

**STATUTORY TREATMENT OF WOMEN ON A BASIS
DIFFERENT FROM THAT FOR MEN**

(Titles 34, 40.1, 55 and 64.1)

**REPORT OF THE
VIRGINIA CODE COMMISSION
TO
THE GOVERNOR
AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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(TITLES 34, 40.1, 55 AND 64.1)

Report of the Virginia Code Commission

Richmond, Virginia

January 4, 1974

To: HONORABLE MILLS E. GODWIN, JR.

and

THE GENERAL ASSEMBLY OF VIRGINIA

In its 1973 Session, the General Assembly adopted the following resolution requiring a study of Titles 34, 40.1, 55 and 64.1 of the Code of Virginia to ascertain whether or not any statutes therein provide for treatment of women on a basis different from that of men and whether or not a rational basis exists for such differing treatment.

HOUSE JOINT RESOLUTION NO. 272

Directing the Code Commission to report upon certain titles of the Code involving women.

Whereas, there has been great discussion of the need for an amendment to the Constitution of the United States to guarantee equal rights to women; and

Whereas, many believe and so state that the Constitution of Virginia prohibits discrimination on account of sex thereby eliminates, as to Virginia, the need for an amendment to the federal Constitutions; and

Whereas, there are many women who must work to support or assist in supporting their families and who after a day spent in gainful employment must return to their homes and cook meals, clean up, and engage in housekeeping as best they can which results in their not being able to attend legislative hearings, public affairs and other occasions on which they could express their views on the matter of sex discrimination; and

Whereas, there are also many women who for one reason or another have more time to engage in public affairs and to present their views and those of others who feel as they do, but such groups should not be considered as the only exponent of the points of view of women generally; and

Whereas, a study is needed of certain provisions of the Code of Virginia to determine whether or not sex discrimination is in the statutes of Virginia and when, in keeping with sound social policy, it should be resolved or terminated as the case may be; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That the Virginia Code Commission is hereby directed to make a study and report upon Titles 34, 40.1, 55 and 64.1 as these titles may involve statutory treatment of women on a basis different from that for men and whether or not a rational basis exists for such differing treatment. The Code Commission may form such committees with representatives from law schools and interested groups as it deems appropriate to assist it in making this study. All agencies of the State shall assist the Commission in its work. In the discharge of its duties, the Commission shall be mindful of the fact that the provision of equal treatment may become as valuable to those women who do not now recognize its potential benefits as those who do. The Commission shall conclude its study and make its report to the

Governor and General Assembly not later than December one, nineteen hundred seventy-three.

Assisting the Commission in its study of Titles 34 and 40.1 was Philip S. LaMar, Staff Attorney for the Commission and assisting in its study of Title 55 was William Swindler, Professor of Law at the Marshall-Wythe School of Law of the College of William and Mary.

The Commission, in arriving at the following recommendations and proposed legislation, isolated those sections of Titles 34, 40.1 and 55 that seem to treat women on a basis different from that of men and then thoroughly examined the related law (Virginia and federal Constitutional law, Virginia and federal Case law and federal statutes) to determine whether or not these sections are unconstitutional or superceded. The Commission has suggested repealing those statutes it considers unconstitutional, superceded, or nonbeneficial and has suggested retaining others with certain amendments that will insure women the same treatment as that received by men.

The proposed legislation that follows this Report reflects the Commission's careful consideration of all recommendations and suggestions either brought to its attention or resulting from its own observations, inquiries and deliberations. It incorporates, among others, the following changes:

First—The adoption of the definition of "householder" used in *Oppenheim v. Myers*, 99 Va. 582, 39 S. E. 218 (1901), a definition broad enough to include both males and females.

Second—The repeal of Article 3 of Chapter 3 of Title 40.1, entitled "Employment of Women Generally," which: (1) provides that employers of females who are required to stand while working must provide such females with special rest periods and restrooms and (2) limits the number of hours women engaged in certain types of employment may work.

In addition to these changes, the Commission recommends that the study of Title 64.1 be continued until such time as the General Assembly has acted upon the recommendations of: (1) the Virginia Advisory Legislative Council pursuant to House Joint Resolution No. 225 (1973), which requires a study of the laws on dower and curtesy and (2) the Courts of Justice Committees of the House of Delegates and of the Senate pursuant to House Joint Resolution No. 234 (1973), which requires a study of the laws relating to the probate of wills and administration of estates.

