

## Chapter 1C.

### Enforcement of Judgments.

Articles 1 to 15

Reserved for Future Codification Purposes.

**§§ 1C-1 through 1C-1599. Reserved for future codification purposes.**

## ARTICLE 16.

### Exempt Property.

#### **§ 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 thirty-five thousand dollars (\$35,000) 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; 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 sixty thousand dollars (\$60,000) 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 five thousand dollars (\$5,000) in value of any unused exemption amount to which the debtor is entitled under subdivision (1) of this subsection.
- (3) The debtor's interest, not to exceed three thousand five hundred dollars (\$3,500) in value, in one motor vehicle.
- (4) The debtor's aggregate interest, not to exceed five thousand dollars (\$5,000) in value for the debtor plus one thousand dollars (\$1,000) for each dependent of the debtor, not to exceed 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 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, 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, 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. Any money or other assets or any interest in any such plan remains exempt after an individual's death if held by one or more subsequent beneficiaries by reason of a direct transfer or eligible rollover that is excluded from gross income under the Internal Revenue Code, including, but not limited to, a direct transfer or eligible rollover to an inherited individual retirement account as defined in section 408(d)(3) 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) 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 cannot be waived except by:
- (1) Transfer of property allocated as exempt (and in that event only as to the specific property 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), 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, 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 Code. – The exemptions provided in The Bankruptcy 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 Code, 11 U.S.C. § 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. (1981, c. 490, s. 1; 1981 (Reg. Sess., 1982), c. 1224, ss. 1-7, 20; 1991, c. 506, s. 1; 1995, c. 250, s. 1; 1998-212, s. 19.4(j); 1999-337, s. 2; 2005-401, s. 1; 2009-417, s. 1; 2013-91, s. 3(a)(9).)

### **§ 1C-1602. Alternative exemptions.**

The debtor may elect to take the personal property and homestead exemptions provided in Article X of the Constitution of North Carolina instead of the exemptions provided by G.S. 1C-1601. If the debtor elects to take his constitutional exemptions, the exemptions provided in G.S. 1C-1601 shall not apply and in that event the exemptions provided in this Article shall not be construed so as to affect the personal property and homestead exemptions granted by Article X of the Constitution of North Carolina. If the debtor elects to take his constitutional exemptions, the clerk or district court judge must designate the property to be exempt under the procedure set out in G.S. 1C-1603. The debtor is entitled to have one thousand dollars (\$1,000) in value in real

property owned and occupied by him and five hundred dollars (\$500.00) in value in his personal property exempted from sale under execution. If the value of the property in which the debtor claims his constitutional exemption is in excess of his exemptions, the clerk, in an execution, may order the sale of the property with the proceeds of the sale being distributed first to the debtor to satisfy his exemption and the excess to be distributed as ordered. (1981, c. 490, s. 1; 1981 (Reg. Sess., 1982), c. 1224, s. 8.)

**§ 1C-1603. Procedure for setting aside exempt property.**

(a) Motion or Petition; Notice. –

- (1) After judgment has been entered against a judgment debtor, that person's exempt property may be designated by motion.
- (2) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s. 10.
- (3) The clerk or district court judge may determine that particular property is not exempt even though there has been no proceeding to designate the exemption.
- (4) After judgment, except as provided in subdivision (3) of this subsection 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 the debtor of the debtor's rights. The judgment creditor must cause the notice, which must be accompanied by the form for the statement by the debtor under subsection (c1) 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 under G.S. 1A-1, Rule 4(j)(1), the judgment creditor may serve the judgment debtor by mailing a copy of the notice to the judgment debtor at 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.
- (5) The Administrative Office of the Courts must provide a form for the notice from the court required by subdivision (4) of this subsection. The notice must inform the debtor that:
  - a. The judgment debtor has the right to retain an interest in certain property free from collection efforts by the judgment creditor.
  - b. To preserve that right, the judgment debtor is required to respond to the notice by filing a motion or petition to claim exempt property, including a schedule of assets that are claimed as exempt, no later than 20 days after the debtor receives the notice, and that the judgment debtor must also mail or take a copy to the judgment creditor at the address provided in the notice.
  - c. The judgment debtor has the option to request a hearing to claim exemptions rather than filing a schedule of assets.
  - d. The judgment debtor may have exemptions under State and federal law that are in addition to those listed on the form for the debtor's statement that is included with the notice, such as Social Security benefits, unemployment benefits, workers' compensation benefits, and earnings for the debtor's personal services rendered within the last 60 days.

