

**REPORT OF THE EXEMPTION REVISION COMMITTEE**

**OF THE BANKRUPTCY SECTION OF THE  
NORTH CAROLINA BAR ASSOCIATION**

**ON REVISIONS TO NORTH CAROLINA'S LAWS  
WITH REGARD TO EXEMPTIONS**

**August 3, 2004**

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## INTRODUCTION

### Formation and Purpose of the Exemption Revision Committee

The Exemption Revision Committee was formed by the Bankruptcy Section Council of the North Carolina Bar Association at its meeting of November 7, 2002 out of a concern that the real and practical values of North Carolina's exemptions have diminished greatly since they were last revised in 1991. The Committee was formed to determine the position of, and the extent to which a consensus exists among, the members of the Bankruptcy Section of the North Carolina Bar Association on the issue of proposed adjustments and revisions to North Carolina laws regarding exemptions.

The members of the Committee were selected to be representative of the composition of the Bar as a whole. Some Committee members primarily represent bankruptcy debtors while others primarily represent creditors. A Chapter 7 Trustee and a staff attorney for the Bankruptcy Court are also members of the Committee. A list of the members of the Committee is included in the Appendix to this report. All members of this Committee have attempted to participate and make their recommendations from an unbiased (neither pro-debtor, nor pro-creditor) perspective. The Committee members believe that as attorneys we are entrusted with the ability and responsibility to effectuate changes and improvements in the law which would benefit our society as a whole, and each member has endeavored to participate in a impartial manner with the collective interests of all parties and the public as a whole as the overriding considerations.

### Overview of the Committee's Activities

Through a survey (discussed in more detail below), the Committee first determined that a consensus existed within the Bankruptcy Section that some or all of the dollar-amount exemptions set forth in N.C. Gen. Stat. § 1C-1601 should be increased and that other elements of North Carolina's laws regarding exemptions should be expanded. The Bankruptcy Section Council then authorized the Committee to solicit more specific input from the Bankruptcy Section and to draft proposed legislative changes for the Council's consideration.

Through a second survey the Committee solicited more specific input from the members of the Bankruptcy Section. The Committee then analyzed the survey results and other data and proceeded to draft proposed revisions to North Carolina's laws with regard to exemptions. In this report the Committee recommends that certain revisions be made to N.C. Gen. Stat. §§ 1C-1601 and 1-362. The recommended revisions and the justifications for them are set forth below.

## The First Survey

The Committee's first survey of the Bankruptcy Section (the "First Survey") focused on the overall general views of the Section members with regard to revising and raising North Carolina's exemptions. The First Survey was distributed to members of the Bankruptcy Section by email and by first class mail by inclusion in the Bankruptcy Section's Newsletter, the Disclosure Statement. (Only two section members responded by first class mail.) The First Survey was open from December 23, 2003 through February 28, 2004. 180 of the approximately 320 members of the Bankruptcy Section participated in the survey. The results of the First Survey revealed that substantial support exists for increasing some or all of the exemptions allowed under North Carolina law.

The results of the First Survey included the following:

- Approximately 74% strongly agree or agree that all of the exemption limits set forth in N.C. Gen. Stat. § 1C-1601 should be increased.
- Approximately 86% strongly agree or agree that some of the exemption limits set forth in N.C. Gen. Stat. § 1C-1601 should be increased.
- Approximately 74% strongly agree or agree that North Carolina should implement a mechanism providing for the automatic adjustment of the dollar-amounts of exemptions every three years according to changes in the consumer price index.
- Approximately 62% strongly agree or agree that North Carolina should consider a separate higher homestead exemption for elderly residents.

The results of the First Survey, together with the notice of and introduction to the First Survey that were provided to Bankruptcy Section members, are included in the Appendix to this report. The results of the First Survey can be viewed in more detail at the following link: <http://www.surveymonkey.com/DisplaySummary.asp?SID=344686&U=34468618284>. The results of the First Survey showed that there is substantial support for raising some or all of the exemptions set forth in N.C. Gen. Stat. § 1C-1601. Based on these results and the interest shown through the First Survey, and at the direction of the Bankruptcy Section Council, the Committee drafted a second survey seeking further input from the Bankruptcy Section regarding specific exemptions and proposed revisions (the "Second Survey").

## The Second Survey

The Second Survey was distributed to members of the Bankruptcy Section by email. The Second Survey was open from April 7, 2004 through May 10, 2004. 87 members of the Bankruptcy Section participated in the survey. The results of the Second Survey, together with the notification of and introduction to the Second Survey that were provided to Bankruptcy Section members, are included in the Appendix to this report. The results of the Second Survey can be viewed in more detail at the following link:

<http://www.surveymonkey.com/DisplaySummary.asp?SID=429898&U=42989821259>. (A summary of the answers to the Second Survey's open ended questions numbered 1 - 7, 15 - 18, and 25 - 27 precede the actual results.)

## The Committee's Analysis of Data and Drafting of Proposed Legislative Revisions

After the Second Survey was completed the Committee analyzed all of the available data and sought to determine what statutory revisions would be appropriate to recommend for endorsement by the Bankruptcy Section Council. Before the process of drafting proposed legislation was begun the Committee held lengthy discussions about what weight should be accorded to the majority opinion of the surveys, other data and statistics, and the federal exemptions. The Committee agreed that at least 3 criteria should be considered with regard to any proposed changes. These criteria included the following:

1. A proposal for a dollar-amount exemption should not exceed any applicable federal exemption by more than 25%;
2. A proposal for a dollar-amount exemption should be at or below the average-amount for such exemption as shown on the results of the Second Survey;
3. A proposal should be supported by 65% or more of the respondents to the Second Survey.

The Committee agreed that good and justifiable reasons should be given in the event that a proposal did not meet any of these applicable criteria.

## Conclusion

The dollar amounts of the exemptions allowed to North Carolina residents and contained in N.C. Gen. Stat. § 1C-1601 were last revised in 1991. The Committee believes that as a result of inflation and increases in the cost of living the current amounts of our State's exemptions now may not be adequate to fulfill the public policies for which they were enacted, to protect property necessary for a debtor's fresh start and for the support of a debtor and his/her family, and to insure that a debtor is able to be recover or maintain status as a productive member of the economy and of society.

It has been the experience of many Committee members that the dollar amounts found in the exemptions provided in N.C. Gen. Stat. § 1C-1601 are so low as to be impractical or meaningless. For example, when appraising a homestead, motor vehicle, or other exemptible property, reasonable appraisers often differ by more than the amount of the applicable exemption. The Committee doubts that a reliable motor vehicle can be obtained for \$1,500, or a mechanic's tools of the trade replaced for \$750. Further, more and more often the costs of litigating disputes over exemptions exceed the amount of the exemptions themselves - litigation under these circumstances is inefficient, counter-productive to both creditor and debtor, and does not advance the public policies for which our exemptions were enacted. The Committee also believes that certain other substantive changes and technical amendments to North Carolina's laws with regard to exemptions are appropriate to fulfill important public policies and/or to clarify the state of existing law.

This report contains the Committee's recommendations as to proposed changes to the North Carolina laws regarding exemptions. This report and the proposals contained herein are supported and have been approved by each member of the Committee. The Committee recommends that the Bankruptcy Section Council approve the proposed legislative revisions contained herein.

Respectfully submitted by the Exemption Revision Committee:

Algernon L. Butler, III - Chairman

Brian D. Darer

Pamela W. McAfee

Stephanie Osborne-Rodgers

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Recommended Revisions to N.C. Gen. Stat. § 1C-1601

N. C. General Statutes

Chapter 1C. Enforcement of Judgments

Article 16. Exempt Property

**§ 1C-1601. What property exempt; waiver; exceptions**

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

- (1) The debtor's aggregate interest, not to exceed ~~ten thousand~~ eighteen thousand five hundred dollars (~~\$10,000~~) (\$18,500) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor. Unmarried debtors who are sixty-five years of age or older are entitled to retain an aggregate interest in such property twice the aforementioned value so long as the property was previously owned by the debtor as a tenant by the entirety or as a joint tenant with rights of survivorship and the former co-owner of the property is deceased.
- (2) The debtor's aggregate interest in any property, not to exceed ~~three thousand five hundred~~ five thousand dollars (~~\$3,500~~) (\$5,000) in value less any amount of the exemption used of any unused exemption provided under subdivision (1).
- (3) The debtor's interest, not to exceed ~~one~~ three thousand five hundred dollars (~~\$1,500~~) (\$3,500) in value, in one motor vehicle.
- (4) The debtor's aggregate interest, not to exceed ~~three thousand five hundred~~ five thousand dollars (~~\$3,500~~) (\$5,000) in value for the debtor plus ~~seven hundred fifty~~ one thousand dollars (~~\$750.00~~) (\$1,000) for each dependent of the debtor, not to exceed ~~three~~ four thousand dollars (~~\$3,000~~) (\$4,000) total for dependents, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.
- (5) The debtor's aggregate interest, not to exceed ~~seven hundred fifty two thousand~~ two thousand dollars (~~\$750.00~~) (\$2,000) in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.
- (6) The debtor's aggregate interest, not to exceed four thousand dollars (\$4,000) in value, in any wedding and engagement rings of the debtor.

