

STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
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MEMORANDUM

June 6, 1980

TO: House Judiciary I and Senate Judiciary II Committees

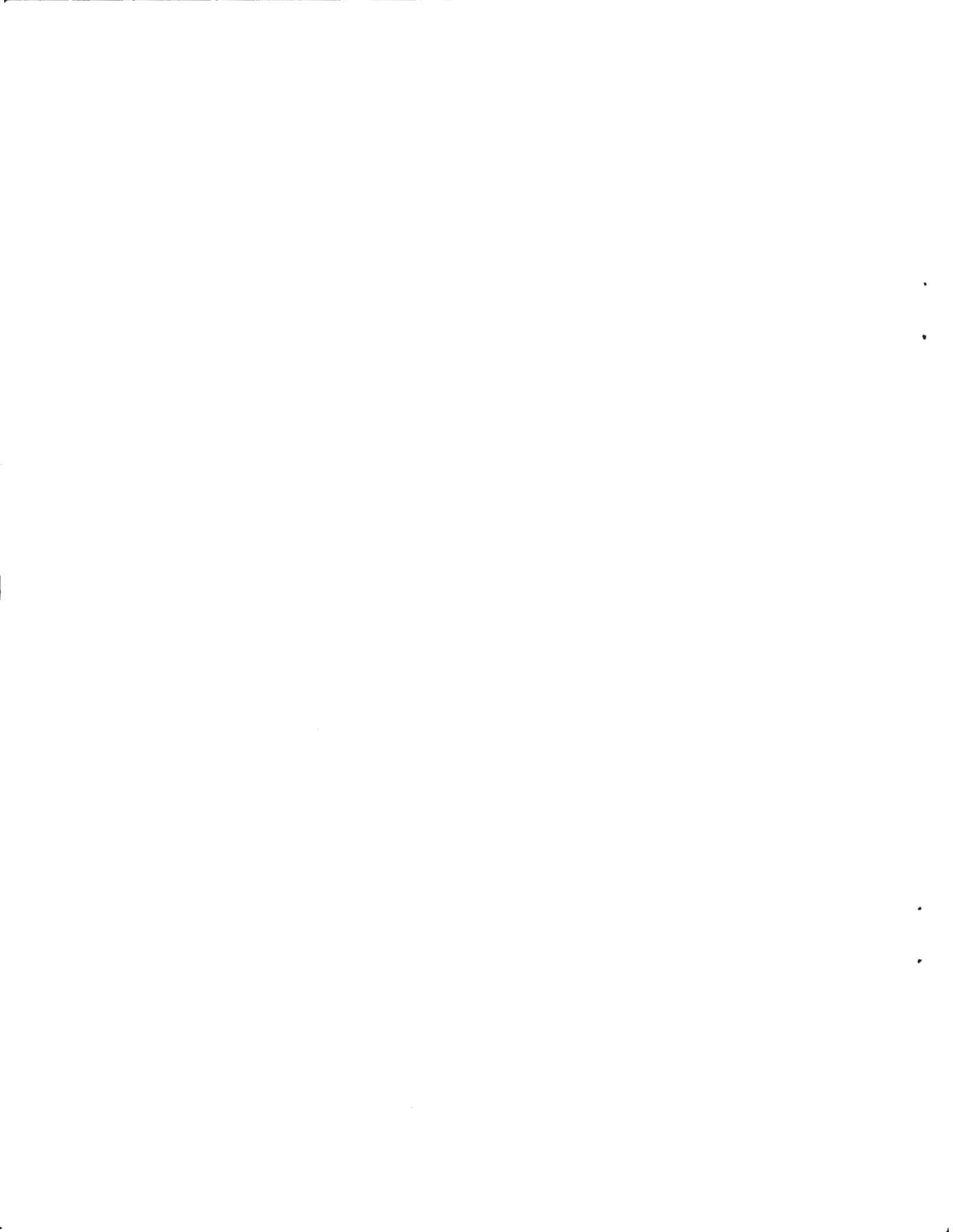
FROM: Representative W. Paul Pulley, Jr. *WPPJ*
Senator Charles E. Vickery *CEV*
Cochairmen of Study Committee on Collection of
Money Judgments

SUBJECT: Proposed Committee Substitute for House Bill 813 and
Senate Bill 499.

Attached is a proposed committee substitute for House Bill 813 and Senate Bill 499. The Special Ad Hoc Committees of the House and Senate, which met jointly, gave a favorable recommendation to the proposed substitute on May 21, 1980. Also attached is a proposed amendment on tenancy by the entirety. The study committee directed that the report to the respective judiciary committees include the amendment.

Encls.

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1 be granted with regard to that property under the following
2 conditions:

3 (1) The claimant must commence an action in this State
4 asserting the claim, the lack of jurisdiction over
5 the rights or interests of the debtor in this
6 State, and that the claimant will seek relief in
7 the courts of a state having jurisdiction. Process
8 must be served upon the debtor as provided in G.S.
9 1A-1, Rule 4(b)(9). Prejudgment relief is
10 available in the action commenced in this State in
11 accordance with the provisions of this Chapter.

12 (2) The claimant must with reasonable promptness
13 prosecute his claim in a state in which
14 jurisdiction may be obtained, and by supplemental
15 pleadings assert the judgment in that state as a
16 basis for further relief in this State.

17 (3) Failure to prosecute the claim in a state in which
18 jurisdiction may be obtained, termination of such
19 an action favorably to the defendant, or failure to
20 assert the judgment in this State may be asserted
21 by the defendant as a basis for termination of
22 prejudgment relief as provided in G.S. 1C-
23 103(f)(4).

24 "§ 1C-102. Prerequisites for prejudgment relief.--(a) As a
25 prerequisite to the granting of prejudgment relief there must be
26 a showing upon affidavit, deposition, or sworn testimony that:

27 (1) The action is for the recovery of money damages,
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1 alimony, alimony pendente lite; or support of a
2 child.

3 (2) The claim is probably valid. A claim is 'probably
4 valid' if it is more likely than not that the
5 plaintiff will obtain a judgment against the
6 defendant on that claim exceeding the amount of any
7 probable setoffs or counterclaims.

8 (3) The property or right to be subjected to
9 prejudgment remedies would be subject to post
10 judgment remedies if the claimant secured a
11 judgment; and

12 (4) There are reasonable grounds to believe that if the
13 relief sought is not granted the claimant will
14 suffer loss or delay in the collection of his
15 judgment.

16 (b) Circumstances creating a reasonable ground to believe the
17 claimant will suffer loss or delay in the collection of his
18 judgment exist when the debtor's circumstances, words or conduct
19 indicate that it is likely that collection of the claimant's
20 judgment, if obtained, would be avoided, hindered or delayed
21 without legal justification. The court must find that one or
22 more of the following exists or is imminently threatened:

23 (1) the insolvency of the debtor;

24 (2) concealment of assets;

25 (3) removal of assets from the jurisdiction;

26 (4) acts or attempts by the debtor to conceal, remove,
27 damage, destroy or fraudulently convey assets;

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1 (5) difficulty of service of process upon the defendant
2 by reason of his concealment of himself within the
3 State or his absence from the State, or by reason
4 of his nonresidency.

5 Insolvency alone is not a basis for prejudgment relief involving
6 seizure of property when the claim is based on nonbusiness debt.

7 "§ 1C-103. Procedure for prejudgment relief.--(a) Time.
8 Prejudgment relief may be sought at any time after commencement
9 of an action and before final judgment.

10 (b) Motion or pleading, notice, hearing.

11 (1) Application for prejudgment relief may be made in a
12 motion made in accordance with the Rules of Civil
13 Procedure, or in any pleading. If the defendant is
14 not represented by an attorney, service of the
15 motion must be in accordance with Rule 4 of G.S.
16 1A-1, the Rules of Civil Procedure. The relief
17 sought must be stated in the motion or pleading.

18 (2) The relief sought may be granted without prior
19 notice to the debtor and hearing only when the
20 claimant shows that there are reasonable grounds to
21 believe that the delay incident to service of
22 process and a hearing will result in substantial
23 loss to the claimant. Insolvency, or lack of
24 assets, without more, is not a sufficient basis for
25 proceeding without prior notice and a hearing.

26 (3) If relief is granted without prior notice to the
27 debtor and hearing, a hearing, after adequate
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1 notice, must be afforded the debtor as soon as
2 practicable. A copy of the order granting the
3 relief must be served with the notice. A defendant
4 may in writing executed after service of the notice
5 waive the hearing.

6 (4) A judicial official authorized by Article 5 of this
7 Chapter to grant the requested relief must consider
8 the application for relief and must preside at
9 hearings held prior to or after the granting of
10 relief.

11 (c) Security. The judicial official must require of the
12 claimant a bond adequate to safeguard the interest of the
13 defendant or person injured in the event that he prevails in the
14 action or the relief is determined to be improper.

15 (d) Contents of order granting prejudgment relief. An order
16 granting prejudgment relief must:

17 (1) identify the party or parties in whose behalf it is
18 granted and the party or parties affected by the
19 order;

20 (2) specify the nature and terms of the relief granted,
21 including its effective date;

22 (3) identify any property affected by the order
23 sufficiently to permit the effectuation of the
24 relief granted. If a lien is to be created there
25 must be compliance with Article 7, Liens by
26 Judicial Process (G.S. 1C-701 et seq.). If the
27 lien is to be perfected by seizure, there must be
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1 compliance with G.S. 1C-801(b).

2 (4) state the manner in which the defendant may be
3 relieved of provisions of the order.

4 (e) Additional relief, modification. The judicial official
5 may upon motion, modify the order to release or substitute
6 remedies, property or conditions, or to make other appropriate
7 changes in the relief granted.

8 (f) Termination of relief. Prejudgment relief is terminated
9 when:

10 (1) the action in which it is sought is terminated in a
11 manner favorable to the defendant and inconsistent
12 with the continuance of the relief;

13 (2) the defendant provides adequate security or other
14 provision for compliance with the judgment sought
15 by the plaintiff, in compliance with Article 5,
16 Part IV, Bonds (G.S. 1C-510 et seq.), and the
17 provisions of the order granting relief or a
18 supplemental order modifying the original order (a
19 bond is adequate when it equals the lesser of the
20 amount claimed or the value of the property for
21 which it is substituted);

22 (3) relief has been granted without prior notice and
23 opportunity to be heard, and at the hearing held
24 after the relief has been granted the claimant
25 fails to satisfy the judicial official that he is
26 entitled to the relief. If the judicial official
27 determines that relief lesser in degree than that
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1 initially granted is appropriate, he may modify the
2 relief;

- 3 (4) upon motion of the debtor it is determined that
4 property of a person whose rights or interests are
5 not subject to litigation in the courts of this
6 State has been affected by prejudgment relief in
7 this State, as provided in G.S. 1C-101(b), and that
- 8 a. the claimant has not with reasonable promptness
9 prosecuted his claim in a state which has
10 jurisdiction to proceed, or
 - 11 b. the claimant has prosecuted his claim in
12 another state and
 - 13 1. the action has terminated in a manner
14 favorable to the debtor and inconsistent
15 with continuance of the relief, or
 - 16 2. the claimant has failed to assert the
17 judgment obtained in the state having
18 jurisdiction by supplemental pleading in
19 the action commenced in this State, to
20 the material prejudice of the debtor.

21 A motion pursuant to this section does not subject
22 the debtor to the jurisdiction of the courts of
23 this State for other purposes.

- 24 (5) the court so orders upon a determination that the
25 relief has been improperly granted or that other
26 good cause for its termination exists.

27 G.S. 1C-104 through G.S. 1C-200: Reserved for future
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1 codification.

2 "ARTICLE 2.

3 "Prejudgment Remedies.

4 "§ 1C-201. Prejudgment remedies authorized.--The remedies in
5 this Article are available in accordance with the procedures set
6 out in Article 1.

7 "§ 1C-202. Prejudgment remedies against property of defendant;
8 liens.--An order granting prejudgment relief may create a
9 preliminary lien on property of the debtor and provide for its
10 enforcement in the manner provided in Article 7, Liens by
11 Judicial Process (G.S. 1C-701 et seq.).

12 "§ 1C-203. Prejudgment remedies against defendant.--
13 Prejudgment relief under this Chapter may include remedies
14 affecting the defendant as follows:

15 (1) Orders and injunctions. In support of a lien authorized
16 under G.S. 1C-202 and upon a showing of good cause, the court may
17 order the defendant to safeguard, return, transfer, secure,
18 surrender, recover or retain designated property, or litigate
19 claims, and may enjoin the defendant as provided in Article 12,
20 Injunctions (G.S. 1C-1201 et seq.).

21 (2) Contempt. Failure to comply with an order of the court
22 relating to prejudgment relief may be the subject of proceedings
23 for civil contempt pursuant to Article 13, Contempt (G.S. 1C-
24 1301).

25 (3) Limited receivership. In order to safeguard any asset or
26 prevent its waste or dissolution, the court may order
27 receivership in the manner and under the conditions provided in
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1 Article 14, Limited Receivership (G.S. 1C-1401 et seq.).

2 (4) General receivership. A defendant may be placed in
3 general receivership in the manner and under the conditions
4 provided in Article 15, General Receivership (G.S. 1C-1501 et
5 seq.).

6 "§ 1C-204. Prejudgment remedies against third parties.--
7 Prejudgment relief may include remedies affecting third parties
8 as follows:

9 (1) Orders to third parties. Upon a showing of good cause the
10 court may enter orders with regard to a person other than the
11 debtor who has or claims an interest in or a right to property or
12 other assets of the debtor in the manner provided in Article 10,
13 Remedies Affecting Third Parties (G.S. 1C-1001 et seq.).

