

## **BILL ANALYSIS**

C.S.S.B. 1810  
By: Carona  
Pensions, Investments & Financial Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

A bankruptcy court in Texas recently held that the Texas statute exempting individual retirement accounts (IRAs) from creditors did not apply to inherited IRAs. C.S.S.B. 1810 seeks to clarify an inherited IRA's exemption status with regard to creditors' claims by amending provisions protecting certain savings plans from a creditor's claims.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.S.B. 1810 amends the Property Code, in a provision exempting a person's right to the assets held in or to receive payments under certain savings plans from attachment, execution, and seizure for the satisfaction of debts, to clarify that such exemption applies to a person's right to the assets held in or to receive payments under any stock bonus, pension, annuity, deferred compensation, profit sharing, or similar plan, including a retirement plan for self-employed individuals, or a simplified employee pension plan, an individual retirement account or individual retirement annuity, including an inherited individual retirement account or individual retirement annuity, or a health savings account, and under any annuity or contract purchased with such assets to the extent the plan, contract, annuity, or account is exempt from federal income tax, or to the extent federal income tax on the person's interest is deferred until actual payment of benefits to the person under certain provisions of the Internal Revenue Code of 1986, including a government plan or church plan described by specific provisions of that code.

C.S.S.B. 1810 removes the qualifying descriptions of certain retirement annuities or accounts and health savings accounts that limited the applicability of such exemption to a retirement annuity or account or health savings account described by specific provisions of the Internal Revenue Code of 1986. The bill removes a condition that made the exemption for a plan, contract, or account contingent on the plan, contract, or account not being disqualified under applicable provisions of the Internal Revenue Code of 1986.

C.S.S.B. 1810 establishes that, for purposes of the exemption for certain savings plans, the interest of a person in a plan, account, annuity, or contract acquired by reason of the death of another person, whether as an owner, participant, beneficiary, survivor, coannuitant, heir, or legatee, is exempt to the same extent that the interest of the person from whom the plan, annuity, account, or contract was acquired was exempt on the date of the person's death.

C.S.S.B. 1810 removes a provision making the exemption for a person's right to the assets held in or to receive payments under a government or church plan or contract contingent on the plan or contract not being disqualified under the definition of a government or church plan under the applicable provisions of the federal Employee Retirement Income Security Act of 1974.

C.S.S.B. 1810 makes its provisions applicable to an inherited individual retirement plan, annuity, account, or contract without regard to whether the plan, annuity, account, or contract was created before, on, or after the bill's effective date. The bill specifies that its changes are intended to clarify rather than change existing law.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.S.B. 1810 contains provisions not included in the original clarifying that a person's right to the assets held in or to receive payments under any of the listed savings plans, contracts, annuities, or accounts is exempt from attachment, execution, and seizure for the satisfaction of debts to the extent the plan, contract, annuity, or account is exempt from federal income tax, or to the extent federal income tax on the person's interest is deferred until actual payment of benefits to the person; removing the qualifying descriptions of certain retirement annuities or accounts and health savings accounts that limited the applicability of such exemption to an annuity or account described by specific provisions of the Internal Revenue Code of 1986; and removing a condition that made the exemption contingent on the plan, contract, or account not being disqualified under applicable provisions of that federal code.

C.S.S.B. 1810 differs from the original by establishing that, for purposes of the additional exemption for certain savings plans, the interest of a person in a plan, annuity, account, or contract acquired by reason of the death of another person, whether as an owner, participant, beneficiary, survivor, coannuitant, heir, or legatee, is exempt to the same extent that the interest of the person from whom the plan, annuity, account, or contract was acquired was exempt on the date of the person's death, whereas the original establishes that, for purposes of that exemption, the interest of a beneficiary of a plan, contract, annuity, or account acquired by reason of the death of any person, whether or not the beneficiary's spouse, is considered qualified under the applicable provisions of the Internal Revenue Code of 1986 to the same extent that the interest of the person from whom the plan, contract, annuity, or account was acquired was qualified on the date of the person's death.

C.S.S.B. 1810 contains a provision not included in the original removing a statutory provision making the exemption for the assets held in or payments received under a government or church plan contingent on the plan or contract not being disqualified under the definition of a government or church plan under the applicable provisions of the federal Employee Retirement Income Security Act of 1974.

C.S.S.B. 1810 omits a provision included in the original establishing that assets and amounts that are exempted from attachment, execution, and seizure for the satisfaction of debts are exempt regardless of whether the person is an owner, participant, or beneficiary of the plan, contract, annuity, or account.

C.S.S.B. 1810 contains provisions not included in the original making the bill's provisions applicable to an inherited individual retirement plan, annuity, account, or contract without regard to whether the plan, annuity, account, or contract was created before, on, or after the bill's effective date and specifying that the bill's changes are intended to clarify rather than change existing law.

C.S.S.B. 1810 differs from the original in nonsubstantive and conforming ways.