

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: SB 978

INTRODUCER: Senator Flores

SUBJECT: Individual Retirement Accounts

DATE: March 17, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	Pre-meeting
2.			JU	
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill amends s. 222.21(2)(c), F.S., to provide that an Individual Retirement Account (IRA) exempt from creditors under s. 222.21(2)(a), F.S., would continue to be exempt if the original IRA were transferred into an Inherited IRA.

The bill takes effect upon becoming law and applies retroactively to all Inherited IRAs regardless of when the Inherited IRA was created.

II. Present Situation:

An Individual Retirement Account (IRA) is a retirement savings account that provides tax benefits to the owner.¹ These accounts are primarily used as a means of saving for the owner's retirement. When the owner of an IRA becomes deceased the IRA may be transferred to a named beneficiary or rolled over to a spouse.² The benefactor of an IRA has two options: withdraw all of the funds from the original IRA within 5 years of the original owner's death; or transfer the funds to an Inherited IRA and receive annual distributions over the remaining lifespan of the beneficiary.³ The beneficiary of an Inherited IRA may not make contributions to the account, must make minimum withdrawals regardless of his or her age and, unlike the original IRA, there is no penalty for making early withdrawals from the account.⁴

¹ IRS Publication 590 (2010), Individual Retirement Accounts (IRAs)

² Id.

³ Id.

⁴ Id.

Section 222.21(2)(a), F.S., provides protection from creditors for various assets including traditional IRAs. These protections also extend to bankruptcy proceedings.

In 2009 the Second District Court of Appeal in its decision of *Robertson v. Deeb*, ruled that an Inherited IRA was not afforded the same protections as a traditional IRA due to the changes in tax status and structure when the original IRA was transferred into the benefactor's Inherited Account.⁵

In *Robertson*, a creditor had obtained a judgment against Robertson and served a writ of garnishment on the trustee of Robertson's Inherited IRA, as he was the named beneficiary of his late father's IRA. Upon his father's death, Robertson was given the option of keeping the IRA in his father's name and withdrawing all the proceeds over the next 5 years, or transferring the funds into an Inherited IRA and taking mandatory annual withdrawals for the remainder of his life expectancy. Robertson chose the latter. Robertson claimed that his beneficial interest in the IRA was exempt from garnishment pursuant to s. 222.21(2)(a), F.S., "because he is a 'beneficiary' of the 'fund or account' that qualified as an IRA when his father was alive."⁶ The court ruled that section 222.21(2)(a), F.S., does not apply to Inherited IRAs,

...because the plain language of that section references only the original 'fund or account' and the tax consequences of Inherited IRAs render them completely separate funds or accounts.⁷

The Court reasoned that since the Inherited IRA was a brand new account different from the original IRA and an Inherited IRA's tax status and structure is different from a traditional IRA, the exceptions in s. 222.21(2)(a), F.S., did not apply. The decision in *Robertson* has been further applied in Federal bankruptcy court in *In re: Ard*.⁸ In the *Ard* case, the debtor had an Inherited IRA similar to that in *Robertson*. The court noted the outcomes involving inherited IRAs "turned on the particular language of each state's law applicable to the exemption of IRAs."⁹ The bankruptcy court, pursuant to the decision in *Robertson*, ruled that s. 222.21(2)(a), F.S., did not apply to an Inherited IRA and thus was not exempt in Federal bankruptcy proceedings.¹⁰ The debtor was therefore required to turn the IRA over to the bankruptcy trustee.

III. Effect of Proposed Changes:

The bill contains "whereas" clauses to express the Legislature's intent that an Inherited IRA, as defined in Internal Revenue Code of 1986, was intended to be exempt from the claims of creditors and that the decisions in *Robertson* and *In re: Ard* are contrary to the Legislature's intent in 2005.¹¹

The bill amends s. 222.21(2)(c), F.S., to provide that an IRA exempt from creditors under

⁵ *Robertson v. Deeb*, 16 So.3d 936 (Fla. 2nd DCA 2009).

⁶ Id. at 938.

⁷ Id. at 938.

⁸ *In re: Ard*, at 719.

⁹ Id. at 722.

¹⁰ Id. at 722.

¹¹ Ch. 2005-101

s. 222.21(2)(a), F.S., would continue to be exempt if the original IRA were transferred into an Inherited IRA. Under the proposed changes, when an owner of an IRA passes away, his or her named beneficiary would continue to enjoy the protection from creditors that the original owner enjoyed under s. 222.21(2)(a), F.S. This protection would most likely extend to protection in bankruptcy proceedings, as well.

The bill contains language indicating the provisions are clarifying and shall apply retroactively to all Inherited IRA's regardless of when an Inherited IRA was created.

The bill takes effect upon becoming a law.

Other Potential Implications:

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Cases currently in litigation could be affected by the retroactive application of the bill.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill removes a source for creditors to collect to satisfy a debt owed.

C. Government Sector Impact:

None

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