The Commission considers the accompanying proposed legislation as a substantial improvement to the law with which it is concerned and recommends its enactment at the 1974 Session of the General Assembly.

Respectfully submitted,

A. L. Philpott, *Chairman*

J. Harry Michael, Jr., *Vice Chairman*

John A. Banks, Jr., *Secretary*

Russell M. Carneal

Frederick T. Gray

John Wingo Knowles

A BILL to amend and reenact §§ 34-1, 34-10, 34-11, 34-12, 34-15, 34-16, 34-17, 34-23, 34-24, 34-31, 34-32, 40.1-21, 40.1-122 and 55-47, as severally amended, of the Code of Virginia, relating to treatment of women on a basis different than that of men; and to repeal Article 3 of Chapter 3 of Title 40.1 of the Code of Virginia, consisting of §§ 40.1-34 through 40.1-38, as severally amended, relating to employment of women generally; penalties for violations.

Be it enacted by the General Assembly of Virginia:

1. That §§ 34-1, 34-10, 34-11, 34-12, 34-15, 34-16, 34-17, 34-23, 34-24, 34-31, 34-32, 40.1-21, 40.1-122 and 55-47, as severally amended, of the Code of Virginia are amended and reenacted as follows:

§ 34-1. Definitions.—The word “householder” used in this title shall mean one who occupies such a relationship towards persons living with him as to entitle them to a legal or moral right to look to him for support and who, in turn, has the duty of supporting and governing such persons. The word “householder” shall be equivalent to the expression “householder or head of a family”, and the term “laboring man person” shall be construed to include all householders who receive wages for their services.

§ 34-10. How real estate, so set apart, held after death of householder.—The real estate set apart by any householder in his lifetime shall, after his death, be held by his ~~widow~~ surviving spouse and minor children, or such of them as there may be, exempt as before and also from the debts and obligations of such ~~widow~~ surviving spouse and children or any of them, until ~~her~~ his death or marriage, and, after ~~her~~ his death or marriage, by such children until they respectively attain the age of eighteen years, or marry, if they marry before attaining that age.

§ 34-11. How set apart, if not by householder in his lifetime.—If no real estate or not so much as the householder may have been entitled to set apart has been so set apart by him in his lifetime, upon his death his ~~widow~~ surviving spouse and minor children, or such of them as there may be, on petition to the circuit court of the county or ~~to any city court of the~~ city wherein his real estate or the greater part thereof is, may have so much thereof set apart by commissioners appointed by the court as the householder might have set apart in his lifetime. to be held by them as it would have been under the preceding section (§ 34-10) if it had been so set apart.

§ 34-12. If surviving spouse receives dower, jointure or curtesy he cannot have the exemption.—The two preceding sections (§§ 34-10, 34-11) are subject to this qualification: If the ~~widow~~ surviving spouse be entitled to dower ~~or~~ jointure or curtesy, under ~~Chapter 2 of Title 64 [Chapter 2 (§ 64.1-19 et seq.) of Title 64.1]~~ Chapter 2 (§ 64.1-19 et seq.) of Title 64.1, and claims and receives either, ~~she~~ he shall not have the benefit of the provisions of either of such sections; but, in such case, the rights of the minor children thereunder shall not be impaired.

§ 34-15. How, if householder has not set it apart in his lifetime.—If a householder die, leaving a ~~wife~~ spouse or minor children, and he has not selected and set apart personal estate as provided in the two preceding sections (§§ 34-13, 34-14) ~~she~~ such surviving spouse, or if ~~she~~ such spouse die or marry, such minor children, each by his guardian or next friend, may select and set apart such personal estate in the manner prescribed by the preceding section (§ 34-14); and the same so set apart, and what, if any, may have been set apart by the householder in his lifetime, shall

be held by the ~~widow~~ *surviving spouse* and minor children in the same manner and exempt as real estate set apart under this chapter would be held by them after the death of such householder. If a ~~widow~~ *surviving spouse* receives dower or, jointure or *curtesy* under ~~chapter 2 of Title 64~~ *Chapter 2 of Title 64* [~~chapter (§ 64.1-19 et seq.) of Title 64.1~~] *Chapter 2 (§ 64.1-19 et seq.) of Title 64.1*, the value thereof shall be deducted from any exemption ~~she~~ *such spouse* may claim under this section, but in such case the rights of minor children hereunder shall not be impaired.

