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HOUSE BILL 1783

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State of Washington                      56th Legislature                      1999 Regular Session

By Representatives Cox, Carrell, Gombosky and Kastama

Read first time 02/05/1999. Referred to Committee on Judiciary.

1            AN ACT Relating to reimbursement of public entities for payments  
2 made because of criminal acts of officers, employees, or contractors;  
3 amending RCW 4.92.070, 6.15.020, 41.28.200, and 43.43.310; reenacting  
4 and amending RCW 41.26.053, 41.32.052, and 41.40.052; adding new  
5 sections to chapter 43.10 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 employees, officers, and contractors whose criminal conduct results in  
10 payment of public money to injured parties. The legislature further  
11 finds that this inability is a drain on public resources and  
12 facilitates the avoidance or responsibility by those who engage in  
13 criminal conduct. The purpose of this act is to enable public entities  
14 on behalf of the citizens to obtain reimbursement from such employees,  
15 officers, and contractors.

16            NEW SECTION.    **Sec. 2.** A new section is added to chapter 43.10 RCW  
17 to read as follows:

1 (1) The attorney general shall provide the state auditor with a  
2 written report summarizing each legal case, or settlement of a case,  
3 that requires a public entity to make any payment as a result of  
4 criminal conduct by an officer or employee of the entity or by a  
5 contractor with the entity. The auditor shall conduct an investigation  
6 of the facts of the case. If the auditor finds that all or a  
7 significant portion of the payment made by the public entity is  
8 attributable to the criminal conduct of an officer, employee, or  
9 contractor, then the auditor may retain an attorney to sue the officer  
10 or former officer, employee or former employee, or contractor or former  
11 contractor on behalf of the entity in order to collect the amount so  
12 attributable. The auditor shall select an attorney not on the staff of  
13 the attorney general. This section does not apply to recovery of any  
14 such an amount if the attorney general, in the report to the auditor,  
15 states that the attorney general is not barred from bringing the legal  
16 action on behalf of the public entity.

17 (2) For purposes of this section:

18 (a) "Contractor" includes any person who contracts with a public  
19 entity for the purpose of providing goods or services to a public  
20 entity; and

21 (b) "Public entity" includes the state, its political subdivisions,  
22 municipal corporations, quasi-municipal corporations, and special  
23 districts.

24 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.10 RCW  
25 to read as follows:

26 This chapter does not apply to the retention of an attorney by the  
27 state auditor, under section 2 of this act, to collect amounts from  
28 current or former officers, employees, or contractors of a public  
29 entity. This chapter also does not apply to any legal action or  
30 settlement in which such an attorney represents a public entity under  
31 section 2 of this act.

32 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.10 RCW  
33 to read as follows:

34 (1) If, as a result of criminal conduct by a person who is a member  
35 of a retirement system or plan, the attorney general, or the state  
36 auditor through an attorney retained under section 2 of this act,  
37 brings legal action against the person to obtain reimbursement of

1 amounts paid by a public entity to an injured party, the attorney  
2 general or state auditor may in the action request the court to order  
3 payment to the public entity of the retirement or plan benefits, or  
4 other amounts, that would otherwise be paid to the person under the  
5 retirement system or plan. If the court finds that reimbursement is  
6 due to the public entity, the court shall enter an order granting the  
7 request. The order shall not conflict with the community property  
8 interests of a spouse.

9 (2) The administrator of any public retirement system shall adopt  
10 rules providing for the assignment of benefits, or other amounts, to a  
11 public entity as may be required by a court order under this section.

12 (3) This section applies to the following persons and retirement  
13 systems:

14 (a) With respect to a public retirement system, a person who, after  
15 the effective date of this act, becomes a member of a public retirement  
16 system, including but not limited to a retirement system under chapter  
17 2.14, 28A.400, 28B.10, 41.26, 41.28, 41.32, 41.40, or 43.43 RCW; and

18 (b) To the extent not prohibited by federal law, a person  
19 participating in an employee benefit plan identified in RCW  
20 6.15.020(4).

