

# CODE OF VIRGINIA



## Title 34

Homestead and Other Exemptions

# Title 34 - HOMESTEAD AND OTHER EXEMPTIONS

## Chapter 1 - GENERAL PROVISIONS

### § 34-1. Definitions.

As used in this title, 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" means any person who receives wages for his services.

Code 1919, § 6566; 1974, c. 272; 1978, c. 253; 1979, c. 674; 1990, c. 942.

### § 34-2. Injunction restraining sale of exempted property or garnishment of wages.

An injunction may be awarded to enjoin the sale of any property exempt under the provisions of this title, and to prevent the wages exempted by § [34-29](#) from being garnisheed or otherwise collected by an execution creditor.

Code 1919, § 6565.

### § 34-3. Articles not exempt from taxes or levies or for their purchase price.

The exemptions under §§ [34-4](#), [34-4.1](#), [34-26](#), [34-27](#), [34-29](#), and [64.2-311](#) shall not extend to distress or lien for state or local taxes or levies, nor to levy, distress, or lien for the purchase price of any articles claimed as exempt or any part of the price thereof nor for fines and damages or either arising from trespass by animals under § [55.1-2810](#) 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.

Code 1919, § 6563; 1990, c. 942; 1996, c. [323](#).

#### § 34-3.1. Property specified in Bankruptcy Reform Act not exempt.

No individual may exempt from the property of the estate in any bankruptcy proceeding the property specified in subsection (d) of § 522 of the Bankruptcy Reform Act (Public Law 95-598), except as may otherwise be expressly permitted under this title.

1979, c. 692.

## Chapter 2 - Homestead Exemption of Householder

### § 34-4. Exemption created.

Every householder shall be entitled, in addition to the property or estate exempt under §§ [23.1-707](#), [34-26](#), [34-27](#), [34-29](#), and [64.2-311](#), to hold exempt from creditor process arising out of a debt, real and personal property, or either, to be selected by the householder, including money and debts due the householder not exceeding \$5,000 in value or, if the householder is 65 years of age or older, not exceeding \$10,000 in value, and, in addition, real or personal property used as the principal residence of the householder or the householder's dependents not exceeding \$25,000 in value. 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.

Code 1919, § 6531; 1918, p. 487; 1975, c. 466; 1977, c. 496; 1978, c. 231; 1990, c. 942; 1997, cc. [785](#), [861](#); 2009, c. [387](#); 2020, c. [328](#).

#### § 34-4.1. Additional exemption for certain veterans.

Every veteran residing in this Commonwealth having a service connected disability of forty percent or more, as rated by the U.S. Department of Veterans Affairs, shall be entitled, in addition to the property or estate which he is entitled to hold exempt from creditor process under §§ [34-4](#), [34-26](#), [34-27](#), [34-29](#), and [64.2-311](#), to hold exempt from creditor process his real and personal property, or either, to be selected by him by the writings required by §§ [34-6](#) and [34-14](#), including money and debts due him, not exceeding \$10,000 in value.

1966, c. 499; 1977, c. 496; 1978, c. 231; 1990, c. 942; 1993, c. 150; 2009, c. [388](#).

#### § 34-4.2. Additional exemption for parents of dependent children.

A. Where a parent supports a dependent minor child or children residing with him, that parent can hold exempt from wage garnishment, in addition to the property or estate that he is entitled to hold exempt from creditor process under §§ [20-108.1](#), [34-4](#), [34-4.1](#), [34-26](#), [34-27](#), [34-29](#), and [64.2-311](#), an additional amount for the support of the child or children as follows: \$34 per week for one child; \$52 per week for two children; and \$66 per week for three or more children. This additional wage exemption amount shall not be available to a parent whose household gross income, including any support payments for children living in the home, exceeds \$1,750 per month. For purposes of this section, "household gross income" means all income from all sources, and shall include, but not be limited to, salaries, wages, commissions, royalties, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, veterans' benefits, child support, spousal

support, rental income, gifts, prizes or awards paid to any adult living in the household or to the dependent child.

