

2020 SPECIAL SESSION I

SENATE SUBSTITUTE

20201176D

HOUSE BILL NO. 5068

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on September 16, 2020)

(Patron Prior to Substitute—Delegate Ayala)

A BILL to amend and reenact § 8.01-512.4 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 3 of Title 34 a section numbered 34-28.3, relating to state of emergency; emergency relief payments exempt; emergency.

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 in Chapter 3 of Title 34 a section numbered 34-28.3 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 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 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 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 householder's dependents not exceeding \$25,000 in value (§ 34-4, Code of Virginia). This exemption may not be claimed in certain cases, such as payment of spousal or child support (§ 34-5, Code of Virginia).

___ 12. Property of disabled veterans — additional \$10,000 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).

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- 60 — 15. Benefits from group life insurance policies (§ 38.2-3339, Code of Virginia).
61 — 16. Proceeds from industrial sick benefits insurance (§ 38.2-3549, Code of Virginia).
62 — 17. Assignments of certain salary and wages (§ 8.01-525.10, Code of Virginia).
63 — 18. Benefits for victims of crime (§ 19.2-368.12, Code of Virginia).
64 — 19. Preneed funeral trusts (§ 54.1-2823, Code of Virginia).
65 — 20. Certain retirement benefits (§ 34-34, Code of Virginia).
66 — 21. Child support payments (§ 20-108.1, Code of Virginia).
67 — 22. Support for dependent minor children (§ 34-4.2, Code of Virginia). To claim this exemption,
68 the debtor shall attach to the claim for exemption form an affidavit that complies with the requirements
69 of subsection B of § 34-4.2 and two items of proof showing that the debtor is entitled to this exemption.
70 — 23. *Emergency relief payments* (§ 34-28.3, Code of Virginia).
71 — 24. Other (describe exemption): \$ _____

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

74 _____
75 (address) (telephone no.)

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

77 _____
78 (date) (signature of judgment debtor)

79 **§ 34-28.3. State of emergency; emergency relief payments exempt.**

80 A. For the purposes of this section, "emergency relief payment" means any payment made by a local,
81 state, or federal governing body pursuant to a law, ordinance, order, or regulation that specifically
82 designates such payment as intended to provide economic relief due to the condition that caused a state
83 of emergency to be declared by the Governor pursuant to § 44-146.17.

84 B. Once a state of emergency, as defined by § 44-146.16, is declared by the Governor pursuant to
85 his powers listed in § 44-146.17, all emergency relief payments paid to individuals or businesses shall
86 be automatically exempt from the creditor process. Any financial institution, as defined by § 6.2-100,
87 receiving such payments directly from a local, state, or federal governing body shall exempt such
88 payments from the creditor process if (i) the payment is marked by the issuing governing body as an
89 "emergency relief payment" or includes some other unique identifier that is reasonably sufficient to
90 allow the financial institution to identify the funds as an emergency relief payment or (ii) the issuing
91 governing body or account holder receiving the emergency relief payment gives notice to the financial
92 institution of such payment. Such exemption extends to any such payments issued and received once
93 such state of emergency is declared. In exempting emergency relief payments on deposit from the
94 creditor process, a financial institution shall look back two months preceding the date of receipt of
95 service of the creditor process. The financial institution shall perform a one-time account review
96 separately for each account in the name of an account holder who is subject to the creditor process
97 without consideration for any other attributes of the account or the creditor process, including (a) the
98 presence of other funds, from whatever source, that may be commingled in the account with funds from
99 an emergency relief payment; (b) the existence of a co-owner on the account; (c) the existence of
100 emergency relief payments to multiple beneficiaries or under multiple programs deposited into the
101 account; and (d) the balance in the account, provided the balance is above zero dollars on the date of
102 account review. After conducting the account review, a financial institution shall exempt from the
103 creditor process the lesser of the sum of all posted emergency relief payments to an account between the
104 close of business on the beginning date of the lookback period and the open of business on the ending
105 date of the lookback period or the balance in an account when the account review is performed.

106 If the creditor process involves a court return date, such as a garnishment, and requires a continued
107 hold on the account, including any deposits made up to the return date, then if an emergency relief
108 payment is deposited into an account after the completion of the account review but before the creditor
109 process or garnishment return date and the account holder notifies the financial institution that the
110 deposit of an emergency relief payment has been made, the financial institution must review the account.
111 If the financial institution verifies that the deposited funds are exempt under this section, then such
112 deposited funds shall be treated as exempt from the creditor process or garnishment. This second
113 account review shall begin within two business days of receiving the notice from the account holder and
114 shall cover the period from the start of business on the date of the completion of the previous account
115 review to the end of business on the date of the notification from the account holder. For any creditor
116 process that requires a continued hold, such as a garnishment where the account hold must continue
117 until the garnishment return date, the account holder may access exempt funds by withdrawal as
118 permitted by the financial institution.

119 In its answer to the creditor process, the financial institution shall state the amount of account funds
120 that are being held pursuant to the creditor process and the amount of account funds that were treated
121 as exempt under this section.

122 A financial institution that makes a good faith effort to comply with the requirements set forth herein
 123 shall not be subject to liability or regulatory action under any state law, regulation, court or other
 124 order, or regulatory interpretation for actions concerning any emergency relief payments.

125 Emergency relief payments shall be exempt from the creditor process even if deposited into an
 126 account with a financial institution or other organization accepting deposits and thereby commingled
 127 with other funds.

128 For the purposes of this section, no such exemption shall extend to child support, spousal support, or
 129 criminal restitution orders.

130 C. If a financial institution does not set aside an emergency relief payment as exempt from the
 131 creditor process, then the accountholder receiving such payment must claim the exemption within the
 132 time limits prescribed by subsection B of § 34-17 and in the manner prescribed under § 8.01-512.4.

133 **2. That an emergency exists and this act is in force from its passage.**

134 **3. The exemption created by this act shall not extend to a garnishment process or other creditor**
 135 **process that concluded before the enactment of this act.**