

REPORT
of the
North Carolina Courts Commission
to the
1982 General Assembly

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Exemptions From Money Judgments

Chapter 490 of the 1981 Session Laws dramatically expanded the exemptions available to an individual debtor who has a money judgment rendered against him. The act also requires that North Carolinians who declare bankruptcy under federal law must take the newly established state exemptions. In addition, it established a new procedure for determining how and when a debtor may claim the exemptions. The new procedure was carved out of a larger bill that would have completely revised the manner in which judgments are collected. In general the new bill involved the court much more in collecting money judgments than prior law relating to executions had done. In establishing the procedure to determine exemptions, Ch. 490 did not amend the execution statutes in G.S. Ch. 1. Thus, the procedural provisions, of Ch. 490, which generally require the court to determine exemptions, and the execution statutes, which generally require the sheriff to collect the judgment, do not always mesh. At its October budget session the General Assembly delayed for three months the effective date of Ch. 490 to give the Administrative Office of the Courts time to prepare necessary forms to implement the new law and directed the Commission to review Ch. 490 and make recommendations for improvements to the 1982 General Assembly.

In its review of Ch. 490, the Commission did not consider any substantive changes to the exemptions themselves. Many people have suggested that the exemptions need to be reviewed, but that issue does not fall within the statutory mandate of the Commission to study the structure, organization, jurisdiction, procedures and personnel of the Judicial Department. Thus, the Commission left that review for the 1983 General Assembly by a group other than the Courts Commission. At the Commission's request a meeting was held to discuss the proposal with representatives of interested groups including the Clerks of Superior Court, Legal Services of North Carolina, North Carolina Automobile Dealers Association, N.C. Banker's Association, N.C. Consumer Finance Association, N.C. Credit Union League, Inc., and the N.C. Merchants' Association. These groups approved in principle the recommendations of the Commission.

Generally, the Commission's recommendations streamline the procedure that designate exemptions and conform that procedure to the execution laws, clarify procedural points left unanswered by Ch. 490, and make technical corrections. The bill recommends four major changes in the procedures of Ch. 490: First, Ch. 490 gave district court judges and clerks of superior court concurrent jurisdiction to designate exemptions. Some confusion has arisen as to which official would actually hear the cases. The Commission's recommendation would provide that district court judges hear contested exemption hearings and clerks handle uncontested requests for exemptions and waivers. The bill also sets out an appeal route, which was lacking in Ch. 490. Second, the recommendation simplifies the procedure for a debtor to claim exemptions by providing that a court hearing is held only when the debtor requests it. Third, the proposal allows a waiver of exemptions without a hearing. Language requiring a finding that the exemptions are not necessary for support of the judgment debtor's dependents is removed because it is unnecessary. That provision was thought to be necessary because of wage garnishment provisions in the original package, but no wage garnishment provision was included in Ch. 490. Finally, the proposal clarifies that when a judgment debtor waives his statutory exemp-

tions, he also waives the constitutional exemptions. The recommendation sets out a procedure for the debtor to claim his constitutional exemptions and for the court to designate the homestead exemption in value rather than setting aside a portion of the land itself.

The Commission's proposal to implement these recommendations is included as Appendix A of this report.

Allocation of Civil Cases in the Trial Divisions

G.S. 7A-243 provides that the district court is the proper division of the court system for the trial of civil actions in which the amount in controversy is \$5,000 or less, with the superior court being the proper court for civil actions in which the amount in controversy is over that amount. That division of the civil caseload was established in 1965 when the district court system was created. At that same time the jurisdiction of magistrates to hear small claims cases was set at cases involving \$300 or less. Since 1965, the figure for magistrates' jurisdiction has been raised several times, and it is now at \$1,000. The original \$5,000 dividing line for determining the proper trial division has not changed. An adjustment to reflect only the increase in the consumer price index since 1965 would require a figure of over \$14,000.

The Commission recommends that G.S. 7A-243 be amended to provide that the dividing line for civil cases be set at \$10,000. The Commission chose that figure for several reasons. First, it is an easy number for the public and court officials to remember. Second, while it will not reflect the extent of inflation over the last 17 years, it will place the magistrate's, district court's and superior court judge's jurisdiction in a more balanced proportion. Finally, the Commission was reluctant to increase the amount any more because it feared any larger change might cause too great a shift in caseloads between the two trial divisions to be handled at once. A report prepared for the Commission by the Administrative Office of the Courts, which concludes that the \$10,000 figure would not result in a significant percentage increase in the district court caseload, supports that view. If the need to adjust the figure upward becomes apparent in the future, the Commission will recommend further adjustment.

The Commission's proposal to implement this recommendation is included as Appendix B.

