

Bill No. SB 660

Barcode 332148

CHAMBER ACTION

Senate

House

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The Committee on Banking and Insurance (Atwater) recommended the following amendment:

**Senate Amendment (with title amendment)**

On page 2, between lines 7 and 8,

insert:

Section 1. Section 222.21, Florida Statutes, is amended to read:

222.21 Exemption of pension money and certain tax-exempt funds or accounts ~~retirement or profit sharing benefits~~ from legal processes.--

(1) Money received by any debtor as pensioner of the United States within 3 months next preceding the issuing of an execution, attachment, or garnishment process may not be applied to the payment of the debts of the pensioner when it is made to appear by the affidavit of the debtor or otherwise that the pension money is necessary for the maintenance of the debtor's support or a family supported wholly or in part by the pension money. The filing of the affidavit by the debtor, or the making of such proof by the debtor, is prima facie

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1 | evidence; and it is the duty of the court in which the  
 2 | proceeding is pending to release all pension moneys held by  
 3 | such attachment or garnishment process, immediately, upon the  
 4 | filing of such affidavit or the making of such proof.

5 |       (2)(a) Except as provided in paragraph(d)(b), any  
 6 | money or other assets payable to an owner, a participant, or a  
 7 | beneficiary from, or any interest of any owner, participant,  
 8 | or beneficiary in, a fund or account ~~retirement or~~  
 9 | ~~profit-sharing plan that is qualified under s. 401(a), s.~~  
 10 | ~~403(a), s. 403(b), s. 408, s. 408A, or s. 409 of the Internal~~  
 11 | ~~Revenue Code of 1986, as amended,~~ is exempt from all claims of  
 12 | creditors of the owner, beneficiary, or participant if the  
 13 | fund or account is:-

14 |       1. Maintained in accordance with a master plan, volume  
 15 | submitter plan, prototype plan, or any other plan or governing  
 16 | instrument that has been preapproved by the Internal Revenue  
 17 | Service as exempt from taxation under s. 401(a), s. 403(a), s.  
 18 | 403(b), s. 408, s. 408A, s. 409, s. 414, s. 457(b), or s.  
 19 | 501(a) of the Internal Revenue Code of 1986, as amended,  
 20 | unless it has been subsequently determined that the plan or  
 21 | governing instrument is not exempt from taxation in a  
 22 | proceeding that has become final and nonappealable;

23 |       2. Maintained in accordance with a plan or governing  
 24 | instrument that has been determined by the Internal Revenue  
 25 | Service to be exempt from taxation under s. 401(a), s. 403(a),  
 26 | s. 403(b), s. 408, s. 408A, s. 409, s. 414, s. 457(b), or s.  
 27 | 501(a) of the Internal Revenue Code of 1986, as amended,  
 28 | unless it has been subsequently determined that the plan or  
 29 | governing instrument is not exempt from taxation in a  
 30 | proceeding that has become final and nonappealable; or

31 |       3. Not maintained in accordance with a plan or

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1 governing instrument described in subparagraph 1. or 2. if the  
 2 person claiming exemption under this paragraph proves by a  
 3 preponderance of the evidence that the fund or account is  
 4 maintained in accordance with a plan or governing instrument  
 5 that:

6       a. Is in substantial compliance with the applicable  
 7 requirements for tax exemption under s. 401(a), s. 403(a), s.  
 8 403(b), s. 408, s. 408A, s. 409, s. 414, s. 457(b), or s.  
 9 501(a) of the Internal Revenue Code of 1986, as amended; or

10       b. Would have been in substantial compliance with the  
 11 applicable requirements for tax exemption under s. 401(a), s.  
 12 403(a), s. 403(b), s. 408, s. 408A, s. 409, s. 414, s. 457(b),  
 13 or s. 501(a) of the Internal Revenue Code of 1986, as amended,  
 14 but for the negligent or wrongful conduct of a person or  
 15 persons other than the person who is claiming the exemption  
 16 under this section.

17       (b) It is not necessary that a fund or account that is  
 18 described in paragraph (a) be maintained in accordance with a  
 19 plan or governing instrument that is covered by any part of  
 20 the Employee Retirement Income Security Act for money or  
 21 assets payable from or any interest in that fund or account to  
 22 be exempt from claims of creditors under that paragraph.

23       (c) Any money or other assets that are exempt from  
 24 claims of creditors under paragraph (a) do not cease to  
 25 qualify for exemption by reason of a direct transfer or  
 26 eligible rollover that is excluded from gross income under s.  
 27 402(c) of the Internal Revenue Code of 1986 or by distribution  
 28 from any such fund or account as long as such money or assets  
 29 are not commingled with other money or assets that are not  
 30 exempt from claims of creditors under that paragraph.

31       (d)(b) Any fund or account ~~plan or arrangement~~

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1 described in paragraph (a) is not exempt from the claims of an  
 2 alternate payee under a qualified domestic relations order.  
 3 However, the interest of any alternate payee under a qualified  
 4 domestic relations order is exempt from all claims of any  
 5 creditor, other than the Department of Children and Family  
 6 Services, of the alternate payee. As used in this paragraph,  
 7 the terms "alternate payee" and "qualified domestic relations  
 8 order" have the meanings ascribed to them in s. 414(p) of the  
 9 Internal Revenue Code of 1986.

10 ~~(e)(c) This subsection applies~~ ~~The provisions of~~  
 11 ~~paragraphs (a) and (b) apply~~ to any proceeding that is filed  
 12 on or after the effective date of this act ~~October 1, 1987~~.

13  
 14 (Redesignate subsequent sections.)

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17 ===== T I T L E A M E N D M E N T =====

18 And the title is amended as follows:

19 On page 1, line 3, after the first semicolon,  
 20  
 21 insert:  
 22 amending s. 222.21, F.S.; exempting certain  
 23 tax-exempt funds or account from legal process  
 24 in favor of creditors;

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