

VIRGINIA ACTS OF ASSEMBLY -- 2007 SESSION

CHAPTER 302

An Act to amend and reenact § 34-34 of the Code of Virginia, relating to the exemption of certain retirement benefits from creditors.

[H 2766]

Approved March 12, 2007

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 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 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 When Exemption Claimed | Cost of \$1 of Annual 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 |

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. 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 *the exemption permitted under federal bankruptcy law for such a plan*. The ~~maximum amount that may be exempted~~ *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.

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.