B. To claim this wage exemption, the parent shall attach to the claim for exemption form set forth in § [8.01-512.4](#) an affidavit and two items of proof showing that the debtor is entitled to this additional wage exemption. The affidavit shall contain the following statement:

**AFFIDAVIT CONCERNING DEPENDENT CHILDREN AND HOUSEHOLD INCOME**

Having been duly sworn, I, \_\_\_\_\_, depose and state the following to be true, accurate and complete:

1. I support \_\_\_\_\_ (number) dependent children, whose names and ages are as follows. For each child I have included the amount of monthly child support I receive (including voluntary support payments and payments made pursuant to a court or administrative order), and, if the child is employed or has other income, the amount of the child's gross monthly income. (If you receive no support for the child and the child has no income, insert zero.)

Full legal name of child	Age	Child's gross monthly support and income
_____	_____	_____
—	—	—
_____	_____	_____
—	—	—
_____	_____	_____
—	—	—
_____	_____	_____
—	—	—

(attach additional pages if necessary)

2. My personal gross monthly income, not including any of the above amounts, is \$\_\_\_\_\_.

3. The following are the names and gross monthly incomes of all people who reside with me in the same house, apartment or other dwelling, other than the above-named dependent minor child or children. (If the household resident has no income, insert zero.)

Full legal name of household residents	Gross monthly income
_____	_____
_____	_____
_____	_____
_____	_____

(attach additional pages if necessary)

4. I swear or affirm that no person other than the above-named individuals resides with me and that I reside with no person other than the above-named individuals.

\_\_\_\_\_ (signature of debtor)

\_\_\_\_\_ (date)

Commonwealth of Virginia:

City/County of \_\_\_\_\_, to wit:

Subscribed and sworn to before me, the undersigned Notary Public, this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_ (month), \_\_\_\_\_ (year)

Notary Public: \_\_\_\_\_

My commission expires: \_\_\_\_\_

2009, c. [332](#).

**§ 34-5. To what debts exemptions shall not apply.**

The property exemptions created under this Code shall not be claimed against the following debts:

1. For the purchase price of such property or any part thereof. If the property purchased and not paid for is exchanged for or converted into other property by the debtor, such last named property shall not be exempted from the payment of such unpaid purchase money.
2. For spousal or child support obligations.

Code 1919, § 6531; 1918, p. 487; 1956, c. 637; 1986, c. 218; 1990, c. 942; 1991, c. 256; 2010, c. [550](#).

**§ 34-6. How exemption of real estate secured; form to claim exemption of real property.**

In order to secure the benefit of the exemptions of real estate under §§ [34-4](#) and [34-4.1](#), the householder, by a writing signed by him and duly admitted to record, to be recorded as deeds are recorded, in the county or city wherein such real estate or any part thereof is located or, if such property is located outside of the Commonwealth, in the county or city in the Commonwealth where the householder resides, shall declare his intention to claim such benefit and select and set apart the real estate to be held by the householder as exempt, and describe the same with reasonable certainty, affixing to the description his cash valuation of the estate so selected and set apart. However, if such real estate is claimed exempt in a case filed under Title 11 of the United States Code, the official Schedule of Property Claimed as Exempt filed in the United States Bankruptcy Court claiming such exemptions shall be sufficient to set apart such property as exempt. Equitable as well as legal estates may be so selected and set apart. The following form, or one which is substantially similar, shall be used and shall be sufficient for the writing required by this section:

HOMESTEAD DEED FOR REAL PROPERTY

Name of Householder \_\_\_\_\_

Name of title holder of record (if different)

\_\_\_\_\_

Is the householder a disabled veteran entitled to claim the additional exemption under § [34-4.1](#)? \_\_\_\_\_

\_\_\_\_\_

Address of Householder \_\_\_\_\_

Name(s) and age(s) of dependent(s) \_\_\_\_\_

County/city/state in which real property claimed as exempt is located

\_\_\_\_\_  
\_\_\_\_\_

Description of property claimed as exempt

\_\_\_\_\_  
\_\_\_\_\_

Value of property described above \_\_\_\_\_

Number of homestead deeds that have been filed by the Householder

\_\_\_\_\_

Exemption amount previously claimed on prior homestead deeds

\_\_\_\_\_

List the jurisdictions where previous homestead deeds were filed

\_\_\_\_\_

\_\_\_\_\_ (Signature of Householder)

\_\_\_\_\_ [ACKNOWLEDGMENT]

Such writing or deed shall not be required to secure any exemption under this Code except those exemptions created by §§ [34-4](#) and [34-4.1](#).

