HOUSE RESEARCH ORGANIZATION bill digest | 5/24/2011 | SB 1810 Carona (Truitt) (CSSB 1810 by Truitt)

SUBJECT: Specifying certain retirement plans' exemption from access by creditors

COMMITTEE: Pensions, Investments and Financial Services — committee substitute recommended

VOTE: 6 ayes — Truitt, Anchia, Legler, Nash, Orr, Veasey

0 nays

3 absent — C. Anderson, Creighton, Hernandez Luna

SENATE VOTE: On final passage, April 21 — 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing

BACKGROUND: Property Code, sec. 42.0021, added in 1987, exempts certain federal income tax-exempt or tax-deferred savings plans from creditors' claims, including individual retirement accounts and annuities (IRAs), governmental and non-profit employer-sponsored retirement plans, and health savings accounts. The federal Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 also defines IRAs as creditor-exempt assets. Neither law specifically exempts IRAs that have been inherited, but Property Code, sec. 42.0021 historically has been interpreted as exempting these IRAs after the original owner's death as they were before the death.

In 2007, a Houston bankruptcy court asserted that the exemption provided by Property Code, sec. 42.0021 does not apply to inherited IRAs. The case was *In re Jarboe*, 365 B.R. 717 (Bankr. S.D. Tex. 2007).

DIGEST: CSSB 1810 would specify that any inherited savings plan or account, including an inherited IRA, was exempt from a creditor's claims under Property Code, sec. 42.0021to the same extent the plan or account was exempt before the original owner's death.

The bill would list the sections of the Internal Revenue Code of 1986 related to the federal income tax-exempt or tax-deferred plans to which Property Code, sec. 42.0021 specifically applied.
The bill would take immediate effect if finally passed by a two-thirds

record vote of the membership of each house. Otherwise, it would take effect September 1, 2011. The bill would apply to all inherited individual retirement plan or accounts, regardless of when they were created.

NOTES: The House committee substitute differs from the Senate-passed version of the bill by listing the types of plans exempt from creditors' claims, all of which are federal income tax-exempt or tax-deferred, and by specifying that any applicable inherited plan or account was exempt, not just inherited IRAs.