- (67) Life insurance as provided in Article X, Section 5 of the Constitution of North Carolina.
- (78) Professionally prescribed health aids for the debtor or a dependent of the debtor.
- (89) Compensation for personal injury, including compensation from private disability policies or annuities, or compensation for the death of a person upon whom the debtor was dependent for support, but such compensation is not exempt from claims for funeral, legal, medical, dental, hospital, and health care charges related to the accident or injury giving rise to the compensation.
- (910) Individual retirement plans as defined in the Internal Revenue Code and any plan treated in the same manner as an individual retirement plan under the Internal Revenue Code, including individual retirement accounts and Roth retirement accounts as described in sections 408(a) and 408A of the Internal Revenue Code, individual retirement annuities as described in section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in section 408(c) of the Internal Revenue Code. For purposes of this subdivision, "Internal Revenue Code" means Code as defined in G.S. 105-228.90.
- (11) Funds in a college savings plan qualified under 26 U.S.C. § 529 up to a cumulative limit of \$25,000, but excluding any funds placed in such an account within the preceding 12 months (except to the extent that such contributions were made in the ordinary course of the debtor's financial affairs and were consistent with the debtor's past pattern of contributions) and only to the extent that such funds are for a child of the debtor and will actually be used for such child's college or university expenses.
- (12) Retirement benefits under the retirement plans of other governmental units, to the same extent that such benefits are exempt under the laws of the governmental unit under which such benefit plan is established.
- (13) Alimony, support or separate maintenance or child support payments to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.
- (14) The earnings of the debtor for his personal services, at any time within 60 days next preceding an order under G.S. 1-362 or the filing of a petition for bankruptcy, when it appears, by the debtor's affidavit or otherwise, that these earnings are necessary for the use of the debtor or a family supported wholly or partly by his labor.



(b) Definition.--"Value" as used in this Article means fair market value of an individual's interest in property, less valid liens superior to the judgment lien sought to be enforced.

(c) Waiver.--The exemptions provided in this Article and in Sections 1 and 2 of Article X of the North Carolina Constitution, cannot be waived except by:

- (1) Transfer of property allocated as exempt (and in that event only as to the specific property transferred); or
- (2) Written waiver, after judgment, approved by the clerk or district court judge. The clerk or district court judge must find that the waiver is made freely, voluntarily, and with full knowledge of the debtor's rights to exemptions and that he is not required to waive them; or
- (3) Failure to assert the exemption after notice to do so pursuant to G.S. 1C-1603. The clerk or district court judge may relieve such a waiver made by reason of mistake, surprise or excusable neglect, to the extent that the rights of innocent third parties are not affected.

Recent earnings exempt under subdivision (14) of subsection (a) of this section may only be waived pursuant to subdivision (2) of this subsection.

(d) Recent purchases.--The exemptions provided in subdivisions (2), (3), (4) and (5) of subsection (a) of this section are inapplicable with respect to tangible personal property purchased by the debtor less than 90 days preceding the initiation of judgment collection proceedings or the filing of a petition for bankruptcy, unless the purchase of such property is directly traceable to the liquidation or conversion of exemptible property of like kind and no additional property was transferred into or used to acquire such replacement property.

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

- (1) Of the United States or its agencies as provided by federal law;
- (2) Of the State or its subdivisions for taxes, appearance bonds or fiduciary bonds;
- (3) Of lien by a laborer for work done and performed for the person claiming the exemption, but only as to the specific property affected;
- (4) Of lien by a mechanic for work done on the premises, but only as to the specific property affected;
- (5) For payment of obligations contracted for the purchase of the specific real property affected;

- (6) Repealed by Laws 1981, c. 1224, § 6, eff. Sept. 1, 1982;
- (7) For contractual security interests in the specific property affected; provided, that the exemptions shall apply to the debtor's household goods notwithstanding any contract for a nonpossessory, nonpurchase money security interest in any such goods;
- (8) For statutory liens, on the specific property affected, other than judicial liens;
- (9) For child support, alimony or distributive award order pursuant to Chapter 50 of the General Statutes;
- (10) For criminal restitution orders docketed as civil judgments pursuant to G.S. 15A-340.38.

(f) Federal Bankruptcy Act Code.--The exemptions provided in The Bankruptcy Act Code, 11 U.S.C. § 522(d), are not applicable to residents of this State. The exemptions provided by this Article and by other statutory or common law of this State shall apply for purposes of The Bankruptcy Act Code, 11 U.S.C. § 522(b).

(g) Effect of exemptions.--Notwithstanding any other provision of law, a creditor shall not obtain possession of a debtor's household goods and furnishings in which the creditor holds a nonpossessory, nonpurchase money security interest until the creditor has fully complied with the procedures required by G.S. 1C-1603.

(h) On April 1, 2009, and at each 3-year interval ending on April 1 thereafter, each dollar amount in effect under subsection (a) of this section immediately before such April 1 shall be automatically adjusted --

- (1) to reflect the change in the Consumer Price Index for All Urban Consumers, published by the United States Department of Labor, for the most recent 3-year period ending immediately before January 1 preceding such April 1, and
- (2) to round to the nearest \$25 the dollar amount that represents such change.

## Committee Notes on Recommended Revisions to N.C. Gen. Stat. § 1C-1601

**Section 1C-1601(a)(1) - (5).** The proposed amendments revise the dollar amounts of the exemptions set forth in this subsection (a) as follows: The homestead exemption in (a)(1) has been increased from \$10,000 to \$18,500; the "wildcard" exemption in (a)(2) has been increased from \$3,500 to \$5,000; the motor vehicle exemption in (a)(3) has been increased from \$1,500 to \$3,500; the household goods exemptions in (a)(4) have been increased from \$3,500 to \$5,000 for the debtor, from \$750 to \$1,000 additional for each dependent of the debtor, and from \$3,000 to \$4,000 as the maximum total for all dependents; and the tools of trade exemption in (a)(5) has been increased from \$750 to \$2,000.

Each of the proposed new dollar amounts meet the following criteria: All are within 20% of the any corresponding federal bankruptcy exemption (11 U.S.C. § 522(d)) and all are in an amount substantially equal to or below the average of the dollar amounts for each such exemption resulting from the Committee's Second Survey of the Bankruptcy Section of the N.C. Bar Association taken in April and May, 2004.

The amounts recommended by the Committee are believed to be appropriate, and have been calculated to enable a debtor to maintain property of a minimum, but sufficient, quality and amount to enable the debtor and his dependents (as applicable) to retain or acquire (1) shelter, (2) modest household goods and tools of any applicable trade, and (3) reliable transportation, so the debtor may preserve the ability to recover or maintain status as a self-supporting member of the economy and of society. Also, it is believed that a period of from 1 to 2 years will have elapsed between the date of the Second Survey and the anticipated date of any enactment of these proposals. Due to the continuing erosion of the value of the current exemptions during the time before which any exemption revisions might be enacted (evidenced by the Consumer Price Index and inflation), it is logical to assume that there will be an even greater need, and an even greater amount of support, than at the present for these proposed revisions.

Attached hereto as Exhibit 1 is a chart analyzing some of the data upon which the Committee based its recommendations for increases in the dollar-amount exemptions of N.C. Gen. Stat. § 1C-1601(a). This chart shows the current exemption amounts enacted in 1991; the equivalent of these exemptions in 2004 dollars; the amount of the corresponding federal bankruptcy exemptions; and a summary of the results of the Second Survey showing the range, average, median, and mode of the survey responses as to each category of exemptions.

**Section 1C-1601(a)(1).** An addition to this subdivision is proposed that would allow to unmarried debtors 65 years of age or older an exemption twice the regular amount so long as the property to be exempted was previously owned by the debtor as a tenant by the entirety or as a joint tenant with rights of survivorship and the former co-owner of the property is deceased. It is not uncommon for widows/widowers to lose their homes as a result of the death of his/her spouse. Part of the issue is the loss of the tenancy by the entirety exemption upon death, and the other part of the issue is the common law doctrine of necessities which makes a person liable for the medical debts of his or her spouse. Elderly persons often have no choice but to incur medical debt, and the high cost of health care can make even an insured person's portion of the bill well beyond their ability to pay. In reality, the only real asset of many elderly persons who

have been unable to pay for medical care is a modest amount of equity in their home built up over many years. As a matter of policy, the Committee believes that elderly persons in this position should not be forced to choose between medical care and keeping their home.

A non-exhaustive search of other state statutes found that both Florida and California accord greater homestead exemption rights to those 65 or older. No search was done on other ages.

The Second Survey asked whether the elderly should be allowed a higher homestead exemption. 48.2% of respondents said "yes," 44.7% said "no" and 7.1% had no opinion. In addition, some of the individual comments to the Second Survey strongly support this proposal. The First Survey, which had a higher response level, showed that 62.4% of the respondents agreed with a higher exemption for the elderly. The Committee therefore believes that the survey results support this proposal.

There are three other substantive changes with regard to the dollar amount exemptions in subdivision (a).

**Section 1C-1601(a)(2).** Subdivision (a)(2) currently provides for a "wildcard" exemption of up to \$3,500 (these proposals would increase this amount to \$5,000). The statute currently provides that the amount of this exemption is reduced by any amount of the homestead exemption of (a)(1) used by a debtor. The effect of the current statute is that this exemption is eliminated, dollar-for-dollar, by the first dollars of the homestead exemption that are used. The proposed amendment provides that the amount of the wildcard exemption of (a)(2) is limited to the amount of the unused homestead exemption, thus having the effect that this exemption would be reduced by the last dollars of the homestead exemption used by a debtor.

