

20104136D

HOUSE BILL NO. 790

Offered January 8, 2020

Prefiled January 7, 2020

A *BILL to amend and reenact §§ 8.01-512.4, 34-4, 34-6, 34-14, 34-17, and 34-21 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 1 of Title 34 a section numbered 34-3.2; and to repeal § 34-3.1 of the Code of Virginia, relating to homestead exemption; bankruptcy exemptions.*

Patron—Simon

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-512.4, 34-4, 34-6, 34-14, 34-17, and 34-21 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~~ *that* 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~~ *that* 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~~ *that* 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. § 5301).

___ 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. 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).

___ 7. Seaman's, master's or fisherman's wages, except for child support or spousal support and maintenance (46 U.S.C. § 11109).

___ 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, or \$10,000 if the debtor is 65 years of age or older, in cash, and, in addition, real or personal property used as the principal residence of the householder or the

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59 *householder's dependents not exceeding \$25,000 in value* (§ 34-4, Code of Virginia). This exemption
 60 may not be claimed in certain cases, such as payment of spousal or child support (§ 34-5, Code of
 61 Virginia).

62 — 12. Property of disabled veterans — additional \$10,000 cash (§ 34-4.1, Code of Virginia).

63 — 13. Workers' Compensation benefits (§ 65.2-531, Code of Virginia).

64 — 14. Growing crops (§ 8.01-489, Code of Virginia).

65 — 15. Benefits from group life insurance policies (§ 38.2-3339, Code of Virginia).

66 — 16. Proceeds from industrial sick benefits insurance (§ 38.2-3549, Code of Virginia).

67 — 17. Assignments of certain salary and wages (§ 8.01-525.10, Code of Virginia).

68 — 18. Benefits for victims of crime (§ 19.2-368.12, Code of Virginia).

69 — 19. Preneed funeral trusts (§ 54.1-2823, Code of Virginia).

70 — 20. Certain retirement benefits (§ 34-34, Code of Virginia).

71 — 21. Child support payments (§ 20-108.1, Code of Virginia).

72 — 22. Support for dependent minor children (§ 34-4.2, Code of Virginia). To claim this exemption,
 73 the debtor shall attach to the claim for exemption form an affidavit that complies with the requirements
 74 of subsection B of § 34-4.2 and two items of proof showing that the debtor is entitled to this exemption.

75 — 23. Other (describe exemption): \$ _____

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

78 _____
 79 (address) (telephone no.)

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

81 _____
 82 (date) (signature of judgment debtor)

83 **§ 34-3.2. Automatic adjustment of exemptions.**

84 *Beginning on July 1, 2023, and every three years thereafter, the dollar amount of the exemptions*
 85 *provided in §§ 34-4, 34-4.1, 34-13, and 34-26 shall be adjusted triennially, rounded to the nearest \$25,*
 86 *based on the increases over the three full calendar years prior thereto in the United States Average*
 87 *Consumer Price Index for all urban consumers (CPI-U) for the South Region as published by the*
 88 *Bureau of Labor Statistics of the U.S. Department of Labor. The Executive Secretary of the Supreme*
 89 *Court of Virginia shall publish the updated dollar amounts between January 1 and June 1 of each year*
 90 *in which an adjustment pursuant to this section shall occur.*

91 **§ 34-4. Exemption created.**

92 Every householder shall be entitled, in addition to the property or estate exempt under §§ 23.1-707,
 93 34-26, 34-27, 34-29, and 64.2-311, to hold exempt from creditor process arising out of a debt, real and
 94 personal property, or either, to be selected by the householder, including money and debts due the
 95 householder not exceeding \$5,000 in value or, if the householder is 65 years of age or older, not
 96 exceeding \$10,000 in value, *and in addition, real or personal property used as the principal residence*
 97 *of the householder or the householder's dependents not exceeding \$25,000 in value.* In addition, upon a
 98 showing that a householder supports dependents, the householder shall be entitled to hold exempt from
 99 creditor process real and personal property, or either, selected by the householder, including money or
 100 monetary obligations or liabilities due the householder, not exceeding \$500 in value for each dependent.