14 (2) Injunctive relief. Injunctive relief is available
15 pursuant to Article 12, Injunctions (G.S. 1C-1201 et seq.).

16 (3) Fraudulent conveyances. The court may direct that
17 property of the defendant conveyed to third parties in fraud of
18 creditors, be returned or held subject to lien, when the transfer
19 is set aside pursuant to Article 9, Fraudulent Transfers and
20 Obligations (G.S. 1C-901 et seq.).

21 "§ 1C-205. Prejudgment discovery of assets.--In aid of
22 proceedings under this Subchapter a claimant or other person
23 authorized by G.S. 1C-602 may obtain discovery of assets in the
24 manner provided in Article 6, Discovery of Assets (G.S. 1C-601 et
25 seq.).

26 G.S. 1C-206 through G.S. 1C-300: Reserved for future
27 codification.

28

"SUBCHAPTER II.

1 "Post Judgment Relief.

2 "ARTICLE 3.

3 "Judgment.

4 "§ 1C-301. Judgment defined.--A judgment is a final order of a
5 court of this State which:

6 (1) determines the respective rights and liabilities of
7 parties to the lawsuit, and which

8 (2) may contain directives with regard to its
9 enforcement.

10 "§ 1C-302. Contents of judgment.--(a) A judgment must

11 (1) identify the court in which it is entered;

12 (2) identify the action or proceeding in which it is
13 entered;

14 (3) bear the date of its entry;

15 (4) set forth the rights and liabilities of the
16 parties;

17 (5) state whether or not interest is included in any
18 money judgment, and the manner in which it is to be
19 computed;

20 (6) bear sufficient attestation of its rendition and
21 entry to reflect compliance with Rule 58 of the
22 Rules of Civil Procedure.

23 (b) A judgment may:

24 (1) contain provisions with regard to its enforcement
25 in the manner provided in this Chapter;

26 (2) limit the availability of remedies under this
27 Chapter;

28

1 (3) if entered by a judge of superior court, prohibit
2 modification of specified provisions for its
3 enforcement;

4 (4) contain provisions with regard to its priority in
5 accordance with G.S. 1C-704(a).

6 "\$ 1C-303. Entry of judgment.--The judgment must be entered in
7 the manner provided in Rule 58 of the Rules of Civil Procedure.

8 "\$ 1C-304. Record of judgment, docketing.--The clerk of the
9 county in which the judgment was entered must docket and index
10 the judgment. The judgment may be docketed in other counties in
11 accordance with G.S. 1C-706.

12 "\$ 1C-305. Docketing and enforcement of federal judgments.--A
13 certified copy of a judgment of a United States District Court
14 rendered in this State may be docketed in any county in this
15 State in the same manner as a judgment of the Superior Court, and
16 may be enforced under this Chapter as judgments of the Superior
17 Court. The clerk of each county in which the judgment is
18 docketed must notify the clerk of the United States District
19 Court in which it was entered of the docketing of the judgment.

20 "\$ 1C-306. Continuing jurisdiction for enforcement.--Courts of
21 this State have continuing jurisdiction to enforce judgments
22 docketed and enforceable in the State. When necessary and
23 appropriate, upon motion of a person entitled to the enforcement
24 of a judgment or a person against whom enforcement is sought, a
25 court may conduct necessary hearings and enter appropriate orders
26 with regard to enforcement of the judgment in accordance with
27 this Chapter.

28

1 "§ 1C-307. Limitation on enforcement of judgment.--A judgment
2 may not be enforced after the expiration of 10 years from the
3 date it is entered, except that:

4 (1) if procedures under this Chapter have been begun, they may
5 be completed, upon order of the court. A sale which has been
6 ordered may be completed, a seizure which has been directed may
7 be accomplished, and the like, but new procedures may not be
8 instituted;

9 (2) this limitation does not affect transfers, titles, and the
10 like which have been effected pursuant to the judgment;

11 (3) if a judgment is made payable in installments the
12 limitation runs from the due date of each installment unless the
13 judgment otherwise provides.

14 This section does not apply to judgments entered before the
15 effective date of this act.

16 "§ 1C-308. Assignment or satisfaction of judgment.--(a) Who
17 may assign or satisfy of record. An assignment or satisfaction
18 of a judgment may be made by the judgment creditor, or his
19 attorney of record.

20 (b) How transfer or satisfaction of record made. Assignment
21 or satisfaction of a judgment, in full or in part, may be made by
22 written instrument which identifies the judgment and the place of
23 its docketing and describes the assignment, payment or
24 satisfaction. It must be signed by a person authorized to assign
25 or satisfy the judgment of record and filed with the clerk. The
26 clerk must make appropriate docket and index entries and forward
27 a copy to each county in which the judgment has been docketed.

28

1 (c) Discharge in bankruptcy. An order of a court of
2 bankruptcy discharging a judgment must be docketed by the clerk
3 in the same manner as a satisfaction of the judgment.

4 (d) Payments to the clerk or court. When payments due on a
5 judgment are made to the clerk or the court, the clerk must
6 notify the judgment creditor's attorney of record, if there is
7 one, or the judgment creditor if there is no attorney of record.
8 The funds may be released to the attorney of record or the
9 judgment creditor upon the execution of an appropriate instrument
10 of partial or full satisfaction.

11 (e) Effect of assignment. The assignment of a judgment is
12 effective only upon its entry upon the docket record. The
13 assignee becomes, to the extent of the assignment, the judgment
14 creditor.

15 (f) Entry upon docket in lieu of separate instrument. An
16 entry of assignment or satisfaction may be made upon the judgment
17 docket in lieu of a separate written instrument.

18 G.S. 1C-309 through G.S. 1C-400: Reserved for future
19 codification.

20 "ARTICLE 4.

21 "Post Judgment Remedies.

22 "§ 1C-401. Judgment lien on property of debtor.--A judgment
23 may create a lien upon the property of the debtor in accordance
24 with Article 7, Liens by Judicial Process (G.S. 1C-701 et seq.).

25 "§ 1C-402. Remedies against the judgment debtor.--(a) Orders
26 and injunctions. Upon motion of the judgment creditor, the court
27 may in the judgment or a supplemental order:

28

1 (1) direct that on or prior to a specified date the
2 judgment debtor submit a plan for the payment of
3 the judgment which has been recovered against him
4 (but not if all of the debtor's property and wages
5 are determined to be exempt);

6 (2) direct that specified nonexempt property of the
7 debtor be surrendered to be held as security for
8 payment, or sold in the manner provided in Article
9 8, Seizure, Safeguarding and Disposition of
10 Property (G.S. 1C-801 et seq.);

11 (3) direct that specified nonexempt property of the
12 debtor be transferred to the judgment creditor or
13 others in satisfaction of the judgment;

14 (4) provide for court supervised collection procedures
15 in accordance with Article 11, Court Supervised
16 Collection Procedures (G.S. 1C-1101 et seq.);

17 (5) enjoin the judgment debtor as provided in Article
18 12, Injunctions (G.S. 1C-1201).

19 (b) Upon motion of the judgment debtor, the court may direct
20 that the judgment be paid in installments subject to its finding
21 under Article 16 of this Chapter that the reasonable support
22 needs of the debtor's dependents will not be adversely affected
23 thereby. The order must provide for the payments to be made to a
24 receiver, a trustee, or the judgment creditor.

25 (c) Contempt. A debtor who fails to comply with an order of
26 the court relating to post judgment relief may be subjected to
27 proceedings for civil contempt pursuant to Subchapter 3, Article
28

1 13.

2 "§ 1C-403. Remedies against third parties.--(a) Orders to
3 third parties. Upon motion of a judgment creditor, the court may
4 enter orders with regard to a person other than the judgment
5 debtor who has or claims an interest in or a right to property or
6 other assets of the judgment debtor in the manner provided in
7 Article 10, Remedies Affecting Third Parties (G.S. 1C-1001 et
8 seq.).

9 (b) Injunctive relief. Injunctive relief against third
10 parties is available as provided in Article 12, Injunctions (G.S.
11 1C-1201).

12 (c) Fraudulent conveyances. The court may direct that
13 property of the judgment debtor conveyed to third parties in
14 fraud of creditors be returned, held subject to lien,
15 surrendered, transferred, sold, or otherwise subjected to the
16 claims of judgment creditors, when the transfer is set aside
17 pursuant to Article 9, Fraudulent Transfers and Obligations (G.S.
18 1C-901 et seq.).

19 "§ 1C-404. Post judgment discovery of assets.--In aid of
20 proceedings under this Subchapter, a judgment creditor or other
21 person authorized by G.S. 1C-602 may obtain discovery of assets
22 in the manner provided in Article 6, Discovery of Assets (G.S.
23 1C-601 et seq.).

24 G.S. 1C-405 through G.S. 1C-500: Reserved for future
25 codification.

26 "SUBCHAPTER III.

27 "Procedures Relating to Enforcement of Money Judgments.

28 "ARTICLE 5.

1 "General Procedures.

2 "PART 1.

3 "Authority of Courts in Collection Proceedings.

4 "§ 1C-501. Authority of courts.--The authority of the courts
5 of this State to grant relief pursuant to this Chapter is as
6 provided in this Article. Except as otherwise provided in this
7 Article, the clerk, district court judge and superior court judge
8 may act with regard to enforcement proceedings in actions in
9 either division of the court.

10 "§ 1C-502. Authority of clerk.--The clerk may

11 (1) order prejudgment relief as follows:

- 12 a. the creation of a lien, pursuant to Articles 1, 2,
13 and 7 of this Chapter;
- 14 b. protective orders, pursuant to Article 18 of this
15 Chapter;
- 16 c. orders to the defendant, as authorized by G.S. 1C-
17 203(1) (other than injunctions) to the extent
18 necessary to protect a lien;
- 19 d. orders to third persons as authorized by G.S. 1C-
20 204(1) to the extent necessary to protect a lien.

21 (2) With regard to judgments rendered by the clerk, order post
22 judgment relief as follows:

- 23 a. installment payments pursuant to G.S. 1C-402;
- 24 b. if a prejudgment lien has been created, provide for
25 the effective date of the judgment lien in
26 accordance with G.S. 1C-704;

27 (3) Enter a general order for the seizure and disposition of
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1 nonexempt property of the debtor, pursuant to Article 8 of this
2 Chapter, for the enforcement of a judgment of a magistrate. In
3 every case the order must be accompanied by the notice provided
4 in C.S. 1C-1603(a) (4) advising the debtor of his right to have
5 his exempt property allocated by a district court judge.

6 "§ 1C-503. Authority of magistrate.--A magistrate

7 (1) may not grant prejudgment relief;

8 (2) may not enter orders granting post judgment relief, but
9 judgments of a magistrate properly rendered and entered may be
10 enforced in the same manner as other judgments of the General
11 Court of Justice.

12 "§ 1C-504. Authority of district court judge; limitations.--

13 (a) The district court judge may:

14 (1) grant prejudgment relief in any case pending in the
15 General Court of Justice, subject to the
16 limitations set out in subsection (b);

17 (2) grant post judgment relief in any case in which
18 judgment has been entered in the General Court of
19 Justice, subject to the limitations set out in
20 subsection (b).

21 (b) A district court judge may not modify an order for the
22 enforcement of a judgment entered by a judge of superior court
23 which

24 (1) grants or denies an order for installment payments,

25 (2) marshalls assets, or

26 (3) provides that it may not be modified other than by
27 a judge of superior court.

28

1 "§ 1C-505. Authority of judge of superior court.--A judge of
2 superior court may:

3 (1) order any prejudgment relief permitted by this Chapter;

4 (2) with regard to judgments entered in the superior court,
5 order any post judgment relief permitted by this Chapter;

6 (3) enforce by contempt proceedings any order of any judicial
7 official made pursuant to this Chapter;

8 (4) review orders of the clerk or district court judge as
9 provided in G.S. 1C-507.

10 "§ 1C-506. Authority of appellate division.--(a) When a case
11 is pending in the appellate division and upon motion of a party
12 it appears that prejudgment or post judgment relief pursuant to
13 this Chapter is necessary or appropriate, the appellate division
14 may

15 (1) enter any order which could be entered by a judge
16 of the trial division, or

17 (2) direct that the trial division act with regard to
18 the relief sought, or

19 (3) remand the case for action in the trial division,
20 or

21 (4) deny the relief.

22 (b) The grant of authority in this section does not deprive the
23 trial division of the power of enforcement in the absence of a
24 stay.

25 "PART 2.

26 "Review of Orders.

27 "§ 1C-507. Review in superior court.--(a) A judge of superior
28

1 court may review any order of the clerk or district court judge
2 granting relief under this Chapter upon motion made within 10
3 days of the entry of the order and supported by an affidavit
4 showing that

- 5 (1) the relief is not authorized by law, or
6 (2) the relief is clearly inappropriate upon the facts,
7 and
8 (3) that great and irreparable harm will result to the
9 moving party if relief is not granted.

10 (b) The moving party must post a bond in accordance with
11 Article 5, Part 4, Bonds (G.S. 1C-510 et seq.), to secure his
12 performance in the event relief is denied.

13 (c) The court may summarily deny any motion it finds to be
14 without substantial merit.

15 (d) If the court finds the grant or denial of relief in the
16 order to be clearly improper it may modify the order and
17 substitute appropriate relief, or it may set aside that portion
18 of the order and remand the matter for entry of an appropriate
19 order.

