

**REPORT OF THE  
JOINT SUBCOMMITTEE STUDYING**

**VIRGINIA'S EXEMPTION  
STATUTES**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**HOUSE DOCUMENT NO. 77**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1990**

## Members of the Joint Subcommittee

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Thomas J. Michie, Jr., Vice Chairman  
G. C. Jennings  
Robert W. Ackerman  
William J. Howell  
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Report of the  
Joint Subcommittee Studying  
Virginia's Exemption Statutes  
To  
The Governor and the General Assembly  
of Virginia  
Richmond, Virginia  
May, 1990

To: The Honorable L. Douglas Wilder, Governor  
and  
The General Assembly of Virginia

I. AUTHORITY FOR STUDY

House Joint Resolution 284, 1989, patroned by Delegate Whittington W. Clement (Danville), established a seven-member joint subcommittee to study Virginia's statutory property exemptions available to debtors against the claims of creditors. The resolution directed the joint subcommittee to reexamine these exemptions and analyze the equity and feasibility of protecting retirement and pension plans from attack by creditors. Several states have enacted statutes which specifically exempt retirement benefits from creditor process. Virginia currently protects certain other types of property from creditors (e.g., homestead, certain life insurance, and household items).

The membership of the joint subcommittee was appointed as follows: the Speaker of the House of Delegates appointed Delegates W. Tayloe Murphy, Jr., G. C. Jennings, and Robert W. Ackerman from the House Committee for Courts of Justice; Delegate William J. Howell from the House Committee on Finance; and Delegate Whittington W. Clement as an ex officio member of the joint subcommittee. The Senate Committee on Privileges and Elections appointed Senators Elmo G. Cross, Jr., and Thomas J. Michie, Jr., from the Senate Committee for Courts of Justice, and Senator Howard P. Anderson from the Senate Committee on Finance.

II. INTRODUCTION

The Bankruptcy Reform Act of 1978 (11 U.S.C.A. § 522, et seq.) provided that property in which a debtor has a legal or equitable interest becomes property of the estate and automatically passes to the bankruptcy trustee. (Only nonexempt property was included in the estate under former law.) In order for exempt property to be excluded from the estate, a debtor must claim the property as exempt under state or federal law. It is incumbent upon the bankruptcy court then to determine whether a claimed exemption actually exists and to fit the state exemption statutes, if applicable, into federal bankruptcy procedures.

The Act provided a federal schedule for the exemption of property but gave the states the power to limit residents to state exemptions. Virginia is

one of thirty-six states<sup>1</sup> which have "opted out" of the federal exemption scheme. Va. Code § 34-3.1. The apparent reason for Virginia's choice was to maintain the existing "balance" between debtor and creditor interests. According to some critics, the scale was already weighted in favor of creditors. At the very best, most practitioners agree Virginia's exemption statutes are antiquated.

### III. PROPERTY EXEMPTIONS

Although often referred to as a plan or a scheme, Virginia's statutory exemptions were not enacted with an eye toward creating a body of law to balance debtor and creditor interests. Exemptions have been adopted one-by-one over the years with seemingly little consideration for existing statutes. Most of the exemptions constitute Title 34 of the Virginia Code, but there are many other exemptions which appear throughout the entire Code.

An examination of state exemption laws reveals wide disparity among the states. Some states do not recognize a homestead exemption while others allow the exemption without monetary limit. There are states which have unlimited exemptions of life insurance policies and others which restrict such an exemption to the face value of a policy. There are probably as many state exemption schemes as there are states which have opted out of the federal scheme.

#### A. Virginia Property Exemptions

##### 1. Homestead and Poor Debtor's Exemptions

Every householder in Virginia is entitled to exempt certain property, valued up to \$5,000, from the claim of creditors under the homestead exemption. Va. Code § 34-4. Traditionally, the homestead exemption had been treated as a device for the preservation of the family home. However, current Virginia law and its construction have broadened the scope of the homestead to include personal property as well as real estate and have broadened the definition of a householder to encompass those persons without dependents. There are several exceptions to the homestead exemption (e.g., claims for taxes, levies, and assessments; rent; and child support). Va. Code § 34-5. These exceptions give certain creditors a higher status and advantage over other classes of creditors.

In addition to the homestead exemption, every householder is entitled to exempt a number of household items such as the family Bible, clothing, beds and bedding, and certain tools of trade. Va. Code § 34-26. Commonly known as the poor debtor's exemption, this statute is

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<sup>1</sup>Thirty-six states have adopted their own exemptions: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Missouri, Montana, Nebraska, Nevada, New Hampshire, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Utah, Virginia, West Virginia, and Wyoming.

designed to ensure that the minimum essentials for daily life are free from creditor claims. It may also prevent a creditor from levying on property which has little or no resale value. The Code provides an additional agriculture exemption, with some monetary limits, for farmers. Va. Code § 34-27. Certain disabled veterans are also granted an additional \$2,000 exemption. Va. Code § 34-4.1.

## 2. Life and Other Insurance Exemptions

In addition to exemptions for accident and sickness benefits<sup>2</sup> and industrial sick benefits,<sup>3</sup> Virginia law provides an exemption for life insurance proceeds.<sup>4</sup> Section 38.2-3122 provides that where a life insurance policy is payable to a third party, the policy is exempt from the claims of creditors. However, where a debtor retains the right to change the beneficiary, § 38.2-3123 bars the exclusion of the policy or policies. A debtor who is also a householder and who retains the right to a change of beneficiary is afforded the exclusion of such policies up to \$10,000. This cap is applicable to the total value of all such policies and applies to the "cash surrender value,"<sup>5</sup> not the face value of the policy. The debtor's right to exempt the proceeds of such policies is not limited by the maximums allowed under the homestead exemption. The exemptions under §§ 38.2-3122 and 38.2-3123 are independent. In general, any insurance premiums paid with the intent to defraud creditors may be recovered under Virginia's fraudulent conveyance statutes (Va. Code § 55-80, et seq.).

## 3. Tenants by the Entirety Exemption

Judicial decisions in Virginia have long recognized the sanctity of property held as tenants by the entirety, thus immunizing such property from the claims of creditors. Case decisions have determined that personal property, as well as real property, held in this manner is also exempt from such attack. Immunity from creditors' claims for a debtor's principal residence held as tenants by the entirety is a statutory exemption unlimited in amount. Va. Code § 55-37. The reasoning behind this exemption in Virginia's statutes is much the same as for other exemptions -- the preservation and protection of the family unit. This

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<sup>2</sup>Va. Code § 38.2-3406.

<sup>3</sup>Va. Code § 38.2-3549.

<sup>4</sup>Va. Code §§ 38.2-3122 and 38.2-3123. See also Va. Code § 38.2-3811 (Cooperative nonprofit life insurance), § 38.2-3339 (Group life insurance), § 38.2-4118 (Fraternal societies benefits), § 38.2-3118 (Spendthrift trusts created under life insurance policies), and § 38.2-4021 (Burial societies benefits).

<sup>5</sup>The "cash surrender value" of a life policy is the reserve less a surrender charge. In other words, those premiums paid in excess of the amount required to provide life insurance.

immunity, however, applies only against individual creditors of each spouse and not to joint creditors.

#### 4. Spendthrift Trusts

Under Virginia law, spendthrift trusts are viewed as a means of providing for the support and maintenance of a beneficiary. Section 55-19 provides that an estate of up to \$500,000 may be created that is not liable for the beneficiary's debts or assignable by the beneficiary. In order to qualify as a spendthrift trust, (i) the trust must provide for support and maintenance of the beneficiary, (ii) the settlor must intend to protect the trust from the beneficiary's creditors, and (iii) the settlor must intend to prevent the beneficiary's alienation of assets.

#### 5. Miscellaneous Exemptions

##### (a) Garnishment

The garnishment exemption<sup>6</sup> is, in actuality, a federal creature. The Consumer Credit Protection Act (CCPA) (15 U.S.C.A. § 1671 et seq.) limits the amount of disposable earnings which may be attached in garnishment. Although the Act is binding on all states, it permits the states to establish state restrictions which are greater than those under the Act. Virginia has adopted the federal minimums. Va. Code § 34-29. The CCPA does not provide procedural guidelines for garnishment; it merely sets the minimum exemption standard. Garnishment proceedings are governed by state law. Va. Code § 8.01-511 et seq.

Virginia Code Section 34-29 sets out the maximum portion of an individual's disposable earnings which may be subjected to garnishment. The maximums are (i) 25 percent of the individual's weekly disposable earnings, or (ii) the amount by which the individual's weekly disposable earnings exceed 30 times the federal minimum hourly wage. These restrictions do not apply to (i) support orders; (ii) an order of a bankruptcy court under Chapter XIII of the Bankruptcy Act; or (iii) debts for state or federal taxes.

This section also defines earnings and disposable earnings:

". . . earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program,

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<sup>6</sup>The Supreme Court has ruled, in Kokoszka v. Belford, 417 U.S. 642 (1974), that the CCPA garnishment provisions do not create an exemption in bankruptcy because those provisions do not protect earnings against all forms of creditor process.

". . . disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld . . .<sup>7</sup>

(b) Public Benefits Exemption

Virginia law allows exemption of certain public benefits provided by the state. These exemptions include workers' compensation benefits (Va. Code § 65.1-82) and unemployment compensation benefits (Va. Code § 60.2-600). Exemption of public benefits serves the state's policy of protecting the debtor and his family from financial devastation, a policy which subjecting such benefits to attack by creditors would negate. Under the same reasoning, awards under the Criminal Injuries Compensation Fund (Va. Code § 19.2-368.18) are exempt from claim by creditors. Va. Code § 19.2-368.12.

There are a number of other exemptions which appear throughout the Code and are broadly applicable in some cases and, in others, very specific to certain debtors.<sup>8</sup>

B. Federal Property Exemptions

Although the Bankruptcy Reform Act of 1978 allowed the states to create their own exemptions in bankruptcy, it did not exempt the states from certain other federal debtor exemptions.<sup>9</sup> Congress has enacted a number of exemptions of moneys received by individuals from certain federal funds, including Social Security payments (42 U.S.C.A. § 407). Benefit payments made by the Veteran's Administration are exempt before and after those payments are received by the beneficiary (38 U.S.C.A. § 301(a)). The Supreme Court has ruled, however, that these VA payments are exempt while liquid but not exempt

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<sup>7</sup>"Amounts required by law to be withheld" include federal, state, and local taxes, social security, unemployment compensation, and workers' compensation withholdings.

