

CHAPTER 15

GOVERNMENT - STATE

SENATE BILL 05-093

BY SENATOR(S) Hillman, and Teck;
also REPRESENTATIVE(S) Garcia, Madden, Marshall, and Paccione.

AN ACT

CONCERNING THE ABILITY TO ATTACH PUBLIC PENSION BENEFITS IF THE PENSION PARTICIPANT ENGAGES IN MISCONDUCT IN CONNECTION WITH PUBLIC PROPERTY.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. The introductory portion to 13-54-104 (1) (b) (II) and 13-54-104 (1) (b) (II) (B), Colorado Revised Statutes, are amended to read:

13-54-104. Restrictions on garnishment and levy under execution or attachment. (1) As used in this section, unless the context otherwise requires:

(b) (II) For the purposes of writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, FOR RESTITUTION FOR THE THEFT, EMBEZZLEMENT, MISAPPROPRIATION, OR WRONGFUL CONVERSION OF PUBLIC PROPERTY, OR IN THE EVENT OF A JUDGMENT FOR A WILLFUL AND INTENTIONAL VIOLATION OF FIDUCIARY DUTIES TO A PUBLIC PENSION PLAN WHERE THE OFFENDER OR A RELATED PARTY RECEIVED DIRECT FINANCIAL GAIN," earnings" also means:

(B) Any pension or retirement benefits or payments, including but not limited to those paid pursuant to article 64 of title 22, C.R.S., ~~articles 51, 54, 54.5, 54.6, and 54.7~~ ARTICLES 51, 52, 54, 54.5, AND 54.6 of title 24, C.R.S., and ~~article 30~~ ARTICLES 30.5 AND 31 of title 31, C.R.S.;

SECTION 2. The introductory portion to 13-54.5-101 (2) (b) and 13-54.5-101 (2) (b) (II), Colorado Revised Statutes, are amended to read:

13-54.5-101. Definitions. As used in this article, unless the context otherwise requires:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(2) (b) For the purposes of writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, FOR RESTITUTION FOR THE THEFT, EMBEZZLEMENT, MISAPPROPRIATION, OR WRONGFUL CONVERSION OF PUBLIC PROPERTY, OR IN THE EVENT OF A JUDGMENT FOR A WILLFUL AND INTENTIONAL VIOLATION OF FIDUCIARY DUTIES TO A PUBLIC PENSION PLAN WHERE THE OFFENDER OR A RELATED PARTY RECEIVED DIRECT FINANCIAL GAIN, "earnings" also means:

(II) Any pension or retirement benefits or payments, including but not limited to those paid pursuant to article 64 of title 22, C.R.S., ~~articles 51, 54, 54.5, 54.6, and 54.7~~ ARTICLES 51, 52, 54, 54.5, AND 54.6 of title 24, C.R.S., and ~~article 30~~ ARTICLES 30.5 AND 31 of title 31, C.R.S.;

SECTION 3. 22-64-120, Colorado Revised Statutes, is amended to read:

22-64-120. Funds not subject to process. Except for assignments for child support purposes as provided for in sections 14-10-118 (1) and 14-14-107, C.R.S., as they existed prior to July 1, 1996, for income assignments for child support purposes pursuant to section 14-14-111.5, C.R.S., for writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, ~~and~~ for payments made in compliance with a properly executed court order approving a written agreement entered into pursuant to section 14-10-113 (6), C.R.S., AND FOR RESTITUTION THAT IS REQUIRED TO BE PAID FOR THE THEFT, EMBEZZLEMENT, MISAPPROPRIATION, OR WRONGFUL CONVERSION OF PUBLIC PROPERTY OR IN THE EVENT OF A JUDGMENT FOR A WILLFUL AND INTENTIONAL VIOLATION OF FIDUCIARY DUTIES PURSUANT TO THIS PART 1 WHERE THE OFFENDER OR A RELATED PARTY RECEIVED DIRECT FINANCIAL GAIN, none of the moneys, payments, or other benefits mentioned in this article shall be assignable either in law or in equity nor be subject to execution, levy, attachment, garnishment, or other legal process.

SECTION 4. 22-64-212, Colorado Revised Statutes, is amended to read:

22-64-212. Funds not subject to process. Except for assignments for child support purposes as provided for in sections 14-10-118 (1) and 14-14-107, C.R.S., as they existed prior to July 1, 1996, for income assignments for child support purposes pursuant to section 14-14-111.5, C.R.S., for writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, ~~and~~ for payments made in compliance with a properly executed court order approving a written agreement entered into pursuant to section 14-10-113 (6), C.R.S., AND FOR RESTITUTION THAT IS REQUIRED TO BE PAID FOR THE THEFT, EMBEZZLEMENT, MISAPPROPRIATION, OR WRONGFUL CONVERSION OF PUBLIC PROPERTY OR IN THE EVENT OF A JUDGMENT FOR A WILLFUL AND INTENTIONAL VIOLATION OF FIDUCIARY DUTIES PURSUANT TO THIS PART 2 WHERE THE OFFENDER OR A RELATED PARTY RECEIVED DIRECT FINANCIAL GAIN, none of the moneys, payments, or other benefits mentioned in this part 2 shall be assignable either in law or in equity nor be subject to execution, levy, attachment, garnishment, or other legal process.

