

1 HB517  
2 128985-1  
3 By Representative Johnson (R)  
4 RFD: Financial Services  
5 First Read: 14-APR-11

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

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

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19 A BILL  
20 TO BE ENTITLED  
21 AN ACT

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23 To amend Section 19-3B-508 of the Code of Alabama  
24 1975, relating to qualified trusts under the Internal Revenue  
25 Code which may not be assigned or alienated, to include Roth  
26 Individual Retirement Accounts as a qualified trust.

27 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.