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HOUSE BILL NO. 2833

Offered January 10, 2007

Prefiled January 10, 2007

A BILL to amend and reenact §§ 64.1-16.1 and 64.1-16.2 of the Code of Virginia, relating to life insurance policy proceeds as part of the estate.

Patron—Waddell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 64.1-16.1 and 64.1-16.2 of the Code of Virginia are amended and reenacted as follows:**

§ 64.1-16.1. Augmented estate; exclusions; valuation.

A. The augmented estate means the estate passing by testate or intestate succession, real and personal, after payment of allowances and exemptions elected under Article 5.1 (§ 64.1-151.1 et seq.) of Chapter 6 of this title, funeral expenses, charges of administration which shall not include federal or state transfer taxes, and debts, and to which is added the sum of the following amounts:

1. The value of property, other than tangible personal property received by gift and the proceeds thereof, owned or acquired by the surviving spouse at the decedent's death, to the extent the property is derived from the decedent, by any means other than testate or intestate succession, without a full consideration in money or money's worth;

2. The value of property, other than tangible personal property received by gift and the proceeds thereof, derived by the surviving spouse from the decedent without a full consideration in money or money's worth, other than by testate or intestate succession, and transferred by the surviving spouse at any time during the marriage to a person other than the decedent, which would have been includible in the surviving spouse's augmented estate if the surviving spouse had predeceased the decedent; and

3. The value of property transferred to anyone other than a bona fide purchaser by the decedent at any time during the marriage to the surviving spouse, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive adequate and full consideration in money or money's worth for the transfer, if the transfer is of any of the following types:

a. Any transfer under which the decedent retained for his life, for any period not ascertainable without reference to his death or for any period which does not in fact end before his death, the possession or enjoyment of, or right to income from, the property;

b. Any transfer to the extent that the decedent retained for his life, for any period not ascertainable without reference to his death or for any period which does not in fact end before his death, a power, either alone or in conjunction with any other person, to revoke or to consume, invade, or dispose of the principal for his own benefit;

c. Any transfer whereby property is held at the time of the decedent's death by the decedent and another with right of survivorship; or

d. Any transfer made to or for the benefit of a donee within the calendar year of the decedent's death or any of the five preceding calendar years to the extent that the aggregate value of the transfers to the donee exceeds \$10,000 in that calendar year.

B. Nothing herein shall cause to be included in the augmented estate (i) the value of any property transferred by the decedent during marriage with the written consent or joinder of the surviving spouse; (ii) the value of any property, its income or proceeds, received by the decedent by gift, will, intestate succession, or any other method or form of transfer to the extent it is received without full consideration in money or money's worth, before or during the marriage to the surviving spouse, from a person other than the surviving spouse to the extent such property, income, or proceeds were maintained by the decedent as separate property; or (iii) any transfer made to anyone other than the surviving spouse prior to January 1, 1991, to the extent that such transfer is irrevocable on that date.

C. Property is valued as of the decedent's death except that property transferred irrevocably during the lifetime of the decedent is valued as of the date the transferee came into possession or enjoyment if that occurs first.

1. Life estates and remainder interests are valued in the manner prescribed in Article 2 (§ 55-269.1 et seq.) of Chapter 15 of Title 55, and deferred payments and estates for years are discounted to present value using the interest rate specified in § 55-269.1.

2. The value of an insurance policy that is irrevocably transferred during the lifetime of a decedent is the cost of a comparable policy on the date of transfer or, if such a policy is not readily available, the policy's interpolated terminal reserve. The value of any premiums paid on an insurance policy owned by

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59 another person is the amount of the premiums only and not the insurance purchased or maintained with
60 such premiums.

61 3. An initial interest in property owned as a joint tenant with survivorship is valued at the time the
62 interest is acquired, and a further interest received upon the death of a cotenant is valued at the
63 cotenant's death. Property owned jointly by persons married to each other shall be rebuttably presumed
64 to have been acquired with contributions of equal value by each tenant. The mere creation of an
65 indebtedness secured by jointly owned property is not a contribution to its acquisition, but any
66 satisfaction of an indebtedness is a contribution. An interest in a tenancy by the entirety shall be valued
67 as if it were an interest in a joint tenancy with survivorship. Joint accounts in financial institutions shall
68 be valued in accordance with the provisions of Chapter 2.1 (§ 6.1-125.1 et seq.) of Title 6.1.

