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#### **HOUSE BILL NO. 790**

# AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary on February 17, 2020)

Oil 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 CLAIM

I 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).

HB790S1 2 of 4

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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).
<b>62</b>	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.
<b>70</b>	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:
<b>73</b>	ine at.
74	(II )
	(address) (telephone no.)
75	The statements made in this request are true to the best of my knowledge and belief.
<u>76</u>	
77	(date) (signature of judgment debtor)
<b>78</b>	§ 34-4. Exemption created.
<b>79</b>	Every householder shall be entitled, in addition to the property or estate exempt under §§ 23.1-707
80	34-26, 34-27, 34-29, and 64.2-311, to hold exempt from creditor process arising out of a debt, real and
81	personal property, or either, to be selected by the householder, including money and debts due the
82	householder not exceeding \$5,000 in value or, if the householder is 65 years of age or older, no
83	exceeding \$10,000 in value, and, in addition, real or personal property used as the principal residence
84	of the householder or the householder's dependents not exceeding \$25,000 in value. In addition, upon a
85	showing that a householder supports dependents, the householder shall be entitled to hold exempt from
86	creditor process real and personal property, or either, selected by the householder, including money of
<b>87</b>	monetary obligations or liabilities due the householder, not exceeding \$500 in value for each dependent.
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 ar
90	individual be the dependent of more than one householder.
91	§ 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 rea
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:
104	HOMESTEAD DEED FOR REAL PROPERTY
105	Name of Householder
106	No. 10 of Calabata and Calabata
	Is the householder a disabled veteran entitled to claim the additional exemption under § 34-4.1?
107	is the nouseholder a disabled veteran entitled to claim the additional exemption under § 34-4.1?
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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
112	A service of the forest service of the service of t
113	<del></del>
	Description of property claimed as exempt
114	Description of property claimed as exempt
115	
116	<del></del>
117	Value of property described above
118	Number of homestead deeds that have been filed by the Householder
119	· ·
120	Exemption amount previously claimed on prior homestead deeds
121	Enemption amount proviously elamica on prior nomestical accus
141	<del></del>

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 by a trustee in bankruptcy, 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 ease 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.

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When the maximum an 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, he or 34-13, such amount shall not afterwards for a period of eight years from such setting apart be entitled to the exemption of any estate other than that so set apart or as otherwise provided by law applied against the maximum amount to which the householder is entitled to set apart as exempt under § 34-4, 34-4.1, or 34-13.

2. That the Executive Secretary of the Supreme Court of Virginia shall promulgate and update the

HB790S1 4 of 4

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