

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 757*

Short Title: Property Exemptions.

(Public)

Sponsors: Senator Johnson.

Referred to: Banks and Thrift Institutions.

April 24, 1991

A BILL TO BE ENTITLED

AN ACT TO INCREASE EXEMPT PROPERTY VALUES AND TO CLARIFY THE EFFECT OF EXEMPTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1C-1601 reads as rewritten:

"§ 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 his creditors:

(1) The debtor's aggregate interest, not to exceed ~~seven thousand five hundred dollars (\$7,500)~~ eleven thousand five hundred dollars (\$11,500) 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)~~ three thousand eight hundred dollars (\$3,800) 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)~~ one thousand five hundred dollars (\$1,500) in value, in one motor vehicle.

(4) The debtor's aggregate interest, not to exceed ~~two thousand five hundred dollars (\$2,500)~~ three thousand eight hundred dollars (\$3,800) in value for the debtor plus ~~five hundred dollars (\$500)~~ seven hundred fifty

1 dollars (\$750.00) for each dependent of the debtor, not to exceed ~~two~~
2 ~~thousand dollars (\$2,000)~~ three thousand dollars (\$3,000) total for
3 dependents, in household furnishings, household goods, wearing
4 apparel, appliances, books, animals, crops, or musical instruments, that
5 are held primarily for the personal, family, or household use of the
6 debtor or a dependent of the debtor.

7 (5) The debtor's aggregate interest, not to exceed ~~five hundred dollars (\$500)~~
8 seven hundred fifty dollars (\$750.00) in value, in any implements,
9 professional books, or tools of the trade of the debtor or the trade of a
10 dependent of the debtor.

11 (6) Life insurance as provided in Article X, Section 5 of the Constitution
12 of North Carolina.

13 (7) Professionally prescribed health aids for the debtor or a dependent of
14 the debtor.

15 (8) Compensation for personal injury or compensation for the death of a
16 person upon whom the debtor was dependent for support, but such
17 compensation is not exempt from claims for funeral, legal, medical,
18 dental, hospital, and health care charges related to the accident or
19 injury giving rise to the compensation.

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

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

25 (1) Transfer to a third party of property allocated which may be claimed as
26 exempt (and in that event only as to the specific property transferred),
27 or

28 (2) Written waiver, after judgment, approved by the clerk or district court
29 judge. The clerk or district court judge must find that the waiver is
30 made freely, voluntarily, and with full knowledge of the debtor's rights
31 to exemptions and that he is not required to waive ~~them;~~ them.

32 (3) ~~Failure to assert the exemption after notice to do so pursuant to G.S.~~
33 ~~1C 1603. The clerk or district court judge may relieve such a waiver~~
34 ~~made by reason of mistake, surprise or excusable neglect, to the extent~~
35 ~~that the rights of innocent third parties are not affected.~~

36 (d) Recent purchases. – The exemptions provided in subdivisions (2), (3), (4) and
37 (5) of subsection (a) of this section are inapplicable with respect to tangible personal
38 property purchased by the debtor less than 90 days preceding ~~the initiation of judgment~~
39 ~~collection proceedings or the filing of a petition for bankruptcy.~~

40 (e) Exceptions. – The exemptions provided in this Article are inapplicable to
41 claims

42 (1) Of the United States or its agencies as provided by federal law;

43 (2) Of the State or its subdivisions for taxes, appearance bonds or
44 fiduciary bonds;

- 1 (3) Of lien by a laborer for work done and performed for the person
 2 claiming the exemption, but only as to the specific property affected;
 3 (4) Of lien by a mechanic for work done on the premises, but only as to
 4 the specific property affected;
 5 (5) For payment of obligations contracted for the purchase of the specific
 6 real property affected;
 7 (6) Repealed by Session Laws 1981 (Reg. Sess., 1982), c. 1224, s. 6,
 8 effective September 1, 1982;
 9 (7) For contractual security interests in the specific property affected;
 10 provided, that the exemptions shall apply to the debtor's household
 11 goods notwithstanding any contract for a nonpossessory, nonpurchase
 12 money security interest in any such goods;
 13 (8) For statutory liens, on the specific property affected, other than judicial
 14 liens;
 15 (9) For child support, alimony or distributive award order pursuant to
 16 Chapter 50 of the General Statutes.

17 (f) Federal Bankruptcy Act. – The exemptions provided in The Bankruptcy Act,
 18 11 U.S.C. § 522(d), are not applicable to residents of this State. The exemptions
 19 provided by this Article shall apply for purposes of The Bankruptcy Act, 11 U.S.C. §
 20 522(b).

21 (g) Effect of exemptions. – Notwithstanding any other provision of law, a
 22 creditor shall not obtain possession of any property which may be claimed as exempt
 23 under this section, until the procedures required by G.S. 1C-1603 have been fully
 24 complied with."

