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HOUSE BILL NO. 1698

Offered January 12, 2005

Prefiled December 22, 2004

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

Patron—Spruill

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	30	0.4429	31	0.4789	32	0.5178	33	0.5598	34	0.6054	35	0.6546	36	0.7080	37	0.7658	38	0.8284	39	0.8963	40	0.9699	41	1.0497	42	1.1363	43	1.2304	44	1.3326	45	1.4436	46	1.5645	47	1.6960	48	1.8394	49	1.9958	50	2.1665	51	2.3530	52	2.5571	53	2.7808	54	3.0260	55	3.2954	56	3.5915	57	3.9175	58	4.2771	59	4.6748	60	5.1150	61	5.6035	62	6.1472	63	6.7538	64	7.4330	65	8.1958	66	7.9989	67	7.8007	68	7.6009	69	7.3985	70	7.1924	71	6.9830	72	6.7706	73	6.5556	74	6.3393	75	6.1222	76	5.9054	77	5.6897	78	5.4763	79	5.2638	80	5.0529	81	4.8447	82	4.6403	83	4.4395	84	4.2415	85	4.0456	86	3.8522	87	3.6616	88	3.4742	89	3.2904	90	3.1106	91	2.9354	92	2.7653	93	2.6011	94	2.4415	95	2.2867	96	2.1367	97	1.9935	98	1.8558	99	1.7214	100	1.5972	101	1.4755	102	1.3478	103	1.2690	104	1.1738	105	1.0679	106	0.7517	107	0.0000	108	0.0000	109	0.0000	110	0.0000
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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

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59 described in this subsection.

60 E. The exemption provided under subsection B shall not apply to claims made against an individual
61 by the alternate payee of such individual or to claims made against such individual by the
62 Commonwealth in administrative actions pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2 or
63 any court process to enforce a child or child and spousal support obligation.

64 F. If two individuals who are married or were married are entitled to claim the exemption provided
65 under subsection B of an interest under the same retirement plan or plans and such individuals are
66 jointly subject to creditor process as to the same debt or obligation and the debt or obligation arose
67 during the marriage, then the exemption provided under subsection B as to such debts or obligations
68 shall not exceed, in the aggregate, the amount that would provide an annual benefit of \$17,500. The
69 maximum amount that may be exempted shall be allocated among such persons in the same proportion
70 as their respective interests in the retirement plan or plans.

71 G. The exemption provided under this section must be claimed within the time limits prescribed by
72 § 34-17.

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

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

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