

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1176
Committee Substitute Favorable 5/2/05

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, TO EXEMPT CERTAIN TYPES OF PROPERTY FROM ENFORCEMENT, TO PROVIDE FOR FUTURE AUTOMATIC ADJUSTMENTS OF THESE CAPS ON EXEMPT PROPERTY, AND TO MAKE CONFORMING CHANGES.

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 (4);~~(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 (5a) The debtor's aggregate interest, not to exceed four thousand dollars
18 (\$4,000) in value, in any wedding and engagement rings of the debtor.
- 19 (6) Life insurance as provided in Article X, Section 5 of the Constitution
20 of North Carolina.
- 21 (7) Professionally prescribed health aids for the debtor or a dependent of
22 the debtor.
- 23 (8) Compensation for personal ~~injury~~injury, including compensation from
24 private disability policies or annuities, or compensation for the death
25 of a person upon whom the debtor was dependent for support, but such
26 compensation is not exempt from claims for funeral, legal, medical,
27 dental, hospital, and health care charges related to the accident or
28 injury giving rise to the compensation.
- 29 (9) Individual retirement plans as defined in the Internal Revenue Code
30 and any plan treated in the same manner as an individual retirement
31 plan under the Internal Revenue Code. ~~For purposes of this~~
32 ~~subdivision, "Internal Revenue Code" means Code as defined in~~
33 ~~G.S. 105-228.90. Code, including individual retirement accounts and~~
34 Roth retirement accounts as described in section 408(a) and section
35 408A of the Internal Revenue Code, individual retirement annuities as
36 described in section 408(b) of the Internal Revenue Code, and
37 accounts established as part of a trust described in section 408(c) of the
38 Internal Revenue Code.
- 39 (10) Funds in a college savings plan qualified under section 529 of the
40 Internal Revenue Code, not to exceed a cumulative limit of twenty-five
41 thousand dollars (\$25,000), but excluding any funds placed in a
42 college savings plan account within the preceding 12 months (except
43 to the extent any of the contributions were made in the ordinary course
44 of the debtor's financial affairs and were consistent with the debtor's

1 past pattern of contributions) and only to the extent that the funds are
2 for a child of the debtor and will actually be used for the child's college
3 or university expenses.

4 (11) Retirement benefits under the retirement plans of other states and
5 governmental units of other states, to the extent that these benefits are
6 exempt under the laws of the state or governmental unit under which
7 the benefit plan is established.

8 (12) Alimony, support, separate maintenance, and child support payments
9 or funds that have been received or to which the debtor is entitled, to
10 the extent the payments or funds are reasonably necessary for the
11 support of the debtor or any dependent of the debtor.

12 (13) The earnings of the debtor for the debtor's personal services, at any
13 time within 60 days preceding an order under G.S. 1-362, an
14 execution, or the filing of a petition for bankruptcy when it appears, by
15 the debtor's affidavit or otherwise, that these earnings are necessary for
16 the use of the debtor or a family supported wholly or in part by the
17 debtor's labor. Recent earnings exempt under this subdivision may
18 only be waived pursuant to subdivision (2) of subsection (c) of this
19 section.

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

22 (1) "Internal Revenue Code" means Code as defined in G.S. 105-228.90.

23 (2) "Value" means fair market value of an individual's interest in property,
24 less valid liens superior to the judgment lien sought to be enforced.

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

27 (1) Transfer of property allocated as exempt (and in that event only as to
28 the specific property ~~transferred~~, or transferred);

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

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

37 (d) Recent purchases. – The exemptions provided in subdivisions (2), (3), ~~(4)~~(4),
38 and (5) of subsection (a) of this section are inapplicable with respect to tangible
39 personal property purchased by the debtor less than 90 days preceding the initiation of
40 judgment collection proceedings or the filing of a petition for ~~bankruptcy~~ bankruptcy,
41 unless the purchase of the property is directly traceable to the liquidation or conversion
42 of property that may be exempt and no additional property was transferred into or used
43 to acquire the replacement property.

1 (e) Exceptions. – The exemptions provided in this Article are inapplicable to
2 claims:

- 3 (1) Of the United States or its agencies as provided by federal law;
- 4 (2) Of the State or its subdivisions for taxes, appearance bonds or
5 fiduciary bonds;
- 6 (3) Of lien by a laborer for work done and performed for the person
7 claiming the exemption, but only as to the specific property affected;
- 8 (4) Of lien by a mechanic for work done on the premises, but only as to
9 the specific property affected;
- 10 (5) For payment of obligations contracted for the purchase of the specific
11 real property affected;
- 12 (6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s. 6.
- 13 (7) For contractual security interests in the specific property affected;
14 provided, that the exemptions shall apply to the debtor's household
15 goods notwithstanding any contract for a nonpossessory, nonpurchase
16 money security interest in any such goods;
- 17 (8) For statutory liens, on the specific property affected, other than judicial
18 liens;
- 19 (9) For child support, alimony or distributive award order pursuant to
20 Chapter 50 of the General Statutes;
- 21 (10) For criminal restitution orders docketed as civil judgments pursuant to
22 G.S. 15A-1340.38.

