

# 1999 SESSION

LEGISLATION NOT PREPARED BY DLS  
ENGROSSED

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## SENATE BILL NO. 1148

Senate Amendments in [ ] — February 9, 1999

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

Patron—Saslaw

Referred to Committee for Courts of Justice

**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, 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. [ *A retirement plan established pursuant to § 408 of the Internal Revenue Code is exempt to the same extent as that permitted for a qualified plan established pursuant to § 401 of the Internal Revenue Code.* ]

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

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<b>58</b>	21	0.2193
<b>59</b>		
<b>60</b>	22	0.2371
<b>61</b>		
<b>62</b>	23	0.2564
<b>63</b>		
<b>64</b>	24	0.2773
<b>65</b>		
<b>66</b>	25	0.2998
<b>67</b>		
<b>68</b>	26	0.3241
<b>69</b>		
<b>70</b>	27	0.3505
<b>71</b>		
<b>72</b>	28	0.3789
<b>73</b>		
<b>74</b>	29	0.4096
<b>75</b>		
<b>76</b>	30	0.4429
<b>77</b>		
<b>78</b>	31	0.4789
<b>79</b>		
<b>80</b>	32	0.5178
<b>81</b>		
<b>82</b>	33	0.5598
<b>83</b>		
<b>84</b>	34	0.6054
<b>85</b>		
<b>86</b>	35	0.6546
<b>87</b>		
<b>88</b>	36	0.7080
<b>89</b>		
<b>90</b>	37	0.7658
<b>91</b>		
<b>92</b>	38	0.8284
<b>93</b>		
<b>94</b>	39	0.8963
<b>95</b>		
<b>96</b>	40	0.9699
<b>97</b>		
<b>98</b>	41	1.0497
<b>99</b>		
<b>100</b>	42	1.1363
<b>101</b>		
<b>102</b>	43	1.2304
<b>103</b>		
<b>104</b>	44	1.3326
<b>105</b>		
<b>106</b>	45	1.4436
<b>107</b>		
<b>108</b>	46	1.5645
<b>109</b>		
<b>110</b>	47	1.6960
<b>111</b>		
<b>112</b>	48	1.8394
<b>113</b>		
<b>114</b>	49	1.9958

115		
116	50	2.1665
117		
118	51	2.3530
119		
120	52	2.5571
121		
122	53	2.7808
123		
124	54	3.0260
125		
126	55	3.2954
127		
128	56	3.5915
129		
130	57	3.9175
131		
132	58	4.2771
133		
134	59	4.6748
135		
136	60	5.1150
137		
138	61	5.6035
139		
140	62	6.1472
141		
142	63	6.7538
143		
144	64	7.4330
145		
146	65	8.1958
147		
148	66	7.9989
149		
150	67	7.8007
151		
152	68	7.6009
153		
154	69	7.3985
155		
156	70	7.1924
157		
158	71	6.9830
159		
160	72	6.7706
161		
162	73	6.5556
163		
164	74	6.3393
165		
166	75	6.1222
167		
168	76	5.9054
169		
170	77	5.6897

<b>171</b>		
<b>172</b>	78	5.4763
<b>173</b>		
<b>174</b>	79	5.2638
<b>175</b>		
<b>176</b>	80	5.0529
<b>177</b>		
<b>178</b>	81	4.8447
<b>179</b>		
<b>180</b>	82	4.6403
<b>181</b>		
<b>182</b>	83	4.4395
<b>183</b>		
<b>184</b>	84	4.2415
<b>185</b>		
<b>186</b>	85	4.0456
<b>187</b>		
<b>188</b>	86	3.8522
<b>189</b>		
<b>190</b>	87	3.6616
<b>191</b>		
<b>192</b>	88	3.4742
<b>193</b>		
<b>194</b>	89	3.2904
<b>195</b>		
<b>196</b>	90	3.1106
<b>197</b>		
<b>198</b>	91	2.9354
<b>199</b>		
<b>200</b>	92	2.7653
<b>201</b>		
<b>202</b>	93	2.6011
<b>203</b>		
<b>204</b>	94	2.4415
<b>205</b>		
<b>206</b>	95	2.2867
<b>207</b>		
<b>208</b>	96	2.1367
<b>209</b>		
<b>210</b>	97	1.9935
<b>211</b>		
<b>212</b>	98	1.8558
<b>213</b>		
<b>214</b>	99	1.7214
<b>215</b>		
<b>216</b>	100	1.5972
<b>217</b>		
<b>218</b>	101	1.4755
<b>219</b>		
<b>220</b>	102	1.3478
<b>221</b>		
<b>222</b>	103	1.2690
<b>223</b>		
<b>224</b>	104	1.1738
<b>225</b>		
<b>226</b>	105	1.0679
<b>227</b>		

228	106	0.7517
229		
230	107	0.0000
231		
232	108	0.0000
233		
234	109	0.0000
235		
236	110	0.0000
237		

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.

[ 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 for a qualified plan established pursuant to § 401 of the Internal Revenue Code. ]

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