
SENATE BILL 5085

State of Washington 62nd Legislature 2011 Regular Session

By Senator Kline; by request of Washington State Bar Association

Read first time 01/13/11. Referred to Committee on Judiciary.

1 AN ACT Relating to modifying provisions on personal property exempt
2 from execution, attachment, and garnishment; amending RCW 6.15.010,
3 6.15.020, and 48.18.430; and adding a new section to chapter 2.48 RCW.

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

5 **Sec. 1.** RCW 6.15.010 and 2005 c 272 s 6 are each amended to read
6 as follows:

7 (1) Except as provided in RCW 6.15.050, the following personal
8 property ~~((shall be))~~ is exempt from execution, attachment, and
9 garnishment:

10 ~~((+1))~~ (a) All wearing apparel of every individual and family, but
11 not to exceed ~~((one))~~ three thousand five hundred dollars in value in
12 furs, jewelry, and personal ornaments for any individual.

13 ~~((+2))~~ (b) All private libraries including electronic media, which
14 includes audio-visual, entertainment, or reference media in digital or
15 analogue format, of every individual, but not to exceed ~~((fifteen~~
16 ~~hundred))~~ three thousand five hundred dollars in value, and all family
17 pictures and keepsakes.

18 ~~((+3))~~ (c) To each individual or, as to community property of

1 spouses maintaining a single household as against a creditor of the
2 community, to the community:

3 ~~((a))~~ (i) The individual's or community's household goods,
4 appliances, furniture, and home and yard equipment, not to exceed
5 ~~((two))~~ six thousand ~~((seven))~~ five hundred dollars in value for the
6 individual or ~~((five))~~ thirteen thousand ~~((four hundred))~~ dollars for
7 the community, no single item to exceed seven hundred fifty dollars,
8 said amount to include provisions and fuel for the comfortable
9 maintenance of the individual or community;

10 ~~((b))~~ (ii) Other personal property, except personal earnings as
11 provided under RCW 6.15.050(1), not to exceed ~~((two))~~ three thousand
12 dollars in value, of which not more than ~~((two hundred))~~ one thousand
13 dollars in value may consist of cash, and of which not more than ~~((two~~
14 ~~hundred))~~ one thousand dollars in value may consist of bank accounts,
15 savings and loan accounts, stocks, bonds, or other securities;

16 ~~((c))~~ (iii) For an individual, a motor vehicle used for personal
17 transportation, not to exceed ~~((two))~~ four thousand ~~((five hundred))~~
18 dollars or for a community two motor vehicles used for personal
19 transportation, not to exceed ~~((five))~~ eight thousand dollars in
20 aggregate value;

21 ~~((d))~~ (iv) Any past due, current, or future child support paid or
22 owed to the debtor, which can be traced;

23 ~~((e))~~ (v) All professionally prescribed health aids for the
24 debtor or a dependent of the debtor; and

25 ~~((f))~~ (vi) To any individual, the right to or proceeds of a
26 payment not to exceed ~~((sixteen))~~ twenty thousand ~~((one hundred fifty))~~
27 dollars on account of personal bodily injury, not including pain and
28 suffering or compensation for actual pecuniary loss, of the debtor or
29 an individual of whom the debtor is a dependent; or the right to or
30 proceeds of a payment in compensation of loss of future earnings of the
31 debtor or an individual of whom the debtor is or was a dependent, to
32 the extent reasonably necessary for the support of the debtor and any
33 dependent of the debtor. The exemption under this subsection
34 ~~((3)(f))~~ (1)(c)(vi) does not apply to the right of the state of
35 Washington, or any agent or assignee of the state, as a lienholder or
36 subrogee under RCW 43.20B.060.

37 ~~((4))~~ (d) To each qualified individual, one of the following
38 exemptions:

1 ~~((a))~~ (i) To a farmer, farm trucks, farm stock, farm tools, farm
2 equipment, supplies and seed, not to exceed ~~((five))~~ ten thousand
3 dollars in value;

4 ~~((b))~~ (ii) To a physician, surgeon, attorney, clergyman, or other
5 professional person, the individual's library, office furniture, office
6 equipment and supplies, not to exceed ~~((five))~~ ten thousand dollars in
7 value;

8 ~~((c))~~ (iii) To any other individual, the tools and instruments
9 and materials used to carry on his or her trade for the support of
10 himself or herself or family, not to exceed ~~((five))~~ ten thousand
11 dollars in value.

12 (e) Tuition units, under chapter 28B.95 RCW, purchased more than
13 two years prior to the date of a bankruptcy filing or court judgment,
14 and contributions to any other qualified tuition program under 26
15 U.S.C. Sec. 529 of the internal revenue code of 1986, as amended, and
16 to a Coverdell education savings account, also known as an education
17 individual retirement account, under 26 U.S.C. Sec. 530 of the internal
18 revenue code of 1986, as amended, contributed more than two years prior
19 to the date of a bankruptcy filing or court judgment.

20 (2) For purposes of this section, "value" means the reasonable
21 market value of the debtor's interest in an article or item at the time
22 it is selected for exemption, exclusive of all liens and encumbrances
23 thereon.

