

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 649  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The real estate, probate, and trust law section of the State Bar of Texas has proposed several updates to the law regarding decedents' estates, including provisions modernizing the property exempt from seizure by creditors in addition to the personal property exemptions in Chapter 42 (Personal Property), Property Code.

Currently, insurance proceeds are exempt from creditors. A question arises as to whether that exemption continues if insurance proceeds are paid to the estate of the insured decedent. The revision to Section 1108.052 (Exemptions Unaffected by Beneficiary Designation) clarifies that the insurance proceeds do not lose their exemption because they are paid to the estate of the insured.

Sections 42.0021(a) and (b), Property Code, currently provide that deductible contributions to a traditional individual retirement account and nondeductible contributions to a Roth individual retirement account are exempt from creditors. However, there is no exemption provided for nondeductible contributions to a traditional individual retirement account. This results in the need for parties or courts to determine whether the taxpayer claimed a deduction for all contributions to a traditional individual retirement account to determine what portion of the account is exempt. The revisions to Sections 42.0021(a) and (b) extend the exemption to nondeductible contributions to traditional individual retirement accounts, which simplifies the administration of the statute.

As proposed, S.B. 649 amends current law relating to the exemption of certain property from seizure 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 1108.052, Insurance Code, to provide that the exemptions provided by Section 1108.051 (Exemptions for Certain Insurance and Annuity Benefits) apply regardless of whether the insured or the insured's estate is a beneficiary, rather than a contingent beneficiary.

SECTION 2. Amends Sections 42.0021(a) and (b), Property Code, as follows:

- (a) Exempts a person's right to the assets held in or to receive payments, whether vested or not, under certain bonuses, pensions, annuities, deferred compensation, profit-sharing, accounts, or plans, including a Roth IRA or inherited Roth IRA, 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 under Section 223, 401(a), 403(a), 403(b), 408(a), 408A, 457(b), or 501(a), Internal Revenue Code of 1986, including a government plan or church plan described by Section 414(d)

or (e), Internal Revenue Code of 1986, in addition to the exemption prescribed by Section 42.001.

(b) Provides that contributions to an individual retirement account that exceed the amounts permitted under the applicable provisions of the Internal Revenue Code of 1986 and any accrued earnings on such contributions are not exempt under this section unless otherwise exempt by law, rather than that contributions to an individual retirement account, other than contributions to a Roth IRA described in Section 408A, Internal Revenue Code of 1986, or an annuity that exceed the amounts deductible under the applicable provisions of the Internal Revenue Code of 1986 and any accrued earnings on such contributions are not exempt under this section unless otherwise exempt by law.

SECTION 3. Provides that the changes in law made by this Act do not apply to property that is, as of the effective date of this Act, subject to a voluntary bankruptcy proceeding or to a valid claim of a holder of a final judgment who has, by levy, garnishment, or other legal process, obtained rights superior to those that would otherwise be held by a trustee in bankruptcy if a bankruptcy petition were then pending against the debtor. Provides that that property is subject to the law as it existed immediately before the effective date of this Act, and the prior law is continued in effect for that purpose.

SECTION 4. Effective date: September 1, 2013.