Annual Jury Lists

G.S. 9-2 provides that the county jury commission is to prepare the county's master list of jurors every two years for the next biennium. In counties with large populations the list contains thousands of names; shifts to one-day or one-trial systems of jury service significantly increase the number of jurors needed. When the result is combined with the number of people who move or change addresses each year, some counties have experienced a large number of incorrect addresses in the second year of use of the list.

As a result, the cost of summoning jurors is increasingly time-consuming and expensive toward the end of the biennium. To alleviate the problem the Commission recommends an amendment to G.S. 9-2 to allow the jury commission to prepare a list annually if the senior regular resident superior court judge requests that it do so. The Commission believes that the authority would be exercised only in large urban counties using one-day or one-trial systems of jury service, and only then if computer and related costs would be offset by savings in postage and related costs, and increased efficiency caused by the reduction in the number of incorrect addresses. In any event, both the senior superior court judge and the jury commissioners would have to agree before annual lists may be used.

The Commission's proposed bill would be effective July 1, 1982, and it authorizes the preparation of an annual list for the calendar year 1983, even though a list for the entire biennium has already been prepared.

The Commission's proposal to implement this recommendation is included as Appendix C.

Technical Amendments

The remaining bill the Commission recommends makes several technical changes in G.S. Ch. 7A to correct errors in 1981 legislation. Ch. 470 of the 1981 session laws amended G.S. 7A-31(a) to make certain decisions of the Court of Appeals final. That act also inadvertently omitted a sentence in that section specifying that causes appealed to the Court of Appeals from certain administrative bodies must be determined first by the Court of Appeals. The proposed bill reinserts the sentence.

Chapter 455 of the 1981 Session Laws amended two sections of G.S. Chapter 7A to authorize service by retired judges and justices past the mandatory retirement age. As part of that bill, a provision was added prohibiting a retired judge or justice from receiving more total compensation for judicial service than an active judge on the same level. That provision was repealed when the appropriations act rewrote the same sections to increase the daily compensation for retired judges and justices. The proposed bill reinserts the deleted provision in two places in the statutes.

Ch. 847 of the 1981 Session Laws added eight new members to the Courts Commission including a superior and district court judge and a district attorney. That act also provides that the judicial officials appointed are to serve two-year terms or until they cease to hold office whichever is later. The intent of the Commission was to make the terms expire at the earlier of the two times; the proposed bill corrects this draftsmen's error.

The Commission's proposal to implement these recommendations is included as Appendix D.

APPENDIX A

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROCEDURE FOR GRANTING EXEMPTIONS FROM MONEY JUDGMENTS

The General Assembly of North Carolina enacts:

Section 1. G.S. § 1C-1601(b) is rewritten as follows: "(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."

Sec. 2. G.S. § 1C-1601(c) is amended by deleting the first sentence, and is further amended on line 4 by inserting after the word "Article" the words "and in Sections 1 and 2 of Article X of the North Carolina Constitution," and by deleting the word "otherwise."

Sec. 3. G.S. § 1C-1601(c)(3) is amended by deleting the comma and the language "if the court finds that the debtor had a reasonable opportunity to assert the exemption," and inserting in its place a period, and is further amended on line 3 by deleting the word "court" and inserting in its place "clerk or district court judge."

Sec. 4. G.S. § 1C-1601(e)(2) is amended by deleting the word "or" as it appears after the word "taxes" and inserting in its place a comma and by inserting after the word "bonds" the words "or fiduciary bonds."

Sec. 5. G.S. § 1C-1601(e)(5) is amended on line 2 by inserting the word "real" in front of the word "property."

Sec. 6. G.S. § 1C-1601(e) is amended by deleting subdivision (6) and renumbering subdivisions (7) through (9) accordingly.

Sec. 7. G.S. § 1C-1601(e)(9), before being renumbered by Sec. 6 of this bill, is rewritten as follows: "(9) For child support, alimony or distributive award order pursuant to Chapter 50 of the General Statutes."

Sec. 8. G.S. § 1C-1602 is rewritten as follows: "The debtor may elect to take the personal property and homestead exemptions provided in Article X of the Constitution of North Carolina instead of the exemptions provided by G.S. 1C-1601. If the debtor elects to take his constitutional exemptions, the exemptions provided in 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. If the debtor elects to take his constitutional exemptions, the clerk or district court judge must designate the property to be exempt under the procedure set out in G.S. 1C-1603. The debtor is entitled to have \$1,000 in value in real property owned and occupied by him and \$500 in value in his personal property exempted from sale under execution. If the value of the property in which the debtor claims his constitutional exemption is in excess of his exemptions, the clerk, in an execution, may order the sale of the property with the proceeds of the sale being distributed first to the debtor to satisfy his exemption and the excess to be distributed as ordered."

