

CHAPTER 2011-84

House Bill No. 469

An act relating to individual retirement accounts; amending s. 222.21, F.S.; clarifying the exemption of inherited individual retirement accounts from legal processes; providing intent; providing for retroactive application; providing an effective date.

WHEREAS, many residents of this state have individual retirement accounts, relying upon the Legislature's intent that individual retirement accounts be exempt from claims of creditors, and

WHEREAS, the Legislature clearly intended in s. 222.21(2)(c), Florida Statutes, that inherited individual retirement accounts included in s. 402(c) of the Internal Revenue Code of 1986, as amended, be exempt from claims of creditors of the owner, beneficiary, or participant of the inherited individual retirement account, and

WHEREAS, in *Robertson v. Deeb*, 16 So. 3d 936 (Fla. 2d DCA 2009) the appellate court, contrary to the Legislature's intent, held that an inherited individual retirement account was not exempt from the beneficiaries' creditors because such an account was not included in property described in s. 222.21, Florida Statutes, a decision that was followed in the Bankruptcy Court of the Middle District of Florida, *In re: Ard*, 435 B.R. 719 (Bkrcty. M.D. Fla. 2010), NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (c) of subsection (2) of section 222.21, Florida Statutes, is amended to read:

222.21 Exemption of pension money and certain tax-exempt funds or accounts from legal processes.—

(2)

(c) Any money or other assets or any interest in any fund or account that is ~~are~~ exempt from claims of creditors of the owner, beneficiary, or participant under paragraph (a) does ~~do~~ not cease to be exempt after the owner's death to qualify for exemption by reason of a direct transfer or eligible rollover that is excluded from gross income under s. ~~402(e)~~ 402(e) of the Internal Revenue Code of 1986, including, but not limited to, a direct transfer or eligible rollover to an inherited individual retirement account as defined in s. 408(d)(3) of the Internal Revenue Code of 1986, as amended. This paragraph is intended to clarify existing law, is remedial in nature, and shall have retroactive application to all inherited individual retirement accounts without regard to the date an account was created.

Section 2. This act shall take effect upon becoming a law.

Approved by the Governor May 31, 2011.

Filed in Office Secretary of State May 31, 2011.