20 (e) Unless the court summarily denies relief on the motion the
21 court must determine the matter after hearing upon appropriate
22 notice. The court may grant a stay pursuant to G.S. 1C-1801
23 pending action upon the motion.

24 (f) Attorneys' fees of the party who seeks review and prevails
25 may be taxed as costs.

26 "§ 1C-508. Review by appellate division.--An order of the
27 superior court granting or denying relief pursuant to G.S. 1C-507
28

1 is not reviewable by appeal to the appellate division, but may be
2 reviewed by writ of certiorari.

3 "PART 3.

4 "Procedure.

5 "§ 1C-509. Procedure.--Procedure under this Chapter is
6 governed by the Rules of Civil Procedure but:

7 (1) Relief sought pursuant to this Chapter will ordinarily be
8 sought by motion in a pending action. When there is a right to
9 jury trial, the court must by order direct appropriate
10 proceedings. Notwithstanding the provisions of Rule 5(a) of the
11 Rules of Civil Procedure, notice of any motion seeking
12 postjudgment relief pursuant to this Chapter must be
13 appropriately served upon a party in default for failure to
14 appear.

15 (2) An initial proceeding under this Chapter, brought
16 independently because it cannot be instituted by motion in a
17 pending action or proceeding, is instituted by a 'petition' which
18 is treated as a complaint.

19 (3) When relief is sought by a motion in an existing action or
20 proceeding and it is necessary to join other parties who are
21 affected by the proceeding pursuant to this Chapter, but who are
22 not parties to the original action, the court may by order
23 provide for their joinder for the limited purposes of the
24 proceeding pursuant to this Chapter. The order must provide for
25 service of the motion and order upon such parties, who may
26 respond within the time fixed by Rule 12 of the Rules of Civil
27 Procedure, unless for good cause the court sets a different time
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1 which, however, may not be less than 5 days.

2 (4) A person not a party to an action whose rights or interests
3 are affected by remedies granted or sought pursuant to this
4 Chapter may intervene as of right to the extent necessary to
5 protect those rights or interests. The court may permit
6 intervention in enforcement procedures by a motion or other
7 limited pleading.

8 "PART 4.

9 "Bonds.

10 "§ 1C-510. When required.--(a) Bonds are required under this
11 Chapter when

12 (1) they are required by specific statutory provisions;

13 (2) they are authorized by statute and the court orders
14 that a bond be given;

15 (3) the court determines that under the circumstances a
16 bond is necessary for the protection of a party or
17 person who may be affected by the proceeding.

18 "§ 1C-511. Authority to set bonds; approval of compliance.--

19 (a) The court authorized by this Chapter to grant relief may
20 require and set the amount and conditions of bonds, subject to
21 any specific statutory requirement.

22 (b) Unless the court which sets the bond provides otherwise,
23 the clerk or any court may determine the sufficiency of the
24 security.

25 (c) The court requiring the bond may determine when the
26 conditions requiring a bond have been satisfied and discharge it.
27 That court may also authorize other judicial officials to make

28

1 that determination.

2 "§ 1C-512. Terms.--(a) A bond required by this Chapter must

3 (1) be in an amount determined by the court to be
4 sufficient to secure compliance with its purposes
5 and to protect the parties, subject to any specific
6 statutory requirement;

7 (2) obligate the party giving the bond and sureties
8 upon it to pay to the party protected damages
9 within the amount of the bond upon failure of
10 compliance with its conditions;

11 (3) be secured by

12 a. deposit of cash, securities or other items of
13 value, or

14 b. individual sureties (not less than two, and
15 more if the court requires), or

16 c. a surety company authorized to do business in
17 this State, or

18 d. a security interest in personal property or
19 real estate. The court may set the amount and
20 type of security required;

21 (4) contain any additional conditions determined by the
22 court to be appropriate.

23 (b) The bond is effective when

24 (1) it has been properly executed,

25 (2) the required security has been given, and

26 (3) the bond and the security have been approved by the
27 court.

28

1 authorization or in a protective order.
2 (2) If the party against whom a claim is asserted posts
3 a bond for payment of the claim in the event he is
4 determined to be liable there may be no prejudgment
5 discovery of assets outside the scope of discovery
6 authorized by the Rules of Civil Procedure, except
7 to the extent that the court determines that the
8 bond is inadequate in amount. The provisions of
9 Article 5, Part 4, Bonds (G.S. 1C-510 et seq.) are
10 applicable to the bond.

11 (b) Post judgment discovery of assets. Post judgment
12 discovery of assets of the judgment debtor, in support of post
13 judgment remedies, may be conducted without prior leave of court.
14 The court may by protective order limit the scope of discovery.

15 "§ 1C-604. Sanctions.--The sanctions provided in the Rules of
16 Civil Procedure for failure to respond appropriately to discovery
17 procedures or comply with orders for discovery are applicable to
18 the discovery of assets.

19 G.S. 1C-605 through G.S. 1C-700: Reserved for future
20 codification.

21 "ARTICLE 7.

22 "Liens by Judicial Process.

23 "§ 1C-701. Definition.--Liens by judicial process consist of:

24 (a) preliminary liens pursuant to G.S. 1C-202 and G.S. 1C-702;

25 (b) judgment liens pursuant to G.S. 1C-401 and G.S. 1C-703.

26 "§ 1C-702. Preliminary lien pursuant to order granting
27 prejudgment relief.--(a) Authorization. An order granting
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1 prejudgment relief may create a preliminary lien on specifically
2 described or identified property of the defendant. Property may
3 not be included by generalities relating to types of property.
4 No more property than is reasonably necessary to secure payment
5 of the obligation sought to be enforced may be subjected to a
6 preliminary lien.

7 (b) Docketing. The clerk must docket orders granting
8 prejudgment relief which create a lien upon real property. The
9 order may be docketed in other counties in accordance with G.S.
10 1C-706.

11 (c) Perfection and priority. A preliminary lien has the
12 priority provided in G.S. 1C-704 and may be perfected in
13 accordance with G.S. 1C-705.

14 (d) Enforcement. A preliminary lien creates only a priority
15 and may be enforced only pursuant to final judgment, except that
16 upon a showing of good cause the court may:

17 (1) order the sale of perishable property or property
18 subject to rapid diminution in value;

19 (2) order seizure and safeguarding of property in
20 accordance with Article 8, Seizure, Safeguarding
21 and Disposition of Property (G.S. 1C-801 et seq.);

22 (3) grant injunctive relief for the preservation of the
23 lien, in accordance with Article 12, Injunctions
24 (G.S. 1C-1201);

25 (4) order limited receivership for the preservation of
26 the lien, in accordance with Article 14, Limited
27 Receivership (G.S. 1C-1401 et seq.);

28

1 (5) permit litigation with third persons for the
2 preservation of the lien, in accordance with G.S.
3 1C-1006.

4 "§ 1C-703. Judgment lien.--(a) Creation of lien. A judgment
5 (1) for a sum certain, is a lien on the property of the
6 debtor from the time of its entry;

7 (2) for installment payments or periodic payments is a
8 lien on the property of the debtor only if it
9 states a sum certain to be paid or specifies the
10 amount for which the judgment is a lien. Upon
11 motion of the judgment creditor, the court may
12 determine an amount of past due periodic payments
13 and direct that that amount become a lien in the
14 same manner as a judgment entered on the date of
15 the order;

16 (3) is not limited, other than by its terms, with
17 regard to the amount or type of property as to
18 which its lien is effective but the court may in
19 the original judgment or a supplemental order limit
20 the application of the lien of the judgment to
21 property sufficient in amount for satisfaction of
22 the judgment.

23 (b) Perfection and priority. A judgment lien has the priority
24 provided in G.S. 1C-704 and may be perfected in accordance with
25 G.S. 1C-705.

26 (c) Enforcement. A judgment lien may be enforced by
27 (1) seizure and safeguarding of the property, in
28

- 1 accordance with Article 8, Seizure, Safeguarding
2 and Disposition of Property (G.S. 1C-801 et seq.);
3 (2) sale, in accordance with G.S. 1C-812;
4 (3) injunctive relief, in accordance with Article 12,
5 Injunctions (G.S. 1C-1201);
6 (4) limited receivership, in accordance with Article
7 14, Limited Receivership (G.S. 1C-1401 et seq.);
8 (5) litigation with third persons in accordance with
9 G.S. 1C-1006.

10 "§ 1C-704. Priority of liens by judicial process.--(a) The
11 priorities of preliminary liens and judgment liens are as
12 provided in this section. When there is a preliminary lien, the
13 judgment may provide that the priority of the judgment lien is
14 the same as that of the preliminary lien. In the absence of such
15 a provision, the judgment lien does not relate back, and the
16 preliminary lien is terminated.

17 (b) A lien by judicial process is prior to the rights of a
18 transferee (other than a buyer of personal property in the
19 ordinary course of business as defined in G.S. 25-1-201(9)) or
20 lien holder (including judicial lien holders) whose interest or
21 lien is acquired after the entry of the judgment or order
22 creating the lien by judicial process and whose interest or lien
23 is acquired after the lien by judicial process has been perfected
24 in the manner provided in G.S. 1C-705, except for liens for ad
25 valorem property taxes, whose priority regarding liens by
26 judicial process shall be determined according to the provisions
27 of G.S. 105-356.

28

1 (c) For the purpose of subsection (b), the interest of a
2 transferee or lien holder is acquired when the transfer or lien
3 is sufficiently recorded, filed, docketed, or otherwise perfected
4 in the manner required by applicable statutes or law to give the
5 transfer or lien priority over a subsequent lien creditor.

6 (d) A lien by judicial process is subject to the rights of
7 other transferees and lien holders of the debtor except those as
8 to whom it has priority in accordance with subsection (b).

9 (e) When a lien by judicial process has priority over the
10 interests of a transferee or lien holder, any enforcement or
11 transfer by that person is subject to the continuing right of the
12 holder of the lien by judicial process to enforce his lien in the
13 manner provided in this Chapter or to a priority of distribution
14 if the property is sold free and clear of both liens or
15 transfers.

16 (f) When a transferee or lien holder has priority over a lien
17 by judicial process, the transferee or a purchaser at a sale
18 enforcing that prior lien acquires the property free of the lien
19 by judicial process. If property is sold pursuant to a prior
20 lien and there is a surplus after satisfaction of the prior lien,
21 the surplus is subject to the lien by judicial process.

22 "§ 1C-705. Perfection of liens by judicial process.--(a) A
23 lien by judicial process is perfected with regard to real
24 property of the debtor when the order creating the preliminary
25 lien or the judgment is docketed in the county in which the
26 property is located.

27 (b) A lien by judicial process is perfected with regard to
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1 personal property when

2 (1) the property is seized in the manner provided in
3 Article 8, Seizure, Safeguarding and Disposition of
4 Property (G.S. 1C-801 et seq.), or

5 (2) there has been perfection by utilization of Uniform
6 Commercial Code filing procedures, as provided in
7 G.S. 1C-707.

8 "§ 1C-706. Docketing of judgments and orders.--(a) An order
9 granting a preliminary lien upon real property is docketed in the
10 county in which it is entered in accordance with G.S. 1C-702(b).

11 (b) A judgment is docketed in the county in which it is
12 entered in accordance with Article 3, Judgment (G.S. 1C-301 et
13 seq.).

14 (c) Upon request of any person, and payment of fees required
15 by law, the clerk of the county in which an order granting a
16 preliminary lien upon real property or a judgment is entered must

17 (1) issue a certified copy of the order or judgment, or
18 (2) issue a certified copy of the docket entry of the
19 order or judgment, or

20 (3) transmit a certified copy of the order or judgment,
21 or the docket entry of the order or judgment, to
22 the clerk of another county, and make a docket
23 entry of that fact.

24 (d) The clerk of a county other than the county in which an
25 order granting a preliminary lien on real property or a judgment
26 was entered must, upon payment of fees required by law:

27 (1) make appropriate docket entries of a certified copy

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1 of an order, judgment or docket entry prepared in
2 accordance with subsection (c) and presented to
3 him, and

4 (2) if the certified copy is not transmitted to him by
5 the clerk of the county of entry, notify that clerk
6 of its receipt and docketing. The clerk of the
7 county of entry must then make an entry in his
8 docket reflecting docketing of the order or
9 judgment in another county.

10 (e) When a lien by judicial process is terminated or modified,
11 the clerk of the county of entry must notify the clerks of other
12 counties in which the judgment or order has been docketed and
13 they must make appropriate entries upon their dockets.

14 "§ 1C-707. Uniform Commercial Code procedures for perfection
15 of liens by judicial process.--(a) Requirements for perfection
16 of lien by Uniform Commercial Code procedures. The perfection of
17 a lien by judicial process in accordance with this Article
18 requires:

19 (1) entry of a separate order creating the lien, and
20 (2) perfection in accordance with Uniform Commercial
21 Code procedures as set out in the following
22 subsections.

23 (b) Contents of order. The order must

24 (1) identify the proceeding or the judgment pursuant to
25 which it is entered by caption, file number, docket
26 number, and any other appropriate reference;

27 (2) contain the names and addresses of the creditor and
28

1 the debtor;

2 (3) state that a security interest is created by the
3 order;

4 (4) state the amount of the security interest created
5 by the order. The amount may be less than the
6 amount of the claim or judgment, and the terms for
7 payment may be included. If the court does not
8 provide differently, the order must reflect that
9 the entire sum is due upon demand, after judgment
10 is entered, but not later than the date the
11 judgment becomes unenforceable pursuant to G.S. 1C-
12 307;

13 (5) describe the property affected. The property may
14 be of any type included in G.S. 25-9-102, and may
15 be described in the manner provided in G.S. 25-9-
16 110, except that consumer goods must be
17 specifically identified or described. Consumer
18 goods may not be included by generalities relating
19 to types of property. No more property than is
20 reasonably necessary to secure payment of the
21 obligation to be enforced may be included;

22 (6) define what constitutes a default and state that
23 such a default will result in seizure of the
24 property without further notice.

