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HOUSE BILL NO. 2428

Offered January 18, 2011

A BILL to amend and reenact §§ 8.01-512.4, 34-1, 34-3, 34-3.1, 34-4, 34-4.1, 34-4.2, 34-13, 34-14, 34-17, 34-21, 34-24, and 34-26 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 1 of Title 34 a section numbered 34-3.2, relating to homestead and other exemptions.

Patron—Abbott

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-512.4, 34-1, 34-3, 34-3.1, 34-4, 34-4.1, 34-4.2, 34-13, 34-14, 34-17, 34-21, 34-24, 34-26 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 1 of Title 34 a section numbered 34-3.2 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 Compensation Act (33 U.S.C. § 916).

. . . . 6. Black lung benefits.

Exemptions listed under 1 through 6 above may not be applicable in child

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- 56 support and alimony cases (42 U.S.C. § 659).
- 57 7. Seaman's, master's or fisherman's wages, except for child
- 58 support or spousal support and maintenance (46 U.S.C. § 1109).
- 59 8. Unemployment compensation benefits (§ 60.2-600, Code of
- 60 Virginia). This exemption may not be applicable in child support cases
- 61 (§ 60.2-608, Code of Virginia).
- 62 9. Portions or amounts of wages subject to garnishment (§ 34-29,
- 63 Code of Virginia).
- 64 10. Public assistance payments (§ 63.2-506, Code of Virginia).
- 65 11. Homestead exemption of \$5,000, or \$10,000 if the debtor is
- 66 65 years of age or older, in cash (~~§ 34-4~~ 34-13, Code of Virginia). This
- 67 exemption may not be available in certain cases, such as payment of rent
- 68 or services of a laborer or mechanic (§ 34-5, Code of Virginia).
- 69 12. Property of disabled veterans - additional \$10,000 cash
- 70 (§ 34-4.1, Code of Virginia).
- 71 13. Workers' Compensation benefits (§ 65.2-531, Code of Virginia).
- 72 14. Growing crops (§ 8.01-489, Code of Virginia).
- 73 15. Benefits from group life insurance policies (§ 38.2-3339,
- 74 Code of Virginia).
- 75 16. Proceeds from industrial sick benefits insurance (§ 38.2-3549,
- 76 Code of Virginia).
- 77 17. Assignments of certain salary and wages (§ 55-165, Code of
- 78 Virginia).
- 79 18. Benefits for victims of crime (§ 19.2-368.12, Code of Virginia).
- 80 19. Preneed funeral trusts (§ 54.1-2823, Code of Virginia).
- 81 20. Certain retirement benefits (§ 34-34, Code of Virginia).
- 82 21. Child support payments (§ 20-108.1, Code of Virginia).
- 83 22. Support for dependent minor children (§ 34-4.2, Code of
- 84 Virginia). To claim this exemption, the debtor shall attach to the claim
- 85 for exemption form an affidavit that complies with the requirements of
- 86 subsection B of § 34-4.2 and two items of proof showing that the debtor
- 87 is entitled to this exemption.
- 88 23. Other (describe exemption): \$

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

91
 92 (address) (telephone no.)

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

95
 96 (date) ~~(date)~~ (signature of judgment debtor)

97 § 34-1. Definitions.

98 As used in this title, unless the context requires a different meaning:

99 "Creditor process" means all methods used by creditors to collect unsecured debts.

100 "Debt" means a legally enforceable monetary obligation or liability of any individual whether arising
 101 out of a contract or otherwise, but not an obligation resulting from an intentional tort.

102 "*Dependent*" means an individual who derives support primarily from the householder and who does
 103 not have assets sufficient to support himself, but in no case shall an individual be the dependent of more
 104 than one householder.

105 "Exempt" means protected from all forms of creditor process.

106 "Exemption" means protection from all forms of creditor process.

107 "*Homestead*" means real or personal property used as the principal residence by the householder or
 108 a dependent of the householder.

109 "Homestead exemption" means that exemption created by § 34-4.

110 "Householder" means any resident of Virginia.

111 "Laboring person" means any person who receives wages for his services.

112 § 34-3. Articles not exempt from taxes or levies or for their purchase price.

113 The exemptions under §§ 34-4, 34-4.1, 34-13, 34-26, 34-27, 34-29, and 64.1-151.3 shall not extend

114 to distress or lien for state or local taxes or levies, nor to levy, distress, or lien for the purchase price of
115 any articles claimed as exempt or any part of the price thereof nor for fines and damages or either
116 arising from trespass by animals under § 55-306 as to such animal so trespassing. If an article purchased
117 and not paid for is exchanged or converted into other property of the debtor, such property shall not be
118 exempt from payment of the unpaid purchase money debt.

