
HOUSE BILL 1224

State of Washington

55th Legislature

1997 Regular Session

By Representatives Carrell, Boldt, Smith, Sherstad, Radcliff,
Zellinsky, Thompson and Skinner

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1 AN ACT Relating to reimbursement of public entities for payments
2 made because of criminal acts of officers, employees, or contractors;
3 amending RCW 4.92.070, 6.15.020, 41.28.200, and 43.43.310; reenacting
4 and amending RCW 41.26.053, 41.32.052, and 41.40.052; adding new
5 sections to chapter 43.10 RCW; and creating a new section.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that citizens, through
8 their government, are frequently unable to collect reimbursement from
9 employees, officers, and contractors whose criminal conduct results in
10 payment of public money to injured parties. The legislature further
11 finds that this inability is a drain on public resources and
12 facilitates the avoidance or responsibility by those who engage in
13 criminal conduct. The purpose of this act is to enable public entities
14 on behalf of the citizens to obtain reimbursement from such employees,
15 officers, and contractors.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.10 RCW
17 to read as follows:

1 (1) The attorney general shall provide the state auditor with a
2 written report summarizing each legal case, or settlement of a case,
3 that requires a public entity to make any payment as a result of
4 criminal conduct by an officer or employee of the entity or by a
5 contractor with the entity. The auditor shall conduct an investigation
6 of the facts of the case. If the auditor finds that all or a
7 significant portion of the payment made by the public entity is
8 attributable to the criminal conduct of an officer, employee, or
9 contractor, then the auditor may retain an attorney to sue the officer
10 or former officer, employee or former employee, or contractor or former
11 contractor on behalf of the entity in order to collect the amount so
12 attributable. The auditor shall select an attorney not on the staff of
13 the attorney general. This section does not apply to recovery of any
14 such an amount if the attorney general, in the report to the auditor,
15 states that the attorney general is not barred from bringing the legal
16 action on behalf of the public entity.

17 (2) For purposes of this section:

18 (a) "Contractor" includes any person who contracts with a public
19 entity for the purpose of providing goods or services to a public
20 entity; and

21 (b) "Public entity" includes the state, its political subdivisions,
22 municipal corporations, quasi-municipal corporations, and special
23 districts.

24 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.10 RCW
25 to read as follows:

26 This chapter does not apply to the retention of an attorney by the
27 state auditor, under section 2 of this act, to collect amounts from
28 current or former officers, employees, or contractors of a public
29 entity. This chapter also does not apply to any legal action or
30 settlement in which such an attorney represents a public entity under
31 section 2 of this act.

32 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.10 RCW
33 to read as follows:

34 (1) If, as a result of criminal conduct by a person who is a member
35 of a retirement system or plan, the attorney general, or the state
36 auditor through an attorney retained under section 2 of this act,
37 brings legal action against the person to obtain reimbursement of

1 amounts paid by a public entity to an injured party, the attorney
2 general or state auditor may in the action request the court to order
3 payment to the public entity of the retirement or plan benefits, or
4 other amounts, that would otherwise be paid to the person under the
5 retirement system or plan. If the court finds that reimbursement is
6 due to the public entity, the court shall enter an order granting the
7 request. The order shall not conflict with the community property
8 interests of a spouse.

9 (2) The administrator of any public retirement system shall adopt
10 rules providing for the assignment of benefits, or other amounts, to a
11 public entity as may be required by a court order under this section.

12 (3) This section applies to the following persons and retirement
13 systems:

14 (a) With respect to a public retirement system, a person who, after
15 the effective date of this act, becomes a member of a public retirement
16 system, including but not limited to a retirement system under chapter
17 2.14, 28A.400, 28B.10, 41.26, 41.28, 41.32, 41.40, or 43.43 RCW; and

18 (b) To the extent not prohibited by federal law, a person
19 participating in an employee benefit plan identified in RCW
20 6.15.020(4).

