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SENATE BILL NO. 839

Offered January 12, 2011

Prefiled January 7, 2011

A BILL to amend and reenact §§ 8.01-512.4, 34-1, 34-3, 34-3.1, 34-4, 34-4.1, 34-4.2, 34-5, 34-13, 34-14, 34-17, 34-21, 34-24, and 34-26 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 1 of Title 34 a section numbered 34-3.2, relating to homestead and other exemptions.

Patron—Petersen

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-512.4, 34-1, 34-3, 34-3.1, 34-4, 34-4.1, 34-4.2, 34-5, 34-13, 34-14, 34-17, 34-21, 34-24, and 34-26 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 1 of Title 34 a section numbered 34-3.2 as follows:

§ 8.01-512.4. Notice of exemptions from garnishment and lien.

No summons in garnishment shall be issued or served, nor shall any notice of lien be served on a financial institution pursuant to § 8.01-502.1, unless a notice of exemptions and claim for exemption form are attached. The notice shall contain the following statement:

NOTICE TO JUDGMENT DEBTOR

HOW TO CLAIM EXEMPTIONS FROM GARNISHMENT AND LIEN

The attached Summons in Garnishment or Notice of Lien has been issued on request of a creditor who holds a judgment against you. The Summons may cause your property or wages to be held or taken to pay the judgment.

The law provides that certain property and wages cannot be taken in garnishment. Such property is said to be exempted. A summary of some of the major exemptions is set forth in the request for hearing form. There is no exemption solely because you are having difficulty paying your debts.

If you claim an exemption, you should (i) fill out the claim for exemption form and (ii) deliver or mail the form to the clerk's office of this court. You have a right to a hearing within seven business days from the date you file your claim with the court. If the creditor is asking that your wages be withheld, the method of computing the amount of wages which are exempt from garnishment by law is indicated on the Summons in Garnishment attached. You do not need to file a claim for exemption to receive this exemption, but if you believe the wrong amount is being withheld you may file a claim for exemption.

On the day of the hearing you should come to court ready to explain why your property is exempted, and you should bring any documents which may help you prove your case. If you do not come to court at the designated time and prove that your property is exempt, you may lose some of your rights.

It may be helpful to you to seek the advice of an attorney in this matter.

REQUEST FOR HEARING-GARNISHMENT/LIEN EXEMPTION CLAIM

I claim that the exemption(s) from garnishment or lien which are checked below apply in this case:

MAJOR EXEMPTIONS UNDER FEDERAL AND STATE LAW

- 1. Social Security benefits and Supplemental Security Income (SSI) (42 U.S.C. § 407).
- 2. Veterans' benefits (38 U.S.C. § 3101).
- 3. Federal civil service retirement benefits (5 U.S.C. § 8346).
- 4. Annuities to survivors of federal judges (28 U.S.C. § 376(n)).
- 5. Longshoremen and Harborworkers Compensation Act (33 U.S.C. § 916).
- 6. Black lung benefits.

- 56 Exemptions listed under 1 through 6 above may not be applicable in child
- 57 support and alimony cases (42 U.S.C. § 659).
- 58 7. Seaman's, master's or fisherman's wages, except for child
- 59 support or spousal support and maintenance (46 U.S.C. § 1109).
- 60 8. Unemployment compensation benefits (§ 60.2-600, Code of
- 61 Virginia). This exemption may not be applicable in child support cases
- 62 (§ 60.2-608, Code of Virginia).
- 63 9. Portions or amounts of wages subject to garnishment (§ 34-29,
- 64 Code of Virginia).
- 65 10. Public assistance payments (§ 63.2-506, Code of Virginia).
- 66 11. Homestead exemption of \$5,000, or \$10,000 if the debtor is
- 67 65 years of age or older, in cash (~~§ 34-4~~ 34-13, Code of Virginia). This
- 68 exemption may not be available in certain cases, such as payment of rent
- 69 or services of a laborer or mechanic (§ 34-5, Code of Virginia).
- 70 12. Property of disabled veterans - additional \$10,000 cash
- 71 (§ 34-4.1, Code of Virginia).
- 72 13. Workers' Compensation benefits (§ 65.2-531, Code of Virginia).
- 73 14. Growing crops (§ 8.01-489, Code of Virginia).
- 74 15. Benefits from group life insurance policies (§ 38.2-3339,
- 75 Code of Virginia).
- 76 16. Proceeds from industrial sick benefits insurance (§ 38.2-3549,
- 77 Code of Virginia).
- 78 17. Assignments of certain salary and wages (§ 55-165, Code of
- 79 Virginia).
- 80 18. Benefits for victims of crime (§ 19.2-368.12, Code of Virginia).
- 81 19. Preneed funeral trusts (§ 54.1-2823, Code of Virginia).
- 82 20. Certain retirement benefits (§ 34-34, Code of Virginia).
- 83 21. Child support payments (§ 20-108.1, Code of Virginia).
- 84 22. Support for dependent minor children (§ 34-4.2, Code of
- 85 Virginia). To claim this exemption, the debtor shall attach to the claim
- 86 for exemption form an affidavit that complies with the requirements of
- 87 subsection B of § 34-4.2 and two items of proof showing that the debtor
- 88 is entitled to this exemption.
- 89 23. Other (describe exemption): \$

