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SENATE BILL 5195

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State of Washington                      56th Legislature                      1999 Regular Session

By Senators Heavey, Johnson, Kline and Winsley

Read first time 01/15/1999. Referred to Committee on Judiciary.

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,~~) or  
3 by any agency or instrumentality (~~(of any)~~) of the (~~(foregoing)~~)  
4 government of the United States.

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

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

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

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