

By: Carona  
(Truitt)

S.B. No. 1810

Substitute the following for S.B. No. 1810:

By: Truitt

C.S.S.B. No. 1810

A BILL TO BE ENTITLED

AN ACT

relating to the exemption of certain retirement accounts from access by creditors.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 42.0021(a), (c), and (d), Property Code, are amended to read as follows:

(a) 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, 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 similar contract purchased with assets distributed from that type of plan or account, [~~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 to the extent [~~unless~~] the plan, contract, annuity, or account is exempt from

1 federal income tax, or to the extent federal income tax on the  
2 person's interest is deferred until actual payment of benefits to  
3 the person under Section 223, 401(a), 403(a), 403(b), 408(a), 408A,  
4 457(b), or 501(a), Internal Revenue Code of 1986, including a  
5 government plan or church plan described by Section 414(d) or (e),  
6 ~~[does not qualify under the applicable provisions of the]~~ Internal  
7 Revenue Code of 1986. For purposes of this subsection, the interest  
8 of a person in a plan, annuity, account, or contract acquired by  
9 reason of the death of another person, whether as an owner,  
10 participant, beneficiary, survivor, coannuitant, heir, or legatee,  
11 is exempt to the same extent that the interest of the person from  
12 whom the plan, annuity, account, or contract was acquired was  
13 exempt on the date of the person's death. ~~[A person's right to the~~  
14 ~~assets held in or to receive payments, whether vested or not, under~~  
15 ~~a government or church plan or contract is also exempt unless the~~  
16 ~~plan or contract does not qualify under the definition of a~~  
17 ~~government or church plan under the applicable provisions of the~~  
18 ~~federal Employee Retirement Income Security Act of 1974.]~~ If this  
19 subsection is held invalid or preempted by federal law in whole or  
20 in part or in certain circumstances, the subsection remains in  
21 effect in all other respects to the maximum extent permitted by law.

22 (c) Amounts distributed from a plan, annuity, account, or  
23 contract entitled to an ~~[the]~~ exemption under Subsection (a) are  
24 not subject to seizure for a creditor's claim for 60 days after the  
25 date of distribution if the amounts qualify as a nontaxable  
26 rollover contribution under Subsection (b).

27 (d) A participant or beneficiary of a ~~[stock bonus, pension,~~

1 ~~profit-sharing, retirement]~~ plan, annuity, account, or contract  
2 entitled to an exemption under Subsection (a), other than an  
3 individual retirement account or individual retirement annuity,  
4 ~~[or government plan]~~ is not prohibited from granting a valid and  
5 enforceable security interest in the participant's or beneficiary's  
6 right to the assets held in or to receive payments under the exempt  
7 plan, annuity, account, or contract to secure a loan to the  
8 participant or beneficiary from the exempt plan, annuity, account,  
9 or contract, and the right to the assets held in or to receive  
10 payments from the plan, annuity, account, or contract is subject to  
11 attachment, execution, and seizure for the satisfaction of the  
12 security interest or lien granted by the participant or beneficiary  
13 to secure the loan.

14 SECTION 2. Section 42.0021, Property Code, as amended by  
15 this Act, applies to an inherited individual retirement plan,  
16 annuity, account, or contract without regard to whether the plan,  
17 annuity, account, or contract was created before, on, or after the  
18 effective date of this Act.

19 SECTION 3. The changes made by this Act are intended to  
20 clarify rather than change existing law.

21 SECTION 4. This Act takes effect immediately if it receives  
22 a vote of two-thirds of all the members elected to each house, as  
23 provided by Section 39, Article III, Texas Constitution. If this  
24 Act does not receive the vote necessary for immediate effect, this  
25 Act takes effect September 1, 2011.