§ 34-16. Sale of exempted property after householder's death.—Any real or personal estate set apart and held as a homestead by a householder in his lifetime, or by his ~~widow~~ *surviving spouse* and minor children, or any of them, after his death, may, upon his death, on a petition for the purpose filed by such ~~widow~~ *spouse* and minor children, or any of them, in the circuit court of the county, or ~~city circuit or corporation court of the corporation~~, wherein they or any of them reside, or the estate or any part thereof is, be sold by order of the court and the proceeds of sale invested in other property, if it appears to the court that such sale and investment would be proper. To such petition all others interested who are not plaintiffs shall be made defendants.

§ 34-17. When the exemption may be set apart.—The real or personal estate which a householder, his ~~widow~~ *surviving spouse* or minor children are entitled to hold as exempt may be set apart at any time before it is subjected by sale or otherwise under judgment, decree, order, execution or other legal process, provided that (1) any person who files a voluntary petition in bankruptcy may set it apart before or on the same day that he files his petition but not thereafter, or (2) any person against whom an involuntary petition in bankruptcy is filed may set it apart at any time before the expiration of the period after its adjudication within which he is required to file his schedules.

§ 34-23. How claim enforced when exemption waived, etc.—In any proceeding for the enforcement of a claim, which by reason of the waiver aforesaid or otherwise, is paramount to the exemption, if there be in the county or ~~corporation city~~ wherein the proceeding is estate of the debtor other than that which has been set apart as aforesaid, such other estate shall be subjected and exhausted before the estate so set apart is resorted to. If, however, the claim is secured by mortgage, deed of trust or other specific lien on the estate set apart, nothing in this section contained shall prevent the enforcement of the security in the first instance and before resorting to other estate of the debtor. If a debtor die leaving unsecured debts which stand on the same footing but as to some of which the homestead is waived and as to others not, his property not embraced in the homestead shall be first applied ratably to all debts of the same class and if it be not sufficient to pay them all in full, then the creditors holding a waiver of the homestead exemption may resort to the property set apart as a homestead for the payment of the balance of their debts.

§ 34-24. When the exemption ceases; how estate passes; lien of judgment or decree against householder.—When any person, entitled as a householder to the exemption provided for in § 34-4, ceases to be a householder or when any person removes from this State, his right to claim or hold any estate as exempt under the provisions of this chapter, shall cease; and, upon the death of a householder leaving neither ~~wife~~ *surviving spouse* nor minor children surviving him, or, if ~~she~~ *the spouse* or any of them survive ~~him~~ *the decedent householder*, and he leaves any estate which they or any of them are entitled to hold, or to have set apart to be held by them, as exempt under the preceding sections of this chapter, then upon

~~her~~ *such spouse's* death or marriage, and if there be minor children, as soon as the youngest of those who attain the age of eighteen years attains that age, or all marry, if they all marry before attaining that age, the exemption of any estate, real or personal, of such householder, then remaining and held as exempt under the provisions of this chapter, shall cease, and it shall pass as other real and personal estate, according to the law of descents and distributions, or as the same may be devised or bequeathed by the householder, subject to his debts; but the lien of a judgment, or decree for money, rendered against a householder, and which is not paramount to the exemption provided for in this chapter, shall, as to the real estate held as exempt by him, his ~~widow~~ *surviving spouse* or minor children, attach to such only of that estate as he may be possessed of or entitled to at the time the exemption thereof ceases, as aforesaid, and until that time the lien shall not be enforced. Such judgments shall attach in the order of their priority, respectively.

§ 34-31. Revocation of such exemption. — Any judgment creditor, upon having a garnishment summons issued upon a judgment against the judgment debtor named in such certificate, may give five days' written notice, to be served personally on the employer and the judgment debtor by any officer authorized by law to serve civil process, that he will apply to the court; *or judge* ~~or trial justice~~ who issued such certificate to have the same revoked, and, upon proof that the holder of the certificate is no longer entitled to the exemption allowed thereby, the court; *or judge* ~~or trial justice~~ shall revoke the same and require the holder to deliver such certificate to the court, which shall cancel the same.

