

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 490
HOUSE BILL 313

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

The General Assembly of North Carolina enacts:

Section 1. A new Chapter 1C, Article 16 is added to the General Statutes:
"ARTICLE 16.
"EXEMPT PROPERTY.

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

- (1) The debtor's aggregate interest, not to exceed seven thousand five hundred dollars (\$7,500) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.
- (2) The debtor's aggregate interest in any property, not to exceed two thousand five hundred dollars (\$2,500) in value less any amount of the exemption used under subdivision (1).
- (3) The debtor's interest, not to exceed one thousand dollars (\$1,000) in value, in one motor vehicle.
- (4) The debtor's aggregate interest, not to exceed two thousand five hundred dollars (\$2,500) in value for the debtor plus five hundred dollars (\$500) for each dependent of the debtor, not to exceed two thousand dollars (\$2,000) 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 five hundred dollars (\$500) 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) Life insurance as provided in Article X, Section 5 of the Constitution of North Carolina.
- (7) Professionally prescribed health aids for the debtor or a dependent of the debtor.
- (8) Compensation for personal injury 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.

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

(c) Waiver. The court may not permit waiver of the exemptions provided in this Article to the extent the exemptions are necessary to ensure the reasonable support needs of the

judgment debtor's dependents. The exemptions provided in this Article cannot otherwise 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 court. The court 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;
- (3) failure to assert the exemption after notice to do so pursuant to G.S. 1C-1603, if the court finds that the debtor had a reasonable opportunity to assert the exemption. The court 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.

(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.

(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 or appearance 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 property affected;
- (6) for the repair or improvement of the specific property affected;
- (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 or alimony order pursuant to Chapter 50 of the General Statutes.

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

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

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

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

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

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

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

NORTH CAROLINA

_____ COUNTY

IN THE GENERAL COURT
OF JUSTICE DISTRICT
COURT DIVISION
CvD

_____ Judgment Creditor)	NOTICE OF PETITION (OR MOTION) TO SET OFF DEBTOR'S EXEMPT PROPERTY
vs. _____ 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;
- (2) his debts and the names and addresses of his creditors;
- (3) the property which he desires designated as exempt. The form for the statement must be substantially as follows:

NORTH CAROLINA

_____ COUNTY
DIVISIONIN THE GENERAL COURT OF
JUSTICE
DISTRICT COURT DIVISION

Judgment Creditor)

CvD

) SCHEDULE OF DEBTOR'S
) PROPERTY AND
 vs.) REQUEST TO SET ASIDE
) EXEMPT PROPERTY
 Judgment debtor)
 I, (fill in your name), being duly sworn do depose and say:
 1. That I am a citizen and resident of _____ County, North Carolina;
 2. That I was born on (date of birth);
 3. That I am (married to (spouse's name)) (not married);
 4. That the following persons live in my household and are in substantial need of my support:

NAME	RELATIONSHIP TO DEBTOR	AGE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Use additional space, as necessary)

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

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

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

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

Address _____

Names of Owners of Record _____

Estimated Value _____

Amount of Liens _____

Amount of Debtor's Interest _____

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

Name of Insurer	Policy Number	Face Value	Beneficiary(ies)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

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

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

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

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

I understand that I am entitled to personal property worth the sum of \$2,500. I understand that I am also entitled to \$500 for each person dependent on me for support, but not to exceed \$2,000 for dependents. I further understand that I am entitled to this amount after deduction from the value of the property the amount of any valid lien or purchase money security interest and that property purchased within 90 days of this proceeding is not exempt.

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

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

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

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 _____

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

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

Judgment Debtor

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

Notary Public My Commission Expires:

(d) Notice to persons affected.

(1) If the debtor does not initiate the proceeding, he must be served in the manner provided by G.S. 1A-1, Rule 4 with the petition, motion or notice directed by the court. He must then file the statement required by subsection (c) and may respond. Notice of the hearing may be given by debtor or creditor to any creditor.

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

(e) Procedure for setting aside exempt property.

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

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

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

person requesting the valuation and is a court cost having priority over the claims.

- (4) If the debtor fails to file the statement required by subsection (c) the court must determine whether the debtor had a reasonable opportunity to assert the exemption.
- (5) The court must enter an order designating any exempt property and directing any steps necessary to designate it. Supplemental reports and orders may be filed and entered as necessary to reflect implementation of the order.
- (6) The court may permit a particular item of property having value in excess of the allowable exemption to be retained by the debtor upon his making available to creditors money or property not otherwise available to them in an amount equivalent to the excess value. Priorities of creditors are the same in the substituted property as they were in the original property. The court may provide for the sale of property having excess value and appropriate distribution of the proceeds at a time and in a manner fixed by the order.

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

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

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

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

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

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

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

In the General Assembly read three times and ratified, this the 2nd day of June, 1981.