

20108364D

HOUSE BILL NO. 790**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Senate Committee on the Judiciary
on February 17, 2020)

(Patron Prior to Substitute—Delegate Simon)

*A BILL to amend and reenact §§ 8.01-512.4, 34-4, 34-6, 34-14, 34-17, and 34-21 of the Code of Virginia, relating to homestead exemption; bankruptcy exemptions.***Be it enacted by the General Assembly of Virginia:****1. That §§ 8.01-512.4, 34-4, 34-6, 34-14, 34-17, and 34-21 of the Code of Virginia are amended and reenacted 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~~ *that* 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~~ *that* 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 CLAIMI claim that the exemption(s) from garnishment or lien ~~which~~ *that* 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. § 5301).

___ 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. Longshore and Harbor Workers' 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. § 11109).

___ 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, *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* (§ 34-4, Code of Virginia). This exemption may not be claimed in certain cases, such as payment of spousal or child support (§ 34-5, Code of Virginia).

___ 12. Property of disabled veterans — additional \$10,000 cash (§ 34-4.1, Code of Virginia).

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

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

- 60 — 15. Benefits from group life insurance policies (§ 38.2-3339, Code of Virginia).
61 — 16. Proceeds from industrial sick benefits insurance (§ 38.2-3549, Code of Virginia).
62 — 17. Assignments of certain salary and wages (§ 8.01-525.10, Code of Virginia).
63 — 18. Benefits for victims of crime (§ 19.2-368.12, Code of Virginia).
64 — 19. Preneed funeral trusts (§ 54.1-2823, Code of Virginia).
65 — 20. Certain retirement benefits (§ 34-34, Code of Virginia).
66 — 21. Child support payments (§ 20-108.1, Code of Virginia).
67 — 22. Support for dependent minor children (§ 34-4.2, Code of Virginia). To claim this exemption,
68 the debtor shall attach to the claim for exemption form an affidavit that complies with the requirements
69 of subsection B of § 34-4.2 and two items of proof showing that the debtor is entitled to this exemption.
70 — 23. Other (describe exemption): \$ _____
71 I request a court hearing to decide the validity of my claim. Notice of the hearing should be given
72 me at:

(address) _____

(telephone no.) _____

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

(date) _____

(signature of judgment debtor) _____

§ 34-4. Exemption created.

78 Every householder shall be entitled, in addition to the property or estate exempt under §§ 23.1-707,
79 34-26, 34-27, 34-29, and 64.2-311, to hold exempt from creditor process arising out of a debt, real and
80 personal property, or either, to be selected by the householder, including money and debts due the
81 householder not exceeding \$5,000 in value or, if the householder is 65 years of age or older, not
82 exceeding \$10,000 in value, *and, in addition, real or personal property used as the principal residence*
83 *of the householder or the householder's dependents not exceeding \$25,000 in value.* In addition, upon a
84 showing that a householder supports dependents, the householder shall be entitled to hold exempt from
85 creditor process real and personal property, or either, selected by the householder, including money or
86 monetary obligations or liabilities due the householder, not exceeding \$500 in value for each dependent.
87

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

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

92 In order to secure the benefit of the exemptions of real estate under §§ 34-4 and 34-4.1, the
93 householder, by a writing signed by him and duly admitted to record, to be recorded as deeds are
94 recorded, in the county or city wherein such real estate or any part thereof is located or, if such property
95 is located outside of the Commonwealth, in the county or city in the Commonwealth where the
96 householder resides, shall declare his intention to claim such benefit and select and set apart the real
97 estate to be held by the householder as exempt, and describe the same with reasonable certainty, affixing
98 to the description his cash valuation of the estate so selected and set apart. *However, if such real estate*
99 *is claimed exempt in a case filed under Title 11 of the United States Code, the official Schedule of*
100 *Property Claimed as Exempt filed in the United States Bankruptcy Court claiming such exemptions shall*
101 *be sufficient to set apart such property as exempt.* Equitable as well as legal estates may be so selected
102 and set apart. The following form, or one which is substantially similar, shall be used and shall be
103 sufficient for the writing required by this section:

HOMESTEAD DEED FOR REAL PROPERTY

105 Name of Householder _____

106 Name of title holder of record (if different) _____

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

109 Address of Householder _____

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

111 County/city/state in which real property claimed as exempt is located

114 Description of property claimed as exempt

117 Value of property described above _____

118 Number of homestead deeds that have been filed by the Householder

120 Exemption amount previously claimed on prior homestead deeds

183 forms necessary to comply with the provisions of the first enactment of this act.