

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1176
Committee Substitute Favorable 5/2/05
Committee Substitute #2 Favorable 5/11/05
Committee Substitute #3 Favorable 5/25/05

Short Title: Property Exempt From Enforcement Actions.

(Public)

Sponsors:

Referred to:

April 12, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CAP ON PROPERTY OF A JUDGMENT DEBTOR
THAT IS FREE OF THE ENFORCEMENT OF THE CLAIMS OF CREDITORS,
AND TO EXEMPT CERTAIN TYPES OF PROPERTY FROM ENFORCEMENT.

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 creditors:

(1) The debtor's aggregate interest, not to exceed ~~ten thousand dollars~~ eighteen thousand five hundred dollars (\$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~~ debtor; however, an unmarried debtor who is 65 years of age or older is entitled to retain an aggregate interest in the property not to exceed thirty-seven thousand dollars (\$37,000) in 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 dollars (\$3,500)~~ five thousand dollars (\$5,000) in value ~~less any amount of the exemption used of any unused exemption amount to which the debtor is entitled under subdivision~~ (1) of this subsection.

- 1 (3) The debtor's interest, not to exceed ~~one thousand five hundred dollars~~
2 ~~(\$1,500)~~three thousand five hundred dollars (\$3,500) in value, in one
3 motor vehicle.
- 4 (4) The debtor's aggregate interest, not to exceed ~~three thousand five~~
5 ~~hundred dollars (\$3,500)~~five thousand dollars (\$5,000) in value for the
6 debtor plus ~~seven hundred fifty dollars (\$750.00)~~one thousand dollars
7 (\$1,000) for each dependent of the debtor, not to exceed ~~three~~
8 ~~thousand dollars (\$3,000)~~four thousand dollars (\$4,000) total for
9 dependents, in household furnishings, household goods, wearing
10 apparel, appliances, books, animals, crops, or musical instruments, that
11 are held primarily for the personal, family, or household use of the
12 debtor or a dependent of the debtor.
- 13 (5) The debtor's aggregate interest, not to exceed ~~seven hundred fifty~~
14 ~~dollars (\$750.00)~~two thousand dollars (\$2,000) in value, in any
15 implements, professional books, or tools of the trade of the debtor or
16 the trade of a dependent of the debtor.
- 17 (6) Life insurance as provided in Article X, Section 5 of the Constitution
18 of North Carolina.
- 19 (7) Professionally prescribed health aids for the debtor or a dependent of
20 the debtor.
- 21 (8) Compensation for personal ~~injury~~injury, including compensation from
22 private disability policies or annuities, or compensation for the death
23 of a person upon whom the debtor was dependent for support, but such
24 compensation is not exempt from claims for funeral, legal, medical,
25 dental, hospital, and health care charges related to the accident or
26 injury giving rise to the compensation.
- 27 (9) Individual retirement plans as defined in the Internal Revenue Code
28 and any plan treated in the same manner as an individual retirement
29 plan under the Internal Revenue Code. ~~For purposes of this~~
30 ~~subdivision, "Internal Revenue Code" means Code as defined in~~
31 ~~G.S. 105-228.90. Code, including individual retirement accounts and~~
32 Roth retirement accounts as described in section 408(a) and section
33 408A of the Internal Revenue Code, individual retirement annuities as
34 described in section 408(b) of the Internal Revenue Code, and
35 accounts established as part of a trust described in section 408(c) of the
36 Internal Revenue Code.
- 37 (10) Funds in a college savings plan qualified under section 529 of the
38 Internal Revenue Code, not to exceed a cumulative limit of twenty-five
39 thousand dollars (\$25,000), but excluding any funds placed in a
40 college savings plan account within the preceding 12 months (except
41 to the extent any of the contributions were made in the ordinary course
42 of the debtor's financial affairs and were consistent with the debtor's
43 past pattern of contributions) and only to the extent that the funds are

