

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 472
HOUSE BILL 43

AN ACT TO REVISE THE CLAIM AND DELIVERY PROCEDURES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-474 is hereby amended to read as follows:

"§ 1-474. **Order of seizure and delivery to plaintiff.** — The clerk of court may, upon notice and hearing as provided in G.S. 1-474.1. and upon the giving by the plaintiff of the undertaking prescribed in G.S. 1-475, require the sheriff of the county where the property claimed is located to take said property from the defendant and deliver it to the plaintiff. The act of the clerk in issuing or refusing to issue the order to the sheriff is a judicial act and may be appealed to the judge of the district or superior court having jurisdiction of the principal action."

Sec. 2. Article 36, Chapter 1 of the North Carolina General Statutes is hereby amended by adding the following section:

"§ 1-474.1. **Notice of hearing; waiver, permissible form of notice and waiver.** — (a) The clerk of court, upon the request of the plaintiff, shall issue a notice to the defendant setting a time and place for a hearing before the clerk which shall not be less than 10 days from the date of service of said notice upon the defendant. The notice shall be served on the defendant in any manner provided by the Rules of Civil Procedure for the service of summons. Upon the request of the plaintiff the notice shall contain an order enjoining the defendant from willfully disposing of the property in any manner, from removing or permitting the removal of the property from the State of North Carolina, or from causing or permitting willful damage or destruction of the property. If in a trial on the merits it is determined that the plaintiff was entitled to the possession of the property, and the defendant after service of notice of the hearing shall have willfully disposed of the property, removed or permitted the removal of the property from the State of North Carolina, or caused or permitted its willful damage or destruction, the defendant may be found in contempt of court and may be fined or imprisoned by the court as provided by law.

(b) Waiver of the rights to notice and hearing shall not be permitted except as set forth herein. At any time subsequent to service of the notice of hearing provided in subsection (a), the clerk of court, upon the request of the plaintiff, shall mail to the defendant at his last known address a form by which the defendant may waive his right to the hearing. Upon the return of the form to the clerk of court, bearing the signature of the defendant and that of a witness to the defendant's signature (which witness shall not be a party to the action or an agent or employee of a party to the action), the clerk in his discretion may dispense with the necessity of a hearing and may proceed to issue the order of seizure prescribed by G.S. 1-474.

(c) In addition to any other forms substantially complying with the requirements of the preceding subsections, form (1) below may be used to give the notice provided for in subsection (a) above and form (2) below may be used to waive the hearing as provided in subsection (b) above:

(1) READ THIS NOTICE.

WARNING: DO NOT WILLFULLY DISPOSE OF, REMOVE OR PERMIT
THE REMOVAL FROM THE STATE OF NORTH CAROLINA, OR CAUSE OR
PERMIT WILLFUL DAMAGE OR DESTRUCTION OF THE PROPERTY

DESCRIBED BELOW BECAUSE YOU MAY BE HELD IN CONTEMPT OF COURT AND MAY BE FINED OR IMPRISONED.

To: _____ (Defendant).

If you want to present reasons why you should not have the property described below taken from you. then you should appear at a hearing to be held before the undersigned clerk of court at _____ o'clock _____ m. on the _____ day of _____ 19__, at the County Courthouse because

_____ (Plaintiff) has sworn that you wrongfully hold the following property and that he is entitled to it:

(Description of Property)

At the hearing the plaintiff will present evidence, and you are allowed to present evidence. You may bring an attorney to this hearing. Upon the basis of the evidence presented, the clerk will decide whether or not to issue an order directing the sheriff to take the property until a trial on the merits is held. You are hereby ORDERED:

- a. not to willfully dispose of the property;
- b. not to remove or permit its removal from the State of North Carolina; and
- c. not to cause or permit its damage or destruction.

If you fail to comply with this order, and it is finally determined that the plaintiff is entitled to the possession of the property, you may be guilty of contempt of court and may be fined or imprisoned as provided by law.

If you have any questions about the hearing, you may contact an attorney or the clerk of court prior to the hearing.

(Certificate of Service)

(2) VOLUNTARY WAIVER OF HEARING.

To _____ (Defendant)

You have been served with a notice that a hearing will be held before the undersigned clerk of court at _____ o'clock _____ m. on the _____ day of _____ 19__, at the _____ County Courthouse to determine if _____ (Plaintiff) is entitled to the possession of the following described property until a trial on the merits is held:

(Description of Property)

If you do not wish to object to the plaintiff's right to the possession of this property until a trial on the merits is held, you may waive your right to the hearing by signing the statement below, having your signature witnessed by any person who is not a party or an agent or employee of a party to this

action and returning it to the undersigned clerk of court by mail or in person prior to the date set for the hearing.

Clerk of Superior Court

I, _____, do hereby voluntarily waive and relinquish my right to the hearing described above.

Defendant

Witness:

(Name) _____

(Address) _____

Sec. 2.1. Article 36, Chapter 1 of the North Carolina General Statutes is hereby amended by adding at the end thereof a new section to read as follows:

"§ 1-484.1. **Remedy not exclusive.** — The provisions of this Article shall not be construed to preclude the use of attachment or any other ancillary remedy (upon the terms and subject to the conditions provided by law for the exercise thereof) simultaneously with the remedy of claim and delivery."

Sec. 3. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 14th day of May, 1973.