<sup>8</sup>Cemetery burial funds, Title 11; Fraternal benefits societies, Title 38.2; Military equipment of National Guard, Title 44; Uniform Partnership Act, individual partner interest, Title 50; Public assistance payments, Title 63; Veterans benefits, Title 34; Family of deceased, additional homestead, Title 64.

<sup>9</sup>11 U.S.C.A. § 522 provides, in part:

"(b). . .[A]n individual debtor may exempt from property of the estate either---

(1) property that is specified under subsection (d) of this section, unless the state law that is applicable to the debtor. . . specifically does not authorize; or, on the alternative,

(2)(A) any property that is exempt under Federal law, other than subsection (d) of this section, as State or local law that is applicable on the date of the filing of the petition. . ."



in the form of real or personal property purchased with such payments. Masters, seamen, apprentices, and fishermen employed on fishing vessels enjoy a wage exemption from execution, garnishment, or attachment (46 U.S.C.A. § 601). The Longshoremen's and Harbor Worker's Compensation Act (33 U.S.C.A. § 916) provides for an exemption of death and disability benefits paid under the Act. Federal law also provides exemptions for various civil service retirement benefits and pensions.

#### IV. RETIREMENT BENEFITS EXEMPTIONS

The Virginia Supplemental Retirement Act (Va. Code § 51-111.9 et seq.) provides that retirement benefits under the Virginia Supplemental Retirement System (VSRS) (Va. Code § 51-111.11) and the State Police Officers Retirement System (Va. Code § 51-143 et seq.) shall be exempt from attack by creditors and any assignment of such benefits is unenforceable.

Under federal law, pension benefits of civil servants, in general, are not assignable or "subject to execution, levy, attachment, garnishment, or other legal process . . ." (5 U.S.C.S. § 8346(a)). This exemption applies to various retirement and pension plans established by various acts of Congress, including the Railroad Retirement Act among many others. The significant exception to this rule permits the division of retirement annuities as necessary to effectuate state marital property laws.

In 1974, Congress passed the Employee Retirement Income Security Act (ERISA) (29 U.S.C.A. § 1001 et seq.) which prohibits the assignment or alienation of employee retirement benefits received under qualified pension plans and proscribes attachment of these benefits by creditors. As is true of federal employee pensions, the exemptions provided do not extend to obligations to pay spousal or child support under state court orders.

The Internal Revenue Code requires that a qualified pension or profit-sharing plan provide that benefits under such plan are not assignable or alienable. (26 U.S.C.S. § 401(a)(13)). ERISA contains this same prohibition and a "preemption of state law" provision (29 U.S.C.S. § 1144(a)). In other words, a pension plan is a qualified plan if it specifically provides that plan participants are prohibited from assigning or pledging their interests to creditors.

As previously explained, a Virginia debtor who files a petition in bankruptcy is limited to the exemptions available under state law and "applicable non-bankruptcy law." See 11 U.S.C.S. § 541 (c)(2), Bankruptcy Reform Act. All property in which a debtor has a legal or equitable interest, at the time of bankruptcy, is brought into the estate. Under the interpretation of a growing number of federal courts of "applicable non-bankruptcy law," qualified retirement plans have been excluded from a debtor's estate only if the plans are enforceable under the state's

spendthrift trust laws.<sup>10</sup> However, spendthrift trust laws, as discussed earlier, do not allow a settlor to create a valid spendthrift trust for his own benefit. This debtor-settlor connection is usually present when a sole practitioner, self-employed individual, or professional corporation sets up a retirement plan for its partners, officers, or directors.

Fewer courts have subscribed to a broader interpretation. The Kansas Bankruptcy Court has held that "applicable non-bankruptcy law" includes both the state's spendthrift trust law and ERISA's anti-alienation provisions.<sup>11</sup> The court reasoned that including a professional corporation's pension plan in the debtor's estate would place the bankruptcy trustee in a better position than general creditors, and that the plan's restriction on alienation should be enforceable against the trustee as against general creditors.<sup>12</sup>

The Fourth Circuit has followed the majority view in its interpretation of "applicable non-bankruptcy law." In a 1985 case, the court ruled that the term makes no reference to federal law and, therefore, funds excluded from a debtor's estate are only those allowed under state law (see McLean v. Central States, Southeast and Southwest Areas Pension Fund, 762 F. 2d 1204 (1985)). In Virginia, as in many other states, this translates to an available exemption of retirement funds where, and only where, the plan itself qualifies as a spendthrift trust. In other words, an employee's interest, in general, will survive bankruptcy as excluded property under a spendthrift trust. However, such trusts established by an owner-employee or a self-employed individual would be self-settled trusts and would not qualify as spendthrift.

## V. SUBCOMMITTEE DELIBERATIONS

During the course of this study, the joint subcommittee considered two issues: (i) whether Virginia law should provide for the exemption of retirement benefits and (ii) whether the exemptions under Virginia law truly reflect the current needs and obligations of debtors.

### A. Retirement Benefits Exemption

In considering the adoption of a retirement benefits exemption, the joint subcommittee found that Virginia law is inconsistent as to the application of exemptions to Virginia retirees. Under federal law, in order for a retirement plan to qualify under ERISA or the Internal Revenue Code, such plan must specifically provide that interests in the plan may not be assigned to creditors, yet the bankruptcy code contains no provision which honors this ERISA restriction. The bankruptcy code does state that restrictions on the transfer of a beneficial interest in a trust will be honored if that

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<sup>10</sup>See McLean v. Central States, Southeast and Southwest Areas Pension Fund, 762 F. 2d 1204 (1985); In the matter of Goff, 706 F. 2d 574 (1983); In re Keer, 65 B.R. 739 (Bankr. S. Utah 1986); In re Osburn, 56 B.R. 867 (Bankr. S.D. Ohio 1986); In re Crenshaw, 51 B.R. 554 (Bankr. N.D. Ala. 1985).

<sup>11</sup>See In re Ralston, 61 B.R. 502 (Bankr. D. Kan. 1986).

<sup>12</sup>Id. at 505. See also In re Holt 32 B.R. 767 (Bankr. Ed Tenn 1983).

restriction is enforceable under applicable non-bankruptcy law. A trust interest so restricted will be excluded from the debtor's bankruptcy estate. The Fourth Circuit Court of Appeals has ruled that "applicable non-bankruptcy law" is a reference to state law and, therefore, does not include ERISA and the Internal Revenue Code.

Virginia's state law which may be interpreted as including retirement and pension plans is the spendthrift trust law. This law contains its own restrictions, such as the absence of control over the corpus by the beneficiary. An employee's interest, in general, will survive bankruptcy as excluded property under a spendthrift trust. However, such trust set up by an owner-employee or a self-employed individual would be a self-settled trust and would not qualify as spendthrift. In applying this rule, it would seem that Virginia law inadvertently categorizes employee-retirees as (i) beneficiaries of spendthrift trusts and entitled to exemption of their retirement benefits, (ii) beneficiaries of the state retirement plan for public employees and entitled to exemption under specific state law, or (iii) beneficiaries of a self-settled trust and, therefore, not entitled to any exemption.

In debating this fairness issue, the joint subcommittee considered whether the Commonwealth has any economic or social interest in providing an exemption for retirement benefits. The 1986 Tax Reform Act reduced tax rates, considerably in some cases, for many individuals. The Act, however, reduced the tax benefit an employer could receive for employee retirement plans. Under the former tax system, these plans encouraged employers to contribute funds to retirement plans for employees and themselves. Employers actually benefited from generous contributions to retirement plans because the money grew tax-free. Such is not the case under the Reform Act. Employers now lose money in the long run from contributions to retirement plans. This obviously discourages the establishment of employee retirement plans.

The joint subcommittee decided it is in the best interests of the citizens of the Commonwealth to encourage employers to provide retirement plans for their employees. The adoption of a retirement benefits exemption would place employers and employees on par under the law as retirees and may provide encouragement to employers, as members of the same plan as is established for their employees, to exempt their own retirement funds from the claims of creditors.

In recommending the adoption of a retirement benefits exemption, the joint subcommittee necessarily considered the issue of whether such an exemption under state law would be preempted by federal law, specifically ERISA. ERISA preempts "any and all state laws insofar as they may now or hereafter relate to any employee benefit plan." Although a state exemption of retirement benefits would clearly "relate to" employee benefit plans under ERISA, the joint subcommittee concluded that such a state exemption should not be preempted by ERISA for the following reasons. ERISA provides in section 514(d) that the Act may not be construed to "alter, amend, modify, invalidate, impair or supercede any law of the United States . . . or any rule or regulation issued under such law." By its own terms, the administration of the U.S. Bankruptcy Code depends upon state exemption statutes. Preempting such state statutes would seriously impair the bankruptcy code, therefore, the joint subcommittee believes that a Virginia exemption would withstand a preemption challenge.

## B. Property Exemptions

The fundamental purpose of property exemption statutes is to protect a debtor and his dependents from absolute poverty and, in doing so, protect the state from assuming the support of debtors and their families. These statutes also are meant to provide, in some measure, an opportunity for the rehabilitation of the debtor into a viable economic participant in society. In applying exemption statutes, the debtor retains enough property to sustain a minimum standard of living and, in theory, to continue to provide support for his family. The issue under consideration during this study was whether Virginia's statutory exemptions, when reviewed in their entirety, serve this fundamental purpose.

The joint subcommittee primarily focused on Virginia's two main exemptions: the homestead exemption (Va. Code § 34-4) and the poor debtor's exemption (Va. Code § 34-26). The homestead exemption is an exemption of up to \$5,000 in real and/or personal property. The poor debtor's exemption is basically a laundry list of personal property which is exempt from creditor claim (e.g., the family bible, clothing, and household items).

The ability of an individual to claim the homestead exemptions is based on a convoluted statutory definition of householder. More than ten years ago, the legislature removed the historical requirement that a householder be one who supports dependents. Case law has further refined this definition by allowing a husband and a wife who make financial contributions to the "household," though not necessarily in equal amounts, to each claim the \$5,000 homestead exemption. The only remaining requirement is that a householder maintain a separate residence. [A very recent decision by a Roanoke bankruptcy court allowed a debtor to claim the homestead exemption based on the debtor's financial contribution to the maintenance of the residence though not technically a residence separate from that of the debtor's parents. In re Howell, 106 Bankr. 99, W.D.Va. 1989.