25 (c) Effect or order, creation of security interest. The order
26 has the following effects:

27 (1) The creditor has all the rights and duties of a
28

1 nonpurchase money secured party under Article 9 of
2 Chapter 25 of the General Statutes.

3 (2) The order constitutes a security agreement in
4 accordance with its terms, effective as if the
5 creditor and the debtor had entered into a
6 contractual agreement on the date the order was
7 entered.

8 (3) The security interest attaches and may be perfected
9 only by filing in the manner provided in Article 9
10 of Chapter 25 of the General Statutes, but
11 perfection by filing is subject to the provisions
12 of subsection (d) of this section.

13 (d) Perfection by filing.

14 (1) A financing statement filed to perfect a security
15 interest created pursuant to this section:

16 a. must identify the judgment or proceeding, and
17 the order pursuant to which it is filed, by
18 caption and file number;

19 b. need not be signed by the secured party or the
20 debtor but must instead bear an indication
21 that it is judicially authorized.

22 (2) If the order of the court meets the requirements
23 for a financing statement, as modified by
24 subsection (a), it may be filed as a financing
25 statement.

26 (3) The court may by supplemental order provide for
27 amendments to the financing statement and for
28

1 continuation statements. They need not be signed
2 by the debtor or the secured party but must instead
3 bear an indication of judicial authorization.

4 (4) In addition to termination statements in the manner
5 provided by G.S. 25-9-404, the court is authorized
6 to direct the entry of a termination statement
7 under appropriate circumstances.

8 (5) The Secretary of State must promulgate standard
9 forms which may be used for filing pursuant to this
10 section.

11 (e) Enforcement of security interest.

12 (1) A lien by judicial process perfected under this
13 section may be enforced only in the manner provided
14 in G.S. 1C-702 and G.S. 1C-703.

15 (2) Part 5 of Article 9 of Chapter 25 of the General
16 Statutes, relating to default, does not apply to
17 the enforcement of liens perfected pursuant to this
18 section.

19 (f) Application of section to vehicles for which a certificate
20 of title is required.

21 (1) The court may by order containing the information
22 required for an application by G.S. 20-58, direct
23 the Division of Motor Vehicles to enter a
24 preliminary lien or a lien upon the certificate of
25 title of a vehicle which is the property of the
26 debtor, in the manner provided in G.S. 20-58, et
27 seq.

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1 (c) This Article is subject to the provisions of Article 16,
2 Exempt Property (G.S. 1C-1601 et seq.).

3 "§ 1C-802. Order for seizure and disposition of property.-- (a)
4 An order directing the seizure or possession of property of the
5 debtor must provide for the seizure of

6 (1) specifically described property, or

7 (2) nonexempt property generally.

8 (b) A general order for the seizure or possession of nonexempt
9 property of the debtor may be issued only when:

10 (1) there is a judgment which is a lien on all of the
11 nonexempt property of the debtor, not limited in
12 its application; and

13 (2) the debtor has failed to respond properly to orders
14 for discovery; or

15 (3) the debtor has been guilty of fraud in the
16 transaction upon which the claim is based; or

17 (4) the debtor has made a fraudulent conveyance or has
18 otherwise concealed his assets in order to defeat
19 payment of his obligation; or

20 (5) the judgment is a magistrate's judgment, and then
21 only for the seizure of the property.

22 (c) An order for the seizure or possession of property may
23 provide special directions with regard to:

24 (1) the manner in which it is to be seized;

25 (2) the manner in which it is to be held;

26 (3) the manner in which it is to be safeguarded;

27 (4) the purpose for which it is to be held;

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1 (5) the manner in which it may be released;

2 (6) the disposition to be made of the property.

3 "§ 1C-803. Manner of seizure of property.--(a) When an
4 officer is directed to seize property generally he may seize any
5 property as to which the debtor has the right of possession
6 without the execution of checks, releases, or other documents,
7 unless the property has been designated as exempt property as
8 provided in Article 16, Exempt Property (G.S. 1C-1601 et seq.).

9 (b) When an officer or other person is directed to seize
10 specifically described property he may seize it in the manner
11 provided in this section.

12 (c) Property may be seized only if it may be removed to a
13 place of safekeeping, and upon seizure it must be so removed.

14 (d) The court may make orders for the safeguarding of property
15 which may not be seized.

16 (e) Real property may not be seized, but the court may make
17 appropriate orders with regard to its possession.

18 "§ 1C-804. Safeguarding of property.--(a) When an officer or
19 other authorized person has seized property he must place it in a
20 safe location unless the court has otherwise directed. Subject
21 to the order of the court the officer or other authorized person
22 may place the property in a commercial warehouse or other
23 property storage facility, or if the property consists of
24 animals, in an appropriate boarding facility.

25 (b) When property not subject to seizure is ordered by the
26 court to be safeguarded, a law enforcement officer must take
27 steps to secure the property by locks, fences, the posting of a
28

1 guard, disabling the property, or other means appropriate to the
2 property and circumstances. The court may provide in its order
3 for some or all of the steps to be taken.

4 (c) If the court orders the surrender of property and it is
5 surrendered to a law enforcement officer or other person or the
6 court to be held subject to further order by the court it must be
7 safeguarded in the manner provided in this section. The
8 surrender of property subject to seizure is the equivalent of
9 seizure.

10 (d) Money, securities or the like may be safeguarded by
11 depositing them with the clerk of court.

12 "§ 1C-805. Possession of real property.--When a law
13 enforcement officer is authorized pursuant to this Chapter to
14 take possession of real property he must remove those persons in
15 possession holding adversely to the claim asserted and establish
16 his possession of the premises. Appropriate locks, fences,
17 gates, signs, or the like must be employed. The court may by
18 order provide for the safeguarding, storage, or disposition of
19 personal property left on the premises.

20 "§ 1C-806. Costs.--The costs of seizing or safeguarding
21 property must be advanced by the claimant and may be charged as
22 costs in the action or proceeding.

23 "§ 1C-807. Insurance or indemnification.--The court must by
24 order provide for adequate insurance or other system of
25 indemnification for property lost, damaged or destroyed while in
26 possession of an officer or other person designated to seize,
27 possess, or safeguard the property. Expenses of insurance or

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1 indemnification are chargeable as costs.

2 "§ 1C-808. Use of force by officer.--An officer may use force
3 in carrying out his duties under this Article to the extent
4 authorized in G.S. 162-14.1.

5 "§ 1C-809. Bond for release of property seized pursuant to
6 prejudgment lien.-- (a) When property has been:

7 (1) subjected to seizure, safeguarding or other
8 possession of the court, or

9 (2) subjected to judicial lien, subsequent order or
10 judgment,

11 release of the property or removal of the lien may be obtained
12 upon the filing of a bond as provided in this section unless the
13 court in its original or a supplemental order directs otherwise.

14 (b) The amount of the bond must be the lesser of one hundred
15 ten percent (110%) of the amount claimed in the action or
16 proceeding or the value of the property. The clerk must
17 ascertain the value of the property if bond in that amount is
18 offered.

19 (c) The bond must secure compliance with the order of the
20 court in the same manner as possession of the property would
21 have.

22 (d) The bond must comply with Article 5, Part 4, Bonds (G.S.
23 1C-510 et seq.).

24 "§ 1C-810. Final disposition.--An order or judgment of the
25 court determining the final disposition of property seized
26 pursuant to this section may provide for:

27 (1) relinquishment of possession to a named person;

28

1 (2) transfer of ownership or title to a named person; or
2 (3) sale in accordance with G.S. 1C-812 and payment of the
3 proceeds to the persons entitled to them.

4 "§ 1C-811. Termination of action or proceeding or need for
5 security.--(a) If an action or proceeding is terminated in such
6 a manner that none or less than all of property held or subjected
7 to a lien to secure the recovery in the action is needed, the
8 court must enter an order releasing the property and directing
9 that appropriate docket or record entries be made with regard to
10 the liens.

11 (b) A person whose property has been wrongfully held or
12 subjected to a lien may recover damages for its detention as
13 provided in Article 17, Liability for Misuse or Improper
14 Avoidance of Collection Procedures (G.S. 1C-1701 et seq.). G.S.
15 1C-509, Procedure, is applicable.

16 "§ 1C-812. Sale of property.--The sale of property pursuant to
17 this Chapter is in accordance with Article 29A (Judicial Sales)
18 of Chapter 1 of the General Statutes, except that an order of the
19 clerk for the general seizure of property for the enforcement of
20 a magistrate's judgment also constitutes an 'execution' for the
21 purpose of permitting sale pursuant to Article 29B of Chapter 1
22 of the General Statutes (G.S. 1-339.1 et seq.), unless the order
23 provides otherwise.

24 G.S. 1C-813 through G.S. 1C-900: Reserved for future
25 codification.

26 "ARTICLE 9.

27 "Fraudulent Transfers and Obligations.

28

1 "§ 1C-901. Setting aside transfers and obligations.--The
2 transfer of an interest of the debtor in property, or any
3 obligation incurred by the debtor, may be set aside at the
4 instance of a creditor affected if the debtor

5 (1) made the transfer or incurred the obligation with actual
6 intent to hinder, delay, or defraud his present or future
7 creditors; or

8 (2) a. received less than a reasonably equivalent value in
9 exchange for the transfer or obligation; and

10 b. 1. was insolvent on the date that the transfer was
11 made or the obligation was incurred, or became
12 insolvent as a result of the transfer or
13 obligation; or

14 2. was engaged in business, or was about to engage
15 in business or a transaction, for which any
16 property remaining with the debtor was an
17 unreasonably small capital; or

18 3. intended to incur, or believed that he would
19 incur, debts that would be beyond his ability
20 to pay as they matured.

21 "§ 1C-902. Transfers to partner by partnership.--A transfer of
22 an interest in partnership property, or any obligation incurred,
23 by a partnership debtor to a partner may be set aside if the
24 partnership was insolvent on the date the transfer was made or
25 the obligation was incurred, or became insolvent as a result of
26 the transfer or obligation.

27 "§ 1C-903. Protection of transferee or obligee.--A transferee
28

1 or obligee of such a transfer or obligation who takes for value
2 and in good faith has a lien on any interest transferred, may
3 retain any lien granted or may enforce any obligation incurred,
4 as the case may be, to the extent that he gave value to the
5 debtor in exchange for the transfer or obligation.

6 "§ 1C-904. Definitions.-- (a) For the purposes of this
7 Article, a transfer is made when the transfer becomes so far
8 perfected that a bona fide purchaser from the debtor against whom
9 such transfer could have been perfected, other than a buyer in
10 the ordinary course of business, cannot acquire an interest in
11 the property transferred that is superior to the interest in such
12 property of the transferee, but if the transfer is not so
13 perfected before the commencement of a proceeding to set it
14 aside, the transfer occurs immediately before the date of the
15 commencement of the proceeding.

16 (b) In this Article 'value' means property, or satisfaction or
17 securing of a present or antecedent debt of the debtor, but does
18 not include an unperformed promise to furnish support to the
19 debtor or to a relative of the debtor.

20 (c) As used in this Article, 'insolvent' means:

21 (1) with reference to an entity other than a
22 partnership, financial condition such that the sum
23 of all the debtor's debts is greater than all of
24 the debtor's property, at a fair valuation,
25 exclusive of

26 a. property transferred, concealed, or removed
27 with intent to hinder, delay, or defraud the
28

- 1 debtor's creditors; and
- 2 b. property that may be exempted under Article 16
- 3 (G.S. 1C-1601 et seq.); and
- 4 (2) with reference to a partnership, financial
- 5 condition such that the sum of the partnership's
- 6 debts is greater than the aggregate of, at a fair
- 7 valuation
- 8 a. all of the partnership's property, exclusive of
- 9 property of the kind specified in subsection
- 10 (c) (1) of this section; and
- 11 b. the sum of the excess of the value of each
- 12 general partner's separate property, exclusive
- 13 of property of the kind specified in
- 14 subsection (c) (1) of this section, over such
- 15 partner's separate debts.

16 G.S. 1C-905 through G.S. 1C-1000: Reserved for future

17 codification.

18 "ARTICLE 10.

19 "Remedies Affecting Third Parties.

20 "PART 1.

21 "Property of Debtor Held by Third Party.

22 "§ 1C-1001. Seizure of property of debtor held by third

23 party.--(a) When a debtor is the owner of property which is not

24 in his possession it may be seized in the manner provided in

25 Article 8, Seizure, Safeguarding and Disposition of Property

26 (G.S. 1C-801 et seq.) if the debtor is entitled to possession

27 upon demand.

28

1 (b) If there are conditions with which the debtor must comply
2 in order to regain possession of the property, the court may
3 order that it be seized in the manner provided in Article 8,
4 Seizure, Safeguarding and Disposition of Property (G.S. 1C-801 et
5 seq.) upon the claimant's compliance with the conditions to the
6 debtor's regaining possession, if the condition is one which he
7 can satisfy. The claimant may recover sums actually expended in
8 satisfaction of such a condition, to the extent that they
9 discharge an obligation of the debtor. The debtor may assert
10 against the claimant any defenses which he had with regard to the
11 obligation discharged.

