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SENATE BILL NO. 640

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 15, 2016)

(Patron Prior to Substitute—Senator Stanley)

A BILL to amend and reenact § 38.2-3122 of the Code of Virginia, relating to proceeds and avails of annuity contracts and life insurance policies; claims of creditors.

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-3122 of the Code of Virginia is amended and reenacted as follows:

§ 38.2-3122. Proceeds and avails of life insurance policies and annuity contracts free of certain claims.

The assignee or lawful beneficiary of an insurance policy shall be entitled to its proceeds against any claims of the creditors or representatives of the insured or the person effecting the policy, except in cases of transfer with intent to defraud creditors, subject to the following conditions:

1. The policy shall have been effected by a person on his own life or on another life, in favor of a person other than himself;

2. The assignee of the policy, or the payee, if the policy is otherwise made payable to another, shall not be the insured, nor the person effecting the policy, nor the executors or administrators;

3. The right to change the beneficiary may or may not have been reserved or permitted;

4. The policy may be payable to the person whose life is insured if the beneficiary or assignee predeceases the insured; and

5. Subject A. As used in this section, "protected insurance item" means, with respect to a policy of life insurance or annuity issued or issued for delivery in the Commonwealth:

1. The cash surrender value of any such policy;

2. The proceeds of any such policy;

3. The withdrawal value of any optional settlement or deposit with any company made pursuant to the terms of such policy; or

4. All other benefits, indemnities, payments, and privileges of every kind from any such policy.

B. In no case whatsoever shall any protected insurance item be liable to execution, attachment, garnishment, or other legal process in favor of any creditor of:

1. The person whose life is insured by the related policy or contract;

2. The person who can, may, or will receive the benefit of that protected insurance item, provided that such person is the insured or owner of the contract, deposit, indemnity, policy, or settlement or the spouse or intended spouse of, a dependent child of, or any other person dependent on, the insured or owner of the contract, deposit, indemnity, policy, or settlement;

3. The person who owns the related contract, deposit, or policy; or

4. The person who effected the related contract, deposit, or policy.

C. The provisions of subsection B shall not apply to any claim by a creditor with respect to a life insurance policy, annuity contract, or deposit with an insurance company that was taken out, made, or assigned in writing for the benefit of the creditor.

D. Notwithstanding the provisions of subsection B and subject to the applicable statute of limitations, the amount of any premiums or other amounts paid for such the related life insurance policy, annuity contract, or deposit with an insurance company that were paid with the intent to defraud creditors, or paid under such circumstances as to be void under § 55-81, with the interest thereon, shall be inure to the benefit of the creditors from the proceeds of the policy, contract, or deposit.

E. The exemption provided by this section shall not apply to any protected insurance item issued or effected during the six months preceding the date that the person claiming the exemption (i) files a voluntary petition in bankruptcy; (ii) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceeding; or (iii) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation.

F. The exemption established by this section shall apply to a protected insurance item regardless of whether (i) the right to change the beneficiary thereof is reserved or permitted or (ii) any of the following persons or any of their estates is a contingent beneficiary thereof:

1. The person insured by the related life insurance policy;

2. The person effecting the related life insurance policy or annuity contract;

3. The annuitant of the related annuity contract; or

4. The owner of the related life insurance policy or annuity contract.