In broadening the definition of householder to include all residents, the joint subcommittee found little or no rationale for barring those persons who do not maintain a separate residence from claiming the homestead exemption. If that debtor supports himself, but does not maintain a separate residence from his parent or other person, should he not be entitled to the exemption as a self-supporting individual? On the other hand, if that person is indeed the dependent of another who provides his sole support, what extensions of credit would be made to someone with no visible means of support? On balance, the joint subcommittee recognized that it is incumbent upon creditors to assess the risk in extending credit and, in fact, the suggested amendment may clarify the risk for creditors in many instances.

The joint subcommittee recommended an addition to the homestead exemption. This addition would allow a \$500 per dependent exemption of real or personal property. Such additional exemptions are allowed in a number of states (e.g., North Carolina) and, the joint subcommittee reasoned, are well-founded in light of the public policy of exemptions serving to avoid welfare dependency.

The joint subcommittee members unanimously agreed that Virginia's current poor debtor's statute is desperately in need of modernization. Nothing underscored this need better than a recent case in which a fairly well-known

debtor was granted by a Virginia bankruptcy court the exemption of a valuable racehorse under the exempt items of the poor debtor's statute. Looking again to North Carolina, the joint subcommittee adopted a scheme of providing categories of exempt property with monetary limits applicable to each category. This scheme would safeguard against abuse by returning the poor debtor's statute to its original purpose. That purpose is to provide exemption of certain property which, in the estimation of the legislature, is necessary to sustain daily life.

Daily life has changed considerably in the years since the adoption of Virginia's poor debtor's statute. Changes in common modes of transportation and communication and in the lifestyles of the Commonwealth's citizens have rendered many of the provisions of the statute inapplicable to debtors in most cases. The joint subcommittee considered situations in which a debtor may wish to exempt a television set and a telephone for purposes of emergency messages and bulletins (e.g., storm warnings and summoning emergency services). The recommended changes would allow such an exemption as household furnishings. The joint subcommittee also agreed that a motor vehicle is necessary for most citizens.

The joint subcommittee also considered amendments to the list of debts to which exemptions do not apply (Va. Code § 34-5). The joint subcommittee recommended that this list contain only (i) debts for the purchase price of exempted property and (ii) obligations for spousal or child support. Overall, the joint subcommittee found that the various categories in the current statute are either covered elsewhere or simply create a priority for certain classes of creditors.

Under current law, the proceeds of life insurance policies which are payable to assignees or beneficiaries are free from the claims of creditors of the insured or of the person effecting the policy. Va. Code § 38.2-3122. Section 38.2-3123 negates this exemption for policies under which the right to change the beneficiary is reserved. Householders are allowed an exemption of such insurance up to \$10,000. The joint subcommittee decided that under the recommended bill and, to some extent, under current law, this exemption is without reasonable justification. Because the recommended statutory changes broaden the definition of householder to all residents and allow additional exemptions for dependents, there is no longer a need to protect householders with dependents under insurance policies. This is accomplished through the various recommended amendments to Title 34.

In recommending the repeal of the householder's insurance exemption, the joint subcommittee made a policy decision that a creditor should have no greater claim to the proceeds of a life insurance policy than the debtor has himself, nor should the debtor be able to shield a policy which, in fact, benefits him and not his dependents. The recommended amendment to § 38.2-3123 puts the law in the posture of extending the exemption to the true owner of the proceeds of life insurance policies.

Finally, the joint subcommittee considered the adoption of a statutory exemption of personal injury causes of action. The Fourth Circuit Court of Appeals found in Tignor v. Parkinson, 729 F.2d 977 (1984), that because of changes in federal bankruptcy law, personal injury causes of action and their proceeds are (i) property of the bankrupt estate and (ii) entitled to exemption only under the homestead exemption statute. Earlier bankruptcy

court decisions had allowed the exemption of such causes of action under § 8.01-26 and common law.

The joint subcommittee decided that the Commonwealth's policy on this issue should reflect the intent of § 8.01-26 (prohibiting the assignment of personal rights of action) and the premise of personal injury awards which is to return the injured party to his pre-injury status. Under current law, the members offered, a creditor may have a right to the personal injury award compensating a debtor for the loss of his hand even where the creditor had no right to levy on the hand. The joint subcommittee's recommendation, therefore, establishes a statutory exemption for all causes of action for personal injury and the proceeds derived from any court award or settlement. The policy of the Commonwealth of exempting disability payments, such as worker's compensation, would be extended to private actions through the adoption of this statute. This recommendation is also in keeping with existing exemptions of awards from the Criminal Injuries Compensation Fund and various federal rehabilitation and compensation funds.

#### VI. RECOMMENDATIONS

The joint subcommittee made the following recommendations for introduction in the 1990 Session of the General Assembly:

1. That the definition of "householder" be expanded to include all residents of the Commonwealth;
2. That the homestead exemption be increased by \$500 per dependent;
3. That exemptions apply to all debts except purchase money debts, child and spousal support, and local and state taxes;
4. That forms be provided for claiming exemptions of real and personal property to give creditors notice of exempted property;
5. That the poor debtor's exemption be modernized to reflect current debtor needs and obligations;
6. That an exemption of personal injury causes of action and the resulting awards and settlements be codified; and
7. That the life insurance exemption applicable to householders be repealed.

Respectfully submitted,

W. Tayloe Murphy, Jr., Chairman  
Thomas J. Michie, Jr., Vice Chairman  
G. C. Jennings  
Robert W. Ackerman  
William J. Howell  
Howard P. Anderson  
Elmo G. Cross, Jr.  
Whittington W. Clement, Ex officio

**VII. APPENDICES**

Appendix A                      House Joint Resolution 284, 1989

Appendix B                      Senate Bill 200, 1990  
House Bill 532, 1990

Appendix C                      Senate Bill 201, 1990  
House Bill 533, 1990

## GENERAL ASSEMBLY OF VIRGINIA -- 1989 SESSION

### HOUSE JOINT RESOLUTION NO. 284

*Establishing a joint subcommittee to study exempting retirement benefits from the claims of creditors.*

Agreed to by the House of Delegates, February 6, 1989

Agreed to by the Senate, February 23, 1989

WHEREAS, the U.S. Bankruptcy Code exempts a debtor's pension plan from creditors' claims provided the plan is necessary for the support and maintenance of the debtor and any dependents; and

WHEREAS, Virginia has not adopted the federal bankruptcy exemption provisions due to § 34-3.1 of the Code; therefore, a debtor's retirement benefits are subject to creditors' claims; and

WHEREAS, Virginia exempts five types of property from creditors: (1) the homestead, which is property of the debtor's own choosing not to exceed \$5,000 in value, (ii) specifically listed household items, (iii) life insurance with a cash value of \$10,000 or less, (iv) property held as tenancy by the entirety, and (v) personal injury causes of action; and

WHEREAS, other states, such as Texas, Michigan and Illinois, have enacted statutes expressly exempting qualified retirement plans from creditors' claims subject to certain restrictions or conditions; and

WHEREAS, the federal policy and statutes of other states seem more equitable because they protect from creditors' claims pension plans of self-employed individuals, small businesses and professional corporations that have devoted years to prudent planning for retirement, and whose retirement benefits are a substantial asset of their estate; and

WHEREAS, Virginia's statutes regarding exemptions which a debtor may invoke against a creditor's claims, should be reexamined to analyze the equity and feasibility of protecting qualified pension plans from the claims of creditors; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study property exemptions available to debtors against claims of creditors in Virginia. The membership of the joint subcommittee shall be as follows: three members of the House Committee for Courts of Justice and one member of the House Finance Committee to be appointed by the Speaker of the House of Delegates; and two members of the Senate Committee for Courts of Justice and one member of the Senate Committee on Finance to be appointed by the Senate Committee on Privileges and Elections.

The joint subcommittee shall complete its work in time to submit its recommendations to the 1990 Session of the General Assembly.

The indirect costs of this study are estimated to be \$13,045; the direct costs of this study shall not exceed \$6,300.



## 1990 SESSION

LD2438125

**SENATE BILL NO. 200**  
Offered January 22, 1990

*A BILL to amend and reenact § 55-19 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 4 of Title 34 a section numbered 34-34, relating to exemption of retirement benefits.*

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Patrons—Michie and Anderson; Delegates: Clement, Jennings and Howell

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Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 55-19 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 4 of Title 34 a section numbered 34-34 as follows:

*§ 34-34. Certain retirement benefits exempt.—A. For the purposes of this section:*

*"Alternate payee" shall have the same meaning as provided under § 206 of the Employee Retirement Income Security Act of 1974 (ERISA). In the case of a retirement plan that is not subject to ERISA, the term "alternate payee" means an individual who has an interest in a retirement plan pursuant to a judgment, decree, or order, including approval of a property settlement agreement, that would be described in § 206(d)(3)(B) of ERISA if the retirement plan were subject to ERISA.*

*"Annual benefit" means an amount payable as an annuity for the lifetime of the individual who claims the exemption provided under this section, assuming that annuity payments will commence upon the individual's attainment of age sixty-five or, if the individual attained age sixty-five on or before the exemption provided under this section is claimed, the individual's age on the date that the exemption is claimed.*

*"Individual account plan" shall have the same meaning as provided under § 3(34) of ERISA, whether or not the retirement plan is subject to ERISA.*

*"Retirement plan" means a plan, account, or arrangement that is intended to satisfy the requirements of United States Internal Revenue Code §§ 401, 403(a), 408, 409 (as in effect prior to repeal by United States P.L. 98-369), or § 457. Whether a plan, account, or arrangement is intended to satisfy the requirements of one of the foregoing provisions shall be determined based on all of the relevant facts and circumstances including, but not limited to, the issuance of a favorable determination letter by the United States Internal Revenue Service, reports or returns filed with United States or state agencies, and communications from the plan sponsor to participants.*

*B. The interest of an individual under a retirement plan shall be exempt from creditor process to the extent provided under this section. The exemption provided by this section shall be available whether such individual has an interest in the retirement plan as a participant, beneficiary, contingent annuitant, alternate payee, or otherwise.*

