

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 607 Exemption of Assets from Legal Process  
**SPONSOR(S):** Rep. Altman  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1486

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary		Thomas	Havlicak
2)			
3)			
4)			
5)			

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**SUMMARY ANALYSIS**

The bill expands upon an existing exemption from legal process for money paid into the Prepaid College Trust Fund or Medical Savings Accounts. Legal process includes attachment and garnishment in favor of any creditor of the purchaser or the beneficiary of the account. The bill expands the exemption to include assets in qualified tuition programs, medical savings accounts, and Coverdell education savings accounts. Specifically, Floridians will be allowed to contribute to an educational savings account sponsored by any other state, and prepay a tuition contract offered by any other state, and still receive the benefit of the exemption from legal process.

The bill does not appear to have a fiscal impact on state or local government.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

The bill expands upon an existing exemption from legal process for money paid into the Prepaid College Trust Fund or Medical Savings Accounts. The bill expands the exemption to include assets in qualified tuition programs, medical savings accounts, and Coverdell education savings accounts. Specifically, Floridians will be allowed to contribute to an educational savings account sponsored by any other state, and prepay a tuition contract offered by any other state, and still receive the benefit of the exemption from legal process. Legal process includes attachment and garnishment in favor of any creditor of the purchaser or the beneficiary of the account.<sup>1</sup>

The exemption is broadened under the bill to prohibit both creditors and claimants from effectuating legal process against these educational or medical savings accounts and protects a program participant, purchaser, owner, contributor, or beneficiary. Presently, the exemption is limited to any *creditor of the purchaser or beneficiary*. The list of types of legal process is expanded to include levy, in addition to attachment and garnishment.

Florida, as many other states, has opted out of exemptions from legal process provided in the federal Bankruptcy Code.<sup>2</sup> Therefore, the Florida law on exemptions from creditor's actions applies and operates independently of bankruptcy provisions. Chapter 222, F.S., currently exempts, without limitation, from garnishment, attachment, and other legal process by creditors the following:

- Certain disposable earnings of a head of family (s. 222.11, F.S.).
- The proceeds of a life insurance policy (s. 222.13, F.S.).
- The cash surrender value of a life insurance policy and the proceeds of an annuity contract (s. 222.14, F.S.).
- Disability benefits payable from any insurance (s. 222.18, F.S.).
- Pension, retirement, or profit sharing benefits (s. 222.21, F.S.).
- Prepaid College Trust Fund moneys and medical savings account funds (s. 222.22, F.S.).
- A debtor's interest in a motor vehicle, up to \$1,000 in value (s. 222.25, F.S.).
- The debtor's interest in any professionally prescribed health aids (s. 222.25, F.S.).
- Social security benefits, unemployment compensation or public assistance benefits (e.g., AFDC, WIC, and food stamps); veterans' benefits; disability, illness or unemployment benefits; alimony, support or separate maintenance; and stock or pension plans under specified circumstances (s. 222.201, F.S., recognizing a subclass of property for federal exemptions under 11 U.S.C. s. 522(d)(10)).

<sup>1</sup> Section 222.22(1), F.S.

<sup>2</sup> Section 222.20, F.S.

## Exemption for Education Accounts

The Legislature established the Florida Prepaid College Program in 1987<sup>3</sup> and the Florida College Savings Program in 1999<sup>4</sup> for the purpose of promoting educational opportunities at postsecondary institutions. The Legislature has exempted these programs from legal process<sup>5</sup> and from claims of probate creditors.<sup>6</sup> Since the inception of these two programs, Congress has expanded the tax benefits under the Internal Revenue Code to allow for the creation of other qualified prepaid education programs and education savings accounts such as the Coverdell Education Savings Account.<sup>7</sup> A Coverdell Education Account, formerly known as an education individual retirement account (IRA), is an established account to which a maximum of \$2000 may be contributed annually for the funding of education expenses of a designated beneficiary through subsequent tax-free earnings.<sup>8</sup> The benefit applies to elementary, secondary, and higher education expenses.

Congress also amended the federal tax law to exclude from income a distribution from a qualified tuition program.<sup>9</sup> This benefit is effective beginning in the tax year 2004.<sup>10</sup> Both states and eligible education institutions can establish and maintain qualified tuition programs to which a person can prepay or contribute for purposes of a qualified student's education. An eligible education institution includes a college, university, vocational school, or other postsecondary institution eligible to participate in a student aid program administered by the Department of Education. This also includes all accredited public, nonprofit, and proprietary (private profit-making) post secondary schools.

## Exemptions for Medical Savings Accounts

Federal law allows a taxable income deduction for the aggregate amount a person pays into an Archer Medical Savings Account during the taxable year.<sup>11</sup> The term "Archer MSA" is defined as a trust created or organized in the United States as a medical savings account exclusively for the purpose of paying the qualified medical expenses of the account holder, but only if the written governing instrument creating the trust meets certain criteria. Only self-employed persons or employers with less than 50 employees could contribute to these accounts. Florida law currently exempts from legal process moneys paid into a medical savings account.<sup>12</sup>

### C. SECTION DIRECTORY:

**Section 1:** Amends s. 222.22, F.S., relating to the protection of funds in the Prepaid College Trust Fund or in Medical Savings Accounts from legal process.

**Section 2:** Provides that the bill takes effect upon becoming a law.

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<sup>3</sup> See ch. 87-132, L.O.F.; s. 240.551, F.S. (now s. 1009.98, F.S.). Under the Florida Prepaid College Program, a purchaser or a person who agrees to make or is obligated to advance registration or dormitory housing payments enters into an advance payment contract with the Florida Prepaid College Board.

<sup>4</sup> See ch. 99-220, L.O.F.; s. 240.553, F.S. (now s. 1009.981, F.S.). Under the Florida College Savings Program, a benefactor enters into a participation agreement for a savings program for a designated beneficiary.

<sup>5</sup> Section 222.22, F.S.

<sup>6</sup> Section 731.402, F.S.

<sup>7</sup> See s. 530, Internal Revenue Code of 1986, as amended.

<sup>8</sup> See Tax Benefits for Education, ch. 7, Pub 970, Department of Treasury (2003).

<sup>9</sup> See s. 529, Internal Revenue Code of 1986, as amended.

<sup>10</sup> See Tax Benefits for Education, ch. 8, Pub 970, Department of Treasury (2003).

<sup>11</sup> See s. 220, I.R.C. 1986, as amended

<sup>12</sup> Section 222.22, F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local governments' revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on local governments' expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides greater protection for savings accounts which have been created for important public policy purposes – education and medical care. It is anticipated that the bill will create expanded opportunities for the beneficiaries of these accounts to take advantage of their intended purposes.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill does not create the need for rulemaking authority.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

N/A