023903932

House Amendments in [ ] — January 23, 2002

A BILL to amend and reenact §§ 34-26 and 34-28 of the Code of Virginia, relating to poor debtor's exemption.

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Patron Prior to Engrossment—Delegate Sherwood

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Referred to Committee for Courts of Justice

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Be it enacted by the General Assembly of Virginia:

1. That §§ 34-26 and 34-28 of the Code of Virginia are amended and reenacted as follows:

§ 34-26. Poor debtor's exemption; exempt articles enumerated.

In addition to the exemptions provided in Chapter 2 (§ 34-4 et seq.) of this title, every householder shall be entitled to hold exempt from creditor process the following enumerated items:

(1) *1.* The family Bible.

(1a) *1a.* Wedding and engagement rings.

(2) *2.* Family portraits and family heirlooms not to exceed $5,000 in value.

(3) *3.* [*(i)*] A lot in a burial ground*,* [~~any preneed funeral contract, and the value of any funeral expenses paid by the debtor for his or her spouse, not to exceed $10,000.~~ *and (ii) any preneed funeral contract not to exceed $5,000.*]

(4) *4.* All wearing apparel of the householder not to exceed $1,000 in value.

(4a) *4a.* All household furnishings including, but not limited to, beds, dressers, floor coverings, stoves, refrigerators, washing machines, dryers, sewing machines, pots and pans for cooking, plates, and eating utensils, not to exceed $5,000 in value.

(5) *5.* All animals owned as pets, such as cats, dogs, birds, squirrels, rabbits and other pets not kept or raised for sale or profit.

(6) *6.* Medically prescribed health aids.

(7) *7.* Tools, books, instruments, implements, equipment, and machines, including motor vehicles, vessels, and aircraft, which are necessary for use in the course of the householder's occupation or trade not exceeding $10,000 in value, except that a perfected security interest on such personal property shall have priority over the claim of exemption under this section. A motor vehicle, vessel or aircraft used to commute to and from a place of occupation or trade and not otherwise necessary for use in the course of such occupation or trade shall not be exempt under this ~~subsection~~ *subdivision.* "Occupation," as used in this subdivision, includes enrollment in any public or private elementary, secondary, or career and technical education school or institution of higher education.

(8) *8.* A motor vehicle, not held as exempt under subdivision (7) *7*, owned by the householder, not to exceed $2,000 in value, except that a perfected security interest on the motor vehicle shall have priority over the claim of exemption under this ~~subsection~~ *subdivision.*

The value of an item claimed as exempt under this section shall be the fair market value of the item less any prior security interest.

The monetary limits, where provided, are applicable to the total value of property claimed as exempt under that subdivision.

The purchase of an item claimed as exempt under this section with nonexempt property in contemplation of bankruptcy or creditor process shall not be deemed to be in fraud of creditors.

No officer or other person shall levy or distrain upon, or attach, such articles, or otherwise seek to subject such articles to any lien or process. It shall not be required that a householder designate any property exempt under this section in a deed in order to secure such exemption.

§ 34-28. Deed of trust, etc., on such property void.

Every deed of trust, mortgage or other writing or pledge made by a householder to give a lien on property exempt from distress or levy under § 34-26 shall be void as to such property. However, this section shall have no application to (i) property covered by a deed of trust, mortgage or other writing or pledge given by a householder to secure a loan made for the purchase of such property or (ii) security interests in such property having priority over the claim of exemption as specifically provided in ~~subsections~~ *subdivisions* (7) *7* and (8) *8* of § 34-26.