*C. The exemption provided under subsection B shall not apply to the extent that the interest of the individual in the retirement plan would provide an annual benefit in excess of \$17,500. If an individual has an interest in more than one retirement plan, the limitation of this subsection C shall be applied as if all such retirement plans constituted a single plan. The amount required to provide an annual benefit of \$17,500 shall be determined under the following table:*

Attained Age When Exemption Claimed	Cost of \$1 of Annual Benefit
16	0.1482
17	0.1603
18	0.1734
19	0.1875
20	0.2028

<b>1</b>	<b>21</b>	<b>0.2193</b>
<b>2</b>	<b>22</b>	<b>0.2371</b>
<b>3</b>	<b>23</b>	<b>0.2564</b>
<b>4</b>	<b>24</b>	<b>0.2773</b>
<b>5</b>	<b>25</b>	<b>0.2998</b>
<b>6</b>	<b>26</b>	<b>0.3241</b>
<b>7</b>	<b>27</b>	<b>0.3505</b>
<b>8</b>	<b>28</b>	<b>0.3789</b>
<b>9</b>	<b>29</b>	<b>0.4096</b>
<b>10</b>	<b>30</b>	<b>0.4429</b>
<b>11</b>	<b>31</b>	<b>0.4789</b>
<b>12</b>	<b>32</b>	<b>0.5178</b>
<b>13</b>	<b>33</b>	<b>0.5598</b>
<b>14</b>	<b>34</b>	<b>0.6054</b>
<b>15</b>	<b>35</b>	<b>0.6546</b>
<b>16</b>	<b>36</b>	<b>0.7080</b>
<b>17</b>	<b>37</b>	<b>0.7658</b>
<b>18</b>	<b>38</b>	<b>0.8284</b>
<b>19</b>	<b>39</b>	<b>0.8963</b>
<b>20</b>	<b>40</b>	<b>0.9699</b>
<b>21</b>	<b>41</b>	<b>1.0497</b>
<b>22</b>	<b>42</b>	<b>1.1363</b>
<b>23</b>	<b>43</b>	<b>1.2304</b>
<b>24</b>	<b>44</b>	<b>1.3326</b>
<b>25</b>	<b>45</b>	<b>1.4436</b>
<b>26</b>	<b>46</b>	<b>1.5645</b>
<b>27</b>	<b>47</b>	<b>1.6960</b>
<b>28</b>	<b>48</b>	<b>1.8394</b>
<b>29</b>	<b>49</b>	<b>1.9958</b>
<b>30</b>	<b>50</b>	<b>2.1665</b>
<b>31</b>	<b>51</b>	<b>2.3530</b>
<b>32</b>	<b>52</b>	<b>2.5571</b>
<b>33</b>	<b>53</b>	<b>2.7808</b>
<b>34</b>	<b>54</b>	<b>3.0260</b>
<b>35</b>	<b>55</b>	<b>3.2954</b>
<b>36</b>	<b>56</b>	<b>3.5915</b>
<b>37</b>	<b>57</b>	<b>3.9175</b>
<b>38</b>	<b>58</b>	<b>4.2771</b>
<b>39</b>	<b>59</b>	<b>4.6748</b>
<b>40</b>	<b>60</b>	<b>5.1150</b>
<b>41</b>	<b>61</b>	<b>5.6035</b>
<b>42</b>	<b>62</b>	<b>6.1472</b>
<b>43</b>	<b>63</b>	<b>6.7538</b>
<b>44</b>	<b>64</b>	<b>7.4330</b>
<b>45</b>	<b>65</b>	<b>8.1958</b>
<b>46</b>	<b>66</b>	<b>7.9989</b>
<b>47</b>	<b>67</b>	<b>7.8007</b>
<b>48</b>	<b>68</b>	<b>7.6009</b>
<b>49</b>	<b>69</b>	<b>7.3985</b>
<b>50</b>	<b>70</b>	<b>7.1924</b>
<b>51</b>	<b>71</b>	<b>6.9830</b>
<b>52</b>	<b>72</b>	<b>6.7706</b>
<b>53</b>	<b>73</b>	<b>6.5556</b>
<b>54</b>	<b>74</b>	<b>6.3393</b>

1	75	6.1222
2	76	5.9054
3	77	5.6897
4	78	5.4763
5	79	5.2638
6	80	5.0529
7	81	4.8447
8	82	4.6403
9	83	4.4395
10	84	4.2415
11	85	4.0456
12	86	3.8522
13	87	3.6616
14	88	3.4742
15	89	3.2904
16	90	3.1106
17	91	2.9354
18	92	2.7653
19	93	2.6011
20	94	2.4415
21	95	2.2867
22	96	2.1367
23	97	1.9935
24	98	1.8558
25	99	1.7214
26	100	1.5972
27	101	1.4755
28	102	1.3478
29	103	1.2690
30	104	1.1738
31	105	1.0679
32	106	0.7517
33	107	0.0000
34	108	0.0000
35	109	0.0000
36	110	0.0000

37 *For example, the amount required to provide an annual benefit of \$17,500 to an individual*  
 38 *who attained age 60 at the time the exemption provided by this section is claimed is*  
 39 *\$89,512.50 (\$17,500 times 5.1150).*

40 *D. The exemption provided under subsection B shall not apply to amounts contributed*  
 41 *to a retirement plan during the fiscal year of the retirement plan that includes the date*  
 42 *on which the individual claims the exemption and for the two preceding fiscal years of*  
 43 *the retirement plan. The exemption provided under subsection B shall not apply to the*  
 44 *earnings on contributions described in this subsection.*

45 *E. The exemption provided under subsection B shall not apply to claims made against*  
 46 *an individual by the alternate payee of such individual or to claims made against such*  
 47 *individual by the Commonwealth under § 63.1-251.*

48 *F. If two individuals who are married or were married are entitled to claim the*  
 49 *exemption provided under subsection B of an interest under the same retirement plan or*  
 50 *plans and such individuals are jointly subject to creditor process as to the same debt or*  
 51 *obligation and the debt or obligation arose during the marriage, then the exemption*  
 52 *provided under subsection B as to such debts or obligations shall not exceed, in the*  
 53 *aggregate, the amount that would provide an annual benefit of \$17,500. The maximum*  
 54 *amount that may be exempted shall be allocated among such persons in the same*

1 *proportion as their respective interests in the retirement plan or plans.*

2 *G. The exemption provided under this section must be claimed within the time limits*  
3 *prescribed by § 34-17.*

4 § 55-19. Estates in trust subject to debts of beneficiaries; exception for spendthrift trusts.  
5 -All trust estates shall be subject to the debts and charges of the persons who are  
6 beneficiaries of such trusts as if those persons owned a similar interest in the trust estate.  
7 However, any such estate, not exceeding \$500,000 in actual value, may be held in trust  
8 upon condition that the trust corpus and income, or either of them, shall in the case of a  
9 simple trust or, in the case of a complex trust, may in the discretion of the fiduciary be  
10 paid to or applied by the trustee for the benefit of the beneficiaries without being subject  
11 to their liabilities or to alienation by them, but no such trust shall operate to the prejudice  
12 of any existing creditor of the creator of such trust. *The exception for spendthrift trusts*  
13 *shall not apply to an interest in a trust, contract, or other fund maintained in conjunction*  
14 *with an employee benefit plan, as defined in § 100(3) of Title 29 of the United States*  
15 *Code, or a similar plan or arrangement regardless of whether the beneficiary may claim*  
16 *the exemption provided under § 34-34.*

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<b>Official Use By Clerks</b>	
<p><b>Passed By The Senate</b></p> <p>without amendment <input type="checkbox"/></p> <p>with amendment <input type="checkbox"/></p> <p>substitute <input type="checkbox"/></p> <p>substitute w/amdt <input type="checkbox"/></p>	<p><b>Passed By The House of Delegates</b></p> <p>without amendment <input type="checkbox"/></p> <p>with amendment <input type="checkbox"/></p> <p>substitute <input type="checkbox"/></p> <p>substitute w/amdt <input type="checkbox"/></p>
Date: _____	Date: _____
Clerk of the Senate	Clerk of the House of Delegates

1990 SESSION

LD1592532

HOUSE BILL NO. 532

Offered January 22, 1990

A BILL to amend and reenact § 55-19 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 4 of Title 34 a section numbered 34-34, relating to exemption of retirement benefits.

Patrons—Clement, Howell, Murphy and Jennings; Senators: Anderson, Michie and Cross

Referred to the Committee on Appropriations

Be it enacted by the General Assembly of Virginia:

1. That § 55-19 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 4 of Title 34 a section numbered 34-34 as follows:

§ 34-34. Certain retirement benefits exempt.—A. For the purposes of this section:

“Alternate payee” shall have the same meaning as provided under § 206 of the Employee Retirement Income Security Act of 1974 (ERISA). In the case of a retirement plan that is not subject to ERISA, the term “alternate payee” means an individual who has an interest in a retirement plan pursuant to a judgment, decree, or order, including approval of a property settlement agreement, that would be described in § 206(d)(3)(B) of ERISA if the retirement plan were subject to ERISA.

“Annual benefit” means an amount payable as an annuity for the lifetime of the individual who claims the exemption provided under this section, assuming that annuity payments will commence upon the individual’s attainment of age sixty-five or, if the individual attained age sixty-five on or before the exemption provided under this section is claimed, the individual’s age on the date that the exemption is claimed.

“Individual account plan” shall have the same meaning as provided under § 3(34) of ERISA, whether or not the retirement plan is subject to ERISA.

“Retirement plan” means a plan, account, or arrangement that is intended to satisfy the requirements of United States Internal Revenue Code §§ 401, 403(a), 408, 409 (as in effect prior to repeal by United States P.L. 98-369), or § 457. Whether a plan, account, or arrangement is intended to satisfy the requirements of one of the foregoing provisions shall be determined based on all of the relevant facts and circumstances including, but not limited to, the issuance of a favorable determination letter by the United States Internal Revenue Service, reports or returns filed with United States or state agencies, and communications from the plan sponsor to participants.

B. The interest of an individual under a retirement plan shall be exempt from creditor process to the extent provided under this section. The exemption provided by this section shall be available whether such individual has an interest in the retirement plan as a participant, beneficiary, contingent annuitant, alternate payee, or otherwise.

