

## **BILL ANALYSIS**

Senate Research Center  
86R14946 NC-F

H.B. 2779  
By: Wray (Rodríguez)  
Business & Commerce  
5/1/2019  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

It has been suggested that using more efficient language will clarify laws regarding the exemption for certain savings plans from attachment, execution, or other seizure for a creditor's claim. H.B. 2779 seeks to provide this clarification by revising provisions relating to such an exemption.

H.B. 2779 amends current law relating to the exemption for certain savings plans from attachment, execution, or other seizure for a creditor's claim.

### **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, Property Code, as follows:

Sec. 42.0021. ADDITIONAL EXEMPTION FOR CERTAIN SAVINGS PLANS. (a) Redefines "qualified savings plan" to include a health or education plan, among other plans, to the extent the plan or account is exempt from federal income tax or to the extent federal income tax on a person's interest in the plan or account is deferred until actual payment of benefits to the person. Provides that a plan or account that is subject to federal income tax is considered to be exempt from federal income tax for purposes of this section if the plan or account is subject to the tax solely under Sections 511 through 514, Internal Revenue Code of 1986. The term includes:

- (1) a retirement plan sponsored by a private employer, government, or church;
- (2)–(6) makes nonsubstantive changes to these subdivisions;
- (7) a Coverdell education savings account;
- (8) a plan or account established under Subchapter F, Chapter 54, Education Code, including a prepaid tuition contract;
- (9) a plan or account established under Subchapter G, Chapter 54, Education Code, including a savings trust account;
- (10) a qualified tuition program of any state that meets the requirements of Section 529, Internal Revenue Code of 1986;
- (11) a qualified ABLE program of any state that meets the requirements of Section 529A, Internal Revenue Code of 1986; and
- (12) an annuity or similar contract purchased with assets distributed from a plan or account described by this subsection, rather than and under any

annuity or similar contract purchased with assets distributed from that type of plan or account.

Deletes existing text relating to the exemption for a certain savings plan from attachment, execution, or seizure for the satisfaction of debts.

(b) Provides that, in addition to the exemption prescribed by Section 42.001 (Personal Property Exemption) and except as provided by this section, a person's interest in and right to receive payments from a qualified savings plan, whether vested or not, is exempt from attachment, execution, and seizure for the satisfaction of debts.

(c) Provides that an interest or right in a qualified savings plan that was 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 or right of the decedent was exempt on the date of the decedent's death, rather than 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.

(d) Redesignates Subsection (b) as Subsection (d). Provides that contributions to a qualified savings plan that are excess contributions under Section 4973, Internal Revenue Code of 1986, and any accrued earnings on such contributions are not exempt under this section unless otherwise exempt by law. Deletes existing text providing that amounts qualifying as nontaxable rollover contributions under Section 402(a)(5), 403(a)(4), 403(b)(8), or 408(d)(3) of the Internal Revenue Code of 1986 before January 1, 1993, are treated as exempt amounts under Subsection (a). Deletes existing text providing that amounts treated as qualified rollover contributions under Section 408A, Internal Revenue Code of 1986, are treated as exempt amounts under Subsection (a). Deletes existing text providing that amounts qualifying as nontaxable rollover contributions under Section 402(c), 402(e)(6), 402(f), 403(a)(4), 403(a)(5), 403(b)(8), 403(b)(10), 408(d)(3), or 408A of the Internal Revenue Code of 1986 on or after January 1, 1993, are treated as exempt amounts under Subsection (a). Deletes existing text providing that amounts qualifying as nontaxable rollover contributions under Section 223(f)(5) of the Internal Revenue Code of 1986 on or after January 1, 2004, are treated as exempt amounts under Subsection (a).

(e) Redesignates Subsection (c) as Subsection (e). Provides that amounts distributed from a qualified savings plan are exempt from attachment, execution, and seizure for a creditor's claim for 60 days after the date of distribution, rather than providing that amounts distributed from a plan, annuity, account, or contract entitled to an exemption under Subsection (a) are not subject to seizure for a creditor's claim for 60 days after the date of distribution. Provides that if the amounts qualify as a rollover contribution, rather than a nontaxable rollover contribution, under the Internal Revenue Code of 1986, whether taxable or nontaxable, the amounts will continue to be exempt thereafter under this section, rather than under Subsection (b).

(f) Provides that a person's interest in a retirement plan that is solely an unfunded, unsecured promise by an employer to pay deferred compensation is not exempt under this section unless otherwise exempt by law.

(g) Redesignates existing Subsection (d) as Subsection (g). Provides that a person is not prohibited by this section from granting a valid and enforceable security interest in the person's interest in or right to receive payments from a qualified savings plan to the extent permitted by, and in accordance with, the Internal Revenue Code of 1986 and the terms of the qualified savings plan to secure a loan to the person from the qualified savings plan. Provides that the person's interest in or right to receive payments from the plan is subject to attachment, execution, and

seizure for the satisfaction of the security interest or lien granted by the person to secure the loan. Deletes existing text relating to a provision that a participant or beneficiary of a plan, annuity, account, or contract entitled to an exemption under Subsection (a), other than an individual retirement account or individual retirement annuity, is not prohibited from granting a valid and enforceable security interest in the participant's or beneficiary's right to the assets held in or to receive payments under the exempt plan, annuity, account, or contract to secure a loan to the participant or beneficiary from the exempt plan, annuity, account, or contract, and the right to the assets held in or to receive payments from the plan, annuity, account, or contract is subject to attachment, execution, and seizure for the satisfaction of the security interest or lien granted by the participant or beneficiary to secure the loan.

(h) Redesignates Subsection (e) as Subsection (h). Provides that if any provision of this section is held invalid or preempted by federal law, in whole or in part or in certain circumstances, the remaining provisions of this section remain in effect, to the maximum extent permitted by law, rather than providing that if Subsection (a) is declared invalid or preempted by federal law, in whole or in part or in certain circumstances, as applied to a person who has not brought a proceeding under Title 11, United States Code, the subsection remains in effect, to the maximum extent permitted by law, as to any person who has filed that type of proceeding.

(i) Redesignates Subsection (f) as Subsection (i). Provides that a reference in this section to the Internal Revenue Code of 1986 or a specific provision of the Internal Revenue Code of 1986 includes a subsequent amendment of that code or of the substance of that provision, rather than providing that a reference in this section to a specific provision of the Internal Revenue Code of 1986 includes a subsequent amendment of the substance of that provision.

SECTION 2. Amends Section 42.005, Property Code, as follows:

Sec. 42.005. CHILD SUPPORT LIENS. (a) Creates an exception under Subsection (b), providing that Sections 42.001 (Personal Property Exemption), 42.002 (Personal Property), and 42.0021 (Additional Exemption For Certain Savings Plans) do not apply to a child support lien established under Subchapter G (Child Support Lien), Chapter 157, Family Code, rather than Sections 42.001, 42.002, and 42.0021 of this code do not apply to a child support lien established under Subchapter G, Chapter 157, Family Code.

(b) Provides that the exemption from attachment, execution, and seizure for the satisfaction of debts provided under Section 42.0021 for a plan or account described by Section 42.0021(a)(8), (9), or (10) applies to a child support lien established under Subchapter G, Chapter 157, Family Code.

SECTION 3. Repealer: Section 42.0022 (Exemption For College Savings Plans), Property Code.

SECTION 4. 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 property is subject to the law as it existed immediately before the effective date of this Act, and that the prior law is continued in effect for that purpose.

SECTION 5. Effective date: September 1, 2019.