

# HOUSE BILL REPORT

## ESSB 5195

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**As Passed House:**

April 8, 1999

**Title:** An act relating to protecting employee benefits.

**Brief Description:** Protecting employee benefits.

**Sponsors:** Senate Committee on Judiciary (originally sponsored by Senators Heavey, Johnson, Kline and Winsley).

**Brief History:**

**Committee Activity:**

Judiciary: 3/30/99, 4/1/99 [DP].

**Floor Activity:**

Passed House: 4/8/99, 81-15.

**Brief Summary of Engrossed Substitute Bill**

- Expands the list of pension plans that are protected from creditors.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass. Signed by 10 members: Representatives Carrell, Republican Co-Chair; Constantine, Democratic Co-Chair; Hurst, Democratic Vice Chair; Cox; Dickerson; Esser; Kastama; Lantz; Lovick and McDonald.

**Minority Report:** Without recommendation. Signed by 2 members: Representatives Lambert, Republican Vice Chair and Schindler.

**Staff:** Bill Perry (786-7123).

**Background:**

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 protect

various kinds of real and personal property from judgment creditors. Pensions are one kind of property that is exempted from most enforcement proceedings.

The Legislature has declared it to be the policy of the state to protect its citizens' pensions from legal process for the enforcement of judgments. Pursuant to that declared policy and under the authorization of federal law, the Legislature has exempted certain pension rights from execution, attachment, garnishment, or seizure for the payment of debts. The exemption from legal process does not extend to child support obligations.

These protected rights include any "pension, annuity, or retirement allowance or disability allowance or death benefits" under an "employee benefit plan." The statute defines "employee benefit plan" to include various private plans or arrangements authorized under state or federal law.

In recent years, the federal and state governments have created several new plans designed to encourage people to put money aside for retirement or for the future education of their children.

The term "employee benefit plan" specifically does not include government employee benefit plans, which are covered by their own exemptions in other sections of law.

When the holder of an individual retirement account dies, the holder's spouse may transfer his or her own community property interest in that account in accordance with the deceased account holder's will or the rules of intestate succession. The person who receives that interest (the "distributee") may, but need not, get a court order confirming that distribution. The distributee's rights in the spouse's community property portion of the individual retirement account are exempt from creditors.

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### **Summary of Bill:**

The definition of "employee benefit plan" is expanded to give explicit protection from creditors to several kinds of benefit plans under federal or state law. Added to the new definition are:

- tax sheltered annuities;
- individual retirement accounts;
- Roth individual retirement accounts;
- medical savings accounts;
- education individual retirement accounts;
- retirement bonds; and
- advanced college tuition units.

Technical changes are made to explicitly list sections of the code that create various public employee pension plans.

The legal order which a distributee of a community property interest in an individual retirement account may obtain may be issued through an alternative dispute resolution proceeding as well as by a court.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** The bill is simply a continuation of a policy established by the Legislature. Since Congress has made several new savings plans available, the state should do what it can to encourage their use.

**Testimony Against:** None.

**Testified:** Richard Hopp, Washington State Bar Association.