C. The exemption provided under subsection B shall not apply to the extent that the interest of the individual in the retirement plan would provide an annual benefit in excess of \$17,500. If an individual has an interest in more than one retirement plan, the limitation of this subsection C shall be applied as if all such retirement plans constituted a single plan. The amount required to provide an annual benefit of \$17,500 shall be determined under the following table:

Attained Age When Exemption Claimed	Cost of \$1 of Annual Benefit
16	0.1482
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<b>3</b>	<b>23</b>	<b>0.2564</b>
<b>4</b>	<b>24</b>	<b>0.2773</b>
<b>5</b>	<b>25</b>	<b>0.2998</b>
<b>6</b>	<b>26</b>	<b>0.3241</b>
<b>7</b>	<b>27</b>	<b>0.3505</b>
<b>8</b>	<b>28</b>	<b>0.3789</b>
<b>9</b>	<b>29</b>	<b>0.4096</b>
<b>10</b>	<b>30</b>	<b>0.4429</b>
<b>11</b>	<b>31</b>	<b>0.4789</b>
<b>12</b>	<b>32</b>	<b>0.5178</b>
<b>13</b>	<b>33</b>	<b>0.5598</b>
<b>14</b>	<b>34</b>	<b>0.6054</b>
<b>15</b>	<b>35</b>	<b>0.6546</b>
<b>16</b>	<b>36</b>	<b>0.7080</b>
<b>17</b>	<b>37</b>	<b>0.7658</b>
<b>18</b>	<b>38</b>	<b>0.8284</b>
<b>19</b>	<b>39</b>	<b>0.8963</b>
<b>20</b>	<b>40</b>	<b>0.9699</b>
<b>21</b>	<b>41</b>	<b>1.0497</b>
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<b>23</b>	<b>43</b>	<b>1.2304</b>
<b>24</b>	<b>44</b>	<b>1.3326</b>
<b>25</b>	<b>45</b>	<b>1.4436</b>
<b>26</b>	<b>46</b>	<b>1.5645</b>
<b>27</b>	<b>47</b>	<b>1.6960</b>
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<b>30</b>	<b>50</b>	<b>2.1665</b>
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<b>32</b>	<b>52</b>	<b>2.5571</b>
<b>33</b>	<b>53</b>	<b>2.7808</b>
<b>34</b>	<b>54</b>	<b>3.0260</b>
<b>35</b>	<b>55</b>	<b>3.2954</b>
<b>36</b>	<b>56</b>	<b>3.5915</b>
<b>37</b>	<b>57</b>	<b>3.9175</b>
<b>38</b>	<b>58</b>	<b>4.2771</b>
<b>39</b>	<b>59</b>	<b>4.6748</b>
<b>40</b>	<b>60</b>	<b>5.1150</b>
<b>41</b>	<b>61</b>	<b>5.6035</b>
<b>42</b>	<b>62</b>	<b>6.1472</b>
<b>43</b>	<b>63</b>	<b>6.7538</b>
<b>44</b>	<b>64</b>	<b>7.4330</b>
<b>45</b>	<b>65</b>	<b>8.1958</b>
<b>46</b>	<b>66</b>	<b>7.9989</b>
<b>47</b>	<b>67</b>	<b>7.8007</b>
<b>48</b>	<b>68</b>	<b>7.6009</b>
<b>49</b>	<b>69</b>	<b>7.3985</b>
<b>50</b>	<b>70</b>	<b>7.1924</b>
<b>51</b>	<b>71</b>	<b>6.9830</b>
<b>52</b>	<b>72</b>	<b>6.7706</b>
<b>53</b>	<b>73</b>	<b>6.5556</b>
<b>54</b>	<b>74</b>	<b>6.3393</b>

1	75	6.1222
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6	80	5.0529
7	81	4.8447
8	82	4.6403
9	83	4.4395
10	84	4.2415
11	85	4.0456
12	86	3.8522
13	87	3.6616
14	88	3.4742
15	89	3.2904
16	90	3.1106
17	91	2.9354
18	92	2.7653
19	93	2.6011
20	94	2.4415
21	95	2.2867
22	96	2.1367
23	97	1.9935
24	98	1.8558
25	99	1.7214
26	100	1.5972
27	101	1.4755
28	102	1.3478
29	103	1.2690
30	104	1.1738
31	105	1.0679
32	106	0.7517
33	107	0.0000
34	108	0.0000
35	109	0.0000
36	110	0.0000

37 *For example, the amount required to provide an annual benefit of \$17,500 to an individual*  
 38 *who attained age 60 at the time the exemption provided by this section is claimed is*  
 39 *\$89,512.50 (\$17,500 times 5.1150).*

40 *D. The exemption provided under subsection B shall not apply to amounts contributed*  
 41 *to a retirement plan during the fiscal year of the retirement plan that includes the date*  
 42 *on which the individual claims the exemption and for the two preceding fiscal years of*  
 43 *the retirement plan. The exemption provided under subsection B shall not apply to the*  
 44 *earnings on contributions described in this subsection.*

45 *E. The exemption provided under subsection B shall not apply to claims made against*  
 46 *an individual by the alternate payee of such individual or to claims made against such*  
 47 *individual by the Commonwealth under § 63.1-251.*

48 *F. If two individuals who are married or were married are entitled to claim the*  
 49 *exemption provided under subsection B of an interest under the same retirement plan or*  
 50 *plans and such individuals are jointly subject to creditor process as to the same debt or*  
 51 *obligation and the debt or obligation arose during the marriage, then the exemption*  
 52 *provided under subsection B as to such debts or obligations shall not exceed, in the*  
 53 *aggregate, the amount that would provide an annual benefit of \$17,500. The maximum*  
 54 *amount that may be exempted shall be allocated among such persons in the same*

1 *proportion as their respective interests in the retirement plan or plans.*

2 *G. The exemption provided under this section must be claimed within the time limits*  
3 *prescribed by § 34-17.*

4 § 55-19. Estates in trust subject to debts of beneficiaries; exception for spendthrift trusts.  
5 -All trust estates shall be subject to the debts and charges of the persons who are  
6 beneficiaries of such trusts as if those persons owned a similar interest in the trust estate.  
7 However, any such estate, not exceeding \$500,000 in actual value, may be held in trust  
8 upon condition that the trust corpus and income, or either of them, shall in the case of a  
9 simple trust or, in the case of a complex trust, may in the discretion of the fiduciary be  
10 paid to or applied by the trustee for the benefit of the beneficiaries without being subject  
11 to their liabilities or to alienation by them, but no such trust shall operate to the prejudice  
12 of any existing creditor of the creator of such trust. *The exception for spendthrift trusts*  
13 *shall not apply to an interest in a trust, contract, or other fund maintained in conjunction*  
14 *with an employee benefit plan, as defined in § 1002(3) of Title 29 of the United States*  
15 *Code, or a similar plan or arrangement regardless of whether the beneficiary may claim*  
16 *the exemption provided under § 34-34.*

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<b>Official Use By Clerks</b>	
<p style="text-align: center;"><b>Passed By</b></p> <p><b>The House of Delegates</b></p> <p>without amendment <input type="checkbox"/></p> <p>with amendment <input type="checkbox"/></p> <p>substitute <input type="checkbox"/></p> <p>substitute w/amdt <input type="checkbox"/></p>	<p style="text-align: center;"><b>Passed By The Senate</b></p> <p>without amendment <input type="checkbox"/></p> <p>with amendment <input type="checkbox"/></p> <p>substitute <input type="checkbox"/></p> <p>substitute w/amdt <input type="checkbox"/></p>
Date: _____	Date: _____
_____ Clerk of the House of Delegates	_____ Clerk of the Senate



## 1990 SESSION

LD2506125

## SENATE BILL NO. 201

Offered January 22, 1990

*A BILL to amend and reenact §§ 34-1, 34-3, 34-4, 34-4.1, 34-5, 34-6, 34-13, 34-14, 34-17, 34-18, 34-19, 34-26, and 38.2-3123 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 3 of Title 34 a section numbered 34-28.1, relating to property exemptions.*

Patrons—Michie and Anderson; Delegates: Clement, Jennings and Howell

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 34-1, 34-3, 34-4, 34-4.1, 34-5, 34-6, 34-13, 34-14, 34-17, 34-18, 34-19, 34-26, and 38.2-3123 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 3 of Title 34 a section numbered 34.28.1, as follows:

§ 34-1. Definitions.— ~~The word "householder" as used in this title shall include any person, married or unmarried, who maintains a separate residence or living quarters, whether or not others are living with him. The term "laboring , unless the context requires a different meaning:~~

*"Creditor process" means all methods used by creditors to collect unsecured debts.*

*"Debt" means a legally enforceable monetary obligation or liability of any individual whether arising out of a contract or otherwise, but not an obligation resulting from an intentional tort.*

*"Exempt" means protected from all forms of creditor process.*

*"Exemption" means protection from all forms of creditor process.*

*"Homestead exemption" means that exemption created by § 34-4.*

*"Householder" means any resident of Virginia.*

~~"Laboring person" shall include means any householder person who receives wages for his services.~~

§ 34-3. Articles not exempt from taxes or levies or for their purchase price.—~~The exemption exemptions under §§ 34-26, 34-27, 34-29 and 64-121 , 64.1-151.3 shall not extend to distress for state , county, or corporation or local taxes or levies, nor to levy or distress for the purchase price of any property therein mentioned articles claimed as exempt or any part of the price thereof nor for fines and damages or either arising from trespass by animals under § 55-306 as to such animal so trespassing. If an article purchased and not paid for is exchanged or converted into other property of the debtor, such property shall not be exempt from payment of the unpaid purchase money debt.~~

§ 34-4. Exemption created.—~~Every householder or head of a family residing in this State shall be entitled, in addition to the property or estate which he is entitled to hold exempt from levy, distress or garnishment exempt under §§ 34-26, 34-27 and , 34-29, and 64.1-151.3. to hold exempt from levy, seizure, garnishment or sale under any execution, order or process issued on any demand for creditor process arising out of a debt or liability on contract , his real and personal property, or either, to be selected by him, the householder, including money and debts monetary obligations or liabilities due him, to the value of the householder not exceeding \$5,000 in value . The word "debt," as used in this title, shall be construed to include a liability incurred as the result of an unintentional tort. In addition, upon a showing that a householder supports dependents, the householder shall be entitled to hold exempt from creditor process real and personal property, or either, selected by the householder, including money or monetary obligations or liabilities due the householder, not exceeding \$500 in value for each dependent.~~

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

§ 34-4.1. Additional exemption for certain veterans.—Every veteran residing in this State

1 *Commonwealth* having a service connected disability of forty ~~per centum~~ *percent* or more,  
 2 as rated by the Veterans Administration of the United States, shall be entitled, in addition  
 3 to the property or estate which he is entitled to hold exempt from levy, distress or  
 4 ~~garnishment creditor process~~ under §§ 34-4, 34-26, 34-27, and 34-29, and *64.1-151.3*, to hold  
 5 exempt from levy, seizure, garnishment or sale under any execution, order or process  
 6 issued on any demand for a debt or liability, *creditor process* his real and personal  
 7 property, or either, to be selected by him, including money and debts due him, to the  
 8 value of not exceeding \$2,000 *in value* . The word "debt," as used in this title, shall be  
 9 construed to include a liability incurred as the result of an unintentional tort.