69 D. As used in this section, the terms "estate" and "property" shall include insurance policies,
70 retirement benefits exclusive of federal social security benefits, annuities, pension plans, deferred
71 compensation arrangements, and employee benefit plans to the extent owned by, vested in, or subject to
72 the control of the decedent on the date of his death or the date of an irrevocable transfer by him during
73 his lifetime. *All such insurance policies and other benefits are included in the terms "estate" and*
74 *"property" notwithstanding the presence of language contained in any statute otherwise providing that*
75 *neither they nor their proceeds shall be liable to attachment, garnishment, levy, execution, or other legal*
76 *process or be seized, taken, appropriated, or applied by any legal or equitable process or operation of*
77 *law or any other such similar language.*

78 § 64.1-16.2. Charging spouse with gifts received; liability of others for balance of elective share;
79 determination; satisfaction.

80 A. In determining the elective share, values included in the augmented estate which pass or have
81 passed to the surviving spouse, or which would have passed to the spouse but were disclaimed, are
82 applied first to satisfy the elective share and to reduce any contributions due from other recipients of
83 transfers included in the augmented estate.

84 B. Remaining property of the augmented estate is so applied that liability for the balance of the
85 elective share of the surviving spouse and interest thereon is equitably apportioned among the recipients
86 of the augmented estate in proportion to the value of their interests therein.

87 C. The only persons subject to contribution to make up the elective share of the surviving spouse are
88 (i) original transferees from or appointees of the decedent, and subsequent gratuitous inter vivos donees
89 or persons claiming by testate or intestate succession to the extent such persons have the property or its
90 proceeds on or after the date of the decedent's death, and (ii) a fiduciary, as to the property under the
91 fiduciary's control at or after the time a fiduciary receives notice that a surviving spouse has claimed an
92 elective share in the decedent's estate. A corporate fiduciary shall not be considered to have notice until
93 it receives notice at its address as shown in the decedent's estate papers in the clerk's office or, if there
94 are no such papers or no address is shown therein, at the office of its registered agent.

95 No other party is subject to contribution to make up the elective share even though the party makes
96 a payment or transfers an item of property or other benefit to any person with actual knowledge that a
97 surviving spouse has claimed an elective share in the decedent's estate.

98 D. Upon petition of the surviving spouse, the decedent's personal representative, or any party in
99 interest, the court having jurisdiction over administration of the decedent's estate shall determine the
100 amount of the elective share and the ratable portion of the elective share attributable to each person
101 liable to contribution. Such petition may be brought against fewer than all persons against whom relief
102 could be sought, but no person is subject to contribution in any greater amount than he would have been
103 if relief had been secured against all persons subject to contribution.

104 E. Within thirty days after the court's determination of the contributions due under subsection D
105 becomes final and not subject to further appeal, any person liable to the surviving spouse for
106 contribution may file with the court a written statement specifying any of the following methods for
107 satisfying his contribution and interest liability:

108 1. Conveyance of a portion of the property included in the augmented estate, which portion is equal
109 in value to his liability on the date the contribution statement is filed as provided in this subsection;
110 however, if, on the date of filing, the value of the property included in the augmented estate is less than
111 his liability, he may convey the property to the surviving spouse in full satisfaction;

112 2. Payment of the value of his liability in cash or, upon agreement of the surviving spouse, other
113 property; or

114 3. Partial conveyance and partial payment under subdivisions 1 and 2 above, provided the value
115 conveyed and paid is equal to his liability.

116 In the event a contribution statement is not filed within thirty days, the court shall enter an order
117 specifying the method by which liability to the surviving spouse shall be satisfied.

118 F. As used in this section, the terms "estate" and "property" shall include insurance policies,
119 retirement benefits exclusive of federal social security benefits, annuities, pension plans, deferred
120 compensation arrangements, and employee benefit plans to the extent owned by, vested in, or subject to

121 the control of the decedent on the date of his death or an irrevocable transfer by him during his lifetime
122 *All such insurance policies and other benefits are included in the terms "estate" and "property"*
123 *notwithstanding the presence of language contained in any statute otherwise providing that neither they*
124 *nor their proceeds shall be liable to attachment, garnishment, levy, execution, or other legal process or*
125 *be seized, taken, appropriated, or applied by any legal or equitable process or operation of law or any*
126 *other such similar language.*