SECTION 5. 24-51-212, Colorado Revised Statutes, as it exists until January 1, 2006, is amended to read:

24-51-212. Funds not subject to legal process. Except for federal tax liens on distributions payable by the association, ~~and except~~ for assignments for child support purposes as provided for in sections 14-10-118 (1) and 14-14-107, C.R.S., as they existed prior to July 1, 1996, ~~and except~~ for income assignments for child support purposes pursuant to section 14-14-111.5, C.R.S., for writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, ~~and~~ for payments from the association in compliance with a properly executed court order approving a written agreement entered into pursuant to section 14-10-113 (6), C.R.S., AND FOR RESTITUTION THAT IS REQUIRED TO BE PAID FOR THE THEFT, EMBEZZLEMENT, MISAPPROPRIATION, OR WRONGFUL CONVERSION OF PUBLIC PROPERTY OR IN THE EVENT OF A JUDGMENT FOR A WILLFUL AND INTENTIONAL VIOLATION OF FIDUCIARY DUTIES PURSUANT TO SECTION 24-51-207 WHERE THE OFFENDER OR A RELATED PARTY RECEIVED DIRECT FINANCIAL GAIN, none of the moneys, trust funds, reserves, accounts, contributions pursuant to parts 4 and 5 of this article, or benefits referred to in this article shall be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment, bankruptcy proceedings, or other legal process. Member contributions are subject to garnishment resulting from a judgment taken for arrearages for child support or for child support debt, FOR RESTITUTION THAT IS REQUIRED TO BE PAID FOR THE THEFT, EMBEZZLEMENT, MISAPPROPRIATION, OR WRONGFUL CONVERSION OF PUBLIC PROPERTY OR IN THE EVENT OF A JUDGMENT FOR A WILLFUL AND INTENTIONAL VIOLATION OF FIDUCIARY DUTIES PURSUANT TO SECTION 24-51-207 WHERE THE OFFENDER OR A RELATED PARTY RECEIVED DIRECT FINANCIAL GAIN, only if the membership has terminated and the member is not vested.

SECTION 6. 24-51-212, Colorado Revised Statutes, as it will become effective January 1, 2006, is amended to read:

24-51-212. Funds not subject to legal process. Except for federal tax liens on distributions payable by the association, ~~and except~~ for assignments for child support purposes as provided for in sections 14-10-118 (1) and 14-14-107, C.R.S., as they existed prior to July 1, 1996, ~~and except~~ for income assignments for child support purposes pursuant to section 14-14-111.5, C.R.S., for writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, ~~and~~ for payments from the association in compliance with a properly executed court order approving a written agreement entered into pursuant to section 14-10-113 (6), C.R.S., AND FOR RESTITUTION THAT IS REQUIRED TO BE PAID FOR THE THEFT, EMBEZZLEMENT, MISAPPROPRIATION, OR WRONGFUL CONVERSION OF PUBLIC PROPERTY OR IN THE EVENT OF A JUDGMENT FOR A WILLFUL AND INTENTIONAL VIOLATION OF FIDUCIARY DUTIES PURSUANT TO SECTION 24-51-207 WHERE THE OFFENDER OR A RELATED PARTY RECEIVED DIRECT FINANCIAL GAIN, none of the moneys, trust funds, reserves, accounts, contributions pursuant to parts 4, 5, and 15 of this article, or benefits referred to in this article shall be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment, bankruptcy proceedings, or other legal process. Member contributions are subject to garnishment resulting from a judgment taken for arrearages for child support or for child support debt, FOR RESTITUTION THAT IS REQUIRED TO BE PAID FOR THE THEFT, EMBEZZLEMENT, MISAPPROPRIATION, OR WRONGFUL CONVERSION OF PUBLIC PROPERTY OR IN THE EVENT OF A JUDGMENT FOR A WILLFUL AND INTENTIONAL VIOLATION OF FIDUCIARY DUTIES PURSUANT TO SECTION 24-51-207 WHERE THE OFFENDER OR A RELATED PARTY RECEIVED DIRECT FINANCIAL GAIN, only if the

membership has terminated and the member is not vested.

