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**SUBSTITUTE SENATE BILL 5085**

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**State of Washington**

**62nd Legislature**

**2011 Regular Session**

**By** Senate Judiciary (originally sponsored by Senator Kline; by request of Washington State Bar Association)

READ FIRST TIME 01/27/11.

1           AN ACT Relating to modifying provisions on personal property exempt  
2 from execution, attachment, and garnishment; amending RCW 6.15.010,  
3 6.15.020, 48.18.430, and 6.27.140; and adding a new section to chapter  
4 2.48 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6           **Sec. 1.** RCW 6.15.010 and 2005 c 272 s 6 are each amended to read  
7 as follows:

8           (1) Except as provided in RCW 6.15.050, the following personal  
9 property ~~((shall be))~~ is exempt from execution, attachment, and  
10 garnishment:

11           ~~((+1))~~ (a) All wearing apparel of every individual and family, but  
12 not to exceed ~~((one))~~ three thousand five hundred dollars in value in  
13 furs, jewelry, and personal ornaments for any individual.

14           ~~((+2))~~ (b) All private libraries including electronic media, which  
15 includes audio-visual, entertainment, or reference media in digital or  
16 analogue format, of every individual, but not to exceed ~~((fifteen~~  
17 ~~hundred))~~ three thousand five hundred dollars in value, and all family  
18 pictures and keepsakes.

1       ~~((3))~~ (c) To each individual or, as to community property of  
2 spouses maintaining a single household as against a creditor of the  
3 community, to the community:

4       ~~((a))~~ (i) The individual's or community's household goods,  
5 appliances, furniture, and home and yard equipment, not to exceed  
6 ~~((two))~~ six thousand ~~((seven))~~ five hundred dollars in value for the  
7 individual or ~~((five))~~ thirteen thousand ~~((four hundred))~~ dollars for  
8 the community, no single item to exceed seven hundred fifty dollars,  
9 said amount to include provisions and fuel for the comfortable  
10 maintenance of the individual or community;

11       ~~((b))~~ (ii) Other personal property, except personal earnings as  
12 provided under RCW 6.15.050(1), not to exceed ~~((two))~~ three thousand  
13 dollars in value, of which not more than ~~((two hundred))~~ one thousand  
14 dollars in value may consist of cash, and of which not more than ~~((two~~  
15 ~~hundred))~~ one thousand dollars in value may consist of bank accounts,  
16 savings and loan accounts, stocks, bonds, or other securities;

17       ~~((c))~~ (iii) For an individual, a motor vehicle used for personal  
18 transportation, not to exceed ~~((two))~~ four thousand ~~((five hundred))~~  
19 dollars or for a community two motor vehicles used for personal  
20 transportation, not to exceed ~~((five))~~ eight thousand dollars in  
21 aggregate value;

22       ~~((d))~~ (iv) Any past due, current, or future child support paid or  
23 owed to the debtor, which can be traced;

24       ~~((e))~~ (v) All professionally prescribed health aids for the  
25 debtor or a dependent of the debtor; and

26       ~~((f))~~ (vi) To any individual, the right to or proceeds of a  
27 payment not to exceed ~~((sixteen))~~ twenty thousand ~~((one hundred fifty))~~  
28 dollars on account of personal bodily injury, not including pain and  
29 suffering or compensation for actual pecuniary loss, of the debtor or  
30 an individual of whom the debtor is a dependent; or the right to or  
31 proceeds of a payment in compensation of loss of future earnings of the  
32 debtor or an individual of whom the debtor is or was a dependent, to  
33 the extent reasonably necessary for the support of the debtor and any  
34 dependent of the debtor. The exemption under this subsection

35 ~~((3)(f))~~ (1)(c)(vi) does not apply to the right of the state of  
36 Washington, or any agent or assignee of the state, as a lienholder or  
37 subrogee under RCW 43.20B.060.

