

**SUBJECT:** Creditor protection for college savings plan accounts

**COMMITTEE:** Pensions and Investments — favorable, without amendment

**VOTE:** 6 ayes — Ritter, Telford, Martinez Fischer, McClendon, Pena, Rose  
0 nays  
1 absent — Grusendorf

**WITNESSES:** For — Jerry Jones, Texas Academy of Probate Lawyers  
Against — None

**BACKGROUND:** The Internal Revenue Service (IRS) Code of 1986, sec. 529, established state-operated investment plans designed to help families save for future college costs. These plans, commonly called 529 plans, provide special tax benefits to participants. The state of Texas administers two of these plans: the Texas Guaranteed Tuition Plan is a pre-paid tuition plan, and the Tomorrow's College Investment Plan is a college-savings plan.

The 75th Legislature in 1997 enacted HB 9 by Stiles, enabling the Texas Guaranteed Tuition Plan (formerly the Texas Tomorrow Fund), which is governed by Education Code, ch. 54, subch. F. Under sec. 54.639(a), money in the fund is exempt from claims of creditors of a purchaser, a beneficiary, or a successor in interest of a purchaser or beneficiary.

SB 555 by Ellis, enacted by the 77th Legislature in 2001, enabled the Tomorrow's College Investment Plan, which is governed by Education Code, ch. 54, subch. G. Under sec. 54.709(e), money in a savings trust account is exempt from attachment, execution, and seizure for the satisfaction of debt or liability of an account owner or beneficiary.

Property Code, ch. 42 defines personal property and governs personal property exemptions from garnishment, attachment, execution, or other seizure for the satisfaction of debt.

**DIGEST:** HB 3234 would add to Property Code, ch. 42 a personal property exemption for a college savings plan. Assets held in the Texas Guaranteed Tuition Plan, the Tomorrow's College Investment Plan, or a qualified 529 plan of any state would be exempt from attachment, execution, and seizure for the satisfaction of debts.

If this provision were held invalid or preempted by federal law in whole or in part or under certain circumstances, it would remain in effect in all other respects to the maximum extent permitted by law.

The bill would take effect September 1, 2003, and would apply to all assets held in a fund or plan on or after the effective date, whether the property was contributed before, on, or after the effective date.

**SUPPORTERS SAY:** HB 3234 would make it clear that assets in any qualified 529 plan, both in Texas and out of state, were exempt from debt collection. This would allow Texans to invest in any of the college savings and pre-paid tuition plans available today, secure in the knowledge that assets put away for a future education would benefit the person for whom they were intended.

Although the Education Code protects investors in the two Texas plans, there is no similar protection in current law for money placed in the 529 plans of other states. The number of college-savings plans developing across the country continues to increase, and colleges and universities recently have gained the right to offer certain 529 plans. Investment houses in Texas offer college-savings plans as a means to invest substantial wealth. A person could invest money in a 529 plan with a Houston firm, for example, and not realize without reading the fine print that the actual investment was in a plan sponsored by another state. With more opportunities for Texans to invest in out-of-state 529 plans, the Legislature should act to ensure that these investments, as well as assets held in Texas plans, are protected from debt collection.

The bill is not designed to shelter assets from creditors, nor would a 529 plan be a good device for such activities. While a person can make a one-time, front end investment of up to \$55,000 in a 529 plan, that investor would be prohibited from making additional contributions for five years. That

limitation, and penalties for early withdrawal, make 529 plans undesirable as asset shelters.

**OPPONENTS  
SAY:**

Investors can put as much as \$250,000 in college-savings plans under IRS Code, sec. 529. This bill would increase opportunities for Texans in debt to shelter substantial funds in out-of-state college savings plans that should go to creditors.

By extending creditor protection to 529 plans sponsored by other states, this bill could make Texas' two 529 plans less competitive.

**NOTES:**

The companion bill, SB 1588 by Whitmire, passed the Senate by voice vote on April 30.