
ENGROSSED SUBSTITUTE SENATE BILL 5195

State of Washington

56th Legislature

1999 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Heavey, Johnson, Kline and Winsley)

Read first time 02/04/1999.

1 AN ACT Relating to protecting employee benefits; and amending RCW
2 6.15.020.

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

4 **Sec. 1.** RCW 6.15.020 and 1997 c 20 s 1 are each amended to read as
5 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 a tax-sheltered annuity described in
28 section((s)) 403(b) ((or 408)) of ((the internal revenue)) such code
29 ((of 1986, as amended,)) or an individual retirement account described
30 in section 408 of such code; or a Roth individual retirement account
31 described in section 408A of such code; or a medical savings account
32 described in section 220 of such code; or an education individual
33 retirement account described in section 530 of such code; or a
34 retirement bond described in section 409 of such code as in effect
35 before January 1, 1984. The term "employee benefit plan" also means
36 any rights accruing on account of money paid currently or in advance
37 for purchase of tuition units under the advanced college tuition
38 payment program in chapter 28B.95 RCW. The term "employee benefit
39 plan" shall not include any employee benefit plan that is established

1 or maintained for its employees by the government of the United States,
2 by the state of Washington (~~(or any political subdivision thereof)~~)
3 under chapter 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.40 or 43.43
4 RCW or RCW 41.50.770, or by any agency or instrumentality (~~(of any)~~) of
5 the (~~(foregoing)~~) government of the United States.

6 (5) An employee benefit plan shall be deemed to be a spendthrift
7 trust, regardless of the source of funds, the relationship between the
8 trustee or custodian of the plan and the beneficiary, or the ability of
9 the debtor to withdraw or borrow or otherwise become entitled to
10 benefits from the plan before retirement. This subsection shall not
11 apply to child support collection actions issued under chapter 26.18,
12 26.23, or 74.20A RCW, if otherwise permitted by federal law. This
13 subsection shall permit benefits under any such plan or arrangement to
14 be payable to a spouse, former spouse, child, or other dependent of a
15 participant in such plan to the extent expressly provided for in a
16 qualified domestic relations order that meets the requirements for such
17 orders under the plan, or, in the case of benefits payable under a plan
18 described in sections 403(b) or 408 of the internal revenue code of
19 1986, as amended, or section 409 of such code as in effect before
20 January 1, 1984, to the extent provided in any order issued by a court
21 of competent jurisdiction that provides for maintenance or support.

22 (6) Unless contrary to applicable federal law, nothing contained in
23 subsection (3), (4), or (5) of this section shall be construed as a
24 termination or limitation of a spouse's community property interest in
25 an individual retirement account held in the name of or on account of
26 the other spouse, the account holder spouse. At the death of the
27 nonaccount holder spouse, the nonaccount holder spouse may transfer or
28 distribute the community property interest of the nonaccount holder
29 spouse in the account holder spouse's individual retirement account to
30 the nonaccount holder spouse's estate, testamentary trust, inter vivos
31 trust, or other successor or successors pursuant to the last will of
32 the nonaccount holder spouse or the law of intestate succession, and
33 that distributee may, but shall not be required to, obtain an order of
34 a court of competent jurisdiction, including (~~(any)~~) a nonjudicial
35 dispute resolution agreement entered into pursuant to RCW 11.96.170 or
36 other order entered under chapter 11.96 RCW, to confirm the
37 distribution. For purposes of subsection (3) of this section, the
38 distributee of the nonaccount holder spouse's community property
39 interest in an individual retirement account shall be considered a

1 person entitled to the full protection of subsection (3) of this
2 section. The nonaccount holder spouse's consent to a beneficiary
3 designation by the account holder spouse with respect to an individual
4 retirement account shall not, absent clear and convincing evidence to
5 the contrary, be deemed a release, gift, relinquishment, termination,
6 limitation, or transfer of the nonaccount holder spouse's community
7 property interest in an individual retirement account. For purposes of
8 this subsection, the term "nonaccount holder spouse" means the spouse
9 of the person in whose name the individual retirement account is
10 maintained. The term "individual retirement account" includes an
11 individual retirement account and an individual retirement annuity both
12 as described in section 408 of the internal revenue code of 1986, as
13 amended, a Roth individual retirement account as described in section
14 408A of the internal revenue code of 1986, as amended, and an
15 individual retirement bond as described in section 409 of the internal
16 revenue code as in effect before January 1, 1984. As used in this
17 subsection, an order of a court of competent jurisdiction includes an
18 agreement, as that term is used under RCW 11.96.170.

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