1        ~~((4))~~ (d) To each qualified individual, one of the following  
2 exemptions:

3        ~~((a))~~ (i) To a farmer, farm trucks, farm stock, farm tools, farm  
4 equipment, supplies and seed, not to exceed ~~((five))~~ ten thousand  
5 dollars in value;

6        ~~((b))~~ (ii) To a physician, surgeon, attorney, clergyman, or other  
7 professional person, the individual's library, office furniture, office  
8 equipment and supplies, not to exceed ~~((five))~~ ten thousand dollars in  
9 value;

10       ~~((c))~~ (iii) To any other individual, the tools and instruments  
11 and materials used to carry on his or her trade for the support of  
12 himself or herself or family, not to exceed ~~((five))~~ ten thousand  
13 dollars in value.

14       (e) Tuition units, under chapter 28B.95 RCW, purchased more than  
15 two years prior to the date of a bankruptcy filing or court judgment,  
16 and contributions to any other qualified tuition program under 26  
17 U.S.C. Sec. 529 of the internal revenue code of 1986, as amended, and  
18 to a Coverdell education savings account, also known as an education  
19 individual retirement account, under 26 U.S.C. Sec. 530 of the internal  
20 revenue code of 1986, as amended, contributed more than two years prior  
21 to the date of a bankruptcy filing or court judgment.

22       (2) For purposes of this section, "value" means the reasonable  
23 market value of the debtor's interest in an article or item at the time  
24 it is selected for exemption, exclusive of all liens and encumbrances  
25 thereon.

26       ~~((5) Tuition units, under chapter 28B.95 RCW, purchased more than~~  
27 ~~two years prior to the date of a bankruptcy filing or court judgment.))~~

28       **Sec. 2.** RCW 6.15.020 and 2007 c 492 s 1 are each amended to read  
29 as follows:

30       (1) It is the policy of the state of Washington to ensure the well-  
31 being of its citizens by protecting retirement income to which they are  
32 or may become entitled. For that purpose generally and pursuant to the  
33 authority granted to the state of Washington under 11 U.S.C. Sec.  
34 522(b)(2), the exemptions in this section relating to retirement  
35 benefits are provided.

36       (2) Unless otherwise provided by federal law, any money received by  
37 any citizen of the state of Washington as a pension from the government

1 of the United States, whether the same be in the actual possession of  
2 such person or be deposited or loaned, shall be exempt from execution,  
3 attachment, garnishment, or seizure by or under any legal process  
4 whatever, and when a debtor dies, or absconds, and leaves his or her  
5 family any money exempted by this subsection, the same shall be exempt  
6 to the family as provided in this subsection. This subsection shall  
7 not apply to child support collection actions issued under chapter  
8 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law.

9 (3) The right of a person to a pension, annuity, or retirement  
10 allowance or disability allowance, or death benefits, or any optional  
11 benefit, or any other right accrued or accruing to any citizen of the  
12 state of Washington under any employee benefit plan, and any fund  
13 created by such a plan or arrangement, shall be exempt from execution,  
14 attachment, garnishment, or seizure by or under any legal process  
15 whatever. This subsection shall not apply to child support collection  
16 actions issued under chapter 26.18, 26.23, or 74.20A RCW if otherwise  
17 permitted by federal law. This subsection shall permit benefits under  
18 any such plan or arrangement to be payable to a spouse, former spouse,  
19 child, or other dependent of a participant in such plan to the extent  
20 expressly provided for in a qualified domestic relations order that  
21 meets the requirements for such orders under the plan, or, in the case  
22 of benefits payable under a plan described in (~~sections~~) 26 U.S.C.  
23 Sec. 403(b) or 408 of the internal revenue code of 1986, as amended, or  
24 section 409 of such code as in effect before January 1, 1984, to the  
25 extent provided in any order issued by a court of competent  
26 jurisdiction that provides for maintenance or support. This subsection  
27 (~~shall~~) does not prohibit actions against an employee benefit plan,  
28 or fund for valid obligations incurred by the plan or fund for the  
29 benefit of the plan or fund.

