
HOUSE BILL 2409

State of Washington 58th Legislature 2004 Regular Session

By Representatives Bush, Mielke, McDonald, Carrell, Talcott, McMahan, Boldt, Sump, Campbell, Roach, Anderson, Schindler and Shabro

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1 AN ACT Relating to reimbursement of public entities for
2 compensation paid to officers and employees; amending RCW 4.92.070,
3 41.28.200, 41.40.052, and 43.43.310; reenacting and amending RCW
4 6.15.020, 41.26.053, and 41.32.052; adding a new section to chapter
5 4.22 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 officers and employees who receive compensation while on paid leave
10 while being investigated for and ultimately convicted of criminal
11 conduct. The legislature further finds that this inability is an
12 unjust drain on public resources and facilitates the avoidance of
13 responsibility by those who engage in criminal conduct. The purpose of
14 this act is to enable public entities on behalf of the citizens to
15 obtain reimbursement from those officers and employees.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 4.22 RCW
17 to read as follows:

18 (1) An officer or employee of a public entity shall be liable to

1 provide reimbursement to the public entity for compensation received
2 while the officer or employee was on paid leave pending or during an
3 inquiry or investigation regarding potential criminal conduct of the
4 officer or employee and the officer or employee is ultimately convicted
5 of a crime.

6 (2) When a public entity enforces a right of contribution against
7 an officer or employee, the court may order that the contribution be
8 paid from the benefits of a retirement system or plan that would
9 otherwise be paid to the officer or employee, if the officer or
10 employee has received compensation while on paid leave pending or
11 during an inquiry or investigation regarding potential criminal conduct
12 of the officer or employee and the officer or employee is ultimately
13 convicted of a crime. This source of contribution is in addition to
14 any other source that may be available.

15 (3) An order under subsection (1) of this section shall protect the
16 community property interests of a spouse in the benefits of the
17 retirement system or plan.

18 (4) The administrator of any public retirement system shall adopt
19 rules providing for the assignment of benefits to a public entity under
20 subsection (1) of this section. The administrator shall also provide
21 a form to be signed by each officer or employee at the time he or she
22 first becomes a member of a public retirement system. The form shall
23 indicate that the officer or employee acknowledges that his or her
24 benefits are subject to this section.

25 (5) This section applies to the following officers and employees:

26 (a) With respect to a public retirement system, an officer or
27 employee who, after the effective date of this act, becomes a member of
28 a public retirement system, including but not limited to a retirement
29 system under chapter 2.14, 28A.400, 28B.10, 41.26, 41.28, 41.32, 41.40,
30 or 43.43 RCW; and

31 (b) To the extent not prohibited by federal law, a person
32 participating in an employee benefit plan identified in RCW
33 6.15.020(4).

34 (6) For purposes of this section, "public entity" includes the
35 state, its political subdivisions, municipal corporations, quasi-
36 municipal corporations, and special districts.

1 **Sec. 3.** RCW 4.92.070 and 1999 c 163 s 5 are each amended to read
2 as follows:

3 If the attorney general (~~shall~~) finds that (~~said~~) the officer,
4 employee, or volunteer's acts or omissions were, or were purported to
5 be in good faith, within the scope of that person's official duties,
6 or, in the case of a foster parent, that the occurrence arose from the
7 good faith provision of foster care services, (~~said~~) the request
8 shall be granted(~~, in which event~~). The attorney general may also
9 grant a request to represent the officer, employee, or volunteer if the
10 attorney general believes that there is a reasonable doubt whether the
11 acts or omissions were performed in good faith and within the scope of
12 official duties and that it is therefore in the state's interest to
13 grant the request. If a request is granted, the necessary expenses of
14 the defense of (~~said~~) the action or proceeding relating to a state
15 officer, employee, or volunteer shall be paid as provided in RCW
16 4.92.130. In the case of a foster parent, necessary expenses of the
17 defense shall be paid from the appropriations made for the support of
18 the department to which such foster parent is attached. In such cases
19 the attorney general shall appear and defend such officer, employee,
20 volunteer, or foster parent, who shall assist and cooperate in the
21 defense of such suit. However, the attorney general may not represent
22 or provide private representation for a foster parent in an action or
23 proceeding brought by the department of social and health services
24 against that foster parent.

25 **Sec. 4.** RCW 6.15.020 and 1999 c 81 s 1 and 1999 c 42 s 603 are
26 each reenacted and amended to read as follows:

27 (1) It is the policy of the state of Washington to ensure the well-
28 being of its citizens by protecting retirement income to which they are
29 or may become entitled. For that purpose generally and pursuant to the
30 authority granted to the state of Washington under 11 U.S.C. Sec.
31 522(b)(2), the exemptions in this section relating to retirement
32 benefits are provided.