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

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

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

32 "(4) After judgment, except as provided in G.S. 1C-1603(a)(3) or when
33 exemptions have already been designated, the clerk may not issue an
34 execution or writ of possession unless notice from the court has been
35 served upon the judgment debtor advising ~~him~~ the debtor of ~~his~~ the
36 debtor's rights. The judgment creditor ~~must~~ shall cause the ~~notice~~
37 notice, which shall be accompanied by the form for the statement by
38 the debtor under subsection (c) of this section, to be served on the
39 debtor as provided in G.S. 1A-1, Rule 4(j)(1). If the judgment debtor
40 cannot be served as provided above, the judgment creditor may serve
41 ~~him~~ the judgment debtor by mailing a copy of the notice to the
42 judgment debtor at ~~his~~ the debtor's last known address. Proof of
43 service by certified or registered mail or personal service is as
44 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 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.

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:

1 NORTH CAROLINA IN THE GENERAL COURT
 2 _____ COUNTY OF JUSTICE DISTRICT
 3 COURT DIVISION
 4 CvD

5
 6 Judgment Creditor) SCHEDULE OF DEBTOR'S
 7) PROPERTY
 8 vs.) AND REQUEST TO
 9) SET ASIDE EXEMPT
 10 Judgment Debtor) PROPERTY

11
12 NOTICE TO JUDGMENT DEBTOR:

13
14 THERE ARE CERTAIN EXEMPTIONS UNDER STATE AND FEDERAL LAW
15 THAT YOU ARE ENTITLED TO CLAIM IN ADDITION TO THE EXEMPTIONS
16 LISTED BELOW.

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

21
22 I, _____, being duly sworn do depose and say:
23 (fill in your name)

24 1. That I am a citizen and resident of _____ County, North Carolina;

25 2. That I was born on _____;
26 (date of birth)

27 3. That I am (married to _____)
28 (spouse's name)

29 _____;
30 (not married)

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

33 NAME	RELATIONSHIP TO DEBTOR	AGE
34 _____	_____	_____
35 _____	_____	_____
36 _____	_____	_____
37 _____	_____	_____

38 (Use additional space, as necessary)

39
40 5. That (I own) (I am purchasing) (I rent) (choose one; mark out the other
41 choices) a (house) (trailer) (apartment) (choose one; mark out the other choices) located
42 at _____ which is my residence.

43 (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.

Four horizontal lines for listing property.

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:

Four horizontal lines for listing persons or companies.

8. That I wish to claim my interest in the following real or personal 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.)

Three horizontal lines for legal description details.

Record Owner(s)

Four horizontal lines for record owner information.

Estimated Value:

One horizontal line for 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

1 valid lien or purchase money security interest and that property purchased within 90
2 days of this proceeding ~~is not~~ may not be exempt.

3 Item (or class) 4 of Property	Amount of Lien or Security 5 Interest	Location	Estimated 6 Value of 7 Debtor's Interest
8 _____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

9 13. That I wish to claim my interest in the following motor vehicle as exempt
10 from the claims of my creditors. I understand that I am entitled to my interest in a motor
11 vehicle worth the sum of ~~\$1,000~~ \$3,500 after deduction of the amount of any valid liens
12 or purchase money security interest. I understand that a motor vehicle purchased within
13 90 days of this proceeding ~~is not~~ may not be exempt.

14 Make and 15 Model of 16 Motor Vehicle	Year	Name(s) of 17 Title Owner 18 of Record	Name(s) of 19 Lien Holder(s) 20 of Record	Estimated 21 Value of 22 Debtor's 23 Interest
_____	_____	_____	_____	_____

19 14. That I wish to claim as exempt the following compensation ~~which that I~~
20 received or to which I am entitled for the personal injury of myself or a person upon
21 whom I was dependent for ~~support~~ support, including compensation from a private
22 disability policy or an annuity, or compensation ~~which that I~~ received for the death of a
23 person upon whom I was dependent for support. I understand that this compensation is
24 not exempt from claims for funeral, legal, medical, dental, hospital or health care
25 charges related to the accident or injury ~~which that~~ resulted in the payment of the
26 compensation to me. I understand that if I wish to claim more than one amount of
27 compensation exempt, I must attach additional pages setting forth the following
28 information for each amount of compensation claimed exempt.