30 (4) For the purposes of this section, the term "employee benefit  
31 plan" means any plan or arrangement that is described in RCW 49.64.020,  
32 including any Keogh plan, whether funded by a trust or by an annuity  
33 contract, and in (~~sections~~) 26 U.S.C. Sec. 401(a) or 403(a) of the  
34 internal revenue code of 1986, as amended; or that is a tax-sheltered  
35 annuity or a custodial account described in section 403(b) of such code  
36 or an individual retirement account or an individual retirement annuity  
37 described in section 408 of such code; or a Roth individual retirement  
38 account described in section 408A of such code; or a medical savings

1 account or a health savings account described in sections 220 and 223,  
2 respectively, of such code; (~~or an education individual retirement~~  
3 ~~account described in section 530 of such code;~~) or a retirement bond  
4 described in section 409 of such code as in effect before January 1,  
5 1984. (~~The term "employee benefit plan" also means any rights~~  
6 ~~accruing on account of money paid currently or in advance for purchase~~  
7 ~~of tuition units under the advanced college tuition payment program in~~  
8 ~~chapter 28B.95 RCW.~~) The term "employee benefit plan" shall not  
9 include any employee benefit plan that is established or maintained for  
10 its employees by the government of the United States, by the state of  
11 Washington under chapter 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.37,  
12 41.40, or 43.43 RCW or RCW 41.50.770, or by any agency or  
13 instrumentality of the government of the United States.

14 (5) An employee benefit plan shall be deemed to be a spendthrift  
15 trust, regardless of the source of funds, the relationship between the  
16 trustee or custodian of the plan and the beneficiary, or the ability of  
17 the debtor to withdraw or borrow or otherwise become entitled to  
18 benefits from the plan before retirement. This subsection shall not  
19 apply to child support collection actions issued under chapter 26.18,  
20 26.23, or 74.20A RCW, if otherwise permitted by federal law. This  
21 subsection shall permit benefits under any such plan or arrangement to  
22 be payable to a spouse, former spouse, child, or other dependent of a  
23 participant in such plan to the extent expressly provided for in a  
24 qualified domestic relations order that meets the requirements for such  
25 orders under the plan, or, in the case of benefits payable under a plan  
26 described in (~~sections~~) 26 U.S.C. Sec. 403(b) or 408 of the internal  
27 revenue code of 1986, as amended, or section 409 of such code as in  
28 effect before January 1, 1984, to the extent provided in any order  
29 issued by a court of competent jurisdiction that provides for  
30 maintenance or support.

31 (6) Unless (~~contrary to applicable~~) prohibited by federal law,  
32 nothing contained in subsection (3), (4), or (5) of this section shall  
33 be construed as a termination or limitation of a spouse's community  
34 property interest in an (~~individual retirement account~~) employee  
35 benefit plan held in the name of or on account of the other spouse, who  
36 is the participant or the account holder spouse. Unless prohibited by  
37 applicable federal law, at the death of the nonparticipant, nonaccount  
38 holder spouse, the nonparticipant, nonaccount holder spouse may