12 "§ 1C-1002. Lien on property of debtor which is in possession
13 of third party.--When a debtor is the owner of property which is
14 not in his possession, a lien by judicial process pursuant to
15 Article 7, (G.S. 1C-701 et seq.) may be perfected in the manner
16 provided in that Article, subject to the provisions of G.S. 1C-
17 1001 with regard to seizure. The lien is subject to the rights
18 of the third party in possession when that person has a claim
19 which has priority under G.S. 1C-704.

20

"PART 2.

21

"Claims of the Debtor Against Third Parties.

22

"§ 1C-1003. Claims of debtor affected.--A claim of the debtor
23 against a third party may be subjected to the remedies provided
24 in this Chapter when it is

25

(1) for the recovery of money or property and

26

(2) is not based upon injury to the person or character or for

27

wrongful death.

28

1 "§ 1C-1004. Prejudgment remedies.--(a) When prejudgment
2 remedies are authorized pursuant to G.S. 1C-204 the court may:

3 (1) order the third party not to make payment or
4 delivery to the debtor;

5 (2) order the third party to safeguard or secure the
6 property, payment, or claim in the manner provided
7 in Article 8, Seizure, Safeguarding and Disposition
8 of Property (G.S. 1C-801 et seq.) pending
9 determination of the claim asserted against the
10 debtor;

11 (3) authorize litigation of the claim pursuant to G.S.
12 1C-1006.

13 (b) Orders authorized by this section are subject to superior
14 rights of the third party.

15 "§ 1C-1005. Post judgment remedies.--(a) When post judgment
16 remedies are authorized pursuant to G.S. 1C-403(a) the court may

17 (1) order the third party not to make payment or
18 delivery to the defendant;

19 (2) order the third party to make payments or
20 deliveries which are due to the judgment creditor
21 or other appropriate person, or to the court;

22 (3) authorize litigation of the claim pursuant to G.S.
23 1C-1006.

24 (b) Orders authorized by this section are subject to superior
25 rights of the third person.

26 "PART 3.

27 "Litigation with Third Parties.

28

1 "§ 1C-1006. Litigation with third parties.--(a) When the
2 claimant proceeds against a third party pursuant to G.S. 1C-1004
3 or G.S. 1C-1005, the third party may contest the claim asserted
4 against him:

5 (1) by response to the order of the court directed to
6 him, or

7 (2) by motion in the claimant's case.

8 (b) When a third party by response or motion contests the
9 claim asserted against him, or it otherwise appears that the
10 claim of the debtor against the third party is contested, the
11 court may authorize the claimant to litigate the debtor's claim
12 if:

13 (1) it appears that the debtor will not effectively
14 litigate the claim, and

15 (2) the claimant will suffer substantial loss if he is
16 not authorized to litigate the claim.

17 The debtor must be given notice and opportunity to be heard.

18 (c) When the claimant is authorized to litigate the debtor's
19 claim he may do so by separate action, or the court may, in an
20 appropriate case, authorize joinder of the claim with the pending
21 action of the claimant. G.S. 1C-509 is applicable.

22 "§ 1C-1007. Intervention in pending action.--When a claimant
23 asserts a right to payment or property which is the subject of a
24 pending action by the debtor against a third party, the claimant
25 may intervene of right if he would be authorized to litigate the
26 matter pursuant to this Article if the action were not pending.

27 G.S. 1C-1008 through G.S. 1C-1100: Reserved for future
28

1 codification.

2 "ARTICLE 11.

3 "Court Supervised Collection Procedures.

4 "§ 1C-1101. Procedure--(a) Initiation of proceedings.

5 Proceedings under this Article may be initiated by:

6 (1) Motion of a judgment creditor pursuant to G.S. 1C-
7 402.

8 (2) Motion of a judgment debtor, made in the cause in
9 which the judgment was rendered.

10 (b) Notice. Notice of a motion under this Article must be
11 served upon all persons claiming an interest in property, rights,
12 or duties affected by the proceedings provided for here, or
13 subject to any claim or judgment which is affected by the
14 proceedings provided for here, unless that person has joined in
15 the motion.

16 (c) Contents of motion. The motion must

17 (1) identify the movant, his interest, and if
18 applicable, the judgment or proceeding which
19 established his interest;

20 (2) list the proceedings or interests which are to be
21 affected;

22 (3) identify the property or rights to be subjected to
23 the proceeding insofar as known to the movant;

24 (4) describe the relief desired.

25 (d) Objection.

26 (1) Any person affected by the proceeding may file a
27 response to the motion, making objection to the
28

1 relief sought or seeking limitations upon the
2 relief granted.

3 (2) Relief sought pursuant to this Article will be
4 granted in the absence of a showing that it is in
5 the best interest of the judgment creditors and the
6 judgment debtor that the particular relief sought
7 be denied.

8 (e) Order. When the court grants or denies relief in
9 proceedings under this Article it must enter an order reflecting
10 its action. The order may be combined with other judgments or
11 orders and may be modified from time to time by additional
12 orders.

13 (f) Accounting.

14 (1) There must be a final accounting in any proceeding
15 under this Article, with regard to the property
16 received, its disposition, distribution of
17 proceeds, and amounts credited to particular
18 judgments or claims.

19 (2) The court may order additional accountings.

20 "§ 1C-1102. Relief available in court supervised collection
21 procedures.--The court may

22 (1) direct consolidation of collection procedures as provided
23 in G.S. 1C-1103;

24 (2) direct collection from wages in the manner provided in
25 G.S. 1C-1104;

26 (3) appoint a limited receiver as provided in Article 14 (G.S.
27 1C-1401 et seq.) or a general receiver as provided in Article 15

28

1 (G.S. 1C-1501 et seq.);

2 (4) direct, permit, or restrict the use of any of the
3 postjudgment remedies provided by this Chapter. All such
4 remedies are available unless restricted by the court.

5 "§ 1C-1103. Consolidation of proceedings.--(a) The court may
6 order consolidation of proceedings for the collection of separate
7 money judgments in the manner provided in this section.

8 (b) When proceedings for the collection of money judgments
9 have been consolidated the court may

10 (1) direct that property subject to sale pursuant to
11 two or more of the judgments be sold free and clear
12 of the claims of all parties to the proceedings and
13 that the proceeds of the sale be distributed in
14 accordance with the relative rights and priorities
15 of the parties;

16 (2) provide for allocation of costs of the proceeding
17 in accordance with the recovery received;

18 (3) marshal assets;

19 (4) refer the proceedings in accordance with Rule 53 of
20 the Rules of Civil Procedure;

21 (5) appoint a limited receiver to proceed with the
22 process of collection in the manner set out in
23 Article 14 (G.S. 1C-1401 et seq.);

24 (6) direct, supervise and approve the disposition of
25 the proceeds, in accordance with the relative
26 rights and priorities of the parties.

27 (c) The court of the county of the debtor's residence may
28

1 direct that proceedings in other counties be consolidated with
2 proceedings in the county of residence, but proceedings in
3 different counties may not be otherwise consolidated. In the
4 case of a corporation or other entity the county in which it has
5 its registered office, or in the absence of that, its principal
6 place of business is its residence.

7 (d) When proceedings are consolidated the court must cause
8 appropriate entries to be made in each proceeding to reflect its
9 disposition.

10 "§ 1C-1104. Collection from wages.--(a) Procedure,
11 limitation. Wages of an employee due or to become due may be
12 subjected to the claims of a judgment creditor only in a
13 proceeding pursuant to subsection (b), and in the manner provided
14 in this section.

15 (b) Limitation to single proceeding. There may be only one
16 proceeding under this Article affecting the wages of an employee.
17 Orders entered pursuant to G.S. 110-136 et seq. take precedence
18 over collection from wages under this Article when wages exempt
19 from other claims are not sufficient to provide the percentage
20 provided therein. After a proceeding under this Article is
21 initiated additional creditors may upon motion or petition be
22 permitted to join in the proceeding.

23 (c) Amount of wages subjected to proceeding.

24 (1) Wages of a debtor not exempted under G.S. 1C-1601
25 may be subjected to court supervised collection
26 proceedings.

27 (2) The amount described in subdivision (1) is reduced
28

1 by the amount of any assignment of wages previously
2 made for the benefit of a creditor and amount
3 ordered to be paid pursuant to an independent
4 garnishment proceeding as set forth in subsection
5 (b).

6 (3) Before direction of collection from wages, the
7 claimant must show and the court must find that
8 wages exempt under G.S. 1C-1601 are sufficient for
9 provision for the defendant and his dependents. If
10 necessary, the court must enter an order increasing
11 the exemption pursuant to that section.

12 (4) The court may order appropriate modifications of
13 the amount within the foregoing limitations. The
14 court must order appropriate modifications to
15 reflect amounts ordered to be paid pursuant to the
16 subsequent institution of any independent
17 garnishment proceeding as set forth in subsection
18 (b).

19 (d) Order to employer; receiver to collect. An order must be
20 directed to the judgment debtor's employer or employers,
21 directing them to make payment of a specified amount of the
22 debtor's wages to a named officer. The court must appoint a
23 limited receiver for that purpose unless a receiver already has
24 been appointed.

25 (e) Powers and duties of receiver.

26 (1) The receiver must collect the designated wages and
27 distribute them to the judgment creditors in
28

1 accordance with the order of the court.

2 (2) The receiver must determine what creditors of the
3 debtor have been given notice of the proceedings,
4 and if it appears that there are additional
5 creditors who should be made parties, with the
6 approval of the court notify them to file their
7 claims within 30 days unless the court sets a
8 shorter time.

9 (3) The receiver must prepare and submit to the court
10 for its approval an order of distribution, and such
11 amendments as from time to time become appropriate.

12 (4) The receiver must keep and file with the court
13 appropriate accounting of his receipts and
14 disbursements.

15 (f) Distribution to creditors.

16 (1) Amounts received must first be applied to the
17 payment of costs.

18 (2) Judgment creditors included in the original order
19 of distribution share pro rata in amounts
20 collected.

21 (3) A judgment creditor not included in the initial
22 order of distribution may be included by amendment,
23 but no amounts may be paid on his claim until the
24 claims of the creditors included in the initial
25 order of distribution have been paid. Judgment
26 creditors added by amendment will be paid in the
27 order in which they assert their claims, and not
28

1 pro rata, except that if several claims are
2 included in one amendment, the court may treat them
3 as a group and direct that distribution within the
4 group be on a pro rata basis.

5 (g) This section shall not apply to garnishment pursuant to
6 other statutory authority.

7 G.S. 1C-1105 through G.S. 1C-1200: Reserved for future
8 codification.

9 "ARTICLE 12.

10 "Injunctions.

11 "§ 1C-1201. Injunctions.-- (a) A judge of superior or district
12 court may grant injunctive relief in support of the remedies
13 authorized in this Chapter when it appears that

14 (1) it is necessary to prevent concealment,
15 disposition, removal, encumbrance, or other actions
16 relating to property and intended to defeat rights
17 and remedies provided in this Chapter;

18 (2) it is necessary to secure compliance by the
19 defendant with procedures or orders authorized by
20 this Chapter;

21 (3) it is necessary to secure compliance by third
22 parties with procedures or orders authorized by
23 this Chapter;

24 (4) it is necessary to prevent third parties from
25 interfering with or taking action affecting
26 property or relationships in a manner which could
27 defeat rights and remedies provided in this
28

1 Chapter.

2 (b) Temporary restraining orders and preliminary injunctions
3 may be granted, when appropriate, prior to the granting of
4 injunctive relief authorized by this section.

5 (c) The procedure for injunctions, preliminary injunctions and
6 temporary restraining orders authorized by this section is as
7 provided in Article 37 of Chapter 1 of the General Statutes and
8 G.S. 1A-1, Rule 65.

9 (d) This section shall not authorize a court to enjoin the
10 collection of any tax, the sale of any tax lien, or the sale of
11 any property for the nonpayment of any tax.

12 G.S. 1C-1202 through G.S. 1C-1300: Reserved for future
13 codification.

14 "ARTICLE 13.

15 "Contempt.

16 "§ 1C-1301. Contempt.--Except as provided in G.S. 1C-1303,
17 failure to comply with an order of the court entered in
18 accordance with the provisions of this Chapter is punishable by
19 proceedings for civil contempt as provided in Article 2 of
20 Chapter 5A of the General Statutes. The procedures set forth in
21 that Chapter govern the proceeding.

22 "§ 1C-1302. Notice of judgment by default before contempt
23 proceedings.--No order for the enforcement of a judgment for
24 money damages entered upon the default of the defendant may be
25 the subject of proceedings for civil contempt unless prior to the
26 entry of the order notice of the judgment and the motion seeking
27 the order have been served in the manner provided in Rule 4 of
28

1 G.S. 1A-1, the Rules of Civil Procedure. This section does not
2 apply to judgments for alimony, alimony pendente lite, or child
3 support.

4 "§ 1C-1303. Limitation on contempt powers.--Notwithstanding
5 other provisions of law, a defendant may not be adjudged to be in
6 civil contempt when the sole basis of the asserted contempt is
7 the failure to pay money due, in installments or otherwise, upon
8 a judgment for money damages. This section does not restrict the
9 power of the court to enforce other lawful orders entered
10 pursuant to this Chapter. This section does not apply to
11 judgments for alimony, alimony pendente lite, or child support.

12 G.S. 1C-1304 through G.S. 1C-1400: Reserved for future
13 codification.

14 "ARTICLE 14.

15 "Limited Receivership.

