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HOUSE BILL NO. 1428

Offered January 22, 1996

A BILL to amend and reenact §§ 34-21, 34-29, and 34-34 of the Code of Virginia, relating to the homestead exemption; garnishment; retirement benefits exemption.

Patrons—Moran, Albo, Callahan, Hull and Keating; Senator: Ticer

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 34-21, 34-29, and 34-34 of the Code of Virginia are amended and reenacted as follows:

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

When ~~estate, the maximum 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 shall not afterwards be entitled to the exemption of any estate other than that so set apart or ~~that mentioned in §§ 34-18, 34-20, 34-26, 34-27, and 34-29 as otherwise provided by law.~~

§ 34-29. Maximum portion of disposable earnings subject to garnishment.

(a) Except as provided in subsections (b) and (b1), the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed the lesser of the following amounts:

(1) Twenty-five percent of his disposable earnings for that week, or

(2) The amount by which his disposable earnings for that week exceed thirty times the federal minimum hourly wage prescribed by § 206 (a) (1) of Title 29 of the United States Code in effect at the time earnings are payable.

In the case of earnings for any pay period other than a week, the State Commissioner of Labor and Industry shall by regulation prescribe a multiple of the federal minimum hourly wage equivalent in effect to that set forth in this section.

(b) The restrictions of subsection (a) do not apply in the case of

(1) Any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by state law, which affords substantial due process, and which is subject to judicial review.

(2) Any order of any court of bankruptcy under Chapter XIII of the Bankruptcy Act.

(3) Any debt due for any state or federal tax.

(b1) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed:

(1) Sixty percent of such individual's disposable earnings for that week; or

(2) If such individual is supporting a spouse or dependent child other than the spouse or child with respect to whose support such order was issued, fifty percent of such individual's disposable earnings for that week.

The fifty percent specified in subdivision (b1) (2) shall be fifty-five percent and the sixty percent specified in subdivision (b1) (1) shall be sixty-five percent if and to the extent that such earnings are subject to garnishment to enforce an order for support for a period which is more than twelve weeks prior to the beginning of such workweek.

(c) No court of the Commonwealth and no state agency or officer may make, execute, or enforce any order or process in violation of this section.

The exemptions allowed herein shall be granted to any person so entitled without any further proceedings.

(d) For the purposes of this section

(1) The term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, *payments to an independent contractor*, or otherwise, whether paid directly to the individual or deposited with another entity or person on behalf of and traceable to the individual, and includes periodic payments pursuant to a pension or retirement program; ~~provided, that in no event shall funds that have been deposited by or for an individual for more than thirty days be considered earnings,~~

(2) The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld, and

(3) The term "garnishment" means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt.

(e) Every assignment, sale, transfer, pledge or mortgage of the wages or salary of an individual

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60 which is exempted by this section, to the extent of the exemption provided by this section, shall be void
 61 and unenforceable by any process of law.

62 (f) No employer may discharge any employee by reason of the fact that his earnings have been
 63 subjected to garnishment for any one indebtedness.

64 (g) A depository wherein earnings have been deposited on behalf of and traceable to an individual
 65 shall not be required to determine the portion of such earnings which are subject to garnishment.

66 § 34-34. Certain retirement benefits exempt.

67 A. For the purposes of this section:

68 "Alternate payee" shall have the same meaning as provided under § 206 of the Employee Retirement
 69 Income Security Act of 1974 (ERISA). In the case of a retirement plan that is not subject to ERISA, the
 70 term "alternate payee" means an individual who has an interest in a retirement plan pursuant to a
 71 judgment, decree, or order, including approval of a property settlement agreement, that would be
 72 described in § 206 (d) (3) (B) of ERISA if the retirement plan were subject to ERISA.

73 "Annual benefit" means an amount payable as an annuity for the lifetime of the individual who
 74 claims the exemption provided under this section, assuming that annuity payments will commence upon
 75 the individual's attainment of age sixty-five or, if the individual attained age sixty-five on or before the
 76 exemption provided under this section is claimed, the individual's age on the date that the exemption is
 77 claimed.

78 "Retirement plan" means a plan, account, or arrangement that is intended to satisfy the requirements
 79 of United States Internal Revenue Code §§ 401, 403 (a), 403 (b), 408, 409 (as in effect prior to repeal
 80 by United States P.L. 98-369), or § 457. Whether a plan, account, or arrangement is intended to satisfy
 81 the requirements of one of the foregoing provisions shall be determined based on all of the relevant
 82 facts and circumstances including, but not limited to, the issuance of a favorable determination letter by
 83 the United States Internal Revenue Service, reports or returns filed with United States or state agencies,
 84 and communications from the plan sponsor to participants.

85 B. The interest of an individual under a retirement plan shall be exempt from creditor process to the
 86 extent provided under this section. The exemption provided by this section shall be available whether
 87 such individual has an interest in the retirement plan as a participant, beneficiary, contingent annuitant,
 88 alternate payee, or otherwise.

