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SENATE BILL NO. 445

Senate Amendments in [] — February 16, 2010

A *BILL to amend and reenact §§ 8.01-502.1 and 8.01-512.4 of the Code of Virginia, relating to notice of lien on financial institutions.*

Patron Prior to Engrossment—Senator Quayle

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-502.1 and 8.01-512.4 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-502.1. Serving notice of lien on financial institution.

A. No judgment creditor or attorney for a judgment creditor shall have a notice of lien served on a financial institution under § 8.01-502 unless such judgment creditor or attorney has a reasonable basis for believing that the judgment debtor is entitled to a payment from such institution. The fact that a financial institution is doing business in a geographic area where the judgment debtor resides, works or has a place of business is not, by itself, a reasonable basis for believing that the judgment debtor is entitled to a payment from a financial institution. Any person violating this section shall be liable to a financial institution for the sum of \$100 for each notice of lien wrongfully served on such institution. In any action at law to recover an amount due hereunder, the judgment creditor or attorney for the judgment creditor causing the notice of lien to be served on the financial institution shall have the burden of showing a reasonable basis for believing that the judgment debtor was entitled to a payment from such institution.

B. Any judgment creditor serving a notice of lien on a financial institution shall, within five business days of such service, mail to the judgment debtor at his last known address a copy of the notice of lien along with a notice of exemptions and claim for exemption form in accordance with § 8.01-512.4. The judgment creditor or attorney for the judgment creditor shall file a certification with the court affirming that he has mailed the judgment debtor these notices. ~~[If the judgment creditor fails to mail the notices in accordance with this section, the financial institution shall release to the judgment debtor any funds otherwise subject to the lien.]~~ In the event that the judgment creditor fails to comply with the requirements of this subsection, he shall be liable to the judgment debtor for no more than [~~\$500~~ \$100] in damages, unless he proves by a preponderance of the evidence that the failure was not willful.

C. A financial institution served with a valid notice of lien shall provide a written response to the judgment creditor or attorney for the judgment creditor within twenty-one days after being served with such notice of lien indicating the amount of money held by the financial institution pursuant to the notice of lien.

§ 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.

ENGROSSED

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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) (-

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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, or \$10,000 if the debtor is 65 years of age or older, in cash (§ 34-4, Code of Virginia). This exemption m-

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

. . . . 12. Property of disabled veterans - additional \$10,000 cash (§ 34-4.-

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Code of Virginia).

. . . . 13. Workers' Compensation benefits (§ 65.2-531, Code of Virginia).

. . . . 14. Growing crops (§ 8.01-489, Code of Virginia).

. . . . 15. Benefits from group life insurance policies (§ 38.2-3339, Code of Virginia).

. . . . 16. Proceeds from industrial sick benefits insurance (§ 38.2-3549, Code of Virginia).

. . . . 17. Assignments of certain salary and wages (§ 55-165, Code of Virginia).

. . . . 18. Benefits for victims of crime (§ 19.2-368.12, Code of Virginia).

. . . . 19. Preneed funeral trusts (§ 54.1-2823, Code of Virginia).

. . . . 20. Certain retirement benefits (§ 34-34, Code of Virginia).

. . . . 21. Child support payments (§ 20-108.1, Code of Virginia).

. . . . 22. Support for dependent minor children (§ 34-4.2, Code of

Virginia). To claim this exemption, the debtor shall attach to the claim for exemption form an affidavit that complies with the requirements of subsection B of § 34-4.2 and two items of proof showing that the debtor is entitled to this exemption.

. . . . 23. Other (describe exemption): \$

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

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(address) (telephone no.)

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

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(date) (signature of judgment debtor)