10 § 34-5. To what debts exemptions shall not apply.— ~~Such exemption~~ *The exemptions*  
 11 *created under §§ 34-4 and 34-4.1* shall not extend to any execution order or other process  
 12 issued on any demand in the following cases *be claimed against the following debts* :

13 ~~(1)~~ 1. For the purchase price of such property or any part thereof. If the property  
 14 purchased and not paid for is exchanged for or converted into other property by the  
 15 debtor, such last named property shall not be exempted from the payment of such unpaid  
 16 purchase money under the provisions of § 34-4 .

17 ~~(2)~~ For services rendered by a laboring person or mechanic.

18 ~~(3)~~ For liabilities incurred by any public officer or officer of a court, or any fiduciary,  
 19 or any attorney at law for money collected.

20 ~~(4)~~ For a lawful claim for any taxes, levies or assessments.

21 ~~(5)~~ For rent

22 ~~(6)~~ For the legal or taxable fees of any public officer or officer of a court.

23 ~~(7)~~ Such exemption shall not be claimed or held in a shifting stock of merchandise or  
 24 in any property the conveyance of which by the homestead claimant has been set aside on  
 25 the ground of fraud or want of consideration. A stock of merchandise shall be considered a  
 26 shifting stock within the meaning of this paragraph after an assignment by the owner  
 27 thereof for the benefit of creditors and after a voluntary or involuntary adjudication in  
 28 bankruptcy.

29 ~~(8)~~ 2. For the support of ~~minor children~~ *spousal or child support obligations* .

30 § 34-6. How exemption of real estate secured; form to claim exemption of real  
 31 property.—In order to secure the benefit of the ~~exemption~~ *exemptions* of real estate under  
 32 § § 34-4 and 34-4.1 , the householder shall , by a writing signed by him and duly admitted  
 33 to record, to be recorded as deeds are recorded, in the county or ~~corporation~~ *city* wherein  
 34 such real estate , or any part thereof , is *located*, shall declare his intention to claim such  
 35 benefit and select and set apart the real estate to be held by ~~him~~ *the householder* as  
 36 exempt, and describe the same with reasonable certainty, affixing to the description his  
 37 cash valuation of the estate so selected and set apart. Equitable as well as legal estates  
 38 may be so selected and set apart. *The following form, or one which is substantially*  
 39 *similar, shall be used and shall be sufficient for the writing required by this section:*

40 *HOMESTEAD DEED FOR REAL PROPERTY*

41 *Name of Householder*.....  
 42 *Is the householder a disabled veteran entitled to claim the*  
 43 *additional exemption under § 34-4.1?*.....  
 44 *Address of Householder*.....  
 45 *Name(s) and age(s) of dependent(s)*.....  
 46 *County/city in which real property claimed as exempt is located..*  
 47 .....  
 48 *Description of property claimed as exempt*.....  
 49 .....  
 50 .....  
 51 *Value of property described above*.....  
 52 .....

53 [ACKNOWLEDGMENT]

(Signature of Householder)

54 § 34-13. Householder may set apart exemption in personal estate.—If the householder

1 does not set apart any real estate as before provided, or if what he does or has so set  
 2 apart is not of the *total* value of \$5,000 which he is entitled to hold exempt , he may, in  
 3 addition to the property or estate which he is entitled to hold exempt under §§ 34-26, 34-27  
 4 and , 34-29 , and 64.1-151.3 , in the first case select and set apart to be held by him as  
 5 exempt under § 34-4 and 34-4.1 , so much of his personal estate as shall not exceed in  
 6 the total value the sum of \$5,000 which he is entitled to hold exempt and, in the latter  
 7 case, personal estate, the value of which, when added to the value of the real estate set  
 8 apart, does not exceed such ~~sum~~ total value .

9 § 34-14. How set apart in personal estate; form to claim exemption of personal property.  
 10 -Such personal estate shall be selected by the householder and set apart in a writing  
 11 signed by him. He shall, in the writing, designate and describe with reasonable certainty  
 12 the personal estate so selected and set apart and each parcel or article, affixing to each  
 13 his cash valuation thereof; and such writing shall be admitted to record, to be recorded as  
 14 deeds are recorded, in the county or ~~corporation~~ city wherein such householder resides.

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

18 **HOMESTEAD DEED FOR PERSONAL PROPERTY**

19 *Name of Householder.....*  
 20 *Is the householder a disabled veteran entitled to claim the*  
 21 *additional exemption under § 34-4.1? .....*  
 22 *Address of Householder.....*  
 23 *Name(s) and age(s) of dependent(s).....*  
 24 *County/city in which householder resides.....*  
 25 *Description of property claimed as exempt and its value.....*  
 26 *.....*  
 27 *.....*

28 [ACKNOWLEDGMENT] (Signature of Householder)

29 § 34-17. When exemption may be set apart.-The real or personal estate which a  
 30 householder is entitled to hold as exempt may be set apart at any time before it is  
 31 subjected by sale or otherwise under judgment, decree, order, execution or other legal  
 32 creditor process, provided that (1) any person or, if such creditor process does not require  
 33 sale of the property, before it is turned over to the creditor. To claim an exemption in  
 34 bankruptcy, a householder who (i) files a voluntary petition in bankruptcy may or (ii)  
 35 against whom an involuntary petition in bankruptcy is filed shall set it such real or  
 36 personal property apart on or before the fifth day after the date initially set for the  
 37 meeting held pursuant to 11 USC § 341, but not thereafter , or (2) any person against  
 38 whom an involuntary petition in bankruptcy is filed may set it apart at any time before  
 39 the expiration of the period after its adjudication within which he is required to file his  
 40 schedules . A householder who converts a case from Chapter 13 to Chapter 7 pursuant to  
 41 11 U.S.C. § 348 (a) shall set such real or personal property apart on or before the fifth  
 42 day after the date initially set for the meeting held pursuant to 11 U.S.C. § 341 in the  
 43 Chapter 7 case, but not thereafter. Nothing in this section shall affect the right of the  
 44 trustee in bankruptcy, with the approval of the court, to proceed immediately with the sale  
 45 or other disposition of personal property which the trustee determines to be perishable or  
 46 particularly susceptible to price deterioration.

47 § 34-18. Rents and profits exempt; increase in value of estate set apart.-The rents and  
 48 profits of the property set apart as the homestead shall be exempt in the same manner as  
 49 the corpus of the homestead such property and if the whole real and personal estate set  
 50 apart be not of greater value than \$5,000 the amount the householder is entitled to exempt  
 51 at the time it is so set apart , the exemption thereof shall not be affected by any increase  
 52 in its value afterwards, unless such increase consists of permanent improvements placed  
 53 upon real estate set apart by means derived from some source other than the homestead  
 54 exempt property .

1 § 34-19. How excess in value set apart subjected to debts.—Any creditor, against whom  
 2 the *an* exemption is claimed, may file a bill in equity, alleging that the value of the estate  
 3 at the time it was set apart was more than ~~\$5,000~~ *the amount the householder is entitled*  
 4 *to exempt* or , that by reason of permanent improvements made on the real estate after it  
 5 was set apart by means derived from some source other than ~~the homestead exempt~~  
 6 *property*, the whole estate set apart is of greater value than ~~\$5,000~~ *the amount the*  
 7 *householder is entitled to exempt* ; and if . *If* the court ~~be~~ *is* satisfied , from the proofs in  
 8 the cause , that the allegations of the bill are true, it shall make such decree or order as  
 9 may be necessary to subject the estate set apart, so far as it exceeds in value the sum of  
 10 ~~\$5,000~~ *the amount the householder is entitled to exempt* , to the payment of the debt or  
 11 demand of such creditor.

12 § 34-26. Poor debtor's exemption; exempt articles enumerated.—In addition to the estate,  
 13 not exceeding in value ~~\$5,000~~, ~~which every householder residing in this State shall be~~  
 14 ~~entitled to hold exempt~~, as *exemptions* provided in Chapter 2 (§ 34-4 et seq.) of this title,  
 15 ~~he every householder shall also be entitled to hold exempt from levy or distress creditor~~  
 16 *process* the following articles ~~or so much of so many thereof as he may have, to be~~  
 17 selected by him or his agents *enumerated items* :

18 (1) The family Bible.

19 (1a) Wedding and engagement rings.

20 (2) Family pictures, schoolbooks and library for the use of the family *portraits and*  
 21 *family heirlooms no. to exceed \$5,000 in value* .

22 (3) A lot in a burial ground.

23 (4) All necessary wearing apparel of the debtor and his family, all beds, ~~bedsteads and~~  
 24 bedding necessary for the use of such family, 2 dressers or 2 dressing tables, wardrobes,  
 25 chifforobes or chests of drawers or a dresser and a dressing table; carpets, rugs, linoleum  
 26 or other floor covering; and all stoves and appendages put up and kept for the use of the  
 27 ~~family not exceeding 3~~ *householder not to exceed \$1,000 in value* .

