

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2005-401
HOUSE BILL 1176**

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 (\$10,000)~~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).~~(1) of this subsection.
- (3) The debtor's interest, not to exceed ~~one thousand five hundred dollars (\$1,500)~~three thousand five hundred dollars (\$3,500) in value, in one motor vehicle.
- (4) The debtor's aggregate interest, not to exceed ~~three thousand five hundred dollars (\$3,500)~~five thousand dollars (\$5,000) in value for the debtor plus ~~seven hundred fifty dollars (\$750.00)~~one thousand dollars (\$1,000) for each dependent of the debtor, not to exceed ~~three thousand dollars (\$3,000)~~four thousand dollars (\$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 dollars (\$750.00)~~two thousand dollars (\$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) 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~~ 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.
- (9) 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. ~~For purposes of this subdivision, "Internal Revenue Code" means Code as defined in G.S. 105-228.90.~~ 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.
- (10) Funds in a college savings plan qualified under section 529 of the Internal Revenue Code, not to exceed a cumulative limit of twenty-five thousand dollars (\$25,000), but excluding any funds placed in a college savings plan account within the preceding 12 months (except to the extent any of the 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 the funds are for a child of the debtor and will actually be used for the child's college or university expenses.
- (11) Retirement benefits under the retirement plans of other states and governmental units of other states, to the extent that these benefits are exempt under the laws of the state or governmental unit under which the benefit plan is established.
- (12) Alimony, support, separate maintenance, and child support payments or funds that have been received or to which the debtor is entitled, to the extent the payments or funds are reasonably necessary for the support of the debtor or any dependent of the debtor.

(b) Definition. ~~"Value" as used in this Article~~ Definitions. – As used in this section, the following definitions apply:

- (1) "Internal Revenue Code" means Code as defined in G.S. 105-228.90.
- (2) "Value" 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~~ transferred);
- (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.

(d) Recent purchases. – The exemptions provided in subdivisions (2), (3), ~~(4)~~ (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~~bankruptcy, unless the purchase of the property is directly traceable to the liquidation or conversion of property that may be exempt and no additional property was transferred into or used to acquire the 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 Session Laws 1981 (Regular Session, 1982), c. 1224, s. 6, effective September 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-1340.38.

(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)~~, § 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."

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

"(4) After judgment, except as provided in G.S. 1C-1603(a)(3) 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~~ the debtor of ~~his~~ the debtor's rights. The judgment creditor ~~must~~ shall cause the ~~notice~~ notice, which shall be accompanied by the form for the statement by the debtor under subsection (c) of this section, 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~~ the judgment debtor by mailing a copy of the notice to the judgment debtor at ~~his~~ the debtor's 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. The notice ~~must~~ shall 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.)	
)	
)	
)	

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.

NOTICE TO JUDGMENT DEBTOR:

THERE ARE CERTAIN EXEMPTIONS UNDER STATE AND FEDERAL LAW THAT YOU ARE ENTITLED TO CLAIM IN ADDITION TO THE EXEMPTIONS LISTED ON THE "SCHEDULE OF DEBTOR'S PROPERTY AND REQUEST TO SET ASIDE EXEMPT PROPERTY" THAT IS ENCLOSED WITH THIS NOTICE.

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

SECTION 3. G.S. 1C-1603(c) reads as rewritten:

"(c) Statement by the Debtor. – When proceedings are instituted, the debtor ~~must~~ shall file with the court a schedule of:

- (1) ~~His~~ The debtor's assets, including their location;
- (2) ~~His~~ The debtor's debts and the names and addresses of ~~his~~ the debtor's creditors;
- (3) The property ~~which that he~~ the debtor desires designated as exempt.

The form for the statement ~~must~~ shall be substantially as follows:

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

Judgment Creditor)	SCHEDULE OF DEBTOR'S PROPERTY AND REQUEST TO SET ASIDE EXEMPT PROPERTY
vs.)	
)	
)	
Judgment Debtor)	

NOTICE TO JUDGMENT DEBTOR:

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

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

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

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 _____ which is my residence.
(address, city, zip code)

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~~ 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.

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

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
_____	_____	_____
_____	_____	_____

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

Item	Estimated Value
_____	_____
_____	_____

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~~ \$5,000. I understand that I am also entitled to ~~\$500~~ \$1,000 for each person dependent on me for support, but not to exceed ~~\$2,000~~ \$4,000 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~~ may not be exempt.

Item (or class) of Property	Amount of Lien or Security Interest	Location	Estimated Value of Debtor's Interest
_____	_____	_____	_____
_____	_____	_____	_____

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
_____	_____	_____	_____	_____

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
_____	_____	_____

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 under section (8) 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), ~~\$1,500~~\$1,000 allowed here; (b) if you claim of ~~\$2,450~~\$13,500 under section (8), ~~\$50~~\$5,000 allowed here; (c) if you claim of ~~\$2,600~~\$18,500 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~~ may not be exempt.

PERSONAL PROPERTY:

Property Location	Amount of Liens or Purchase Money Security Interests	Value of Debtor's Interest
_____	_____	_____
_____	_____	_____
_____	_____	_____

REAL 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.

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

~~16~~20. 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. This act becomes effective January 1, 2006, and applies to judgments and bankruptcy petitions filed on or after that date.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 3:49 p.m. this 14th day of September, 2005