1 transfer or distribute the community property interest of the  
2 nonparticipant, nonaccount holder spouse in the participant or account  
3 holder spouse's (~~((individual retirement account))~~) employee benefit plan  
4 to the nonparticipant, nonaccount holder spouse's estate, testamentary  
5 trust, inter vivos trust, or other successor or successors pursuant to  
6 the last will of the nonparticipant, nonaccount holder spouse or the  
7 law of intestate succession, and that distributee may, but shall not be  
8 required to, obtain an order of a court of competent jurisdiction,  
9 including a nonjudicial (~~((dispute resolution))~~) binding agreement or  
10 (~~((other))~~) order entered under chapter 11.96A RCW, to confirm the  
11 distribution. For purposes of subsection (3) of this section, the  
12 distributee of the nonparticipant, nonaccount holder spouse's community  
13 property interest in an (~~((individual retirement account))~~) employee  
14 benefit plan shall be considered a person entitled to the full  
15 protection of subsection (3) of this section. The nonparticipant,  
16 nonaccount holder spouse's consent to a beneficiary designation by the  
17 participant or account holder spouse with respect to an (~~((individual~~  
18 ~~retirement account))~~) employee benefit plan shall not, absent clear and  
19 convincing evidence to the contrary, be deemed a release, gift,  
20 relinquishment, termination, limitation, or transfer of the  
21 nonparticipant, nonaccount holder spouse's community property interest  
22 in an (~~((individual retirement account))~~) employee benefit plan. For  
23 purposes of this subsection, the term "nonparticipant, nonaccount  
24 holder spouse" means the spouse of the person who is a participant in  
25 an employee benefit plan or in whose name (~~((the))~~) an individual  
26 retirement account is maintained. (~~((The term "individual retirement~~  
27 ~~account" includes an individual retirement account and an individual~~  
28 ~~retirement annuity both as described in section 408 of the internal~~  
29 ~~revenue code of 1986, as amended, a Roth individual retirement account~~  
30 ~~as described in section 408A of the internal revenue code of 1986, as~~  
31 ~~amended, and an individual retirement bond as described in section 409~~  
32 ~~of the internal revenue code as in effect before January 1, 1984.))~~) As  
33 used in this subsection, an order of a court of competent jurisdiction  
34 entered under chapter 11.96A RCW includes an agreement, as that term is  
35 used under RCW 11.96A.220.

36 **Sec. 3.** RCW 48.18.430 and 2005 c 223 s 10 are each amended to read  
37 as follows:

1 (1) The benefits, rights, privileges, and options under any annuity  
2 contract that are due the annuitant who paid the consideration for the  
3 annuity contract are not subject to execution and the annuitant may not  
4 be compelled to exercise those rights, powers, or options, and  
5 creditors are not allowed to interfere with or terminate the contract,  
6 except:

7 (a) As to amounts paid for or as premium on an annuity with intent  
8 to defraud creditors, with interest thereon, and of which the creditor  
9 has given the insurer written notice at its home office prior to making  
10 the payments to the annuitant out of which the creditor seeks to  
11 recover. The notice must specify the amount claimed or the facts that  
12 will enable the insurer to determine the amount, and must set forth the  
13 facts that will enable the insurer to determine the insurance or  
14 annuity contract, the person insured or annuitant and the payments  
15 sought to be avoided on the basis of fraud.

16 (b) The total exemption of benefits presently due and payable to an  
17 annuitant periodically or at stated times under all annuity contracts  
18 may not at any time exceed ((two)) three thousand ((five-hundred))  
19 dollars per month for the length of time represented by the  
20 installments, and a periodic payment in excess of ((two)) three  
21 thousand ((five-hundred)) dollars per month is subject to garnishee  
22 execution to the same extent as are wages and salaries.

23 (c) If the total benefits presently due and payable to an annuitant  
24 under all annuity contracts at any time exceeds payment at the rate of  
25 ((two)) three thousand ((five-hundred)) dollars per month, then the  
26 court may order the annuitant to pay to a judgment creditor or apply on  
27 the judgment, in installments, the portion of the excess benefits that  
28 the court determines to be just and proper, after due regard for the  
29 reasonable requirements of the judgment debtor and the judgment  
30 debtor's dependent family, as well as any payments required to be made  
31 by the annuitant to other creditors under prior court orders.

32 (2) The benefits, rights, privileges, or options accruing under an  
33 annuity contract to a beneficiary or assignee are not transferable or  
34 subject to commutation, and if the benefits are payable periodically or  
35 at stated times, the same exemptions and exceptions contained in this  
36 section for the annuitant apply to the beneficiary or assignee.

