



Senate

General Assembly

February Session, 2000

File No. 180

Senate Bill No. 473

Senate, March 22, 2000

The Committee on Judiciary reported through SEN. WILLIAMS of the 29th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

An Act Concerning Attachment Of Government Pension Payments.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 52-321a of the general statutes is repealed and the following
2 is substituted in lieu thereof:

3 (a) Except as provided in subsection (b) of this section, any interest
4 in or amounts payable to a participant or beneficiary from (1) any
5 trust, custodial account, annuity or insurance contract established as
6 part of a Keogh plan or a retirement plan established by a corporation
7 which is qualified under Section 401, 403, 404 or 409 of the Internal
8 Revenue Code of 1986, or any subsequent corresponding internal
9 revenue code of the United States, as from time to time amended, (2)
10 any individual retirement account which is qualified under Section 408
11 of said internal revenue code to the extent funded, including income
12 and appreciation, (A) as a roll-over from a qualified retirement plan, as
13 provided in subdivision (1) of this section, pursuant to Section

14 402(a)(5), 403(a) or 408(d)(3) of said internal revenue code or (B) by
15 annual contributions which do not exceed the maximum annual limits
16 set forth in Section 219(b) of said internal revenue code, determined
17 without regard to any reduction or limitation for active participants
18 required by Section 219(g) of said internal revenue code, (3) (A) any
19 simple retirement account established and funded pursuant to Section
20 408(p) of said internal revenue code, (B) any simple plan established
21 and funded pursuant to Section 401(k)(11) of said internal revenue
22 code, (C) any Roth IRA established and funded pursuant to Section
23 408A of said internal revenue code, (D) any education individual
24 retirement account established and funded pursuant to Section 530 of
25 said internal revenue code, or (E) any simplified employee pension
26 established under Section 408(k) of said internal revenue code to the
27 extent such pension is funded by annual contributions within the
28 limits of Section 408(j) of said internal revenue code or roll-over
29 contributions from a qualified plan, as provided in subdivision (1) of
30 this subsection, pursuant to Section 402(a)(5), 403(a) or 408(d)(3) of said
31 internal revenue code, (4) any medical savings account established
32 under Section 220 of said internal revenue code, to the extent such
33 account is funded by annual deductible contributions or a roll-over
34 from any other medical savings account as provided in Section
35 220(f)(5) of said internal revenue code, or (5) any pension plan, annuity
36 or insurance contract or similar arrangement not described in
37 subdivision (1) or (2) of this subsection, established by federal or state
38 statute for federal, state or municipal employees for the primary
39 purpose of providing benefits upon retirement by reason of age, health
40 or length of service, shall be exempt from the claims of all creditors of
41 such participant or beneficiary. Any such trust, account, contract, plan
42 or other arrangement shall be (A) conclusively presumed to be a
43 restriction on the transfer of a beneficial interest of the debtor in a trust
44 that is enforceable under the laws of this state, and (B) considered a
45 trust which has been created by or which has proceeded from a person
46 other than such participant or beneficiary, even if such participant or

47 beneficiary is a self-employed individual, a partner of the entity
48 sponsoring the Keogh plan or a shareholder of the corporation
49 sponsoring the retirement plan.

50 (b) Nothing in this section shall impair the rights of an alternate
51 payee under a qualified domestic relations order, as defined in Section
52 414(p) of the Internal Revenue Code of 1986, or any subsequent
53 corresponding internal revenue code of the United States, as from time
54 to time amended. Nothing in this section shall impair the rights of the
55 state to recover the costs of incarceration from any federal, state or
56 municipal pension, annuity or insurance contract or similar
57 arrangement described in subdivision (5) of subsection (a) of this
58 section. Nothing in this section shall impair the rights of a victim of
59 crime to recover damages awarded by a court of competent
60 jurisdiction from any federal, state or municipal pension, annuity or
61 insurance contract or similar arrangement described in subdivision (5)
62 of subsection (a) of this section when such damages are the result of a
63 crime committed by a participant or beneficiary of such pension,
64 annuity or insurance contract or similar arrangement.

65 (c) Nothing in this section shall affect the status of additions or
66 contributions to a trust, account, contract, plan or other arrangement
67 described in subsection (a) of this section if (1) (A) the debtor-
68 participant or the debtor-beneficiary is a self-employed individual,
69 partner of the entity sponsoring the Keogh plan or a one per cent or
70 more shareholder of the corporation sponsoring the retirement plan, or
71 in the opinion of a court of competent jurisdiction, exercises dominion
72 and control over such proprietorship, partnership, corporation or other
73 entity and (B) the addition or contribution is made less than ninety
74 days before the filing of the claim on which the judgment is thereafter
75 entered or (2) such additions or contributions are determined to be a
76 fraudulent conveyance under applicable federal or state law.

JUD Committee Vote: Yea 39 Nay 0 JF

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Minimal Revenue Gain

Affected Agencies: Office of the Attorney General

Municipal Impact: None

Explanation**State Impact:**

The Office of the Attorney General has indicated that the bill creates a narrow exception to the overall pension protection policy that allows the state or a victim to attach the public employee pension payments of a convicted felon to recover the cost of incarceration or satisfy a court judgment. The bill will result in a minimal workload increase to the Attorney General from representing the state to recover the costs of incarceration and a subsequent minimal revenue gain to the General Fund.

OLR Bill Analysis

SB 473

AN ACT CONCERNING ATTACHMENT OF GOVERNMENT PENSION PAYMENTS.**SUMMARY:**

This bill appears to make no change in the current law's prohibition against creditors attaching or seizing government employee pension payments. It specifies that the general bar against attaching pension benefits does not impair:

1. the state's right to recover the costs of incarceration from a prisoner's state, federal, or municipal pension, or
2. a crime victim's right to collect court-awarded damages from such entities when the pension-holder or a pension plan beneficiary caused the damage.

But another state law, unaffected by the bill, exempts these pensions from being encumbered or seized to satisfy court judgments. And federal law prohibits civil service retirement benefits from being seized except in connection with divorce or legal separation proceedings or to enforce a court judgment against a person for physically, sexually, or emotionally abusing a child.

EFFECTIVE DATE: October 1, 2000

BACKGROUND***Department of Correction Assessments***

By law, the Department of Corrections (DOC) commissioner can assess inmates the costs of incarceration. Regulations specify that, for those serving time in-state, these are calculated using the same formula that the comptroller uses to set per diem costs in state mental hospitals and other state residential facilities. The DOC may also charge prisoners a

small fee for education and training programs, extended family visits, and some medical and dental procedures.

When an inmate's prison account balance is too small to pay these charges, the Department of Administrative Services may recoup them from other income sources, including by obtaining court judgments and executing upon his non-exempt property.

Exempt Property

In addition to pension payments, the law bars creditors from seizing other types of property. These include necessary clothing, household items, and work-connected tools; welfare, workers compensation, health, disability, and some other insurance payments; and a portion of the value of the debtor's motor vehicle (\$1,500) and home (\$75,000).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Report
Yea 39 Nay 0