

HOUSE BILL NO. 1339

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on \_\_\_\_\_)

(Patron Prior to Substitute--Delegate Simon)

A BILL to amend and reenact §§ 8.01-512.4, 34-4, 34-13, and 34-26 of the Code of Virginia, relating to exemptions from garnishment and lien; householder; total value.

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 8.01-512.4, 34-4, 34-13, 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

27 Summons in Garnishment attached. You do not need to file a claim for exemption to receive this  
28 exemption, but if you believe the wrong amount is being withheld you may file a claim for exemption.

29 On the day of the hearing you should come to court ready to explain why your property is  
30 exempted, and you should bring any documents that may help you prove your case. If you do not come to  
31 court at the designated time and prove that your property is exempt, you may lose some of your rights.

32 It may be helpful to you to seek the advice of an attorney in this matter.

33 Request for hearing-garnishment/lien exemption claim

34 I claim that the exemption(s) from garnishment or lien that are checked below apply in this case:

35 MAJOR EXEMPTIONS UNDER FEDERAL AND STATE LAW

36 \_\_\_1. Social Security benefits and Supplemental Security Income (SSI)(42 U.S.C. § 407).

37 \_\_\_2. Veterans' benefits (38 U.S.C. § 5301).

38 \_\_\_3. Federal civil service retirement benefits (5 U.S.C. § 8346).

39 \_\_\_4. Annuities to survivors of federal judges (28 U.S.C. § 376(n)).

40 \_\_\_5. Longshore and Harbor Workers' Compensation Act (33 U.S.C. § 916).

41 \_\_\_6. Black lung benefits.

42 Exemptions listed under 1 through 6 above may not be applicable in child support and alimony  
43 cases (42 U.S.C. § 659).

44 \_\_\_7. Seaman's, master's or fisherman's wages, except for child support or spousal support and  
45 maintenance (46 U.S.C. § 11109).

46 \_\_\_8. Unemployment compensation benefits (§ 60.2-600, Code of Virginia). This exemption may  
47 not be applicable in child support cases (§ 60.2-608, Code of Virginia).

48 \_\_\_9. Portions or amounts of wages subject to garnishment (§ 34-29, Code of Virginia).

49 \_\_\_10. Public assistance payments (§ 63.2-506, Code of Virginia).

50 \_\_\_11. Homestead exemption of \$5,000, or \$10,000 if the debtor is 65 years of age or older, in  
51 cash, and, in addition, real or personal property used as the principal residence of the householder or the  
52 householder's dependents not exceeding ~~\$25,000~~ \$100,000 in value (§ 34-4, Code of Virginia). This

53 exemption may not be claimed in certain cases, such as payment of spousal or child support (§ 34-5, Code  
54 of Virginia).

55 \_\_\_\_12. Property of disabled veterans — additional \$10,000 cash (§ 34-4.1, Code of Virginia).

56 \_\_\_\_13. Workers' Compensation benefits (§ 65.2-531, Code of Virginia).

57 \_\_\_\_14. Growing crops (§ 8.01-489, Code of Virginia).

58 \_\_\_\_15. Benefits from group life insurance policies (§ 38.2-3339, Code of Virginia).

59 \_\_\_\_16. Proceeds from industrial sick benefits insurance (§ 38.2-3549, Code of Virginia).

60 \_\_\_\_17. Assignments of certain salary and wages (§ 8.01-525.10, Code of Virginia).

61 \_\_\_\_18. Benefits for victims of crime (§ 19.2-368.12, Code of Virginia).

62 \_\_\_\_19. Preneed funeral trusts (§ 54.1-2823, Code of Virginia).

63 \_\_\_\_20. Certain retirement benefits (§ 34-34, Code of Virginia).

64 \_\_\_\_21. Child support payments (§ 20-108.1, Code of Virginia).

65 \_\_\_\_22. Support for dependent minor children (§ 34-4.2, Code of Virginia). To claim this  
66 exemption, the debtor shall attach to the claim for exemption form an affidavit that complies with the  
67 requirements of subsection B of § 34-4.2 and two items of proof showing that the debtor is entitled to this  
68 exemption.