16 "§ 1C-1401. Authorization.--(a) A limited receiver may be
17 appointed ancillary to any of the following:

18 (1) prejudgment or postjudgment remedies which require
19 seizure of assets, collection or payment of debts,
20 management of business enterprises or the like, or
21 in which that relief has been specifically
22 authorized;

23 (2) any action or proceeding in which the seizure of
24 property or management of business enterprises or
25 the like is authorized and it is necessary for the
26 court to provide for supervision and management;

27 (3) any action or proceeding in which such relief is
28

1 specifically authorized.

2 (b) A limited receiver is ancillary to other pending
3 proceedings and may not be appointed for the general dissolution
4 and distribution of the assets of a business enterprise or
5 individual.

6 (c) A limited receivership is authorized only when the court
7 finds that it is necessary to prevent or diminish

8 (1) loss or destruction of property or assets, or

9 (2) concealment of assets, or

10 (3) a multiplicity of claims or proceedings affecting a
11 business, enterprise or asset, or

12 (4) other conditions, justifying the appointment of a
13 receiver in order to preserve or protect assets or
14 an enterprise or an individual.

15 "§ 1C-1402. Procedure.--(a) A limited receiver may be
16 appointed:

17 (1) upon motion of a party in an action or proceeding;

18 (2) upon petition of a debtor, creditor, or person
19 claiming an interest in property which is being
20 sold pursuant to a power of sale in an instrument
21 securing an obligation.

22 (b) A motion or petition for the appointment of a limited
23 receiver:

24 (1) must identify the action or proceeding to which it
25 is ancillary. The caption may be sufficient
26 identification;

27 (2) must identify the property, business, asset or the
28

1 like which is sought to be subjected to the limited
2 receivership;

3 (3) must state the cause justifying the appointment of
4 a receiver;

5 (4) must describe the nature and purpose of the
6 receivership sought;

7 (5) may nominate a person to be appointed receiver.

8 (c) When there are two or more motions or petitions for
9 limited receivership affecting the same person or property, a
10 court having jurisdiction of any of them may make appropriate
11 orders for their consolidation in accordance with G.S. 1C-1103.

12 (d) An order appointing a limited receiver must identify the
13 property and set forth the scope and purpose of the receivership
14 and the powers and duties of the receiver.

15 "§ 1C-1403. Powers and duties of limited receiver.--A limited
16 receiver:

17 (1) must give bond as provided in Article 5, Part 4, Bonds,
18 (G.S. 1C-510 et seq.);

19 (2) must take an oath for the faithful performance of his
20 duties;

21 (3) may be assigned any of the following duties and powers in
22 his order of appointment or any amendment of that order:

23 a. to take possession of designated property;

24 b. to collect designated assets or accounts;

25 c. to enforce obligations owed to or by the debtor with
26 regard to property subjected to the receivership;

27 d. to institute necessary legal proceedings in order to
28

- 1 carry out his duties;
- 2 e. to temporarily manage a designated business
- 3 enterprise or the like for a specified period of
- 4 time or until a specified event occurs;
- 5 f. to dispose of designated assets. The court may
- 6 provide for sales pursuant to G.S. 1C-812, or may
- 7 make other specific provision for the manner of
- 8 sale or other disposition of the asset. This
- 9 provision does not affect the power of a receiver
- 10 operating a business or other enterprise to make
- 11 sales in the ordinary course of business;
- 12 g. to take other appropriate actions ordered by the
- 13 court.

14 (4) must cause appropriate notice to be served upon creditors

15 whose claims will be affected by his receivership and require

16 them to assert their claims;

17 (5) must prepare a schedule of property and claims subject to

18 his receivership;

19 (6) must prepare a plan for the distribution or disposition of

20 property subject to the receivership;

21 (7) must distribute the property in accordance with the order

22 of the court;

23 (8) must make a final accounting to the court and such other

24 accounting as the court directs.

25 "§ 1C-1404. Effect of receivership.--(a) The appointment of a

26 limited receiver does not create a lien or other special interest

27 in property of the debtor, but the receiver may effectively

28

1 transfer the title to property which he is empowered to convey.

2 (b) The appointment of a limited receiver does not stay
3 pending actions, but the court which appoints the receiver may
4 stay actions which affect the receivership.

5 "§ 1C-1405. Orders in support of receivership.--The court may
6 grant injunctive relief in accordance with G.S. 1C-1201 or enter
7 other appropriate orders in support of the receivership.

8 "§ 1C-1406. Compensation of receiver; counsel fee.--The court
9 must provide by order for the reasonable compensation of the
10 receiver for his services, not to exceed five percent (5%) upon
11 receipts and disbursements, (unless upon a showing of special
12 circumstances the court orders a larger amount) and for the costs
13 and expenses of administration. The court may allow counsel fees
14 for an attorney serving as receiver (in addition to compensation
15 as receiver) for professional services rendered as attorney
16 beyond the ordinary routine of a receivership and of a type which
17 would reasonably justify the retention of legal counsel by any
18 such receiver not himself licensed to practice law.

19 G.S. 1C-1407 through G.S. 1C-1500: Reserved for future
20 codification.

21 "ARTICLE 15.

22 "General Receivership.

23 "§ 1C-1501. Authorization for general receiver.--(a) A
24 general receiver may be appointed:

25 (1) upon petition of a person seeking appointment of a
26 receiver for himself;

27 (2) upon petition of a creditor of a person who is
28

1 unable to pay his debts as they become due;

2 (3) upon petition of a creditor or a shareholder of a
3 corporation which has suspended its operations or
4 has lost or forfeited its right to do business in
5 this State.

6 (b) A general receivership is an independent proceeding for
7 the general dissolution and distribution of the assets of a
8 business, enterprise, or individual.

9 (c) A general receivership is authorized only when the court
10 finds:

11 (1) that the person to be placed in receivership

12 a. has consented or himself petitioned for
13 receivership, or

14 b. is unable to pay his debts as they become due,
15 or

16 c. is a corporation which has suspended its
17 operations or has lost or forfeited its right
18 to do business in this State, and

19 (2) that

20 a. the person is not able to continue his affairs
21 and meet his obligations, or

22 b. that a corporation is not in a position to
23 resume its operations and

24 (3) that the interests and rights of creditors or
25 shareholders will be adversely affected if a
26 receiver is not appointed.

27 "§ 1C-1502. Procedure.--(a) General receivership is initiated

28

1 by petition.

2 (b) The court may, upon sufficient showing of appropriateness
3 of the relief, direct that proceedings for limited receivership
4 be converted to general receivership. The court must then enter
5 orders severing the proceeding, providing for any necessary
6 additional service of pleadings and process, and other procedural
7 steps.

8 (c) There is no right to a jury trial with regard to whether a
9 receiver should be appointed. There may be a jury trial as to
10 any issue of fact relating to the receivership.

11 (d) If the court finds that a receiver should be appointed it
12 must do so by appropriate order.

13 (e) The debtor must file a schedule of his creditors, their
14 addresses, and the amounts owed them.

15 (f) The receiver must notify the creditors to file their claims
16 by a specified date, not less than 30 days after the date of the
17 notice. Notice must also be given by newspaper publication in a
18 manner approved by the court.

19 "§ 1C-1503. Powers and duties of general receiver.--A general
20 receiver:

21 (1) must give bond as provided in Article 5, Part 4, Bonds
22 (G.S. 1C-510 et seq.);

23 (2) must take an oath for the faithful performance of his
24 duties;

25 (3) must notify creditors as provided in G.S. 1C-502(f);

26 (4) must take possession of the property of the debtor not
27 allocated as exempt;

28

1 (5) must secure the allocation of the debtor's exemption if
2 that has not been done;

3 (6) must collect all amounts owed to the debtor;

4 (7) may initiate and prosecute all legal proceedings necessary
5 to the conduct of his duties;

6 (8) must examine and pass upon claims against the debtor. A
7 creditor whose claim is disallowed may upon motion made within 10
8 days of notice of the disallowance have a jury trial upon issues
9 of fact relating to his claim;

10 (9) unless the court orders otherwise must liquidate the
11 property of the debtor and distribute it in accordance with the
12 relative rights and priorities of creditors who have filed claims
13 and the debtor. The court may order otherwise when receivers are
14 appointed for public utilities or other entities affected by
15 public interest, or when a change in circumstances justifies
16 termination of the receivership other than through completion of
17 dissolution and distribution;

18 (10) must file a final account of his receipts and
19 disbursements, and such additional accounts as the court directs.

20 "§ 1C-1504. Effect of general receivership.--A general
21 receivership has the following effects:

22 (1) all actions and proceedings (including enforcement of liens
23 and sales under power of sale) for the enforcement of obligations
24 of the person in receivership are stayed;

25 (2) effective upon entry of his order of appointment the
26 receiver is vested with the title of the debtor in all the
27 debtor's property and also has all the rights of a creditor

28

1 holding a perfected judicial lien on the debtor's property;

2 (3) creditors who fail to file their claims as required are
3 barred.

4 "§ 1C-1505. Compensation of receiver; counsel fee.--The court
5 must provide by order for the reasonable compensation of the
6 receiver for his services, not to exceed five percent (5%) upon
7 receipts and disbursements, (unless upon a showing of special
8 circumstances the court orders a larger amount) and for the costs
9 and expenses of administration. The court may allow counsel fees
10 for an attorney serving as receiver (in addition to compensation
11 as receiver) for professional services rendered as attorney
12 beyond the ordinary routine of a receivership and of a type which
13 would reasonably justify the retention of legal counsel by any
14 such receiver not himself licensed to practice law.

15 G.S. 1C-1506 through G.S. 1C-1600: Reserved for future
16 codification.

17 "ARTICLE 16.

18 "Exempt Property.

19 "§ 1C-1601. Exempt property.--(a) Exempt property. A resident
20 of this State who is a debtor is entitled to retain, free of the
21 enforcement of the claims of his creditors:

22 (1) a residence consisting of the principal dwelling of
23 the individual, whether it consists of real or
24 personal property, and the tract of land upon which
25 it is located, together with reasonable access to
26 it. The tract of land is limited to a lot or tract
27 not to exceed one acre, except that if there are
28

1 ordinances, subdivision restrictions, restrictive
2 covenants or the like not permitting reduction to
3 one acre, the smallest permissible unit is
4 applicable. The court may by appropriate order
5 sever and divide property in excess of the amount
6 provided or property related to business purposes;

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

9 (3) income or benefits as follows:

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

17 b. that amount protected from withholding for the
18 payment of debt by 15 U. S. C. Section 1671
19 and following sections, as amended, or the sum
20 of one thousand dollars (\$1,000) per month in
21 earned or unearned income, whichever is the
22 greater sum. The court must, by order,
23 increase the amount exempted to the level it
24 finds adequate to meet the reasonable support
25 needs of the debtor and his dependents for
26 health, care, and protection;

27 c. a reasonable amount for rent, as determined by
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1 the court, when the debtor does not have a
2 residence which qualifies under subdivision
3 (1).

4 (4) personal property as follows:

5 a. the sum of one thousand dollars (\$1,000) in
6 money or property for the judgment debtor, and
7 the additional sum of five hundred dollars
8 (\$500.00) for each person dependent upon the
9 judgment debtor for support, after deducting
10 from the value of such property the amount of
11 valid security interests or liens against it
12 other than judicial liens. A person claiming
13 a separate exemption, or who is claimed as a
14 dependent by another judgment debtor, may not
15 be considered in computing the amount provided
16 in this subdivision;

17 b. health aids reasonably necessary to enable the
18 individual or a dependent to work or to
19 sustain health.

20 (5) A burial plot for the individual and his family.

21 (b) Waiver. The court may not permit waiver of the exemptions
22 provided in this Article to the extent the exemptions are
23 necessary to ensure the reasonable support needs of the judgment
24 debtor's dependents. The exemptions provided in this Article
25 cannot otherwise be waived except by:

26 (1) transfer of property allocated as exempt (and in
27 that event only as to the specific property
28

1 transferred), or
2 (2) written waiver, after judgment, approved by the
3 court. The exemption for wages cannot be waived
4 prior to the entry of an order for collection from
5 wages. The court must find that the waiver is made
6 freely, voluntarily, and with full knowledge of the
7 debtor's rights to exemptions and that he is not
8 required to waive them;

9 (3) failure to assert the exemption after notice to do
10 so pursuant to G.S. 1C-1603, if the court finds
11 that the debtor was capable of asserting the
12 exemption, but such a failure does not constitute a
13 waiver of the exemption for wages. The court may
14 relieve such a waiver made by reason of mistake,
15 surprise or excusable neglect, to the extent that
16 the rights of innocent third parties are not
17 affected.

18 (c) Exceptions.--The exemptions provided in this Article are
19 inapplicable to claims

20 (1) of the United States or its agencies as provided by
21 federal law;

22 (2) of the State or its subdivisions for taxes or
23 appearance bonds;

24 (3) of lien by a laborer for work done and performed
25 for the person claiming the exemption, but only as
26 to the specific property affected;

27 (4) of lien by a mechanic for work done on the
28

1 premises, but only as to the specific property
2 affected;

3 (5) for payment of obligations contracted for the
4 purchase of the specific property affected;

5 (6) for the repair or improvement of the specific
6 property affected;

7 (7) for contractual security interests in the specific
8 property affected; provided, that the exemptions
9 shall apply to the debtor's household goods
10 notwithstanding any contract for a nonpossessory,
11 nonpurchase money security interest in any such
12 goods;

13 (8) for statutory liens, on the specific property
14 affected, other than judicial liens;

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

17 "§ 1C-1602. Alternative exemptions.--(a) If the allocation of
18 amounts provided in this Article is insufficient to meet
19 constitutionally mandated exemptions, the court may upon motion
20 of the debtor assign as exempt the additional property required
21 to satisfy those requirements. The exemptions provided in this
22 Article shall not be construed so as to affect the personal
23 property and homestead exemptions granted by Article X of the
24 Constitution of North Carolina.

