

1 SB424
2 128985-1
3 By Senator Irons
4 RFD: Judiciary
5 First Read: 19-APR-11

SYNOPSIS: Under existing law, the Uniform Probate Code provides that a qualified trust may not be assigned or alienated, voluntarily or involuntarily, and is exempt from any bankruptcy or insolvency laws. A qualified trust includes as an Individual Retirement Account (IRA), but does not include a Roth IRA.

This bill would include a Roth IRA under Section 408A of the Internal Revenue Code as a qualified trust under this law.

A BILL
TO BE ENTITLED
AN ACT

To amend Section 19-3B-508 of the Code of Alabama 1975, relating to qualified trusts under the Internal Revenue Code which may not be assigned or alienated, to include Roth Individual Retirement Accounts as a qualified trust.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Section 19-3B-508 of the Code of Alabama
2 1975, is amended to read as follows:

3 "§19-3B-508.

4 "(a) Any benefits provided under a plan which
5 includes a trust that constitutes a "qualified trust" may not
6 be assigned or alienated, voluntarily or involuntarily, and
7 shall be exempt from the operation of any bankruptcy or
8 insolvency laws under 11 U.S.C. § 522(b), as from time to time
9 amended. This subsection may not be waived by a participant or
10 beneficiary of any qualified plan.

11 "(b) The securing of a loan made to a participant or
12 beneficiary of such a plan shall not be treated as an
13 assignment or alienation under subsection (a) if such loan is
14 secured by the participant's accrued nonforfeitable benefit
15 under the plan and is exempt from the tax imposed by Section
16 4975 of the code by reason of Section 4975(d)(1) of the code.

17 "(c) Subsection (a) shall apply to the creation,
18 assignment, or recognition of a right to any benefit payable
19 with respect to a participant pursuant to a domestic relations
20 order, as such term is defined in Section 414(p) of the code,
21 except that subsection (a) shall not apply if the order is
22 determined to be a "qualified domestic relations order" in
23 accordance with Section 414(p) of the code. However, no
24 domestic relations order shall be deemed a qualified domestic
25 relations order except in accordance with the procedures for
26 such determination set forth in Section 414(p) and the related

1 provisions of the Employee Retirement Income Security Act of
2 1974, as from time to time amended.

3 "(d) The provisions of this section shall be
4 interpreted so as to provide restrictions on alienation and
5 assignment to the extent, and only to the extent, the same are
6 required for a trust within the definition of "qualified
7 trust" herein to be a "qualified trust" under the applicable
8 provisions of the code, notwithstanding any attempted
9 assignment or alienation in violation of Section 401(a) or
10 other applicable provisions of the code. It is intended that
11 this section will constitute "a restriction of the transfer of
12 a beneficial interest of the debtor in a trust that is
13 enforceable under applicable nonbankruptcy law" for purposes
14 of Section 541(c)(2) of the Federal Bankruptcy Code, 11 U.S.C.
15 § 541(c)(2), as from time to time amended. This section shall
16 further be construed as a "state spendthrift trust law." It is
17 further intended for this section to provide an exemption from
18 creditors' claims within 11 U.S.C. § 522.

19 "(e) As used in this section:

20 "(1) ASSIGNMENT or ALIENATION, and any conjugation
21 thereof, includes any anticipation, assignment at law or in
22 equity, alienation, attachment, garnishment, levy, execution,
23 or other legal or equitable process. The term includes: (i)
24 any arrangement providing for the payment to the employer or
25 other sponsor of such plan of benefits that otherwise would be
26 due the participant under the plan; (ii) any direct or
27 indirect arrangement, whether revocable or irrevocable,

1 whereby any person acquires from a participant or beneficiary
2 of such plan a right or interest enforceable against the plan
3 in, or to, all or any part of a plan benefit which is, or may
4 become, payable to the participant or beneficiary; (iii) any
5 attachment, execution, seizure, or the like, or under any form
6 of legal process whatsoever; and (iv) the operation of any
7 bankruptcy or insolvency laws under 11 U.S.C. § 522(b) as from
8 time to time amended. Notwithstanding the foregoing, the term
9 does not include those items excluded from the definition by
10 Treasury Regulations § 1.401(a)-13(c)(2).

11 "(2) CODE means the Internal Revenue Code of 1986,
12 as from time to time amended, or as at any time superseded by
13 reenactment, recodification, or adoption of any other similar
14 revenue law. Reference to specific sections of the code shall
15 include references to their successor sections as a result of
16 renumbering or recodification at any future date.

17 "(3) TREASURY REGULATION means a valid regulation of
18 the United States Department of Treasury codified at Title 26
19 of the Code of Federal Regulations. References to specific
20 Treasury Regulations include references to amendments and
21 future reenactments or recodifications of such regulations,
22 regardless of how designated.

23 "(4) QUALIFIED TRUST means a "qualified trust" as
24 such term is used in Section 401(a) of the code, and includes
25 any trust that would not be qualified but for this section. A
26 "qualified trust" includes, without limitations, any trust
27 that has received a favorable determination letter from the

1 Internal Revenue Service of the United States Department of
2 Treasury to the effect that such trust is, or will be upon the
3 satisfaction of certain administrative conditions, a
4 "qualified trust" under Section 401(a) of the code. "Qualified
5 trust" also includes: (i) a "retirement annuity" described in
6 Section 404(a)(2) of the code, including a retirement annuity
7 that would not satisfy the requirements of Section 404(a)(2)
8 of the code but for this section; (ii) an annuity described in
9 Section 403(b) of the code, including an annuity that would
10 not satisfy the requirements of Section 403(b) of the code but
11 for this section; (iii) an individual retirement plan
12 described in Section 7701(a)(37) of the code, including an
13 individual retirement plan that would not satisfy the
14 requirements of Section 7701(a)(37) of the code but for this
15 section; (iv) a retirement bond described in Section 409 of
16 the code, as in effect prior to January 1, 1984, including a
17 retirement bond that would not satisfy the requirements of
18 Section 409 of the code but for this section; (v) a
19 governmental plan described in Section 414(d) of the code;
20 (vi) a church plan described in Section 414(e) of the code;
21 ~~and~~ (vii) a tax credit employee stock ownership plan described
22 in Section 409 of the code, including a tax credit employee
23 stock ownership plan that would not satisfy the requirements
24 of Section 409 of the code but for this section; and (viii) an
25 individual retirement plan defined as a Roth IRA under Section
26 408A of the code.

1 "(f) This section does not apply to the Employees'
2 Retirement System of Alabama, Teachers' Retirement System of
3 Alabama, and the Judicial Retirement Fund of Alabama."

4 Section 2. This act shall become effective
5 immediately following its passage and approval by the
6 Governor, or its otherwise becoming law.