This proposal is similar to the operation of the wildcard exemption under federal bankruptcy law (11 U.S.C. § 522(d)(4)). (However, these proposals offer a lesser amount for the wildcard exemption than the \$10,225 allowable under federal bankruptcy law.) 67.1% of those surveyed in the Second Survey were in support of reducing the wildcard exemption by the last dollars of the used homestead exemption. 60% of respondents to the Second Survey supported a more generous alternative, allowing a debtor to exempt the full unused amount of the homestead exemption (\$10,000 under current law). 45.8% of respondents to the Second Survey were in support of yet another more generous option, allowing the wildcard exemption in addition to the homestead exemption.

**Section 1C-1601(a)(6).** A new subdivision (a)(6) is added. This subdivision provides for a new exemption for the debtor's aggregate interest, not to exceed \$4,000 in value, in any wedding and engagement rings. Under the current statute any wedding or engagement rings could be exempt only under any available portion of the household goods exemption of (a)(4) or the wildcard exemption of (a)(2).

This proposal is similar to the federal bankruptcy exemption of 11 U.S.C. § 522(d)(4) which allows for a separate exemption for jewelry. However, this proposal is more narrow than the federal exemption, as it is limited to wedding and engagement rings. In addition, 64.7% of respondents to the Second Survey were in support of an additional exemption for

wedding/engagement rings. 21.2% of respondents to the Second Survey supported an unlimited exemption for engagement and wedding rings, while 43.5% were in favor of a limit on this exemption. Of those in favor of a limit, the suggested limits ranged from \$1,000 to \$10,000, with an average limit of \$4,068, a median of \$5,000, and a mode of \$5,000 (12 of 37 respondents).

Current subdivisions 1C-1601(a)(6), (7), and (8) have been renumbered as a result of the addition of new subdivision 1C-1601(a)(6).

**Section 1C-1601(a)(8).** To be renumbered as §1C-1601(a)(9). The revisions to this subdivision are intended to clarify that all compensation received on account of personal injuries, even from private annuities or disability policies, are exempt from execution, treating all funds received as a result of personal injury consistently under the exemptions statute and N.C. Gen. Stat. § 97-21 which protects all workers' compensation benefits from claims of creditors. Although the definition of "compensation" is not included in present § 1C-1601 and would likely include compensation received under such policies, the Second Survey results showed that over 67% of the respondents favored clarifying the issue within the statute.

**Section 1C-1601(a)(9).** To be renumbered as § 1C-1601(a)(10). This subdivision, renumbered as § 1C-1601(a)(10), clarifies that Roth IRA's and other types of retirement accounts or annuities provided for under Internal Revenue Code §§ 408 and 408A are exempt. As it currently exists, this subdivision provides for the exemption of IRA accounts "and any plan treated in the same manner as an individual retirement plan under the Internal Revenue Code." The current subdivision also references IRC § 408A which provides: "Except as provided in this section, a Roth IRA shall be treated for purposes of this title in the same manner as an individual retirement plan." Roth IRA accounts did not exist in 1991 when the Legislature last amended § 1C-1601. Consequently, it is reasonable to assume that the legislature's intent was to exempt all IRA and similar accounts. Thus, the Committee believes that this is a clarifying revision, not a substantive change in the law. The Committee notes that IRA accounts have their own built-in safeguards to prevent abusive pre-bankruptcy or pre-judgment planning. The Second Survey asked if Roth IRA accounts should be exempt - 72.9% of respondents answered "yes with no limit."

**Section 1C-1601(a)(11).** The addition of this subdivision allows the exemption of funds in college savings plans under 26 U.S.C § 529 up to a cumulative limit of \$25,000 and excluding any funds placed in such an account within the preceding 12 months, (except to the extent that such contributions were made in the ordinary course of the debtor's financial affairs and were consistent with the debtor's past pattern of contributions) and only to the extent that such funds are for a child of the debtor and will actually be used for such child's college or university expenses.

The responses to the college savings plan issue in the Second Survey were 50.6% "yes with no limit," 9.4% "no," 9.4% "no opinion," and 30.6% yes with a dollar limit. Thus, 81% of the respondents felt that there should be an exemption for college savings plans qualified under IRC § 529. Of the 25 respondents who specified a dollar limit, the average was \$28,680. A 26<sup>th</sup>

respondent who favored a cap merely suggested that the amount exclude any contributions in the year prior to filing bankruptcy. The most frequently occurring amounts listed for a cap were \$10,000 (6 respondents), \$40,000 (5 respondents) and \$25,000 (5 respondents). The average of these most common responses is \$24,060.

According to the web site for the University of North Carolina at Chapel Hill, as of December 2003, a year there (including tuition, books, meals and housing) costs \$25,547.

As a matter of policy, the Internal Revenue Code allows tax-exempt status for college savings plans under IRC § 529 to encourage people to save for their children's education. Data shows that a college diploma allows a person to earn substantially more over their lifetimes. Our nation is increasingly losing manufacturing jobs and a college degree is arguably becoming more necessary to have a basic standard of living in this country.

A non-comprehensive search of other state law found that Texas added an exemption in 2003 to fully exempt all educational savings. Title 5, Subtitle A, Chapter 42, § 42.0022 of the Texas Statutes.

**Section 1C-1601(a)(12).** This new subdivision was added to provide that retirement plans of other state and local governments are exempt. The General Statutes currently provide that retirement plans of the State of North Carolina are entirely exempt pursuant to N.C. Gen. Stat. §§ 135-9 and 135-5. Most retirement plans of other states already may be non-estate property in bankruptcy cases since they usually contain anti-alienation provisions similar to spendthrift trusts. As a matter of policy, North Carolina should give full faith and credit to the laws of other states. Many North Carolina residents have previously resided in other states and are entitled to benefits under retirement plan of other states. It may be unconstitutional for the statute to discriminate only in favor of North Carolina State retirees. This proposed subdivision gives no greater or lesser rights than the debtor would have in the debtor's former state. The Second Survey asked whether retirement plans from other states should be exempt. A total of 82.4% of the respondents answered, "yes, to the same extent as NC retirement plans."

**Section 1C-1601(a)(13).** The proposed legislation adds a new subdivision § 1C-1601(a)(13), which provides an exemption for alimony and child support payments. The Second Survey responses on this question elicited strong support for this addition: 70.2% were in favor of the addition. Although many states provide this type of exemption, this proposed addition is similar to the language of an Oklahoma statute. See 31 Okla. Stat. § 1(19).

**Section 1C-1601(a)(14).** The proposed legislation adds subdivision § 1C-1601(a)(14). This provision is the "recent earnings" exemption currently found in § 1-362. The provision is to be moved into § 1C-1601 out of a concern that debtors claiming exemptions by using the AOC forms may not be aware of exemptions that are allowed through common law or other statutes. It is hoped that locating this exemption within the framework of § 1C-1601 will also result in the recent earnings exemption being added to the AOC form, so that debtors may exempt their recent earnings before bank accounts are garnished or attached, rather than having to recover recent

earnings after execution. The Second Survey responses provided that 71.8% of the respondents were in favor of moving the recent wages exemption to § 1C-1601.

This proposal makes three changes to the “recent earnings” language currently found in § 1-362. The first adds “an order under § 1-362 or the filing of a petition for bankruptcy.” This change is technical, to accommodate the fact that the provision has been moved. Similarly, the language “cannot be so applied” was deleted to make the language of § 1C-1601(a)(14) consistent with the other provisions in § 1C-1601(a).

The third change provides that recent earnings are exempt when necessary for the use of the debtor or a family supported wholly or partly by his labor, adding the term “of the debtor.” This language is intended to clarify that a single debtor with no dependents may exempt recent earnings. This issue results from a split in the bankruptcy courts on this interpretation. See In re Connelly, 276 B.R. 421 (Bankr. W.D.N.C. 2002) (exemption not available to single debtor with no dependents); In re Andy, Case No. 02-02493-5-ATS (Bankr. E.D.N.C. October 28, 2002) (debtor may fully avail herself of provisions of § 1-362 to the extent necessary for her support). The Second Survey responses provided that 81.2% of the respondents were in favor of amending the exemption to specifically provide for individual residents, whether or not the resident has dependents.

**Section 1C-1601(c).** As a result of moving the recent earnings exemption previously found in N.C. Gen. Stat. § 1-362 into § 1C-1601(a)(14), the waiver rules of § 1C-1601(c) now apply to the recent earnings exemption. Because prior to moving the recent earnings exemption to § 1C-1601, this exemption could only be waived in writing, § 1C-1601(c) has been amended to make clear that the recent earnings exemption may only be waived by written waiver. The Second Survey responses provided that 71.8% were in favor of including a specific provision that recent earnings are exempt unless explicitly waived.

**Section 1C-1601(d).** This subsection is amended to add the following language: “unless the purchase of such property is directly traceable to the liquidation or conversion of exemptible property of like kind and no additional property was transferred into or used to acquire such replacement property.” This is an effort to codify the narrow “replacement property” exception to the recent purchases provision found in In re Ellis, 33 B.R. 16 (Bankr. E.D.N.C. 1983), and In re Hallman, 26 B.R. 34 (Bankr. W.D.N.C. 1982), and as clarified in In re Edge, Case No. 99-01290-8-JRL (Bankr. E.D.N.C. July 22, 1999). It does not appear that the North Carolina state courts have addressed this issue, and the Committee was unable to find a Middle District of North Carolina bankruptcy court opinion. The Second Survey responses provided that 71.89% of respondents were in favor of a replacement property exception to the recent purchases provision.

