

1-1 By: Wray (Senate Sponsor - Rodríguez) H.B. No. 2779  
 1-2 (In the Senate - Received from the House April 24, 2019;  
 1-3 April 25, 2019, read first time and referred to Committee on  
 1-4 Business & Commerce; May 7, 2019, reported favorably by the  
 1-5 following vote: Yeas 8, Nays 0; May 7, 2019, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15			X	
1-16	X			

1-17 A BILL TO BE ENTITLED  
 1-18 AN ACT

1-19 relating to the exemption for certain savings plans from  
 1-20 attachment, execution, or other seizure for a creditor's claim.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Section 42.0021, Property Code, is amended to  
 1-23 read as follows:

1-24 Sec. 42.0021. ADDITIONAL EXEMPTION FOR CERTAIN SAVINGS  
 1-25 PLANS. (a) In this section, "qualified savings plan" means  
 1-26 ~~[addition to the exemption prescribed by Section 42.001, a person's~~  
 1-27 ~~right to the assets held in or to receive payments, whether vested~~  
 1-28 ~~or not, under]~~ any stock bonus, pension, annuity, deferred  
 1-29 compensation, profit-sharing, health, education, or similar plan  
 1-30 or account, to the extent the plan or account is exempt from federal  
 1-31 income tax or to the extent federal income tax on a person's  
 1-32 interest in the plan or account is deferred until actual payment of  
 1-33 benefits to the person. A plan or account that is subject to  
 1-34 federal income tax is considered to be exempt from federal income  
 1-35 tax for purposes of this section if the plan or account is subject  
 1-36 to the tax solely under Sections 511 through 514, Internal Revenue  
 1-37 Code of 1986. The term includes:

1-38 (1) a retirement plan sponsored by a private employer,  
 1-39 government, or church;

1-40 (2) ~~[, including]~~ a retirement plan for self-employed  
 1-41 individuals;

1-42 (3) ~~[, or]~~ a simplified employee pension plan;

1-43 (4) ~~[, ]~~ an individual retirement account or  
 1-44 ~~[individual retirement]~~ annuity, including an inherited individual  
 1-45 retirement account or ~~[, individual retirement]~~ annuity;

1-46 (5) a ~~[, ]~~ Roth IRA, including an ~~[or]~~ inherited Roth  
 1-47 IRA;

1-48 (6) ~~[, or]~~ a health savings account;

1-49 (7) a Coverdell education savings account;

1-50 (8) a plan or account established under Subchapter F,  
 1-51 Chapter 54, Education Code, including a prepaid tuition contract;

1-52 (9) a plan or account established under Subchapter G,  
 1-53 Chapter 54, Education Code, including a savings trust account;

1-54 (10) a qualified tuition program of any state that  
 1-55 meets the requirements of Section 529, Internal Revenue Code of  
 1-56 1986;

1-57 (11) a qualified ABLE program of any state that meets  
 1-58 the requirements of Section 529A, Internal Revenue Code of 1986;  
 1-59 and

1-60 (12) an ~~[, and under any]~~ annuity or similar contract  
 1-61 purchased with assets distributed from a ~~[that type of]~~ plan or

2-1 account described by this subsection.

2-2 (b) In addition to the exemption prescribed by Section  
 2-3 42.001 and except as provided by this section, a person's interest  
 2-4 in and right to receive payments from a qualified savings plan,  
 2-5 whether vested or not, is exempt from attachment, execution, and  
 2-6 seizure for the satisfaction of debts.

2-7 (c) An interest or right in a qualified savings plan that  
 2-8 was [to the extent the plan, contract, annuity, or account is exempt  
 2-9 from federal income tax, or to the extent federal income tax on the  
 2-10 person's interest is deferred until actual payment of benefits to  
 2-11 the person under Section 223, 401(a), 403(a), 403(b), 408(a), 408A,  
 2-12 457(b), or 501(a), Internal Revenue Code of 1986, including a  
 2-13 government plan or church plan described by Section 414(d) or (e),  
 2-14 Internal Revenue Code of 1986. For purposes of this subsection,  
 2-15 the interest of a person in a plan, annuity, account, or contract]  
 2-16 acquired by reason of the death of another person, whether as an  
 2-17 owner, participant, beneficiary, survivor, coannuitant, heir, or  
 2-18 legatee, is exempt to the same extent that the interest or right of  
 2-19 the decedent [person from whom the plan, annuity, account, or  
 2-20 contract was acquired] was exempt on the date of the decedent's  
 2-21 [person's] death.

2-22 (d) [If this subsection is held invalid or preempted by  
 2-23 federal law in whole or in part or in certain circumstances, the  
 2-24 subsection remains in effect in all other respects to the maximum  
 2-25 extent permitted by law.

