

11101158D

HOUSE BILL NO. 1471

Offered January 12, 2011

Prefiled December 7, 2010

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, 34-13, 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—Cole (By Request)

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, 34-13, 34-14, 34-17, 34-21, 34-24, 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.

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

§ 34-3.1. Alternative exemptions.

~~Notwithstanding any other provision of law, an individual may exempt from the property of the estate in any bankruptcy proceeding either the property permitted to be exempted (i) as specified in subsection (d) of 11 U.S.C. § 522 of the Bankruptcy Reform Act (Public Law 95-598), except as may otherwise be expressly permitted under, or (ii) as specified in this title.~~

§ 34-3.2. Automatic adjustment of exemptions.

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

§ 34-4. Exemption created.

Every householder shall be entitled, in addition to the property or estate exempt under §§ 23-38.81, 34-14, 34-26, 34-27, 34-29, and 64.1-151.3, to hold exempt from creditor process arising out of a debt, real and or personal property, ~~or either, to be selected by that the householder, including money and debts due or a dependent of the householder claims as a homestead~~ not exceeding \$5,000 \$25,000 in value or, if the householder is 65 years of age or older, not exceeding \$10,000 \$35,000 in value. ~~In addition, upon a showing that a householder supports dependents, the householder shall be entitled to hold exempt from creditor process real and personal property, or either, selected by the householder, including money or monetary obligations or liabilities due the householder, not exceeding \$500 in value for each dependent.~~

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

§ 34-4.1. Additional exemption for certain veterans.

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

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

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

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

AFFIDAVIT CONCERNING DEPENDENT CHILDREN

AND HOUSEHOLD INCOME

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

1. I support (number) dependent children, whose names and ages are as follows. For each child I have included the amount of monthly child support I receive (including voluntary support payments and payments made 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 § 34-13. Householder may set apart exemption in real or personal estate.

207 ~~If the Every householder does not set apart any real estate as before provided, or if what he does or~~
 208 ~~has so set apart is not of the total value which he is entitled to hold exempt, he may, in addition to the~~
 209 ~~property or estate which he is shall be entitled to hold, in addition to the property or estate exempt~~
 210 ~~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~~
 211 ~~the writing required by § 34-14 to be held by him as exempt under §§ 34-4 and 34-4.1, so much of his~~
 212 ~~personal estate as shall not exceed the total value which he is entitled to hold exempt and, in the latter~~
 213 ~~case, personal estate, the value of which, when added to the value of the real estate set apart, does not~~
 214 ~~exceed such total value from creditor process arising out of a debt, real or personal property, or either,~~
 215 ~~other than that described in § 34-4, to be selected by the householder, including money and debts due~~
 216 ~~the householder not exceeding \$5,000 in value or, if the householder is 65 years of age or older, not~~
 217 ~~exceeding \$10,000 in value. In addition, upon a showing that a householder supports dependents, the~~
 218 ~~householder shall be entitled to hold exempt from creditor process real and personal property, or either,~~
 219 ~~selected by the householder, including money or monetary obligations or liabilities due the householder,~~
 220 ~~not exceeding \$500 in value for each dependent.~~

221 § 34-14. How set apart in personal estate; form to claim exemption of personal property.

222 Such personal estate selected by the householder ~~and~~ under §§ 34-4, 34-4.1, or § 34-13 shall be set
 223 apart in a writing signed by him. He shall, in the writing, designate and describe with reasonable
 224 certainty the personal estate so selected and set apart and each parcel or article, affixing to each his cash
 225 valuation thereof. Such writing shall be admitted to record, to be recorded as deeds are recorded in the
 226 county or city wherein such householder resides. *However, if such personal estate is claimed exempt in*
 227 *a petition filed under Title 11 of the United States Code, the official form admitted to record in the*
 228 *United States Bankruptcy Court claiming such exemptions shall be sufficient to set apart such property*
 229 *as exempt.*

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

233 HOMESTEAD DEED FOR PERSONAL PROPERTY

Name of Householder
 Is the householder a disabled veteran entitled to claim the additional
 exemption under § 34-4.1?
 Address of Householder
 Name(s) and age(s) of dependent(s)
 County/city in which householder resides
 Description of property claimed as exempt and its value

 Number of homestead deeds that have been filed by the Householder

 Exemption amount previously claimed on prior homestead deeds

 List the jurisdictions where previous homestead deeds were filed

 (Signature of Householder)

[ACKNOWLEDGMENT]

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

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

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

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

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

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

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

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

§ 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. The family Bible.

1a. Wedding and engagement rings.

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

3. (i) A lot in a burial ground, and (ii) any preneed funeral contract not to exceed \$5,000.

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

4a. All household *goods and* furnishings including, but not limited to, beds, dressers, floor coverings, stoves, refrigerators, washing machines, dryers, sewing machines, pots and pans for cooking, plates, and

294 eating utensils, *books and music regardless of format, and personal electronics* not to exceed \$5,000 in
295 value.

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

298 6. Medically prescribed health aids.

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

307 8. A motor vehicle, not held as exempt under subdivision 7, owned by the householder, not to
308 exceed ~~\$2,000~~ \$7,500 in value, except that a perfected security interest on the motor vehicle shall have
309 priority over the claim of exemption under this subdivision.

310 9. *One firearm per householder for household use.*

311 10. *School books of the householder.*

312 11. *Personal effects and furniture that are exclusively used by a dependent who is a minor, disabled,*
313 *or 65 years of age or older.*

314 12. *Educational materials and educational equipment that are used by a dependent who is a minor.*

315 13. *Payments pursuant to the federal child tax credit under 26 U.S.C. § 24, as amended, and the*
316 *federal earned income credit under 26 U.S.C. § 32, as amended.*

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

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

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

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