**Section 1C-1601(f).** Only technical changes are made to this subsection. The reference to the old Bankruptcy Act is changed to refer to the Bankruptcy Code which has superseded the Act. The reference to “other statutory and common law of this State” has been added to confirm the ruling in In re Hare, 32 B.R. 16 (Bankr. E.D.N.C. 1983) which held that § 1C-1601(a) is not the exclusive source of exemptions available to residents of North Carolina. Other exemptions exist under North Carolina common law (e.g., real estate held as tenants by the entireties is exempt from the claims of creditors against only one of the spouse/owners) and statutory law (e.g., State

of North Carolina Retirement benefits are exempt under N. C. Gen. Stat. § 135-9), which exemptions are not affected or repealed by § 1C-1601.

**Section 1C-1601(h).** A new subsection § 1C-1601(h) is added to provide a mechanism, like that in the Bankruptcy Code (11 U.S.C. § 104), that automatically adjusts the dollar amounts of exemptions every 3 years according to changes in the Consumer Price Index. The first adjustment would occur on April 1, 2009, and subsequent adjustments would occur at 3-year intervals thereafter. The current statute contains no mechanism for the adjustment of the dollar amounts of the exemptions set forth in 1C-1601(a) - any adjustments must be made by legislative amendment to the statute, which last took place in 1991. This proposal was supported by 74% of those surveyed in the First Survey. The Committee also believes that the adoption of this proposal could save considerable legislative energy in future years by eliminating the periodic need to propose legislation to adjust the dollar amount of the exemptions for inflation.



**Exhibit 1**  
**to Committee Notes on Recommended Revisions to N.C. Gen. Stat. § 1C-1601**

Chart Analyzing Data in Support of Committee's Recommendations for Increases in the Dollar-amount Exemptions of N.C. Gen. Stat. § 1C-1601(a)

	Category of Exemption						
	Homestead <sup>1</sup>	Motor Vehicle	HHGs	HHGs for each additional dependent	HHGs limit for total dependents <sup>2</sup>	Tools of the Trade	Wildcard
Current NC amounts - these figures were set in 1991	10,000	1,500	3,500	750	3,000	750	3,500
Equivalent of 1991 exemption in 2004 dollars as of July 27, 2004 (CPI)	13,928	2,089	4,875	1,045	4,178	1,045	4,875
Federal Bankruptcy 11 U.S.C. § 522	18,450	2,950	11,075	n/a	n/a	1,850	10,225
125% of Federal exemption	23,062.50	3,687.50	13,843.75	n/a	n/a	2,312.50	12,781.25
BR Section Survey: 65% would support an exemption in this amount or higher	15,000	3,000	5,000	1,000	4,000	1,500	5,000
BR Section Survey: Range	10,000 to unlimited	1,500 to 10,000	1,000 to 25,000	750 to 5,000	1,000 to unlimited	750 to 15,000	1,500 to 25,000
BR Section Survey: Average/Mean	28,559	3,947	5,525	1,190	5,562	2,832	6,509
BR Section Survey: Median	55,000	5,750	13,000	2,875	8,000	7,875	13,250
BR Section Survey: Mode	21 of 86 surveyed chose 15,000	29 of 86 surveyed chose 5,000	50 of 86 surveyed chose 5,000	52 of 85 surveyed chose 1,000	18 of 86 surveyed chose 5,000	18 of 86 surveyed chose 2,000	41 of 86 surveyed chose 5,000
<b>Committee Recommendation</b>	<b>18,500</b>	<b>3,500</b>	<b>5,000</b>	<b>1,000</b>	<b>4,000</b>	<b>2,000</b>	<b>5,000</b>
	<b>Homestead</b>	<b>Motor Vehicle</b>	<b>HHGs</b>	<b>HHGs for each additional</b>	<b>HHGs limit for total dependents</b>	<b>Tools of the Trade</b>	<b>Wildcard</b>

<sup>1</sup>For purposes of the calculation of the mean and median the value of \$100,000 was used for the "unlimited" values.

<sup>2</sup>For purposes of the calculation of the mean the value of \$10,000 was used for the "unlimited" values. This value was lower than the highest numerical value submitted which was \$15,000.

				dependent			
Committee Recommendation	18,500	3,500	5,000	1,000	4,000	2,000	5,000
Criteria met:							
- below 125% of federal exemption	yes	yes	yes	yes (even when cumulative HHG exemption considered)	yes (even when cumulative HHG exemption considered)	yes	yes
- BR Section Second Survey: at or below average of survey results	yes	yes	yes	yes	yes	yes	yes
- BR Section Second Survey: 65% would support an exemption in this amount or higher	no	no	yes	yes	yes	no	yes
- BR Section Second Survey: % that would support the amount of the recommendation or higher	53% support 18,450+	55%	76%	88%	78%	63%	80%

It is noted that 3 of the Committee's recommendations (homestead, motor vehicle, tools of the trade) do not meet one of the criteria the Committee considered: that 65% or more of the respondents to the Bankruptcy Section Second Survey voted for an exemption in this amount or higher. (The Committee's recommendation for tools of the trade was supported by 63% of the respondents to the Second Survey.) However, the subcommittee feels justified in its recommendations for these categories for reasons including the following:

- (1) Each recommendation meets the other criteria approved by the Committee.
- (2) The Committee has considered more important than the 65% criteria the likely replacement cost of the types of property covered by these exemptions. The Committee's recommendations are in an amount thought to enable a debtor to maintain property of a minimum, but sufficient, quality and amount to enable the debtor and his dependents (as applicable) to retain or acquire (1) shelter, (2) modest household goods and tools of any applicable trade, and (3) reliable transportation, so the debtor may preserve the ability to recover or maintain status as a self-supporting member of the economy and of society.

Recommended Revisions to N.C. Gen. Stat. § 1-362

N. C. General Statutes  
Chapter 1. Civil Procedure  
Subchapter X. Execution  
Article 31. Supplemental Proceedings  
**§ 1-362. Debtor's property ordered sold**

The court or judge may order any property, whether subject or not to be sold under execution (except the homestead and personal property other exemptions of the judgment debtor), in the hands of the judgment debtor or of any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment. ; except that the earnings of the debtor for his personal services, at any time within 60 days next preceding the order, cannot be so applied when it appears, by the debtor's affidavit or otherwise, that these earnings are necessary for the use of a family supported wholly or partly by his labor. Wages may not be garnished except as specifically provided by statute.

**Committee Notes on Recommended Revisions to N.C. Gen. Stat. § 1-362**

The recent earnings exemption provided for by N.C. Gen. Stat. § 1-362 has been moved to § 1C-1601(a)(14). It therefore has been deleted from this section.

The “personal property” language in the parenthetical has been changed to “other” property. This amendment is not intended to be substantive.

In addition, the following language has been added to § 1-362: “Wages may not be garnished except as specifically provided by statute.” This is intended only to codify existing law. See Motor Finance Co. v. Putnam, 229 N.C. 555 (1948); Harris v. Hinson, 87 N.C. App. 148 (1987). The Committee was specifically concerned with the possibility of courts in foreign states issuing garnishment orders with no statute for a debtor to cite showing that garnishment is not allowed. The Second Survey responses provided that 77.4% of the respondents were in favor of clarifying that wages may not be garnished unless otherwise authorized by statute.

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**A.L. Butler III**

**From:** "Bankruptcy Exemption Revision Committee" <sections@ncbar.org>  
**To:** <alb3law@bellsouth.net>  
**Sent:** Tuesday, December 23, 2003 4:51 PM  
**Subject:** Bankruptcy Exemption Revision Committee Survey

To: Members of the Bankruptcy Section

**Re: The Exemption Revision Committee & Survey - DO NOT REPLY**

Date: December 23, 2003

To Members of the Bankruptcy Section:

The Exemption Revision Committee is an ad hoc committee appointed by the Bankruptcy Section of the North Carolina Bar Association. It was formed to determine the extent to which a consensus exists among the members of the Bankruptcy Section as to whether adjustments or revisions to the North Carolina exemption laws, primarily set forth in N.C. Gen. Stat. § 1C-1601, would be appropriate at this time.

The Bankruptcy Section Council formed this Committee out of a concern that the real and practical values of North Carolina's exemptions have diminished greatly since they were last revised in 1991. As a result of inflation and increases in the cost of living, the current amounts of our State's exemptions now may not be adequate in practice to fulfill the public policies for which they were enacted, to protect property necessary for a debtor's fresh start and for the support of a debtor and its family, and to insure that a debtor is able to remain a productive member of society and our economy. The Committee has questioned whether or not the dollar amount of North Carolina's exemptions in many cases may be so low as to be meaningless. For example, consider whether your experience has been that when appraising a homestead, motor vehicle, or other exempted property, reasonable valuations often differ by more than the amount of the applicable exemption. Also consider whether a reliable motor vehicle can be obtained for \$1,500, or a mechanic's tools of the trade replaced for \$750. Further, more and more often the costs of litigating disputes over exemptions exceed the amount of the exemptions themselves. Litigation under these circumstances is inefficient, counter-productive to both creditor and debtor, and does not advance the public policies for which our exemptions were enacted.