25 (b) In lieu of the exemptions specified in G.S. 1C-1601(a), a
26 debtor may upon motion elect to have his property allocated as
27 exempt in accordance with the exemptions he would be entitled to
28

1 under the Federal Bankruptcy Code if he had filed a petition for
2 bankruptcy on the date of the motion. Such an election is final
3 and bars any entitlement to other exemptions provided in this
4 Chapter.

5 "§ 1C-1603. Procedure for setting aside exempt property.-- (a)
6 Motion or Petition; Notice

7 (1) A judgment debtor may have his exempt property
8 designated in a separate action, by a motion or
9 request in a pending case, or in a proceeding
10 relating to the enforcement of a money judgment.

11 (2) A judgment creditor may have the exempt property of
12 the debtor designated upon motion in a proceeding
13 to enforce a money judgment.

14 (3) In a proceeding for the enforcement of a money
15 judgment the court may determine that particular
16 property is not qualified as exempt even though
17 there has been no proceeding to designate the
18 exemption.

19 (4) If it appears in a proceeding under this Chapter
20 that exempt property may be affected and there has
21 been no allocation of exempt property, the court
22 must cause notice to be served upon the judgment
23 debtor advising him of his rights. The notice must
24 be substantially in the following form:

25 NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
26 _____ COUNTY DISTRICT COURT DIVISION
27 CVD
28 _____)

1 Judgment Creditor) NOTICE OF PETITION
 2) (OR MOTION)
 3 vs.) TO SET OFF DEBTOR'S
 4 -----) EXEMPT PROPERTY
 5 Judgment Debtor)

6 GREETINGS:

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

13 It is important that you respond to this notice no later
 14 than twenty (20) days after you receive it because you may lose
 15 valuable rights if you do nothing. If you do not understand what
 16 is required of you in this proceeding, contact

17 _____ (NAME) _____, _____ (ADDRESS) _____, _____ (TELEPHONE) _____,

18 who is responsible to the court for making sure you have
 19 assistance in understanding and completing the form which is
 20 attached to this notice. You may wish to consider hiring an
 21 attorney to help you with this proceeding to make certain that
 22 you receive all the protections to which you are entitled under
 23 the North Carolina Constitution and laws.

24 (b) Contents of motion or petition. The motion or petition
 25 must:

- 26 (1) name the judgment debtor;
- 27 (2) name the judgment creditors of the debtor insofar

28

1 as they are known to the movant;
 2 (3) if it is a motion to modify a previously allocated
 3 exemption, describe the change of condition and the
 4 modification desired.

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

- 7 (1) his assets, including their location;
- 8 (2) his debts and the names and addresses of his
 9 creditors;
- 10 (3) the property which he desires designated as
 11 exempt.

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

13 NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
 14 _____ COUNTY DISTRICT COURT DIVISION
 15 CVD

17 Judgment Creditor)
 18) SCHEDULE OF DEBTOR'S
 19) PROPERTY AND
 20 vs.) REQUEST TO SET ASIDE
 21) EXEMPT PROPERTY
 22 Judgment debtor)

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

- 25 1. That I am a citizen and resident of _____
 26 County, North Carolina;
- 27 2. That I was born on (date of birth);

1 3. That I am (married to (spouse's name)) (not
2 married);

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

5 NAME	RELATIONSHIP TO DEBTOR	AGE
6 -----	-----	---
7 -----	-----	---
8 -----	-----	---
9 -----	-----	---

10 (Use additional space, as necessary)

11 5. That (I own) (I am purchasing) (I rent) [choose
12 one; mark out the other choices] a (house) (trailer) (apartment)
13 [choose one; mark out the other choices] located at (address,---
14 city, zip code) which is my residence.

15 6. That I (do) (do not) own any other real property.
16 [If other real property is owned, list that property on the
17 following lines; if no other real property is owned, mark "not
18 applicable" on the first line.

19 -----
20 -----
21 -----
22 -----

23 7. That I (am employed by) (am self employed as) (am
24 not employed).

25 (NAME OF EMPLOYER OR SELF EMPLOYED , EMPLOYER'S
26 ADDRESS) , TELEPHONE

27 8. That my rate of pay from my employment is _____
28 per (week) (bi-weekly) (month) (year) before the deduction of

1 taxes, social security, insurance, union dues, credit union
2 deductions or any other deduction.

3 OR

4 8. That I receive public benefit payments in the
5 amount of _____ per month as (unemployment benefits) (AFDC)
6 (SSI) (other social security payments).

7 OR

8 8. That I receive _____ per month from (a private
9 pension plan) (veterans pension) (trust) investments.

10 9. That I have the following other regular sources of
11 income.

12	<u>Reason for Pay't.</u>	<u>Source of Income</u>	<u>Amount</u>	<u>Period of Pay't.</u>
13	-----	-----	-----	-----
14	-----	-----	-----	-----
15	-----	-----	-----	-----

16 10. That the following persons are, so far as I am
17 able to tell, all of the persons or companies to whom I owe
18 money:

19	-----	-----	-----
20	-----	-----	-----

21 11. That I wish to claim the following residence,
22 which is my principal dwelling, as exempt from the claims of
23 my creditors:

24 Address _____

25 Names of Owners of Record _____

26 Number of Acres _____

27 OR

28 11. That I wish to claim a reasonable amount of rent

1 as exempt.

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

5	<u>Name of Insurer</u>	<u>Policy Number</u>	<u>Face Value</u>	<u>Beneficiary(ies)</u>
6	-----	-----	-----	-----
7	-----	-----	-----	-----

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

11	<u>Item</u>	<u>Purpose</u>	<u>Person using item</u>
12	-----	-----	-----
13	-----	-----	-----
14	-----	-----	-----

15 14. That I wish to claim the following burial plots
 16 for myself and/or my dependents as exempt:

17	<u>Number of plots</u>	<u>Cemetery Name</u>	<u>Location</u>
18	-----	-----	-----

19 15. That I wish to claim the following personal
 20 property as exempt from the claims of my creditors and that I
 21 understand that I am entitled to the sum of \$1,000 worth of
 22 personal property for myself and the sum of \$500 for each person
 23 dependent upon me for support, computed after deduction from the
 24 value of such property any valid liens or purchase money
 25 security interests.

26	<u>Item of Property</u>	<u>Location</u>	<u>Estimated value</u>
27	<u>(or class of property)</u>	-----	-----
28	-----	-----	-----

1 _____
2 _____

3 16. That I wish to claim the full amount of any
4 exemption available to me under North Carolina law relating to
5 the garnishment of my wages.

6 17. That the following is a complete listing of all
7 of my assets which I have not claimed as exempt under any of the
8 preceding paragraphs:

9 <u>Item</u>	<u>Location</u>	<u>Estimated value</u>
10 _____	_____	_____
11 _____	_____	_____

12 This the ____ day of _____, 19__.

13

14

Judgment Debtor

15

16 Sworn to and Subscribed before

17 me this ____ day of _____, 19__.

18

19 Notary Public

My Commission Expires:

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

22 (d) Notice to persons affected.

23 (1) If the debtor does not initiate the proceeding, he
24 must be served with summons and the petition,
25 motion or notice directed by the court. He must
26 then file the statement required by subsection (c)
27 and may respond.

28

1 (2) Notice of the hearing must be given to each
2 creditor scheduled by the debtor or known to the
3 petitioner or movant.

4 (e) Procedure for setting aside exempt property.

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

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

12 (3) If objection is made the court must determine the
13 value of the property. The court may appoint a
14 qualified person to examine the property and
15 report its value to the court. Compensation of
16 that person is a court cost having priority over
17 the claims.

18 (4) If the debtor fails to file the statement required
19 by subsection (c) the court must determine whether
20 the failure is willful.

21 (5) The court must enter an order designating the
22 exempt property and directing any steps necessary
23 to designate it. Supplemental reports and orders
24 may be filed and entered as necessary to reflect
25 implementation of the order.

26 (6) The court may permit a particular item of property
27 having value in excess of the allowable exemption
28

1 to be retained by the debtor upon his making
2 available to creditors money or property not
3 otherwise available to them in an amount equivalent
4 to the excess value. Priorities of creditors are
5 the same in the substituted property as they were
6 in the original property. The court may provide
7 for the sale of property having excess value and
8 appropriate distribution of the proceeds at a time
9 and in a manner fixed by the order.

10 (f) Docketing and recording of order. A copy of the order of
11 the court must be docketed and indexed by the clerk of court
12 under the name of the debtor in each county in which the debtor
13 has assets. If real property is included, a copy must be
14 recorded in the office of the register of deeds in each county in
15 which it is located.

16 (g) Modification. The debtor's exemption may be modified upon
17 a change of circumstances, by motion in the original exemption
18 proceeding, made by the debtor or anyone interested. A
19 substantial change in value may constitute changed circumstances.
20 Modification may include the substitution of different property
21 for the exempt property.

22 "§ 1C-1604. Effect of exemption.--(a) Property allocated to
23 the debtor as exempt is free of the enforcement of the claims of
24 creditors for indebtedness incurred before or after the exempt
25 property is set aside, other than claims excepted by G.S. 1C-
26 1601(c), for so long as the debtor owns it. When the property is
27 conveyed to another, the exemption ceases as to liens attaching
28

1 prior to the conveyance. Creation of a security interest in the
2 property does not constitute a conveyance within the meaning of
3 this section, but a transfer in satisfaction of, or for the
4 enforcement of, a security interest is a conveyance. When exempt
5 property is conveyed, the debtor may have other exemptions
6 allotted.

7 (b) Exempt property which passes by bequest, devise intestate
8 succession or gift to a dependent spouse, child or person to
9 whom the debtor stands in loco parentis, continues to be exempt
10 while held by that person. The exemption is terminated if the
11 spouse remarries, or, with regard to a dependent, when the court
12 determines that dependency no longer exists.

13 G.S. 1C-1605 through G.S. 1C-1700: Reserved for future
14 codification.

15 "ARTICLE 17.

16 "Liability for Misuse or Improper Avoidance of Collection
17 Procedures.

18 "§ 1C-1701. Liability governed by this Article.--Liability for
19 misuse of procedures under this Chapter is governed by this
20 Article. This Article does not abrogate other statutory
21 remedies.

22 "§ 1C-1702. Liability on bond.--(a) When this Chapter permits
23 or requires a bond as a prerequisite to the granting of relief,
24 the obligors and sureties are liable for breach of the conditions
25 of the bond in accordance with its terms.

26 (b) Recovery on a bond does not bar the right to recovery
27 under G.S. 1C-1703 in the same or in an independent proceeding,
28

1 but there may not be multiple recovery for the same acts.

2 "§ 1C-1703. Liability for misuse or improper avoidance of
3 procedures.--(a) Any person who knowingly:

4 (1) makes any false statement or claim to secure or
5 defeat remedies authorized by this Chapter, or

6 (2) secures remedies under this Chapter for purposes
7 other than those for which they are authorized, or

8 (3) obtains remedies under this Chapter to which he is
9 not entitled, or

10 (4) conceals or disposes of assets or takes other
11 action to improperly defeat the remedies provided
12 in this Chapter

13 is liable to the party injured for his actual damages. Punitive
14 damages are recoverable if the claimant establishes that the
15 action was taken with the actual intent to cause monetary or
16 other damage to the claimant.

17 (b) Claims under this section may be asserted by motion or
18 independent action.

19 G.S. 1C-1704 through G.S. 1C-1800: Reserved for future
20 codification.

21 "ARTICLE 18.

22 "Protective Orders for Debtors.

23 "§ 1C-1801. Protective orders for debtors.--(a)
24 Authorization. A court authorized to grant remedies under this
25 Chapter may enter an order for the protection of the debtor in
26 the manner provided in this Article.

27 (b) Procedure.

28

1 (1) The debtor or any dependent of the debtor affected
2 by the proceedings may by motion in any proceeding
3 authorized by this Chapter seek a protective order.
4 Reasonable notice and opportunity to be heard must
5 be given to any person to be affected by the order.
6 If granted, the order must be served upon persons
7 affected by it.

8 (2) The court may on its own motion enter a protective
9 order.

10 (c) Grounds for relief; denial of relief.

11 (1) Relief may be granted upon a finding by the court
12 that it is necessary to protect the debtor or his
13 dependents from undue harassment or injury to
14 person, property, or reputation, having due regard
15 to the rights of the claimant.

16 (2) Relief may be denied if the court finds that the
17 debtor is improperly seeking to avoid payment of an
18 obligation he is capable of satisfying without the
19 protection of the court.

20 (d) Remedies. The court may:

21 (1) limit the extent of, stay, or impose conditions
22 upon, any of the remedies authorized by this
23 Chapter. The limitation may be with regard to the
24 property affected, the extent of judicial liens,
25 the remedies which may be utilized, or the time at
26 which a remedy may be utilized;

27 (2) prohibit or limit contacts by mail, telephone, in
28

- 1 person, or otherwise with the debtor's family,
2 relatives, employers or associates;
- 3 (3) require a bond as a condition to the granting of
4 remedies under this Chapter when it appears
5 necessary for the protection of the debtor's
6 interests;
- 7 (4) prohibit, stay or limit prejudgment remedies to the
8 extent that the action seeks money damages when the
9 party against whom relief is sought posts an
10 adequate bond. This provision does not limit
11 subdivision (1);
- 12 (5) prohibit advertisements, publicity, and the like
13 with regard to the claim;
- 14 (6) enter other appropriate orders for the protection
15 of the debtor which do not deprive the creditor of
16 rights to which he is entitled.