33 (2) Unless otherwise provided by federal law, any money received by
34 any citizen of the state of Washington as a pension from the government
35 of the United States, whether the same be in the actual possession of
36 such person or be deposited or loaned, shall be exempt from execution,
37 attachment, garnishment, or seizure by or under any legal process

1 whatever, and when a debtor dies, or absconds, and leaves his or her
2 family any money exempted by this subsection, the same shall be exempt
3 to the family as provided in this subsection. This subsection shall
4 not apply to child support collection actions issued under chapter
5 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law.

6 (3) The right of a person to a pension, annuity, or retirement
7 allowance or disability allowance, or death benefits, or any optional
8 benefit, or any other right accrued or accruing to any citizen of the
9 state of Washington under any employee benefit plan, and any fund
10 created by such a plan or arrangement, shall be exempt from execution,
11 attachment, garnishment, or seizure by or under any legal process
12 whatever. This subsection shall not apply to child support collection
13 actions issued under chapter 26.18, 26.23, or 74.20A RCW if otherwise
14 permitted by federal law. This subsection shall permit benefits under
15 any such plan or arrangement to be payable to a spouse, former spouse,
16 child, or other dependent of a participant in such plan to the extent
17 expressly provided for in a qualified domestic relations order that
18 meets the requirements for such orders under the plan, or, in the case
19 of benefits payable under a plan described in sections 403(b) or 408 of
20 the internal revenue code of 1986, as amended, or section 409 of such
21 code as in effect before January 1, 1984, to the extent provided in any
22 order issued by a court of competent jurisdiction that provides for
23 maintenance or support. This subsection shall not prohibit actions
24 against an employee benefit plan, or fund for valid obligations
25 incurred by the plan or fund for the benefit of the plan or fund. This
26 subsection does not apply to an order entered under section 2 of this
27 act.

28 (4) For the purposes of this section, the term "employee benefit
29 plan" means any plan or arrangement that is described in RCW 49.64.020,
30 including any Keogh plan, whether funded by a trust or by an annuity
31 contract, and in sections 401(a) or 403(a) of the internal revenue code
32 of 1986, as amended; or that is a tax-sheltered annuity described in
33 section 403(b) of such code or an individual retirement account
34 described in section 408 of such code; or a Roth individual retirement
35 account described in section 408A of such code; or a medical savings
36 account described in section 220 of such code; or an education
37 individual retirement account described in section 530 of such code; or
38 a retirement bond described in section 409 of such code as in effect

1 before January 1, 1984. The term "employee benefit plan" also means
2 any rights accruing on account of money paid currently or in advance
3 for purchase of tuition units under the advanced college tuition
4 payment program in chapter 28B.95 RCW. The term "employee benefit
5 plan" shall not include any employee benefit plan that is established
6 or maintained for its employees by the government of the United States,
7 by the state of Washington under chapter 2.10, 2.12, 41.26, 41.32,
8 41.34, 41.35, 41.40 or 43.43 RCW or RCW 41.50.770, or by any agency or
9 instrumentality of the government of the United States.

10 (5) An employee benefit plan shall be deemed to be a spendthrift
11 trust, regardless of the source of funds, the relationship between the
12 trustee or custodian of the plan and the beneficiary, or the ability of
13 the debtor to withdraw or borrow or otherwise become entitled to
14 benefits from the plan before retirement. This subsection shall not
15 apply to child support collection actions issued under chapter 26.18,
16 26.23, or 74.20A RCW, if otherwise permitted by federal law. This
17 subsection shall permit benefits under any such plan or arrangement to
18 be payable to a spouse, former spouse, child, or other dependent of a
19 participant in such plan to the extent expressly provided for in a
20 qualified domestic relations order that meets the requirements for such
21 orders under the plan, or, in the case of benefits payable under a plan
22 described in sections 403(b) or 408 of the internal revenue code of
23 1986, as amended, or section 409 of such code as in effect before
24 January 1, 1984, to the extent provided in any order issued by a court
25 of competent jurisdiction that provides for maintenance or support.
26 This subsection does not apply to an order entered under section 2 of
27 this act.