SECTION 7. 24-52-105, Colorado Revised Statutes, is amended to read:

24-52-105. Moneys not subject to legal process. Except for assignments for child support purposes as provided for in sections 14-10-118 (1) and 14-14-107, C.R.S., as they existed prior to July 1, 1996, for income assignments for child support purposes pursuant to section 14-14-111.5, C.R.S., for writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, ~~and~~ for payments made in compliance with a properly executed court order approving a written agreement entered into pursuant to section 14-10-113 (6), C.R.S., AND FOR RESTITUTION THAT IS REQUIRED TO BE PAID FOR THE THEFT, EMBEZZLEMENT, MISAPPROPRIATION, OR WRONGFUL CONVERSION OF PUBLIC PROPERTY OR IN THE EVENT OF A JUDGMENT FOR A WILLFUL AND INTENTIONAL VIOLATION OF FIDUCIARY DUTIES PURSUANT TO THIS PART 1 WHERE THE OFFENDER OR A RELATED PARTY RECEIVED DIRECT FINANCIAL GAIN, no moneys, assets, benefits, or payments under a plan established or administered pursuant to the provisions of this article shall be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment, or any other legal process. Nothing in this section shall be deemed to alter any greater restrictions on legal process against the deferred compensation plan under federal or state law.

SECTION 8. 24-52-208, Colorado Revised Statutes, is amended to read:

24-52-208. Moneys not subject to legal process. Except for assignments for child support purposes as provided for in sections 14-10-118 (1) and 14-14-107, C.R.S., as they existed prior to July 1, 1996, for income assignments for child support purposes pursuant to section 14-14-111.5, C.R.S., for liens filed pursuant to section 26-13-128, C.R.S., for current child support, child support debt, retroactive child support, child support arrearages, child support costs, or child support when combined with maintenance, for writs of garnishment that are the result of a judgment taken for current child support, child support debt, retroactive child support, child support arrearages, child support costs, or child support when combined with maintenance, ~~and~~ for payments made in compliance with a properly executed court order approving a written agreement entered into pursuant to section 14-10-113 (6), C.R.S., AND FOR RESTITUTION THAT IS REQUIRED TO BE PAID FOR THE THEFT, EMBEZZLEMENT, MISAPPROPRIATION, OR WRONGFUL CONVERSION OF PUBLIC PROPERTY OR IN THE EVENT OF A JUDGMENT FOR A WILLFUL AND INTENTIONAL VIOLATION OF FIDUCIARY DUTIES PURSUANT TO THIS PART 2 WHERE THE OFFENDER OR A RELATED PARTY RECEIVED DIRECT FINANCIAL GAIN, no moneys, assets, benefits, or payments under a plan established or administered pursuant to the provisions of this article shall be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment, or any other legal process. Nothing in this section shall be deemed to alter any greater restrictions on legal process against the defined contribution plan under federal or state law.

SECTION 9. 24-54-111, Colorado Revised Statutes, is amended to read:

24-54-111. Funds not subject to process. Except for assignments for child support purposes as provided for in sections 14-10-118 (1) and 14-14-107, C.R.S., as they existed prior to July 1, 1996, ~~and except~~ for income assignments for child

support purposes pursuant to section 14-14-111.5, C.R.S., for writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, ~~and~~ for payments made in compliance with a properly executed court order approving a written agreement entered into pursuant to section 14-10-113 (6), C.R.S., AND FOR RESTITUTION THAT IS REQUIRED TO BE PAID FOR THE THEFT, EMBEZZLEMENT, MISAPPROPRIATION, OR WRONGFUL CONVERSION OF PUBLIC PROPERTY OR IN THE EVENT OF A JUDGMENT FOR A WILLFUL AND INTENTIONAL VIOLATION OF FIDUCIARY DUTIES PURSUANT TO THIS ARTICLE WHERE THE OFFENDER OR A RELATED PARTY RECEIVED DIRECT FINANCIAL GAIN, none of the moneys, funds, annuities, individual accounts, or other benefits specified in this article shall be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment, or other legal process.

SECTION 10. 24-54.5-107, Colorado Revised Statutes, is amended to read:

24-54.5-107. Moneys not subject to legal process. Except for assignments for child support purposes as provided for in sections 14-10-118 (1) and 14-14-107, C.R.S., as they existed prior to July 1, 1996, for income assignments for child support purposes pursuant to section 14-14-111.5, C.R.S., for writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, ~~and~~ for payments made in compliance with a properly executed court order approving a written agreement entered into pursuant to section 14-10-113 (6), C.R.S., AND FOR RESTITUTION THAT IS REQUIRED TO BE PAID FOR THE THEFT, EMBEZZLEMENT, MISAPPROPRIATION, OR WRONGFUL CONVERSION OF PUBLIC PROPERTY OR IN THE EVENT OF A JUDGMENT FOR A WILLFUL AND INTENTIONAL VIOLATION OF FIDUCIARY DUTIES PURSUANT TO THIS ARTICLE WHERE THE OFFENDER OR A RELATED PARTY RECEIVED DIRECT FINANCIAL GAIN, no annuity contract or certificate purchased under an optional retirement plan established pursuant to the provisions of this article shall be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment, or other legal process.

