

50 State plus D.C. Creditor Exemption Statutes for IRAs, Non-ERISA 403(b) and Roth Variants

Common exceptions (not always noted herein) to protections include government as creditor (taxes), division in divorce (QDRO) and child support. Many states have specific UFTA (fraudulent conveyance) exceptions, but these may exist regardless of specific mention in statute.

Some states (IN, MD and others) tie protection to amounts "deductible", excepting Roth IRAs, but this jeopardizes non-deductible traditional IRAs.

Many states have a prerequisites that the debtor is a resident or citizen (query whether this provides equal privileges/immunities to non-residents).

Many states (e.g. TX) explicitly state or imply that contributions must be within tax code contributory limits, not in fraud of creditors.

Another common prerequisite for protection is that the account be qualified/compliant for tax law (but, FL, IL, OH statutes for substantial compliance).

Many states *might* protect inherited accounts, due to vague or silent statute, but trend is negative. Will states follow *Clark* reasoning?

SEP and SIMPLE IRAs may also have significant variation in protection from state to state (not noted herein) - do not assume these get same protection.

Chart will note "no" or "maybe" if there are significant limitations on protection, such as only to extent "reasonably necessary" for support.

Some states also have augmented statutory elective shares that could impact IRA/plans and affect accounts at death as if spouse were a creditor.

Is Protection Unlimited?

<u>State</u>	<u>State Statute</u>	<u>IRA</u>	<u>Roth IRA</u>	<u>403(b)</u>	<u>Loopholes, Exceptions or Unique Features in Statute</u>
Alabama	Ala. Code §19-3B-508	Yes	maybe	maybe	References IRC 7701(a)(37), which does not mention Roth IRAs. Mentions 403(b) <i>annuities</i> , not 403(b) <i>accounts</i> . In Re Navarre - no protection inherited IRAs.
Alaska	Alaska Stat. §09.38.017	Yes	Yes	Yes	Does not apply to amounts contributed within 120 days of bankruptcy filing. Protects inherited retirement accounts (IRA and 403(b) -(a)(3).
Arizona	Ariz. Rev. Stat. 33-1126(B)	Yes	Yes	Yes	Does not apply to amounts contributed within 120 days before bankruptcy filing. Statute appears to protect inherited IRAs as well
Arkansas	Ark. Code Ann. §16-66-220	Yes	Yes	Yes	Traditional IRA/403b contributions in excess of deductible limits not protected
California	Cal. Civ. Proc. Code § 704.115	No	No	No	Only to the extent necessary to provide for the support of debtor, spouse and dependents. Inherited IRAs no better, see <i>In re Greenfield</i>
Colorado	Co. Rev. Stat. 13-54-102(s)	Yes	Yes	probably	Child support, felonious killing exceptions - 403bs not mentioned specifically, but are probably protected
Connecticut	Conn. Gen. Stat. §52-321a	Yes	Yes	Yes	Includes education ESAs, MSAs, exceptions for costs/debts due crime victims, incarceration costs
Delaware	10 Del. Code §4915	Yes	Yes	Yes	Includes add'l protection for 60 day rollovers
Wash. DC	D.C. Code § 15-501(a)(9)	Yes	Yes	Yes	Applies to residents or those who "earn livelihood" DC
Florida	Fla. Stat. Ann. §222.21	Yes	Yes	Yes	New statute broadly includes beneficiaries, inherited IRAs (2)(c), substantially compliant plans