37 (3) An annuity contract within the meaning of this section is any  
38 obligation to pay certain sums at stated times, during life or lives,

1 or for a specified term or terms, issued for a valuable consideration,  
2 regardless of whether or not the sums are payable to one or more  
3 persons, jointly or otherwise, but does not include payments under life  
4 insurance contracts at stated times during life or lives, or for a  
5 specified term or terms.

6 NEW SECTION. **Sec. 4.** A new section is added to chapter 2.48 RCW  
7 to read as follows:

8 (1) The Washington state bar association must review the monetary  
9 threshold amounts set forth in RCW 6.15.010 and 48.18.430 regarding  
10 personal property and annuities exempt from execution, attachment, and  
11 garnishment to determine whether such amounts should be modified. The  
12 bar association shall include in its first report a review of  
13 historical exemption amounts set by the legislature and conclusions as  
14 to whether historical exemption amounts are an appropriate basis for  
15 future modifications.

16 (2) The Washington state bar association must report to the  
17 legislature with its recommendations by November 1, 2014, and every  
18 five years thereafter.

19 **Sec. 5.** RCW 6.27.140 and 2010 1st sp.s. c 26 s 2 are each amended  
20 to read as follows:

21 (1) The notice required by RCW 6.27.130(1) to be mailed to or  
22 served on an individual judgment debtor shall be in the following form,  
23 printed or typed in type no smaller than elite type:

24 NOTICE OF GARNISHMENT  
25 AND OF YOUR RIGHTS

26 A Writ of Garnishment issued in a Washington court has been or  
27 will be served on the garnishee named in the attached copy of  
28 the writ. After receipt of the writ, the garnishee is required  
29 to withhold payment of any money that was due to you and to  
30 withhold any other property of yours that the garnishee held or  
31 controlled. This notice of your rights is required by law.

32 YOU HAVE THE FOLLOWING EXEMPTION RIGHTS:

33 WAGES. If the garnishee is your employer who owes wages or  
34 other personal earnings to you, your employer is required to  
35 pay amounts to you that are exempt under state and federal  
36 laws, as explained in the writ of garnishment. You should

1 receive a copy of your employer's answer, which will show how  
2 the exempt amount was calculated. If the garnishment is for  
3 child support, the exempt amount paid to you will be forty  
4 percent of wages due you, but if you are supporting a spouse,  
5 state registered domestic partner, or dependent child, you are  
6 entitled to claim an additional ten percent as exempt.

7 BANK ACCOUNTS. If the garnishee is a bank or other institution  
8 with which you have an account in which you have deposited  
9 benefits such as Temporary Assistance for Needy Families,  
10 Supplemental Security Income (SSI), Social Security, veterans'  
11 benefits, unemployment compensation, or a United States  
12 pension, you may claim the account as fully exempt if you have  
13 deposited only such benefit funds in the account. It may be  
14 partially exempt even though you have deposited money from  
15 other sources in the same account. An exemption is also  
16 available under RCW 26.16.200, providing that funds in a  
17 community bank account that can be identified as the earnings  
18 of a stepparent are exempt from a garnishment on the child  
19 support obligation of the parent.

20 OTHER EXEMPTIONS. If the garnishee holds other property of  
21 yours, some or all of it may be exempt under RCW 6.15.010, a  
22 Washington statute that exempts certain property of your choice  
23 (including (~~specified cash or~~) money in a bank account of up  
24 to \$1000.00) and certain other property such as household  
25 furnishings, tools of trade, and a motor vehicle (all limited  
26 by differing dollar values).

27 HOW TO CLAIM EXEMPTIONS. Fill out the enclosed claim form and  
28 mail or deliver it as described in instructions on the claim  
29 form. If the plaintiff does not object to your claim, the  
30 funds or other property that you have claimed as exempt must be  
31 released not later than 10 days after the plaintiff receives  
32 your claim form. If the plaintiff objects, the law requires a  
33 hearing not later than 14 days after the plaintiff receives  
34 your claim form, and notice of the objection and hearing date  
35 will be mailed to you at the address that you put on the claim  
36 form.