- e. There is a procedure for challenging an attachment or levy on the judgment debtor's property.
  - f. The judgment debtor may wish to consider hiring an attorney.
  - g. Failure to respond within the required time results in the loss of statutory rights.
- (b) Contents of Motion or Petition. – The motion or petition must:
- (1) Name the judgment debtor;
  - (2) Name the judgment creditors of the debtor insofar as they are known to the movant;
  - (3) If it is a motion to modify a previously allocated exemption, describe the change of condition (if the movant received notice of the exemption hearing) and the modification desired.
- (c) Statement by the Debtor. – When proceedings are instituted, the judgment debtor must file with the court a schedule of:
- (1) The debtor's assets, including their location;
  - (2) Repealed by Session Laws 2014-107, s. 3.1, effective October 1, 2014.
  - (3) The property that the debtor desires designated as exempt.
- (c1) Form for Debtor's Statement. – The Administrative Office of the Courts must provide a form for the schedule required under subsection (c) of this section. The form must include a statement to the effect that North Carolina law and federal law also exempt certain other property not included in the form, such as Social Security benefits, unemployment benefits, workers' compensation benefits, and earnings for the debtor's personal services rendered within the last 60 days.
- (d) Notice to Persons Affected. – If the judgment debtor moves to designate exemptions, a copy of the motion and schedule must be served on the judgment creditor as provided in G.S. 1A-1, Rule 5.
- (e) Procedure for Setting Aside Exempt Property. –
- (1) When served with the notice under subdivision (4) of subsection (a) of this section, the judgment debtor may either file a motion to designate 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 the debtor's rights was served in accordance with subdivision (4) of subsection (a) of this section, or if 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. Upon request of the judgment creditor, the clerk must issue a writ of execution or writ of possession.
  - (3) If the judgment debtor moves to designate exemptions by filing a motion and schedule of assets, the judgment creditor must be served as provided in subsection (d) of this section.
  - (4) If the judgment debtor requests a hearing before the clerk to claim exemptions, the clerk must set a hearing date and give notice of the hearing to the judgment debtor and judgment creditor. At the hearing, the judgment debtor may claim the debtor's exemptions.

- (5) The judgment creditor has 10 days from the date served with a motion and schedule of assets or from the date of a hearing to claim exemptions to file an objection to the judgment debtor's schedule of exemptions.
- (6) If the judgment creditor files no objection to the schedule filed by the judgment debtor or claimed at the requested hearing, the clerk must enter an order designating the property allowed by law and scheduled by the judgment debtor as exempt property. Upon request of the judgment creditor, the clerk must issue an execution or writ of possession except for exempt property.
- (7) If the judgment creditor objects to the schedule filed or claimed by the judgment debtor, the clerk must place the motion for hearing by the district court judge, without a jury, at the next civil session.
- (8) The district court judge must determine the value of the property. The district court judge or the clerk, upon order of the judge, may appoint a qualified person to examine the property and report its value to the judge. Compensation of that person must be advanced by the person requesting the valuation and is a court cost having priority over the claims.
- (9) The district court judge must enter an order designating exempt property. Supplemental reports and orders may be filed and entered as necessary to implement the order.
- (10) Where the order designating exemptions indicates excess value in exempt property, the clerk, in an execution, may order the sale of property having excess value and appropriate distribution of the proceeds.
- (11) The clerk or district court judge may permit a particular item of property having value in excess of the allowable exemption to be retained by the judgment debtor upon the debtor's making available to judgment creditors money or property not otherwise available to them in an amount equivalent to the excess value. Priorities of judgment creditors are the same in the substituted property as they were in the original property.
- (12) Appeal from a designation of exempt property by the clerk is to the district court judge. A party has 10 days from the date of entry of an order to appeal. Appeal from a designation of exempt property by a district court judge is to the Court of Appeals. Decisions of the Court of Appeals with regard to questions of valuation of property are final as provided in G.S. 7A-28. Other questions may be appealed as provided in G.S. 7A-30 and 7A-31.

(f) Notation of Order on Judgment Docket. – A notation of the order setting aside exempt property must be entered by the clerk of court on the judgment docket opposite the judgment that was the subject of the enforcement proceeding. If real property located in a county other than the county in which the judgment was rendered is designated as exempt and the judgment has already been docketed in that county, the clerk must send a notice of the designation of exempt property to the county where the property is located. The clerk of the county where the land is located must enter a notation of the designation of exempt property on the judgment docket. If a judgment is docketed in a county where real property is located after that real property has been designated as exempt, the transcript of judgment must indicate that the exemptions have been designated. The clerk in the county receiving the transcript must enter the notation of designation of exempt property as well as docket the judgment.

(g) Modification. – The judgment debtor's exemption may be modified by motion in the original exemption proceeding by anyone who did not receive notice of the exemption hearing. Also, the debtor's exemption may be modified upon a change of circumstances, by motion in the original exemption proceeding, made by the debtor or anyone interested. A substantial change in value may constitute changed circumstances. Modification may include the substitution of different property for the exempt property.

(h) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s. 14. (1981, c. 490, s. 1; 1981 (Reg. Sess., 1982), c. 1224, ss. 9-14, 18, 19; 1991, c. 607, s. 1; 1999-456, s. 59; 2005-401, ss. 2, 3; 2011-326, s. 1; 2014-107, s. 3.1.)