24 ~~((5) Tuition units, under chapter 28B.95 RCW, purchased more than~~
25 ~~two years prior to the date of a bankruptcy filing or court judgment.))~~

26 **Sec. 2.** RCW 6.15.020 and 2007 c 492 s 1 are each amended to read
27 as follows:

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

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

1 attachment, garnishment, or seizure by or under any legal process
2 whatever, and when a debtor dies, or absconds, and leaves his or her
3 family any money exempted by this subsection, the same shall be exempt
4 to the family as provided in this subsection. This subsection shall
5 not apply to child support collection actions issued under chapter
6 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law.

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

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 26 U.S.C. Sec((tions)). 401(a) or 403(a) of the
32 internal revenue code of 1986, as amended; or that is a tax-sheltered
33 annuity or a custodial account described in section 403(b) of such code
34 or an individual retirement account or an individual retirement annuity
35 described in section 408 of such code; or a Roth individual retirement
36 account described in section 408A of such code; or a medical savings
37 account or a health savings account described in sections 220 and 223,
38 respectively, of such code; (~~or an education individual retirement~~

1 ~~account described in section 530 of such code~~) or a retirement bond
2 described in section 409 of such code as in effect before January 1,
3 1984. (~~The term "employee benefit plan" also means any rights~~
4 ~~accruing on account of money paid currently or in advance for purchase~~
5 ~~of tuition units under the advanced college tuition payment program in~~
6 ~~chapter 28B.95 RCW.~~) The term "employee benefit plan" shall not
7 include any employee benefit plan that is established or maintained for
8 its employees by the government of the United States, by the state of
9 Washington under chapter 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.37,
10 41.40, or 43.43 RCW or RCW 41.50.770, or by any agency or
11 instrumentality of the government of the United States.

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

29 (6) Unless (~~contrary to applicable~~) prohibited by federal law,
30 nothing contained in subsection (3), (4), or (5) of this section shall
31 be construed as a termination or limitation of a spouse's community
32 property interest in an (~~individual retirement account~~) employee
33 benefit plan held in the name of or on account of the other spouse, who
34 is the participant or the account holder spouse. Unless prohibited by
35 applicable federal law, at the death of the nonparticipant, nonaccount
36 holder spouse, the nonparticipant, nonaccount holder spouse may
37 transfer or distribute the community property interest of the
38 nonparticipant, nonaccount holder spouse in the participant or account

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

34 **Sec. 3.** RCW 48.18.430 and 2005 c 223 s 10 are each amended to read
35 as follows:

36 (1) The benefits, rights, privileges, and options under any annuity
37 contract that are due the annuitant who paid the consideration for the

1 annuity contract are not subject to execution and the annuitant may not
2 be compelled to exercise those rights, powers, or options, and
3 creditors are not allowed to interfere with or terminate the contract,
4 except:

5 (a) As to amounts paid for or as premium on an annuity with intent
6 to defraud creditors, with interest thereon, and of which the creditor
7 has given the insurer written notice at its home office prior to making
8 the payments to the annuitant out of which the creditor seeks to
9 recover. The notice must specify the amount claimed or the facts that
10 will enable the insurer to determine the amount, and must set forth the
11 facts that will enable the insurer to determine the insurance or
12 annuity contract, the person insured or annuitant and the payments
13 sought to be avoided on the basis of fraud.

14 (b) The total exemption of benefits presently due and payable to an
15 annuitant periodically or at stated times under all annuity contracts
16 may not at any time exceed ((two)) three thousand ((five-hundred))
17 dollars per month for the length of time represented by the
18 installments, and a periodic payment in excess of ((two)) three
19 thousand ((five-hundred)) dollars per month is subject to garnishee
20 execution to the same extent as are wages and salaries.

21 (c) If the total benefits presently due and payable to an annuitant
22 under all annuity contracts at any time exceeds payment at the rate of
23 ((two)) three thousand ((five-hundred)) dollars per month, then the
24 court may order the annuitant to pay to a judgment creditor or apply on
25 the judgment, in installments, the portion of the excess benefits that
26 the court determines to be just and proper, after due regard for the
27 reasonable requirements of the judgment debtor and the judgment
28 debtor's dependent family, as well as any payments required to be made
29 by the annuitant to other creditors under prior court orders.

30 (2) The benefits, rights, privileges, or options accruing under an
31 annuity contract to a beneficiary or assignee are not transferable or
32 subject to commutation, and if the benefits are payable periodically or
33 at stated times, the same exemptions and exceptions contained in this
34 section for the annuitant apply to the beneficiary or assignee.

35 (3) An annuity contract within the meaning of this section is any
36 obligation to pay certain sums at stated times, during life or lives,
37 or for a specified term or terms, issued for a valuable consideration,
38 regardless of whether or not the sums are payable to one or more

1 persons, jointly or otherwise, but does not include payments under life
2 insurance contracts at stated times during life or lives, or for a
3 specified term or terms.

4 NEW SECTION. **Sec. 4.** A new section is added to chapter 2.48 RCW
5 to read as follows:

6 (1) The Washington state bar association must review the monetary
7 threshold amounts set forth in RCW 6.15.010 and 48.18.430 regarding
8 personal property and annuities exempt from execution, attachment, and
9 garnishment to determine whether such amounts should be modified. The
10 bar association shall include in its first report a review of
11 historical exemption amounts set by the legislature and conclusions as
12 to whether historical exemption amounts are an appropriate basis for
13 future modifications.

14 (2) The Washington state bar association must report to the
15 legislature with its recommendations by November 1, 2014, and every
16 five years thereafter.

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