- 1 for a child of the debtor and will actually be used for the child's college
2 or university expenses.
- 3 (11) Retirement benefits under the retirement plans of other states and
4 governmental units of other states, to the extent that these benefits are
5 exempt under the laws of the state or governmental unit under which
6 the benefit plan is established.
- 7 (12) Alimony, support, separate maintenance, and child support payments
8 or funds that have been received or to which the debtor is entitled, to
9 the extent the payments or funds are reasonably necessary for the
10 support of the debtor or any dependent of the debtor.
- 11 (b) Definition. – "Value" as used in this ArticleDefinitions. – As used in this
12 section, the following definitions apply:
- 13 (1) "Internal Revenue Code" means Code as defined in G.S. 105-228.90.
14 (2) "Value" means fair market value of an individual's interest in property,
15 less valid liens superior to the judgment lien sought to be enforced.
- 16 (c) Waiver. – The exemptions provided in this Article and in Sections 1 and 2 of
17 Article X of the North Carolina Constitution, cannot be waived except by:
- 18 (1) Transfer of property allocated as exempt (and in that event only as to
19 the specific property ~~transferred~~, or transferred);
- 20 (2) Written waiver, after judgment, approved by the clerk or district court
21 judge. The clerk or district court judge must find that the waiver is
22 made freely, voluntarily, and with full knowledge of the debtor's rights
23 to exemptions and that he is not required to waive them; or
- 24 (3) Failure to assert the exemption after notice to do so pursuant to
25 G.S. 1C-1603. The clerk or district court judge may relieve such a
26 waiver made by reason of mistake, surprise or excusable neglect, to the
27 extent that the rights of innocent third parties are not affected.
- 28 (d) Recent purchases. – The exemptions provided in subdivisions (2), (3), ~~(4)~~(4),
29 and (5) of subsection (a) of this section are inapplicable with respect to tangible
30 personal property purchased by the debtor less than 90 days preceding the initiation of
31 judgment collection proceedings or the filing of a petition for ~~bankruptcy~~bankruptcy,
32 unless the purchase of the property is directly traceable to the liquidation or conversion
33 of property that may be exempt and no additional property was transferred into or used
34 to acquire the replacement property.
- 35 (e) Exceptions. – The exemptions provided in this Article are inapplicable to
36 claims:
- 37 (1) Of the United States or its agencies as provided by federal law;
38 (2) Of the State or its subdivisions for taxes, appearance bonds or
39 fiduciary bonds;
- 40 (3) Of lien by a laborer for work done and performed for the person
41 claiming the exemption, but only as to the specific property affected;
- 42 (4) Of lien by a mechanic for work done on the premises, but only as to
43 the specific property affected;

- 1 (5) For payment of obligations contracted for the purchase of the specific
- 2 real property affected;
- 3 (6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s. 6,
- 4 effective September 1, 1982;
- 5 (7) For contractual security interests in the specific property affected;
- 6 provided, that the exemptions shall apply to the debtor's household
- 7 goods notwithstanding any contract for a nonpossessory, nonpurchase
- 8 money security interest in any such goods;
- 9 (8) For statutory liens, on the specific property affected, other than judicial
- 10 liens;
- 11 (9) For child support, alimony or distributive award order pursuant to
- 12 Chapter 50 of the General Statutes;
- 13 (10) For criminal restitution orders docketed as civil judgments pursuant to
- 14 G.S. 15A-1340.38.

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

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

23 **SECTION 2.** G.S. 1C-1603(a)(4) reads as rewritten:

24 "(4) After judgment, except as provided in G.S. 1C-1603(a)(3) or when
 25 exemptions have already been designated, the clerk may not issue an
 26 execution or writ of possession unless notice from the court has been
 27 served upon the judgment debtor advising ~~him~~ the debtor of ~~his~~ the
 28 debtor's rights. The judgment creditor ~~must~~ shall cause the ~~notice~~
 29 notice, which shall be accompanied by the form for the statement by
 30 the debtor under subsection (c) of this section, to be served on the
 31 debtor as provided in G.S. 1A-1, Rule 4(j)(1). If the judgment debtor
 32 cannot be served as provided above, the judgment creditor may serve
 33 ~~him~~ the judgment debtor by mailing a copy of the notice to the
 34 judgment debtor at ~~his~~ the debtor's last known address. Proof of
 35 service by certified or registered mail or personal service is as
 36 provided in G.S. 1A-1, Rule 4. The judgment creditor may prove
 37 service by mailing to last known address by filing a certificate that the
 38 notice was served indicating the circumstances warranting the use of
 39 such service and the date and address of service. The notice ~~must~~ shall
 40 be substantially in the following form:

41 NORTH CAROLINA	IN THE GENERAL COURT
42 _____ COUNTY	OF JUSTICE DISTRICT
	COURT DIVISION
	CvD

1 Judgment Debtor) SET ASIDE EXEMPT
2) PROPERTY
3

4 NOTICE TO JUDGMENT DEBTOR:

5
6 THERE ARE CERTAIN EXEMPTIONS UNDER STATE AND FEDERAL LAW
7 THAT YOU ARE ENTITLED TO CLAIM IN ADDITION TO THE EXEMPTIONS
8 LISTED BELOW.