### **§ 1C-1604. Effect of exemption.**

(a) Property allocated to the debtor as exempt is free of the enforcement of the claims of creditors for indebtedness incurred before or after the exempt property is set aside, other than claims exempted by G.S. 1C-1601(e), for so long as the debtor owns it. When the property is conveyed to another, the exemption ceases as to liens attaching prior to the conveyance. Creation of a security interest in the property does not constitute a conveyance within the meaning of this section, but a transfer in satisfaction of, or for the enforcement of, a security interest is a conveyance. When exempt property is conveyed, the debtor may have other exemptions allotted.

(a1) The statute of limitations on judgments is suspended for the period of exemption as to the property which is exempt. However, the statute of limitations is not suspended as to the exempt property unless the judgment creditor shall have, prior to the expiration of the statute of limitations, recorded a copy of the order designating exempt property in the office of the register of deeds in the county where the exempt real property is located.

(b) Exempt property which passes by devise, intestate succession or gift to a dependent spouse, child or person to whom the debtor stands in loco parentis, continues to be exempt while held by that person. The exemption is terminated if the spouse remarries, or, with regard to a dependent, when the court determinates that dependency no longer exists. (1981, c. 490, s. 1; 1991, c. 607, s. 2; 2011-284, s. 6.)

### **§§ 1C-1605 through 1C-1700. Reserved for future codification purposes.**

## Article 17.

### Uniform Enforcement of Foreign Judgments Act.

#### **§ 1C-1701. Short title.**

This Article shall be known and may be cited as the Uniform Enforcement of Foreign Judgments Act. (1989, c. 747.)

#### **§ 1C-1702. Definitions.**

As used in this Article, unless the context requires otherwise:

- (1) "Foreign Judgment" means any judgment, decree, or order of a court of the United States or a court of any other state which is entitled to full faith and credit in this State, except a "child support order," as defined in G.S. 52C-1-101 (The Uniform Interstate Family Support Act), a "custody decree," as defined in

G.S. 50A-102 (The Uniform Child-Custody Jurisdiction and Enforcement Act), or a domestic violence protective order as provided in G.S. 50B-4(d).

- (2) "Judgment Debtor" means the party against whom a foreign judgment has been rendered.
- (3) "Judgment Creditor" means the party in whose favor a foreign judgment has been rendered. (1989, c. 747, s. 1; 1999-23, s. 3; 1999-223, s. 4.)

**§ 1C-1703. Filing and status of foreign judgments.**

(a) A copy of any foreign judgment authenticated in accordance with an act of Congress or the statutes of this State may be filed in the office of the clerk of superior court of any county of this State in which the judgment debtor resides, or owns real or personal property. Along with the foreign judgment, the judgment creditor or his attorney shall make and file with the clerk an affidavit which states that the foreign judgment is final and that it is unsatisfied in whole or in part, and which sets forth the amount remaining unpaid on the judgment.

(b) Upon the filing of the foreign judgment and the affidavit, the foreign judgment shall be docketed and indexed in the same manner as a judgment of this State; however, no execution shall issue upon the foreign judgment nor shall any other proceeding be taken for its enforcement until the expiration of 30 days from the date upon which notice of filing is served in accordance with G.S. 1C-1704.

(c) A judgment so filed has the same effect and is subject to the same defenses as a judgment of this State and shall be enforced or satisfied in like manner; provided however, if the judgment debtor files a motion for relief or notice of defense pursuant to G.S. 1C-1705, enforcement of the foreign judgment is automatically stayed, without security, until the court finally disposes of the matter. (1989, c. 747.)

**§ 1C-1704. Notice of filing; service.**

(a) Promptly upon the filing of a foreign judgment and affidavit, the judgment creditor shall serve the notice of filing provided for in subsection (b) on the judgment debtor and shall attach thereto a filed-stamped copy of the foreign judgment and affidavit. Service and proof of service of the notice may be made in any manner provided for in Rule 4(j) of the Rules of Civil Procedure.

(b) The notice shall set forth the name and address of the judgment creditor, of his attorney if any, and of the clerk's office in which the foreign judgment is filed in this State, and shall state that the judgment attached thereto has been filed in that office, that the judgment debtor has 30 days from the date of receipt of the notice to seek relief from the enforcement of the judgment, and that if the judgment is not satisfied and no such relief is sought within that 30 days, the judgment will be enforced in this State in the same manner as any judgment of this State. (1989, c. 747.)

**§ 1C-1705. Defenses; procedure; stay.**

(a) The judgment debtor may file a motion for relief from, or notice of defense to, the foreign judgment on the grounds that the foreign judgment has been appealed from, or enforcement has been stayed by, the court which rendered it, or on any other ground for which relief from a judgment of this State would be allowed. Notwithstanding subsection (b) of this section, the court shall stay enforcement of the foreign judgment for an appropriate period if the judgment debtor shows that:

- (1) The foreign judgment has been stayed by the court that rendered it; or



- (2) An appeal from the foreign judgment is pending or the time for taking an appeal has not expired and the judgment debtor executes a written undertaking in the same manner and amount as would be required in the case of a judgment entered by a court of this State under G.S. 1-289.