Code 1919, § 6532; 1990, c. 942; 1993, c. 150; 1998, c. [331](#); 2008, c. [224](#); 2019, c. [492](#); 2020, c. [328](#).

**§ 34-7. Real estate, subject to encumbrances, may be set apart; if sold, how surplus disposed of.**

Such real estate may be selected and set apart as aforesaid, subject to any paramount encumbrances thereon. If a sale be had to satisfy the encumbrances, the surplus of the proceeds, if any, not exceeding the amount to which the householder is entitled under § [34-4](#), shall be paid to the householder and invested by him in such other property as he may select.

Code 1919, § 6533.

**§ 34-8. Partition or sale of real estate held as exempt by joint tenant, etc.**

If the estate so set apart be held by the householder as joint tenant, coparcener or tenant in common, partition or sale may be had as provided by Article 11 (§ [8.01-96](#) et seq.) of Chapter 3 of Title 8.01 and in case of sale the share of the proceeds to which the householder is entitled shall be paid to the householder and invested by him in such other property as he may select.

Code 1919, § 6534.

**§ 34-9. How real estate set apart as exempt may be encumbered or aliened.**

Real estate set apart as aforesaid may be sold and conveyed as other real estate held by the householder and the proceeds invested in other property, or it may in like manner be exchanged for other property, but in no case shall the purchaser be bound to see to the application of the purchase money.

Code 1919, § 6535.

**§§ 34-10 through 34-12. Repealed.**

Repealed by Acts 1981, c. 580.

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

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

Code 1919, § 6539; 1975, c. 466; 1980, c. 167; 1990, c. 942; 1993, c. 150.

**§ 34-14. How set apart in personal estate; form to claim exemption of personal property.**

Such personal estate selected by the householder under § [34-4](#), [34-4.1](#), or [34-13](#) shall be set apart in a writing signed by him. He shall, in the writing, designate and describe with reasonable certainty the personal estate so selected and set apart and each parcel or article, affixing to each his cash valuation thereof. Such writing shall be admitted to record, to be recorded as deeds are recorded in the county or city wherein such householder resides. However, if such personal estate is claimed exempt in a case filed under Title 11 of the United States Code, the official Schedule of Property Claimed as Exempt filed in the United States Bankruptcy Court claiming such exemptions shall be sufficient to set apart such property as exempt.

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

**HOMESTEAD DEED FOR PERSONAL PROPERTY**

Name of Householder \_\_\_\_\_

Is the householder a disabled veteran entitled to claim the additional exemption under § [34-4.1](#)? \_\_\_\_\_

Address of Householder \_\_\_\_\_

Name(s) and age(s) of dependent(s) \_\_\_\_\_

County/city in which householder resides \_\_\_\_\_

\_\_\_\_\_  
Description of property claimed as exempt and its value

\_\_\_\_\_  
Number of homestead deeds that have been filed by the Householder

\_\_\_\_\_  
Exemption amount previously claimed on prior homestead deeds

\_\_\_\_\_  
List the jurisdictions where previous homestead deeds were filed

\_\_\_\_\_  
\_\_\_\_\_  
(Signature of Householder)

\_\_\_\_\_  
[ACKNOWLEDGMENT]

Such writing or deed shall not be required to secure any exemption under this Code except those exemptions created by §§ [34-4](#), [34-4.1](#) and [34-13](#).

Code 1919, § 6540; 1990, c. 942; 1993, c. 150; 2010, c. [186](#); 2020, c. [328](#).

**§§ 34-15, 34-16. Repealed.**

Repealed by Acts 1981, c. 580.

**§ 34-17. When exemption may be set apart; garnished wages.**

A. The real or personal estate that a householder is entitled to hold as exempt may be set apart at any time before it is subjected by sale under creditor process or by a trustee in bankruptcy, or, if such creditor process does not require sale of the property, before it is turned over to the creditor.

B. A claim of homestead exemption to protect garnished wages may be filed by the debtor after the garnishment summons is served on the employer but prior to or upon the return date of the garnishment summons and shall be considered by the garnishing court.

Code 1919, § 6543; 1944, p. 489; 1974, c. 272; 1981, c. 580; 1985, c. 521; 1990, c. 942; 2003, c. [1000](#); 2005, c. [367](#); 2020, c. [328](#).

