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HOUSE BILL NO. 1593

Offered January 19, 2018

A *BILL to amend and reenact §§ 34-4, 34-6, 34-14, 34-17, and 34-21 of the Code of Virginia, relating to homestead exemption; bankruptcy exemptions.*

Patron—Krizek

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 34-4, 34-6, 34-14, 34-17, and 34-21 of the Code of Virginia are amended and reenacted as follows:

§ 34-4. Exemption created.

Every householder shall be entitled, in addition to the property or estate exempt under §§ 23.1-707, 34-26, 34-27, 34-29, and 64.2-311, to hold exempt from creditor process arising out of a debt, real and personal property, or either, to be selected by the householder, including money and debts due the householder not exceeding \$5,000 in value or, if the householder is 65 years of age or older, not exceeding \$10,000 in value, *and, in addition, real or personal property used as the principal residence of the householder or the householder's dependents not exceeding \$25,000 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.

§ 34-6. 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~~ or 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 as 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

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59 exemptions created by §§ 34-4 and 34-4.1.

60 **§ 34-14. How set apart in personal estate; form to claim exemption of personal property.**

61 Such personal estate selected by the householder ~~and~~ under §§ § 34-4, 34-4.1, or § 34-13 shall be set
 62 apart in a writing signed by him. He shall, in the writing, designate and describe with reasonable
 63 certainty the personal estate so selected and set apart and each parcel or article, affixing to each his cash
 64 valuation thereof. Such writing shall be admitted to record, to be recorded as deeds are recorded in the
 65 county or city wherein such householder resides. *However, if such personal estate is claimed exempt in*
 66 *a petition filed under Title 11 of the United States Code, the official Schedule of Property Claimed as*
 67 *Exempt filed in the United States Bankruptcy Court claiming such exemption shall be sufficient to set*
 68 *apart such property as exempt.*

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

72 Name of Householder _____

73 Is the householder a disabled veteran entitled to claim the additional exemption under § 34-4.1?
 74 _____

75 Address of Householder _____

76 Name(s) and age(s) of dependent(s) _____

77 County/city in which householder resides _____

78 Description of property claimed as exempt and its value _____
 79 _____

80 Number of homestead deeds that have been filed by the Householder
 81 _____

82 Exemption amount previously claimed on prior homestead deeds
 83 _____

84 List the jurisdictions where previous homestead deeds were filed
 85 _____

86 _____ (Signature of Householder)

87 _____ [ACKNOWLEDGMENT]

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

90 **§ 34-17. When exemption may be set apart; garnished wages.**

91 A. The real or personal estate ~~which~~ *that* a householder is entitled to hold as exempt may be set
 92 apart at any time before it is subjected by sale under creditor process *or by a trustee in bankruptcy*, or,
 93 if such creditor process does not require sale of the property, before it is turned over to the creditor *or*
 94 *disbursed by the bankruptcy trustee. To claim an exemption in bankruptcy, a householder who (i) files a*
 95 *voluntary petition in bankruptcy or (ii) against whom an involuntary petition in bankruptcy is filed shall*
 96 *set such real or personal property apart on or before the fifth day after the date of the meeting held*
 97 *pursuant to 11 U.S.C. § 341, but not thereafter. A householder who converts a case from Chapters 11,*
 98 *12, or 13 to Chapter 7 shall set such real or personal property apart on or before the fifth day after the*
 99 *date of the meeting held pursuant to 11 U.S.C. § 341 in the Chapter 7 case, but not thereafter. Nothing*
 100 *in this section shall affect the right of the trustee in bankruptcy, with the approval of the court, to*
 101 *proceed immediately with the sale or other disposition of personal property which the trustee determines*
 102 *to be perishable or particularly susceptible to price deterioration.*

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

106 **§ 34-21. When householder's right to exemption is exhausted.**

107 When ~~the maximum~~ *an* amount of property, whether real or personal, or both, has been ~~once~~ set
 108 apart to be held by a householder as exempt under § 34-4 ~~or~~ §, 34-4.1, ~~he shall not afterwards be~~
 109 ~~entitled to the exemption of any estate other than that so set apart or as otherwise provided by law or~~
 110 *34-13, such amount shall, for a period of seven years from such setting apart, be applied against the*
 111 *maximum amount to which he is entitled to set apart as exempt under § 34-4, 34-4.1, or 34-13.*