17 (e) Bond. The court may require a bond of the debtor as a
18 condition to relief under this Article."

19 Sec. 2. G.S. 1A-1, Rule 62(a), is amended by striking
20 out the first sentence thereof.

21 Sec. 3. Chapter 162 of the General Statutes is amended
22 by inserting the following section:

23 "§ 162-14. Use of force by officer in collection proceedings;
24 entry on property, bond.--(a) In carrying out his duties under
25 Chapter 1C of the General Statutes an officer may use no more
26 force than is reasonably necessary to comply with the directive
27 of the court. The order granting relief or a protective order
28

1 may include directions or limitations with regard to the use of
2 force.

3 (b) When directed to seize property or carry out other duties
4 under Chapter 1C of the General Statutes, the officer may make
5 peaceable entry upon the premises of the debtor or others in
6 order to comply with the directive of the court. The officer may
7 force entry when authorized to do so by the court and when
8 peaceable entry has been attempted and cannot reasonably be
9 obtained."

10 Sec. 4. G.S. 1-339.41 is amended by:

11 (1) Rewriting the catchline to read, "Definitions;
12 applicability."

13 (2) Adding the following subsection:

14 "(c) This Article does not apply to the enforcement of
15 judgments pursuant to Chapter 1C of the General Statutes, except
16 as expressly provided therein."

17 Sec. 5. G.S. 1-339.1(a) is amended by deleting
18 subdivision (5) and by redesignating the remaining subdivisions
19 appropriately.

20 Sec. 6. If any General Statute refers to a provision
21 repealed by this act and replaced by a comparable provision or
22 one which produces the same or an equivalent result, the
23 reference is deemed to refer to the appropriate section of this
24 act.

25 Sec. 7. The following sections of the General Statutes
26 are repealed:

27	1-116 (a) (3)	1-339.41	1-356	1-409
28	1-210	1-339.42	1-357	1-410

1	1-234	1-339.43	1-358	1-411
2	1-237	1-339.44	1-359	1-412
3	1-239	1-339.45	1-360	1-413
4	1-241	1-339.46	1-361	1-414
5	1-245	1-339.47	1-362	1-415
6	1-246	1-339.48	1-363	1-416
7	1-302	1-339.49	1-364	1-417
8	1-303	1-339.50	1-365	1-418
9	1-304	1-339.51	1-366	1-419
10	1-305	1-339.52	1-367	1-420
11	1-306	1-339.53	1-368	1-421
12	1-307	1-339.54	1-369	1-422
13	1-308	1-339.55	1-370	1-423
14	1-309	1-339.56	1-371	1-424
15	1-310	1-339.57	1-372	1-425
16	1-311	1-339.58	1-373	1-426
17	1-312	1-339.59	1-374	1-427
18	1-313	1-339.60	1-375	1-428
19	1-314	1-339.61	1-376	1-429
20	1-315	1-339.62	1-377	1-430
21	1-316	1-339.63	1-378	1-431
22	1-317	1-339.64	1-379	1-432
23	1-318	1-339.65	1-380	1-433
24	1-319	1-339.66	1-381	1-434
25	1-320	1-339.67	1-382	1-435
26	1-321	1-339.68	1-383	1-436
27	1-322	1-339.69	1-384	1-437
28	1-323	1-339.70	1-385	1-438

1	1-324.1	1-339.71	1-386	1-439
2	1-324.2	1-352	1-387	1-440.1
3	1-324.3	1-352.1	1-388	1-440.2
4	1-324.4	1-352.2	1-389	1-440.3
5	1-324.5	1-353	1-390	1-440.4
6	1-324.6	1-354	1-391	1-440.5
7	1-324.7	1-355	1-392	1-440.6
8	1-440.7	1-440.26	1-440.45	1-507.1
9	1-440.8	1-440.27	1-440.46	1-507.2
10	1-440.9	1-440.28	1-440.47	1-507.3
11	1-440.10	1-440.29	1-440.48	1-507.4
12	1-440.11	1-440.30	1-440.49	1-507.5
13	1-440.12	1-440.31	1-440.50	1-507.6
14	1-440.13	1-440.32	1-440.51	1-507.7
15	1-440.14	1-440.33	1-440.52	1-507.8
16	1-440.15	1-440.34	1-440.53	1-507.9
17	1-440.16	1-440.35	1-440.54	1-507.10
18	1-440.17	1-440.36	1-440.55	1-507.11
19	1-440.18	1-440.37	1-440.56	7A-225
20	1-440.19	1-440.38	1-440.57	39-15
21	1-440.20	1-440.39	1-480	39-16
22	1-440.21	1-440.40	1-501	39-17
23	1-440.22	1-440.41	1-502	39-18
24	1-440.23	1-440.42	1-503	39-19
25	1-440.24	1-440.43	1-504	39-20
26	1-440.25	1-440.44	1-505	39-21
27				39-22
28				

1 Sec. 8. The sum of one thousand dollars (\$1,000) per
2 month in exempt wages set forth in G.S. 1C-1601(a)(3)b is
3 increased to one thousand one hundred dollars (\$1,100) per month
4 on January 1, 1983, and similarly increased by the sum of one
5 hundred dollars (\$100.00) per month on January 1 of each year
6 thereafter. This amount does not constitute a vested right and
7 may be modified by the General Assembly.

8 Sec. 9. If any portion of this act is declared
9 unconstitutional, the remaining unaffected portions are declared
10 to be severable and separate and continue in effect.

11 Sec. 10. All laws and clauses of laws in conflict with
12 this act are repealed.

13 Sec. 11. G.S. 75-51(6) as the same appears in the 1979
14 Cumulative Supplement to the 1975 Replacement of Volume 2C of the
15 General Statutes is hereby amended by adding the following new
16 language:

17 "For the purposes of this section, garnishment of wages is not
18 permitted by law if all the consumer's wages may be claimed as
19 exempt. The burden is on the creditor to make such
20 determination."

21 Sec. 12. (a) G.S. 1-47(1) is amended by adding at the
22 end thereof a new sentence to read as follows:

23 "This subdivision does not apply to judgments entered on or
24 after the effective date of this act."

25 (b) The codifier is directed to insert the effective
26 date of this act in lieu of the underlined material in subsection
27 (a) of this section and in G.S. 1C-307 of Section 1.

28

1 Sec. 13. This act is effective October 1, 1982, and
2 applies to all actions and proceedings initiated before and after
3 that date. If a proceeding has been initiated prior to that date
4 the court may enter appropriate transitional orders.

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NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

PROPOSED AMENDMENT ON TENANCY BY ENTIRETY

H. B. No. _____

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

Rep.)

)

Sen.)

moves to amend the bill on page _____, line _____,

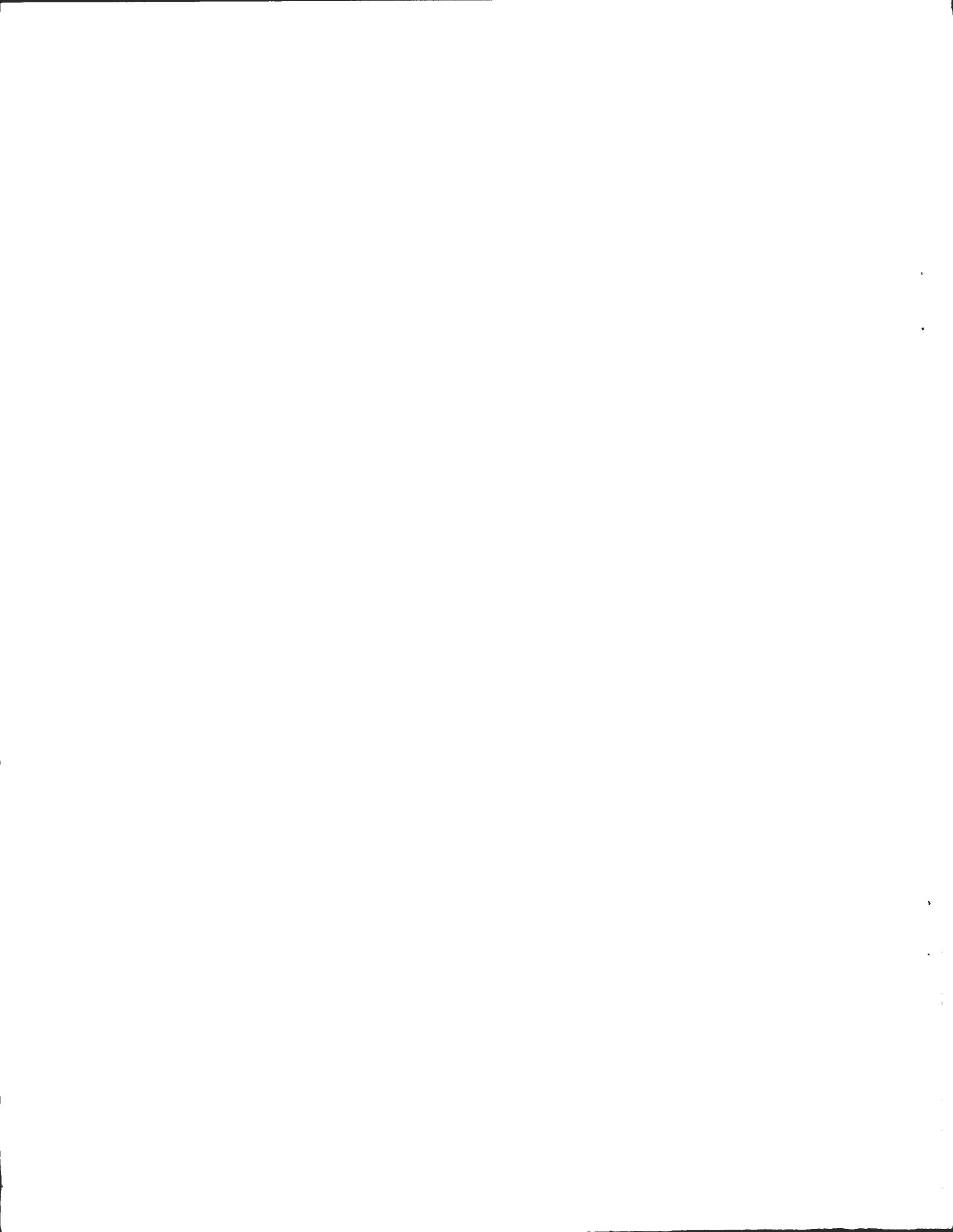
by renumbering Section 3 to 13 as 4 to 14, respectively, and by
adding a new Section 3 to read:

"Sec. 3. (a) Chapter 41 of the General Statutes is
amended by inserting the following section:

"§41-2.3. Interests in tenancy by entirety subject
to debts.--(a) The interest of a spouse in a tenancy by the en-
tirety is subject to the debts of the spouse, and severable
for that purpose, in the manner and to the extent provided by
this section. For the purpose of this section the interest of a
spouse in a tenancy by the entirety does not exceed one-half of
the value of the property. Either spouse may also show that the
debtor spouse contributed less than one-half to their obtaining
the property and the debtor spouse's share is reduced accordingly.
Contributions of a spouse include sums expended for acquisition,
maintenance and improvement. Rents and profits may be reached in

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

Page 2

H. B. No. _____

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

Rep.)

Sen.)

moves to amend the bill on page _____, line _____,

~~by~~ accordance with the pro rata rights of the spouses.

(b) The interest of a debtor spouse may be reached only when
it is shown that

(1) The contribution of the debtor spouse to the purchase
of the property is attributable to that spouse's trade or
business, or

(2) The property held by the entireties has been utilized
for business purposes, and

(3) The debt arises out of
a. an action in fraud, or
b. an action in which punitive damages were awarded, or
c. an action in contract or tort, arising out of a trade
or business.

(c) In a proceeding against property held by the entireties,
either spouse may assert the exemption of the debtor with regard
to the entirety property.

(d) This section is applicable to estates by the entirety created

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

Page 3

H. B. No. _____

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

Rep.)

Sen.)

moves to amend the bill on page _____, line _____,

~~xxx~~ after the effective date of this act.

(e) This section becomes applicable to estates by the entirety created before its effective date upon the expiration of three years from that date, unless prior to that time one or both of the spouses records in the office of the register of deeds in the county where the property is located a claim of exemption from this section or the property has been conveyed to another person. The notice must state that exemption is claimed under this section, name the spouses, identify the deed or instrument under which the property is held (including book and page), and be signed, sealed, authenticated, probated and recorded in the same manner as a deed. The register of deeds must record the instrument and index and cross-index it in the names of both spouses.

(f) The right to assert the existence of an estate by the entirety created prior to the effective date of this act is waived by a spouse who:

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____



AMENDMENT

(Please type or use ballpoint pen)

Page 4

H. B. No. _____

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

Rep.)

)

Sen.)

moves to amend the bill on page _____, line _____,

by (1) fails to file a claim of exemption within the time
provided in subsection (e), or

(2) fails to assert the estate in a proceeding for collec-
tion of a money judgment, or

(3) lists the property as an available asset in a financial
statement relied upon by a creditor, or

(4) lists the property as an available asset in an exemption
proceeding."

(b) The codifier is directed to insert the effective date of
this act in lieu of the underlined material in subsection (a).

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

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