**§ 34-18. Rents and profits exempt; increase in value of estate set apart.**

The rents and profits of the property set apart shall be exempt in the same manner as the corpus of such property and if the whole real and personal estate set apart be not of greater value than the amount the householder is entitled to exempt at the time it is so set apart, the exemption thereof shall not be affected by any increase in its value afterwards, unless such increase consists of permanent



improvements placed upon real estate set apart by means derived from some source other than exempt property.

Code 1919, § 6544; 1975, c. 466; 1977, c. 496; 1990, c. 942.

**§ 34-19. How excess in value set apart subjected to debts.**

Any creditor, against whom an exemption is claimed, may file a bill in equity, alleging that the value of the estate at the time it was set apart was more than the amount the householder is entitled to exempt or, that by reason of permanent improvements made on the real estate after it was set apart by means derived from some source other than exempt property, the whole estate set apart is of greater value than the amount the householder is entitled to exempt. If the court is satisfied from the proofs in the cause that the allegations of the bill are true, it shall make such decree or order as may be necessary to subject the estate set apart, so far as it exceeds the amount the householder is entitled to exempt, to the payment of the debt or demand of such creditor.

Code 1919, § 6545; 1975, c. 466; 1977, c. 496; 1990, c. 942.

**§ 34-20. Proceeds of sale of estate exempt; how evidenced.**

The estate or property in which proceeds of sale are invested, or which may be acquired in exchange, under any of the preceding sections of this chapter, shall be held exempt in like manner and to the like extent as the estate sold or exchanged was held. But such estate or property when acquired in exchange or otherwise than by investment under an order of court, or unless when set apart by a court, shall be set apart, if real estate, by such a writing as is prescribed by § [34-6](#); if personal estate, by such a writing as is prescribed by § [34-14](#); and such writing shall be recorded as provided by the same sections, respectively. In addition to the requirements of such sections, the writing shall state from what source the estate was derived and with what means acquired. When such estate is invested or set apart under an order of court, a copy of the order and of any report of a commissioner or other officer making the investment thereunder, if confirmed, and a copy of the order of confirmation, duly certified by the clerk of the court, shall be recorded in the deed book of the county or city wherein the writing, if the estate had been set apart by a writing, is required to be recorded.

Code 1919, § 6546.

**§ 34-21. When householder's right to exemption is exhausted.**

When an amount of property, whether real or personal, or both, has been set apart to be held by a householder as exempt under § [34-4](#), [34-4.1](#), or [34-13](#), such amount shall for a period of eight years from such setting apart be applied against the maximum amount to which the householder is entitled to set apart as exempt under § [34-4](#), [34-4.1](#), or [34-13](#).

Code 1919, § 6547; 1975, c. 466; 1977, c. 496; 1990, c. 942; 1996, c. [330](#); 2020, c. [328](#).

**§ 34-22. Waiver of exemption; its effect; form of waiver.**

If any person shall declare in a bond, bill, note or other instrument by which he is or may become liable for the payment of money to another or by a writing thereon or annexed thereto that he waives, as to such obligation, the exemption from liability of the property or estate which he may be entitled to

claim and hold exempt under the provisions of this chapter, such property or estate, whether previously set apart or not, shall be liable to be subjected for such obligation, under legal process, in like manner and to the same extent as other property or estate of such person. But such waiver shall not extend to or affect the exemption of the property or estate exempt under §§ [34-26](#), [34-27](#) and [34-29](#). The following or equivalent words shall be sufficient to operate as the waiver hereinbefore provided for: "I (or we) waive the benefit of my (or our) exemption as to this obligation." If a debt which is superior to the homestead, or as to which the homestead is waived, be paid off by a surety therein, the principal shall not be allowed to claim the homestead as against such surety.

Code 1919, § 6548.

**§ 34-23. How claim enforced when exemption waived, etc.**

In any proceeding for the enforcement of a claim, which by reason of the waiver aforesaid or otherwise, is paramount to the exemption, if there be in the county or city wherein the proceeding is estate of the debtor other than that which has been set apart as aforesaid, such other estate shall be subjected and exhausted before the estate so set apart is resorted to. If, however, the claim is secured by mortgage, deed of trust or other specific lien on the estate set apart, nothing in this section contained shall prevent the enforcement of the security in the first instance and before resorting to other estate of the debtor.

Code 1919, § 6549; 1974, c. 272; 1981, c. 580.

