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HOUSE BILL NO. 1668

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on January 28, 2009)

(Patron Prior to Substitute—Delegate Kilgore)

A BILL to amend and reenact § 8.01-512.4 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 34-4.2, relating to garnishments.

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-512.4 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 34-4.2 as follows:

§ 8.01-512.4. Notice of exemptions from garnishment.

No summons in garnishment shall be issued or served 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

The attached Summons in Garnishment 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 EXEMPTION CLAIM

I claim that the exemption(s) from garnishment 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.

Exemptions listed under 1 through 6 above may not be applicable in child support and alimony cases (42 U.S.C. § 659).

. . . . 7. Seaman's, master's or fisherman's wages, except for child support or spousal support and maintenance (46 U.S.C. § 1109).

. . . . 8. Unemployment compensation benefits (§ 60.2-600, Code of Virginia). This exemption may not be applicable in child support cases (§ 60.2-608, Code of Virginia).

. . . . 9. Portions or amounts of wages subject to garnishment (§ 34-29, Code of Virginia).

. . . . 10. Public assistance payments (§ 63.2-506, Code of Virginia).

. . . . 11. Homestead exemption of \$5,000 in cash (§ 34-4, Code of Virginia).

This exemption may not be available in certain cases, such as payment of rent or services of a laborer or mechanic (§ 34-5, Code of Virginia).

HOUSE
SUBSTITUTE

HB1668H1

58 12. Property of disabled veterans - additional \$2,000 cash
 59 (§ 34-4.1, Code of Virginia).
 60 13. Workers' Compensation benefits (§ 65.2-531, Code of Virginia).
 61 14. Growing crops (§ 8.01-489, Code of Virginia).
 62 15. Benefits from group life insurance policies (§ 38.2-3339, Code o-
 63 f Virginia).
 64 16. Proceeds from industrial sick benefits insurance
 65 (§ 38.2-3549, Code of Virginia).
 66 17. Assignments of certain salary and wages (§ 55-165, Code of
 67 Virginia).
 68 18. Benefits for victims of crime (§ 19.2-368.12,
 69 Code of Virginia).
 70 19. Preneed funeral trusts (§ 54.1-2823, Code of Virginia).
 71 20. Certain retirement benefits (§ 34-34, Code of Virginia).
 72 21. Child support payments (§ 20-108.1, Code of Virginia).
 73 22. Support for dependent minor children (§ 34-4.2, Code of
 74 Virginia). To claim this exemption, the debtor shall attach to the
 75 claim for exemption form an affidavit that complies with the
 76 requirements of subsection B of § 34-4.2 and two items of proof showing
 77 that the debtor is entitled to this exemption.
 78 2223. Other (describe exemption): \$
 79 I request a court hearing to decide the validity of my claim. Notice
 80 of the hearing should be given me at:

81
 82 (address) (telephone no.)
 83 The statements made in this request are true to the best of my
 84 knowledge and belief.
 85
 86 (date) (signature of judgment debtor)

87 § 34-4.2. Additional exemption for parents of dependent children.

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

101 B. To claim this wage exemption, the parent shall attach to the claim for exemption form set forth in
 102 § 8.01-512.4 an affidavit and two items of proof showing that the debtor is entitled to this additional
 103 wage exemption. The affidavit shall contain the following statement:

104 AFFIDAVIT CONCERNING DEPENDENT CHILDREN AND HOUSEHOLD INCOME

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

107 1. I support (number) dependent children, whose names and
 108 ages are as follows. For each child I have included the amount of
 109 monthly child support I receive (including voluntary support payments
 110 and payments made pursuant to a court or administrative order), and,
 111 if the child is employed or has other income, the amount of the child's
 112 gross monthly income. (If you receive no support for the child and the
 113 child has no income, insert zero.)

114 Full legal name of child Age Child's gross monthly support and income
 115

116
 117
 118
 119 (attach additional pages if necessary)
 120 2. My personal gross monthly income, not including any of the above
 121 amounts, is \$
 122 3. The following are the names and gross monthly incomes of all people
 123 who reside with me in the same house, apartment or other dwelling,
 124 other than the above-named dependent minor child or children. (If the
 125 household resident has no income, insert zero.)
 126 Full legal name of household residents Gross monthly income
 127
 128
 129
 130
 131 (attach additional pages if necessary)
 132 4. I swear or affirm that no person other than the above-named
 133 individuals resides with me and that I reside with no person other
 134 than the above-named individuals.
 135 (signature of debtor)
 136 (date)
 137 Commonwealth of Virginia:
 138 City/County of, to wit:
 139 Subscribed and sworn to before me, the undersigned Notary Public,
 140 this . . . day of . . . (month), . . . (year)
 141 Notary Public:
 142 My commission expires:

HOUSE
SUBSTITUTE

HB1668H1