119 § 34-3.1. Alternative exemptions.

120 ~~No~~ *Notwithstanding any other provision of law, an individual may exempt from the property of the*
121 *estate in any bankruptcy proceeding either the property permitted to be exempted (i) as specified in*
122 *subsection (d) of 11 U.S.C. § 522 of the Bankruptcy Reform Act (Public Law 95-598), except as may*
123 *otherwise be expressly permitted under, or (ii) as specified in this title.*

124 § 34-3.2. Automatic adjustment of exemptions.

125 *Beginning July 1, 2013, the dollar amount of the exemptions provided in §§ 34-4, 34-13, and 34-26*
126 *shall be adjusted triennially, rounded to the nearest \$25, based on the increases in the United States*
127 *Average Consumer Price Index for all urban consumers (CPI-U) for the South Region as published by*
128 *the Bureau of Labor Statistics of the U.S. Department of Labor.*

129 § 34-4. Exemption created.

130 Every householder shall be entitled, in addition to the property or estate exempt under §§ 23-38.81,
131 34-13, 34-26, 34-27, 34-29, and 64.1-151.3, to hold exempt from creditor process arising out of a debt,
132 real and or personal property, or either, to be selected by that the householder, including money and
133 debts due or a dependent of the householder claims as a homestead not exceeding \$5,000 \$25,000 in
134 value or, if the householder is 65 years of age or older, not exceeding \$10,000 \$35,000 in value. In
135 addition, upon a showing that a householder supports dependents, the householder shall be entitled to
136 hold exempt from creditor process real and personal property, or either, selected by the householder,
137 including money or monetary obligations or liabilities due the householder, not exceeding \$500 in value
138 for each dependent.

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

142 § 34-4.1. Additional exemption for certain veterans.

143 Every veteran residing in this Commonwealth having a service connected disability of forty 40
144 percent or more, as rated by the Veterans Administration of the United States, shall be entitled, in
145 addition to the property or estate which he is entitled to hold exempt from creditor process under
146 §§ 34-4, 34-13, 34-26, 34-27, 34-29, and 64.1-151.3, to hold exempt from creditor process his real and
147 personal property, or either, to be selected by him by the writings required by §§ 34-6 and 34-14,
148 including money and debts due him, not exceeding \$ 10,000 in value.

149 § 34-4.2. Additional exemption for parents of dependent children.

150 A. Where a parent supports a dependent minor child or children residing with him, that parent can
151 hold exempt from wage garnishment, in addition to the property or estate that he is entitled to hold
152 exempt from creditor process under §§ 20-108.1, 34-4, 34-4.1, 34-13, 34-26, 34-27, 34-29, and
153 64.1-151.3, an additional amount for the support of the child or children as follows: \$34 per week for
154 one child; \$52 per week for two children; and \$66 per week for three or more children. This additional
155 wage exemption amount shall not be available to a parent whose household gross income, including any
156 support payments for children living in the home, exceeds \$1,750 per month. For purposes of this
157 section, "household gross income" means all income from all sources, and shall include, but not be
158 limited to, salaries, wages, commissions, royalties, bonuses, dividends, severance pay, pensions, interest,
159 trust income, annuities, capital gains, social security benefits, workers' compensation benefits,
160 unemployment insurance benefits, disability insurance benefits, veterans' benefits, child support, spousal
161 support, rental income, gifts, prizes or awards paid to any adult living in the household or to the
162 dependent child.

163 B. To claim this wage exemption, the parent shall attach to the claim for exemption form set forth in
164 § 8.01-512.4 an affidavit and two items of proof showing that the debtor is entitled to this additional
165 wage exemption. The affidavit shall contain the following statement:

166 AFFIDAVIT CONCERNING DEPENDENT CHILDREN

167 AND HOUSEHOLD INCOME

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

- 170 1. I support (number) dependent children, whose names and ages
171 are as follows. For each child I have included the amount of monthly child
172 support I receive (including voluntary support payments and payments made
173 pursuant to a court or administrative order), and, if the child is employed
174 or has other income, the amount of the child's gross monthly income. (If you

175 receive no support for the child and the child has no income, insert zero.)
 176 Full legal name of child Age Child's gross monthly support and income
 177
 178
 179
 180

181 (attach additional pages if necessary)

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

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

188 Full legal name of household residents Gross monthly income
 189
 190
 191
 192

193 (attach additional pages if necessary)

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

197 (signature of debtor)

198 (date)

199 Commonwealth of Virginia:

200 City/County of, to wit:

201 Subscribed and sworn to before me, the undersigned Notary Public, this . .

202 day of (month), (year)

203 Notary Public:

204 My commission expires:

205 § 34-13. Householder may set apart exemption in real or personal estate.

