
SENATE BILL 5108

State of Washington

55th Legislature

1997 Regular Session

By Senators Roach and Johnson

Read first time 01/15/97. Referred to Committee on Law & Justice.

1 AN ACT Relating to the transfer of a community property interest in
2 an individual retirement account at death; and amending RCW 6.15.020.

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

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

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

12 (2) Unless otherwise provided by federal law, any money received by
13 any citizen of the state of Washington as a pension from the government
14 of the United States, whether the same be in the actual possession of
15 such person or be deposited or loaned, shall be exempt from execution,
16 attachment, garnishment, or seizure by or under any legal process
17 whatever, and when a debtor dies, or absconds, and leaves his or her
18 family any money exempted by this subsection, the same shall be exempt
19 to the family as provided in this subsection. This subsection shall

1 not apply to child support collection actions issued under chapter
2 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law.

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

23 (4) For the purposes of this section, the term "employee benefit
24 plan" means any plan or arrangement that is described in RCW 49.64.020,
25 including any Keogh plan, whether funded by a trust or by an annuity
26 contract, and in sections 401(a) or 403(a) of the internal revenue code
27 of 1986, as amended; or that is described in sections 403(b) or 408 of
28 the internal revenue code of 1986, as amended, or section 409 of such
29 code as in effect before January 1, 1984. The term "employee benefit
30 plan" shall not include any employee benefit plan that is established
31 or maintained for its employees by the government of the United States,
32 by the state of Washington or any political subdivision thereof, or by
33 any agency or instrumentality of any of the foregoing.

34 (5) An employee benefit plan shall be deemed to be a spendthrift
35 trust, regardless of the source of funds, the relationship between the
36 trustee or custodian of the plan and the beneficiary, or the ability of
37 the debtor to withdraw or borrow or otherwise become entitled to
38 benefits from the plan before retirement. This subsection shall not
39 apply to child support collection actions issued under chapter 26.18,

1 26.23, or 74.20A RCW, if otherwise permitted by federal law. This
2 subsection shall permit benefits under any such plan or arrangement to
3 be payable to a spouse, former spouse, child, or other dependent of a
4 participant in such plan to the extent expressly provided for in a
5 qualified domestic relations order that meets the requirements for such
6 orders under the plan, or, in the case of benefits payable under a plan
7 described in sections 403(b) or 408 of the internal revenue code of
8 1986, as amended, or section 409 of such code as in effect before
9 January 1, 1984, to the extent provided in any order issued by a court
10 of competent jurisdiction that provides for maintenance or support.

11 (6) Unless contrary to applicable federal law, nothing contained in
12 subsection (3), (4), or (5) of this section shall be construed as a
13 termination or limitation of a spouse's community property interest in
14 an individual retirement account held in the name of or on account of
15 the other spouse, the account holder spouse. At the death of the
16 nonaccount holder spouse, the nonaccount holder spouse may transfer or
17 distribute the community property interest of the nonaccount holder
18 spouse in the account holder spouse's individual retirement account to
19 the nonaccount holder spouse's estate, testamentary trust, inter vivos
20 trust, or other successor or successors pursuant to the last will of
21 the nonaccount holder spouse or the law of intestate succession, and
22 that distributee may, but shall not be required to, obtain an order of
23 a court of competent jurisdiction, including any order entered under
24 chapter 11.96 RCW, to confirm the distribution. For purposes of
25 subsection (3) of this section, the distributee of the nonaccount
26 holder spouse's community property interest in an individual retirement
27 account shall be considered a person entitled to the full protection of
28 subsection (3) of this section. The nonaccount holder spouse's consent
29 to a beneficiary designation by the account holder spouse with respect
30 to an individual retirement account shall not, absent clear and
31 convincing evidence to the contrary, be deemed a release, gift,
32 relinquishment, termination, limitation, or transfer of the nonaccount
33 holder spouse's community property interest in an individual retirement
34 account. For purposes of this subsection, the term "nonaccount holder
35 spouse" means the spouse of the person in whose name the individual
36 retirement account is maintained. The term "individual retirement
37 account" includes an individual retirement account and an individual
38 retirement annuity both as described in section 408 of the internal
39 revenue code of 1986, as amended, and an individual retirement bond as

1 described in section 409 of the internal revenue code as in effect
2 before January 1, 1984. As used in this subsection, an order of a
3 court of competent jurisdiction includes an agreement, as that term is
4 used under RCW 11.96.170.

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