**Your participation is valuable to us and will be influential on the issue of whether or not the N. C. Bar Association advocates revisions to our exemptions. The Committee therefore requests that you complete a short six question survey located at: THE EXEMPTION REVISION COMMITTEE SURVEY**

The purpose of the survey is only to determine whether the bar is in favor of pursuing some amendments to the North Carolina exemptions, and not what the actual amendments should be. If the Committee finds that there is consensus among the bar that revisions are needed, the Committee then will seek further input on how amounts should be adjusted and what other changes may need to be made.

Information and data regarding this Committee and the North Carolina exemptions relative to those of other jurisdictions may also be found at this Web site.

Thank you for your participation and feedback.

The Exemption Revision Committee  
of the Bankruptcy Section of the  
N. C. Bar Association

## Results Summary

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[Add Filter...](#) Total: 180  
Visible: 180

### 2. Untitled Page

1. All of the NC exemption limits set forth in N.C. Gen. Stat. § 1C-1601 should be increased.

	Response Percent	Response Total
Strongly agree	53.1%	95
Agree	20.7%	37
No opinion	3.9%	7
Disagree	20.7%	37
Strongly disagree	1.7%	3
<b>Total Respondents</b>		<b>179</b>
(skipped this question)		1

### 3. Untitled Page






1. Some of the NC exemption limits set forth in N.C. Gen. Stat. § 1C-1601 should be increased.

	Response Percent	Response Total
Strongly agree	52.9%	83
Agree	33.1%	52
No opinion	2.5%	4
Disagree	8.3%	13
Strongly disagree	3.2%	5
<b>Total Respondents</b>		<b>157</b>
(skipped this question)		23

### 4. Untitled Page






1. North Carolina should implement a mechanism, like that in the Bankruptcy Code, providing for the automatic adjustment of the dollar amounts of exemptions every 3 years according to changes in the Consumer Price Index.

Response Percent Response Total

Strongly agree		46%	80
Agree		28.2%	49
No opinion		5.2%	9
Disagree		16.1%	28
Strongly disagree		4.6%	8
		<b>Total Respondents</b>	<b>174</b>
		(skipped this question)	6

**5. Untitled Page**

1. North Carolina should consider a separate, higher homestead exemption for elderly residents.

		Response Percent	Response Total
Strongly agree		39.1%	68
Agree		23%	40
No opinion		6.9%	12
Disagree		23.6%	41
Strongly disagree		7.5%	13
		<b>Total Respondents</b>	<b>174</b>
		(skipped this question)	6

**6. Untitled Page**

1. Other aspects of North Carolina's exemptions scheme should be amended. (Please elaborate in the "Comments" section, below).

		Response Percent	Response Total
Strongly agree		34%	49
Agree		21.5%	31
No opinion		40.3%	58
Disagree		3.5%	5
Strongly disagree		0.7%	1
		<b>Total Respondents</b>	<b>144</b>
		(skipped this question)	36

2. Comments:

<b>View</b>	<b>Total Respondents</b>	<b>75</b>
	(skipped this question)	105



**7. Untitled Page**

1. North Carolina should allow debtors to choose between North Carolina's exemptions and the exemptions set forth in § 522 of the Bankruptcy Code.

	Response Percent	Response Total
Strongly agree	23.2%	39
Agree	22.6%	38
No opinion	19%	32
Disagree	24.4%	41
Strongly disagree	10.7%	18
<b>Total Respondents</b>		<b>168</b>
(skipped this question)		12

**8. Untitled Page**

1. Additional Comments:

<a href="#">View</a> Total Respondents	24
(skipped this question)	156

**A.L. Butler III**

**From:** "Bankruptcy Exemption Revision Committee" <sections@ncbar.org>  
**To:** <alb3law@bellsouth.net>  
**Sent:** Wednesday, April 07, 2004 3:24 PM  
**Subject:** AB - Second Bankruptcy Survey

To: Members of the Bankruptcy Section

**From: Exemption Revision Committee**

Re: SECOND SURVEY - See links below to respond to survey

The Exemption Revision Committee is an ad hoc committee appointed by the Bankruptcy Section of the North Carolina Bar Association. It was formed to determine the extent to which a consensus exists among the members of the Bankruptcy Section as to whether adjustments or revisions to the North Carolina exemption laws, primarily set forth in N.C. Gen. Stat. § 1C-1601, would be appropriate at this time.

Our first survey focused on the overall views of members with regard to revising and raising the exemptions. The Committee was pleased that approximately 180 of the 320 members of the Section participated in the survey. The results revealed that substantial support exists for increasing some or all of the exemptions. For example, 86% of respondents agreed or strongly agreed that some of the exemptions should be raised.

The results of the first survey have been reported to the Section Council, which has authorized the Committee to proceed with proposing specific revisions to the exemptions. Now, we seek further input regarding specific exemptions. This survey will allow you to propose specific revisions and amounts for each category of exemptions currently allowed. After the Committee makes its final recommendations to the Section Council, the Council may recommend to the Bar Association Board of Governors that legislation be proposed to the North Carolina General Assembly revising the exemptions. Any such proposed legislation may be drafted with reference to the results of this survey.

For your reference, we have included on each page of the survey a link to an exemption comparison chart outlining the exemptions in all 50 states and the federal exemptions that will be effective April 1, 2004 under Section 522 of the Code. There are 30 short questions in this survey. [www.ncbar.org/download/ExemptionSumm.pdf](http://www.ncbar.org/download/ExemptionSumm.pdf)

Your participation is valuable, and your input will assist the Committee members as they consider specific recommendations for the Section Council. Please access the survey at the following Web site: [www.surveymonkey.com/s.asp?u=34376429898](http://www.surveymonkey.com/s.asp?u=34376429898)

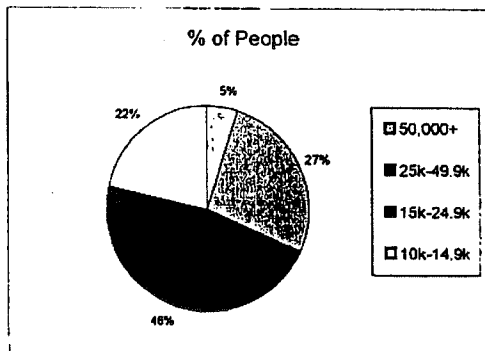
# Bankruptcy Exemption Survey

## 1. North Carolina's Homestead exemption of N.C.G.S. § 1C-1601(a)(1) should be:

Amount	# of People	% of People
50,000+	11	5%
25k-49.9k	21	24%
15k-24.9k	37	43%
10k-14.9k	17	20%
Total	86	

Range: \$10,000 to Unlimited

Average: \$ 28,559

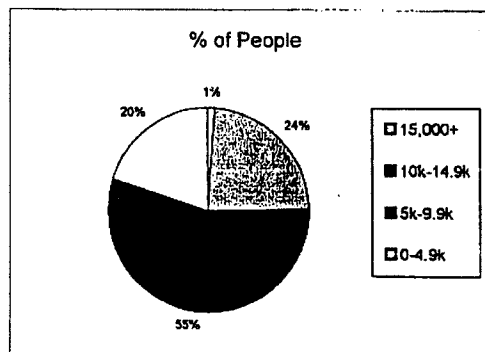


## 2. North Carolina's "Wildcard" exemption of N.C.G.S. § 1C-1601(a)(2) should be:

Amount	# of People	% of People
15,000+	1	1%
10k-14.9k	20	24%
5k-9.9k	47	55%
0-4.9k	17	20%
Total	85	

Range: \$1,500 to \$25,000

Average: \$ 6,468

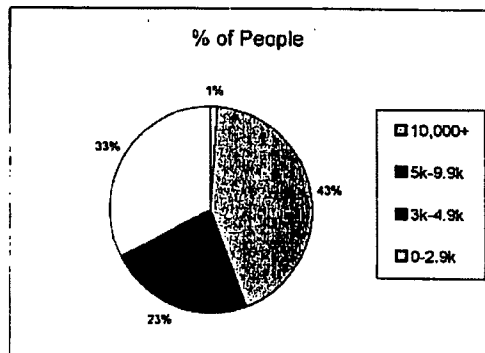


## 3. North Carolina's Motor Vehicle exemption of N.C.G.S. § 1C-1601(a)(3) should be:

Amount	# of People	% of People
10,000+	1	1%
5k-9.9k	37	43%
3k-4.9k	20	23%
0-2.9k	28	33%
Total	86	

Range: \$1,500 to \$10,000

Average: \$ 3,947

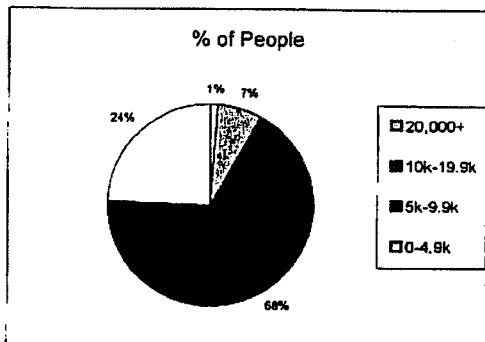


## 4. North Carolina's base Household Goods exemption of N.C.G.S. § 1C-1601(a)(4) should be:

Amount	# of People	% of People
20,000+	1	1%
10k-19.9k	6	7%
5k-9.9k	58	67%
0-4.9k	21	24%
Total	86	

