

1999 SESSION

LEGISLATION NOT PREPARED BY DLS
INTRODUCED

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SENATE BILL NO. 1148

Offered January 21, 1999

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

Patron—Saslaw

Referred to Committee for Courts of Justice

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

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

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58	21	0.2193
59		
60	22	0.2371
61		
62	23	0.2564
63		
64	24	0.2773
65		
66	25	0.2998
67		
68	26	0.3241
69		
70	27	0.3505
71		
72	28	0.3789
73		
74	29	0.4096
75		
76	30	0.4429
77		
78	31	0.4789
79		
80	32	0.5178
81		
82	33	0.5598
83		
84	34	0.6054
85		
86	35	0.6546
87		
88	36	0.7080
89		
90	37	0.7658
91		
92	38	0.8284
93		
94	39	0.8963
95		
96	40	0.9699
97		
98	41	1.0497
99		
100	42	1.1363
101		
102	43	1.2304
103		
104	44	1.3326
105		
106	45	1.4436
107		
108	46	1.5645
109		
110	47	1.6960
111		
112	48	1.8394
113		
114	49	1.9958

115		
116	50	2.1665
117		
118	51	2.3530
119		
120	52	2.5571
121		
122	53	2.7808
123		
124	54	3.0260
125		
126	55	3.2954
127		
128	56	3.5915
129		
130	57	3.9175
131		
132	58	4.2771
133		
134	59	4.6748
135		
136	60	5.1150
137		
138	61	5.6035
139		
140	62	6.1472
141		
142	63	6.7538
143		
144	64	7.4330
145		
146	65	8.1958
147		
148	66	7.9989
149		
150	67	7.8007
151		
152	68	7.6009
153		
154	69	7.3985
155		
156	70	7.1924
157		
158	71	6.9830
159		
160	72	6.7706
161		
162	73	6.5556
163		
164	74	6.3393
165		
166	75	6.1222
167		
168	76	5.9054
169		
170	77	5.6897

171		
172	78	5.4763
173		
174	79	5.2638
175		
176	80	5.0529
177		
178	81	4.8447
179		
180	82	4.6403
181		
182	83	4.4395
183		
184	84	4.2415
185		
186	85	4.0456
187		
188	86	3.8522
189		
190	87	3.6616
191		
192	88	3.4742
193		
194	89	3.2904
195		
196	90	3.1106
197		
198	91	2.9354
199		
200	92	2.7653
201		
202	93	2.6011
203		
204	94	2.4415
205		
206	95	2.2867
207		
208	96	2.1367
209		
210	97	1.9935
211		
212	98	1.8558
213		
214	99	1.7214
215		
216	100	1.5972
217		
218	101	1.4755
219		
220	102	1.3478
221		
222	103	1.2690
223		
224	104	1.1738
225		
226	105	1.0679
227		

228	106	0.7517
229		
230	107	0.0000
231		
232	108	0.0000
233		
234	109	0.0000
235		
236	110	0.0000
237		

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

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

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

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

258 G. The exemption provided under this section must be claimed within the time limits prescribed by
 259 § 34-17.