

1 HB264
2 181876-1
3 By Representatives Faulkner, Johnson (K) and Blackshear
4 RFD: Financial Services
5 First Read: 16-FEB-17

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8 SYNOPSIS: Currently, benefits provided pursuant to a
9 qualified trust may not be assigned and are exempt
10 from certain federal bankruptcy or insolvency laws.

11 This bill would further define qualified
12 trusts to include trusts formed as part of certain
13 qualified pension plans, qualified stock bonus
14 plans, and profit sharing plans.

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16 A BILL
17 TO BE ENTITLED
18 AN ACT

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20 To amend Section 19-3B-508 of the Code of Alabama
21 1975, relating to qualified trusts under the federal tax code;
22 to further define the term qualified trust; to provide for the
23 treatment of benefits of such trusts for purposes of
24 assignment or alienation of such accounts and the exclusion
25 from federal bankruptcy and insolvency laws.

26 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 "~~(e)~~ (a) As used in this section:

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

23 "(2) CODE means the Internal Revenue Code of 1986,
24 as from time to time amended, or as at any time superseded by
25 reenactment, recodification, or adoption of any other similar
26 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) QUALIFIED ROLLOVER CONTRIBUTION means any of
4 the following:

5 "a. Amounts qualifying as nontaxable rollover
6 contributions or direct transfers under Section 402(a)(5),
7 403(a)(4), 403(b)(8), or 403(d)(3) of the code before January
8 1, 1993.

9 "b. amounts qualifying as nontaxable rollover
10 contributions or direct transfers under Sections 402(c),
11 402(e)(6), 402(f), 403(a)(4), 403(a)(5), 403(b)(8),
12 403(b)(10), or 408(d)(3) of the code on or after January 1,
13 1993.

14 "c. Amounts treated as qualified rollover
15 contributions under Section 408A of the code.

16 "(4) QUALIFIED TRUST means a "qualified trust" as
17 such term is used in includes all trusts created or organized
18 under Section 401(a) of the code, including, but not limited
19 to, a trust forming part of a qualified pension plan,
20 qualified stock bonus plan, or qualified profit sharing plan
21 and includes any trust that would not be qualified but for
22 this section. A "qualified trust" includes, without
23 limitations, any trust that has received a favorable
24 determination letter from the Internal Revenue Service of the
25 United States Department of Treasury to the effect that such
26 trust is, or will be upon the satisfaction of certain
27 administrative conditions, a "qualified trust" under Section

1 401(a) of the code; ~~."Qualified trust" also includes: (i) a~~
2 ~~"retirement annuity" described in Section 404(a)(2) of the~~
3 ~~code, including a retirement annuity that would not satisfy~~
4 ~~the requirements of Section 404(a)(2) of the code but for this~~
5 ~~section; (ii) an annuity described in Section 403(b) of the~~
6 ~~code, including an annuity that would not satisfy the~~
7 ~~requirements of Section 403(b) of the code but for this~~
8 ~~section; (iii) an individual retirement plan described in~~
9 ~~Section 7701(a)(37) of the code, including an individual~~
10 ~~retirement plan that would not satisfy the requirements of~~
11 ~~Section 7701(a)(37) of the code but for this section; (iv) any~~
12 ~~qualified annuity plan described in the code, including an~~
13 ~~individual retirement annuity and individual retirement~~
14 ~~account (IRA), rollover individual retirement account, an~~
15 ~~individual retirement plan defined as a Roth IRA under Section~~
16 ~~408A of the code; simplified employee pension (SEP), savings~~
17 ~~incentive match plan for employees (SIMPLE IRA), or other~~
18 ~~individual retirement plan described in Section 408 of the~~
19 ~~code;~~ a retirement bond described in Section 409 of the code,
20 as in effect prior to January 1, 1984, ~~including a retirement~~
21 ~~bond that would not satisfy the requirements of Section 409 of~~
22 ~~the code but for this section; (v) a any governmental plan~~
23 ~~described in Section 414(d) of the code; (vi) a church plan~~
24 ~~health savings accounts and church plans described in Section~~
25 ~~414(e) of the code; (vii) a tax credit employee stock~~
26 ~~ownership plan described in Section 409 of the code;~~7
27 ~~including a tax credit employee stock ownership plan that~~

1 ~~would not satisfy the requirements of Section 409 of the code~~
2 ~~but for this section; and (viii) an individual retirement plan~~
3 ~~defined as a Roth IRA under Section 408A of the code. an~~
4 ~~eligible deferred compensation plan described in Section~~
5 ~~457(b) of the code; and any other plan, contract, annuity,~~
6 ~~account, or arrangement which satisfies the requirements of~~
7 ~~Sections 401, 403(a), 403(a), 404(a)(2), 408, 408A, 409,~~
8 ~~414(d), 414(e), or 457 of the code.~~

9 "~~(3)~~(5) TREASURY REGULATION means a valid regulation
10 of the United States Department of Treasury codified at Title
11 26 of the Code of Federal Regulations. References to specific
12 Treasury Regulations include references to amendments and
13 future reenactments or recodifications of such regulations,
14 regardless of how designated.

