

By Senator Flores

38-01000A-11

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1 A bill to be entitled
2 An act relating to individual retirement accounts;
3 amending s. 222.21, F.S.; clarifying the exemption of
4 inherited individual retirement accounts from legal
5 processes; providing intent; providing for retroactive
6 application; providing an effective date.

7
8 WHEREAS, many residents of this state have individual
9 retirement accounts, relying upon the Legislature's intent that
10 individual retirement accounts be exempt from claims of
11 creditors, and

12 WHEREAS, the Legislature clearly intended in s.
13 222.21(2)(c), Florida Statutes, that inherited individual
14 retirement accounts included in s. 402(c) of the Internal
15 Revenue Code of 1986, as amended, be exempt from claims of
16 creditors of the owner, beneficiary, or participant of the
17 inherited individual retirement account, and

18 WHEREAS, in *Robertson v. Deeb*, 16 So. 3d 936 (Fla. 2d DCA
19 2009) the appellate court, contrary to the Legislature's intent,
20 held that an inherited individual retirement account was not
21 exempt from the beneficiaries' creditors because such an account
22 was not included in property described in s. 222.21, Florida
23 Statutes, a decision that was followed in the Bankruptcy Court
24 of the Middle District of Florida, *In re: Ard*, 435 B.R. 719
25 (Bkrtcy. M.D. Fla. 2010), NOW, THEREFORE,

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Paragraph (c) of subsection (2) of section

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30 222.21, Florida Statutes, is amended to read:

31 222.21 Exemption of pension money and certain tax-exempt
32 funds or accounts from legal processes.—

33 (2)

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

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