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HOUSE BILL NO. 1339

Offered January 12, 2024

A *BILL to amend and reenact §§ 8.01-512.4, 34-4, and 34-26 of the Code of Virginia, relating to exemptions from garnishment and lien; householder; total value.*

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, and 34-26 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 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 \$100,000 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).

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- 59 _____ 14. Growing crops (§ 8.01-489, Code of Virginia).
 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. Other (describe exemption): \$_____ Other (describe exemption): \$_____

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

73 _____
 74 (address) (telephone no.)
 75 The statements made in this request are true to the best of my knowledge and belief.

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

78 **§ 34-4. Exemption created.**

79 Every householder shall be entitled, in addition to the property or estate exempt under §§ 23.1-707,
 80 34-26, 34-27, 34-29, and 64.2-311, to hold exempt from creditor process arising out of a debt, real and
 81 personal property, or either, to be selected by the householder, including money and debts due the
 82 householder not exceeding \$5,000 in value or, if the householder is 65 years of age or older, not
 83 exceeding \$10,000 in value, and, in addition, real or personal property used as the principal residence of
 84 the householder or the householder's dependents not exceeding ~~\$25,000~~ \$100,000 in value. In addition,
 85 upon a showing that a householder supports dependents, the householder shall be entitled to hold exempt
 86 from creditor process real and personal property, or either, selected by the householder, including money
 87 or monetary obligations or liabilities due the householder, not exceeding \$500 in value for each
 88 dependent.

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

92 **§ 34-26. Poor debtor's exemption; exempt articles enumerated.**

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

- 95 1. The family Bible.
- 96 1a. Wedding and engagement rings.
- 97 2. Family portraits and family heirlooms not to exceed \$5,000 in value.
- 98 3. (i) A lot in a burial ground, and (ii) any preneed funeral contract not to exceed \$5,000.
- 99 4. All wearing apparel of the householder not to exceed \$1,000 in value.
- 100 4a. All household furnishings including, but not limited to, beds, dressers, floor coverings, stoves,
 101 refrigerators, washing machines, dryers, sewing machines, pots and pans for cooking, plates, and eating
 102 utensils, not to exceed \$5,000 in value.
- 103 4b. Firearms, not to exceed a total of \$3,000 in value.
- 104 5. All animals owned as pets, such as cats, dogs, birds, squirrels, rabbits and other pets not kept or
 105 raised for sale or profit.
- 106 6. Medically prescribed health aids.
- 107 7. Tools, books, instruments, implements, equipment, and machines, including motor vehicles,
 108 vessels, and aircraft, which are necessary for use in the course of the householder's occupation or trade
 109 not exceeding \$10,000 in value, except that a perfected security interest on such personal property shall
 110 have priority over the claim of exemption under this section. A motor vehicle, vessel or aircraft used to
 111 commute to and from a place of occupation or trade and not otherwise necessary for use in the course
 112 of such occupation or trade shall not be exempt under this subdivision. "Occupation," as used in this
 113 subdivision, includes enrollment in any public or private elementary, secondary, or career and technical
 114 education school or institution of higher education.
- 115 8. Motor vehicles, not held as exempt under subdivision 7, owned by the householder, not to exceed
 116 a total of ~~\$6,000~~ \$10,000 in value, except that a perfected security interest on a motor vehicle shall have
 117 priority over the claim of exemption under this subdivision.
- 118 9. Those portions of a tax refund or governmental payment attributable to the Child Tax Credit or
 119 Additional Child Tax Credit pursuant to § 24 of the Internal Revenue Code of 1986, as amended, or the
 120 Earned Income Credit pursuant to § 32 of the Internal Revenue Code of 1986, as amended.

121 10. Unpaid spousal or child support.
122 The value of an item claimed as exempt under this section shall be the fair market value of the item
123 less any prior security interest.
124 The monetary limits, where provided, are applicable to the total value of property claimed as exempt
125 under that subdivision.
126 The purchase of an item claimed as exempt under this section with nonexempt property in
127 contemplation of bankruptcy or creditor process shall not be deemed to be in fraud of creditors.
128 No officer or other person shall levy or distrain upon, or attach, such articles, or otherwise seek to
129 subject such articles to any lien or process. It shall not be required that a householder designate any
130 property exempt under this section in a deed in order to secure such exemption.