Georgia	Georgia Code Ann. § 44-13-100(a)(2.1)	No	No	No	No tracing of protection once in hand of debtor, "reasonably necessary". Roth IRA not mentioned in statute, but protected if "necessary" by <i>In re Bramlette</i>
Hawaii	Hawaii Rev. Stat. § 651-124	Yes	Yes	Yes	The exemption does not apply to contributions made to a plan or arrangement within three years before the date a civil action is initiated against the debtor.
Idaho	Idaho Code §11-604A, 55-1101, 11-607	Yes	Yes	Yes	Inherited IRAs protected per <i>In re McClelland</i> .
Illinois	I.L.C.S. § 5/12-1006	Yes	Yes	Yes	Even plans "intended in good faith to qualify" protected. Not inherited plans - <i>In re Taylor</i>
Indiana	Ind. Code Ann. § 55-10-2(c)(6)	Yes	Yes	Yes	Roth 401k rollover may not be protected, non-deductible contributions to traditional IRAs as well. Inherited IRAs not protected: <i>In re Klipsch</i>
Iowa	Iowa Code § 627.6	Yes	Yes	No	Requires residency, mentions 408(a) trustee IRA, but not 408(h) custodial IRA (though surely intended). Non-ERISA 403(b) not mentioned.
Kansas	Kan. Stat. Ann. § 60-2308(b)	Yes	Yes	Yes	May protect inherited retirement plans as well ("shall be exempt from any and all claims of creditors of the beneficiary or participant")
Kentucky	Ky Rev. Stat. § 427.150(2)	Yes	Yes	Yes	Contributions within 120 days of filing bankruptcy excepted, maintenance/child support
Louisiana	La. Rev. Stat. Ann. §§ 20:33(1), 13:3881(D)	Yes	Yes	Yes	Contributions within one year of bankruptcy filing, alimony/Child support
Maine	Me. Rev. Stat. Ann. Tit. 14, § 4422(13)(E)	No	No	No	\$15,000 or only to the extent reasonably necessary for the support of the debtor/dependents
Maryland	Md. Code Ann. Cts. & Jud. Proc. § 11-504(h)(1)	Yes	Yes	Yes	Ties protection to deductibility (unless Roth)
Massachusetts	Mass. Gen. L. Ch. 235 § 34A; 236 § 28	Yes	Yes	Yes	Exceptions for spousal/child maintenance support, crime victims, additional exceptions for amounts contributed in excess of 7% of income within 5 years of bankruptcy/judgment.
Michigan	Mich. Comp. Laws Ann. §§ 600.5451(1), 600.60	Yes	Maybe	maybe	Exceptions for contribution within 120 days of filing for bankruptcy. Non-ERISA 403bs unclear. Statute references 408(a) trustee IRAs but probably intended to reference 408A (Roth IRAs).
Minnesota	Minn. Rev. Stat. Ann. § 550.37(24)	No	No	No	Protection limited to \$60,000 (adjusts for inflation), amounts "reasonably necessary" for support of debtor/spouse/dependents.
Mississippi	Miss. Code Ann. §85-3-1	Yes	Maybe	Yes	Statute references IRC 408 (or corresponding provisions of successor law), unclear whether 408A qualifies

Missouri	Mo. Ann. Stat. § 513.430.1(10)(f)	Yes	Yes	Yes	Exceptions for fraudulent conveyance, but generally strong protection, including inherited accounts
Montana	Mont. Code Ann. §§ 19-2-1004, 25-13-608, 31-2	Yes	Yes	No	Exceptions for spousal maintenance/child support. Problems if non-deductible contributions made to traditional IRAs?
Nebraska	Neb. Rev. Stat. § 25-1563.01	No	No	No	Must be reasonably necessary for support of debtor/dependents
Nevada	Nev. Rev. Stat. § 21.090(1)(q)	No	No	No	The exemption is limited to \$500,000 for Roth or traditional IRAs, but non-ERISA 403bs may not get that.
New Hampshire	N.H. Code Ann. § 511:2, XIX	Yes	Yes	probably	403b annuities mentioned, but not 403b accounts, though statute is broadly worded. Exceptions for Post-1999 debts, fraudulent transfers
New Jersey	N.J. Stat. Ann. § 25:2-1(b)	Yes	Yes	Yes	Exception for tortious killing, child support, UFTA
New Mexico	N.M. Stat. Ann. §§ 42-10-1, 42-10-2	Yes	Yes	Yes	Broad and simply worded statute
New York	N.Y. Civ. Prac. L. and R. § 5205c	Yes	Yes	Maybe	Exceptions for contributions within 90 days, fraudulent conveyance, non-ERISA 403bs not mentioned, query whether they qualify as "established by a corporation"
North Carolina	N.C. Gen. Stat. § 1C-1601(a)(9)	Yes	Yes	Yes	Any individual retirement plan "treated in the same manner" as IRA, so 403b, 457 should be protected. Inherited IRA accounts have clear protection as well.
North Dakota	N.D. Cent. Code § 28-22-03.1(3)	No	No	No	Must be resident. One Year "curing period", must be tax qualified accounts, including Roth, traditional IRA and 403b. Limited to \$100,000 per account up to \$200,000, or more if "reasonably necessary" for support of debtor/dependents
Ohio	Ohio Rev. Code Ann. § 2329.66(A)(10)(b) and ©	Yes	Yes	No	SEP and SIMPLE IRAs have case law exceptions, non-ERISA 403bs limited to "reasonably necessary", Inherited IRAs now protected as of 3/27/13, along with those disqualified through "good faith error", but not inherited 403(b). Alimony/child support exceptions apply but are, strangely, inapplicable to inherited IRA
Oklahoma	31 Okla. St. Ann. § 1(A)(20)	Yes	Yes	Yes	Exceptions for UFTA. Not inherited IRAs - <i>In re Sims</i> .
Oregon	Or. Rev. Stat. §18-358	Yes	Yes	Yes	Exceptions for UFTA, excess contributions over IRS permitted limits
Pennsylvania	42 Pa. C.S. §§ 8124(b)(1)(vii), (viii), (ix)	Yes	Yes	Yes	Protected, but one year "curing period" for contributions within 1 year (not including rollovers) and contributions in excess of \$15,000 in a one-year period. UFTA exception