Sec. 9. G.S. § 1C-1603(a) is amended by rewriting subdivision (1) to read as follows: "(1) A judgment debtor may have his exempt property designated by motion after judgment has been entered against him."

Sec. 10. G.S. 1C-1603(a) is further amended by deleting subdivision (2) and renumbering subdivisions (3) and (4) accordingly.

Sec. 11. The first sentence of G.S. 1C-1603(a)(3), subdivision (4) before being renumbered by Sec. 10 of this bill, is rewritten to read as

follows: "After judgment, except as provided in G.S. 1C-1603(a)(2) or when exemptions have already been designated, the clerk may not issue an execution or writ of possession unless notice from the court has been served upon the judgment debtor advising him of his rights. The judgment creditor must cause the notice to be served on the debtor as provided in G.S. 1A-1, Rule 4(j)(1). If the judgment debtor cannot be served as provided above, the judgment creditor may serve him by mailing a copy of the notice to the judgment debtor at his last known address. Proof of service by certified or registered mail or personal service is as provided in G.S. 1A-1, Rule 4. The judgment creditor may prove service by mailing to last known address by filing a certificate that the notice was served indicating the circumstances warranting the use of such service and the date and address of service.

Sec. 12. G.S. 1C-1603(d) is amended to read as follows:

"(d). Notice to Persons Affected.--If the judgment debtor moves to designate his exemptions, a copy of the motion and schedule must be served on the judgment creditor as provided in G.S. 1A-1, Rule 5."

Sec. 13. G.S. 1C-1603(e) is rewritten to read as follows:

"(e) Procedure for Setting Aside Exempt Property.--

(1) When served with the notice provided in G.S. 1C-1603(a)(3), the judgment debtor may either file a motion to designate his exemptions with a schedule of assets or may request, in writing, a hearing before the clerk to claim exemptions.

(2) If the judgment debtor does not file a motion to designate exemptions with a schedule of assets within twenty days after notice of his rights were served in accordance with G.S. 1C-1603(a)(3) or if he does not request a hearing before the clerk within twenty days after service of the notice of rights and appear at the requested hearing, the judgment debtor has

waived the exemptions provided in this Article and in Sections 1 and 2 of Article X of the North Carolina Constitution. Upon request of the judgment creditor, the clerk shall issue a writ of execution or writ of possession.

(3) If the judgment debtor moves to designate his exemptions by filing a motion and schedule of assets, the judgment creditor is served as provided in G.S. 1C-1603(d).

(4) If the judgment debtor requests a hearing before the clerk to claim exemptions, the clerk sets a hearing date and gives notice of the hearing to the judgment debtor and judgment creditor. At the hearing, the judgment debtor may claim his exemptions.

(5) The judgment creditor has ten days from the date served with a motion and schedule of assets or from the date of a hearing to claim exemptions to file an objection to the judgment debtor's schedule of exemptions.

(6) If the judgment creditor files no objection to the schedule filed by the judgment debtor or claimed at the requested hearing, the clerk shall enter an order designating the property allowed by law and scheduled by the judgment debtor as exempt property. Upon request of the judgment creditor, the clerk shall issue an execution or writ of possession except for exempt property.

(7) If the judgment creditor objects to the schedule filed or claimed by the judgment debtor, the clerk must place the motion for hearing by the district court judge, without a jury, at the next civil session.

(8) The district court judge must determine the value of the property. The district court judge or the clerk, upon order of the judge,

may appoint a qualified person to examine the property and report its value to the judge. Compensation of that person must be advanced by the person requesting the valuation and is a court cost having priority over the claims.

(9) The district court judge must enter an order designating exempt property. Supplemental reports and orders may be filed and entered as necessary to implement the order.

(10) Where the order designating exemptions indicates excess value in exempt property, the clerk, in an execution, may order the sale of property having excess value and appropriate distribution of the proceeds.

(11) The clerk or district court judge may permit a particular item of property having value in excess of the allowable exemption to be retained by the judgment debtor upon his making available to judgment creditors money or property not otherwise available to them in an amount equivalent to the excess value. Priorities of judgment creditors are the same in the substituted property as they were in the original property.

(12) Appeal from a designation of exempt property by the clerk is to the district court judge. A party has ten days from the date of entry of an order to appeal. Appeal from a designation of exempt property by a district court judge is to the Court of Appeals. Decisions of the Court of Appeals with regard to questions of valuation of property are final as provided in G.S. 7A-28. Other questions may be appealed as provided in G.S. 7A-30 and G.S. 7A-31."

Sec. 14. G.S. 1C-1603 is amended by deleting subsection (h).