90 I request a court hearing to decide the validity of my claim. Notice of the
 91 hearing should be given me at:

92

93 (address) (telephone no.)

94 The statements made in this request are true to the best of my knowledge
 95 and belief.

96

97 (date) ~~(date)~~ (signature of judgment debtor)

98 § 34-1. Definitions.

99 As used in this title, unless the context requires a different meaning:

100 "Creditor process" means all methods used by creditors to collect unsecured debts.

101 "Debt" means a legally enforceable monetary obligation or liability of any individual whether arising
 102 out of a contract or otherwise, but not an obligation resulting from an intentional tort.

103 "*Dependent*" means an individual who derives support primarily from the householder and who does
 104 not have assets sufficient to support himself, but in no case shall an individual be the dependent of more
 105 than one householder.

106 "Exempt" means protected from all forms of creditor process.

107 "Exemption" means protection from all forms of creditor process.

108 "*Homestead*" means real or personal property used as the principal residence by the householder or
 109 a dependent of the householder.

110 "Homestead exemption" means that exemption created by § 34-4.

111 "Householder" means any resident of Virginia.

112 "Laboring person" means any person who receives wages for his services.

113 § 34-3. Articles not exempt from taxes or levies or for their purchase price.

114 The exemptions under §§ 34-4, 34-4.1, 34-13, 34-26, 34-27, 34-29, and 64.1-151.3 shall not extend
115 to distress or lien for state or local taxes or levies, nor to levy, distress, or lien for the purchase price of
116 any articles claimed as exempt or any part of the price thereof nor for fines and damages or either
117 arising from trespass by animals under § 55-306 as to such animal so trespassing. If an article purchased
118 and not paid for is exchanged or converted into other property of the debtor, such property shall not be
119 exempt from payment of the unpaid purchase money debt.

120 § 34-3.1. Alternative exemptions.

121 ~~No~~ *Notwithstanding any other provision of law, an individual may exempt from the property of the*
122 *estate in any bankruptcy proceeding either the property permitted to be exempted (i) as specified in*
123 *subsection (d) of 11 U.S.C. § 522 of the Bankruptcy Reform Act (Public Law 95-598), except as may*
124 *otherwise be expressly permitted under, or (ii) as specified in this title.*

125 § 34-3.2. Automatic adjustment of exemptions.

126 *Beginning July 1, 2013, the dollar amount of the exemptions provided in §§ 34-4, 34-13, and 34-26*
127 *shall be adjusted triennially, rounded to the nearest \$25, based on the increases in the United States*
128 *Average Consumer Price Index for all urban consumers (CPI-U) for the South Region as published by*
129 *the Bureau of Labor Statistics of the U.S. Department of Labor.*

130 § 34-4. Exemption created.

131 Every householder shall be entitled, in addition to the property or estate exempt under §§ 23-38.81,
132 34-13, 34-26, 34-27, 34-29, and 64.1-151.3, to hold exempt from creditor process arising out of a debt,
133 real and or personal property, or either, to be selected by that the householder, including money and
134 debts due or a dependent of the householder claims as a homestead not exceeding ~~\$5,000~~ \$25,000 in
135 value or, if the householder is 65 years of age or older, not exceeding ~~\$10,000~~ \$35,000 in value. In
136 addition, upon a showing that a householder supports dependents, the householder shall be entitled to
137 hold exempt from creditor process real and personal property, or either, selected by the householder,
138 including money or monetary obligations or liabilities due the householder, not exceeding \$500 in value
139 for each dependent.