**§ 34-24. When the exemption ceases; lien of judgment or decree against householder.**

When any person, entitled as a householder to the exemption provided for in § [34-4](#), ceases to be a householder or when any person removes from this Commonwealth, his right to claim or hold any estate as exempt under the provisions of this chapter, shall cease; but the lien of a judgment, or decree for money, rendered against a householder, and which is not paramount to the exemption provided for in this chapter, shall, as to the real estate held as exempt by him, attach to such only of that estate as he may be possessed of or entitled to at the time the exemption thereof ceases, as aforesaid, and until that time the lien shall not be enforced. Such judgments shall attach in the order of their priority, respectively, subject to the provisions of Article 2 (§ [64.2-309](#) et seq.) of Chapter 2 of Title 64.2.

Code 1919, § 6550; 1972, c. 825; 1974, c. 272; 1981, c. 580.

**§ 34-25. When homestead waived judgments and executions to so state.**

Whenever a judgment or decree is rendered on an instrument waiving the homestead or upon a demand against which the homestead cannot be claimed the court shall include in its judgment or decree words to the following effect, as the case may be: "Upon an instrument waiving the homestead," or "upon a claim against which the homestead cannot be demanded." This statement shall be endorsed upon the executions issued upon such judgments or decrees. In any action or suit when it is not apparent from the face of the pleadings that the demand is not subject to the homestead exemption the plaintiff shall not have the benefit of the foregoing provision of this section unless in his

declaration he alleges that his demand is not subject to such homestead exemption. But no presumption of nonwaiver or that the judgment or decree was rendered upon a demand against which homestead could be claimed is to be drawn from the silence of any judgment, execution or decree on the matters provided for by this section.

Code 1919, § 6551.

### **Chapter 3 - OTHER ARTICLES EXEMPT**

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

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

1. The family Bible.
  - 1a. Wedding and engagement rings.
2. Family portraits and family heirlooms not to exceed \$5,000 in value.
3. (i) A lot in a burial ground, and (ii) any preneed funeral contract not to exceed \$5,000.
4. All wearing apparel of the householder not to exceed \$1,000 in value.
  - 4a. All household furnishings including, but not limited to, beds, dressers, floor coverings, stoves, refrigerators, washing machines, dryers, sewing machines, pots and pans for cooking, plates, and eating utensils, not to exceed \$5,000 in value.
  - 4b. Firearms, not to exceed a total of \$3,000 in value.
5. All animals owned as pets, such as cats, dogs, birds, squirrels, rabbits and other pets not kept or raised for sale or profit.
6. Medically prescribed health aids.
7. Tools, books, instruments, implements, equipment, and machines, including motor vehicles, vessels, and aircraft, which are necessary for use in the course of the householder's occupation or trade not exceeding \$10,000 in value, except that a perfected security interest on such personal property shall have priority over the claim of exemption under this section. A motor vehicle, vessel or aircraft used to commute to and from a place of occupation or trade and not otherwise necessary for use in the course of such occupation or trade shall not be exempt under this subdivision. "Occupation," as used in this subdivision, includes enrollment in any public or private elementary, secondary, or career and technical education school or institution of higher education.
8. Motor vehicles, not held as exempt under subdivision 7, owned by the householder, not to exceed a total of \$6,000 in value, except that a perfected security interest on a motor vehicle shall have priority over the claim of exemption under this subdivision.

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

10. Unpaid spousal or child support.

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

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

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

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

Code 1919, § 6552; 1934, p. 371; 1936, p. 322; 1956, c. 637; 1970, c. 428; 1975, c. 466; 1976, c. 150; 1977, cc. 253, 496; 1990, c. 942; 1992, c. 644; 1993, c. 150; 2001, c. [483](#); 2002, c. [88](#); 2011, cc. [761](#), [835](#); 2015, c. [686](#).

#### **§ 34-27. Additional articles exempted to householder engaged in agriculture.**

If the householder be at the time actually engaged in the business of agriculture, there shall also be exempt from such levy or distress, while he is so engaged, to be selected by him or his agent, the following articles, or so many thereof as he may have, to wit: a pair of horses or mules unless he selects or has selected a horse or mule under § [34-26](#), in which case he shall be entitled to select under this section only one, with the necessary gearing, one wagon or cart, one tractor, not exceeding in value \$3,000, two plows, one drag, one harvest cradle, one pitchfork, one rake, two iron wedges and fertilizer and fertilizer material not exceeding in value \$1,000. It shall not be required that a householder designate any property exempt under this section in a deed in order to secure such exemption.