(b) If the judgment debtor has filed a motion for relief or notice of defenses then the judgment creditor may move for enforcement of the foreign judgment as a judgment of this State, unless the court stays enforcement of the judgment under subsection (a) of this section. The judgment creditor's motion shall be heard before a judge of the trial division which would be the proper division for the trial of an action in which the amount in controversy is the same as the amount remaining unpaid on the foreign judgment. The Rules of Civil Procedure (G.S. 1A-1) shall apply. The judgment creditor shall have the burden of proving that the foreign judgment is entitled to full faith and credit. (1989, c. 747, s. 1; 2003-19, s. 2.)

**§ 1C-1706. Fees.**

The enforcement of a foreign judgment under this Article shall be subject to the costs and fees set forth in Article 28 of Chapter 7A of the General Statutes. The amount remaining unpaid on the foreign judgment as set forth in the affidavit filed under G.S. 1C-1703(b) shall determine the amount of the costs to be collected at the time of the filing of the foreign judgment and assessed pursuant to G.S. 7A-305. (1989, c. 747.)

**§ 1C-1707. Optional procedure.**

This Article may not be construed to impair a judgment creditor's right to bring a civil action in this State to enforce such creditor's judgment. (1989, c. 747.)

**§ 1C-1708. Judgments against public policy.**

The provisions of this Article shall not apply to foreign judgments based on claims which are contrary to the public policies of North Carolina. (1989, c. 747.)

**§§ 1C-1709 through 1C-1749. Reserved for future codification purposes.**

Article 17A.

Enforcement of Foreign Judgments for Noncompensatory Damages.

**§ 1C-1750:** Repealed by Session Laws 2003-19, s. 1, effective April 23, 2003.

**§§ 1C-1751 through 1C-1759. Reserved for future codification purposes.**

**§ 1C-1760:** Repealed by Session Laws 2003-19, s. 1, effective April 23, 2003.

**§§ 1C-1761 through 1C-1799. Reserved for future codification purposes.**

Article 18.

North Carolina Foreign Money Judgments Recognition Act.

§ **1C-1800**: Repealed by Session Laws 2009-325, s. 1, effective October 1, 2009, and applicable to all actions commenced on or after that date in which the issue of recognition of a foreign-country judgment is raised.

§ **1C-1801**: Repealed by Session Laws 2009-325, s. 1, effective October 1, 2009, and applicable to all actions commenced on or after that date in which the issue of recognition of a foreign-country judgment is raised.

§ **1C-1802**: Repealed by Session Laws 2009-325, s. 1, effective October 1, 2009, and applicable to all actions commenced on or after that date in which the issue of recognition of a foreign-country judgment is raised.

§ **1C-1803**: Repealed by Session Laws 2009-325, s. 1, effective October 1, 2009, and applicable to all actions commenced on or after that date in which the issue of recognition of a foreign-country judgment is raised.

§ **1C-1804**: Repealed by Session Laws 2009-325, s. 1, effective October 1, 2009, and applicable to all actions commenced on or after that date in which the issue of recognition of a foreign-country judgment is raised.

§ **1C-1805**: Repealed by Session Laws 2009-325, s. 1, effective October 1, 2009, and applicable to all actions commenced on or after that date in which the issue of recognition of a foreign-country judgment is raised.

§ **1C-1806**: Repealed by Session Laws 2009-325, s. 1, effective October 1, 2009, and applicable to all actions commenced on or after that date in which the issue of recognition of a foreign-country judgment is raised.

§ **1C-1807**: Repealed by Session Laws 2009-325, s. 1, effective October 1, 2009, and applicable to all actions commenced on or after that date in which the issue of recognition of a foreign-country judgment is raised.

§ **1C-1808**: Repealed by Session Laws 2009-325, s. 1, effective October 1, 2009, and applicable to all actions commenced on or after that date in which the issue of recognition of a foreign-country judgment is raised.

§§ **1C-1809 through 1C-1819**. Reserved for future codification purposes.

## Article 19

### The North Carolina Foreign-Money Claims Act.

#### § **1C-1820. Definitions.**

As used in this Article:

- (1) "Action" means a judicial proceeding or arbitration in which a payment in money may be awarded or enforced with respect to a foreign-money claim.