89 C. The exemption provided under subsection B shall not apply to the extent that the interest of the
 90 individual in the retirement plan would provide an annual benefit in excess of \$17,500. If an individual
 91 has an interest in more than one retirement plan, the limitation of this subsection C shall be applied as if
 92 all such retirement plans constituted a single plan. The amount required to provide an annual benefit of
 93 \$17,500 shall be determined under the following table:

94	Attained Age	Cost of \$1
95		
96	When Exemption	of Annual
97		
98	Claimed	Benefit
99		
100	16	0.1482
101		
102	17	0.1603
103		
104	18	0.1734
105		
106	19	0.1875
107		
108	20	0.2028
109		
110	21	0.2193
111		
112	22	0.2371
113		
114	23	0.2564
115		
116	24	0.2773
117		
118	25	0.2998

119		
120	26	0.3241
121		
122	27	0.3505
123		
124	28	0.3789
125		
126	29	0.4096
127		
128	30	0.4429
129		
130	31	0.4789
131		
132	32	0.5178
133		
134	33	0.5598
135		
136	34	0.6054
137		
138	35	0.6546
139		
140	36	0.7080
141		
142	37	0.7658
143		
144	38	0.8284
145		
146	39	0.8963
147		
148	40	0.9699
149		
150	41	1.0497
151		
152	42	1.1363
153		
154	43	1.2304
155		
156	44	1.3326
157		
158	45	1.4436
159		
160	46	1.5645
161		
162	47	1.6960
163		
164	48	1.8394
165		
166	49	1.9958
167		
168	50	2.1665
169		
170	51	2.3530
171		
172	52	2.5571
173		
174	53	2.7808

175		
176	54	3.0260
177		
178	55	3.2954
179		
180	56	3.5915
181		
182	57	3.9175
183		
184	58	4.2771
185		
186	59	4.6748
187		
188	60	5.1150
189		
190	61	5.6035
191		
192	62	6.1472
193		
194	63	6.7538
195		
196	64	7.4330
197		
198	65	8.1958
199		
200	66	7.9989
201		
202	67	7.8007
203		
204	68	7.6009
205		
206	69	7.3985
207		
208	70	7.1924
209		
210	71	6.9830
211		
212	72	6.7706
213		
214	73	6.5556
215		
216	74	6.3393
217		
218	75	6.1222
219		
220	76	5.9054
221		
222	77	5.6897
223		
224	78	5.4763
225		
226	79	5.2638
227		
228	80	5.0529
229		
230	81	4.8447
231		

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232	82	4.6403
233		
234	83	4.4395
235		
236	84	4.2415
237		
238	85	4.0456
239		
240	86	3.8522
241		
242	87	3.6616
243		
244	88	3.4742
245		
246	89	3.2904
247		
248	90	3.1106
249		
250	91	2.9354
251		
252	92	2.7653
253		
254	93	2.6011
255		
256	94	2.4415
257		
258	95	2.2867
259		
260	96	2.1367
261		
262	97	1.9935
263		
264	98	1.8558
265		
266	99	1.7214
267		
268	100	1.5972
269		
270	101	1.4755
271		
272	102	1.3478
273		
274	103	1.2690
275		
276	104	1.1738
277		
278	105	1.0679
279		
280	106	0.7517
281		
282	107	0.0000
283		
284	108	0.0000
285		
286	109	0.0000
287		

288 110 0.0000

289
290 For example, the amount required to provide an annual benefit of \$17,500 to an individual who
291 attained age 60 at the time the exemption provided by this section is claimed is \$89,512.50 (\$17,500
292 times 5.1150).

293 D. The exemption provided under subsection B shall not apply to amounts contributed to a
294 retirement plan during the fiscal year of the retirement plan that includes the date on which the
295 individual claims the exemption and for the two preceding fiscal years of the retirement plan *other than*
296 *amounts that were exempt from creditor process immediately prior to being contributed to the retirement*
297 *plan*. The exemption provided under subsection B shall not apply to the earnings on contributions
298 described in this subsection.

299 E. The exemption provided under subsection B shall not apply to claims made against an individual
300 by the alternate payee of such individual or to claims made against such individual by the
301 Commonwealth in administrative actions pursuant to Chapter 13 (§ 63.1-249 et seq.) of Title 63.1 or any
302 court process to enforce a child or child and spousal support obligation.

303 F. If two individuals who are married or were married are entitled to claim the exemption provided
304 under subsection B of an interest under the same retirement plan or plans and such individuals are
305 jointly subject to creditor process as to the same debt or obligation and the debt or obligation arose
306 during the marriage, then the exemption provided under subsection B as to such debts or obligations
307 shall not exceed, in the aggregate, the amount that would provide an annual benefit of \$17,500. The
308 maximum amount that may be exempted shall be allocated among such persons in the same proportion
309 as their respective interests in the retirement plan or plans.

310 G. The exemption provided under this section must be claimed within the time limits prescribed by
311 § 34-17.