

By: Wray

H.B. No. 2779

A BILL TO BE ENTITLED

AN ACT

relating to the exemption for certain savings plans from attachment, execution, or other seizure for a creditor's claim.

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

SECTION 1. Section 42.0021, Property Code, is amended to read as follows:

Sec. 42.0021. ADDITIONAL EXEMPTION FOR CERTAIN SAVINGS PLANS. (a) In this section, "qualified savings plan" means ~~[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, health, education, or similar plan or account, 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. 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) [, including] a retirement plan for self-employed individuals;

- 1 (3) [~~7~~ or] a simplified employee pension plan;
- 2 (4) [7] an individual retirement account or
- 3 [~~individual retirement~~] annuity, including an inherited individual
- 4 retirement account or [~~individual retirement~~] annuity;
- 5 (5) a [7] Roth IRA, including an [~~or~~] inherited Roth
- 6 IRA;
- 7 (6) [~~7~~ or] a health savings account;
- 8 (7) a Coverdell education savings account;
- 9 (8) a plan or account established under Subchapter F,
- 10 Chapter 54, Education Code, including a prepaid tuition contract;
- 11 (9) a plan or account established under Subchapter G,
- 12 Chapter 54, Education Code, including a savings trust account;
- 13 (10) a qualified tuition program of any state that
- 14 meets the requirements of Section 529, Internal Revenue Code of
- 15 1986;
- 16 (11) a qualified ABLE program of any state that meets
- 17 the requirements of Section 529A, Internal Revenue Code of 1986;
- 18 and
- 19 (12) an [~~7~~ and under any] annuity or similar contract
- 20 purchased with assets distributed from a [~~that type of~~] plan or
- 21 account described by this subsection.
- 22 (b) In addition to the exemption prescribed by Section
- 23 42.001 and except as provided by this section, a person's interest
- 24 in and right to receive payments from a qualified savings plan,
- 25 whether vested or not, is exempt from attachment, execution, and
- 26 seizure for the satisfaction of debts.
- 27 (c) An interest or right in a qualified savings plan that

1 was [~~to the extent the plan, contract, annuity, or account is exempt~~
2 ~~from federal income tax, or to the extent federal income tax on the~~
3 ~~person's interest is deferred until actual payment of benefits to~~
4 ~~the person under Section 223, 401(a), 403(a), 403(b), 408(a), 408A,~~
5 ~~457(b), or 501(a), Internal Revenue Code of 1986, including a~~
6 ~~government plan or church plan described by Section 414(d) or (e),~~
7 ~~Internal Revenue Code of 1986. For purposes of this subsection,~~
8 ~~the interest of a person in a plan, annuity, account, or contract]~~
9 acquired by reason of the death of another person, whether as an
10 owner, participant, beneficiary, survivor, coannuitant, heir, or
11 legatee, is exempt to the same extent that the interest or right of
12 the decedent [~~person from whom the plan, annuity, account, or~~
13 ~~contract was acquired]~~ was exempt on the date of the decedent's
14 [~~person's~~] death.

15 (d) [~~If this subsection is held invalid or preempted by~~
16 ~~federal law in whole or in part or in certain circumstances, the~~
17 ~~subsection remains in effect in all other respects to the maximum~~
18 ~~extent permitted by law.~~

19 [(b)] Contributions to a qualified savings plan that are
20 excess contributions under Section 4973, [~~an individual retirement~~
21 ~~account that exceed the amounts permitted under the applicable~~
22 ~~provisions of the]~~ Internal Revenue Code of 1986, and any accrued
23 earnings on such contributions are not exempt under this section
24 unless otherwise exempt by law. [~~Amounts qualifying as nontaxable~~
25 ~~rollover contributions under Section 402(a)(5), 403(a)(4),~~
26 ~~403(b)(8), or 408(d)(3) of the Internal Revenue Code of 1986 before~~
27 ~~January 1, 1993, are treated as exempt amounts under Subsection~~

