

BILL ANALYSIS

Senate Research Center

S.B. 2324
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State Affairs
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The provisions of two federal laws, the Mandatory Victims Restitution Act, requiring a criminal defendant to make restitution to victims of the crime and the Federal Debt Collection Procedures Act, defining a debt to include an amount owed for restitution, preempt the Texas law (Section 821.005 (Exemption from Execution), Government Code) that protects money and benefits in the various public retirement systems from garnishment, attachment, levy, and other similar processes. Further, because Texas law provides that all property acquired during a marriage is community property and that all community property is subject to the tortious liability of either spouse incurred during the marriage, efforts to use the public retirement system account of the participant spouse to fund the criminal restitution owed by the nonparticipant spouse have increased. Recently, this Texas law has been used by the U.S. Department of Justice to attempt to access the entire account rather than just the nonparticipant's share of the account. This bill would make it clear that only the nonparticipant's share as established in a qualified domestic relations order is subject to a claim for criminal restitution owed by the nonparticipant spouse.

As proposed, S.B. 2324 amends current law relating to the classification of certain types of marital property in regards to claims for payment of a criminal restitution judgment.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 3.202, Family Code, by adding Subsection (e), to provide that for purposes of this section, all retirement allowances, annuities, accumulated contributions, optional benefits, and money in the various public retirement system accounts of this state are community property subject to the participating spouse's sole management, control, and disposition and are not subject to any claim for payment of a criminal restitution judgment entered against the nonparticipant spouse except to the extent of the nonparticipant spouse's interest as determined in a qualified domestic relations order under Chapter 804 (Domestic Relations Orders and Spousal Consent), Government Code.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2009.