206 ~~If the Every householder does not set apart any real estate as before provided, or if what he does or~~
 207 ~~has so set apart is not of the total value which he is entitled to hold exempt, he may, in addition to the~~
 208 ~~property or estate which he is shall be entitled to hold, in addition to the property or estate exempt~~
 209 ~~under §§ 23-38.81, 34-4, 34-26, 34-27, 34-29, and 64.1-151.3, in the first ease select and set apart by~~
 210 ~~the writing required by § 34-14 to be held by him as exempt under §§ 34-4 and 34-4.1, so much of his~~
 211 ~~personal estate as shall not exceed the total value which he is entitled to hold exempt and, in the latter~~
 212 ~~case, personal estate, the value of which, when added to the value of the real estate set apart, does not~~
 213 ~~exceed such total value from creditor process arising out of a debt, real or personal property, or either,~~
 214 ~~other than that described in § 34-4, to be selected by the householder, including money and debts due~~
 215 ~~the householder not exceeding \$5,000 in value or, if the householder is 65 years of age or older, not~~
 216 ~~exceeding \$10,000 in value. In addition, upon a showing that a householder supports dependents, the~~
 217 ~~householder shall be entitled to hold exempt from creditor process real and personal property, or either,~~
 218 ~~selected by the householder, including money or monetary obligations or liabilities due the householder,~~
 219 ~~not exceeding \$500 in value for each dependent.~~

220 § 34-14. How set apart in personal estate; form to claim exemption of personal property.

221 Such personal estate selected by the householder ~~and~~ under §§ ~~34-4, 34-4.1,~~ or § 34-13 shall be set
 222 apart in a writing signed by him. He shall, in the writing, designate and describe with reasonable
 223 certainty the personal estate so selected and set apart and each parcel or article, affixing to each his cash
 224 valuation thereof. Such writing shall be admitted to record, to be recorded as deeds are recorded in the
 225 county or city wherein such householder resides. *However, if such personal estate is claimed exempt in*
 226 *a petition filed under Title 11 of the United States Code, the official form admitted to record in the*
 227 *United States Bankruptcy Court claiming such exemptions shall be sufficient to set apart such property*
 228 *as exempt.*

229 The following form, or one which is substantially similar, shall be used and shall be sufficient, when
230 duly admitted to record in the county or city in which the householder resides, to exempt such described
231 personal property from creditor process:

232 HOMESTEAD DEED FOR PERSONAL PROPERTY

233 Name of Householder

234 Is the householder a disabled veteran entitled to claim the additional
 235 exemption under § 34-4.1?

236 Address of Householder

237 Name(s) and age(s) of dependent(s)

238 County/city in which householder resides

239 Description of property claimed as exempt and its value

240

241 Number of homestead deeds that have been filed by the Householder
 242

243 Exemption amount previously claimed on prior homestead deeds
 244

245 List the jurisdictions where previous homestead deeds were filed
 246

247

248 (Signature of Householder)

249 [ACKNOWLEDGMENT]

250 Such writing or deed shall not be required to secure any exemption under this Code except those
 251 exemptions created by §§ 34-4, 34-4.1 and 34-13.

252 § 34-17. When exemption may be set apart; garnished wages.

253 A. The real or personal estate ~~which~~ *that* a householder is entitled to hold as exempt may be set
 254 apart at any time before it is subjected by sale under creditor process, or, if such creditor process does
 255 not require sale of the property, before it is turned over to the creditor. ~~To claim an exemption in~~
 256 ~~bankruptcy, a householder who (i) files a voluntary petition in bankruptcy or (ii) against whom an~~
 257 ~~involuntary petition in bankruptcy is filed shall set such real or personal property apart on or before the~~
 258 ~~fifth day after the date of the meeting held pursuant to 11 U.S.C. § 341, but not thereafter. A~~
 259 ~~householder who converts a case from Chapters 11, 12, or 13 to Chapter 7 shall set such real or~~
 260 ~~personal property apart on or before the fifth day after the date of the meeting held pursuant to 11~~
 261 ~~U.S.C. § 341 in the Chapter 7 case, but not thereafter. Nothing in this section shall affect the right of~~
 262 ~~the trustee in bankruptcy, with the approval of the court, to proceed immediately with the sale or other~~
 263 ~~disposition of personal property which the trustee determines to be perishable or particularly susceptible~~
 264 ~~to price deterioration.~~

265 B. A claim of homestead exemption to protect garnished wages may be filed by the debtor after the
 266 garnishment summons is served on the employer but prior to or upon the return date of the garnishment
 267 summons and shall be considered by the garnishing court.