Sec. 15. G.S. 1-305 is amended by designating the present section as subsection (a) by adding on the first line before the comma the language

"and subsection (b) below", and by adding a new subsection (b) to read as follows:

"(b) The clerk may not issue an execution unless

(1) the judgment debtor's exemptions have been designated, or

(2) the judgment debtor has waived his exemptions as provided in

G.S. 1C-1601(c), or

(3) the clerk determines that the exemptions are inapplicable to the particular claim as authorized by G.S. 1C-1603(a)(2) (as renumbered by Sec. 10 of this bill)."

Sec. 16. G.S. Chapter 7A-28 is amended by numbering the present section as subsection (a) and by adding a new subsection (b) as follows: "Decisions of the Court of Appeals upon review of valuation of exempt property under G.S. Chapter 1C are final and not subject to further review in the Supreme Court by appeal, motion, certification, writ, or otherwise."

Sec. 17. G.S. 7A-31(a) is amended on line 6 by deleting the words "embracing subject matter covered by G.S. 7A-28" and inserting the words "or valuation of exempt property pursuant to G.S. 7A-28."

Sec. 18. G.S. 1C-1603(f) is amended by deleting the second sentence and inserting a new sentence to read as follows: "If real property located in a county other than the county in which the judgment was rendered is designated as exempt and the judgment has already been docketed in that county, the clerk must send a notice of the designation of exempt property to the county where the property is located. The clerk of the county where the land is located shall enter a notation of the designation of exempt property on the judgment docket. If a judgment is docketed in a county where real property is located after that real property has been designated as exempt, the transcript of judgment must indicate the exemptions have been designated. The clerk in

the county receiving the transcript must enter the notation of designation of exempt property as well as docket the judgment.

Sec. 19. G.S. 1C-1603(a)(3) (before being renumbered by Section 10 of this bill) is amended in lines 1 and 2 by deleting the words "In a proceeding for the enforcement of a money judgment (including an execution or a supplemental proceeding) the court" and by inserting in its place the words "The clerk or district court judge."

Sec. 20. G.S. 1C-1601(c)(2) is amended on line one by deleting the word "court" as it appears twice, and inserting in its place the words "clerk or district court judge."

Sec. 21. If any section, paragraph or clause of this act is declared unconstitutional by a court of competent jurisdiction, that judgment shall not affect or invalidate the remainder of the act, but is limited to the section, paragraph or clause of this act that was declared unconstitutional.

Sec. 22. This act is effective on September 1, 1982, and applies to all proceedings to enforce money judgments begun on or after that date. When a proceeding to enforce a money judgment has begun before the effective date of this act, the clerk may enter appropriate transitional orders.

APPENDIX B

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CIVIL JURISDICTION OF THE DISTRICT COURT

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-243 is amended by deleting the words and figures "five thousand dollars (\$5,000.00)" in the two places they appear and inserting in lieu thereof the words and figures "ten thousand dollars (\$10,000.00)".

Sec. 2. This act shall become effective July 1, 1982.

APPENDIX C

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR ANNUAL JURY LISTS

The General Assembly of North Carolina enacts:

Section 1. G.S. 9-2(a) is amended by adding at the end of the present subsection the following sentence:

"Instead of providing a list for an entire biennium, the commission may prepare a list each year if the senior regular resident superior court judge requests in writing that it do so."

Sec. 2. This act shall become effective July 1, 1982, and a jury commission may prepare a list for the calendar year 1983 pursuant to the provisions of this act, even though the commission in 1981 prepared a jury list for the entire 1982-83 biennium.

APPENDIX D

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS TO G.S. CHAPTER 7A.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-31(a), as it appears in the 1981 Replacement Volume 1B of the General Statutes, is amended by inserting after the first sentence of that subsection the following sentence: "A cause appealed to the Court of Appeals from any of the administrative bodies listed in the preceding sentence may be certified in similar fashion, but only after determination of the cause in the Court of Appeals."

Sec. 2. G.S. 7A-39.3(b) is amended by adding a sentence at the end of that subsection to read as follows: "No recalled retired or emergency justice or judge shall receive from the State total annual compensation for judicial services in excess of that received by an active justice or judge of the bench to which the justice or judge is being recalled."

Sec. 3. G.S. 7A-52(b) is amended by adding a sentence at the end of that subsection to read as follows: "No recalled retired trial judge shall receive from the State total annual compensation for judicial services in excess of that received by an active judge of the bench to which the judge is recalled."

Sec. 4. G.S. 7A-506 is amended on line 26 by deleting the word "later" and inserting in lieu thereof the word "earlier".

Sec. 5. This act is effective on ratification.