28 (4a) *All household furnishings including, but not limited to, beds, dressers, floor*  
 29 *coverings, stoves, refrigerators, washing machines, dryers, sewing machines, pots and pans*  
 30 *for cooking, plates, and eating utensils, not to exceed \$5,000 in value.*

31 (5) All animals owned as pets, such as cats, dogs, birds, squirrels, rabbits and other  
 32 pets not kept or raised for sale ; 1 cow and her calf until 1 year old, 1 horse, 6 chairs, 6  
 33 plates, 1 table, 12 knives, 12 forks, 2 dozen spoons, 12 dishes, or if the family consists of  
 34 more than 12, then a plate, knife, fork and 2 spoons, and a dish for each member thereof;  
 35 2 basins, 1 pot, 1 oven, 6 pieces of wooden or earthenware; 1 dining room table, 1 buffet,  
 36 china press, 1 icebox, freezer or refrigerator of any construction, 1 washing machine, 1  
 37 clothes dryer not to exceed \$150 in value, 1 loom and its appurtenances, 1 kitchen safe or  
 38 1 kitchen cabinet or press, 1 spinning wheel, 1 pair of cards, 1 axe and ~~provisions~~ other  
 39 than those hereinafter set out of the value of \$50; 2 hoes; 50 bushels of shelled corn, or, in  
 40 lieu thereof, 25 bushels of rye or buckwheat; 5 bushels of wheat, or 1 barrel of flour; 20  
 41 bushels of potatoes, 200 pounds of bacon or pork, 3 hogs, fowl not exceeding in value \$25,  
 42 all canned and frozen goods, canned fruits, preserved fruits or home-prepared food put up  
 43 and prepared for use and consumption of the family, \$25 in value of forage or hay, 1  
 44 cooking stove and utensils for cooking therewith, 1 sewing machine, and in case of a  
 45 mechanic, the tools and utensils of his trade, and in case of an oysterman or ~~fisherman~~ his  
 46 boat and tackle, not exceeding \$1,500 in value; if the boat and tackle exceed \$1,500 in  
 47 value the same shall be sold, and out of the proceeds the oysterman or ~~fisherman~~ shall  
 48 first receive \$1,500 in lieu of such boat and tackle *or profit* .

49 (6) *Medically prescribed health aids.*

50 (7) *Tools, books, instruments, implements, equipment, and machines, including motor*  
 51 *vehicles, vessels, and aircraft, which are necessary for use in the course of the*  
 52 *householder's occupation or trade not exceeding \$10,000 in value, except that a perfected*  
 53 *security interest on such personal property shall have priority over the claim of exemption*  
 54 *under this section. "Occupation," as used in this subdivision, includes enrollment in any*

1 public or private elementary, secondary, or vocational school or institution of higher  
2 education.

3 (8) A motor vehicle, not held as exempt under subdivision (7) owned by the  
4 householder not to exceed \$2,000 in value, except that a perfected security interest on the  
5 motor vehicle shall have priority over the claim of exemption under this subsection.

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

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

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

13 No officer or other person shall levy or distrain upon, or attach, such articles, or  
14 otherwise seek to subject such articles to any lien or process.

15 § 34-28.1. Personal injury actions exempt.—Except for liens created under Article 7.1 (§  
16 8.01-66.2 et seq.) of Title 8.01, all causes of action for personal injury and the proceeds  
17 derived from court award or settlement shall be exempt from creditor process against the  
18 injured person.

19 § 38.2-3123. Amount of proceeds limited in certain cases.— A. In the case of policies  
20 under whose the terms of which the right to change the beneficiary is reserved and as to  
21 which the cash surrender or loan value of the policy is claimed by the creditors, the  
22 insurance shall not be entitled to the protection afforded by § 38.2-3122. However,  
23 ~~householders or their beneficiaries or their assignees shall be entitled to the protection~~  
24 ~~afforded by § 38.2-3122 for such insurance not exceeding \$10,000. When the amount of~~  
25 ~~insurance represented by two or more policies exceeds that limit, the protection afforded~~  
26 ~~by § 38.2-3122 shall be allowed as to each of the policies pro rata in accordance with the~~  
27 ~~respective annual premiums involved.~~

28 B. For the purpose of this section, "householder" includes any person, married or  
29 ~~unmarried, who maintains a separate residence or living quarters, whether or not others~~  
30 ~~are living with him.~~

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<b>Official Use By Clerks</b>	
<p><b>Passed By The Senate</b></p> <p>without amendment <input type="checkbox"/></p> <p>with amendment <input type="checkbox"/></p> <p>substitute <input type="checkbox"/></p> <p>substitute w/amdt <input type="checkbox"/></p>	<p style="text-align: center;"><b>Passed By</b></p> <p><b>The House of Delegates</b></p> <p>without amendment <input type="checkbox"/></p> <p>with amendment <input type="checkbox"/></p> <p>substitute <input type="checkbox"/></p> <p>substitute w/amdt <input type="checkbox"/></p>
Date: _____	Date: _____
_____ Clerk of the Senate	_____ Clerk of the House of Delegates

1990 SESSION

LD1094532

HOUSE BILL NO. 533

Offered January 22, 1990

A BILL to amend and reenact §§ 34-1, 34-3, 34-4, 34-4.1, 34-5, 34-6, 34-13, 34-14, 34-17, 34-18, 34-19, 34-26, and 38.2-3123 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 3 of Title 34 a section numbered 34-28.1, relating to property exemptions.

Patrons—Clement, Howell, Murphy and Jennings; Senators: Anderson, Michie and Cross

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 34-1, 34-3, 34-4, 34-4.1, 34-5, 34-6, 34-13, 34-14, 34-17, 34-18, 34-19, 34-26, and 38.2-3123 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 3 of Title 34 a section numbered 34.28.1, as follows:

§ 34-1. Definitions.— The word "householder" as used in this title shall include any person, married or unmarried, who maintains a separate residence or living quarters, whether or not others are living with him. The term "laboring , unless the context requires a different meaning:

"Creditor process" means all methods used by creditors to collect unsecured debts.

"Debt" means a legally enforceable monetary obligation or liability of any individual whether arising out of a contract or otherwise, but not an obligation resulting from an intentional tort.

"Exempt" means protected from all forms of creditor process.

"Exemption" means protection from all forms of creditor process.

"Homestead exemption" means that exemption created by § 34-4.

"Householder" means any resident of Virginia.

"Laboring person" shall include means any householder person who receives wages for his services.

§ 34-3. Articles not exempt from taxes or levies or for their purchase price.—The exemption exemptions under §§ 34-26, 34-27, 34-29 and 64-121 , 64.1-151.3 shall not extend to distress for state , county, or corporation or local taxes or levies, nor to levy or distress for the purchase price of any property therein mentioned articles claimed as exempt or any part of the price thereof nor for fines and damages or either arising from trespass by animals under § 55-306 as to such animal so trespassing. If an article purchased and not paid for is exchanged or converted into other property of the debtor, such property shall not be exempt from payment of the unpaid purchase money debt.

§ 34-4. Exemption created.—Every householder or head of a family residing in this State shall be entitled, in addition to the property or estate which he is entitled to hold exempt from levy, distress or garnishment exempt under §§ 34-26, 34-27 and , 34-29, and 64.1-151.3, to hold exempt from levy, seizure, garnishment or sale under any execution, order or process issued on any demand for creditor process arising out of a debt or liability on contract , his real and personal property, or either, to be selected by him, the householder, including money and debts monetary obligations or liabilities due him, to the value of the householder not exceeding \$5,000 in value . The word "debt," as used in this title, shall be construed to include a liability incurred as the result of an unintentional tort. In addition, upon a showing that a householder supports dependents, the householder shall be entitled to hold exempt from creditor process real and personal property, or either, selected by the householder, including money or monetary obligations or liabilities due the householder, not exceeding \$500 in value for each dependent.

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

§ 34-4.1. Additional exemption for certain veterans.—Every veteran residing in this State

1 *Commonwealth* having a service connected disability of forty per ~~centum~~ percent or more,  
 2 as rated by the Veterans Administration of the United States, shall be entitled, in addition  
 3 to the property or estate which he is entitled to hold exempt from ~~levy, distress or~~  
 4 ~~garnishment creditor process~~ under §§ 34-4, 34-26, 34-27, and 34-29, and 64.1-151.3, to hold  
 5 exempt from ~~levy, seizure, garnishment or sale under any execution, order or process~~  
 6 ~~issued on any demand for a debt or liability, creditor process~~ his real and personal  
 7 property, or either, to be selected by him, including money and debts due him, to the  
 8 value of not exceeding \$2,000 in value . The word "debt," as used in this title, shall be  
 9 construed to include a liability incurred as the result of an unintentional tort.

10 § 34-5. To what debts exemptions shall not apply.— ~~Such exemption~~ *The exemptions*  
 11 *created under §§ 34-4 and 34-4.1 shall not extend to any execution order or other process*  
 12 *issued on any demand in the following cases be claimed against the following debts :*

13 (1) 1. For the purchase price of such property or any part thereof. If the property  
 14 purchased and not paid for is exchanged for or converted into other property by the  
 15 debtor, such last named property shall not be exempted from the payment of such unpaid  
 16 purchase money under the provisions of § 34-4 .

17 (2) For services rendered by a laboring person or mechanic.

18 (3) For liabilities incurred by any public officer or officer of a court, or any fiduciary,  
 19 or any attorney at law for money collected.

20 (4) For a lawful claim for any taxes, levies or assessments.

21 (5) For rent.

22 (6) For the legal or taxable fees of any public officer or officer of a court.

23 (7) Such exemption shall not be claimed or held in a shifting stock of merchandise or  
 24 in any property the conveyance of which by the homestead claimant has been set aside on  
 25 the ground of fraud or want of consideration. A stock of merchandise shall be considered a  
 26 shifting stock within the meaning of this paragraph after an assignment by the owner  
 27 thereof for the benefit of creditors and after a voluntary or involuntary adjudication in  
 28 bankruptcy.

29 (8) 2. For the support of ~~minor children~~ *spousal or child support obligations* .