21 **Sec. 5.** RCW 4.92.070 and 1989 c 403 s 3 are each amended to read
22 as follows:

23 If the attorney general (~~((shall find))~~) finds that (~~((said))~~) the
24 officer, employee, or volunteer's acts or omissions were, or were
25 purported to be in good faith, within the scope of that person's
26 official duties, or, in the case of a foster parent, that the
27 occurrence arose from the good faith provision of foster care services,
28 ((said)) the request shall be granted(~~(, in which event))~~). The
29 attorney general may also grant a request to represent the officer,
30 employee, or volunteer if the attorney general believes that there is
31 a reasonable doubt whether the acts or omissions were performed in good
32 faith and within the scope of official duties and that it is therefore
33 in the state's interest to grant the request. If a request is granted,
34 the necessary expenses of the defense of ((said)) the action or
35 proceeding shall be paid from the appropriations made for the support
36 of the department to which such officer, employee, volunteer, or foster
37 parent is attached. In such cases the attorney general shall appear
38 and defend such officer, employee, volunteer, or foster parent, who

1 shall assist and cooperate in the defense of such suit. However, the
2 attorney general may not represent or provide private representation
3 for a foster parent in an action or proceeding brought by the
4 department of social and health services against that foster parent.

5 **Sec. 6.** RCW 6.15.020 and 1990 c 237 s 1 are each amended to read
6 as follows:

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

13 (2) Unless otherwise provided by federal law, any money received by
14 any citizen of the state of Washington as a pension from the government
15 of the United States, whether the same be in the actual possession of
16 such person or be deposited or loaned, shall be exempt from execution,
17 attachment, garnishment, or seizure by or under any legal process
18 whatever, and when a debtor dies, or absconds, and leaves his or her
19 family any money exempted by this subsection, the same shall be exempt
20 to the family as provided in this subsection. This subsection shall
21 not apply to child support collection actions issued under chapter
22 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law.

23 (3) The right of a person to a pension, annuity, or retirement
24 allowance or disability allowance, or death benefits, or any optional
25 benefit, or any other right accrued or accruing to any citizen of the
26 state of Washington under any employee benefit plan, and any fund
27 created by such a plan or arrangement, shall be exempt from execution,
28 attachment, garnishment, or seizure by or under any legal process
29 whatever. This subsection shall not apply to child support collection
30 actions issued under chapter 26.18, 26.23, or 74.20A RCW if otherwise
31 permitted by federal law. This subsection shall permit benefits under
32 any such plan or arrangement to be payable to a spouse, former spouse,
33 child, or other dependent of a participant in such plan to the extent
34 expressly provided for in a qualified domestic relations order that
35 meets the requirements for such orders under the plan, or, in the case
36 of benefits payable under a plan described in sections 403(b) or 408 of
37 the internal revenue code of 1986, as amended, or section 409 of such
38 code as in effect before January 1, 1984, to the extent provided in any

1 order issued by a court of competent jurisdiction that provides for
2 maintenance or support. This subsection shall not prohibit actions
3 against an employee benefit plan, or fund for valid obligations
4 incurred by the plan or fund for the benefit of the plan or fund. This
5 subsection does not apply to section 4 of this act.

6 (4) For the purposes of this section, the term "employee benefit
7 plan" means any plan or arrangement that is described in RCW 49.64.020,
8 including any Keogh plan, whether funded by a trust or by an annuity
9 contract, and in sections 401(a) or 403(a) of the internal revenue code
10 of 1986, as amended; or that is described in sections 403(b) or 408 of
11 the internal revenue code of 1986, as amended, or section 409 of such
12 code as in effect before January 1, 1984. The term "employee benefit
13 plan" shall not include any employee benefit plan that is established
14 or maintained for its employees by the government of the United States,
15 by the state of Washington or any political subdivision thereof, or by
16 any agency or instrumentality of any of the foregoing.

17 (5) An employee benefit plan shall be deemed to be a spendthrift
18 trust, regardless of the source of funds, the relationship between the
19 trustee or custodian of the plan and the beneficiary, or the ability of
20 the debtor to withdraw or borrow or otherwise become entitled to
21 benefits from the plan before retirement. This subsection shall not
22 apply to child support collection actions issued under chapter 26.18,
23 26.23, or 74.20A RCW, if otherwise permitted by federal law. This
24 subsection shall permit benefits under any such plan or arrangement to
25 be payable to a spouse, former spouse, child, or other dependent of a
26 participant in such plan to the extent expressly provided for in a
27 qualified domestic relations order that meets the requirements for such
28 orders under the plan, or, in the case of benefits payable under a plan
29 described in sections 403(b) or 408 of the internal revenue code of
30 1986, as amended, or section 409 of such code as in effect before
31 January 1, 1984, to the extent provided in any order issued by a court
32 of competent jurisdiction that provides for maintenance or support.
33 This subsection does not apply to section 4 of this act.