140 For the purposes of this section, "dependent" means an individual who derives support primarily
141 from the householder and who does not have assets sufficient to support himself, but in no case shall an
142 individual be the dependent of more than one householder.

143 § 34-4.1. Additional exemption for certain veterans.

144 Every veteran residing in ~~this~~ the Commonwealth having a service connected disability of ~~forty~~ 40
145 percent or more, as rated by the Veterans Administration of the United States, shall be entitled, in
146 addition to the property or estate which he is entitled to hold exempt from creditor process under
147 §§ 34-4, 34-13, 34-26, 34-27, 34-29, and 64.1-151.3, to hold exempt from creditor process his real and
148 personal property, or either, to be selected by him by the writings required by §§ 34-6 and 34-14,
149 including money and debts due him, not exceeding \$ 10,000 in value.

150 § 34-4.2. Additional exemption for parents of dependent children.

151 A. Where a parent supports a dependent minor child or children residing with him, that parent can
152 hold exempt from wage garnishment, in addition to the property or estate that he is entitled to hold
153 exempt from creditor process under §§ 20-108.1, 34-4, 34-4.1, 34-13, 34-26, 34-27, 34-29, and
154 64.1-151.3, an additional amount for the support of the child or children as follows: \$34 per week for
155 one child; \$52 per week for two children; and \$66 per week for three or more children. This additional
156 wage exemption amount shall not be available to a parent whose household gross income, including any
157 support payments for children living in the home, exceeds \$1,750 per month. For purposes of this
158 section, "household gross income" means all income from all sources, and shall include, but not be
159 limited to, salaries, wages, commissions, royalties, bonuses, dividends, severance pay, pensions, interest,
160 trust income, annuities, capital gains, social security benefits, workers' compensation benefits,
161 unemployment insurance benefits, disability insurance benefits, veterans' benefits, child support, spousal
162 support, rental income, gifts, prizes or awards paid to any adult living in the household or to the
163 dependent child.

164 B. To claim this wage exemption, the parent shall attach to the claim for exemption form set forth in
165 § 8.01-512.4 an affidavit and two items of proof showing that the debtor is entitled to this additional
166 wage exemption. The affidavit shall contain the following statement:

167 AFFIDAVIT CONCERNING DEPENDENT CHILDREN
168 AND HOUSEHOLD INCOME

169 Having been duly sworn, I,, depose and state the
170 following to be true, accurate and complete:

- 171 1. I support (number) dependent children, whose names and ages
172 are as follows. For each child I have included the amount of monthly child
173 support I receive (including voluntary support payments and payments made
174 pursuant to a court or administrative order), and, if the child is employed

175 or has other income, the amount of the child's gross monthly income. (If you
176 receive no support for the child and the child has no income, insert zero.)

177	Full legal name of child	Age	Child's gross monthly support and income
178	.....	.....	.....
179	.....	.....	.....
180	.....	.....	.....
181	.....	.....	.....

182 (attach additional pages if necessary)

183 2. My personal gross monthly income, not including any of the above amounts,
184 is \$

185 3. The following are the names and gross monthly incomes of all people who
186 reside with me in the same house, apartment or other dwelling, other than
187 the above-named dependent minor child or children. (If the household
188 resident has no income, insert zero.)

189	Full legal name of household residents	Gross monthly income
190	.....	.....
191	.....	.....
192	.....	.....
193	.....	.....

194 (attach additional pages if necessary)

195 4. I swear or affirm that no person other than the above-named individuals
196 resides with me and that I reside with no person other than the above-named
197 individuals.

198 (signature of debtor)

199 (date)

200 Commonwealth of Virginia:

201 City/County of, to wit:

202 Subscribed and sworn to before me, the undersigned Notary Public, this . .
203 day of (month), (year)

204 Notary Public:

205 My commission expires:

206 § 34-5. To what debts exemptions shall not apply.

207 A. The property exemptions created under this Code shall not be claimed against the following debts:

208 1. For the purchase price of such property or any part thereof. If the property purchased and not paid
209 for is exchanged for or converted into other property by the debtor, such last named property shall not
210 be exempted from the payment of such unpaid purchase money.

211 2. For spousal or child support obligations.

212 3. *For a judgment entered against the debtor based on fraudulent conduct or deceit committed by the*
213 *debtor.*

214 B. *The property exemptions created under this Code shall not be claimed for property that is not*
215 *lawfully owned by the debtor.*

216 § 34-13. Householder may set apart exemption in real or personal estate.

