;
- 18 (2) name the judgment creditors of the debtor insofar
19 as they are known to the movant;
- 20 (3) if it is a motion to modify a previously allocated
21 exemption, describe the change of condition (if the
22 movant received notice of the exemption hearing)
23 and the modification desired.

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

- 26 (1) his assets, including their location;

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1 (2) his debts and the names and addresses of his
2 creditors;

3 (3) the property which he desires designated as exempt.

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

5 NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
6 _____ COUNTY DISTRICT COURT DIVISION
7 CVD

8 Judgment Creditor)
9) SCHEDULE OF DEBTOR'S
10) PROPERTY AND
11 vs.) REQUEST TO SET ASIDE
12) EXEMPT PROPERTY
13 Judgment debtor)

14 I, {fill in your name}, being duly sworn do depose and
15 say:

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

18 2. That I was born on { date of birth };

19 3. That I am (married to {spouse's name}) (not
20 married);

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

23 NAME	RELATIONSHIP TO DEBTOR	AGE
24 _____	_____	_____
25 _____	_____	_____
26 _____	_____	_____
27 _____	_____	_____

28 (Use additional space, as necessary)

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

5 6. That I (do) (do not) own any other real property. If
 6 other real property is owned, list that property on the following
 7 lines; if no other real property is owned, mark 'not applicable'
 8 on the first line.

9 _____
 10 _____
 11 _____
 12 _____

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

16 _____
 17 _____

18 8. That I wish to claim my interest in the following
 19 real or personal property that I use as a residence or my
 20 dependent uses as a residence. I also wish to claim my interest
 21 in the following burial plots for myself or my dependents. I
 22 understand that my total interest claimed in the residence and
 23 burial plots may not exceed \$7,500. I understand that I am not
 24 entitled to this exemption if I take the homestead exemption
 25 provided by the Constitution of North Carolina in other property.

26 Address _____
 27 Names of Owners of Record _____
 28 Estimated Value _____

1 Amount of Liens -----

2 Amount of Debtor's Interest -----

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

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

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

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

16 11. That I wish to claim the following implements,
17 professional books, or tools (not to exceed \$500), of my trade
18 or the trade of my dependent. I understand that such property
19 purchased within 90 days of this proceeding is not exempt:

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

24 12. That I wish to claim the following personal
25 property consisting of household furnishings, household goods,
26 wearing apparel, appliances, books, animals, crops or musical
27 instruments as exempt from the claims of my creditors. I affirm,
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1 that these items of personal property are held primarily for my
 2 personal, family or household use or for such use by my
 3 dependents.

4 I understand that I am entitled to personal property
 5 worth the sum of \$2,500 plus \$500 for each person dependent on me
 6 for support. I further understand that I am entitled to this
 7 amount after deduction from the value of the property the amount
 8 of any valid lien or purchase money security interest and that
 9 property purchased within 90 days of this proceeding is not
 10 exempt.

<u>Item (or class)</u> <u>of Property</u>	<u>Amount of Lien</u> <u>or Security</u> <u>Interest</u>	<u>Location</u>	<u>Estimated</u> <u>Value of</u> <u>Debtor's</u> <u>Interest</u>
-----	-----	-----	-----
-----	-----	-----	-----
-----	-----	-----	-----

18 13. That I wish to claim my interest in the following
 19 motor vehicle as exempt from the claims of my creditors. I
 20 understand that I am entitled to my interest in a motor vehicle
 21 worth the sum of \$1,000 after deduction of the amount of any
 22 valid liens or purchase money security interest. I understand
 23 that a motor vehicle purchased within 90 days of this proceeding
 24 is not exempt.

<u>Make and</u> <u>Model of</u> <u>Motor Vehicle</u>	<u>Year Name(s) of</u> <u>Title Owner</u> <u>of Record</u>	<u>Name(s) of</u> <u>Lien Holder(s)</u> <u>of Record</u>	<u>Estimated</u> <u>Value of</u> <u>Debtor's</u> <u>Interest</u>
-----	-----	-----	-----

1 -----

2 14. That I wish to claim as exempt the following

3 compensation which I received for the personal injury of myself

4 or a person upon whom I was dependent for support or compensation

5 which I received for the death of a person upon whom I was

6 dependent for support. I understand that this compensation is

7 not exempt from claims for funeral, legal, medical, dental,

8 hospital or health care charges related to the accident or injury

9 which resulted in the payment of the compensation to me.