34 **Sec. 7.** RCW 41.26.053 and 1991 c 365 s 20 and 1991 c 35 s 25 are
35 each reenacted and amended to read as follows:

36 (1) Subject to subsections (2), (3), and ~~((+3))~~ (4) of this
37 section, the right of a person to a retirement allowance, disability
38 allowance, or death benefit, to the return of accumulated

1 contributions, the retirement, disability or death allowance itself,
2 any optional benefit, any other right accrued or accruing to any person
3 under the provisions of this chapter, and the moneys in the fund
4 created under this chapter, are hereby exempt from any state, county,
5 municipal, or other local tax and shall not be subject to execution,
6 garnishment, attachment, the operation of bankruptcy or insolvency
7 laws, or any other process of law whatsoever, and shall be
8 unassignable.

9 (2) On the written request of any person eligible to receive
10 benefits under this section, the department may deduct from such
11 payments the premiums for life, health, or other insurance. The
12 request on behalf of any child or children shall be made by the legal
13 guardian of such child or children. The department may provide for
14 such persons one or more plans of group insurance, through contracts
15 with regularly constituted insurance carriers or health care service
16 contractors.

17 (3) Subsection (1) of this section shall not prohibit the
18 department from complying with (a) a wage assignment order for child
19 support issued pursuant to chapter 26.18 RCW, (b) an order to withhold
20 and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of
21 payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory
22 benefits assignment order issued by the department, (e) a court order
23 directing the department of retirement systems to pay benefits directly
24 to an obligee under a dissolution order as defined in RCW 41.50.500(3)
25 which fully complies with RCW 41.50.670 and 41.50.700, or (f) any
26 administrative or court order expressly authorized by federal law.

27 (4) Subsection (1) of this section does not apply to section 4 of
28 this act.

29 **Sec. 8.** RCW 41.28.200 and 1939 c 207 s 21 are each amended to read
30 as follows:

31 The right of a person to a pension, an annuity or a retirement
32 allowance, to the return of contributions, the pension, annuity or
33 retirement allowance itself, any optional benefit, any other right
34 accrued or accruing to any person under the provisions of this chapter,
35 and the moneys in the fund created under this chapter shall not be
36 subject to execution, garnishment, attachment, or any other process
37 whatsoever and shall be unassignable except as in this chapter

1 specifically provided. This section does not apply to section 4 of
2 this act.

3 **Sec. 9.** RCW 41.32.052 and 1991 c 365 s 21 and 1991 c 35 s 63 are
4 each reenacted and amended to read as follows:

5 (1) Subject to subsections (2), (3), and (~~(+3+)~~) (4) of this
6 section, the right of a person to a pension, an annuity, a retirement
7 allowance, or disability allowance, to the return of contributions, any
8 optional benefit or death benefit, any other right accrued or accruing
9 to any person under the provisions of this chapter and the moneys in
10 the various funds created by this chapter shall be unassignable, and
11 are hereby exempt from any state, county, municipal or other local tax,
12 and shall not be subject to execution, garnishment, attachment, the
13 operation of bankruptcy or insolvency laws, or other process of law
14 whatsoever.

15 (2) This section shall not be deemed to prohibit a beneficiary of
16 a retirement allowance who is eligible:

17 (a) Under RCW 41.05.080 from authorizing monthly deductions
18 therefrom for payment of premiums due on any group insurance policy or
19 plan issued for the benefit of a group comprised of public employees of
20 the state of Washington or its political subdivisions;

21 (b) Under a group health care benefit plan approved pursuant to RCW
22 28A.400.350 or 41.05.065 from authorizing monthly deductions therefrom,
23 of the amount or amounts of subscription payments, premiums, or
24 contributions to any person, firm, or corporation furnishing or
25 providing medical, surgical, and hospital care or other health care
26 insurance; or

27 (c) Under this system from authorizing monthly deductions therefrom
28 for payment of dues and other membership fees to any retirement
29 association composed of retired teachers and/or public employees
30 pursuant to a written agreement between the director and the retirement
31 association.

32 Deductions under (a) and (b) of this subsection shall be made in
33 accordance with rules that may be adopted by the director.