30 § 34-6. How exemption of real estate secured; form to claim exemption of real  
 31 property.—In order to secure the benefit of the ~~exemption~~ *exemptions* of real estate under  
 32 § § 34-4 and 34-4.1 , the householder shall , by a writing signed by him and duly admitted  
 33 to record, to be recorded as deeds are recorded, in the county or ~~corporation~~ *city* wherein  
 34 such real estate ; or any part thereof ; is located. *shall declare his intention to claim such*  
 35 *benefit and select and set apart the real estate to be held by him the householder as*  
 36 exempt, and describe the same with reasonable certainty, affixing to the description his  
 37 cash valuation of the estate so selected and set apart. Equitable as well as legal estates  
 38 may be so selected and set apart. *The following form, or one which is substantially*  
 39 *similar, shall be used and shall be sufficient for the writing required by this section:*

40 *HOMESTEAD DEED FOR REAL PROPERTY*

41 *Name of Householder.....*

42 *Is the householder a disabled veteran entitled to claim the*  
 43 *additional exemption under § 34-4.1?.....*

44 *Address of Householder.....*

45 *Name(s) and age(s) of dependent(s).....*

46 *County/city in which real property claimed as exempt is located..*

47 *.....*

48 *Description of property claimed as exempt.....*

49 *.....*

50 *.....*

51 *Value of property described above.....*

52 *.....*

53 [ACKNOWLEDGMENT]

(Signature of Householder)

54 § 34-13. Householder may set apart exemption in personal estate.—If the householder

1 does not set apart any real estate as before provided, or if what he does or has so set  
 2 apart is not of the ~~total value of \$5,000~~ which he is entitled to hold exempt , he may, in  
 3 addition to the property or estate which he is entitled to hold exempt under §§ 34-26, 34-27  
 4 ~~and , 34-29 , and 64.1-151.3~~ , in the first case select and set apart to be held by him as  
 5 exempt under § ~~§ 34-4 and 34-4.1~~ , so much of his personal estate as shall not exceed ~~in~~  
 6 ~~the total value the sum of \$5,000~~ which he is entitled to hold exempt and, in the latter  
 7 case, personal estate, the value of which, when added to the value of the real estate set  
 8 apart, does not exceed such ~~sum~~ total value .

9 § 34-14. How set apart in personal estate; form to claim exemption of personal property.  
 10 –Such personal estate shall be selected by the householder and set apart in a writing  
 11 signed by him. He shall, in the writing, designate and describe with reasonable certainty  
 12 the personal estate so selected and set apart and each parcel or article, affixing to each  
 13 his cash valuation thereof; and such writing shall be admitted to record, to be recorded as  
 14 deeds are recorded, in the county or ~~corporation~~ city wherein such householder resides.

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

18 **HOMESTEAD DEED FOR PERSONAL PROPERTY**

19 Name of Householder.....  
 20 Is the householder a disabled veteran entitled to claim the  
 21 additional exemption under § 34-4.1? .....  
 22 Address of Householder.....  
 23 Name(s) and age(s) of dependent(s).....  
 24 County/city in which householder resides.....  
 25 Description of property claimed as exempt and its value.....  
 26 .....  
 27 .....

28 [ACKNOWLEDGMENT] (Signature of Householder)

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 32 creditor process, provided that (1) any person or, if such creditor process does not require  
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 35 against whom an involuntary petition in bankruptcy is filed shall set it such real or  
 36 personal property apart on or before the fifth day after the date initially set for the  
 37 meeting held pursuant to 11 USC § 341, but not thereafter , or (2) any person against  
 38 whom an involuntary petition in bankruptcy is filed may set it apart at any time before  
 39 the expiration of the period after its adjudication within which he is required to file his  
 40 schedules . A householder who converts a case from Chapter 13 to Chapter 7 pursuant to  
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 48 profits of the property set apart as the homestead shall be exempt in the same manner as  
 49 the corpus of the homestead such property and if the whole real and personal estate set  
 50 apart be not of greater value than \$5,000 the amount the householder is entitled to exempt  
 51 at the time it is so set apart , the exemption thereof shall not be affected by any increase  
 52 in its value afterwards, unless such increase consists of permanent improvements placed  
 53 upon real estate set apart by means derived from some source other than the homestead  
 54 exempt property .



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 2 ~~the an~~ exemption is claimed, may file a bill in equity, alleging that the value of the estate  
 3 at the time it was set apart was more than ~~\$5,000~~ *the amount the householder is entitled*  
 4 *to exempt* or , that by reason of permanent improvements made on the real estate after it  
 5 was set apart by means derived from some source other than ~~the homestead exempt~~  
 6 *property*, the whole estate set apart is of greater value than ~~\$5,000~~ *the amount the*  
 7 *householder is entitled to exempt* ; and if . If the court be ~~is~~ satisfied ; from the proofs in  
 8 the cause ; that the allegations of the bill are true, it shall make such decree or order as  
 9 may be necessary to subject the estate set apart, so far as it exceeds ~~in value the sum of~~  
 10 ~~\$5,000~~ *the amount the householder is entitled to exempt* , to the payment of the debt or  
 11 demand of such creditor.

12 § 34-26. Poor debtor's exemption; exempt articles enumerated.—In addition to the estate,  
 13 ~~not exceeding in value \$5,000, which every householder residing in this State shall be~~  
 14 ~~entitled to hold exempt, as exemptions provided in Chapter 2 (§ 34-4 et seq.) of this title,~~  
 15 ~~he every householder shall also be entitled to hold exempt from levy or distress creditor~~  
 16 ~~process the following articles or so much or so many thereof as he may have, to be~~  
 17 ~~selected by him or his agents enumerated items :~~

18 (1) The family Bible.

19 (1a) Wedding and engagement rings.

20 (2) Family pictures, schoolbooks and library for the use of the family *portraits and*  
 21 *family heirlooms not to exceed \$5,000 in value .*

22 (3) A lot in a burial ground.

23 (4) All necessary wearing apparel of the debtor and his family, all beds, bedsteads and  
 24 bedding necessary for the use of such family, 2 dressers or 2 dressing tables, wardrobes,  
 25 chiffonets or chests of drawers or a dresser and a dressing table; carpets, rugs, linoleum  
 26 or other floor covering; and all stoves and appendages put up and kept for the use of the  
 27 family ~~not exceeding 3~~ *householder not to exceed \$1,000 in value .*

28 (4a) *All household furnishings including, but not limited to, beds, dressers, floor*  
 29 *coverings, stoves, refrigerators, washing machines, dryers, sewing machines, pots and pans*  
 30 *for cooking, plates, and eating utensils, not to exceed \$5,000 in value.*

31 (5) All *animals owned as pets, such as cats, dogs, birds, squirrels, rabbits and other*  
 32 *pets not kept or raised for sale ; 1 cow and her calf until 1 year old, 1 horse, 6 chairs, 6*  
 33 *plates, 1 table, 12 knives, 12 forks, 2 dozen spoons, 12 dishes, or if the family consists of*  
 34 *more than 12, then a plate, knife, fork and 2 spoons, and a dish for each member thereof;*  
 35 *2 basins, 1 pot, 1 oven, 6 pieces of wooden or earthenware; 1 dining room table, 1 buffet,*  
 36 *china press, 1 icebox, freezer or refrigerator of any construction, 1 washing machine, 1*  
 37 *clothes dryer not to exceed \$150 in value, 1 loom and its appurtenances, 1 kitchen safe or*  
 38 *1 kitchen cabinet or press, 1 spinning wheel, 1 pair of cards, 1 axe and provisions other*  
 39 *than those hereinafter set out of the value of \$50; 2 hoes; 50 bushels of shelled corn, or, in*  
 40 *lieu thereof, 25 bushels of rye or buckwheat; 5 bushels of wheat, or 1 barrel of flour; 20*  
 41 *bushels of potatoes; 200 pounds of bacon or pork; 3 hogs, fowl not exceeding in value \$25,*  
 42 *all canned and frozen goods, canned fruits, preserved fruits or home-prepared food put up*  
 43 *and prepared for use and consumption of the family, \$25 in value of forage or hay, 1*  
 44 *cooking stove and utensils for cooking therewith, 1 sewing machine, and in case of a*  
 45 *mechanic, the tools and utensils of his trade, and in case of an oysterman or fisherman his*  
 46 *boat and tackle, not exceeding \$1,500 in value; if the boat and tackle exceed \$1,500 in*  
 47 *value the same shall be sold, and out of the proceeds the oysterman or fisherman shall*  
 48 *first receive \$1,500 in lieu of such boat and tackle or profit .*

49 (6) *Medically prescribed health aids.*

50 (7) *Tools, books, instruments, implements, equipment, and machines, including motor*  
 51 *vehicles, vessels, and aircraft, which are necessary for use in the course of the*  
 52 *householder's occupation or trade not exceeding \$10,000 in value, except that a perfected*  
 53 *security interest on such personal property shall have priority over the claim of exemption*  
 54 *under this section. "Occupation," as used in this subdivision, includes enrollment in any*

1 public or private elementary, secondary, or vocational school or institution of higher  
2 education.

3 (8) A motor vehicle, not held as exempt under subdivision (7) owned by the  
4 householder not to exceed \$2,000 in value, except that a perfected security interest on the  
5 motor vehicle shall have priority over the claim of exemption under this subsection.

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

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

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

13 No officer or other person shall levy or distrain upon, or attach, such articles, or  
14 otherwise seek to subject such articles to any lien or process.

15 § 34-28.1. Personal injury actions exempt.—Except for liens created under Article 7.1 (§  
16 8.01-66.2 et seq.) of Title 8.01, all causes of action for personal injury and the proceeds  
17 derived from court award or settlement shall be exempt from creditor process against the  
18 injured person.

19 § 38.2-3123. Amount of proceeds limited in certain cases.— A. In the case of policies  
20 under whose the terms of which the right to change the beneficiary is reserved and as to  
21 which the cash surrender or loan value of the policy is claimed by the creditors, the  
22 insurance shall not be entitled to the protection afforded by § 38.2-3122. However,  
23 householders or their beneficiaries or their assignees shall be entitled to the protection  
24 afforded by § 38.2-3122 for such insurance not exceeding \$10,000. When the amount of  
25 insurance represented by two or more policies exceeds that limit, the protection afforded  
26 by § 38.2-3122 shall be allowed as to each of the policies pro rata in accordance with the  
27 respective annual premiums involved.

28 B. For the purpose of this section, "householder" includes any person, married or  
29 unmarried, who maintains a separate residence or living quarters, whether or not others  
30 are living with him.

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<b>Official Use By Clerks</b>	
<b>Passed By</b>	
<b>The House of Delegates</b>	<b>Passed By The Senate</b>
without amendment <input type="checkbox"/>	without amendment <input type="checkbox"/>
with amendment <input type="checkbox"/>	with amendment <input type="checkbox"/>
substitute <input type="checkbox"/>	substitute <input type="checkbox"/>
substitute w/amdt <input type="checkbox"/>	substitute w/amdt <input type="checkbox"/>
Date: _____	Date: _____
_____ Clerk of the House of Delegates	_____ Clerk of the Senate