69 \_\_\_\_23. Other (describe exemption): \$\_\_\_\_Other (describe exemption):  
70 \$\_\_\_\_\_

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

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

91 On April 1, 2027, and at each three-year interval ending on April 1 thereafter, each monetary limit  
92 in effect under this section immediately before such April 1 shall be adjusted to reflect the change in the  
93 Consumer Price Index for all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of  
94 the U.S. Department of Labor, for the most recent three-year period ending immediately before January 1  
95 preceding such April 1, and rounded to the nearest \$25 the dollar amount that represents such change. Not  
96 later than March 1, 2027, and at each three-year interval ending on March 1 thereafter, the Virginia Code  
97 Commission shall publish in the Virginia Register of Regulations the dollar amounts that will become  
98 effective on such April 1 under this section. Adjustments made in this section shall not apply with respect  
99 to bankruptcy cases commenced before April 1, 2027.

100 **§ 34-13. Householder may set apart exemption in personal estate.**

101 If the householder does not set apart any real estate as before provided, or if what he does or has  
102 so set apart is not of the total value which he is entitled to hold exempt, he may, in addition to the property  
103 or estate which he is entitled to hold exempt under §§ 34-26, 34-27, 34-29, and 64.2-311, in the first case  
104 select and set apart by the writing required by § 34-14 to be held by him as exempt under §§ 34-4 and 34-  
105 4.1, so much of his personal estate as shall not exceed the total value which he is entitled to hold exempt

106 and, in the latter case, personal estate, the value of which, when added to the value of the real estate set  
107 apart, does not exceed such total value.

108 For the purposes of this section, the exemption under § 34-4, or unused portion thereof, that is  
109 limited by such section to real or personal property used as the principal residence of the householder or  
110 the householder's dependents may only be used for such property, and its proceeds as provided under §  
111 34-20, and no other.

112 **§ 34-26. Poor debtor's exemption; exempt articles enumerated.**

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

115 1. The family Bible.

116 1a. Wedding and engagement rings.

117 2. Family portraits and family heirlooms not to exceed \$5,000 in value.

118 3. (i) A lot in a burial ground, and (ii) any preneed funeral contract not to exceed \$5,000.

119 4. All wearing apparel of the householder not to exceed \$1,000 in value.

120 4a. All household furnishings including, but not limited to, beds, dressers, floor coverings, stoves,  
121 refrigerators, washing machines, dryers, sewing machines, pots and pans for cooking, plates, and eating  
122 utensils, not to exceed \$5,000 in value.

123 4b. Firearms, not to exceed a total of \$3,000 in value.

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

126 6. Medically prescribed health aids.

127 7. Tools, books, instruments, implements, equipment, and machines, including motor vehicles,  
128 vessels, and aircraft, which are necessary for use in the course of the householder's occupation or trade  
129 not exceeding \$10,000 in value, except that a perfected security interest on such personal property shall  
130 have priority over the claim of exemption under this section. A motor vehicle, vessel or aircraft used to  
131 commute to and from a place of occupation or trade and not otherwise necessary for use in the course of  
132 such occupation or trade shall not be exempt under this subdivision. "Occupation," as used in this

133 subdivision, includes enrollment in any public or private elementary, secondary, or career and technical  
134 education school or institution of higher education.

135 8. Motor vehicles, not held as exempt under subdivision 7, owned by the householder, not to  
136 exceed a total of ~~\$6,000~~ \$10,000 in value, except that a perfected security interest on a motor vehicle shall  
137 have priority over the claim of exemption under this subdivision.

138 9. Those portions of a tax refund or governmental payment attributable to the Child Tax Credit or  
139 Additional Child Tax Credit pursuant to § 24 of the Internal Revenue Code of 1986, as amended, or the  
140 Earned Income Credit pursuant to § 32 of the Internal Revenue Code of 1986, as amended.

141 10. Unpaid spousal or child support.

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

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

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

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

151 On April 1, 2027, and at each three-year interval ending on April 1 thereafter, each monetary limit  
152 in effect under this section immediately before such April 1 shall be adjusted to reflect the change in the  
153 Consumer Price Index for all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of  
154 the U.S. Department of Labor, for the most recent three-year period ending immediately before January 1  
155 preceding such April 1, and rounded to the nearest \$25 the dollar amount that represents such change. Not  
156 later than March 1, 2027, and at each three-year interval ending on March 1 thereafter, the Virginia Code  
157 Commission shall publish in the Virginia Register of Regulations the dollar amounts that will become  
158 effective on such April 1 under this section. Adjustments made in this section shall not apply with respect  
159 to bankruptcy cases commenced before April 1, 2027.

**160**

**#**