21 **Sec. 5.** RCW 4.92.070 and 1989 c 403 s 3 are each amended to read  
22 as follows:

23 If the attorney general (~~shall find~~) finds that (~~said~~) the  
24 officer, employee, or volunteer's acts or omissions were, or were  
25 purported to be in good faith, within the scope of that person's  
26 official duties, or, in the case of a foster parent, that the  
27 occurrence arose from the good faith provision of foster care services,  
28 (~~said~~) the request shall be granted(~~(, in which event)~~). The  
29 attorney general may also grant a request to represent the officer,  
30 employee, or volunteer if the attorney general believes that there is  
31 a reasonable doubt whether the acts or omissions were performed in good  
32 faith and within the scope of official duties and that it is therefore  
33 in the state's interest to grant the request. If a request is granted,  
34 the necessary expenses of the defense of (~~said~~) the action or  
35 proceeding shall be paid from the appropriations made for the support  
36 of the department to which such officer, employee, volunteer, or foster  
37 parent is attached. In such cases the attorney general shall appear  
38 and defend such officer, employee, volunteer, or foster parent, who

1 shall assist and cooperate in the defense of such suit. However, the  
2 attorney general may not represent or provide private representation  
3 for a foster parent in an action or proceeding brought by the  
4 department of social and health services against that foster parent.

5 **Sec. 6.** RCW 6.15.020 and 1997 c 20 s 1 are each amended to read as  
6 follows:

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

13 (2) Unless otherwise provided by federal law, any money received by  
14 any citizen of the state of Washington as a pension from the government  
15 of the United States, whether the same be in the actual possession of  
16 such person or be deposited or loaned, shall be exempt from execution,  
17 attachment, garnishment, or seizure by or under any legal process  
18 whatever, and when a debtor dies, or absconds, and leaves his or her  
19 family any money exempted by this subsection, the same shall be exempt  
20 to the family as provided in this subsection. This subsection shall  
21 not apply to child support collection actions issued under chapter  
22 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law.

23 (3) The right of a person to a pension, annuity, or retirement  
24 allowance or disability allowance, or death benefits, or any optional  
25 benefit, or any other right accrued or accruing to any citizen of the  
26 state of Washington under any employee benefit plan, and any fund  
27 created by such a plan or arrangement, shall be exempt from execution,  
28 attachment, garnishment, or seizure by or under any legal process  
29 whatever. This subsection shall not apply to child support collection  
30 actions issued under chapter 26.18, 26.23, or 74.20A RCW if otherwise  
31 permitted by federal law. This subsection shall permit benefits under  
32 any such plan or arrangement to be payable to a spouse, former spouse,  
33 child, or other dependent of a participant in such plan to the extent  
34 expressly provided for in a qualified domestic relations order that  
35 meets the requirements for such orders under the plan, or, in the case  
36 of benefits payable under a plan described in sections 403(b) or 408 of  
37 the internal revenue code of 1986, as amended, or section 409 of such  
38 code as in effect before January 1, 1984, to the extent provided in any

1 order issued by a court of competent jurisdiction that provides for  
2 maintenance or support. This subsection shall not prohibit actions  
3 against an employee benefit plan, or fund for valid obligations  
4 incurred by the plan or fund for the benefit of the plan or fund. This  
5 subsection does not apply to section 4 of this act.

6 (4) For the purposes of this section, the term "employee benefit  
7 plan" means any plan or arrangement that is described in RCW 49.64.020,  
8 including any Keogh plan, whether funded by a trust or by an annuity  
9 contract, and in sections 401(a) or 403(a) of the internal revenue code  
10 of 1986, as amended; or that is described in sections 403(b) or 408 of  
11 the internal revenue code of 1986, as amended, or section 409 of such  
12 code as in effect before January 1, 1984. The term "employee benefit  
13 plan" shall not include any employee benefit plan that is established  
14 or maintained for its employees by the government of the United States,  
15 by the state of Washington or any political subdivision thereof, or by  
16 any agency or instrumentality of any of the foregoing.