25 Sec. 2. G.S. 1C-1603(a) reads as rewritten:

26 "(a) Motion or Petition; Notice. –

- 27 (1) A judgment debtor may have his exempt property designated by
 28 motion after judgment has been entered against him.
 29 (2) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s.
 30 10, effective September 1, 1982.
 31 (3) The clerk or district court judge may determine that particular property
 32 is not exempt even though there has been no proceeding to designate
 33 the exemption.
 34 (4) ~~After judgment, except~~ Except as provided in G.S. 1C-1603(a)(3) or when
 35 ~~exemptions have already been designated, G.S. 1C-1603(a)(3),~~ the clerk
 36 may not issue an execution or writ of possession unless, within
 37 60 days preceding the time an execution or writ of possession is
 38 sought, notice from ~~issued by~~ the court has been served upon the
 39 judgment debtor advising him of his rights. The judgment creditor
 40 must cause the notice to be served on the debtor as provided in G.S.
 41 1A-1, Rule 4(j)(1). If the judgment debtor cannot be served as
 42 provided above, the judgment creditor may serve him by mailing a
 43 copy of the notice to the judgment debtor at his last known address.
 44 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. The notice must be substantially in the following form:

NORTH CAROLINA IN THE GENERAL COURT
... .. COUNTY OF JUSTICE DISTRICT
COURT DIVISION
CvD

Judgment Creditor) NOTICE OF
vs.) PETITION (OR
) MOTION) TO SET
) OFF DEBTOR'S
) EXEMPT PROPERTY

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 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."

Sec. 3. G.S. 1C-1603(e) reads as rewritten:

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

- (1) When served with the notice provided in G.S. 1C-1603(a)(4), 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 20 days after notice of his rights was served in accordance with G.S. 1C-1603(a)(4) or if he does not request a hearing before the clerk within 20 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. assets, the clerk may issue a writ of execution or a writ of possession after 30 days from the date the Notice of Right To Claim Exempt Property has been served upon the debtor in accordance with G.S. 1C-1603(a).

- 1 (2a) The judgment debtor may file a motion to claim exempt property at
2 any time. Such motion shall be ineffective as to property which has
3 been sold to a third party. If execution has issued, within 24 hours
4 after a motion to exempt property is filed, the clerk shall notify the
5 sheriff of the motion and the sheriff shall cease execution proceedings
6 until the process set forth in G.S. 1C-1603(e) has been completed. If
7 execution proceedings are suspended pursuant to this section, the 90-
8 day period set forth in G.S. 1-310 shall be tolled during the period of
9 suspension. If the property has been removed from the possession of
10 the debtor, it shall be returned to the debtor upon payment to the
11 creditor of the costs incurred by the judgment creditor in levying on
12 the property.
- 13 *(3) If the judgment debtor moves to designate his exemptions by filing a
14 motion and schedule of assets, the judgment creditor is served as
15 provided in G.S. 1C-1603(d).
- 16 (4) If the judgment debtor requests a hearing before the clerk to claim
17 exemptions, the clerk sets a hearing date and gives notice of the
18 hearing to the judgment debtor and judgment creditor. At the hearing,
19 the judgment debtor may claim his exemptions.
- 20 (5) The judgment creditor has 10 days from the date served with a motion
21 and schedule of assets or from the date of a hearing to claim
22 exemptions to file an objection to the judgment debtor's schedule of
23 exemptions.
- 24 (6) If the judgment creditor files no objection to the schedule filed by the
25 judgment debtor or claimed at the requested hearing, the clerk shall
26 enter an order designating the property allowed by law and scheduled
27 by the judgment debtor as exempt property. Upon request of the
28 judgment creditor, the clerk shall issue an execution or writ of
29 possession except for exempt property.
- 30 (7) If the judgment creditor objects to the schedule filed or claimed by the
31 judgment debtor, the clerk must place the motion for hearing by the
32 district court judge, without a jury, at the next civil session.
- 33 (8) The district court judge must determine the value of the property. The
34 district court judge or the clerk, upon order of the judge, may appoint a
35 qualified person to examine the property and report its value to the
36 judge. Compensation of that person must be advanced by the person
37 requesting the valuation and is a court cost having priority over the
38 claims.
- 39 (9) The district court judge must enter an order designating exempt
40 property. Supplemental reports and orders may be filed and entered as
41 necessary to implement the order.
- 42 (10) Where the order designating exemptions indicates excess value in
43 exempt property, the clerk, in an execution, may order the sale of

- 1 property having excess value and appropriate distribution of the
2 proceeds.
- 3 (11) The clerk or district court judge may permit a particular item of
4 property having value in excess of the allowable exemption to be
5 retained by the judgment debtor upon his making available to
6 judgment creditors money or property not otherwise available to them
7 in an amount equivalent to the excess value. Priorities of judgment
8 creditors are the same in the substituted property as they were in the
9 original property.
- 10 (12) Appeal from a designation of exempt property by the clerk is to the
11 district court judge. A party has 10 days from the date of entry of an
12 order to appeal. Appeal from a designation of exempt property by a
13 district court judge is to the Court of Appeals. Decisions of the Court
14 of Appeals with regard to questions of valuation of property are final
15 as provided in G.S. 7A-28. Other questions may be appealed as
16 provided in G.S. 7A-30 and 7A-31."
- 17 Sec. 4. This act becomes effective October 1, 1991.