

# VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

## CHAPTER 284

*An Act to amend and reenact § 34-34 of the Code of Virginia, relating to certain retirement benefits exempt from creditors.*

[H 1695]

Approved March 20, 2005

**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~~ \$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 ~~\$17,500~~ \$25,000 shall be determined under the following table:

Attained Age When Exemption Claimed Benefit	Cost of \$1 of Annual
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
31	0.4789
32	0.5178
33	0.5598

34	0.6054
35	0.6546
36	0.7080
37	0.7658
38	0.8284
39	0.8963
40	0.9699
41	1.0497
42	1.1363
43	1.2304
44	1.3326
45	1.4436
46	1.5645
47	1.6960
48	1.8394
49	1.9958
50	2.1665
51	2.3530
52	2.5571
53	2.7808
54	3.0260
55	3.2954
56	3.5915
57	3.9175
58	4.2771
59	4.6748
60	5.1150
61	5.6035
62	6.1472
63	6.7538
64	7.4330
65	8.1958
66	7.9989
67	7.8007
68	7.6009
69	7.3985
70	7.1924
71	6.9830
72	6.7706
73	6.5556
74	6.3393
75	6.1222
76	5.9054
77	5.6897
78	5.4763
79	5.2638
80	5.0529
81	4.8447
82	4.6403
83	4.4395
84	4.2415
85	4.0456
86	3.8522
87	3.6616
88	3.4742
89	3.2904
90	3.1106
91	2.9354
92	2.7653

93	2.6011
94	2.4415
95	2.2867
96	2.1367
97	1.9935
98	1.8558
99	1.7214
100	1.5972
101	1.4755
102	1.3478
103	1.2690
104	1.1738
105	1.0679
106	0.7517
107	0.0000
108	0.0000
109	0.0000
110	0.0000

For example, the amount required to provide an annual benefit of ~~\$17,500~~ \$25,000 to an individual who attained age 60 at the time the exemption provided by this section is claimed is ~~\$89,512.50~~ \$127,875 (~~\$17,500~~ \$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. 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 ~~\$17,500~~ \$25,000. The maximum amount that may be exempted shall be allocated among such persons in the same proportion as their respective interests in the retirement plan or plans.

G. 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.