

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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

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

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

111	87	3.6616
112	88	3.4742
113	89	3.2904
114	90	3.1106
115	91	2.9354
116	92	2.7653
117	93	2.6011
118	94	2.4415
119	95	2.2867
120	96	2.1367
121	97	1.9935
122	98	1.8558
123	99	1.7214
124	100	1.5972
125	101	1.4755
126	102	1.3478
127	103	1.2690
128	104	1.1738
129	105	1.0679
130	106	0.7517
131	107	0.0000
132	108	0.0000
133	109	0.0000
134	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 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 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.