§ 34-32. Illegal to garnish such exempt wages out of State, etc.—No person shall institute or permit to be instituted proceedings in his own name or in the name of any other person or shall assign or transfer, either for or without value, any claim for debt or liability of any kind held by him against a resident of this State who is a laboring ~~man~~ *person* and a householder for the purpose of having payment of the same or any part thereof enforced out of the wages exempted by § 34-29 by proceedings in attachment or garnishment in courts or before justices of the peace or other trial justices in any other state than this State, or to send out of this State by assignment, transfer or in any other manner whatsoever, either for or without value, any claim or debt against any resident thereof for the purpose or with the intent of depriving such person of the right to have his wages exempt from distress, levy or garnishment according to the provisions of § 34-29. And the person instituting such suit or permitting such suit to be instituted or sending, assigning, or transferring any such claim or debt for the purpose or with the intent aforesaid shall, upon conviction thereof, be fined not less than ten nor more than one hundred dollars and shall, in addition thereto, be civilly liable to the person from whom payment of the same, or any part thereof, shall have been enforced by attachment or garnishment or otherwise, elsewhere than in this State, for the full amount, payment whereof shall have been so enforced, together with interest thereon and the costs of the attachment or garnishee proceedings, as well as the costs of such action.

The amount recovered in such action shall stand on the same footing with the wages of the plaintiff under § 34-29 and shall be exempt and free from any and all liability of the plaintiff to the defendant in the way of setoff or otherwise.

The fact that the payment of a claim or debt against any person entitled to the exemption provided for in § 34-29 has been enforced by legal proceedings in some state other than this State in such manner as to de-

prive such person to any extent of the benefit of such exemption shall be prima facie evidence that any resident of this State who may at any time have been owner or holder of the claim or debt has violated this section.

§ 40.1-21. When violation a felony; penalty.—Any person or employment agency which shall knowingly send any ~~female~~ help or servants to any place of bad repute, house of ill fame or assignation house or to any house or place kept for immoral purposes, or to any person for immoral purposes, shall be deemed guilty of a felony and upon conviction in any court of competent jurisdiction shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars or by imprisonment in the penitentiary not less than one year nor more than ten years, or by both such fine and imprisonment.

§ 40.1-122. Approval of agreement by Council; signing.—No apprentice agreement under this chapter shall be effective until approved by the Council. Every apprentice agreement shall be signed by the employer, or by an association of employers or an organization of employees as provided in § 40.1-124, and by the apprentice, and, if the apprentice is a minor, by the minor's father *or mother*; provided, that ~~if the father be dead or legally incapable of giving consent or has abandoned his family then by the minor's mother~~; if both father and mother be dead or legally incapable of giving consent *or have abandoned their children*, then by the guardian of the minor.

§ 55-47. Nothing contained in the preceding sections of this chapter shall be construed to prevent the creation of equitable separate estates. They may be created as heretofore and shall be held in all respects according to the provisions of the instrument by which they are created and with all the powers conferred by such instrument.

However, with the exception of those provisions of the chapter relating to the preservation of the equitable separate estates for women, nothing in this chapter shall be construed to distinguish between or discriminate against either men or women in the acquisition, holding or disposition of any rights in property either real or personal.

2. That Article 3 of Chapter 3 of Title 40.1 of the Code of Virginia, consisting of §§ 40.1-34 through 40.1-38, as severally amended, is repealed.

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HOUSE JOINT RESOLUTION NO. .

Directing the Virginia Code Commission to continue its study pursuant to House Joint Resolution No. 272 of the 1973 Acts of Assembly insofar as it requires a study of Title 64.1 of the Code of Virginia.

Whereas, the General Assembly of Virginia, at its nineteen hundred seventy-three Session, adopted House Joint Resolution No. 272 directing the Code Commission to report upon certain titles of the Code involving women; and

Whereas, the Code Commission, after careful consideration, has determined that this study insofar as it relates to Title 64.1 of the Code of Virginia, should be continued until such time as the General Assembly has acted upon the recommendations of: (1) the Virginia Advisory Legislative Council pursuant to House Joint Resolution No. 225 of nineteen hundred seventy-three which requires a study of the laws on dower and curtesy and (2) the Courts of Justice Committees of the House of Dele-

gates and of the Senate pursuant to House Joint Resolution No. 234 of nineteen hundred seventy-three which requires a study of the laws relating to the probate of wills and the administration of estates; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That the Virginia Code Commission is hereby directed to continue its study and report pursuant to House Joint Resolution No. 272 of the 1973 Acts of Assembly, insofar as it relates to Title 64.1 of the Code of Virginia, until such time as the General Assembly of Virginia has acted upon: (1) the report of the Virginia Advisory Legislative Council relating to the laws of dower and curtesy and (2) the report of the Courts of Justice Committees of the House of Delegates and of the Senate relating to laws of probate of wills and administration of estates.

The Commission shall conclude its study and make its report at the session of the General Assembly next following the session at which the General Assembly acts upon the aforesaid reports.

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