Rhode Island	R.I. Gen. Laws § 9-26-4(11), (12)	Yes	Yes	No	Spousal/child support exceptions, ERISA accounts protection but unclear whether non-ERISA 403b
South Carolina	S.C. Code Ann. § 15-41-30(13)	No	No	No	Requires domicile. IRAs and Roth IRAs protection limited to amounts "reasonably necessary" for support of debtor/dependents. Non-ERISA 403bs not mentioned.
South Dakota	S.D. Laws Ann. 43-45-16, 17	No	No	No	Exempts "certain retirement benefits", including Roth, IRAs and 403bs, up to \$1,000,000.
Tennessee	Tenn. Code Ann. § 26-2-105	Yes	Yes	Yes	Interesting prohibition against creditor subpoenaing documents related to plan. Must be tax qualified, no residency required. State is exception creditor.
Texas	Tex. Prop. Code § 42.0021	Yes	Yes	Yes	Specifically includes inherited IRAs as well, and even has specific protection for 60 days for 60 day rollovers.
Utah	Utah Code Ann. §78B-5-505, -508	Yes	Yes	Yes	One Year "curing" denying protection for contributions within one year. Exceptions for spouse/child support, state/local taxes, employee as creditor for 1 mo. wages
Vermont	12 Vt. Stat. Ann. § 2740(16)	Yes	Yes	Yes	One year "curing" required for protection of contributions within one year. Also, protection requires that non-Roth contributions be "deductible"
Virginia	Va. Code Ann. § 34-34	Yes	Yes	Yes	Interestingly, protection to the "extent permitted under federal bankruptcy law", so contributory IRAs may only get protection to \$1,171,650 (those would be very few, since larger IRAs are typically rollovers). Protects alternate payees and inherited IRA/403bs
Washington	Wash. Rev. Code § 6.15.020	Yes	Yes	Yes	Only for Washington citizens. Protection extended to tracing even after assets distributed outside IRA/plan per recent legislation overruling <i>Anthis</i> case.
West Virginia	W.V. Code Ann. 38-8-1, 38-10-4 (in bankr)	Yes	Yes	No	IRAs, including SEP-IRAs, exempt to extent no excess contributions made. Requires residency, tax qualified. 403bs protected to extent "reasonably necessary".
Wisconsin	Wisc. Stat. Ann. § 815.18(3)(j)	Yes	Probably	Yes	But, must be "providing benefits by reason of age, illness, disability, death or length of service" - query whether Roth IRA/403b qualify. QDRO divided benefits protected: <i>In re Farmer</i> . Inherited IRA not protected: <i>In re Clark</i> , <i>In re Kirchen</i>
Wyoming	Wyo. Stat. Ann. §1-20-110	Yes	Yes	Yes	Must be tax-qualified, only protected to the extent contributions made "while solvent".