SECTION 11. 24-54.6-106, Colorado Revised Statutes, is amended to read:

24-54.6-106. Moneys not subject to legal process. Except for assignments for child support as provided for in sections 14-10-118 (1) and 14-14-107, C.R.S., as they existed prior to July 1, 1996, for income assignments for child support purposes pursuant to section 14-14-111.5, C.R.S., for writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, ~~and~~ for payments made in compliance with a properly executed court order approving a written agreement entered into pursuant to ~~section 14-10-113, C.R.S.~~ SECTION 14-10-113 (6), C.R.S., AND FOR RESTITUTION THAT IS REQUIRED TO BE PAID FOR THE THEFT, EMBEZZLEMENT, MISAPPROPRIATION, OR WRONGFUL CONVERSION OF PUBLIC PROPERTY OR IN THE EVENT OF A JUDGMENT FOR A WILLFUL AND INTENTIONAL VIOLATION OF FIDUCIARY DUTIES PURSUANT TO THIS ARTICLE WHERE THE OFFENDER OR A RELATED PARTY RECEIVED DIRECT FINANCIAL GAIN, no annuity contract or certificate purchased under a student employee retirement plan established pursuant to the provisions of this article shall be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment, or other legal process.

SECTION 12. 31-30.5-208, Colorado Revised Statutes, is amended to read:

31-30.5-208. Fund not subject to levy. Except for assignments for child support purposes as provided for in sections 14-10-118 (1) and 14-14-107, C.R.S., as they existed prior to July 1, 1996, for income assignments for child support purposes pursuant to section 14-14-111.5, C.R.S., for writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, ~~and~~ for payments made in compliance with a properly executed court order approving a written agreement entered into pursuant to section 14-10-113 (6), C.R.S., AND FOR RESTITUTION THAT IS REQUIRED TO BE PAID FOR THE THEFT, EMBEZZLEMENT, MISAPPROPRIATION, OR WRONGFUL CONVERSION OF PUBLIC PROPERTY OR IN THE EVENT OF A JUDGMENT FOR A WILLFUL AND INTENTIONAL VIOLATION OF FIDUCIARY DUTIES PURSUANT TO THIS ARTICLE WHERE THE OFFENDER OR A RELATED PARTY RECEIVED DIRECT FINANCIAL GAIN, no portion of the fund, before or after its order for distribution by the board to the persons entitled thereto, shall be held, seized, taken, subjected to, detained, or levied on by virtue of any attachment, execution, injunction, writ, interlocutory or other order or decree, or process or proceeding whatsoever issued out of or by any court of this state for the payment or satisfaction, in whole or in part, of any debt, damage, claim, demand, or judgment against the employer or the beneficiary of the fund. Said fund shall be held and distributed for the purposes of this article and for no other purpose whatsoever.

SECTION 13. 31-31-203, Colorado Revised Statutes, is amended to read:

31-31-203. Fund not subject to levy. Except for assignments for child support purposes as provided for in sections 14-10-118 (1) and 14-14-107, C.R.S., as they existed prior to July 1, 1996, for income assignments for child support purposes pursuant to section 14-14-111.5, C.R.S., for writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, ~~and~~ for payments made in compliance with a properly executed court order approving a written agreement entered into pursuant to section 14-10-113 (6), C.R.S., AND FOR RESTITUTION THAT IS REQUIRED TO BE PAID FOR THE THEFT, EMBEZZLEMENT, MISAPPROPRIATION, OR WRONGFUL CONVERSION OF PUBLIC PROPERTY OR IN THE EVENT OF A JUDGMENT FOR A WILLFUL AND INTENTIONAL VIOLATION OF FIDUCIARY DUTIES PURSUANT TO THIS ARTICLE WHERE THE OFFENDER OR A RELATED PARTY RECEIVED DIRECT FINANCIAL GAIN, no portion of the funds created pursuant to sections 31-31-301, 31-31-502, and 31-31-703, before or after their order for distribution by the board to the persons entitled thereto, shall be held, seized, taken, subjected to, detained, or levied on by virtue of any attachment, execution, injunction, writ, interlocutory or other order or decree, or process or proceeding whatsoever issued out of or by any court of this state for the payment or satisfaction, in whole or in part, of any debt, damage, claim, demand, or judgment against the fire and police pension association or employers that belong to such association or the beneficiary of such funds. The funds shall be held and distributed for the purpose of this article and for no other purpose whatsoever.

SECTION 14. Applicability. This act shall apply to restitution ordered on or after the effective date of this act.

SECTION 15. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution (August 10, 2005, if adjournment sine

die is on May 11, 2005); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: March 25, 2005