1 ~~(a). Amounts treated as qualified rollover contributions under~~
 2 ~~Section 408A, Internal Revenue Code of 1986, are treated as exempt~~
 3 ~~amounts under Subsection (a). In addition, amounts qualifying as~~
 4 ~~nontaxable rollover contributions under Section 402(c), 402(e)(6),~~
 5 ~~402(f), 403(a)(4), 403(a)(5), 403(b)(8), 403(b)(10), 408(d)(3), or~~
 6 ~~408A of the Internal Revenue Code of 1986 on or after January 1,~~
 7 ~~1993, are treated as exempt amounts under Subsection (a). Amounts~~
 8 ~~qualifying as nontaxable rollover contributions under Section~~
 9 ~~223(f)(5) of the Internal Revenue Code of 1986 on or after January~~
 10 ~~1, 2004, are treated as exempt amounts under Subsection (a).]~~

11 (e) [(c)] Amounts distributed from a qualified savings plan
 12 are exempt from attachment, execution, and [plan, annuity, account,
 13 or contract entitled to an exemption under Subsection (a) are not
 14 subject to] seizure for a creditor's claim for 60 days after the
 15 date of distribution. If [if] the amounts qualify as a [nontaxable]
 16 rollover contribution under the Internal Revenue Code of 1986,
 17 whether taxable or nontaxable, the amounts will continue to be
 18 exempt thereafter under this section [Subsection (b)].

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

23 (g) A person [(d) A participant or beneficiary of a plan,
 24 annuity, account, or contract entitled to an exemption under
 25 Subsection (a), other than an individual retirement account or
 26 individual retirement annuity,] is not prohibited by this section
 27 from granting a valid and enforceable security interest in the

1 person's interest in or right [~~participant's or beneficiary's right~~
 2 ~~to the assets held in or~~] to receive payments from a qualified
 3 savings plan to the extent permitted by, and in accordance with, the
 4 Internal Revenue Code of 1986 and the terms of the qualified savings
 5 plan [~~under the exempt plan, annuity, account, or contract~~] to
 6 secure a loan to the person [~~participant or beneficiary~~] from the
 7 qualified savings plan. The person's interest in or right [~~exempt~~
 8 ~~plan, annuity, account, or contract, and the right to the assets~~
 9 ~~held in or~~] to receive payments from the plan[, ~~annuity, account, or~~
 10 ~~contract~~] is subject to attachment, execution, and seizure for the
 11 satisfaction of the security interest or lien granted by the person
 12 [~~participant or beneficiary~~] to secure the loan.

13 (h) [~~(e)~~] If any provision of this section is held
 14 [~~Subsection (a) is declared~~] invalid or preempted by federal law,
 15 in whole or in part or in certain circumstances, the remaining
 16 provisions of this section remain [~~as applied to a person who has~~
 17 ~~not brought a proceeding under Title 11, United States Code, the~~
 18 ~~subsection remains~~] in effect, to the maximum extent permitted by
 19 law[, ~~as to any person who has filed that type of proceeding~~].

20 (i) [~~(f)~~] A reference in this section to the Internal
 21 Revenue Code of 1986 or a specific provision of the Internal Revenue
 22 Code of 1986 includes a subsequent amendment of that code or of the
 23 substance of that provision.

24 SECTION 2. Section 42.005, Property Code, is amended to
 25 read as follows:

26 Sec. 42.005. CHILD SUPPORT LIENS. (a) Except as provided
 27 by Subsection (b), Sections 42.001, 42.002, and 42.0021 [~~of this~~

1 ~~code~~] do not apply to a child support lien established under
2 Subchapter G, Chapter 157, Family Code.

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

8 SECTION 3. Section 42.0022, Property Code, is repealed.

9 SECTION 4. The changes in law made by this Act do not apply
10 to property that is, as of the effective date of this Act, subject
11 to a voluntary bankruptcy proceeding or to a valid claim of a holder
12 of a final judgment who has, by levy, garnishment, or other legal
13 process, obtained rights superior to those that would otherwise be
14 held by a trustee in bankruptcy if a bankruptcy petition were then
15 pending against the debtor. That property is subject to the law as
16 it existed immediately before the effective date of this Act, and
17 the prior law is continued in effect for that purpose.

18 SECTION 5. This Act takes effect September 1, 2019.