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August 24, 2023

Representative Clay Schexnayder  
Speaker of the House of Representatives  
P.O. Box 94062  
Baton Rouge, Louisiana 70804

Senator Patrick Page Cortez  
President of the Senate  
P.O. Box 94183  
Baton Rouge, Louisiana 70804

**RE: HOUSE CONCURRENT RESOLUTION NO. 52 OF THE 2018 REGULAR SESSION**

Dear Mr. Speaker and Mr. President:

The Louisiana State Law Institute respectfully submits its report to the legislature relative to exemption of inherited retirement accounts from seizure.

Sincerely,

A handwritten signature in black ink, appearing to read "Guy Holdridge", with a long horizontal stroke extending to the right.

Guy Holdridge  
Director

cc: Senator Franklin J. Foil

email cc: David R. Poynter Legislative Research Library  
[drplibrary@legis.la.gov](mailto:drplibrary@legis.la.gov)

Secretary of State, Mr. R. Kyle Ardoin  
[admin@sos.louisiana.gov](mailto:admin@sos.louisiana.gov)

**LOUISIANA STATE LAW INSTITUTE  
SUCCESSIONS AND DONATIONS COMMITTEE**

**REPORT TO THE LEGISLATURE IN RESPONSE TO  
HCR NO. 52 OF THE 2018 REGULAR SESSION**

**Relative to exempting certain inherited retirement accounts from seizure**

Prepared for the  
Louisiana Legislature on

**August 24, 2023**

Baton Rouge, Louisiana

# LOUISIANA STATE LAW INSTITUTE SUCCESSIONS AND DONATIONS COMMITTEE

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\* \* \* \* \*

Ronald J. Scalise, Reporter

Jessica G. Braun, Staff Attorney

2018 Regular Session

HOUSE CONCURRENT RESOLUTION NO. 52

BY REPRESENTATIVE FOIL

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A CONCURRENT RESOLUTION

To urge and request the Louisiana State Law Institute to study the exemption of inherited retirement accounts and inherited annuities from liability for any debt except alimony and child support.

WHEREAS, R.S. 13:3881(D) provides that pensions, tax-deferred arrangements, annuity contracts, and the proceeds thereof are exempt from all liability for any debt except alimony and child support; and

WHEREAS, in 2014, the United States Supreme Court in the matter of *Clark v. Rameker* held, by drawing distinction between an individual's retirement fund and an inherited retirement fund, that funds held in an inherited IRA are not "retirement funds" within the meaning of the bankruptcy estate exemption provided by 11 U.S.C. §522(b)(3)(C); and

WHEREAS, Louisiana is an "opt out" state under the United States Bankruptcy Code and bankruptcy debtors in Louisiana may therefore take advantage of the exemptions provided by both state and federal law; and

WHEREAS, relying on the United States Supreme Court's decision in *Clark v. Rameker*, the United States District Court, Eastern District of Louisiana ruled in *In re Everett* that "an inherited IRA is not a 'tax-deferred arrangement' within the meaning of R.S. 13:3881, and is not exempt from the bankruptcy estate under Louisiana Law"; and

WHEREAS, the court's holding in *In re Everett* as it relates to inherited IRAs could potentially be applied to other inherited accounts provided for in R.S. 13:3881(D).

1           THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby  
2 urge and request the Louisiana State Law Institute to study whether inherited retirement  
3 funds and other inherited "tax-deferred arrangements" should be generally exempt from  
4 seizure in Louisiana, and if so, to what extent.

5           BE IT FURTHER RESOLVED that the Legislature of Louisiana does hereby urge  
6 and request the Louisiana State Law Institute to propose any recommended changes to R.S.  
7 13:3881(D) to give effect to its findings.

8           BE IT FURTHER RESOLVED that the Legislature of Louisiana does hereby urge  
9 and request the Louisiana State Law Institute to include representatives of the Louisiana  
10 Bankers Association in its study.

11           BE IT FURTHER RESOLVED that a suitable copy of this Resolution be transmitted  
12 to the Louisiana State Law Institute.

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_

August 24, 2023

To: Representative Clay Schexnayder  
Speaker of the House of Representatives  
P.O. Box 94062  
Baton Rouge, Louisiana 70804

Senator Patrick Page Cortez  
President of the Senate  
P.O. Box 94183  
Baton Rouge, Louisiana 70804

**REPORT TO THE LEGISLATURE IN RESPONSE TO  
HCR NO. 52 OF THE 2018 REGULAR SESSION**

House Concurrent Resolution No. 52 of the 2018 Regular Session urged and requested the Louisiana State Law Institute to study the exemption of inherited retirement accounts and inherited annuities from liability for any debt except alimony and child support. In fulfillment of this request, the Law Institute assigned the project to its Successions and Donations Committee, which operates under the direction of Professor Ronald J. Scalise, Jr. as Reporter.