Code 1919, § 6533; 1932, p. 324; 1956, c. 637; 1970, c. 428; 1977, c. 496; 1993, c. 150.

#### **§ 34-28. Deed of trust, etc., on such property void.**

Every deed of trust, mortgage or other writing or pledge made by a householder to give a lien on property exempt from distress or levy under § [34-26](#) shall be void as to such property. However, this section shall have no application to (i) property covered by a deed of trust, mortgage or other writing or pledge given by a householder to secure a loan made for the purchase of such property or (ii) security interests in such property having priority over the claim of exemption as specifically provided in subdivisions 7 and 8 of § [34-26](#).

Code 1919, § 6564; 1938, p. 218; 1940, p. 615; 1992, c. 644; 2002, c. [88](#).

#### **§ 34-28.1. Personal injury and wrongful death actions exempt; exceptions.**

Except for liens created under Article 7.1 (§ [8.01-66.2](#) et seq.) of Title 8.01, Article 5 (§ [54.1-3932](#) et seq.) of Title 54.1, and Chapter 19 (§ [63.2-1900](#) et seq.) of Title 63.2, all causes of action for personal injury or wrongful death and the proceeds derived from court award or settlement shall be exempt from creditor process against the injured person or statutory beneficiary as defined in Article 5 (§ [8.01-50](#) et seq.) of Title 8.01. It shall not be required that a householder designate any property exempt under this section in a deed in order to secure such exemption. The provisions of this section shall not be construed to affect any voluntary assignment of the proceeds or anticipated proceeds of a personal injury or wrongful death award or settlement as permitted by § [8.01-26](#).

1990, c. 942; 1991, c. 256; 1993, c. 150; 1994, c. [35](#); 2003, cc. [929](#), [942](#).

#### **§ 34-28.2. Spousal and child support exempt.**

The debtor's right to receive spousal or child support, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, shall be exempt from creditor process.

2015, c. [686](#).

### **Chapter 4 - WAGES EXEMPT**

#### **§ 34-29. Maximum portion of disposable earnings subject to garnishment.**

(a) Except as provided in subsections (b) and (b1), the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed the lesser of the following amounts:

- (1) Twenty-five percent of his disposable earnings for that week, or
- (2) The amount by which his disposable earnings for that week exceed 40 times the federal minimum hourly wage prescribed by § 206 (a) (1) of Title 29 of the United States Code in effect at the time earnings are payable.

In the case of earnings for any pay period other than a week, the State Commissioner of Labor and Industry shall by regulation prescribe a multiple of the federal minimum hourly wage equivalent in effect to that set forth in this section.

(b) The restrictions of subsection (a) do not apply in the case of:

- (1) Any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by state law, which affords substantial due process, and which is subject to judicial review.
- (2) Any order of any court of bankruptcy under Chapter XIII of the Bankruptcy Act.
- (3) Any debt due for any state or federal tax.

(b1) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed:

- (1) Sixty percent of such individual's disposable earnings for that week; or

(2) If such individual is supporting a spouse or dependent child other than the spouse or child with respect to whose support such order was issued, 50 percent of such individual's disposable earnings for that week.

The 50 percent specified in subdivision (b1) (2) shall be 55 percent and the 60 percent specified in subdivision (b1) (1) shall be 65 percent if and to the extent that such earnings are subject to garnishment to enforce an order for support for a period which is more than 12 weeks prior to the beginning of such workweek.

(c) No court of the Commonwealth and no state agency or officer may make, execute, or enforce any order or process in violation of this section.

The exemptions allowed herein shall be granted to any person so entitled without any further proceedings.

(d) For the purposes of this section:

(1) The term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, payments to an independent contractor, or otherwise, whether paid directly to the individual or deposited with another entity or person on behalf of and traceable to the individual, and includes periodic payments pursuant to a pension or retirement program,

(2) The term "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, and

(3) The term "garnishment" means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt.

(e) Every assignment, sale, transfer, pledge or mortgage of the wages or salary of an individual which is exempted by this section, to the extent of the exemption provided by this section, shall be void and unenforceable by any process of law.

(f) No employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness.

(g) A depository wherein earnings have been deposited on behalf of and traceable to an individual shall not be required to determine the portion of such earnings which are subject to garnishment.