Range: \$1,000 to \$25,000

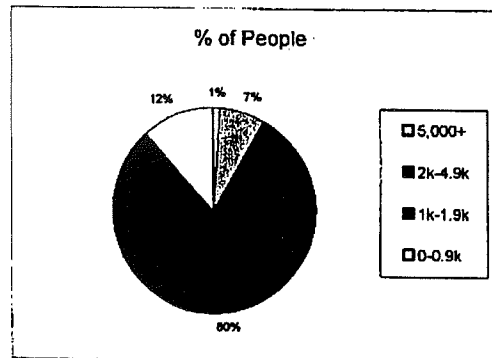
Average: \$ 5,525



5. North Carolina's additional Household Goods allowance for each dependent of the debtor set forth in N.C.G.S. §1C-1601(a)(4) should be:

Amount	# of People	% of People
5,000+	1	1%
2k-4.9k	6	7%
1k-1.9k	68	80%
0-0.9k	10	12%
Total	85	

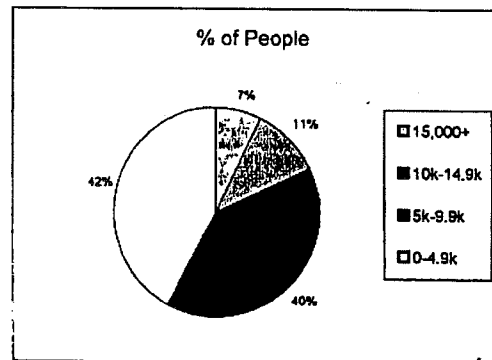
Range: \$750 to \$5,000  
Average: \$ 1,190



6. North Carolina's Household Goods exemption allowance limit for total dependents set forth in N.C.G.S. § 1C-1601(a)(4) should be:

Amount	# of People	% of People
15,000+	6	7%
10k-14.9k	9	11%
5k-9.9k	33	40%
0-4.9k	35	42%
Total	83	

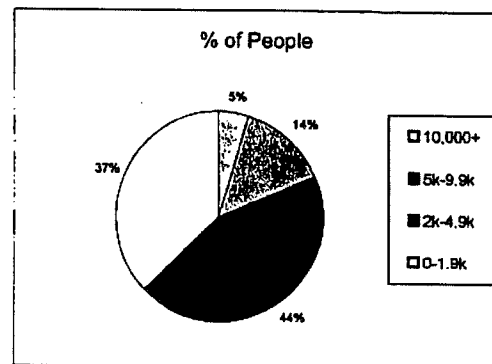
Range: \$1000 to \$15,000  
Average: \$ 5,871



7. North Carolina's Tools of the Trade exemption of N.C.G.S. § 1C-1601(a)(5) should be:

Amount	# of People	% of People
10,000+	4	5%
5k-9.9k	12	14%
2k-4.9k	38	44%
0-1.9k	32	37%
Total	86	

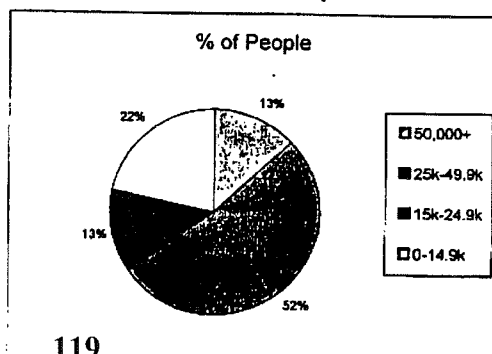
Range: \$750 to \$15,000  
Average: \$ 2,832



15. Should college savings plans qualified under 26 U.S.C. § 529 be exempt?

Amount	# of People	% of People
50,000+	3	13%
25k-49.9k	12	52%
15k-24.9k	3	13%
0-14.9k	5	22%
Total	23	

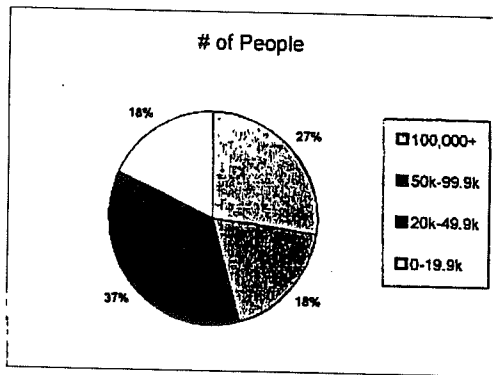
Range: \$10,000 to \$100,000  
Average: \$ 28,680



16. Should Roth IRAs be exempt?

Amount	# of People	% of People
100,000+	3	27%
50k-99.9k	2	18%
20k-49.9k	4	36%
0-19.9k	2	18%
Total	11	

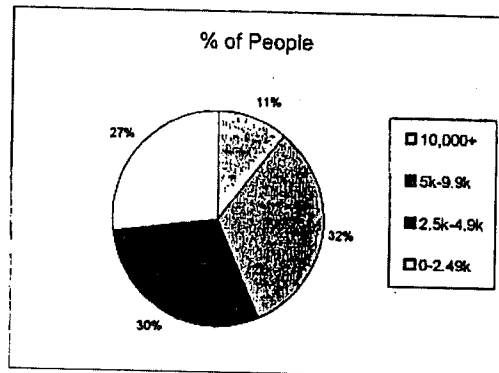
Range: \$5,000 to \$200,000  
 Average: \$ 55,909



17. Should wedding/engagement rings be exempt (in addition to any exemption for household goods)?

Amount	# of People	% of People
10,000+	4	11%
5k-9.9k	12	32%
2.5k-4.9k	11	30%
0-2.49k	10	27%
Total	37	

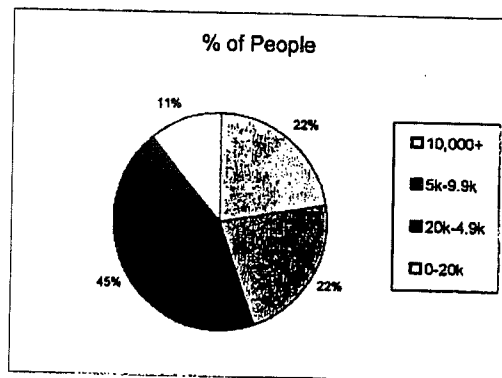
Range: \$1,000 to \$10,000  
 Average: \$ 4,068



18. Should annuities and proceeds from a private disability insurance policy be exempt?

Amount	# of People	% of People
10,000+	2	22%
5k-9.9k	2	22%
20k-4.9k	4	44%
0-20k	1	11%
Total	9	

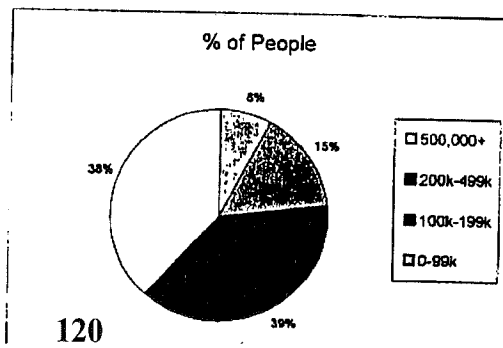
Range: \$10,000 to \$100,000  
 Average: \$ 45,556

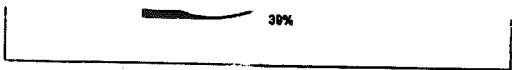


25. Should retirement accounts exempt under §1C-1609(a)(9) be limited in amount?

Amount	# of People	% of People
500,000+	1	8%
200k-499k	2	15%
100k-199k	5	38%
0-99k	5	38%
Total	13	

Range: \$5,000 to \$500,000  
 Average: \$ 124,231

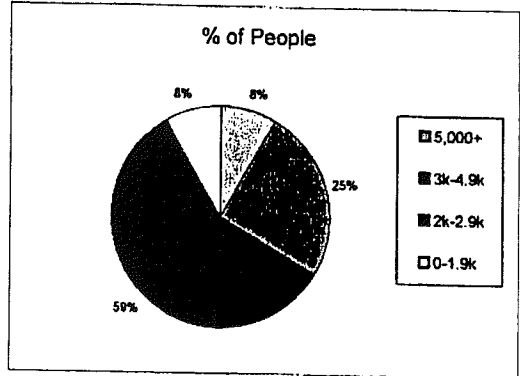




**26. Should tax refunds be exempt?**

Amount	# of People	% of People
5,000+	1	8%
3k-4.9k	3	25%
2k-2.9k	7	58%
0-1.9k	1	8%
Total	12	

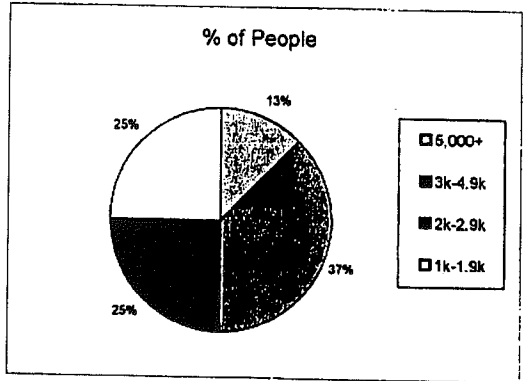
Range: \$1,000 to \$5,000  
 Average: \$ 2,538



