

## **BILL ANALYSIS**

C.S.H.B. 330  
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Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The Medicare Prescription Drug, Improvement, and Modernization Act of '03 (P.L. 108-173; 12/8/2003) enacted a medical savings plan called a Health Savings Account, effective January 1, 2004. This savings plan is very similar in every aspect of a retirement plan, in that you are saving for your future. However, instead of sustaining someone with income it sustains them with health care for any future health coverage you might incur or high medical costs. The Health Savings Accounts (or HSA) are essentially the same as an IRA or a Roth IRA with the exception that an IRA and a Roth IRA are both exempt from any attacks from those who wish to satisfy an unpaid debt or debts by draining ones retirement fund. HSAs on the other hand are not. CPAs state that if a retirement plan can be exempt from attacks, then HSAs should be exempt from those same attacks. Current Texas law would be changed to exempt HSAs from attacks from those who wish to satisfy an unpaid debt or debts. The purpose of C.S.H.B. 330 is to exempt Health Savings Accounts from attacks from those who wish to satisfy an unpaid debt or debts.

### **RULEMAKING AUTHORITY**

C.S.H.B. 330 does not expressly grant any new rule making authority to anyone state officer, board, institution, department or agency.

### **ANALYSIS**

Section one changes the heading to Section 42.0021 of the Texas Property Code to read as follows "Additional Exemption For Certain Savings Plans." The language in Section two adds any health savings accounts as described by Section 223 of the Internal Revenue Code of 1986 to the person's right to assets list that exempts those items from attachment, execution, and seizure for the satisfaction of debts. This addition is made to subsection (a) of Section 42.0021 of the Property Code. Section two changes the date of when amounts qualifying as nontaxable rollover contributions can be treated as exempt. The change is made from on or after January 1, 1993 to on or after January 1, 2004.

Section three establishes that this Act applies to all contributions made under Section 223, of the Internal Revenue Code of 1986, before, on, or after the effective date. This applies whether HSA contributions are made by an individual, the individual's employer, or a third party. Section four establishes the effective date.

### **EFFECTIVE DATE**

The effective date of this Act takes effect immediately if a vote of two thirds of all members in both houses is received. If the vote is not received then this Act takes place on September 1, 2005.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The difference between House Bill 330 and the Committee Substitute are found in section two of the bill and under Section 42.0021 subsection (b). This section lists the accounts that have non-exempt contributions. Health Savings Accounts are left off of this list, where as in H.B. 330 the HSAs are added to the list of accounts with non-exempt contributions.

The reasoning behind this change:

Internal Revenue Code Section 223, newly enacted by the Medicare Prescription Drug, Improvement, and Modernization Act of '03, allows a deduction for amounts contributed to a health savings account (HSA) by or on behalf of an individual who is covered under a high deductible health plan and no other non high deductible plan. All contributions to an HSA are tax deductible. Contrast IRAs, however, to which individuals may make nondeductible contributions under certain circumstances. For example, an unmarried individual who is an active participant in a pension plan and whose adjusted gross income does not exceed \$50,000 may make a nondeductible contribution of \$4,000 to an IRA for 2005. [IRC Sec. 219(b)(5), 219(g)(3)(B), and Sec. 408(o)(2)(B)]

The current version of H.B. 330 fails to recognize this important distinction between HSAs and IRAs in its proposed amendment to Texas Property Code Section 42.0021(b). Before amendment, Section 42.0021(b) carves out as *nonexempt* that portion of IRAs (but not Roth IRAs) and annuities, plus earnings thereon, that arose from nondeductible contributions. H.B. No. 330 proposes to insert HSAs in Section 42.0021(b), presumably to include the nondeductible portion of HSAs in the group of nonexempt assets. However, as discussed above, in no case are contributions to an HSA nondeductible. Therefore, it is inappropriate to insert HSAs in Section 42.0021(b).