The Successions and Donations Committee began its consideration of the resolution by noting that it was in response to a case decided by the United States Supreme Court, *Clark v. Rameker*, 573 U.S. 122 (2014), which unanimously concluded that “inherited” IRAs are not included as “retirement funds” and thus not subject to an exemption in bankruptcy proceedings under federal law. Although Louisiana has opted out of the federal bankruptcy exemptions and created its own list of exemptions in R.S. 13:3881, a federal district court followed *Clark* in *In re Everett*, 520 B.R. 498 (E.D. La. 2014), concluding that an inherited IRA is not a “tax-deferred arrangement” exempted from seizure under R.S. 13:3881(D). Research showed that seven states have enacted statutes that specifically exempt inherited IRAs, but at least eighteen states that have not opted out of the federal bankruptcy exemptions are governed by *Clark*.

The Committee noted that inherited IRAs are different in character and purpose because there are no tax benefits, money cannot be added, and money must be withdrawn by mandatory intervals. Members of the Committee also discussed the necessity for clarity and consistency as applied to all accounts of this variety and whether inheritance by a spouse or child should be treated differently from an inheritance by a more distant individual. The Committee acknowledged the effects on creditors, the ability to roll over the IRA or create a trust to protect the beneficiary, the similarities with other non-probate assets, the treatment of inherited IRAs by tax law, the potential issues that might arise when spouses have a separate property agreement, the treatment of forced heirs, and issues concerning divorce. Ultimately, the Committee decided to recommend exempting all IRAs from seizure and obtained approval of its recommendations from the Law Institute’s Council. The proposed revisions were submitted to the resolution’s author and are attached below.

20\_\_ Regular Session

HOUSE/SENATE BILL NO.

BY REPRESENTATIVE/SENATOR

(On Recommendation of the Louisiana State Law Institute)

SUCCESSIONS: Provides for the exemption of certain inherited assets

1 AN ACT

2 To amend and reenact R.S. 13:3881(D)(3), relative to successions; to exempt certain retirement  
3 accounts from seizure; and to provide for related matters.

4 Be it enacted by the Legislature of Louisiana:

5 Section 1. R.S. 13:3881(D)(3) is hereby amended and reenacted to read as follows:

6 §3881. General exemptions from seizure

7 \* \* \*

8 D.

9 \* \* \*

10 (3) The term “tax-deferred arrangement” includes all individual retirement  
11 accounts or individual retirement annuities of any variety or name, including inherited  
12 accounts or inherited annuities and any account or annuity allocated pursuant to a qualified  
13 domestic relations order, whether authorized now or in the future in the Internal Revenue  
14 Code of 1986, or the corresponding provisions of any future United States income tax law,  
15 including balances rolled over from any other tax-deferred arrangement as defined ~~herein~~  
16 in this Subsection, money purchase pension plans, defined benefit plans, defined

1 contribution plans, Keogh plans, simplified employee pension (SEP) plans, simple  
2 retirement account (SIMPLE) plans, Roth IRAs, or any other plan of any variety or name,  
3 whether authorized now or in the future in the Internal Revenue Code of 1986, or the  
4 corresponding provisions of any future United States income tax law, under which United  
5 States income tax on the tax-deferred arrangement is deferred. The term “annuity contract”  
6 shall have the same definition as ~~defined~~ provided in R.S. 22:912(B).

7 Revision Comments – 20\_\_  
8

9 This revision is designed to legislatively overrule the decision in *In re Everett*, 520  
10 Bank. 498 (E.D. La. 2014) and to expand the applicability of this statute to exempt all  
11 inherited individual retirement accounts or individual retirement annuities, whether the  
12 beneficiary who has inherited the account or annuity (1) treats it as his own by designating  
13 himself as the account holder, (2) rolls over the account or annuity, or (3) treats himself as  
14 the beneficiary of the account or annuity, rather than treating it as his own. Also included  
15 within the expansion of the exemption are funds allocated pursuant to a qualified domestic  
16 relations order.

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DIGEST

The digest printed below was prepared by the Louisiana State Law Institute. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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H/SB \_\_\_\_\_

20\_\_ Regular Session

Author

**Abstract:** Provides an exemption from seizure for certain inherited assets.

Present law (R.S. 13:3881) provides for certain items to be exempt from seizure.

Proposed law retains present law and legislatively overrules *In re Everett*, 520 Bank. 498 (E.D. La. 2014) by exempting inherited individual retirement accounts or annuities, and funds received by a former spouse pursuant to a qualified domestic relations order, from seizure.

(Amends R.S. 13:3881(D)(3))