

VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

CHAPTER 330

An Act to amend and reenact §§ 34-21, 34-29, and 34-34 of the Code of Virginia, relating to the homestead exemption; garnishment; retirement benefits exemption.

[H 1428]

Approved March 22, 1996

Be it enacted by the General Assembly of Virginia:

1. That §§ 34-21, 34-29, and 34-34 of the Code of Virginia are amended and reenacted as follows:

§ 34-21. When householder's right to exemption is exhausted.

When ~~estate~~, *the maximum amount of property*, whether real or personal, or both, has been once set apart to be held by a householder as exempt under § 34-4 or § 34-4.1, he shall not afterwards be entitled to the exemption of any estate other than that so set apart or ~~that mentioned in §§ 34-18, 34-20, 34-26, 34-27, and 34-29 as otherwise provided by law.~~

§ 34-29. Maximum portion of disposable earnings subject to garnishment.

(a) Except as provided in subsections (b) and (b1), the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed the lesser of the following amounts:

(1) Twenty-five percent of his disposable earnings for that week, or

(2) The amount by which his disposable earnings for that week exceed thirty times the federal minimum hourly wage prescribed by § 206 (a) (1) of Title 29 of the United States Code in effect at the time earnings are payable.

In the case of earnings for any pay period other than a week, the State Commissioner of Labor and Industry shall by regulation prescribe a multiple of the federal minimum hourly wage equivalent in effect to that set forth in this section.

(b) The restrictions of subsection (a) do not apply in the case of

(1) Any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by state law, which affords substantial due process, and which is subject to judicial review.

(2) Any order of any court of bankruptcy under Chapter XIII of the Bankruptcy Act.

(3) Any debt due for any state or federal tax.

(b1) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed:

(1) Sixty percent of such individual's disposable earnings for that week; or

(2) If such individual is supporting a spouse or dependent child other than the spouse or child with respect to whose support such order was issued, fifty percent of such individual's disposable earnings for that week.

The fifty percent specified in subdivision (b1) (2) shall be fifty-five percent and the sixty percent specified in subdivision (b1) (1) shall be sixty-five percent if and to the extent that such earnings are subject to garnishment to enforce an order for support for a period which is more than twelve weeks prior to the beginning of such workweek.

(c) No court of the Commonwealth and no state agency or officer may make, execute, or enforce any order or process in violation of this section.

The exemptions allowed herein shall be granted to any person so entitled without any further proceedings.

(d) For the purposes of this section

(1) The term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, *payments to an independent contractor*, or otherwise, whether paid directly to the individual or deposited with another entity or person on behalf of and traceable to the individual, and includes periodic payments pursuant to a pension or retirement program; ~~provided, that in no event shall funds that have been deposited by or for an individual for more than thirty days be considered earnings,~~

(2) The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld, and

(3) The term "garnishment" means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt.

(e) Every assignment, sale, transfer, pledge or mortgage of the wages or salary of an individual which is exempted by this section, to the extent of the exemption provided by this section, shall be void and unenforceable by any process of law.

(f) No employer may discharge any employee by reason of the fact that his earnings have been

subjected to garnishment for any one indebtedness.

(g) A depository wherein earnings have been deposited on behalf of and traceable to an individual shall not be required to determine the portion of such earnings which are subject to garnishment.

§ 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
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 to an individual who attained age 60 at the time the exemption provided by this section is claimed is \$89,512.50 (\$17,500 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 13 (§ 63.1-249 et seq.) of Title 63.1 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. 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.