- (2) "Bank-offered spot rate" means the spot rate of exchange at which a bank will sell foreign money at a spot rate.
- (3) "Conversion date" means the banking day next preceding the date on which money, in accordance with this Article, is:
  - a. Paid to a claimant in an action or distribution proceeding;
  - b. Paid to the official designated by law to enforce a judgment or award on behalf of a claimant; or
  - c. Used to recoup, set off, or counterclaim in different moneys in an action or distribution proceeding.
- (4) "Distribution proceeding" means a judicial or nonjudicial proceeding for the distribution of a fund in which one or more foreign-money claims is asserted and includes an accounting, an assignment for the benefit of creditors, a foreclosure, the liquidation or rehabilitation of a corporation or other entity, and the distribution of an estate, trust, or other fund.
- (5) "Foreign money" means money other than money of the United States.
- (6) "Foreign-money claim" means a claim upon an obligation to pay, or a claim for recovery of a loss, expressed in or measured by a foreign money.
- (7) "Money" means a medium of exchange for the payment of obligations or a store of value authorized or adopted by a government or by intergovernmental agreement.
- (8) "Money of the claim" means the money determined as proper for payment of the claim pursuant to G.S. 1C-1823.
- (9) "Person" means an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, joint venture, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.
- (10) "Rate of exchange" means the rate at which money of one country may be converted into money of another country in a free financial market convenient to or reasonably usable by a person obligated to pay or to state a rate of conversion. "Rate of exchange" means, if separate rates of exchange apply to different kinds of transactions, the rate applicable to the particular transaction giving rise to the foreign-money claim.
- (11) "Spot rate" means the rate of exchange at which foreign money is sold by a bank or other dealer in foreign exchange for immediate or next day availability or for settlement by immediate payment in cash or its equivalent, by charge to an account, or by an agreed delayed settlement not exceeding two days.
- (12) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States. (1995, c. 213, s. 1.)

**§ 1C-1821. Scope of Article.**

(a) This Article applies only to a foreign-money claim in an action or distribution proceeding.

(b) This Article applies to foreign-money issues even if other law under the conflict of laws rules of this State applies to other issues in the action or distribution proceeding. (1995, c. 213, s. 1.)

**§ 1C-1822. Variation by agreement.**

(a) The effect of this Article may be varied by agreement of the parties made before or after commencement of an action or distribution proceeding or the entry of judgment.

(b) Parties to a transaction may agree upon the money to be used in a transaction giving rise to a foreign-money claim and may agree to use different moneys for different aspects of the transaction. Stating the price in a foreign money for one aspect of a transaction does not alone require the use of that money for other aspects of the transaction. (1995, c. 213, s. 1.)

**§ 1C-1823. Determining proper money of the claim.**

(a) The money in which the parties to a transaction have agreed that payment is to be made is the proper money of the claim for payment.

(b) If the parties to a transaction have not otherwise agreed, the proper money of the claim, as in each case may be appropriate, is the money:

- (1) Regularly used between the parties as a matter of usage or course of dealing;
- (2) Used at the time of a transaction in international trade, by trade usage or common practice, for valuing or settling transactions in the particular commodity or service involved; or
- (3) In which the loss was ultimately felt or will be incurred by the party claimant. (1995, c. 213, s. 1.)

**§ 1C-1824. Determining amount of the money of certain contract claims.**

(a) If an amount contracted to be paid in a foreign money is measured by a specified amount of a different money, the amount to be paid shall be determined on the conversion date.

(b) If an amount contracted to be paid in a foreign money is to be measured by a different money at the rate of exchange prevailing on a date before default, that rate of exchange applies only to payments made within a reasonable time after default, not exceeding 30 days. Thereafter, conversion is made at the bank-offered spot rate on the conversion date.

(c) A monetary claim is neither usurious nor unconscionable for the reason that the agreement on which it is based provides that the amount of the debtor's obligation to be paid in the debtor's money, when received by the creditor, must equal a specified amount of the foreign money of the country of the creditor. If, because of unexcused delay in payment of a judgment or award, the amount received by the creditor does not equal the amount of the foreign money specified in the agreement, the court or arbitrator shall amend the judgment or award accordingly. (1995, c. 213, s. 1.)

**§ 1C-1825. Asserting and defending foreign-money claims.**

(a) A person may assert a claim in a specified foreign money. If a foreign-money claim is not asserted, the claimant shall make the claim in United States dollars.

(b) An opposing party may allege and prove that a claim, in whole or in part, is in a different money than that asserted by the claimant.

(c) A person may assert a defense, setoff, recoupment, or counterclaim in any money without regard to the money of other claims.

(d) The determination of the proper money of the claim pursuant to G.S. 1C-1823 is a question of law. (1995, c. 213, s. 1.)

**§ 1C-1826. Judgments and awards on foreign-money claims, times of money conversion; form of judgments.**

(a) Except as provided in subsection (c) of this section, a judgment or award on a foreign-money claim must be stated in an amount of the money of the claim.

(b) A judgment or award on a foreign-money claim is payable in that foreign money or, at the option of the debtor, in the amount of United States dollars that will purchase that foreign money on the conversion date at a bank-offered spot rate.

(c) A judgment or award on a foreign-money claim shall assess costs in United States dollars.

(d) Each payment in United States dollars shall be accepted and credited on a judgment or award on a foreign-money claim in the amount of the foreign money that could be purchased by the dollars at a bank-offered spot rate of exchange at or near the close of business on the conversion date for that payment.

