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HOUSE BILL NO. 1494

Offered January 12, 2011

Prefiled December 16, 2010

A BILL to amend and reenact §§ 8.01-512.4 and 34-4 of the Code of Virginia, relating to the homestead exemption.

Patrons—Ware, O. and Dance

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 8.01-512.4 and 34-4 of the Code of Virginia are amended and reenacted 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 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/LIEN EXEMPTION CLAIM

I claim that the exemption(s) from garnishment or lien 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~~ 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).

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55 7. Seaman's, master's or fisherman's wages, except for child
 56 support or spousal support and maintenance (46 U.S.C. § ~~1109~~ 11109).
 57 8. Unemployment compensation benefits (§ 60.2-600, Code of
 58 Virginia). This exemption may not be applicable in child support cases
 59 (§ 60.2-608, Code of Virginia).
 60 9. Portions or amounts of wages subject to garnishment (§ 34-29,
 61 Code of Virginia).
 62 10. Public assistance payments (§ 63.2-506, Code of Virginia).
 63 11. Homestead exemption of ~~\$5,000~~ \$15,000, or \$10,000 if the
 64 debtor is 65 years of age or older, in cash (§ 34-4, Code of Virginia).
 65 This exemption may not be available in certain cases, such as payment of
 66 rent or services of a laborer or mechanic (§ 34-5, Code of Virginia).
 67 12. Property of disabled veterans - additional \$10,000 cash
 68 (§ 34-4.1, Code of Virginia).
 69 13. Workers' Compensation benefits (§ 65.2-531, Code of Virginia).
 70 14. Growing crops (§ 8.01-489, Code of Virginia).
 71 15. Benefits from group life insurance policies (§ 38.2-3339,
 72 Code of Virginia).
 73 16. Proceeds from industrial sick benefits insurance (§ 38.2-3549,
 74 Code of Virginia).
 75 17. Assignments of certain salary and wages (§ 55-165, Code of
 76 Virginia).
 77 18. Benefits for victims of crime (§ 19.2-368.12, Code of Virginia).
 78 19. Preneed funeral trusts (§ 54.1-2823, Code of Virginia).
 79 20. Certain retirement benefits (§ 34-34, Code of Virginia).
 80 21. Child support payments (§ 20-108.1, Code of Virginia).
 81 22. Support for dependent minor children (§ 34-4.2, Code of
 82 Virginia). To claim this exemption, the debtor shall attach to the claim
 83 for exemption form an affidavit that complies with the requirements of
 84 subsection B of § 34-4.2 and two items of proof showing that the debtor
 85 is entitled to this exemption.
 86 23. Other (describe exemption): \$
 87 I request a court hearing to decide the validity of my claim. Notice of the
 88 hearing should be given me at:
 89
 90 (address) (telephone no.)
 91 The statements made in this request are true to the best of my knowledge
 92 and belief.
 93
 94 (date) ~~(date)~~ (signature of judgment debtor)

95 § 34-4. Exemption created.

96 Every householder shall be entitled, in addition to the property or estate exempt under §§ 23-38.81,
 97 34-26, 34-27, 34-29, and 64.1-151.3, to hold exempt from creditor process arising out of a debt, real
 98 and personal property, or either, to be selected by the householder, including money and debts due the
 99 householder not exceeding ~~\$5,000~~ \$15,000 in value or, if the householder is 65 years of age or older,
 100 not exceeding \$10,000 in value. In addition, upon a showing that a householder supports dependents, the
 101 householder shall be entitled to hold exempt from creditor process real and personal property, or either,
 102 selected by the householder, including money or monetary obligations or liabilities due the householder,
 103 not exceeding \$500 in value for each dependent.

104 For the purposes of this section, "dependent" means an individual who derives support primarily
 105 from the householder and who does not have assets sufficient to support himself, but in no case shall an
 106 individual be the dependent of more than one householder.