

SUBJECT: Prohibiting court-ordered seizure of retirement income

COMMITTEE: Judiciary: favorable, without amendment

VOTE: 5 ayes--S. Thompson, Conley, Dutton, D. Hudson, Thomas
0 nays

4 absent--Seidlits, Hinojosa, S. Hudson, Perez

WITNESSES: None

BACKGROUND: The Property Code exempts from execution to satisfy court judgments certain amounts and types of personal property. Since 1987 this exempt property has included assets in, and the right to receive payments from, qualifying retirement plans.

DIGEST: HB 1029 would forbid a court to order a person owing a judgment to turn over either disbursements or proceeds of property that is statutorily exempt from seizure and execution, including qualifying retirement plans described in the Property Code.

The bill would apply to orders already entered, as well as to judgments rendered on or after its effective date.

SUPPORTERS SAY: HB 1029 would make clear to the courts that they cannot order judgment debtors to turn over their retirement checks to satisfy judgments. The Property Code exempts all qualifying retirement funds from attachment, execution and seizure, yet some courts still allow creditors to collect payments made out of these accounts. Last year, the El Paso Court of Appeals held that current law protects only the funds actually on deposit in a retirement account. It ruled that checks paid out of these accounts are equivalent to cash, which is not exempt from seizure, and that judgment debtors can be ordered to turn over the retirement checks they receive, before those checks are cashed.

The court's decision has the effect of a prospective order; it means that all of a retiree's future income is committed to the creditor. It is an overly harsh remedy to exact payment from someone dependent on a

retirement fund, and the Legislature tried to prevent such actions last session. Allowing disbursements from those funds to be seized is very similar to garnishment, which involves ordering an employer to turn over a debtor's wages before they are paid. Garnishment has long been prohibited by the Texas Constitution (with a narrow exception for child support payments), and the Legislature should unequivocally prohibit this similar practice as well.

HB 1029 would reverse the El Paso court's 1988 decision in Cain v. Cain (746 SW 2nd. 861), and all other past court orders based on this incorrect interpretation of the law that have required retirement fund recipients to turn over their checks.

OPPONENTS
SAY:

HB 1029 effectively would excuse some debtors from ever paying their debts. Cash is not exempt property except under very limited circumstances relating to the real estate homestead. Creditors should be able to seize a bank account into which a debtor has deposited retirement checks. If the law permits the creditor to seize the account, why should the type of check deposited into the account make any difference?

The law exempts retirement plans from creditor collection only because the debtor also cannot reach these funds before they are drawn from the account. Once the debtor draws out these funds and starts spending them, that money should be eligible for paying judgment debts as well.