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HOUSE BILL NO. 1642

Offered January 12, 2005

Prefiled December 17, 2004

A BILL to amend and reenact § 34-4 of the Code of Virginia, relating to the homestead exemption.

Patron—Orrock

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 34-4 of the Code of Virginia is amended and reenacted as follows:**

§ 34-4. Exemption created.

Every householder shall be entitled, in addition to the property or estate exempt under §§ 23-38.81, 34-26, 34-27, 34-29, and 64.1-151.3, 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~~ \$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.

§ 8.01-512.4. Notice of exemptions from garnishment.

No summons in garnishment shall be issued or served 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**

The attached Summons in Garnishment 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 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 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 EXEMPTION CLAIM

I claim that the exemption(s) from garnishment which 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. § 3101). 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. Longshoremen and Harborworkers 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. § 1109). 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~~ \$25,000 in cash (§ 34-4, Code of Virginia). This exemption may not be available in certain cases, such as payment of rent or services of a laborer or mechanic (§ 34-5, Code of Virginia). 12. Property of disabled veterans - additional \$2,000 cash (§ 34-4.1, Code of Virginia). 13. Workers' Compensation benefits (§ 65.2-531,

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59 Code of Virginia). 14. Growing crops (§ 8.01-489, Code of Virginia). 15. Benefits from group life
60 insurance policies (§ 38.2-3339, Code of Virginia). 16. Proceeds from industrial sick benefits insurance
61 (§ 38.2-3549, Code of Virginia). 17. Assignments of certain salary and wages (§ 55-165, Code of
62 Virginia). 18. Benefits for victims of crime (§ 19.2-368.12, Code of Virginia). 19. Preneed funeral trusts
63 (§ 54.1-2823, Code of Virginia). 20. Certain retirement benefits (§ 34-34, Code of Virginia). 21. Other
64 (describe exemption): \$ I request a court hearing to decide the validity of my
65 claim. Notice of the hearing should be given me at: (address) (telephone no.)
66 The statements made in this request are true to the best of my knowledge and belief.
67 (date) (signature of judgment debtor)