

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1981

D

H

HOUSE BILL 313  
Committee Substitute Adopted 4/30/81  
Proposed Committee Substitute PCS1097

Short Title: Money Judgments; Part 3.

(Public)

Sponsors: Representative

Referred to: Judiciary III.

February 26, 1981

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

4 The General Assembly of North Carolina enacts:

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

7 "ARTICLE 16.

8 "EXEMPT PROPERTY.

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

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

20

21

- 1                   (2)    The debtor's aggregate interest in any property,  
2                                   not to exceed two thousand five hundred dollars  
3                                   (\$2,500) in value less any amount of the exemption  
4                                   used under subdivision (1).
- 5                   (3)    The debtor's interest, not to exceed one thousand  
6                                   dollars (\$1,000) in value, in one motor vehicle.
- 7                   (4)    The debtor's aggregate interest, not to exceed two  
8                                   thousand five hundred dollars (\$2,500) in value for  
9                                   the debtor plus five hundred dollars (\$500) for  
10                                  each dependent of the debtor, in household  
11                                  furnishings, household goods, wearing apparel,  
12                                  appliances, books, animals, crops, or musical  
13                                  instruments, that are held primarily for the  
14                                  personal, family, or household use of the debtor or  
15                                  a dependent of the debtor.
- 16                   (5)    The debtor's aggregate interest, not to exceed five  
17                                  hundred dollars (\$500) in value, in any implements,  
18                                  professional books, or tools of the trade of the  
19                                  debtor or the trade of a dependent of the debtor.
- 20                   (6)    Life insurance as provided in Article X, Section 5  
21                                  of the Constitution of North Carolina.
- 22                   (7)    Professionally prescribed health aids for the  
23                                  debtor or a dependent of the debtor.
- 24                   (8)    Compensation for personal injury or compensation  
25                                  for the death of a person upon whom the debtor was  
26                                  dependent for support, but such compensation is not  
27                                  exempt from claims for funeral, legal, medical,  
28

1 dental, hospital, and health care charges related  
2 to the accident or injury giving rise to the  
3 compensation.

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

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

12 (1) transfer of property allocated as exempt (and in  
13 that event only as to the specific property  
14 transferred), or

15 (2) written waiver, after judgment, approved by the  
16 court. The court must find that the waiver is made  
17 freely, voluntarily, and with full knowledge of the  
18 debtor's rights to exemptions and that he is not  
19 required to waive them;

20 (3) failure to assert the exemption after notice to do  
21 so pursuant to G.S. 1C-1603, if the court finds  
22 that the debtor had a reasonable opportunity to  
23 assert the exemption. The court may relieve such a  
24 waiver made by reason of mistake, surprise or  
25 excusable neglect, to the extent that the rights of  
26 innocent third parties are not affected.

27 (d) Recent purchases. The exemptions provided in subdivisions  
28

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

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

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

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

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

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

10 "§ 1C-1602. Alternative exemptions.--If the allocation of  
11 amounts provided in this Article is insufficient to meet  
12 constitutionally mandated exemptions, the court may upon motion  
13 of the debtor assign as exempt the additional property required  
14 to satisfy those requirements. If the debtor elects to take the  
15 personal property and homestead exemptions provided in Article X  
16 of the Constitution of North Carolina in property other than that  
17 exempted by G.S. 1C-1601, then the exemptions provided by G.S.  
18 1C-1601 shall not apply and in that event the exemptions provided  
19 in this Article shall not be construed so as to affect the  
20 personal property and homestead exemptions granted by Article X  
21 of the Constitution of North Carolina.

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

24 (1) A judgment debtor may have his exempt property  
25 designated in a separate action before the clerk or  
26 a district court judge, by a motion or petition in  
27 a pending case (except a case before a magistrate),  
28

1 or in a proceeding relating to the enforcement of a  
2 money judgment (including an execution or a  
3 supplemental proceeding).

