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**HOUSE BILL NO. 1695****AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Courts of Justice  
on January 17, 2005)

(Patron Prior to Substitute—Delegate Spruill)

*A BILL to amend and reenact § 34-34 of the Code of Virginia, relating to certain retirement benefits exempt from creditors.***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~~ \$25,000. 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~~ \$25,000 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
30	0.4429
31	0.4789
32	0.5178

58	33	0.5598
59	34	0.6054
60	35	0.6546
61	36	0.7080
62	37	0.7658
63	38	0.8284
64	39	0.8963
65	40	0.9699
66	41	1.0497
67	42	1.1363
68	43	1.2304
69	44	1.3326
70	45	1.4436
71	46	1.5645
72	47	1.6960
73	48	1.8394
74	49	1.9958
75	50	2.1665
76	51	2.3530
77	52	2.5571
78	53	2.7808
79	54	3.0260
80	55	3.2954
81	56	3.5915
82	57	3.9175
83	58	4.2771
84	59	4.6748
85	60	5.1150
86	61	5.6035
87	62	6.1472
88	63	6.7538
89	64	7.4330
90	65	8.1958
91	66	7.9989
92	67	7.8007
93	68	7.6009
94	69	7.3985
95	70	7.1924
96	71	6.9830
97	72	6.7706
98	73	6.5556
99	74	6.3393
100	75	6.1222
101	76	5.9054
102	77	5.6897
103	78	5.4763
104	79	5.2638
105	80	5.0529
106	81	4.8447
107	82	4.6403
108	83	4.4395
109	84	4.2415
110	85	4.0456
111	86	3.8522
112	87	3.6616
113	88	3.4742
114	89	3.2904

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

For example, the amount required to provide an annual benefit of ~~\$17,500~~ \$25,000 to an individual who attained age 60 at the time the exemption provided by this section is claimed is ~~\$89,542.50~~ \$127,875 (~~\$17,500~~ \$25,000 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~~ \$25,000. 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.