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

104 **§ 34-6. How exemption of real estate secured; form to claim exemption of real property.**

105 In order to secure the benefit of the exemptions of real estate under §§ 34-4 and 34-4.1, the
 106 householder, by a writing signed by him and duly admitted to record, to be recorded as deeds are
 107 recorded, in the county or city wherein such real estate or any part thereof is located or, if such property
 108 is located outside of the Commonwealth, in the county or city in the Commonwealth where the
 109 householder resides, shall declare his intention to claim such benefit and select and set apart the real
 110 estate to be held by the householder as exempt, and describe the same with reasonable certainty, affixing
 111 to the description his cash valuation of the estate so selected and set apart. *However, if such real estate*
 112 *is claimed exempt in a case filed under Title 11 of the United States Code, the official Schedule of*
 113 *Property Claimed as Exempt filed in the United States Bankruptcy Court claiming such exemptions shall*
 114 *be sufficient to set apart such property as exempt.* Equitable as well as legal estates may be so selected
 115 and set apart. The following form, or one which is substantially similar, shall be used and shall be
 116 sufficient for the writing required by this section:

117 **HOMESTEAD DEED FOR REAL PROPERTY**

118 Name of Householder _____

119 Name of title holder of record (if different) _____

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

Address of Householder _____
 Name(s) and age(s) of dependent(s) _____
 County/city/state in which real property claimed as exempt is located _____

Description of property claimed as exempt _____

Value of property described above _____
 Number of homestead deeds that have been filed by the Householder _____

Exemption amount previously claimed on prior homestead deeds _____

List the jurisdictions where previous homestead deeds were filed _____

 _____ (Signature of Householder)
 _____ [ACKNOWLEDGMENT]

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

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

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

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

HOMESTEAD DEED FOR PERSONAL PROPERTY

Name of Householder _____
 Is the householder a disabled veteran entitled to claim the additional exemption under § 34-4.1? _____

Address of Householder _____
 Name(s) and age(s) of dependent(s) _____
 County/city in which householder resides _____
 Description of property claimed as exempt and its value _____

Number of homestead deeds that have been filed by the Householder _____

Exemption amount previously claimed on prior homestead deeds _____

List the jurisdictions where previous homestead deeds were filed _____

 _____ (Signature of Householder)
 _____ [ACKNOWLEDGMENT]

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

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

A. The real or personal estate ~~which~~ *that* a householder is entitled to hold as exempt may be set apart at any time before it is subjected by sale under creditor process *or by a trustee in bankruptcy*, or, if such creditor process does not require sale of the property, before it is turned over to the creditor. ~~To claim an exemption in bankruptcy, a householder who (i) files a voluntary petition in bankruptcy or (ii) against whom an involuntary petition in bankruptcy is filed shall set such real or personal property apart on or before the fifth day after the date of the meeting held pursuant to 11 U.S.C. § 341, but not thereafter. A householder who converts a case from Chapters 11, 12, or 13 to Chapter 7 shall set such real or personal property apart on or before the fifth day after the date of the meeting held pursuant to~~

182 11 U.S.C. § 341 in the Chapter 7 case, but not thereafter. Nothing in this section shall affect the right of
183 the trustee in bankruptcy, with the approval of the court, to proceed immediately with the sale or other
184 disposition of personal property which the trustee determines to be perishable or particularly susceptible
185 to price deterioration or disbursed by the bankruptcy trustee.

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

189 **§ 34-21. When householder's right to exemption is exhausted.**

190 When ~~the maximum~~ *an* amount of property, whether real or personal, or both, has been ~~once~~ set
191 apart to be held by a householder as exempt under § 34-4 or §, 34-4.1, ~~he or 34-13,~~ *such amount* shall
192 ~~not afterwards for a period of seven years from such setting apart~~ be entitled to the exemption of any
193 estate other than that so set apart or as otherwise provided by law applied against the maximum amount
194 to which the householder is entitled to set apart as exempt under § 34-4, 34-4.1, or 34-13.

195 **2. That § 34-3.1 of the Code of Virginia is repealed.**

196 **3. That the Executive Secretary of the Supreme Court of Virginia shall promulgate and update the**
197 **forms necessary to comply with the provisions of the first enactment of this act.**