

1 HB94
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3 By Representative Johnson (R)
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ENROLLED, 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:

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

"§19-3B-508.

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

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

"(c) Subsection (a) shall apply to the creation, assignment, or recognition of a right to any benefit payable

1 with respect to a participant pursuant to a domestic relations
2 order, as such term is defined in Section 414(p) of the code,
3 except that subsection (a) shall not apply if the order is
4 determined to be a "qualified domestic relations order" in
5 accordance with Section 414(p) of the code. However, no
6 domestic relations order shall be deemed a qualified domestic
7 relations order except in accordance with the procedures for
8 such determination set forth in Section 414(p) and the related
9 provisions of the Employee Retirement Income Security Act of
10 1974, as from time to time amended.

11 "(d) The provisions of this section shall be
12 interpreted so as to provide restrictions on alienation and
13 assignment to the extent, and only to the extent, the same are
14 required for a trust within the definition of "qualified
15 trust" herein to be a "qualified trust" under the applicable
16 provisions of the code, notwithstanding any attempted
17 assignment or alienation in violation of Section 401(a) or
18 other applicable provisions of the code. It is intended that
19 this section will constitute "a restriction of the transfer of
20 a beneficial interest of the debtor in a trust that is
21 enforceable under applicable nonbankruptcy law" for purposes
22 of Section 541(c)(2) of the Federal Bankruptcy Code, 11 U.S.C.
23 § 541(c)(2), as from time to time amended. This section shall
24 further be construed as a "state spendthrift trust law." It is

1 further intended for this section to provide an exemption from
2 creditors' claims within 11 U.S.C. § 522.

3 "(e) As used in this section:

4 "(1) ASSIGNMENT or ALIENATION, and any conjugation
5 thereof, includes any anticipation, assignment at law or in
6 equity, alienation, attachment, garnishment, levy, execution,
7 or other legal or equitable process. The term includes: (i)
8 any arrangement providing for the payment to the employer or
9 other sponsor of such plan of benefits that otherwise would be
10 due the participant under the plan; (ii) any direct or
11 indirect arrangement, whether revocable or irrevocable,
12 whereby any person acquires from a participant or beneficiary
13 of such plan a right or interest enforceable against the plan
14 in, or to, all or any part of a plan benefit which is, or may
15 become, payable to the participant or beneficiary; (iii) any
16 attachment, execution, seizure, or the like, or under any form
17 of legal process whatsoever; and (iv) the operation of any
18 bankruptcy or insolvency laws under 11 U.S.C. § 522(b) as from
19 time to time amended. Notwithstanding the foregoing, the term
20 does not include those items excluded from the definition by
21 Treasury Regulations § 1.401(a)-13(c)(2).

22 "(2) CODE means the Internal Revenue Code of 1986,
23 as from time to time amended, or as at any time superseded by
24 reenactment, recodification, or adoption of any other similar
25 revenue law. Reference to specific sections of the code shall

1 include references to their successor sections as a result of
2 renumbering or recodification at any future date.

3 "(3) TREASURY REGULATION means a valid regulation of
4 the United States Department of Treasury codified at Title 26
5 of the Code of Federal Regulations. References to specific
6 Treasury Regulations include references to amendments and
7 future reenactments or recodifications of such regulations,
8 regardless of how designated.

9 "(4) QUALIFIED TRUST means a "qualified trust" as
10 such term is used in Section 401(a) of the code, and includes
11 any trust that would not be qualified but for this section. A
12 "qualified trust" includes, without limitations, any trust
13 that has received a favorable determination letter from the
14 Internal Revenue Service of the United States Department of
15 Treasury to the effect that such trust is, or will be upon the
16 satisfaction of certain administrative conditions, a
17 "qualified trust" under Section 401(a) of the code. "Qualified
18 trust" also includes: (i) a "retirement annuity" described in
19 Section 404(a)(2) of the code, including a retirement annuity
20 that would not satisfy the requirements of Section 404(a)(2)
21 of the code but for this section; (ii) an annuity described in
22 Section 403(b) of the code, including an annuity that would
23 not satisfy the requirements of Section 403(b) of the code but
24 for this section; (iii) an individual retirement plan
25 described in Section 7701(a)(37) of the code, including an

1 individual retirement plan that would not satisfy the
2 requirements of Section 7701(a)(37) of the code but for this
3 section; (iv) a retirement bond described in Section 409 of
4 the code, as in effect prior to January 1, 1984, including a
5 retirement bond that would not satisfy the requirements of
6 Section 409 of the code but for this section; (v) a
7 governmental plan described in Section 414(d) of the code;
8 (vi) a church plan described in Section 414(e) of the code;
9 ~~and~~ (vii) a tax credit employee stock ownership plan described
10 in Section 409 of the code, including a tax credit employee
11 stock ownership plan that would not satisfy the requirements
12 of Section 409 of the code but for this section; and (viii) an
13 individual retirement plan defined as a Roth IRA under Section
14 408A of the code.

15 "(f) This section does not apply to the Employees'
16 Retirement System of Alabama, Teachers' Retirement System of
17 Alabama, and the Judicial Retirement Fund of Alabama."

18 Section 2. This act shall become effective
19 immediately following its passage and approval by the
20 Governor, or its otherwise becoming law.

