

992070410

HOUSE BILL NO. 2683**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee for Courts of Justice
on February 7, 1999)

(Patron Prior to Substitute—Delegate Puller)

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

58		
59	23	0.2564
60		
61	24	0.2773
62		
63	25	0.2998
64		
65	26	0.3241
66		
67	27	0.3505
68		
69	28	0.3789
70		
71	29	0.4096
72		
73	30	0.4429
74		
75	31	0.4789
76		
77	32	0.5178
78		
79	33	0.5598
80		
81	34	0.6054
82		
83	35	0.6546
84		
85	36	0.7080
86		
87	37	0.7658
88		
89	38	0.8284
90		
91	39	0.8963
92		
93	40	0.9699
94		
95	41	1.0497
96		
97	42	1.1363
98		
99	43	1.2304
100		
101	44	1.3326
102		
103	45	1.4436
104		
105	46	1.5645
106		
107	47	1.6960
108		
109	48	1.8394
110		
111	49	1.9958
112		
113	50	2.1665
114		

115	51	2.3530
116		
117	52	2.5571
118		
119	53	2.7808
120		
121	54	3.0260
122		
123	55	3.2954
124		
125	56	3.5915
126		
127	57	3.9175
128		
129	58	4.2771
130		
131	59	4.6748
132		
133	60	5.1150
134		
135	61	5.6035
136		
137	62	6.1472
138		
139	63	6.7538
140		
141	64	7.4330
142		
143	65	8.1958
144		
145	66	7.9989
146		
147	67	7.8007
148		
149	68	7.6009
150		
151	69	7.3985
152		
153	70	7.1924
154		
155	71	6.9830
156		
157	72	6.7706
158		
159	73	6.5556
160		
161	74	6.3393
162		
163	75	6.1222
164		
165	76	5.9054
166		
167	77	5.6897
168		
169	78	5.4763
170		

171	79	5.2638
172		
173	80	5.0529
174		
175	81	4.8447
176		
177	82	4.6403
178		
179	83	4.4395
180		
181	84	4.2415
182		
183	85	4.0456
184		
185	86	3.8522
186		
187	87	3.6616
188		
189	88	3.4742
190		
191	89	3.2904
192		
193	90	3.1106
194		
195	91	2.9354
196		
197	92	2.7653
198		
199	93	2.6011
200		
201	94	2.4415
202		
203	95	2.2867
204		
205	96	2.1367
206		
207	97	1.9935
208		
209	98	1.8558
210		
211	99	1.7214
212		
213	100	1.5972
214		
215	101	1.4755
216		
217	102	1.3478
218		
219	103	1.2690
220		
221	104	1.1738
222		
223	105	1.0679
224		
225	106	0.7517
226		
227	107	0.0000

228		
229	108	0.0000
230		
231	109	0.0000
232		
233	110	0.0000
234		

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

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

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

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

255 G. The exemption provided under this section must be claimed within the time limits prescribed by
 256 § 34-17.

257 H. *A retirement plan established pursuant to § 408 and § 408 A of the Internal Revenue Code is*
 258 *exempt to the same extent as that permitted for a qualified plan established pursuant to § 401 of the*
 259 *Internal Revenue Code.*