29 (a) amount of compensation _____

30 (b) method of payment: lump sum or installments _____

31 (If installments, state amount, frequency and duration of payments)

32
33 (c) name and relationship to debtor of person(s) injured or killed giving rise to
34 compensation _____

35 (d) ~~location~~ location/source of compensation if received in lump or
36 ~~installments~~ installments, including name and account number of any disability policy or
37 annuity

38
39 (e) unpaid debts arising out of the injury or death giving rise to compensation

41 Name and Address	Services Rendered	Amount of Debt
42 _____	_____	_____
43 _____	_____	_____

1 15. That I wish to claim the following property as exempt because I claimed
 2 residential real or personal property as exempt that is worth less than ~~\$2,500~~\$18,500 or I
 3 made no claim for a residential exemption under section (8) above. I understand that I
 4 am entitled to ~~\$2,500~~an exemption of up to \$5,000 in any property only if I made no
 5 claim under section (8) above ~~and that if I make a claim or a claim that was less than~~
 6 \$18,500 under section (8) ~~above,~~ above. I understand that I am entitled to ~~\$2,500~~claim
 7 any unused amount that I was permitted to make under section (8) above up to a
 8 maximum of \$5,000 in any ~~property minus any amount I claimed under section~~
 9 ~~(8),~~property. (Examples: (a) if you claim ~~of \$1,000~~\$17,500 under section (8),
 10 ~~\$1,500~~\$1,000 allowed here; (b) if you claim ~~of \$2,450~~\$13,500 under section (8),
 11 ~~\$50~~\$5,000 allowed here; (c) if you claim ~~of \$2,600~~\$18,500 under section (8), no claim
 12 allowed here.) I further understand that the amount of my claim under this section is
 13 after the deduction from the value of this property of the amount of any valid lien or
 14 purchase money security interests and that tangible personal property purchased within
 15 90 days of this proceeding ~~is not~~may not be exempt.

16 PERSONAL PROPERTY:

17 Property Location	18 Amount of Liens 19 or Purchase Money 20 Security Interests	21 Value of 22 Debtor's 23 Interest
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

27 Property Location
 28 County _____ Township _____
 29 Street Address _____

30 Legal Description:
 31 Number by which county tax assessor identifies property
 32 _____
 33 _____

34 Description (Attach a copy of your deed or other instrument of conveyance that
 35 describes the property and indicate here: _____ or describe the
 36 property in as much detail as possible.
 37 Attach additional sheets if necessary.)
 38 _____
 39 _____
 40 _____
 41 _____
 42 _____
 43 _____

44 Record Owner(s): _____

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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.

<u>Type of Retirement Account</u>	<u>Name of Account</u>	<u>Account Number</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

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.

<u>College Savings Plan</u>	<u>Account Number</u>	<u>Value</u>	<u>Name(s) of Child(ren)</u>	<u>Beneficiaries</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

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.

<u>State/Governmental Unit</u>	<u>Name of Retirement Plan</u>	<u>Identifying Number</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

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.

Table with 3 columns: Type of Support, Person Paying Support, Amount & Location of Funds

20. That I wish to claim as exempt the following wedding and engagement rings not to exceed \$4,000 in value. I understand that I am entitled to this exemption after deduction of the amount of any valid liens or purchase money security interests.

Table with 4 columns: Item (or Class) of Property, Amount of Lien or Security Interest, Location, Estimated Value of Debtor's Interest

21. 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:

Table with 3 columns: 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 hethe 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. G.S. 1-362 reads as rewritten:

"§ 1-362. Debtor's property ordered sold.

1 The court or judge may order any property, whether subject or not to be sold under
2 execution (except the homestead and ~~personal property~~ other exemptions of the
3 judgment debtor), in the hands of the judgment debtor or of any other person, or due to
4 the judgment debtor, to be applied towards the satisfaction of the judgment; ~~except that~~
5 ~~the earnings of the debtor for his personal services, at any time within 60 days next~~
6 ~~preceding the order, cannot be so applied when it appears, by the debtor's affidavit or~~
7 ~~otherwise, that these earnings are necessary for the use of a family supported wholly or~~
8 ~~partly by his labor.~~ judgment. Wages of the judgment debtor shall not be garnished
9 unless specifically authorized by statute."

10 **SECTION 6.(a)** Article 16 of Chapter 1C of the General Statutes is amended
11 by adding a new section to read:

12 **"§ 1C-1601.1. Automatic adjustment of value of certain exempt property; revision**
13 **of form to reflect automatic adjustment.**

14 (a) Every three years on April 1, each dollar amount under subsection (a) of
15 G.S. 1C-1601 shall be automatically adjusted and amended to a revised amount that:

16 (1) Reflects the change in the Consumer Price Index for All Urban
17 Consumers published by the United States Department of Labor for
18 the most recent three-year period ending immediately before January 1
19 that immediately precedes April 1 of the year in which the automatic
20 adjustment occurs, and

21 (2) Is then rounded to the nearest twenty-five dollars (\$25.00).

22 (b) Prior to April 1 of the year in which the automatic adjustment under
23 subsection (a) of this section occurs, the Administrative Office of the Courts shall
24 change the Statement by the Debtor form to be filed by the debtor pursuant to
25 G.S. 1C-1603(c) to reflect the revised amounts."

26 **SECTION 6.(b)** The first automatic adjustment prescribed in
27 G.S. 1C-1601.1 shall become effective on April 1, 2009.

28 **SECTION 7.** Except as otherwise provided, this act becomes effective
29 January 1, 2006.