

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

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

1 beneficiary designated in the affected pension, profit-sharing, retirement, or similar
 2 benefit plan.

3 C. This Section shall not apply to any beneficiary designation made pursuant
 4 to the Louisiana Public Retirement Law.

5 Revision Comments - 2022

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

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

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

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

32 (e) This provision is not intended to conflict with the various provisions of
 33 the Louisiana Public Retirement Law regarding the consequences of divorce under
 34 a public retirement plan. See, e.g., R.S. 11:446(E), 783(D), 1933, 2224(C), and
 35 2256.1. Consequently, this provision has no applicability to any beneficiary
 36 designation made pursuant to the Louisiana Public Retirement Law. See R.S. 11:1
 37 et seq.

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

39 §911.1. Revocation upon divorce; beneficiary designation in life insurance and
 40 annuity contracts

41 A. In all policies of life or endowment insurance and in all annuity contracts,
 42 divorce revokes any revocable designation made by a divorced individual to the
 43 former spouse, provided the divorce occurs after the beneficiary is designated, the

1 parties remained divorced from each other at the time of death, and no judgment or
2 property-settlement agreement expressly provides otherwise. If revocation occurs,
3 the proceeds of the policy or annuity contract are payable as if the former spouse had
4 predeceased the decedent.

5 B. A payor with no actual knowledge of a divorce, judgment, or
6 property-settlement agreement affecting an insurance policy or annuity contract is
7 not liable for having made payment in good faith to a beneficiary designated in the
8 affected insurance policy or annuity.

9 Revision Comments - 2022

10 (a) This provision changes the law. It is consistent with other provisions of
11 Louisiana law, see, e.g., Civil Code Article 1608(5), R.S. 9:2047, and R.S. 9:2449.1,
12 and with the law of other jurisdictions. See, e.g., Unif. Prob. Code §2-804.

13 (b) This provision operates to revoke "any revocable designation made by
14 a divorced individual to the former spouse," provided three factors exist, namely, the
15 divorce occurs after the beneficiary is designated, the parties remained divorced at
16 the time of death, and no judgment or property-settlement agreement expressly
17 provides otherwise. This provision recognizes that in most instances, an individual
18 would not want to maintain a former spouse as a beneficiary and that if a former
19 spouse remains listed as a beneficiary, it is likely due to a mistake.

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

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

DIGEST

The digest printed below was prepared by House Legislative Services. 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)]

HB 213 Engrossed

2022 Regular Session

Gregory Miller

Abstract: Provides for the automatic revocation of certain beneficiary designations for retirement accounts and life insurance policies upon divorce.

Proposed law (R.S. 9:2449.1) provides for the automatic revocation of any revocable designation resulting in a benefit payable to a former spouse if the parties were divorced after the beneficiary 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.

Proposed law does not apply to beneficiary designations made pursuant to the La. Public Retirement Law.

Proposed law (R.S. 22:911.1) provides for the automatic revocation of any benefit payable to a former spouse in a life insurance policy if the parties were divorced after the beneficiary 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)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Provide that the revocation provisions for retirement benefits apply only to revocable designations.
2. Exempt beneficiary designations made pursuant to the Public Retirement Law from the revocation provisions.
3. Revise the comments to reflect the adopted amendments.