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HOUSE BILL NO. 1668

Offered January 14, 2009

Prefiled December 18, 2008

A BILL to amend and reenact §§ 8.01-512.4 and 20-108.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 34-4.2, relating to garnishments.

Patron—Kilgore

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-512.4 and 20-108.1 of the Code of Virginia are 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) (- 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).

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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 children* (§ 34-4.2, Code of Virginia).

. . . . 2223. 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)

§ 20-108.1. Determination of child or spousal support.

A. In any proceeding on the issue of determining spousal support, the court shall consider all evidence presented relevant to any issues joined in that proceeding. The court's decision shall be rendered based upon the evidence relevant to each individual case.

B. In any proceeding on the issue of determining child support under this title or Title 16.1 or Title 63.2, the court shall consider all evidence presented relevant to any issues joined in that proceeding. The court's decision in any such proceeding shall be rendered upon the evidence relevant to each individual case. However, there shall be a rebuttable presumption in any judicial or administrative proceeding for child support, including cases involving split custody or shared custody, that the amount of the award which would result from the application of the guidelines set out in § 20-108.2 is the correct amount of child support to be awarded. Liability for support shall be determined retroactively for the period measured from the date that the proceeding was commenced by the filing of an action with any court provided the complainant exercised due diligence in the service of the respondent or, if earlier, the date an order of the Department of Social Services entered pursuant to Title 63.2 and directing payment of support was delivered to the sheriff or process server for service on the obligor.

In order to rebut the presumption, the court shall make written findings in the order, which findings may be incorporated by reference, that the application of such guidelines would be unjust or inappropriate in a particular case. The finding that rebuts the guidelines shall state the amount of support that would have been required under the guidelines, shall give a justification of why the order varies from the guidelines, and shall be determined by relevant evidence pertaining to the following factors affecting the obligation, the ability of each party to provide child support, and the best interests of the child:

1. Actual monetary support for other family members or former family members;
2. Arrangements regarding custody of the children, including the cost of visitation travel;
3. Imputed income to a party who is voluntarily unemployed or voluntarily under-employed; provided that income may not be imputed to the custodial parent when a child is not in school, child care services are not available and the cost of such child care services are not included in the computation and provided further, that any consideration of imputed income based on a change in a party's employment shall be evaluated with consideration of the good faith and reasonableness of employment decisions made by the party;
4. Debts of either party arising during the marriage for the benefit of the child;
5. Direct payments ordered by the court for maintaining life insurance coverage pursuant to subsection D, education expenses, or other court-ordered direct payments for the benefit of the child;

116 6. Extraordinary capital gains such as capital gains resulting from the sale of the marital abode;
 117 7. Any special needs of a child resulting from any physical, emotional, or medical condition;
 118 8. Independent financial resources of the child or children;
 119 9. Standard of living for the child or children established during the marriage;
 120 10. Earning capacity, obligations, financial resources, and special needs of each parent;
 121 11. Provisions made with regard to the marital property under § 20-107.3, where said property earns
 122 income or has an income-earning potential;
 123 12. Tax consequences to the parties including claims for exemptions, child tax credit, and child care
 124 credit for dependent children;
 125 13. A written agreement, stipulation, consent order, or decree between the parties which includes the
 126 amount of child support; and
 127 14. Such other factors as are necessary to consider the equities for the parents and children.
 128 C. In any proceeding under this title or Title 16.1 or Title 63.2 on the issue of determining child
 129 support, the court shall have the authority to order a party to provide health care coverage, as defined in
 130 § 63.2-1900, for dependent children if reasonable under all the circumstances and health care coverage
 131 for a spouse or former spouse.
 132 D. In any proceeding under this title, Title 16.1 or Title 63.2 on the issue of determining child
 133 support, the court shall have the authority to order a party to (i) maintain any existing life insurance
 134 policy on the life of either party provided the party so ordered has the right to designate a beneficiary
 135 and (ii) designate a child or children of the parties as the beneficiary of all or a portion of such life
 136 insurance for so long as the party so ordered has a statutory obligation to pay child support for the child
 137 or children.
 138 E. Except when the parties have otherwise agreed, in any proceeding under this title, Title 16.1 or
 139 Title 63.2 on the issue of determining child support, the court shall have the authority to and may, in its
 140 discretion, order one party to execute all appropriate tax forms or waivers to grant to the other party the
 141 right to take the income tax dependency exemption for any tax year or future years, for any child or
 142 children of the parties for federal and state income tax purposes.
 143 F. Notwithstanding any other provision of law, any amendments to this section shall not be
 144 retroactive to a date before the effective date of the amendment, and shall not be the basis for a material
 145 change in circumstances upon which a modification of child support may be based.
 146 G. Child support payments, whether current or arrears, received by a parent *pursuant to a court or*
 147 *administrative order* for the benefit of and owed to a child in the parent's custody, whether the payments
 148 were ordered under this title, Title 16.1, or Title 63.2, shall not be subject to garnishment. A depository
 149 wherein child support payments have been deposited on behalf of and traceable to an individual shall
 150 not be required to determine the portion of deposits which are subject to garnishment.
 151 § 34-4.2. *Additional exemption for parents of dependent children.*
 152 *Where a parent supports a dependent child or children residing with him for whom he does not*
 153 *receive child support payments, that parent can hold exempt from garnishment, in addition to the*
 154 *property or estate that he is entitled to hold exempt from creditor process under §§ 34-4, 34-4.1, 34-26,*
 155 *34-27, 34-29, and 64.1-151.3, an additional amount for the support of the child or children as follows:*
 156 *\$51 per week for one child; \$79 per week for two children; and \$99 per week for three children. The*
 157 *court may add additional sums as necessary for the support of additional dependent children for whom*
 158 *no child support payment is received. This additional exemption amount shall not be available to a*
 159 *parent whose household gross income exceeds \$4,000 per month.*