

**ACT 152**

H.B. NO. 477

A Bill for an Act Relating to Exempting Roth Individual Retirement Accounts from Attachment or Seizure.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the Roth individual retirement account is a sound financial tool for retirement planning. Many people currently in the workforce will use the Roth individual retirement account as a part of their financial planning as opposed to or in conjunction with a regular individual retirement account. Both types of retirement accounts use compound interest to grow contributions over time, providing a nest egg for the owner of either account.

The legislature also finds that a regular individual retirement account is protected from the claims of creditors under section 651-124, Hawaii Revised

Statutes, but the same is not true for a Roth individual retirement account. Legal arguments abound whether a reference in the Hawaii statute to section 408 of the Internal Revenue Code that relates to pensions exempted from creditor claims, encompasses Roth individual retirement accounts, which are discussed within section 408A of the Internal Revenue Code.

It is the intent of the legislature to remove any ambiguity from the State's pension money exemption statute in favor of protecting Roth individual retirement accounts from the claims of creditors in the same manner as regular individual retirement accounts.

SECTION 2. Section 651-124, Hawaii Revised Statutes, is amended to read as follows:

**“§651-124 Pension money exempt.** The right of a debtor to a pension, annuity, retirement or disability allowance, death benefit, any optional benefit, or any other right accrued or accruing under any retirement plan or arrangement described in section 401(a), 401(k), 403(a), 403(b), 408, 408A, 409 (as in effect prior to January 1, 1984), 414(d), or 414(e) of the Internal Revenue Code of [~~1954,~~] 1986, as amended, or any fund created by the plan or arrangement, shall be exempt from attachment, execution, seizure, the operation of bankruptcy or insolvency laws under 11 United States Code section 522(b), or under any legal process whatever. However, this section shall not apply to:

- (1) A “qualified domestic relations order” as defined in section 206(d) of the Employee Retirement Security Act of 1974, as amended, or in section 414(p) of the Internal Revenue Code of [~~1954,~~] 1986, as amended; and
- (2) Contributions made to a plan or arrangement within the three years before the date a debtor files for bankruptcy, whether voluntary or involuntary, or within three years before the date a civil action is initiated against the debtor, except for contributions to a retirement plan established by state statute if the effect would be to eliminate a state employee's retirement service credit.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 23, 2005.)