

# VIRGINIA ACTS OF ASSEMBLY -- 2009 SESSION

## CHAPTER 332

*An Act to amend and reenact § 8.01-512.4 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 34-4.2, relating to garnishments.*

[H 1668]

Approved March 27, 2009

**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 a section numbered 34-4.2 as follows:**

§ 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 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, Code of Virginia).  
 . . . . 14. Growing crops (§ 8.01-489, Code of Virginia).  
 . . . . 15. Benefits from group life insurance policies  
 (§ 38.2-3339, Code of Virginia).  
 . . . . 16. Proceeds from industrial sick benefits insurance  
 (§ 38.2-3549, Code of Virginia).  
 . . . . 17. Assignments of certain salary and wages (§ 55-165, Code of  
 Virginia).  
 . . . . 18. Benefits for victims of crime (§ 19.2-368.12,  
 Code of Virginia).  
 . . . . 19. Preneed funeral trusts (§ 54.1-2823, Code of Virginia).  
 . . . . 20. Certain retirement benefits (§ 34-34, Code of Virginia).  
 . . . . 21. Child support payments (§ 20-108.1, Code of Virginia).  
 . . . . 22. Support for dependent minor children (§ 34-4.2, Code of  
 Virginia). To claim this exemption, the debtor shall attach to the  
 claim for exemption form an affidavit that complies with the  
 requirements of subsection B of § 34-4.2 and two items of proof showing  
 that the debtor is entitled to this exemption.  
 . . . . 23. Other (describe exemption): \$ .....

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

.....  
 (address) (telephone no.)

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

.....  
 (date) (signature of judgment debtor)

**§ 34-4.2. Additional exemption for parents of dependent children.**

*A. Where a parent supports a dependent minor child or children residing with him, that parent can hold exempt from wage garnishment, in addition to the property or estate that he is entitled to hold exempt from creditor process under §§ 20-108.1, 34-4, 34-4.1, 34-26, 34-27, 34-29, and 64.1-151.3, an additional amount for the support of the child or children as follows: \$34 per week for one child; \$52 per week for two children; and \$66 per week for three or more children. This additional wage exemption amount shall not be available to a parent whose household gross income, including any support payments for children living in the home, exceeds \$1,750 per month. For purposes of this section, "household gross income" means all income from all sources, and shall include, but not be limited to, salaries, wages, commissions, royalties, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, veterans' benefits, child support, spousal support, rental income, gifts, prizes or awards paid to any adult living in the household or to the dependent child.*

*B. To claim this wage exemption, the parent shall attach to the claim for exemption form set forth in § 8.01-512.4 an affidavit and two items of proof showing that the debtor is entitled to this additional wage exemption. The affidavit shall contain the following statement:*

**AFFIDAVIT CONCERNING DEPENDENT CHILDREN AND HOUSEHOLD INCOME**

Having been duly sworn, I, . . . . ., depose and state the following  
 to be true, accurate and complete:

1. I support . . . . . (number) dependent children, whose names and  
 ages are as follows. For each child I have included the amount of  
 monthly child support I receive (including voluntary support payments  
 and payments made pursuant to a court or administrative order), and,  
 if the child is employed or has other income, the amount of the child's  
 gross monthly income. (If you receive no support for the child and the  
 child has no income, insert zero.)

Full legal name of child	Age	Child's gross monthly support and income
.....	...	.....
.....	...	.....
.....	...	.....
.....	...	.....

(attach additional pages if necessary)

2. My personal gross monthly income, not including any of the above amounts, is \$ . . . . .

3. The following are the names and gross monthly incomes of all people who reside with me in the same house, apartment or other dwelling, other than the above-named dependent minor child or children. (If the household resident has no income, insert zero.)

Full legal name of household residents	Gross monthly income
.....	.....
.....	.....
.....	.....
.....	.....

(attach additional pages if necessary)

4. I swear or affirm that no person other than the above-named individuals resides with me and that I reside with no person other than the above-named individuals.

. . . . . (signature of debtor)

. . . . . (date)

Commonwealth of Virginia:

City/County of . . . . ., to wit:

Subscribed and sworn to before me, the undersigned Notary Public, this . . . day of . . . (month), . . . (year)

Notary Public: . . . . .

My commission expires: . . . . .