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SENATE BILL NO. 166

Offered January 11, 2012

Prefiled January 10, 2012

A BILL to amend and reenact §§ 34-6, 34-14, 34-17, 34-21, and 34-26 of the Code of Virginia and to repeal § 34-3.1 of the Code of Virginia, relating to the homestead exemption.

Patron—Petersen

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 34-6, 34-14, 34-17, 34-21, and 34-26 of the Code of Virginia are amended and reenacted as follows:

§ 34-6. How exemption of real estate secured; form to claim exemption of real property.

In order to secure the benefit of the exemptions of real estate under §§ 34-4 and 34-4.1, the householder, by a writing signed by him and duly admitted to record, to be recorded as deeds are recorded, in the county or city wherein such real estate or any part thereof is located and if such property is located outside of the Commonwealth, in the county or city where the householder resides, shall declare his intention to claim such benefit and select and set apart the real estate to be held by the householder as exempt, and describe the same with reasonable certainty, affixing to the description his cash valuation of the estate so selected and set apart. Equitable as well as legal estates may be so selected and set apart. *However, if such real estate is claimed exempt in a petition filed under Title 11 of the United States Code, the official schedule of property claimed exempt filed in the United States Bankruptcy Court claiming such exemptions shall be sufficient to set apart such property as exempt.*

The following form, or one which is substantially similar, shall be used and shall be sufficient for the writing required by this section:

HOMESTEAD DEED FOR REAL PROPERTY

Name of Householder

Name of title holder of record (if different)

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/state in which real property claimed as exempt is located

.....

.....

Description of property claimed as exempt

.....

.....

Value of property described above

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 and 34-4.1.

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

Such personal estate selected by the householder and under §§ 34-4, 34-4.1, or § 34-13 shall be set apart in a writing signed by him. He shall, in the writing, designate and describe with reasonable certainty the personal estate so selected and set apart and each parcel or article, affixing to each his cash valuation thereof. Such writing shall be admitted to record, to be recorded as deeds are recorded in the county or city wherein such householder resides. *However, if such personal estate is claimed exempt in*

57 *a petition filed under Title 11 of the United States Code, the official schedule of property claimed*
 58 *exempt filed in the United States Bankruptcy Court claiming such exemptions shall be sufficient to set*
 59 *apart such property as exempt.*

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

63 HOMESTEAD DEED FOR PERSONAL PROPERTY

64 Name of Householder
 65 Is the householder a disabled veteran entitled to claim the
 66 additional exemption under § 34-4.1?
 67 Address of Householder
 68 Name(s) and age(s) of dependent(s)
 69 County/city in which householder resides
 70 Description of property claimed as exempt and its value
 71
 72 Number of homestead deeds that have been filed by the Householder
 73
 74 Exemption amount previously claimed on prior homestead deeds
 75
 76 List the jurisdictions where previous homestead deeds were filed
 77
 78
 79 (Signature of Householder)

80 [ACKNOWLEDGMENT]

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

83 § 34-17. When exemption may be set apart; garnished wages.

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

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

99 § 34-21. When householder's right to exemption is exhausted.

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

106 § 34-26. Poor debtor's exemption; exempt articles enumerated.

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

109 1. The family Bible.

110 1a. Wedding and engagement rings.

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

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

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

114 4a. All household *goods and* furnishings including, but not limited to, beds, dressers, floor coverings,
 115 stoves, refrigerators, washing machines, dryers, sewing machines, pots and pans for cooking, plates, ~~and~~
 116 eating utensils, *books and music without regard to format, and personal electronics* not to exceed

117 \$5,000 in value.

118 4b. ~~One firearm~~ *Firearms*, not to exceed \$3,000 in value.

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

121 6. Medically prescribed health aids.

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

130 8. A motor vehicle, not held as exempt under subdivision 7, owned by the householder, not to
131 exceed \$6,000 in value, except that a perfected security interest on the motor vehicle shall have priority
132 over the claim of exemption under this subdivision.

133 9. *Real or personal property that the householder or a dependent of the householder claims as the*
134 *primary residence, not exceeding \$25,000 in value.*

135 10. *Educational books, materials, and equipment, including such items used for home school*
136 *instruction, that are used by the householder or a dependent of the householder who is a minor or who*
137 *is enrolled in an elementary or secondary school or an institution of higher education.*

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

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

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

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

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

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

151 **2. That § 34-3.1 of the Code of Virginia is repealed.**