17 (5) An employee benefit plan shall be deemed to be a spendthrift  
18 trust, regardless of the source of funds, the relationship between the  
19 trustee or custodian of the plan and the beneficiary, or the ability of  
20 the debtor to withdraw or borrow or otherwise become entitled to  
21 benefits from the plan before retirement. This subsection shall not  
22 apply to child support collection actions issued under chapter 26.18,  
23 26.23, or 74.20A RCW, if otherwise permitted by federal law. This  
24 subsection shall permit benefits under any such plan or arrangement to  
25 be payable to a spouse, former spouse, child, or other dependent of a  
26 participant in such plan to the extent expressly provided for in a  
27 qualified domestic relations order that meets the requirements for such  
28 orders under the plan, or, in the case of benefits payable under a plan  
29 described in sections 403(b) or 408 of the internal revenue code of  
30 1986, as amended, or section 409 of such code as in effect before  
31 January 1, 1984, to the extent provided in any order issued by a court  
32 of competent jurisdiction that provides for maintenance or support.  
33 This subsection does not apply to section 4 of this act.

34 (6) Unless contrary to applicable federal law, nothing contained in  
35 subsection (3), (4), or (5) of this section shall be construed as a  
36 termination or limitation of a spouse's community property interest in  
37 an individual retirement account held in the name of or on account of  
38 the other spouse, the account holder spouse. At the death of the  
39 nonaccount holder spouse, the nonaccount holder spouse may transfer or

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

28 **Sec. 7.** RCW 41.26.053 and 1991 c 365 s 20 and 1991 c 35 s 25 are  
29 each reenacted and amended to read as follows:

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

23 **Sec. 8.** 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 section 4 of  
33 this act.

34 **Sec. 9.** 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), (3), and ~~((+3+))~~ (4) of this  
37 section, the right of a person to a pension, an annuity, a retirement

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

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

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

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

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

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

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

38 (4) Subsection (1) of this section does not apply to section 4 of  
39 this act.



1       **Sec. 10.** RCW 41.40.052 and 1991 c 365 s 22 and 1991 c 35 s 92 are  
2 each reenacted and amended to read as follows:

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

12       (2) This section shall not be deemed to prohibit a beneficiary of  
13 a retirement allowance from authorizing deductions therefrom for  
14 payment of premiums due on any group insurance policy or plan issued  
15 for the benefit of a group comprised of public employees of the state  
16 of Washington or its political subdivisions and which has been approved  
17 for deduction in accordance with rules that may be adopted by the state  
18 health care authority and/or the department, and this section shall not  
19 be deemed to prohibit a beneficiary of a retirement allowance from  
20 authorizing deductions therefrom for payment of dues and other  
21 membership fees to any retirement association or organization the  
22 membership of which is composed of retired public employees, if a total  
23 of three hundred or more of such retired employees have authorized such  
24 deduction for payment to the same retirement association or  
25 organization.

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

36       (4) Subsection (1) of this section does not apply to section 4 of  
37 this act.

1       **Sec. 11.** RCW 43.43.310 and 1991 c 365 s 23 are each amended to  
2 read as follows:

3       (1) Except as provided in subsections (2), (3), and ~~((+3))~~ (4) of  
4 this section, the right of any person to a retirement allowance or  
5 optional retirement allowance under the provisions hereof and all  
6 moneys and investments and income thereof are exempt from any state,  
7 county, municipal, or other local tax and shall not be subject to  
8 execution, garnishment, attachment, the operation of bankruptcy or the  
9 insolvency laws, or other processes of law whatsoever and shall be  
10 unassignable except as herein specifically provided.

11       (2) Subsection (1) of this section shall not prohibit the  
12 department of retirement systems from complying with (a) a wage  
13 assignment order for child support issued pursuant to chapter 26.18  
14 RCW, (b) an order to withhold and deliver issued pursuant to chapter  
15 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW  
16 26.23.060, (d) a mandatory benefits assignment order issued pursuant to  
17 chapter 41.50 RCW, (e) a court order directing the department of  
18 retirement systems to pay benefits directly to an obligee under a  
19 dissolution order as defined in RCW 41.50.500(3) which fully complies  
20 with RCW 41.50.670 and 41.50.700, or (f) any administrative or court  
21 order expressly authorized by federal law.

22       (3) Subsection (1) of this section shall not be deemed to prohibit  
23 a beneficiary of a retirement allowance from authorizing deductions  
24 therefrom for payment of premiums due on any group insurance policy or  
25 plan issued for the benefit of a group comprised of members of the  
26 Washington state patrol or other public employees of the state of  
27 Washington, or for contributions to the Washington state patrol  
28 memorial foundation.

29       (4) Subsection (1) of this section does not apply to section 4 of  
30 this act.

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