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

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

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

21 NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

22 \_\_\_\_\_ COUNTY

DISTRICT COURT DIVISION

23 CVD

24 \_\_\_\_\_ )

25 Judgment Creditor )

NOTICE OF PETITION

26 \_\_\_\_\_ )

(OR MOTION)

27 vs. \_\_\_\_\_ )

TO SET OFF DEBTOR'S

28 \_\_\_\_\_ )

EXEMPT PROPERTY

Judgment Debtor )

GREETINGS:

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

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

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

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

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

- (1) his assets, including their location;

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

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

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

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

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

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

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

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

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

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

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

28 (Use additional space, as necessary)



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

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

9 \_\_\_\_\_  
 10 \_\_\_\_\_  
 11 \_\_\_\_\_  
 12 \_\_\_\_\_

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

16 \_\_\_\_\_  
 17 \_\_\_\_\_

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

26       Address \_\_\_\_\_  
 27       Names of Owners of Record \_\_\_\_\_  
 28       Estimated Value \_\_\_\_\_

1 Amount of Liens \_\_\_\_\_

2 Amount of Debtor's Interest \_\_\_\_\_

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

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

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

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

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

<u>Item</u>	<u>Estimated Value</u>
_____	_____
_____	_____
_____	_____

24 12. That I wish to claim the following personal  
25 property consisting of household furnishings, household goods,  
26 wearing apparel, appliances, books, animals, crops or musical  
27 instruments as exempt from the claims of my creditors. I affirm,  
28

1 that these items of personal property are held primarily for my  
 2 personal, family or household use or for such use by my  
 3 dependents.

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

11	<u>Item (or class)</u>	<u>Amount of Lien</u>	<u>Location</u>	<u>Estimated</u>
12	<u>of Property</u>	<u>or Security</u>		<u>Value of</u>
13		<u>Interest</u>		<u>Debtor's</u>
14				<u>Interest</u>
15	-----	-----	-----	-----
16	-----	-----	-----	-----
17	-----	-----	-----	-----

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

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

14. That I wish to claim as exempt the following compensation which I received for the personal injury of myself or a person upon whom I was dependent for support or compensation which I received for the death of a person upon whom I was dependent for support. I understand that this compensation is not exempt from claims for funeral, legal, medical, dental, hospital or health care charges related to the accident or injury which resulted in the payment of the compensation to me.

(a) amount of compensation \_\_\_\_\_

(b) method of payment: lump sum or installments \_\_\_\_\_

(If installments, state amount, frequency and duration of payments)

(c) name and relationship to debtor of person(s) injured or killed giving rise to compensation \_\_\_\_\_

(d) location of compensation if received in lump sum or installments \_\_\_\_\_

(e) unpaid debts arising out of the injury or death giving rise to compensation

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

15. That I wish to claim the following property as exempt because I claimed residential real or personal property as exempt that is worth less than \$2,500 or I made no claim for a residential exemption under section (8) above. I understand that

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

<u>Property</u>	<u>Location</u>	<u>Amount of Liens</u>	<u>Estimated</u>
		<u>or Purchase Money</u>	<u>Value of</u>
		<u>Security Interests</u>	<u>Debtor's</u>
			<u>Interest</u>
-----	-----	-----	-----
-----	-----	-----	-----
-----	-----	-----	-----
-----	-----	-----	-----

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

<u>Item</u>	<u>Location</u>	<u>Estimated value</u>
-----	-----	-----
-----	-----	-----

This the \_\_\_ day of \_\_\_\_\_, 19\_\_.

1  
2 Judgment Debtor

3 Sworn to and Subscribed before

4 me this \_\_\_ day of \_\_\_\_\_, 19\_\_.

5  
6 Notary Public

My Commission Expires:

7 (d) Notice to persons affected.

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

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

17 (e) Procedure for setting aside exempt property.

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

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

25 (3) If objection is made the court must determine the  
26 value of the property. The court may appoint a  
27 qualified person to examine the property and report  
28

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

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

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

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

25          (f) Notation of order on judgment docket. A notation of the  
26          order setting aside exempt property must be entered by the clerk  
27          of court on the judgment docket opposite the judgment that was

28

1 the subject of the enforcement proceeding. If the exempt  
2 property is designated in a separate action, the order shall be  
3 entered on the judgment docket.

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

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

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

27 (b) Exempt property which passes by bequest, devise intestate  
28



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

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

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

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28