(e) A judgment or award made in an action or distribution proceeding on:

(1) A defense, setoff, recoupment, or counterclaim, and

(2) The adverse party's claim

shall be netted by converting the money of the smaller into the money of the larger, and by subtracting the smaller from the larger and shall specify the rates of exchange used.

(f) A judgment substantially in the following form satisfies the provisions of this section: "It is ORDERED, ADJUDGED, AND DECREED that defendant (insert name) pay to Plaintiff (insert name) the sum of (insert amount in the foreign money) plus interest on that sum at the rate of (insert rate pursuant to G.S. 1C-1828) percent a year or, at the option of the judgment debtor, the number of United States dollars that will purchase the (insert name of foreign money) with interest due, at a bank-offered spot rate at or near the close of business on the banking day next before the day of payment, together with assessed costs of (insert amount) United States dollars."

(g) If a contract claim is of the type covered by G.S. 1C-1824(a) or G.S. 1C-1824(b), the judgment or award shall be entered for the amount of money stated to measure the obligation to be paid in the money specified for payment or, at the option of the debtor, the number of United States dollars that will purchase the computed amount of the money of payment on the conversion date at a bank-offered spot rate.

(h) A judgment shall be filed, docketed, and indexed in foreign money in the same manner as other judgments and has the same effect as a lien. A judgment may be discharged by payment.

(i) A party seeking enforcement of a judgment entered as provided in this section shall file with each request or application an affidavit or certificate executed in good faith by its counsel or a bank officer, stating the rate of exchange used and how it was obtained and setting forth the calculation and the amount of United States dollars that would satisfy the judgment on the date of the affidavit or certificate by applying that rate of exchange. Affected court officials shall incur no liability, after a filing of the affidavit or certificate, for acting as if the judgment were in the amount of United States dollars stated in the affidavit or certificate. The computation contained in the affidavit or certificate shall remain in effect for 90 days following the filing of the affidavit or certificate and may be recomputed before the expiration of 90 days by filing additional affidavits or certificates. Recomputation shall not affect any payment obtained before the filing of the recomputation.

(j) When a payment is made to a clerk's office pursuant to G.S. 1-239, the clerk may determine the spot rate of exchange on the conversion date on the basis of information received in good faith from any bank officer or other reliable source and shall incur no liability to any person

for crediting a payment toward a judgment, or for marking a judgment satisfied in full, on the basis of the rate so determined. (1995, c. 213, s. 1.)

**§ 1C-1827. Conversions of foreign money in distribution proceedings.**

The rate of exchange prevailing at or near the close of business on the day the distribution proceeding is initiated shall govern all exchanges of foreign money in a distribution proceeding. A foreign-money claimant in a distribution proceeding shall assert its claim in the named foreign money and show the amount of United States dollars resulting from a conversion as of the date the proceeding was initiated. (1995, c. 213, s. 1.)

**§ 1C-1828. Prejudgment and judgment interest.**

(a) Except as provided in subsection (b) of this section, recovery of prejudgment or pre-award interest and the rate of interest to be applied in the action or distribution proceeding shall be determined by the substantive law governing the right to recovery under the conflict of laws rules of this State.

(b) The court or arbitrator shall increase or decrease the amount of prejudgment or pre-award interest otherwise payable in a judgment or award in foreign money to the extent required by the law of this State governing a failure to make or accept an offer of settlement or offer of judgment, or conduct by a party or its attorney causing undue delay or expense.

(c) A judgment or award on a foreign-money claim bears interest at the rate applicable to judgments of this State. (1995, c. 213, s. 1.)

**§ 1C-1829. Enforcement of foreign judgments.**

Subject to the provisions of Article 17 and 20 of this Chapter:

- (1) If an action is brought to enforce a judgment of another jurisdiction expressed in a foreign money and the judgment is recognized in this State as enforceable, the enforcing judgment shall be entered as provided in G.S. 1C-1826, whether or not the foreign judgment confers an option to pay in an equivalent amount of United States dollars.
- (2) A foreign judgment may be filed or docketed in accordance with any rule or statute of this State providing a procedure for its recognition and enforcement.
- (3) A satisfaction or partial payment made upon the foreign judgment, on proof thereof, shall be credited against the amount of foreign money specified in the judgment, notwithstanding the entry of judgment in this State.
- (4) A judgment entered on a foreign-money claim only in United States dollars in another state shall be enforced in this State in United States dollars only. (1995, c. 213, s. 1; 2020-69, s. 1.)

**§ 1C-1830. Determining United States dollar value of assets to be seized or restrained.**

(a) Computations under this section shall not affect computation of the United States dollar equivalent of the money of the judgment for the purpose of payment.

