

PUBLICATION

Spotlight on Alabama: New Law Extends Creditor Protections for Certain Retirement Account Assets in Alabama

Authors: Allen Brooks Blow

June 02, 2017

On May 18, Governor Kay Ivey signed Act 2017-317 (the "Act") into law. The Act amends the provisions of the Alabama Uniform Trust Code, which provide creditor protection for various types of tax-preferred retirement accounts including, without limitation, 401(k) plans, 403(b) plans, 457 plans, church plans and individual retirements accounts (IRAs) (collectively, "Qualified Accounts"), to clarify that the protections provided by such provisions of the Alabama Uniform Trust Code apply with respect to qualifying rollover contributions from one Qualified Account to another Qualified Account and to extend such protections to a Qualified Account held by the surviving spouse of an account owner after the account owner's death. The Act becomes effective August 1, 2017.

Existing Alabama law provided that, subject to limited exceptions, assets within Qualified Accounts were exempt from the claims of creditors (whether in bankruptcy, in a civil action or otherwise) so long as such assets remained within a Qualified Account. The Act clarifies that assets remain exempt from the claims of creditors even if withdrawn from a Qualified Account so long as such assets are transferred to another Qualified Account in qualified rollover contribution within a period of 60 days or such longer period provided for such a rollover in the Internal Revenue Code. Thus, the Act permits an Alabama resident, among other things, to rollover assets from a 401(k) plan to an IRA without subjecting such assets to the claims of the account owner's creditors.

The Act extends protection from creditors' claims to Qualified Accounts held by the surviving spouse of an account owner after the account owner's death. Such protection was already available for certain retirement accounts, such as 401(k), 403(b) and 457 plans, pursuant to the "anti-alienation" provisions of the Employee Retirement Income Security Act of 1974 (ERISA), which prohibit the voluntary or involuntary assignment or alienation of assets within such an account. However, certain retirement accounts, such as IRAs, are not subject to the "anti-alienation" provisions of ERISA and therefore have not historically been subject to such protections. Further, dicta in the recent U.S. Supreme Court decision of *Clark v. Rameker* has created ambiguity as to when a surviving spouse's interest in an IRA is protected from the claims of creditors pursuant to federal bankruptcy exemptions, with that case arguably suggesting a distinction between assets retained in the decedent spouse's IRA and assets rolled over or transferred to the surviving spouse's IRA. The Act attempts to resolve these uncertainties and gaps in the protection of IRAs in the hands of surviving spouses by extending creditor protection to assets in Qualified Accounts in the hands of a surviving spouse whether such surviving spouse elects to retain the assets in the decedent's Qualified Account or to rollover or transfer the assets to their own Qualified Account.

The co-authors of this alert, [Allen Blow](#) and [Ross Cohen](#), were involved in drafting the Act. Allen and Ross were engaged by the Financial Planning Association of North Alabama to draft the bill introduced in the Alabama Legislature, and worked collaboratively with the General Counsel of the Alabama Securities Commission in revising the draft bill in order to prepare it for the legislative process.

Please remember that advice and counsel regarding your particular tax or retirement account-related issues, including the potential impact of the developments outlined above, are dependent on your specific facts and

circumstances. For more information about how these issues may affect you, or related matters, contact the co-authors of this alert, Allen Blow and Ross Cohen, or any member of the Firm's Tax Group.