15 "~~(a)~~(b) Any Except where stated otherwise in this
16 section, benefits provided under a plan, contract, annuity,
17 account, or arrangement which includes ~~a trust that~~ or
18 constitutes a "qualified trust" may not be assigned or
19 alienated, voluntarily or involuntarily, and shall be exempt
20 from the operation of any bankruptcy or insolvency laws under
21 11 U.S.C. § 522(b), as from time to time amended. This
22 subsection may not be waived by a participant or beneficiary
23 of any qualified plan.

24 "~~(c) Subsection (a) shall apply to the creation,~~
25 ~~assignment, or recognition of a right to any benefit payable~~
26 ~~with respect to a participant pursuant to a domestic relations~~
27 ~~order, as such term is defined in Section 414(p) of the code,~~

1 ~~except that subsection (a) shall not apply if the order is~~
2 ~~determined to be a "qualified domestic relations order" in~~
3 ~~accordance with Section 414(p) of the code. However, no~~
4 ~~domestic relations order shall be deemed a qualified domestic~~
5 ~~relations order except in accordance with the procedures for~~
6 ~~such determination set forth in Section 414(p) and the related~~
7 ~~provisions of the Employee Retirement Income Security Act of~~
8 ~~1974, as from time to time amended. Subsection (b) shall not~~
9 ~~apply to taxes owed to any local, state, or federal taxing~~
10 ~~authority, to a qualified domestic relations order as~~
11 ~~determined in accordance with the procedures for such~~
12 ~~determination set forth in Section 414(p) of the code and the~~
13 ~~related provisions of the Employee Retirement Income Security~~
14 ~~Act of 1974, as from time to time amended, to contributions to~~
15 ~~a qualified trust that exceed the amounts allowed under the~~
16 ~~applicable provisions of the code and any earnings thereon,~~
17 ~~unless otherwise exempt by law, or to criminal restitution~~
18 ~~orders enforced as civil judgments.~~

19 ~~"(d) The provisions of this section shall be~~
20 ~~interpreted so as to provide restrictions on alienation and~~
21 ~~assignment to the extent, and only to the extent, the same are~~
22 ~~required for a trust within the definition of "qualified~~
23 ~~trust" herein to be a "qualified trust" under the applicable~~
24 ~~provisions of the code, notwithstanding any attempted~~
25 ~~assignment or alienation in violation of Section 401(a) or~~
26 ~~other applicable provisions of the code. It is intended that~~
27 ~~this section will constitute "a restriction of the transfer of~~

1 ~~a beneficial interest of the debtor in a trust that is~~
2 ~~enforceable under applicable nonbankruptcy law" for purposes~~
3 ~~of Section 541(c)(2) of the Federal Bankruptcy Code, 11 U.S.C.~~
4 ~~§ 541(c)(2), as from time to time amended. This section shall~~
5 ~~further be construed as a "state spendthrift trust law." It is~~
6 ~~further intended for this section to provide an exemption from~~
7 ~~creditors' claims within 11 U.S.C. § 522.~~

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

15 "(e) The protections afforded by subsection (b)
16 shall apply to any amounts of money or other assets
17 distributed from a qualified trust if such distribution
18 constitutes a qualified rollover contribution.

19 "(f) Money or other assets distributed from a
20 qualified trust subject to restraint on assignment or
21 alienation of benefits under subsection (b) are not subject to
22 assignment or alienation for the greater of 60 days after the
23 date of distribution or such additional period of time allowed
24 by the Internal Revenue Service to effectuate a valid rollover
25 if the contribution of such money or other assets constitutes
26 a qualified rollover contribution.

1 "(g) Any money or other assets in a qualified trust
2 subject to restraint on assignment or alienation of benefits
3 under subsection (b) cease to be exempt after the account
4 owner's death, except with respect to any money or other
5 assets in a qualified trust owned or controlled by the
6 surviving spouse of the deceased account owner.

7 "~~(f)~~ (h) This section does not apply to the
8 Employees' Retirement System of Alabama, Teachers' Retirement
9 System of Alabama, and the Judicial Retirement Fund of
10 Alabama."

11 Section 2. This act shall become effective on the
12 first day of the third month following its passage and
13 approval by the Governor, or its otherwise becoming law.