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HOUSE BILL NO. 138

Offered January 14, 2004

Prefiled December 29, 2003

A BILL to amend and reenact § 34-34 of the Code of Virginia, relating to certain retirement benefits exempt from creditors.

Patron—Kilgore

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 34-34 of the Code of Virginia is amended and reenacted 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.

"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. 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	Cost of \$1
When Exemption	of Annual
Claimed Benefit	
16	0.1482
17	0.1603
18	0.1734
19	0.1875
20	0.2028
21	0.2193
22	0.2371
23	0.2564
24	0.2773
25	0.2998
26	0.3241
27	0.3505
28	0.3789
29	0.4096

57	30	0.4429
58	31	0.4789
59	32	0.5178
60	33	0.5598
61	34	0.6054
62	35	0.6546
63	36	0.7080
64	37	0.7658
65	38	0.8284
66	39	0.8963
67	40	0.9699
68	41	1.0497
69	42	1.1363
70	43	1.2304
71	44	1.3326
72	45	1.4436
73	46	1.5645
74	47	1.6960
75	48	1.8394
76	49	1.9958
77	50	2.1665
78	51	2.3530
79	52	2.5571
80	53	2.7808
81	54	3.0260
82	55	3.2954
83	56	3.5915
84	57	3.9175
85	58	4.2771
86	59	4.6748
87	60	5.1150
88	61	5.6035
89	62	6.1472
90	63	6.7538
91	64	7.4330
92	65	8.1958
93	66	7.9989
94	67	7.8007
95	68	7.6009
96	69	7.3985
97	70	7.1924
98	71	6.9830
99	72	6.7706
100	73	6.5556
101	74	6.3393
102	75	6.1222
103	76	5.9054
104	77	5.6897
105	78	5.4763
106	79	5.2638
107	80	5.0529
108	81	4.8447
109	82	4.6403
110	83	4.4395
111	84	4.2415
112	85	4.0456
113	86	3.8522

114	87	3.6616
115	88	3.4742
116	89	3.2904
117	90	3.1106
118	91	2.9354
119	92	2.7653
120	93	2.6011
121	94	2.4415
122	95	2.2867
123	96	2.1367
124	97	1.9935
125	98	1.8558
126	99	1.7214
127	100	1.5972
128	101	1.4755
129	102	1.3478
130	103	1.2690
131	104	1.1738
132	105	1.0679
133	106	0.7517
134	107	0.0000
135	108	0.0000
136	109	0.0000
137	110	0.0000

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

D. The exemption provided under subsection B shall not apply to amounts contributed to a retirement plan during the fiscal year of the retirement plan that includes the date on which the individual claims the exemption and for the two preceding fiscal years of the retirement plan other than amounts that were exempt from creditor process immediately prior to being contributed to the retirement plan. The exemption provided under subsection B shall not apply to the earnings on contributions described in this subsection.

E. 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.

F. 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 amount that would provide an annual benefit of \$17,500. The maximum amount that may be exempted shall be allocated among such persons in the same proportion as their respective interests in the retirement plan or plans.

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

H. A retirement plan established pursuant to §§ 408 and 408 A of the Internal Revenue Code is exempt to the same extent as that permitted under federal law for a qualified plan established pursuant to § 401 of the Internal Revenue Code.

However, an individual who claims an exemption under federal law for any retirement plan established pursuant to §§ 401, 403 (a), 403 (b), 409 or § 457 of the Internal Revenue Code shall not be entitled to claim the exemption under this subsection for a retirement plan established pursuant to § 408 or § 408 A of the Internal Revenue Code.