

20201042D

**HOUSE BILL NO. 5068****AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee for Courts of Justice  
on August 26, 2020)

(Patron Prior to Substitute—Delegate Ayala)

*A BILL to amend and reenact § 8.01-512.4 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 3 of Title 34 a section numbered 34-28.3, relating to state of emergency; emergency relief payments exempt; emergency.*

**Be it enacted by the General Assembly of Virginia:**

**1. That § 8.01-512.4 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 3 of Title 34 a section numbered 34-28.3 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 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 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 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).

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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).  
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. *Emergency relief payments* (§ 34-28.3, Code of Virginia).  
71 — 24. Other (describe exemption): \$ \_\_\_\_\_

72 I request a court hearing to decide the validity of my claim. Notice of the hearing should be given  
73 me at:

74 \_\_\_\_\_  
75 (address) (telephone no.)

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

77 \_\_\_\_\_  
78 (date) (signature of judgment debtor)

79 **§ 34-28.3. State of emergency; emergency relief payments exempt.**

80 A. For the purposes of this section, "emergency relief payment" means any payment made by a local,  
81 state, or federal governing body pursuant to a law, ordinance, order, or regulation that specifically  
82 designates such payment as intended to provide economic relief due to the condition that caused a state  
83 of emergency to be declared by the Governor pursuant to § 44-146.17.

84 B. Once a state of emergency, as defined by § 44-146.16, is declared by the Governor pursuant to  
85 his powers listed in § 44-146.17, all emergency relief payments paid to individuals or businesses shall  
86 be automatically exempt from the creditor process. Any financial institution, as defined by § 6.2-100,  
87 receiving such payments directly from a local, state, or federal governing body shall set aside such  
88 payments as exempt from the creditor process if (i) the payment is marked by the issuing governing  
89 body as an "emergency relief payment" or includes some other unique identifier that is reasonably  
90 sufficient to allow the financial institution to identify the funds as an emergency relief payment or (ii)  
91 the issuing governing body or accountholder receiving the emergency relief payment gives notice to the  
92 financial institution of such payment. Such exemption extends to any such payments issued and received  
93 once such state of emergency is declared. In setting aside emergency relief payments on deposit as  
94 exempt from the creditor process, a financial institution shall not be required to look back more than  
95 two months from the date preceding receipt of service of the creditor process. When emergency relief  
96 payments are commingled with other funds on deposit, the obligation of a financial institution to set  
97 aside funds under this provision shall be limited to funds that can be reasonably traced as such. For  
98 tracing purposes under this section, the "first-in, first-out" method shall be used wherein the oldest  
99 funds in the account are deemed to be withdrawn first. A financial institution that makes a good faith  
100 effort to comply with the requirements set forth herein shall not be subject to liability or regulatory  
101 action under any state law, regulation, court or other order, or regulatory interpretation for actions  
102 concerning any emergency relief payments.

103 Emergency relief payments shall be exempt from the creditor process even if deposited into an  
104 account with a financial institution or other organization accepting deposits and thereby commingled  
105 with other funds.

106 For the purposes of this section, no such exemption shall extend to child support, spousal support, or  
107 criminal restitution orders.

108 C. If a financial institution does not set aside an emergency relief payment as exempt from the  
109 creditor process, then the accountholder receiving such payment must claim the exemption within the  
110 time limits prescribed by subsection B of § 34-17 and in the manner prescribed under § 8.01-512.4.

111 **2. That an emergency exists and this act is in force from its passage.**

112 **3. The exemption created by this act shall not extend to a creditor process that is subject to a final**  
113 **order rendered before the enactment of this act.**