
HOUSE BILL 1131

State of Washington 58th Legislature 2003 Regular Session

By Representatives Carrell, Roach and Talcott

Read first time 01/17/2003. 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, 41.28.200, 41.40.052, and 43.43.310; reenacting
4 and amending RCW 6.15.020, 41.26.053, and 41.32.052; adding a new
5 section to chapter 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 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 4.22 RCW
17 to read as follows:

18 (1) When a public entity enforces a right of contribution against

1 an officer, employee, or contractor, the court may order that the
2 contribution be paid from the benefits of a retirement system or plan
3 that would otherwise be paid to the officer, employee, or contractor,
4 if the officer, employee, or contractor has been convicted of a felony,
5 the commission of which was a proximate cause of the injury, death, or
6 harm for which the public entity and the officer, employee, or
7 contractor are jointly and severally liable. This source of
8 contribution is in addition to any other source that may be available.

9 (2) An order under subsection (1) of this section shall protect the
10 community property interests of a spouse in the benefits of the
11 retirement system or plan.

12 (3) The administrator of any public retirement system shall adopt
13 rules providing for the assignment of benefits to a public entity under
14 subsection (1) of this section. The administrator shall also provide
15 a form to be signed by each officer or employee at the time he or she
16 first becomes a member of a public retirement system. The form shall
17 indicate that the officer or employee acknowledges that his or her
18 benefits are subject to the provisions of this section.

19 (4) This section applies to the following officers, employees, and
20 contractors:

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

26 (b) To the extent not prohibited by federal law, a person
27 participating in an employee benefit plan identified in RCW
28 6.15.020(4).

29 (5) For purposes of this section:

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

33 (b) "Public entity" includes the state, its political subdivisions,
34 municipal corporations, quasi-municipal corporations, and special
35 districts.

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

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

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

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

31 (2) Unless otherwise provided by federal law, any money received by
32 any citizen of the state of Washington as a pension from the government
33 of the United States, whether the same be in the actual possession of
34 such person or be deposited or loaned, shall be exempt from execution,
35 attachment, garnishment, or seizure by or under any legal process
36 whatever, and when a debtor dies, or absconds, and leaves his or her
37 family any money exempted by this subsection, the same shall be exempt

1 to the family as provided in this subsection. This subsection shall
2 not apply to child support collection actions issued under chapter
3 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law.

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

26 (4) For the purposes of this section, the term "employee benefit
27 plan" means any plan or arrangement that is described in RCW 49.64.020,
28 including any Keogh plan, whether funded by a trust or by an annuity
29 contract, and in sections 401(a) or 403(a) of the internal revenue code
30 of 1986, as amended; or that is a tax-sheltered annuity described in
31 section 403(b) of such code or an individual retirement account
32 described in section 408 of such code; or a Roth individual retirement
33 account described in section 408A of such code; or a medical savings
34 account described in section 220 of such code; or an education
35 individual retirement account described in section 530 of such code; or
36 a retirement bond described in section 409 of such code as in effect
37 before January 1, 1984. The term "employee benefit plan" also means
38 any rights accruing on account of money paid currently or in advance

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

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

26 (6) Unless contrary to applicable federal law, nothing contained in
27 subsection (3), (4), or (5) of this section shall be construed as a
28 termination or limitation of a spouse's community property interest in
29 an individual retirement account held in the name of or on account of
30 the other spouse, the account holder spouse. At the death of the
31 nonaccount holder spouse, the nonaccount holder spouse may transfer or
32 distribute the community property interest of the nonaccount holder
33 spouse in the account holder spouse's individual retirement account to
34 the nonaccount holder spouse's estate, testamentary trust, inter vivos
35 trust, or other successor or successors pursuant to the last will of
36 the nonaccount holder spouse or the law of intestate succession, and
37 that distributee may, but shall not be required to, obtain an order of
38 a court of competent jurisdiction, including a nonjudicial dispute

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

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

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

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

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

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

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

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

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

34 (1) Subject to subsections (2), (3), and ~~((+3))~~ (4) of this
35 section, the right of a person to a pension, an annuity, a retirement
36 allowance, or disability allowance, to the return of contributions, any

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

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

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

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

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

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

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

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

1 **Sec. 8.** RCW 41.40.052 and 1999 c 83 s 1 are each amended to read
2 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)(a) This section shall not be deemed to prohibit a beneficiary
13 of 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 (b) This section does not prohibit a beneficiary of a retirement
27 allowance from authorizing deductions from that allowance for
28 charitable purposes on the same terms as employees and public officers
29 under RCW 41.04.035 and 41.04.036.

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

1 which fully complies with RCW 41.50.670 and 41.50.700, or (f) any
2 administrative or court order expressly authorized by federal law.

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

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

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

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

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

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

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