

BILL ANALYSIS

Senate Research Center

S.B. 1810
By: Carona
Business & Commerce
4/2/2011
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2007, a bankruptcy court in Houston held that the Texas statute exempting individual retirement accounts (IRAs) from creditors did not apply to inherited IRAs. (*See In re Jarboe*, ___ B.R. ___, 2007 WL 987314 (Bankr. S. D. Tex. 2007)).

Texans hold millions of dollars in inherited IRAs based on the assumption that they are exempt from creditors' claims. Virtually all estate planners have long read Section 42.0021 (Additional Exemption for Certain Savings Plans), Property Code, as exempting these IRAs; therefore, Texans hold these accounts based on the false assumption of their protection. Section 42.0021 must be changed so that Texans will not be in the undesirable position of having to file bankruptcy to protect their inherited IRAs.

Texas has a history of protecting assets such as IRAs, not only in the hands of persons who create and fund them, but also in the hands of beneficiaries. For example, in recent legislative sessions, exempt status has been extended to Roth IRAs, health savings accounts, and 529 plans (which the statute exempts from the claims of the student/beneficiary's creditors (Section 42.0022, Property Code)).

S.B. 1810 would change current law to exclude inherited IRAs from creditors, thereby safeguarding these assets for any beneficiary.

As proposed, S.B. 1810 amends current law relating to the exemption of certain retirement accounts from access by creditors.

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 42.0021(a), Property Code, to provide that, in addition to the exemption prescribed by Section 42.001, a person's right to the assets held in or to receive payments, whether vested or not and whether or not obtained through inheritance, devise, or bequest, under any stock bonus, pension, profit-sharing, or similar plan, including a retirement plan for self-employed individuals, and under any annuity or similar contract purchased with assets distributed from that type of plan, and under any retirement annuity or account described by Section 403(b) or 408A of the Internal Revenue Code of 1986, and under any individual retirement account or any individual retirement annuity, including a simplified employee pension plan, and under any health savings account described by Section 223 of the Internal Revenue Code of 1986, is exempt from attachment, execution, and seizure for the satisfaction of debts unless the plan, contract, or account does not qualify under the contract is also exempt unless the plan or contract does not qualify under the definition of a government or church plan under the applicable provisions of the federal Employee Retirement Income Security Act of 1974.