9 These exemptions may include social security benefits, unemployment benefits,
10 workers' compensation benefits, and earnings for your personal services rendered within
11 the last 60 days. There is available to you a prompt procedure for challenging an
12 attachment or levy on your property.

13
14 I, _____, being duly sworn do depose and say:
15 (fill in your name)

- 16 1. That I am a citizen and resident of _____ County, North Carolina;
17 2. That I was born on _____;
18 (date of birth)
19 3. That I am (married to _____)
20 (spouse's name)

21 _____;
22 (not married)

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

Table with 3 columns: NAME, RELATIONSHIP TO DEBTOR, AGE. Rows 25-29.

30 (Use additional space, as necessary)

31
32 5. That (I own) (I am purchasing) (I rent) (choose one; mark out the other
33 choices) a (house) (trailer) (apartment) (choose one; mark out the other choices) located
34 at _____ which is my residence.
35 (address, city, zip code)

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

39 _____
40 _____
41 _____
42 _____

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

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8. That I wish to claim my interest in the following real or personal ~~property~~ property, or in a cooperative that owns 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.~~ \$18,500, except that if I am unmarried and am 65 years of age or older, I am entitled to claim a total exemption in the residence and burial plots not to exceed \$37,000 so long as the property was previously owned by me as a tenant by the entireties or as a joint tenant with rights of survivorship, and the former co-owner of the property is deceased.

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. I understand that if I wish to claim more than one parcel exempt I must attach additional pages setting forth the following information for each parcel claimed exempt.

Property Location:

County _____ Township _____

Street Address _____

Legal Description:

Number by which county tax assessor identifies property _____

Description (Attach a copy of your deed or other instrument of conveyance that describes the property and indicate here: _____ or describe the property in as much detail as possible.

Attach additional sheets if necessary.)

Record Owner(s) _____

Estimated Value: _____

Lienholders: _____

(1) Name _____ Current Balance _____
Address _____

(2) Name _____ Current Balance _____
Address _____

(3) Name _____ Current Balance _____
Address _____

(4) If others, attach additional pages.

1 If you are unmarried and 65 years of age or older, specify which, if any, property
 2 listed above was previously owned by you as a tenant by the entireties or as a joint
 3 tenant with rights of survivorship and as to which the former co-owner of the property is
 4 deceased:

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

9 Name of Insurer	Policy Number	Face Value	Beneficiary(ies)
10 _____	_____	_____	_____
11 _____	_____	_____	_____
12 _____	_____	_____	_____

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

15 Item	Purpose	Person using item
16 _____	_____	_____
17 _____	_____	_____
18 _____	_____	_____

19 11. That I wish to claim the following implements, professional books, or tools
 20 (not to exceed ~~\$500~~, \$2,000), of my trade or the trade of my dependent. I understand
 21 that such property purchased within 90 days of this proceeding ~~is not~~ may not be
 22 exempt:

23 Item	Estimated Value
24 _____	_____
25 _____	_____
26 _____	_____

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

32 I understand that I am entitled to personal property worth the sum of ~~\$2,500~~, \$5,000.
 33 I understand that I am also entitled to ~~\$500~~ \$1,000 for each person dependent on me for
 34 support, but not to exceed ~~\$2,000~~ \$4,000 for dependents. I further understand that I am
 35 entitled to this amount after deduction from the value of the property the amount of any
 36 valid lien or purchase money security interest and that property purchased within 90
 37 days of this proceeding ~~is not~~ may not be exempt.

38 Item (or class) 39 of Property	Amount of Lien or Security Interest	Location	Estimated Value of Debtor's Interest
40 _____	_____	_____	_____
41 _____	_____	_____	_____
42 _____	_____	_____	_____
43 _____	_____	_____	_____

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~~\$3,500 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~~may not be exempt.

Make and Model of Motor Vehicle	Year	Name(s) of Title Owner of Record	Name(s) of Lien Holder(s) of Record	Estimated Value of Debtor's Interest
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14. That I wish to claim as exempt the following compensation ~~which that I received or to which I am entitled~~ for the personal injury of myself or a person upon whom I was dependent for ~~support~~support, including compensation from a private disability policy or an annuity, or compensation ~~which that 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 that~~ resulted in the payment of the compensation to me. I understand that if I wish to claim more than one amount of compensation exempt, I must attach additional pages setting forth the following information for each amount of compensation claimed exempt.