**27. Should a debtor's interest in a tax refund for a tax year that has not yet ended be exempt?**

Amount	# of People	% of People
5,000+	1	13%
3k-4.9k	3	38%
2k-2.9k	2	25%
1k-1.9k	2	25%
Total	8	

Range: \$1,000 to \$5,000  
 Average: \$ 2,688



## Results Summary

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### Filter Results

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**Visible:** 87

#### 1. Untitled Page

1. North Carolina's Homestead exemption of N.C.G.S. § 1C-1601(a)(1) should be:  
(Please insert a '\$' value)

[View](#) **Total Respondents** 86  
(skipped this question) 1

#### 2. Untitled Page

2. North Carolina's "Wildcard" exemption of N.C.G.S. § 1C-1601(a)(2) should be:  
(Please insert a '\$' value)

[View](#) **Total Respondents** 86  
(skipped this question) 1

#### 3. Untitled Page

3. North Carolina's Motor Vehicle exemption of N.C.G.S. § 1C-1601(a)(3) should be:  
(Please insert a '\$' value)

[View](#) **Total Respondents** 86  
(skipped this question) 1

#### 4. Untitled Page

4. North Carolina's base Household Goods exemption of N.C.G.S. § 1C-1601(a)(4) should be:  
(Please insert a '\$' value)

[View](#) **Total Respondents** 86  
(skipped this question) 1

5. North Carolina's additional Household Goods allowance for each dependent of the debtor set forth in N.C.G.S. §1C-1601(a)(4) should be:  
(Please insert a '\$' value)

[View](#) **Total Respondents** 85  
(skipped this question) 2

6. North Carolina's Household Goods exemption allowance limit for total dependents set forth in N.C.G.S. § 1C-1601(a)(4) should be:  
 (Please insert a '\$' value)

**View** Total Respondents **86**  
 (skipped this question) **1**



**5. Untitled Page**

7. North Carolina's Tools of the Trade exemption of N.C.G.S. § 1C-1601(a)(5) should be:  
 (Please insert a '\$' value)

**View** Total Respondents **86**  
 (skipped this question) **1**




**6. Untitled Page**

8. Should NCGS § 1-362 be rewritten to clarify that the wages exemption applies to any resident of North Carolina (whether or not that resident has dependents)?

	Response Percent	Response Total
Yes 	81.2%	69
No 	7.1%	6
No Opinion 	11.8%	10
<b>Total Respondents</b>		<b>85</b>
(skipped this question)		<b>2</b>

**7. Untitled Page**

9. Should the Schedule of Debtor's Property and Request to Set Aside Exemptions (Claim of Exemptions Form) required by NCGS § 1C-1603(c) provide for exemptions not included in § 1C-1601 (such as § 1-362 and tenancy by the entireties property)?

	Response Percent	Response Total
Yes 	86.9%	73
No 	4.8%	4
No Opinion 	8.3%	7
<b>Total Respondents</b>		<b>84</b>
(skipped this question)		<b>3</b>

**8. Untitled Page**

10. Should § 1-362 be amended to provide that wages may not be garnished except as specifically



authorized by other statutes (certain tax debts, child support, certain public health care facilities debts, and student loan debts)?

	Response Percent	Response Total
Yes	77.4%	65
No	16.7%	14
No Opinion	6%	5
<b>Total Respondents</b>		<b>84</b>
(skipped this question)		3

**9. Untitled Page**

11. Should the recent wages exemption be moved into § 1C-1601 with a specific provision that recent wages are exempt unless explicitly waived?

	Response Percent	Response Total
Yes	71.8%	61
No	12.9%	11
No Opinion	15.3%	13
<b>Total Respondents</b>		<b>85</b>
(skipped this question)		2

**10. Untitled Page**

12. Should the recent purchase exception of § 1C-1601(d) be deleted in its entirety? (Recent purchases remain subject to all exemption provisions/limits.)

	Response Percent	Response Total
Yes	42.9%	36
No	42.9%	36
No Opinion	14.3%	12
<b>Total Respondents</b>		<b>84</b>
(skipped this question)		3

**11. Untitled Page**

13. Should the recent purchase exception of § 1C-1601(d) be amended to provide for the exemption of replacement property?

	Response Percent	Response Total
Yes	71.8%	61
No	20%	17

Opinion	8.2%	7
<b>Total Respondents</b>		<b>85</b>
(skipped this question)		2

**12. Untitled Page**

14. Should alimony and child support be exempt?

	Response Percent	Response Total
Yes	70.2%	59
No	22.6%	19
No Opinion	7.1%	6
<b>Total Respondents</b>		<b>84</b>
(skipped this question)		3

**13. Untitled Page**

15. Should college savings plans qualified under 26 U.S.C. § 529 be exempt?

	Response Percent	Response Total
Yes, with no limit	50.6%	43
No	9.4%	8
No Opinion	9.4%	8
<a href="#">View</a> Yes, with a limit of \$	30.6%	26
<b>Total Respondents</b>		<b>85</b>
(skipped this question)		2





**14. Untitled Page**

16. Should Roth IRAs be exempt?

	Response Percent	Response Total
Yes, with no limit	72.9%	62
No	9.4%	8
No Opinion	3.5%	3
<a href="#">View</a> Yes, with a limit of \$	14.1%	12
<b>Total Respondents</b>		<b>85</b>
(skipped this question)		2





15. Untitled Page

17. Should wedding/engagement rings be exempt (in addition to any exemption for household goods)?

	Response Percent	Response Total
Yes, with no limit 	21.2%	18
No 	27.1%	23
No Opinion 	8.2%	7
<a href="#">View</a> Yes, with a limit of \$ 	43.5%	37
<b>Total Respondents</b>		<b>85</b>
(skipped this question)		2




16. Untitled Page

18. Should annuities and proceeds from a private disability insurance policy be exempt?

	Response Percent	Response Total
Yes, with no limit 	67.1%	57
No 	11.8%	10
No Opinion 	9.4%	8
<a href="#">View</a> Yes, with a limit of \$ 	11.8%	10
<b>Total Respondents</b>		<b>85</b>
(skipped this question)		2

17. Untitled Page




19. Should the North Carolina common law tenancy by the entireties exemption be codified?

	Response Percent	Response Total
Yes 	61.2%	52
No 	23.5%	20
No Opinion 	15.3%	13
<b>Total Respondents</b>		<b>85</b>
(skipped this question)		2

18. Untitled Page




20. Should the wildcard exemption of § 1C-1601(a)(2) allow a debtor to exempt the full unused amount of the homestead exemption of § 1C-1601(a)(1)?

Response Response

	Percent	Total
Yes 	60%	51
No 	37.6%	32
No Opinion 	2.4%	2
<b>Total Respondents</b>		<b>85</b>
(skipped this question)		2




**19. Untitled Page**

21. Should the wildcard exemption of § 1C-1601(a)(2) be allowed in addition to the homestead exemption of § 1C-1601(a)(1)?

	Response Percent	Response Total
Yes 	45.8%	38
No 	51.8%	43
No Opinion 	2.4%	2
<b>Total Respondents</b>		<b>83</b>
(skipped this question)		4


**20. Untitled Page**

22. Should the wildcard exemption of § 1C-1601(a)(2) be reduced by the last dollars of the homestead exemption used? (As the statute is now written, a debtor who claims a \$5,000 homestead exemption may not use the wildcard exemption. This amendment would allow the debtor to use the full \$3,500 wildcard exemption. A debtor claiming an \$8,000 homestead exemption would be allowed to claim a \$2,000 wildcard exemption.)

	Response Percent	Response Total
Yes 	67.1%	57
No 	28.2%	24
No Opinion 	4.7%	4
<b>Total Respondents</b>		<b>85</b>
(skipped this question)		2

**21. Untitled Page**

23. Should elderly residents be allowed a higher homestead exemption?




	Response Percent	Response Total
No 	44.7%	38
No Opinion 	7.1%	6

**View** Yes (Please provide at what age and in what amount)  48.2% 41

**Total Respondents** 85  
 (skipped this question) 2




**22. Untitled Page**

24. Should there be an exemption for an equitable interest in a vehicle, notwithstanding title? (For example, both family cars are titled to wife, husband is primary driver of one vehicle. Should husband be allowed to exempt the vehicle he drives?)

	Response Percent	Response Total
Yes 	64.7%	55
No 	31.8%	27
No Opinion 	3.5%	3
<b>Total Respondents</b>	<b>85</b>	
(skipped this question)		2





**23. Untitled Page**

25. Should retirement accounts exempt under §1C-1609(a)(9) be limited in amount?

	Response Percent	Response Total
No 	78.8%	67
No Opinion 	5.9%	5
<b>View</b> Yes, with a limit of \$ 	15.3%	13
<b>Total Respondents</b>	<b>85</b>	
(skipped this question)		2

**24. Untitled Page**

26. Should tax refunds be exempt?

	Response Percent	Response Total
Yes, with no limit 	18.8%	16
No 	64.7%	55
No Opinion 	1.2%	1
<b>View</b> Yes, with a limit of \$ 	15.3%	13
<b>Total Respondents</b>	<b>85</b>	
(skipped this question)		2

**25. Untitled Page**

27. Should a debtor's interest in a tax refund for a tax year that has not yet ended be exempt?

	Response Percent	Response Total
Yes, with no limit	44.7%	38
No	37.6%	32
No opinion	8.2%	7
<a href="#">View</a> Yes, with a limit of \$	9.4%	8
<b>Total Respondents</b>		<b>85</b>
(skipped this question)		2

**26. Untitled Page**

28. Should state retirement plans from other states be exempt?

	Response Percent	Response Total
Yes, to the same extent as NC retirement plans	82.4%	70
Yes, with no limit	11.8%	10
No	5.9%	5
No opinion	0%	0
Yes, with a limit of \$	0%	0
<b>Total Respondents</b>		<b>85</b>
(skipped this question)		2

**27. Untitled Page**

29. Should debtors have the option of exempting any property (at their discretion) up to a certain total dollar amount (for example, \$50,000), instead of having to use the statutory exemptions?