34 (3) Subsection (1) of this section shall not prohibit the
35 department from complying with (a) a wage assignment order for child
36 support issued pursuant to chapter 26.18 RCW, (b) an order to withhold
37 and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of
38 payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory

1 benefits assignment order issued by the department, (e) a court order
2 directing the department of retirement systems to pay benefits directly
3 to an obligee under a dissolution order as defined in RCW 41.50.500(3)
4 which fully complies with RCW 41.50.670 and 41.50.700, or (f) any
5 administrative or court order expressly authorized by federal law.

6 (4) Subsection (1) of this section does not apply to section 4 of
7 this act.

8 **Sec. 10.** RCW 41.40.052 and 1991 c 365 s 22 and 1991 c 35 s 92 are
9 each reenacted and amended to read as follows:

10 (1) Subject to subsections (2), (3), and ~~((+3))~~ (4) of this
11 section, the right of a person to a pension, an annuity, or retirement
12 allowance, any optional benefit, any other right accrued or accruing to
13 any person under the provisions of this chapter, the various funds
14 created by this chapter, and all moneys and investments and income
15 thereof, are hereby exempt from any state, county, municipal, or other
16 local tax, and shall not be subject to execution, garnishment,
17 attachment, the operation of bankruptcy or insolvency laws, or other
18 process of law whatsoever, and shall be unassignable.

19 (2) This section shall not be deemed to prohibit a beneficiary of
20 a retirement allowance from authorizing deductions therefrom for
21 payment of premiums due on any group insurance policy or plan issued
22 for the benefit of a group comprised of public employees of the state
23 of Washington or its political subdivisions and which has been approved
24 for deduction in accordance with rules that may be adopted by the state
25 health care authority and/or the department, and this section shall not
26 be deemed to prohibit a beneficiary of a retirement allowance from
27 authorizing deductions therefrom for payment of dues and other
28 membership fees to any retirement association or organization the
29 membership of which is composed of retired public employees, if a total
30 of three hundred or more of such retired employees have authorized such
31 deduction for payment to the same retirement association or
32 organization.

33 (3) Subsection (1) of this section shall not prohibit the
34 department from complying with (a) a wage assignment order for child
35 support issued pursuant to chapter 26.18 RCW, (b) an order to withhold
36 and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of
37 payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory
38 benefits assignment order issued by the department, (e) a court order

1 directing the department of retirement systems to pay benefits directly
2 to an obligee under a dissolution order as defined in RCW 41.50.500(3)
3 which fully complies with RCW 41.50.670 and 41.50.700, or (f) any
4 administrative or court order expressly authorized by federal law.

5 (4) Subsection (1) of this section does not apply to section 4 of
6 this act.

7 **Sec. 11.** RCW 43.43.310 and 1991 c 365 s 23 are each amended to
8 read as follows:

9 (1) Except as provided in subsections (2), (3), and ~~((+3+))~~ (4) of
10 this section, the right of any person to a retirement allowance or
11 optional retirement allowance under the provisions hereof and all
12 moneys and investments and income thereof are exempt from any state,
13 county, municipal, or other local tax and shall not be subject to
14 execution, garnishment, attachment, the operation of bankruptcy or the
15 insolvency laws, or other processes of law whatsoever and shall be
16 unassignable except as herein specifically provided.

17 (2) Subsection (1) of this section shall not prohibit the
18 department of retirement systems from complying with (a) a wage
19 assignment order for child support issued pursuant to chapter 26.18
20 RCW, (b) an order to withhold and deliver issued pursuant to chapter
21 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW
22 26.23.060, (d) a mandatory benefits assignment order issued pursuant to
23 chapter 41.50 RCW, (e) a court order directing the department of
24 retirement systems to pay benefits directly to an obligee under a
25 dissolution order as defined in RCW 41.50.500(3) which fully complies
26 with RCW 41.50.670 and 41.50.700, or (f) any administrative or court
27 order expressly authorized by federal law.

28 (3) Subsection (1) of this section shall not be deemed to prohibit
29 a beneficiary of a retirement allowance from authorizing deductions
30 therefrom for payment of premiums due on any group insurance policy or
31 plan issued for the benefit of a group comprised of members of the
32 Washington state patrol or other public employees of the state of
33 Washington, or for contributions to the Washington state patrol
34 memorial foundation.

35 (4) Subsection (1) of this section does not apply to section 4 of
36 this act.

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