- (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~~location/source of compensation if received in lump or ~~installments~~installments, including name and account number of any disability policy or annuity

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

Name and Address	Services Rendered	Amount of Debt
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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~~\$18,500 or I made no claim for a residential exemption under section (8) above. I understand that I am entitled to ~~\$2,500~~an exemption of up to \$5,000 in any property only if I made no claim under section (8) above ~~and that if I make a claim or a claim that was less than \$18,500~~ above, above. I understand that I am entitled to \$2,500 claim any unused amount that I was permitted to make under section (8) above up to a maximum of \$5,000 in any property minus any amount I claimed under section (8) property. (Examples: (a) if you claim ~~of \$1,000~~\$17,500 under section (8),

1 ~~\$1,500~~\$1,000 allowed here; (b) if you claim ~~of \$2,450~~\$13,500 under section (8),
2 ~~\$50~~\$5,000 allowed here; (c) if you claim ~~of \$2,600~~\$18,500 under section (8), no claim
3 allowed here.) I further understand that the amount of my claim under this section is
4 after the deduction from the value of this property of the amount of any valid lien or
5 purchase money security interests and that tangible personal property purchased within
6 90 days of this proceeding ~~is not~~may not be exempt.

7 PERSONAL PROPERTY:

8 Property Location	9 Amount of Liens or Purchase Money Security Interests	10 Value of Debtor's Interest
11 _____	_____	_____
12 _____	_____	_____
13 _____	_____	_____
14 _____	_____	_____

15 REAL PROPERTY (I understand that if I wish to claim more than one parcel exempt, I
16 must attach additional pages setting forth the following information for each parcel
17 claimed exempt):

18 Property Location
19 County _____ Township _____
20 Street Address _____

21 Legal Description:
22 Number by which county tax assessor identifies property
23 _____
24 _____

25 Description (Attach a copy of your deed or other instrument of conveyance that
26 describes the property and indicate here: _____ or describe the
27 property in as much detail as possible.
28 Attach additional sheets if necessary.)
29 _____
30 _____
31 _____
32 _____
33 _____
34 _____

35 Record Owner(s): _____
36 _____
37 _____
38 _____

39 Estimated Value: _____

40 Lienholders:
41 (1) Name _____ Current Balance _____
42 Address _____
43 (2) Name _____ Current Balance _____
44 Address _____

(3) Name _____ Current Balance _____
Address _____

(4) If others, attach additional pages.

16. That I wish to claim as exempt the following retirement plans that I have that are individual retirement plans as described in the Internal Revenue Code or that are 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 section 408(a) and section 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.

Type of Retirement Account	Name of Account	Account Number
_____	_____	_____
_____	_____	_____
_____	_____	_____

17. That I wish to claim as exempt the following funds I hold in a college savings plan, not to exceed \$25,000. I understand that to qualify for this exemption, the college savings plan must qualify as a college savings plan under section 529 of the Internal Revenue Code, and the college savings plan must be for my child and must actually be used for my child's college or university expenses. I understand I may not exempt any funds I placed in this account within the preceding 12 months, except to the extent that any contributions were made in the ordinary course of my financial affairs and were consistent with my past pattern of contributions.

College Savings Plan	Account Number	Value	Name(s) of Child(ren) Beneficiaries
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

18. That I wish to claim as exempt the following retirement benefits to which I am entitled to under the retirement plans of other states and governmental units of other states. I understand that these benefits are exempt only to the extent these benefits are exempt under the laws of the state or governmental unit under which the benefit plan was established.

State/Governmental Unit	Name of Retirement Plan	Identifying Number
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

19. That I wish to claim as exempt any alimony, support, separate maintenance, or child support payments or funds that I have received or that I am entitled to receive. I understand that these payments are exempt only to the extent that they are reasonably necessary for my support or for the support of a person dependent on me for support.

Type of Support	Person Paying Support	Amount & Location of Funds
_____	_____	_____

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1620. That the following is a complete listing of all of my assets ~~which~~that I have not claimed as exempt under any of the preceding paragraphs:

Item	Location	Estimated Value
_____	_____	_____
_____	_____	_____
_____	_____	_____

This the _____ day of _____, _____

Judgment Debtor

Sworn to and Subscribed before

me this _____ day of _____, _____

Notary Public

My Commission Expires: "

SECTION 4. G.S. 1C-1603(e)(2) reads as rewritten:

"(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~~the debtor's rights was served in accordance with G.S. 1C-1603(a)(4) or if ~~he~~the debtor 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.~~Constitution, except as provided in G.S. 1C-1601(a)(13) with regard to recent earnings. Upon request of the judgment creditor, the clerk shall issue a writ of execution or writ of possession."

SECTION 5. Except as otherwise provided, this act becomes effective

January 1, 2006, and applies to judgments and bankruptcy petitions filed on or after that date.