10 (a) amount of compensation _____

11 (b) method of payment: lump sum or installments _____

12 (If installments, state amount, frequency and duration of

13 payments)

14 -----

15 (c) name and relationship to debtor of person(s) injured or

16 killed giving rise to compensation _____

17 (d) location of compensation if received in lump sum or

18 installments _____

19 (e) unpaid debts arising out of the injury or death giving

20 rise to compensation

<u>Name and Address</u>	<u>Services Rendered</u>	<u>Amount of Debt</u>
-----	-----	-----
-----	-----	-----

24 15. That I wish to claim the following property as

25 exempt because I claimed residential real or personal property as

26 exempt that is worth less than \$2,500 or I made no claim for a

27 residential exemption under section (8) above. I understand that

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1 I am entitled to \$2,500 in any property only if I made no claim
 2 under section (8) above and that if I make a claim under section
 3 (8) above, that I am entitled to \$2,500 in any property minus any
 4 amount I claimed under section (8). (Examples: claim of \$1,000
 5 under section (8), \$1,500 allowed here; claim of \$2,450 under
 6 section (8), \$50 allowed here; claim of \$2,600 under section (8),
 7 no claim allowed here.) I further understand that the amount of
 8 my claim under this section is after the deduction from the value
 9 of this property of the amount of any valid lien or purchase
 10 money security interests and that tangible personal property
 11 purchased within 90 days of this proceeding is not exempt.

12	<u>Property</u>	<u>Location</u>	<u>Amount of Liens</u>	<u>Estimated</u>
13			<u>or Purchase Money</u>	<u>Value of</u>
14			<u>Security Interests</u>	<u>Debtor's</u>
15				<u>Interest</u>
16	-----	-----	-----	-----
17	-----	-----	-----	-----
18	-----	-----	-----	-----
19	-----	-----	-----	-----

20 16. That the following is a complete listing of all of
 21 my assets which I have not claimed as exempt under any of the
 22 preceding paragraphs:

23	<u>Item</u>	<u>Location</u>	<u>Estimated value</u>
24	-----	-----	-----
25	-----	-----	-----
26	-----	-----	-----

27 This the ___ day of _____, 19__.

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Judgment Debtor

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

Notary Public

My Commission Expires:

(d) Notice to persons affected.

(1) If the debtor does not initiate the proceeding, he must be served with summons and the petition, motion or notice directed by the court. He must then file the statement required by subsection (c) and may respond. Notice of the hearing may be given by debtor or creditor to any creditor.

(2) If the debtor initiates the proceeding, notice of the hearing must be given to each creditor scheduled by the debtor.

(e) Procedure for setting aside exempt property.

(1) The court must hold a hearing for the determination of the exempt property.

(2) If at the time for the hearing no objection has been made by a creditor or other interested person the judge may, if he finds it appropriate, enter an order designating the property scheduled by the debtor as exempt property.

(3) If objection is made the court must determine the value of the property. The court may appoint a qualified person to examine the property and report

1 its value to the court. Compensation of that
2 person must be advanced by the person requesting
3 the valuation and is a court cost having priority
4 over the claims.

5 (4) If the debtor fails to file the statement required
6 by subsection (c) the court must determine whether
7 the debtor had a reasonable opportunity to assert
8 the exemption.

9 (5) The court must enter an order designating any
10 exempt property and directing any steps necessary
11 to designate it. Supplemental reports and orders
12 may be filed and entered as necessary to reflect
13 implementation of the order.

14 (6) The court may permit a particular item of property
15 having value in excess of the allowable exemption
16 to be retained by the debtor upon his making
17 available to creditors money or property not
18 otherwise available to them in an amount equivalent
19 to the excess value. Priorities of creditors are
20 the same in the substituted property as they were
21 in the original property. The court may provide
22 for the sale of property having excess value and
23 appropriate distribution of the proceeds at a time
24 and in a manner fixed by the order.

25 (f) Notation of order on judgment docket. A notation of the
26 order setting aside exempt property must be entered by the clerk
27 of court on the judgment docket opposite the judgment that was
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1 the subject of the enforcement proceeding. If the exempt
2 property is designated in a separate action, the order shall be
3 entered on the judgment docket.

4 (g) Modification. The debtor's exemption may be modified by
5 motion in the original exemption proceeding by anyone who did not
6 receive notice of the exemption hearing. Also, the debtor's
7 exemption may be modified upon a change of circumstances, by
8 motion in the original exemption proceeding, made by the debtor
9 or anyone interested. A substantial change in value may
10 constitute changed circumstances. Modification may include the
11 substitution of different property for the exempt property.

12 (h) Determinations in any proceeding to set aside exempt
13 property may be made by the clerk or judge.

14 "§ 1C-1604. Effect of exemption.--(a) Property allocated to
15 the debtor as exempt is free of the enforcement of the claims of
16 creditors for indebtedness incurred before or after the exempt
17 property is set aside, other than claims excepted by G.S. 1C-
18 1601(e), for so long as the debtor owns it. When the property is
19 conveyed to another, the exemption ceases as to liens attaching
20 prior to the conveyance. Creation of a security interest in the
21 property does not constitute a conveyance within the meaning of
22 this section, but a transfer in satisfaction of, or for the
23 enforcement of, a security interest is a conveyance. When exempt
24 property is conveyed, the debtor may have other exemptions
25 allotted. The statute of limitation on judgments is suspended
26 for the period of exemption, as to the property which is exempt.

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

6 Sec. 2. G.S. 1-369 through G.S. 1-392 are repealed.

7 Sec. 3. This act shall become effective July 1, 1981,
8 and applies to all actions and proceedings initiated before and
9 after that date. If a proceeding has been initiated prior to
10 that date the court may enter appropriate transitional orders.

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