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## HOUSE BILL NO. 761

Offered January 23, 1998

*A BILL to amend and reenact § 64.1-16.1 of the Code of Virginia, relating to exclusions from the augmented estate.*

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Patron—McClure

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Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:****1. That § 64.1-16.1 of the Code of Virginia is amended and reenacted as follows:**

§ 64.1-16.1. Augmented estate; exclusions; valuation.

The augmented estate means the estate passing by testate or intestate succession, real and personal, after payment of allowances and exemptions elected under Article 5.1 (§ 64.1-151.1 et seq.) of Chapter 6 of this title, funeral expenses, charges of administration which shall not include federal or state transfer taxes, and debts, and to which is added the sum of the following amounts:

1. The value of property, other than tangible personal property received by gift and the proceeds thereof, owned or acquired by the surviving spouse at the decedent's death, to the extent the property is derived from the decedent, by any means other than testate or intestate succession, without a full consideration in money or money's worth;

2. The value of property, other than tangible personal property received by gift and the proceeds thereof, derived by the surviving spouse from the decedent without a full consideration in money or money's worth, other than by testate or intestate succession, and transferred by the surviving spouse at any time during the marriage to a person other than the decedent, which would have been includible in the surviving spouse's augmented estate if the surviving spouse had predeceased the decedent; and

3. The value of property transferred to anyone other than a bona fide purchaser by the decedent at any time during the marriage to the surviving spouse, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive adequate and full consideration in money or money's worth for the transfer, if the transfer is of any of the following types:

a. Any transfer under which the decedent retained for his life, for any period not ascertainable without reference to his death or for any period which does not in fact end before his death, the possession or enjoyment of, or right to income from, the property;

b. Any transfer to the extent that the decedent retained for his life, for any period not ascertainable without reference to his death or for any period which does not in fact end before his death, a power, either alone or in conjunction with any other person, to revoke or to consume, invade, or dispose of the principal for his own benefit;

c. Any transfer whereby property is held at the time of the decedent's death by the decedent and another with right of survivorship; or

d. Any transfer made to or for the benefit of a donee within the calendar year of the decedent's death or any of the five preceding calendar years to the extent that the aggregate value of the transfers to the donee exceeds \$10,000 in that calendar year.

Nothing herein shall cause to be included in the augmented estate (i) the value of any property transferred by the decedent during marriage with the written consent or joinder of the surviving spouse; (ii) the value of any property, its income or proceeds, received by the decedent by gift, will, or intestate succession before or during the marriage to the surviving spouse, from a person other than the surviving spouse to the extent such property, income, or proceeds were maintained by the decedent as separate property; (iii) *the value of any life insurance policy on the life of the decedent held by an irrevocable life insurance trust under which the decedent retained no incidents of ownership as defined under the U.S. Internal Revenue Code and whose primary beneficiaries are descendants of the decedent; or (iii)* (iv) any transfer made to anyone other than the surviving spouse prior to January 1, 1991, to the extent that such transfer is irrevocable on that date.

Property is valued as of the decedent's death except that property transferred irrevocably during the lifetime of the decedent is valued as of the date the transferee came into possession or enjoyment if that occurs first. Life estates and remainder interests are valued in the manner prescribed in Article 2 (§ 55-269.1 et seq.) of Chapter 15 of Title 55, and deferred payments and estates for years are discounted to present value using the interest rate specified in § 55-269.1.

As used in this section, the terms "estate" and "property" shall include insurance policies, retirement benefits exclusive of federal social security benefits, annuities, pension plans, deferred compensation arrangements, and employee benefit plans to the extent owned by, vested in, or subject to the control of

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**60** the decedent on the date of his death or the date of an irrevocable transfer by him during his lifetime.