2-26 [~~(b)~~] Contributions to a qualified savings plan that are  
 2-27 excess contributions under Section 4973, [an individual retirement  
 2-28 account that exceed the amounts permitted under the applicable  
 2-29 provisions of the] Internal Revenue Code of 1986, and any accrued  
 2-30 earnings on such contributions are not exempt under this section  
 2-31 unless otherwise exempt by law. [Amounts qualifying as nontaxable  
 2-32 rollover contributions under Section 402(a)(5), 403(a)(4),  
 2-33 403(b)(8), or 408(d)(3) of the Internal Revenue Code of 1986 before  
 2-34 January 1, 1993, are treated as exempt amounts under Subsection  
 2-35 (a). Amounts treated as qualified rollover contributions under  
 2-36 Section 408A, Internal Revenue Code of 1986, are treated as exempt  
 2-37 amounts under Subsection (a). In addition, amounts qualifying as  
 2-38 nontaxable rollover contributions under Section 402(c), 402(e)(6),  
 2-39 402(f), 403(a)(4), 403(a)(5), 403(b)(8), 403(b)(10), 408(d)(3), or  
 2-40 408A of the Internal Revenue Code of 1986 on or after January 1,  
 2-41 1993, are treated as exempt amounts under Subsection (a). Amounts  
 2-42 qualifying as nontaxable rollover contributions under Section  
 2-43 223(f)(5) of the Internal Revenue Code of 1986 on or after January  
 2-44 1, 2004, are treated as exempt amounts under Subsection (a).]

2-45 (e) [~~(c)~~] Amounts distributed from a qualified savings plan  
 2-46 are exempt from attachment, execution, and [plan, annuity, account,  
 2-47 or contract entitled to an exemption under Subsection (a) are not  
 2-48 subject to] seizure for a creditor's claim for 60 days after the  
 2-49 date of distribution. If [~~if~~] the amounts qualify as a [nontaxable]  
 2-50 rollover contribution under the Internal Revenue Code of 1986,  
 2-51 whether taxable or nontaxable, the amounts will continue to be  
 2-52 exempt thereafter under this section [Subsection (b)].

2-53 (f) A person's interest in a retirement plan that is solely  
 2-54 an unfunded, unsecured promise by an employer to pay deferred  
 2-55 compensation is not exempt under this section unless otherwise  
 2-56 exempt by law.

2-57 (g) A person [~~(d)~~ A participant or beneficiary of a plan,  
 2-58 annuity, account, or contract entitled to an exemption under  
 2-59 Subsection (a), other than an individual retirement account or  
 2-60 individual retirement annuity,] is not prohibited by this section  
 2-61 from granting a valid and enforceable security interest in the  
 2-62 person's interest in or right [participant's or beneficiary's right  
 2-63 to the assets held in or] to receive payments from a qualified  
 2-64 savings plan to the extent permitted by, and in accordance with, the  
 2-65 Internal Revenue Code of 1986 and the terms of the qualified savings  
 2-66 plan [under the exempt plan, annuity, account, or contract] to  
 2-67 secure a loan to the person [participant or beneficiary] from the  
 2-68 qualified savings plan. The person's interest in or right [exempt  
 2-69 plan, annuity, account, or contract, and the right to the assets

3-1 ~~held in or~~ to receive payments from the plan [~~, annuity, account, or~~  
 3-2 ~~contract~~] is subject to attachment, execution, and seizure for the  
 3-3 satisfaction of the security interest or lien granted by the person  
 3-4 [~~participant or beneficiary~~] to secure the loan.

3-5 (h) [(e)] If any provision of this section is held  
 3-6 [~~Subsection (a) is declared~~] invalid or preempted by federal law,  
 3-7 in whole or in part or in certain circumstances, the remaining  
 3-8 provisions of this section remain [~~as applied to a person who has~~  
 3-9 ~~not brought a proceeding under Title 11, United States Code, the~~  
 3-10 ~~subsection remains~~] in effect, to the maximum extent permitted by  
 3-11 law [~~, as to any person who has filed that type of proceeding~~].

3-12 (i) [(f)] A reference in this section to the Internal  
 3-13 Revenue Code of 1986 or a specific provision of the Internal Revenue  
 3-14 Code of 1986 includes a subsequent amendment of that code or of the  
 3-15 substance of that provision.

3-16 SECTION 2. Section 42.005, Property Code, is amended to  
 3-17 read as follows:

3-18 Sec. 42.005. CHILD SUPPORT LIENS. (a) Except as provided  
 3-19 by Subsection (b), Sections 42.001, 42.002, and 42.0021 [~~of this~~  
 3-20 ~~code~~] do not apply to a child support lien established under  
 3-21 Subchapter G, Chapter 157, Family Code.

3-22 (b) The exemption from attachment, execution, and seizure  
 3-23 for the satisfaction of debts provided under Section 42.0021 for a  
 3-24 plan or account described by Section 42.0021(a)(8), (9), or (10)  
 3-25 applies to a child support lien established under Subchapter G,  
 3-26 Chapter 157, Family Code.

3-27 SECTION 3. Section 42.0022, Property Code, is repealed.

3-28 SECTION 4. The changes in law made by this Act do not apply  
 3-29 to property that is, as of the effective date of this Act, subject  
 3-30 to a voluntary bankruptcy proceeding or to a valid claim of a holder  
 3-31 of a final judgment who has, by levy, garnishment, or other legal  
 3-32 process, obtained rights superior to those that would otherwise be  
 3-33 held by a trustee in bankruptcy if a bankruptcy petition were then  
 3-34 pending against the debtor. That property is subject to the law as  
 3-35 it existed immediately before the effective date of this Act, and  
 3-36 the prior law is continued in effect for that purpose.

3-37 SECTION 5. This Act takes effect September 1, 2019.

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