217 ~~If the Every~~ householder does not set apart any real estate as before provided, or if what he does or
218 has so set apart is not of the total value which he is entitled to hold exempt, he may, in addition to the
219 property or estate which he is shall be entitled to hold, in addition to the property or estate exempt
220 under §§ 23-38.81, 34-4, 34-26, 34-27, 34-29, and 64.1-151.3, in the first case select and set apart by
221 the writing required by § 34-14 to be held by him as exempt under §§ 34-4 and 34-4.1, so much of his
222 personal estate as shall not exceed the total value which he is entitled to hold exempt and, in the latter
223 case, personal estate, the value of which, when added to the value of the real estate set apart, does not
224 exceed such total value from creditor process arising out of a debt, real or personal property, or either,
225 other than that described in § 34-4, to be selected by the householder, including money and debts due
226 the householder not exceeding \$5,000 in value or, if the householder is 65 years of age or older, not
227 exceeding \$10,000 in value. In addition, upon a showing that a householder supports dependents, the
228 householder shall be entitled to hold exempt from creditor process real and personal property, or either,
229 selected by the householder, including money or monetary obligations or liabilities due the householder,
230 not exceeding \$500 in value for each dependent.

231 § 34-14. How set apart in personal estate; form to claim exemption of personal property.

232 Such personal estate selected by the householder ~~and~~ under §§ 34-4, § 34-4.1; or § 34-13 shall be set
233 apart in a writing signed by him. He shall, in the writing, designate and describe with reasonable

234 certainty the personal estate so selected and set apart and each parcel or article, affixing to each his cash
235 valuation thereof. Such writing shall be admitted to record, to be recorded as deeds are recorded in the
236 county or city wherein such householder resides. *However, if such personal estate is claimed exempt in*
237 *a petition filed under Title 11 of the United States Code, the official form admitted to record in the*
238 *United States Bankruptcy Court claiming such exemptions shall be sufficient to set apart such property*
239 *as exempt.*

240 The following form, or one which is substantially similar, shall be used and shall be sufficient, when
241 duly admitted to record in the county or city in which the householder resides, to exempt such described
242 personal property from creditor process:

243 HOMESTEAD DEED FOR PERSONAL PROPERTY

244 Name of Householder

245 Is the householder a disabled veteran entitled to claim the additional
246 exemption under § 34-4.1?

247 Address of Householder

248 Name(s) and age(s) of dependent(s)

249 County/city in which householder resides

250 Description of property claimed as exempt and its value

251

252 Number of homestead deeds that have been filed by the Householder
253

254 Exemption amount previously claimed on prior homestead deeds
255

256 List the jurisdictions where previous homestead deeds were filed
257

258

259 (Signature of Householder)

260 [ACKNOWLEDGMENT]
261 Such writing or deed shall not be required to secure any exemption under this Code except those
262 exemptions created by §§ 34-4, 34-4.1 and 34-13.

263 § 34-17. When exemption may be set apart; garnished wages.

264 A. The real or personal estate ~~which~~ *that* a householder is entitled to hold as exempt may be set
265 apart at any time before it is subjected by sale under creditor process, or, if such creditor process does
266 not require sale of the property, before it is turned over to the creditor. ~~To claim an exemption in~~
267 ~~bankruptcy, a householder who (i) files a voluntary petition in bankruptcy or (ii) against whom an~~
268 ~~involuntary petition in bankruptcy is filed shall set such real or personal property apart on or before the~~
269 ~~fifth day after the date of the meeting held pursuant to 11 U.S.C. § 341, but not thereafter. A~~
270 ~~householder who converts a case from Chapters 11, 12, or 13 to Chapter 7 shall set such real or~~
271 ~~personal property apart on or before the fifth day after the date of the meeting held pursuant to 11~~
272 ~~U.S.C. § 341 in the Chapter 7 case, but not thereafter. Nothing in this section shall affect the right of~~
273 ~~the trustee in bankruptcy, with the approval of the court, to proceed immediately with the sale or other~~
274 ~~disposition of personal property which the trustee determines to be perishable or particularly susceptible~~
275 ~~to price deterioration.~~

276 B. A claim of ~~homestead~~ exemption to protect garnished wages may be filed by the debtor after the
277 garnishment summons is served on the employer but prior to or upon the return date of the garnishment
278 summons and shall be considered by the garnishing court.