(b) For the limited purpose of facilitating the enforcement of provisional remedies in an action, the value in United States dollars of assets to be seized or restrained pursuant to a writ of attachment, garnishment, execution, or other legal process, the amount of United States dollars at issue for assessing costs, or the amount of United States dollars involved for a surety bond or other

court-required undertaking, shall be ascertained as provided in subsections (c) and (d) of this section.

(c) A party seeking process, costs, bond, or other undertaking under subsection (b) of this section shall compute in United States dollars the amount of the foreign-money claim from a bank-offered spot rate prevailing at or near the close of business on the banking day next preceding the filing of a request or application for the issuance of process or for the determination of costs, or an application for a bond or other court-required undertaking.

(d) A party seeking the process, costs, bond, or other undertaking under subsection (b) of this section shall file with each request or application an affidavit or certificate executed in good faith by its counsel or a bank officer, stating the market quotation used and how it was obtained, and setting forth the calculation. Affected court officials shall incur no liability, after a filing of the affidavit or certificate, for acting as if the judgment were in the amount of United States dollars stated in the affidavit or certificate. (1995, c. 213, s. 1.)

**§ 1C-1831. Effect of currency revalorization.**

(a) If, after an obligation is expressed or a loss is incurred in a foreign money, the country issuing or adopting that money substitutes a new money in place of that money, the obligation or the loss shall be treated as if expressed or incurred in the new money at the rate of conversion the issuing country established for the payment of like obligations or losses denominated in the former money.

(b) If substitution under subsection (a) of this section occurs after a judgment or award is entered on a foreign-money claim, the court or arbitrator shall amend the judgment or award by a like conversion of the former money. (1995, c. 213, s. 1.)

**§ 1C-1832. Supplementary general principles of law.**

Unless displaced by particular provisions of this Article, the principles of law and equity, including the law merchant, and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes shall supplement its provisions. (1995, c. 213, s. 1.)

**§ 1C-1833. Uniformity of application and construction.**

This Article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Article among states enacting it. (1995, c. 213, s. 1.)

**§ 1C-1834. Short title.**

This Article may be cited as the North Carolina Foreign-Money Claims Act. (1995, c. 213, s. 1.)

**§ 1C-1835. Reserved for future codification purposes.**

**§ 1C-1836. Reserved for future codification purposes.**

**§ 1C-1837. Reserved for future codification purposes.**

**§ 1C-1838. Reserved for future codification purposes.**

§ 1C-1839. **Reserved for future codification purposes.**

§ 1C-1840. Reserved for future codification purposes.

§ 1C-1841. Reserved for future codification purposes.

§ 1C-1842. Reserved for future codification purposes.

§ 1C-1843. Reserved for future codification purposes.

§ 1C-1844. Reserved for future codification purposes.

§ 1C-1845. Reserved for future codification purposes.

§ 1C-1846. Reserved for future codification purposes.

§ 1C-1847. Reserved for future codification purposes.

§ 1C-1848. Reserved for future codification purposes.

§ 1C-1849. Reserved for future codification purposes.

## Article 20.

### North Carolina Uniform Foreign-Country Money Judgments Recognition Act.

#### § 1C-1850. **Short title.**

This Article may be cited as the North Carolina Uniform Foreign-Country Money Judgments Recognition Act. (2009-325, s. 2.)

#### § 1C-1851. **Definitions.**

The following definitions apply in this Article:

- (1) Foreign country. – A government other than:
  - a. The United States;
  - b. A state, district, commonwealth, territory, or insular possession of the United States; or
  - c. Any other government with regard to which the decision in this State as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.
- (2) Foreign-country judgment. – A judgment of a court of a foreign country. (2009-325, s. 2.)

#### § 1C-1852. **Applicability; saving clause.**



(a) Except as otherwise provided in subsection (b) of this section, this Article applies to a foreign-country judgment to the extent that the judgment:

- (1) Grants or denies recovery of a sum of money; and
- (2) Under the law of the foreign country where rendered, is final, conclusive, and enforceable.

(b) This Article does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is:

- (1) A judgment for taxes;
- (2) A fine or other penalty; or
- (3) A judgment for alimony, support, or maintenance in matrimonial or family matters.

(c) A party seeking recognition of a foreign-country judgment has the burden of establishing that this Article applies to the foreign-country judgment.

(d) This Article does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment to which this Article does not apply. (2009-325, s. 2.)

### **§ 1C-1853. Standards for recognition and nonrecognition of foreign-country judgment.**

(a) Except as otherwise provided in this section, a court of this State shall recognize a foreign-country judgment to which this Article applies.

(b) A court of this State shall not recognize a foreign-country judgment if:

- (1) The judgment was rendered under a judicial system that, taken as a whole, does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
- (2) The foreign court did not have personal jurisdiction over the defendant;
- (3) The foreign court did not have jurisdiction over the subject matter; or
- (4) The judgment was obtained by a foreign government entity to compensate for the expenditure of public funds for government programs.

