

SENATE BILL REPORT

SB 5085

As of January 14, 2011

Title: An act relating to modifying provisions on personal property exempt from execution, attachment, and garnishment.

Brief Description: Modifying provisions on personal property exempt from execution, attachment, and garnishment.

Sponsors: Senator Kline; by request of Washington State Bar Association.

Brief History:

Committee Activity: Judiciary: 1/11/11.

SENATE COMMITTEE ON JUDICIARY

Staff: Lidia Mori (786-7755)

Background: An individual's personal property can be taken to satisfy a debt by garnishment, attachment, or the execution of a judgment. Garnishment, attachment, and the execution of a judgment are legal judgments against a debtor, by a creditor, for a claim owed to him or her. However, not all of a person's property can be seized by utilization of these proceedings. A person is allowed to retain portions of their personal property up to certain amounts. These amounts are as follows:

- apparel, jewelry, furs, and personal ornaments up to \$1,000 for an individual;
- private libraries up to \$1,500;
- household goods, appliances, furniture, home and yard equipment not to exceed \$2,700 for an individual or \$5,400 for a community;
- other personal property up to \$2,000 of which not more than \$200 may consist of cash, money in bank accounts, savings and loan accounts, stocks, bonds, or other securities;
- a motor vehicle up to \$2,500 for an individual, or \$5,000 for two vehicles belonging to a community;
- personal injury claims up to \$16,150;
- farm equipment, including vehicles and tools, up to \$5,000;
- office equipment, supplies, furniture, and library of a professional person such as an attorney, clergyman, or surgeon not to exceed \$5,000;
- tools and instruments necessary to carry on a trade up to \$5000; and

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- tuition units in Washington's Guaranteed Education Tuition (GET) account purchased two years prior to the date of bankruptcy filing or court judgment.

The money contained in some employee benefit plans is also exempt from execution, attachment, or garnishment. A debtor is allowed to retain up to \$2,500 if in a fixed annuity.

Summary of Bill: The current personal property exemptions from legal process are modified as follows:

- apparel, jewelry, furs, and personal ornaments up to \$3,500 for an individual;
- private libraries up to \$3,500 – library is expanded to include electronic media;
- household goods, furniture, home and yard equipment up to \$6,500 for an individual or \$13,000 for a community;
- other personal property up to \$3,000 of which not more than \$1,000 may consist of cash, money in bank accounts, savings and loan accounts, stocks, bonds, or other securities;
- a motor vehicle up to \$4,000 for an individual, or \$8,000 for two vehicles belonging to a community;
- personal injury claims up to \$20,000;
- farm equipment, including vehicles and tools, up to \$10,000;
- office equipment, supplies, furniture, and library of a professional person such as an attorney, clergyman, or surgeon not to exceed \$10,000;
- tools and instruments necessary to carry on a trade up to \$10,000; and
- tuition unit exemption to Coverdell education savings accounts and all tuition savings accounts covered by Section 529 of the Internal Revenue Code (529 plan).

The definition of employee benefit plan is expanded to include custodial accounts, individual retirement annuities, or a health savings account. A debtor is allowed to retain up to \$3,000 of income received from a fixed annuity.

A notice must be mailed or served on an individual debtor informing him or her of their rights. The notice must include the personal property amounts a debtor is allowed to legally retain.

The Washington State Bar Association (WSBA) must review the monetary threshold amounts and make recommendations to the Legislature every five years concerning whether the amounts should be modified.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This is the bill that came out of this committee last year. There is a claim form in RCW 6.27.150 that needs to be changed and that should be added to this bill. If a debtor buys something a few months before going bankrupt using unsecured funds, the creditor has the option of suing in bankruptcy court for fraud. If the

person is a farmer, that person could keep the equipment up to \$10,000. If it's above that amount and not encumbered by a secured creditor, the trustee takes it and sells it.

The proposed amendments relate to the state's policy of ensuring the well-being of its citizens by protecting certain education and retirement savings plans from attachment and seizure through the legal process. The proposed amendments will expand statutory protection that's granted already to education savings plans to include federal 529 plans and Coverdell education plans. We would like to include the 529 plan and the Coverdell education plan under the same umbrella as the GET plan. The amendments also update the definition of employee benefit plan. It will expand the community property exception of RCW 6.15.020(6) to include employee benefit plans that are not governed by Employee Retirement Income Security Act (ERISA). This will mean our states parents and students will have the same protections and be subject to the same limitations for their education savings plans as they are under the GET plan. 403(b) retirement accounts will have the same flexibility for estate planning purposes as IRAs.

Persons Testifying: PRO: Bill Hames, WSBA Creditor Debtor Section; Claudia Gowan, WSBA Real Property, Probate, and Trust Section.