

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 34-34 of the Code of Virginia, relating to homestead exemptions; retirement benefit exemptions; individual retirement accounts.

[H 2683]

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 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

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55		
56	23	0.2564
57		
58	24	0.2773
59		
60	25	0.2998
61		
62	26	0.3241
63		
64	27	0.3505
65		
66	28	0.3789
67		
68	29	0.4096
69		
70	30	0.4429
71		
72	31	0.4789
73		
74	32	0.5178
75		
76	33	0.5598
77		
78	34	0.6054
79		
80	35	0.6546
81		
82	36	0.7080
83		
84	37	0.7658
85		
86	38	0.8284
87		
88	39	0.8963
89		
90	40	0.9699
91		
92	41	1.0497
93		
94	42	1.1363
95		
96	43	1.2304
97		
98	44	1.3326
99		
100	45	1.4436
101		
102	46	1.5645
103		
104	47	1.6960
105		
106	48	1.8394
107		
108	49	1.9958
109		
110	50	2.1665

111		
112	51	2.3530
113		
114	52	2.5571
115		
116	53	2.7808
117		
118	54	3.0260
119		
120	55	3.2954
121		
122	56	3.5915
123		
124	57	3.9175
125		
126	58	4.2771
127		
128	59	4.6748
129		
130	60	5.1150
131		
132	61	5.6035
133		
134	62	6.1472
135		
136	63	6.7538
137		
138	64	7.4330
139		
140	65	8.1958
141		
142	66	7.9989
143		
144	67	7.8007
145		
146	68	7.6009
147		
148	69	7.3985
149		
150	70	7.1924
151		
152	71	6.9830
153		
154	72	6.7706
155		
156	73	6.5556
157		
158	74	6.3393
159		
160	75	6.1222
161		
162	76	5.9054
163		
164	77	5.6897
165		
166	78	5.4763

167		
168	79	5.2638
169		
170	80	5.0529
171		
172	81	4.8447
173		
174	82	4.6403
175		
176	83	4.4395
177		
178	84	4.2415
179		
180	85	4.0456
181		
182	86	3.8522
183		
184	87	3.6616
185		
186	88	3.4742
187		
188	89	3.2904
189		
190	90	3.1106
191		
192	91	2.9354
193		
194	92	2.7653
195		
196	93	2.6011
197		
198	94	2.4415
199		
200	95	2.2867
201		
202	96	2.1367
203		
204	97	1.9935
205		
206	98	1.8558
207		
208	99	1.7214
209		
210	100	1.5972
211		
212	101	1.4755
213		
214	102	1.3478
215		
216	103	1.2690
217		
218	104	1.1738
219		
220	105	1.0679
221		
222	106	0.7517

223		
224	107	0.0000
225		
226	108	0.0000
227		
228	109	0.0000
229		
230	110	0.0000
231		

232 For example, the amount required to provide an annual benefit of \$17,500 to an individual who
 233 attained age 60 at the time the exemption provided by this section is claimed is \$89,512.50 (\$17,500
 234 times 5.1150).

235 D. The exemption provided under subsection B shall not apply to amounts contributed to a
 236 retirement plan during the fiscal year of the retirement plan that includes the date on which the
 237 individual claims the exemption and for the two preceding fiscal years of the retirement plan other than
 238 amounts that were exempt from creditor process immediately prior to being contributed to the retirement
 239 plan. The exemption provided under subsection B shall not apply to the earnings on contributions
 240 described in this subsection.

241 E. The exemption provided under subsection B shall not apply to claims made against an individual
 242 by the alternate payee of such individual or to claims made against such individual by the
 243 Commonwealth in administrative actions pursuant to Chapter 13 (§ 63.1-249 et seq.) of Title 63.1 or any
 244 court process to enforce a child or child and spousal support obligation.

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

252 G. The exemption provided under this section must be claimed within the time limits prescribed by
 253 § 34-17.

254 *H. A retirement plan established pursuant to §§ 408 and 408 A of the Internal Revenue Code is*
 255 *exempt to the same extent as that permitted under federal law for a qualified plan established pursuant*
 256 *to § 401 of the Internal Revenue Code.*

257 *However, an individual who claims an exemption under federal law for any retirement plan*
 258 *established pursuant to §§ 401, 403 (a), 403 (b), 409 or § 457 of the Internal Revenue Code shall not*
 259 *be entitled to claim the exemption under this subsection for a retirement plan established pursuant to*
 260 *§ 408 or § 408 A of the Internal Revenue Code.*