	Response Percent	Response Total
No	62.4%	53
No Opinion	17.6%	15
<a href="#">View</a> Yes, with a cap of \$	20%	17
<b>Total Respondents</b>		<b>85</b>
(skipped this question)		2

**28. Untitled Page**

30. Please offer any comments here:

<a href="#">View</a>	<b>Total Respondents</b>	<b>28</b>
	<b>(skipped this question)</b>	<b>59</b>

**Chart Showing Common Exemptions Applicable to Residents of Each of the States (Including D.C.) and under the Bankruptcy Code**

Each Particular Exemption Which Is Higher than That Allowed under N.C. Law Is Shown in **Bold** on this Chart.

(All values shown in dollars)

<u>Exemption Scheme / State</u>	<u>Homestead</u>	<u>Motor Vehicle</u>	<u>Personal Property/HHGs - (Cumulative amounts shown. Some states limit the exemption in particular items to a certain \$ amount</u>	<u>Tools of the Trade</u>	<u>Wildcard</u>
Federal Bankruptcy 11 USC § 522	18,450	2,950	11,075	1,850	10,225 <sup>1</sup>
AL	5,000	included in PP	3,000		
AK	54,000	3,000	5,000	2,800	
AZ	100,000	5,000 - 10,000	4,000	2,500	
AR*	800 to Unlimited, depending on acreage	1,200	200 to 500, plus clothes and wedding band	750	
CA-option 1 <sup>2</sup>	50,000 to 125,000 depending on marital status, age, disability	1,900	No \$ limit on necessary food, clothing, appliances, furnishings, + 5,000 in heirlooms	5,000	
CA-option 2	17,425	2,775	All HHG's worth less than 450, + 1,150 in jewelry, + 925	1,750	up to 18,350 <sup>1</sup>
CO	45,000	3,000 / 6,000 if elderly or disabled	Up to 7,600	Up to 10,000 / 25,000 for farmers, or a 3,000 professional library	
CT*	75,000	1,500	No \$ limit on necessary food, clothing, appliances, furniture, wedding /engagement rings, + 1,000	No \$ limit on necessary tools, books, instruments, farm animals	
DE	generally allows	5,000 for real,	personal &	motor vehicle	
DC*	Unlimited	2,575	3,625	1,925	850, + 8075 <sup>1</sup>



FL	Unlimited	1,000	1,000		
GA	10,000	3,500	5,000 + 500 jewelry	1,500	600, + 10,000 <sup>1</sup>
HI*	30,000 for head of family, 20,000 for others	2,575	No \$ limit on necessary HHGs, plus 1,000 jewelry	No \$ limit if reasonable /necessary	
ID	50,000	3,000	5,000 + heirlooms + 1,000 jewelry	1,500 + arms of peace/military personnel	
IL	7,500	1,200	No \$ limit on necessary clothes + 2,000	750	
IN	7,500	Included in HHGs	4,000		
IA	Unlimited	5,000	Cumulative 4,100 + wedding / engagement ring	10,000	
KS	Unlimited	20,000	No \$ limit on HHGs necessary for 1 year + 1,000 jewelry	7,500	
KY	5,000	2,500	3,000	300 to 3,000 depending on profession	1,000
LA	25,000		No \$ limit on HHGs + 5,000 wedding / engagement rings	No \$ limit if necessary for work, includes a vehicle	
ME	25,000 (50,000 with dependents which cannot be doubled for spouses)	5,000	Minimum 1,050 + all items under 200 + generous allowance of wood, coal, petroleum + up to 6,000 of unused homestead exemption	5,000 + farm implements + a commercial fishing boat	
MD	included under wildcard		2,500	2,500	3,000/5,500 in bankruptcy
MA*	300,000	700	3,000 + various other small amounts	500 + military equipment + other small items	
MI*	3,500		1000 + fuel + animals/feed	1,000 + military equipment	
MN*	200,000 / 500,000 for agriculture	2,000 in 1972 dollars	4,500 in 1972 dollars	5,000 (+ 7,500 for farm equipment) in 1972 dollars	
MS	75,000	Included in PP	10,000	Included in PP	
MO	18,000	1,000	1,900 + 850 for head of household + 250 for each dependent	2,000	

MT	100,000	2,500	4,500	3,000 + military equipment	
NE	12,500	Included under PP	1,500 + 2,500 if no homestead	2,400	
NV	200,000	15,000	10,000	4,500 + 4,500 in farming equipment + 4,500 mining equipment + military equipment	
NH*	50,000	4,000	Cumulatively \$5,800 + various items	5,000 + military equipment	
NJ*		Included under PP	2,000		
NM*	30,000 if married, widowed, or supporting another	4,000	No \$ limit on clothing & furniture + 2,500 jewelry + 500	1,500	2,000 if no homestead
NY	10,000	2,400	5,000	600	
NC	10,000	1,500	3,500 + 750 for each dependent up to 4	750	3,500 <sup>1</sup>
ND	80,000	1,200	2,500 (5,000 for head of household) subject to alternative exemptions, + certain items absolutely exempt		7,500 in lieu of homestead exemption
OH	5,000	1,000	1,500 (2,000 if no homestead exemption) + certain items absolutely exempt	750	
OK	Unlimited, if no more than 1 acre in town/160 acres out of town, and not used more than 25% for business - otherwise 5,000	3,000	4,000	5,000	
OR	25,000 / 33,000 combined for joint owners	1,700	5,800 + certain items absolutely exempt	3,000	
PA*		Included in PP	300 plus certain items absolutely exempt		
RI*	150,000	10,000	8,600 + 1,000 jewelry + certain items absolutely exempt	1,200 + professional library	
SC	5,000	1,200	3,000	750	1,000 if no homestead

SD	Unlimited	Included in PP	6,000 if head of family / 4,000 if not + certain items absolutely exempt		
TN	5,000 / 7,500 for joint owners	Included in PP	4,000 + certain items absolutely exempt	1,900	
TX*	Unlimited	Included in PP	30,000 / 60,000 for head of household	Unlimited	
UT	20,000 for primary residence	2,500	4,000 + certain items absolutely exempt	3,500	
VT*	75,000	2,500	3,000 + certain items absolutely exempt + any unused m.v. and tools of trade exemptions	5,000	
VA	5,000 + 500 per dependent	2,000	Up to 16,000 + 500 per dependent + certain property absolutely exempt	10,000 + up to 4,000 more for farmers	
WA*	40,000	2 vehicles up to 2,500	up to 7,200 + certain property absolutely exempt	5,000	
WV <sup>3</sup>	25,000	2,400	9,800 + any unused homestead exemption	1,500	
WI*	40,000	1,200	5,000	7,500	
WY	10,000	2,400	3,000	2,000	

**LEGEND:**

1. The amounts of these wildcard exemption are reduced by the amount of the homestead exemption used.
2. Generally spouses cannot double these exemptions.
3. The state apparently uses different sets of exemptions depending on whether or not the debtor is in bankruptcy. The bankruptcy exemptions are set forth herein.

\* These states have not opted-out of the federal exemption scheme of 11 U.S.C. § 522(d). Thus, residents of these states may use either their state's exemptions or the federal exemptions of 11 U.S.C. § 522(d) in bankruptcy.

In addition to the foregoing, many states allow an unlimited exemption for military equipment.

Some of the unlimited and larger homestead exemptions are limited by a maximum of acreage, often 1 acre if within a municipality, and 160 acres if without.

North Carolina's Exemptions Compared to Exemptions of Other States

The chart below shows the number of states (including D.C.) whose exemptions are **higher** in dollar amount than those of N.C. for each category. In states which have not opted-out of the exemptions of 11 USC § 522(d) the amount of the federal exemptions have been counted for purposes of this calculation.

<u>Homestead</u>	<u>Motor Vehicle</u>	<u>Personal Property / HHGs</u> (States whose exemptions are greater than or equal to \$3,500 are included here)	<u>Tools of the Trade</u>
37 higher than NC	35 higher than NC	38 higher than NC	40 higher than NC

All of the federal bankruptcy exemptions set forth in 11 U.S.C. § 522 (d) are higher than those of N.C. for each of these categories.

The information set forth in these charts is believed to be substantially accurate through 2003 as a general summary only and was compiled by with data obtained from the following sources: 14 Collier on Bankruptcy (Alan Resnick et al. eds., 2003) and The Small Business Owner's Guide To Bankruptcy by Wendell & Wes Schollander, Sphinx Publishing 2002. In a few instances, the two sources differed as to the amount of a certain exemption, and the exemptions set forth herein were then ascertained after a review of the particular state's exemption statute as reprinted in Collier on Bankruptcy. While believed to be substantially accurate, the information herein should not, and is not intended to, be relied upon as a legal opinion or as legal advice.