(c) If a court of this State finds that any of the following exist with respect to a foreign-country judgment for which recognition is sought, recognition of the judgment shall be denied unless the court determines, as a matter of law, that recognition would nevertheless be reasonable under the circumstances:

- (1) The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend.
- (2) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case.
- (3) The judgment, or the cause of action or claim for relief on which the judgment is based, is repugnant to the public policy of this State or of the United States.
- (4) Reserved for future codification.
- (5) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court.
- (6) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.
- (7) The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment.

- (8) The specific proceeding in the foreign court leading to the judgment was fundamentally unfair.
- (9) The judgment is based on a foreign statute or rule of law which, as applied by the foreign court, would have been contrary to either the United States Constitution or the North Carolina Constitution had it been applied by a court in North Carolina.

(d) If a foreign-country judgment for which recognition is sought is otherwise entitled to recognition under this Article but conflicts with a prior final and conclusive judgment, a court of this State shall recognize the judgment for which recognition is sought unless the court determines that nonrecognition would nevertheless be reasonable under the circumstances.

(e) If a foreign-country judgment for which recognition is sought is otherwise entitled to recognition under this Article but conflicts with a subsequent final and conclusive judgment, a court of this State shall deny recognition of the judgment for which recognition is sought unless the court determines that recognition would nevertheless be reasonable under the circumstances.

(f) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (b) of this section exists.

(g) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (c) of this section exists. The party seeking recognition of the judgment has the burden of establishing that, as a matter of law, recognition would nevertheless be reasonable under the circumstances.

(h) A party resisting recognition of a foreign-country judgment under subsection (d) or (e) of this section has the burden of establishing that another final and conclusive judgment exists and that the other judgment conflicts with the judgment for which recognition is sought. Under subsection (d) of this section, the party resisting recognition also has the burden of establishing that nonrecognition of the judgment for which recognition is sought would be reasonable under the circumstances. Under subsection (e) of this section, the party seeking recognition of the foreign-country judgment has the burden of establishing that recognition would be reasonable under the circumstances.

(i) When a court of this State rules on recognition of a foreign-country judgment, the court shall state the facts specially and state separately its conclusions of law.

(j) If a proceeding in a foreign court is brought by a foreign government entity based upon rules of law adopted for the benefit of the foreign government entity that are applied ex post facto to conduct of the defendant or if the action imposes liability for harms to individuals without requiring individualized proof of each element of the claim for each such individual, the court shall find that the action is fundamentally unfair and its judgment is repugnant to the public policy of this State under subdivisions (3) and (8) of subsection (c) of this section. (2009-325, s. 2; 2015-107, s. 1; 2015-264, s. 32.)

#### **§ 1C-1854. Personal jurisdiction.**

(a) A foreign-country judgment shall not be refused recognition for lack of personal jurisdiction if any of the following exist:

- (1) The defendant was served with process personally in the foreign country.
- (2) The defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant.

- (3) The defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved.
- (4) The defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country.
- (5) The defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action or claim for relief arising out of business done by the defendant through that office in the foreign country.
- (6) The defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action or claim for relief arising out of that operation.
- (7) There was any other basis for personal jurisdiction that would be consistent with the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

(b) The list of bases for personal jurisdiction in subsection (a) of this section is not exclusive. The courts of this State may recognize reasonable bases of personal jurisdiction other than those listed in subsection (a) of this section as sufficient to support a foreign-country judgment. (2009-325, s. 2.)

**§ 1C-1855. Procedure for recognition and nonrecognition of foreign-country judgment.**

(a) If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign-country judgment.

(b) If recognition or nonrecognition of a foreign-country judgment is sought in some other action, the issue of recognition may be raised by complaint, counterclaim, cross-claim, or affirmative defense. (2009-325, s. 2.)

**§ 1C-1856. Effect of recognition of foreign-country judgment.**

(a) If the court in a proceeding under G.S. 1C-1855 finds that the foreign-country judgment is entitled to recognition under this Article then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:

- (1) Conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this State would be conclusive; and
- (2) Enforceable in the same manner and to the same extent as a judgment rendered in this State.

(b) Article 17 of this Chapter does not apply to the enforcement of foreign-country judgments recognized under this Article. (2009-325, s. 2.)

**§ 1C-1857. Stay of proceedings pending appeal of foreign-country judgment.**

If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign-country judgment until the appeal is concluded, the time for appeal expires without an appeal being taken, or the appellant has had sufficient time to prosecute the appeal and has failed to do so. (2009-325, s. 2.)

**§ 1C-1858. Statute of limitations.**

An action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or 10 years from the date that the foreign-country judgment became effective in the foreign country. (2009-325, s. 2.)

**§ 1C-1859. Uniformity of interpretation.**

In applying and construing this Article, consideration may be given to promoting uniformity of interpretation with respect to its subject matter among states that enact it. (2009-325, s. 2.)

**§ 1C-1860. Severability.**

The provisions of this Article are severable. If any part or application of this Article is invalid, then other parts or applications remain valid. (2015-107, s. 2.)