Code 1919, § 6555; 1928, p. 348; 1938, p. 574; 1948, p. 489; 1952, c. 432; 1954, cc. 143, 379; 1958, cc. 217, 417; 1960, c. 498; 1970, c. 428; 1978, c. 564; 1992, c. 674; 1996, c. [330](#); 2005, c. [286](#).

### **§ 34-30. Repealed.**

Repealed by Acts 1970, c. 428.

### **§ 34-31. Revocation of such exemption.**

Any judgment creditor, upon having a garnishment summons issued upon a judgment against the judgment debtor named in such certificate, may give five days' written notice, to be served personally on the employer and the judgment debtor by any officer authorized by law to serve civil process, that

he will apply to the court or judge who issued such certificate to have the same revoked, and, upon proof that the holder of the certificate is no longer entitled to the exemption allowed thereby, the court or judge shall revoke the same and require the holder to deliver such certificate to the court, which shall cancel the same.

Code 1919, § 6556; 1932, p. 384; 1936, p. 378; 1974, c. 272.

**§ 34-32. Illegal to garnish such exempt wages out of Commonwealth, etc.**

No person shall institute or permit to be instituted proceedings in his own name or in the name of any other person or shall assign or transfer, either for or without value, any claim for debt or liability of any kind held by him against a resident of the Commonwealth who is a laboring person and a householder for the purpose of having payment of the same or any part thereof enforced out of the wages exempted by § [34-29](#) by proceedings in attachment or garnishment in courts or before magistrates in any other state than the Commonwealth, or to send out of the Commonwealth by assignment, transfer or in any other manner whatsoever, either for or without value, any claim or debt against any resident thereof for the purpose or with the intent of depriving such person of the right to have his wages exempt from distress, levy or garnishment according to the provisions of § [34-29](#). And the person instituting such suit or permitting such suit to be instituted or sending, assigning, or transferring any such claim or debt for the purpose or with the intent aforesaid shall, upon conviction thereof, be fined not less than \$10 nor more than \$100 and shall, in addition thereto, be civilly liable to the person from whom payment of the same, or any part thereof, shall have been enforced by attachment or garnishment or otherwise, elsewhere than in the Commonwealth, for the full amount, payment whereof shall have been so enforced, together with interest thereon and the costs of the attachment or garnishee proceedings, as well as the costs of such action.

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

The fact that the payment of a claim or debt against any person entitled to the exemption provided for in § [34-29](#) has been enforced by legal proceedings in some state other than the Commonwealth in such manner as to deprive such person to any extent of the benefit of such exemption shall be prima facie evidence that any resident of the Commonwealth who may at any time have been owner or holder of the claim or debt has violated this section.

Code 1919, § 6557; 1954, c. 613; 1974, c. 272; 2005, c. [839](#).

**§ 34-33. Exemption of wages of minor from garnishment process.**

The wages of a minor shall not be liable to garnishment or otherwise liable to the payment of the debts of parents.

Code 1919, § 6558.

**§ 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.

"Retirement plan" means a plan, account, or arrangement that is intended to satisfy the requirements of United States Internal Revenue Code §§ 401, 403 (a), 403 (b), 408, 408 A, 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. Except as otherwise provided in this section, the interest of an individual under a retirement plan shall be exempt from creditor process to the same extent permitted under federal bankruptcy law for such a plan. 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 claims made against an individual by the alternate payee of such individual or to claims made against such individual by the Commonwealth in administrative actions pursuant to Chapter 19 (§ [63.2-1900](#) et seq.) of Title 63.2 or any court process to enforce a child or child and spousal support obligation.

D. If two individuals who are married or were married are entitled to claim the exemption provided under subsection B of an interest under the same retirement plan or plans and such individuals are jointly subject to creditor process as to the same debt or obligation and the debt or obligation arose during the marriage, then the exemption provided under subsection B as to such debts or obligations shall not exceed, in the aggregate, the exemption permitted under federal bankruptcy law for such a plan. The exemption permitted under federal bankruptcy law shall be allocated among such persons in the same proportion as their respective interests in the retirement plan or plans.

E. The exemption provided under this section must be claimed within the time limits prescribed by § [34-17](#).

1990, c. 425; 1992, c. 716; 1996, c. [330](#); 1999, cc. [766](#), [796](#); 2005, c. [284](#); 2007, c. [302](#).