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HOUSE BILL NO. 192

Offered January 11, 2006

Prefiled January 3, 2006

A *BILL to amend and reenact § 34-34 of the Code of Virginia, relating to exemption of certain retirement benefits from creditor process.*

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~~ *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 provided under this section permitted under federal bankruptcy law for such 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 the extent that the interest of the individual in the retirement plan would provide an annual benefit in excess of \$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 \$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

57	29	0.4096
58	30	0.4429
59	31	0.4789
60	32	0.5178
61	33	0.5598
62	34	0.6054
63	35	0.6546
64	36	0.7080
65	37	0.7658
66	38	0.8284
67	39	0.8963
68	40	0.9699
69	41	1.0497
70	42	1.1363
71	43	1.2304
72	44	1.3326
73	45	1.4436
74	46	1.5645
75	47	1.6960
76	48	1.8394
77	49	1.9958
78	50	2.1665
79	51	2.3530
80	52	2.5571
81	53	2.7808
82	54	3.0260
83	55	3.2954
84	56	3.5915
85	57	3.9175
86	58	4.2771
87	59	4.6748
88	60	5.1150
89	61	5.6035
90	62	6.1472
91	63	6.7538
92	64	7.4330
93	65	8.1958
94	66	7.9989
95	67	7.8007
96	68	7.6009
97	69	7.3985
98	70	7.1924
99	71	6.9830
100	72	6.7706
101	73	6.5556
102	74	6.3393
103	75	6.1222
104	76	5.9054
105	77	5.6897
106	78	5.4763
107	79	5.2638
108	80	5.0529
109	81	4.8447
110	82	4.6403
111	83	4.4395
112	84	4.2415
113	85	4.0456

114	86	3.8522
115	87	3.6616
116	88	3.4742
117	89	3.2904
118	90	3.1106
119	91	2.9354
120	92	2.7653
121	93	2.6011
122	94	2.4415
123	95	2.2867
124	96	2.1367
125	97	1.9935
126	98	1.8558
127	99	1.7214
128	100	1.5972
129	101	1.4755
130	102	1.3478
131	103	1.2690
132	104	1.1738
133	105	1.0679
134	106	0.7517
135	107	0.0000
136	108	0.0000
137	109	0.0000
138	110	0.0000

For example, the amount required to provide an annual benefit of \$25,000 to an individual who attained age 60 at the time the exemption provided by this section is claimed is \$127,875 (\$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.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 amount that would provide an annual benefit of \$25,000 exemption permitted under federal bankruptcy laws for such plans. The maximum amount that may be exempted exemption permitted under federal bankruptcy laws shall be allocated among such persons in the same proportion as their respective interests in the retirement plan or plans.

G.E. 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.