28 (6) Unless contrary to applicable federal law, nothing contained in
29 subsection (3), (4), or (5) of this section shall be construed as a
30 termination or limitation of a spouse's community property interest in
31 an individual retirement account held in the name of or on account of
32 the other spouse, the account holder spouse. At the death of the
33 nonaccount holder spouse, the nonaccount holder spouse may transfer or
34 distribute the community property interest of the nonaccount holder
35 spouse in the account holder spouse's individual retirement account to
36 the nonaccount holder spouse's estate, testamentary trust, inter vivos
37 trust, or other successor or successors pursuant to the last will of
38 the nonaccount holder spouse or the law of intestate succession, and

1 that distributee may, but shall not be required to, obtain an order of
2 a court of competent jurisdiction, including a nonjudicial dispute
3 resolution agreement entered into pursuant to RCW 11.96.170 or other
4 order entered under chapter 11.96A RCW, to confirm the distribution.
5 For purposes of subsection (3) of this section, the distributee of the
6 nonaccount holder spouse's community property interest in an individual
7 retirement account shall be considered a person entitled to the full
8 protection of subsection (3) of this section. The nonaccount holder
9 spouse's consent to a beneficiary designation by the account holder
10 spouse with respect to an individual retirement account shall not,
11 absent clear and convincing evidence to the contrary, be deemed a
12 release, gift, relinquishment, termination, limitation, or transfer of
13 the nonaccount holder spouse's community property interest in an
14 individual retirement account. For purposes of this subsection, the
15 term "nonaccount holder spouse" means the spouse of the person in whose
16 name the individual retirement account is maintained. The term
17 "individual retirement account" includes an individual retirement
18 account and an individual retirement annuity both as described in
19 section 408 of the internal revenue code of 1986, as amended, a Roth
20 individual retirement account as described in section 408A of the
21 internal revenue code of 1986, as amended, and an individual retirement
22 bond as described in section 409 of the internal revenue code as in
23 effect before January 1, 1984. As used in this subsection, an order of
24 a court of competent jurisdiction includes an agreement, as that term
25 is used under RCW 11.96A.220.

26 **Sec. 5.** RCW 41.26.053 and 1991 c 365 s 20 and 1991 c 35 s 25 are
27 each reenacted and amended to read as follows:

28 (1) Subject to subsections (2) (~~and~~), (3), and (4) of this
29 section, the right of a person to a retirement allowance, disability
30 allowance, or death benefit, to the return of accumulated
31 contributions, the retirement, disability or death allowance itself,
32 any optional benefit, any other right accrued or accruing to any person
33 under the provisions of this chapter, and the moneys in the fund
34 created under this chapter, are hereby exempt from any state, county,
35 municipal, or other local tax and shall not be subject to execution,
36 garnishment, attachment, the operation of bankruptcy or insolvency

1 laws, or any other process of law whatsoever, and shall be
2 unassignable.

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

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

21 (4) Subsection (1) of this section does not apply to an order
22 entered under section 2 of this act.

23 **Sec. 6.** RCW 41.28.200 and 1939 c 207 s 21 are each amended to read
24 as follows:

25 The right of a person to a pension, an annuity or a retirement
26 allowance, to the return of contributions, the pension, annuity or
27 retirement allowance itself, any optional benefit, any other right
28 accrued or accruing to any person under the provisions of this chapter,
29 and the moneys in the fund created under this chapter shall not be
30 subject to execution, garnishment, attachment, or any other process
31 whatsoever and shall be unassignable except as in this chapter
32 specifically provided. This section does not apply to an order entered
33 under section 2 of this act.

34 **Sec. 7.** RCW 41.32.052 and 1991 c 365 s 21 and 1991 c 35 s 63 are
35 each reenacted and amended to read as follows:

36 (1) Subject to subsections (2) (~~and~~), (3), and (4) of this

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

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

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

16 (b) Under a group health care benefit plan approved pursuant to RCW
17 28A.400.350 or 41.05.065 from authorizing monthly deductions therefrom,
18 of the amount or amounts of subscription payments, premiums, or
19 contributions to any person, firm, or corporation furnishing or
20 providing medical, surgical, and hospital care or other health care
21 insurance; or

22 (c) Under this system from authorizing monthly deductions therefrom
23 for payment of dues and other membership fees to any retirement
24 association composed of retired teachers and/or public employees
25 pursuant to a written agreement between the director and the retirement
26 association.

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

29 (3) Subsection (1) of this section shall not prohibit the
30 department from complying with (a) a wage assignment order for child
31 support issued pursuant to chapter 26.18 RCW, (b) an order to withhold
32 and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of
33 payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory
34 benefits assignment order issued by the department, (e) a court order
35 directing the department of retirement systems to pay benefits directly
36 to an obligee under a dissolution order as defined in RCW 41.50.500(3)
37 which fully complies with RCW 41.50.670 and 41.50.700, or (f) any
38 administrative or court order expressly authorized by federal law.

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 an order
6 entered under section 2 of this act.

7 **Sec. 9.** RCW 43.43.310 and 1991 c 365 s 23 are each amended to read
8 as follows:

9 (1) Except as provided in subsections (2) (~~and~~), (3), and (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 an order

1 entered under section 2 of this act.

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