

2022 Regular Session

HOUSE BILL NO. 213

BY REPRESENTATIVE GREGORY MILLER

(On Recommendation of the Louisiana State Law Institute)

DIVORCE: Provides for the revocation of beneficiary designations for certain assets

1 AN ACT

2 To enact R.S. 9:2449.1 and R.S. 22:911.1, relative to divorce; to provide for the automatic
3 revocation of certain benefits upon divorce; to provide for certain retirement
4 accounts; to provide for life insurance; to provide for liability; and to provide for
5 related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 9:2449.1 is hereby enacted to read as follows:

8 §2449.1. Revocation upon divorce; deferred compensation plans

9 A. A divorce of an individual from the individual's spouse revokes any
10 benefit payable to the former spouse by reason of the individual's death under any
11 pension, profit-sharing, retirement, or similar benefit plan, provided the divorce
12 occurs after the beneficiary is designated, the parties remained divorced from each
13 other at the time of death, and no judgment or property-settlement agreement
14 expressly provides otherwise. If revocation occurs, the proceeds of the plan are
15 payable as if the former spouse had predeceased the decedent.

16 B. A payor with no actual knowledge of a divorce, judgment, or
17 property-settlement agreement affecting any pension, profit-sharing, retirement, or
18 similar benefit plan is not liable for having made payment in good faith to a
19 beneficiary designated in the affected pension, profit-sharing, retirement, or similar
20 benefit plan.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39

Revision Comments - 2022

(a) This provision changes the law. It is consistent with other provisions of Louisiana law, see, e.g., Civil Code Article 1608(5), R.S. 9:2047, and R.S. 22:911.1, and with the law of other jurisdictions. See, e.g., Unif. Prob. Code §2-804.

(b) This provision operates to revoke "any benefit payable to [a] former spouse by reason of [an] individual's death under any pension, profit-sharing, retirement, or similar benefit plan," provided three factors exist, namely, the divorce occurs after the beneficiary is designated, the parties remained divorced at the time of death, and no judgment or property-settlement agreement expressly provides otherwise. This provision recognizes that in most instances, an individual would not want to maintain a former spouse as a beneficiary and that if a former spouse remains listed as a beneficiary, it is likely due to a mistake.

(c) This provision is not intended to conflict with federal law and must, in appropriate cases, yield when preempted. Under the Employee Retirement Income Security Act (ERISA), "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" are preempted by ERISA. 29 U.S.C. 1144(a). See, e.g., Engelhoff v. Engelhoff, 532 U.S. 141 (2001) (holding that ERISA preempted an automatic revocation on divorce statute under Washington law as applied to an ERISA-governed life insurance policy and pension plan); see also Hillman v. Maretta, 569 U.S. 483 (2013) (recognizing the preemptive effect of the Federal Employees' Group Life Insurance Act of 1954 on a Virginia statute that not only revoked beneficiary status for former spouses in contracts for death benefits but also gave a cause of action against the former spouse to the party who would have received death benefits had federal law not preempted).

(d) As a matter of law, a payor is insulated from liability under this Section provided that the payor acts in good faith and has no actual knowledge of a divorce, judgment, or property-settlement agreement.

Section 2. R.S. 22:911.1 is hereby enacted to read as follows:

§911.1. Revocation upon divorce; beneficiary designation in life insurance and annuity contracts

A. In all policies of life or endowment insurance and in all annuity contracts, divorce revokes any revocable designation made by a divorced individual to the former spouse, provided the divorce occurs after the beneficiary is designated, the parties remained divorced from each other at the time of death, and no judgment or property-settlement agreement expressly provides otherwise. If revocation occurs, the proceeds of the policy or annuity contract are payable as if the former spouse had predeceased the decedent.

B. A payor with no actual knowledge of a divorce, judgment, or property-settlement agreement affecting an insurance policy or annuity contract is

is designated, they remain divorced at the time of a party's death, and no agreement expressly provides otherwise.

Proposed law also provides a limitation of liability for a payor who does not have actual knowledge of the divorce and who makes payment in good faith.

(Adds R.S. 9:2449.1 and R.S. 22:911.1)