

SUBJECT: Fully exempting life insurance benefits from bankruptcy demands

COMMITTEE: Financial Institutions — committee substitute recommended

VOTE: 7 ayes — Averitt, Denny, Ehrhardt, Elkins, Marchant, Pitts, Juan Solis

0 nays

2 absent — Solomons, Grusendorf

WITNESSES: For — C. Dean Davis, Texas Association of Life Underwriters

Against — None

On — Glenn Karisch

BACKGROUND: Certain personal property is exempt from garnishment, attachment, execution, or other seizure when a person voluntarily declares bankruptcy. The aggregate value of exempted personal property cannot exceed \$60,000 for a family or \$30,000 for a single adult. Some items are exempt and do not count against these monetary caps, including retirement benefits, pensions, alimony, and child support.

Some or all of the present value of a life insurance policy is exempt, depending upon which statute is consulted. Property Code, sec. 42.002(a) exempts the present value of any life insurance policy of the individual declaring bankruptcy, to the extent that a member of the family is a beneficiary, subject to the \$60,000 aggregate limit. Insurance Code, art. 21.22 fully exempts life insurance benefits from all demands in any bankruptcy proceeding. The Insurance Code provides for no monetary cap.

The 75th Legislature attempted to resolve this conflict by enacting HB 2274 by Shields, which amended the Insurance Code to clarify that the exemption therein is in addition to exemptions in the Property Code. However, some federal bankruptcy courts have continued to rule that the life insurance exemption applies toward the monetary cap provided by the Property Code, while others have ruled that this exemption is in addition to the monetary cap.

HB 1805
House Research Organization
page 2

DIGEST: CSHB 1805 would amend the Property Code to delete life insurance from the list of personal property exempt from bankruptcy demands that is subject to the monetary cap.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

SUPPORTERS SAY: By eliminating contradictory language in the Property Code, CSHB 1805 finally would clarify that the value of a life insurance policy is fully exempt from bankruptcy demands and does not apply toward the monetary cap. This conflict has resulted in confusing and contradictory rulings throughout the state. The bill would provide clear and consistent statutory language that should allow consistent application of the exemption of life insurance benefits throughout Texas.

A life insurance policy generally benefits dependents of a policyholder in the event of that person's death. As such, it is unfair to take these benefits away from the dependents to satisfy creditors' demands stemming from the policyholder's declaring bankruptcy. The Property Code already exempts virtually all retirement and pension annuities, and their present value does not apply toward the monetary cap. Alimony and child support are also exempt and do not apply toward the monetary cap.

OPPONENTS SAY: No apparent opposition.

NOTES: The committee substitute eliminated a section of the original bill that would have repealed Insurance Code, art. 21.22, sec. 7, added by HB 2274 in 1997.