
Judiciary Committee

HB 1131

Title: An act relating to reimbursement of public entities for payments made because of criminal acts of officers, employees, or contractors.

Brief Description: Providing for reimbursement of public entities for payments made because of criminal acts of officers, employees, or contractors.

Sponsors: Representatives Carrell, Roach and Talcott.

Brief Summary of Bill

- Makes the pension of a public employee or contractor available to a government entity for recovery of damages in a contribution action when the employee or contractor has been convicted of a felony which was the cause of the government's liability in a tort action.

Hearing Date: 1/31/03

Staff: Bill Perry (786-7123).

Background:

Sovereign Immunity. The state has generally waived sovereign immunity for itself and for all levels of government in the state. That is, generally, the state has allowed government to be sued in the same way that private entities may be sued for tortious conduct. This means, again generally, that government may be liable for damages caused by its negligent, reckless or intentional acts or omissions.

Right of Contribution. In a tort action in which the injured plaintiff was not at fault, multiple defendants may be jointly and severally liable for the plaintiff's damages. That is, even though each of the defendants will be assigned a percentage of the total fault that caused the injury, any one of the defendants can be called upon individually to pay for all of the damages. However, if a defendant pays more than his or her proportionate share of the damages, he or she has a "right of contribution" against the other defendants. In a contribution action, a defendant who has paid all of the damages, for example, can recover from each of the other defendants in an amount equal to that defendant's proportionate share of the fault. As a practical matter, however, it is sometimes impossible for a defendant to

get contribution from other defendants who may be insolvent, or otherwise judgment proof. Government entities may be the "deep pocket" defendant in cases of multiple defendants, and therefore the defendant against whom an injured plaintiff may seek all of his or her recovery.

Suits against Government Employees. A person injured by the action or inaction of government may sue to recover damages. The suit may be filed against both the government itself and the individual employee who was responsible for the action or inaction. A government employee who is named in such a lawsuit may be eligible for legal defense at government expense and, if found liable, eligible for government payment of any judgment.

A state employee named in a suit may, but need not, request that the attorney general defend him or her against the suit. The employee is entitled to attorney general representation if he or she was "performing, or in good faith purporting to perform, official duties." If the attorney general finds that the employee was acting within the scope of employment, or in good faith thought he or she was so acting, then the employee will be represented. If the attorney general has agreed to represent the employee, and if the court subsequently finds that the employee was acting within the scope of his or her duties, then the state will pay any damage award entered against the employee.

A state employee who has not been represented by the attorney general and who has been found liable for damages is responsible for paying those damages.

Pensions. When a judgment has been entered against a person, various procedures control the enforcement of that judgment. Statutes provide various methods that a judgment creditor may use to collect money from a judgment debtor. Statutes also specifically restrict some of these collection methods with respect to some kinds of property of the judgment debtor. Pensions, in particular, are generally protected. One of the statutes controlling enforcement of judgments declares that it is the policy of the state to "ensure the well-being of its citizens by protecting retirement income." This statute protects pensions, annuities, retirement or disability allowances, and death benefits from "execution, attachment, garnishment, or seizure by or under any legal process whatever." In addition, statutes covering some of the state's employee retirement systems contain individual prohibitions against use of these enforcement measures on pensions. Exceptions to these prohibitions are made for collection of child support obligations.

Summary of Bill:

An additional exception is provided to the general rule that pensions are not subject to execution, attachment, garnishment or seizure. The pension of an officer or employee of a public entity or a person who contracts with a public entity is made available to the public entity in an action for contribution under the following circumstances:

- The officer, employee or contractor has been convicted of a felony; and
- The felony was a proximate cause of an injury or death for which the officer, employee or contractor and the public entity have been found to be jointly and severally liable.

With respect to public pension systems, this new provision applies only to employees hired after the effective date of this act. A new employee must sign an acknowledgment that his or

her pension benefits are subject to this act.

Any order directing payments to a public entity from a pension must protect the community property interests of a spouse.

An additional ground is created for the attorney general to agree to represent a state employee who is being sued for tortious conduct. Even if the attorney general believes there is reasonable doubt whether the acts or omissions of the state employee were performed in good faith and within the scope of duties, the attorney general may nonetheless agree to represent the employee if it would be in the best interest of the state.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect ninety days after adjournment of session in which bill is passed.