268 § 34-21. When householder's right to exemption is exhausted.

269 When the maximum amount of property, whether real or personal, or both, has been once set apart
 270 to be held by a householder as exempt under § 34-4 ~~or~~ §, 34-4.1, *or 34-13*, he shall not afterwards be
 271 entitled to the exemption of any estate other than that so set apart or as otherwise provided by law *for a*
 272 *period of seven years from the time the householder last claimed the exemption.*

273 § 34-24. When the exemption ceases; lien of judgment or decree against householder.

274 When any person, entitled as a householder to the exemption provided for in § 34-4 *or 34-13*, ceases
 275 to be a householder or when any person removes from this Commonwealth, his right to claim or hold
 276 any estate as exempt under the provisions of this chapter, shall cease; but the lien of a judgment, or
 277 decree for money, rendered against a householder, and which is not paramount to the exemption
 278 provided for in this chapter, shall, as to the real estate held as exempt by him, attach to such only of
 279 that estate as he may be possessed of or entitled to at the time the exemption thereof ceases, as
 280 aforesaid, and until that time the lien shall not be enforced. Such judgments shall attach in the order of
 281 their priority, respectively, subject to the provisions of Article 5.1 (§ 64.1-151.1 et seq.) of Chapter 6 of
 282 Title 64.1.

283 § 34-26. Poor debtor's exemption; exempt articles enumerated.

284 In addition to the exemptions provided in Chapter 2 (§ 34-4 et seq.) of this title, every householder
 285 shall be entitled to hold exempt from creditor process the following enumerated items:

- 286 1. The family Bible.
- 287 1a. Wedding and engagement rings.
- 288 2. Family portraits and family heirlooms not to exceed \$5,000 in value.
- 289 3. (i) A lot in a burial ground, and (ii) any preneed funeral contract not to exceed \$5,000.
- 290 4. All wearing apparel of the householder not to exceed \$1,000 in value.
- 291 4a. All household *goods and* furnishings including, but not limited to, beds, dressers, floor coverings,
 292 stoves, refrigerators, washing machines, dryers, sewing machines, pots and pans for cooking, plates, ~~and~~
 293 eating utensils, *books and music regardless of format, and personal electronics* not to exceed \$5,000 in

294 value.

295 5. All animals owned as pets, such as cats, dogs, birds, squirrels, rabbits and other pets not kept or
296 raised for sale or profit.

297 6. Medically prescribed health aids.

298 7. Tools, books, instruments, implements, equipment, and machines, including motor vehicles,
299 vessels, and aircraft, which are necessary for use in the course of the householder's occupation or trade
300 not exceeding \$10,000 in value, except that a perfected security interest on such personal property shall
301 have priority over the claim of exemption under this section. A motor vehicle, vessel or aircraft used to
302 commute to and from a place of occupation or trade and not otherwise necessary for use in the course
303 of such occupation or trade shall not be exempt under this subdivision. "Occupation," as used in this
304 subdivision, includes enrollment in any public or private elementary, secondary, or career and technical
305 education school or institution of higher education.

306 8. A motor vehicle, not held as exempt under subdivision 7, owned by the householder, not to
307 exceed ~~\$2,000~~ \$7,500 in value, except that a perfected security interest on the motor vehicle shall have
308 priority over the claim of exemption under this subdivision.

309 9. *One firearm per householder for household use.*

310 10. *School books of the householder.*

311 11. *Personal effects and furniture that are exclusively used by a dependent who is a minor, disabled,*
312 *or 65 years of age or older.*

313 12. *Educational materials and educational equipment that are used by a dependent who is a minor.*

314 13. *Payments pursuant to the federal child tax credit under 26 U.S.C. § 24, as amended, and the*
315 *federal earned income credit under 26 U.S.C. § 32, as amended.*

316 The value of an item claimed as exempt under this section shall be the fair market value of the item
317 less any prior security interest.

318 The monetary limits, where provided, are applicable to the total value of property claimed as exempt
319 under that subdivision.

320 The purchase of an item claimed as exempt under this section with nonexempt property in
321 contemplation of bankruptcy or creditor process shall not be deemed to be in fraud of creditors.

322 No officer or other person shall levy or distrain upon, or attach, such articles, or otherwise seek to
323 subject such articles to any lien or process. It shall not be required that a householder designate any
324 property exempt under this section in a deed in order to secure such exemption.