1 THE LAW ALSO PROVIDES OTHER EXEMPTION RIGHTS. IF NECESSARY, AN  
2 ATTORNEY CAN ASSIST YOU TO ASSERT THESE AND OTHER RIGHTS, BUT  
3 YOU MUST ACT IMMEDIATELY TO AVOID LOSS OF RIGHTS BY DELAY.

4 (2) The claim form required by RCW 6.27.130(1) to be mailed to or  
5 served on an individual judgment debtor shall be in the following form,  
6 printed or typed in type no smaller than elite type:

7 [Caption to be filled in by judgment creditor  
8 or plaintiff before mailing.]

9 .....  
10 Name of Court  
11 ..... No.....  
12 Plaintiff,  
13 vs.  
14 ..... EXEMPTION CLAIM  
15 Defendant,  
16 .....  
17 Garnishee Defendant

18 INSTRUCTIONS:

- 19 1. Read this whole form after reading the enclosed  
20 notice. Then put an X in the box or boxes that  
21 describe your exemption claim or claims and write in  
22 the necessary information on the blank lines. If  
23 additional space is needed, use the bottom of the last  
24 page or attach another sheet.

1 2. Make two copies of the completed form. Deliver the  
2 original form by first-class mail or in person to the  
3 clerk of the court, whose address is shown at the  
4 bottom of the writ of garnishment. Deliver one of  
5 the copies by first-class mail or in person to the  
6 plaintiff or plaintiff's attorney, whose name and  
7 address are shown at the bottom of the writ. Keep  
8 the other copy. YOU SHOULD DO THIS AS  
9 QUICKLY AS POSSIBLE, BUT NO LATER  
10 THAN 28 DAYS (4 WEEKS) AFTER THE DATE  
11 ON THE WRIT.

12 I/We claim the following money or property as exempt:

13 IF BANK ACCOUNT IS GARNISHED:

14 [ ] The account contains payments from:

15 [ ] Temporary assistance for needy families, SSI, or  
16 other public assistance. I receive \$ . . . . . monthly.

17 [ ] Social Security. I receive \$ . . . . . monthly.

18 [ ] Veterans' Benefits. I receive \$ . . . . . monthly.

19 [ ] U.S. Government Pension. I receive \$ . . . . .  
20 monthly.

21 [ ] Unemployment Compensation. I receive \$ . . . . .  
22 monthly.

23 [ ] Child support. I receive \$ . . . . . monthly.

24 [ ] Other. Explain . . . . .  
25 . . . . .

26 IF EXEMPTION IN BANK ACCOUNT IS CLAIMED,  
27 ANSWER ONE OR BOTH OF THE FOLLOWING:

28 [ ] No money other than from above payments are in  
29 the account.

30 [ ] Moneys in addition to the above payments have  
31 been deposited in the account. Explain . . . . .  
32 . . . . .  
33 . . . . .

34 IF EARNINGS ARE GARNISHED FOR CHILD  
35 SUPPORT:



1 that a bank account is exempt, you may have to show the judge your bank  
2 statements and papers that show the source of the money you deposited  
3 in the bank. Your claim may be granted more quickly if you attach  
4 copies of such proof to your claim.

5 IF THE JUDGE DENIES YOUR EXEMPTION CLAIM, YOU WILL HAVE TO PAY THE  
6 PLAINTIFF'S COSTS. IF THE JUDGE DECIDES THAT YOU DID NOT MAKE THE  
7 CLAIM IN GOOD FAITH, HE OR SHE MAY DECIDE THAT YOU MUST PAY THE  
8 PLAINTIFF'S ATTORNEY FEES.

--- END ---