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HOUSE BILL NO. 2683

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice)

on February 21, 1999)

(Patron Prior to Substitute—Delegate Puller)

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

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. 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

58	23	0.2564
59		
60	24	0.2773
61		
62	25	0.2998
63		
64	26	0.3241
65		
66	27	0.3505
67		
68	28	0.3789
69		
70	29	0.4096
71		
72	30	0.4429
73		
74	31	0.4789
75		
76	32	0.5178
77		
78	33	0.5598
79		
80	34	0.6054
81		
82	35	0.6546
83		
84	36	0.7080
85		
86	37	0.7658
87		
88	38	0.8284
89		
90	39	0.8963
91		
92	40	0.9699
93		
94	41	1.0497
95		
96	42	1.1363
97		
98	43	1.2304
99		
100	44	1.3326
101		
102	45	1.4436
103		
104	46	1.5645
105		
106	47	1.6960
107		
108	48	1.8394
109		
110	49	1.9958
111		
112	50	2.1665
113		
114	51	2.3530

115		
116	52	2.5571
117		
118	53	2.7808
119		
120	54	3.0260
121		
122	55	3.2954
123		
124	56	3.5915
125		
126	57	3.9175
127		
128	58	4.2771
129		
130	59	4.6748
131		
132	60	5.1150
133		
134	61	5.6035
135		
136	62	6.1472
137		
138	63	6.7538
139		
140	64	7.4330
141		
142	65	8.1958
143		
144	66	7.9989
145		
146	67	7.8007
147		
148	68	7.6009
149		
150	69	7.3985
151		
152	70	7.1924
153		
154	71	6.9830
155		
156	72	6.7706
157		
158	73	6.5556
159		
160	74	6.3393
161		
162	75	6.1222
163		
164	76	5.9054
165		
166	77	5.6897
167		
168	78	5.4763
169		
170	79	5.2638

171		
172	80	5.0529
173		
174	81	4.8447
175		
176	82	4.6403
177		
178	83	4.4395
179		
180	84	4.2415
181		
182	85	4.0456
183		
184	86	3.8522
185		
186	87	3.6616
187		
188	88	3.4742
189		
190	89	3.2904
191		
192	90	3.1106
193		
194	91	2.9354
195		
196	92	2.7653
197		
198	93	2.6011
199		
200	94	2.4415
201		
202	95	2.2867
203		
204	96	2.1367
205		
206	97	1.9935
207		
208	98	1.8558
209		
210	99	1.7214
211		
212	100	1.5972
213		
214	101	1.4755
215		
216	102	1.3478
217		
218	103	1.2690
219		
220	104	1.1738
221		
222	105	1.0679
223		
224	106	0.7517
225		
226	107	0.0000
227		

228	_____108_____	0.0000
229		
230	_____109_____	0.0000
231		
232	_____110_____	0.0000
233		

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

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

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

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

254 **G F.** The exemption provided under this section must be claimed within the time limits prescribed by
 255 § 34-17.