279 § 34-21. When householder's right to exemption is exhausted.

280 When the maximum amount of property, whether real or personal, or both, has been once set apart
281 to be held by a householder as exempt under § 34-4 ~~or~~ §, 34-4.1, *or 34-13*, he shall not afterwards be
282 entitled to the exemption of any estate other than that so set apart or as otherwise provided by law *for a*
283 *period of seven years from the time the householder last claimed the exemption.*

284 § 34-24. When the exemption ceases; lien of judgment or decree against householder.

285 When any person, entitled as a householder to the exemption provided for in § 34-4 *or 34-13*, ceases
286 to be a householder or when any person removes from ~~this~~ *the* Commonwealth, his right to claim or
287 hold any estate as exempt under the provisions of this chapter, shall cease; but the lien of a judgment,
288 or decree for money, rendered against a householder, and which is not paramount to the exemption
289 provided for in this chapter, shall, as to the real estate held as exempt by him, attach to such only of
290 that estate as he may be possessed of or entitled to at the time the exemption thereof ceases, as
291 aforesaid, and until that time the lien shall not be enforced. Such judgments shall attach in the order of
292 their priority, respectively, subject to the provisions of Article 5.1 (§ 64.1-151.1 et seq.) of Chapter 6 of
293 Title 64.1.

294 § 34-26. Poor debtor's exemption; exempt articles enumerated.
295 In addition to the exemptions provided in Chapter 2 (§ 34-4 et seq.) of this title, every householder
296 shall be entitled to hold exempt from creditor process the following enumerated items:
297 1. The family Bible.
298 1a. Wedding and engagement rings.
299 2. Family portraits and family heirlooms not to exceed \$5,000 in value.
300 3. (i) A lot in a burial ground, and (ii) any preneed funeral contract not to exceed \$5,000.
301 4. All wearing apparel of the householder not to exceed \$1,000 in value.
302 4a. All household *goods and* furnishings including, but not limited to, beds, dressers, floor coverings,
303 stoves, refrigerators, washing machines, dryers, sewing machines, pots and pans for cooking, plates, ~~and~~
304 eating utensils, *books and music regardless of format, and personal electronics* not to exceed \$5,000 in
305 value.
306 5. All animals owned as pets, such as cats, dogs, birds, squirrels, rabbits and other pets not kept or
307 raised for sale or profit.
308 6. Medically prescribed health aids.
309 7. Tools, books, instruments, implements, equipment, and machines, including motor vehicles,
310 vessels, and aircraft, which are necessary for use in the course of the householder's occupation or trade
311 not exceeding \$10,000 in value, except that a perfected security interest on such personal property shall
312 have priority over the claim of exemption under this section. A motor vehicle, vessel or aircraft used to
313 commute to and from a place of occupation or trade and not otherwise necessary for use in the course
314 of such occupation or trade shall not be exempt under this subdivision. "Occupation," as used in this
315 subdivision, includes enrollment in any public or private elementary, secondary, or career and technical
316 education school or institution of higher education.
317 8. A motor vehicle, not held as exempt under subdivision 7, owned by the householder, not to
318 exceed ~~\$2,000~~ \$5,000 in value, except that a perfected security interest on the motor vehicle shall have
319 priority over the claim of exemption under this subdivision.
320 9. *One firearm per householder for household use.*
321 10. *School books of the householder.*
322 11. *Personal effects and furniture that are exclusively used by a dependent who is a minor, disabled,*
323 *or 65 years of age or older.*
324 12. *Educational materials and educational equipment that are used by a dependent who is a minor.*
325 13. *Payments pursuant to the federal child tax credit under 26 U.S.C. § 24, as amended, and the*
326 *federal earned income credit under 26 U.S.C. § 32, as amended.*
327 The value of an item claimed as exempt under this section shall be the fair market value of the item
328 less any prior security interest.
329 The monetary limits, where provided, are applicable to the total value of property claimed as exempt
330 under that subdivision.
331 The purchase of an item claimed as exempt under this section with nonexempt property in
332 contemplation of bankruptcy or creditor process shall not be deemed to be in fraud of creditors.
333 No officer or other person shall levy or distrain upon, or attach, such articles, or otherwise seek to
334 subject such articles to any lien or process. It shall not be required that a householder designate any
335 property exempt under this section in a deed in order to secure such exemption.