

HOUSE BILL NO. 248

INTRODUCED BY MCDONOUGH, MAZUREK, BACHINI, ADDY

IN THE HOUSE

JANUARY 17, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 18, 1989	FIRST READING.
FEBRUARY 2, 1989	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 3, 1989	PRINTING REPORT.
FEBRUARY 4, 1989	SECOND READING, DO PASS.
FEBRUARY 6, 1989	ENGROSSING REPORT.
FEBRUARY 7, 1989	THIRD READING, PASSED. AYES, 87; NOES, 12.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 8, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 8, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 9, 1989	SECOND READING, CONCURRED IN.
MARCH 11, 1989	THIRD READING, CONCURRED IN. AYES, 44; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 13, 1989	RECEIVED FROM SENATE.
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MARCH 14, 1989

SECOND READING, AMENDMENTS
CONCURRED IN.

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 248
 2 INTRODUCED BY M. D. H. Thayer
 3 Bachin
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE LAWS
 5 RELATING TO THE EXEMPTION OF WAGES AND RETIREMENT BENEFITS;
 6 TO INCLUDE RETIREMENT BENEFITS IN THE PROPERTY AN INDIVIDUAL
 7 MAY EXEMPT IN A BANKRUPTCY PROCEEDING; AMENDING SECTIONS
 8 25-13-614 AND 31-2-106, MCA; REPEALING SECTION 25-13-411,
 9 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN
 10 APPLICABILITY DATE."

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 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 **Section 1.** Section 31-2-106, MCA, is amended to read:

14 "31-2-106. Exempt property -- bankruptcy proceeding.

15 No individual may exempt from the property of the estate in
 16 any bankruptcy proceeding the property specified in 11
 17 U.S.C. 522(d), ~~except that property specified in 11 U.S.C.~~
 18 ~~522(d)(10) and~~ An individual may exempt from the property of
 19 the estate in any bankruptcy proceeding:

20 (1) that property exempt from execution of judgment as
 21 provided in 19-3-105, 19-4-706, 19-5-704, 19-6-705,
 22 19-7-705, 19-8-805, 19-9-1006, 19-10-504, 19-11-612,
 23 19-13-1004, Title 25, chapter 13, part 6, 33-7-511,
 24 33-15-512 through 33-15-514, 35-10-502, 39-51-3105,
 25 39-71-743, 39-73-110, 53-2-607, 53-9-129, Title 70, chapter

1 32, and 80-2-245;

2 (2) the individual's right to receive unemployment
 3 compensation and unemployment benefits; and

4 (3) the individual's right to receive benefits from a
 5 private or governmental retirement, pension, stock bonus,
 6 profit-sharing, annuity, or similar plan or contract on
 7 account of illness, disability, death, age, or length of
 8 service, unless:

9 (a) the plan or contract was established by or under
 10 the auspices of an insider that employed the individual at
 11 the time the individual's rights under the plan or contract
 12 arose;

13 (b) the benefit is paid on account of age or length of
 14 service; and

15 (c) the plan or contract does not qualify under
 16 section 401(a), 403(a), 403(b), 408, or 409 of the Internal
 17 Revenue Code of 1954 (26 U.S.C. 401(a), 403(b), 408, or
 18 409)."

19 **Section 2.** Section 25-13-614, MCA, is amended to read:

20 "25-13-614. Earnings of judgment debtor. (1) No
 21 ~~earnings are exempt unless the judgment debtor complies with~~
 22 25-13-411. Earnings of a judgment debtor that are not
 23 subject to garnishment as provided in this section are
 24 exempt.

25 (2) Except as provided in subsections (3) and (4), the

1 maximum part of the aggregate disposable earnings of a
2 judgment debtor for any workweek that is subjected to
3 garnishment may not exceed the lesser of:

4 (a) the amount by which his disposable earnings for
5 the week exceed 30 times the federal minimum hourly wage in
6 effect at the time the earnings are payable; or

7 (b) 25% of his disposable earnings for that week.

8 (3) The restrictions of subsection (2) do not apply in
9 the case of an order or judgment for the maintenance or
10 support of any person, issued by a court of competent
11 jurisdiction or pursuant to an administrative procedure that
12 is established by state law, affords substantial due
13 process, and is subject to judicial review.

14 (4) (a) The maximum part of the aggregate disposable
15 earnings of a judgment debtor for any workweek that is
16 subject to garnishment to enforce an order described in
17 subsection (3) may not exceed:

18 (i) 50% of the judgment debtor's disposable earnings
19 for that week if he is supporting his spouse or dependent
20 child (other than a spouse or child for whom the order is
21 issued); or

22 (ii) 60% of the judgment debtor's disposable earnings
23 for that week if he is not supporting a spouse or dependent
24 child described in subsection (4)(a)(i).

25 (b) However, the amount stated in (4)(a)(i) may be 55%

1 and the amount stated in (4)(a)(ii) may be 65% if such
2 earnings are being garnished to enforce an order for
3 maintenance or support for a period prior to the 12-week
4 period that ends with the beginning of such workweek.

5 (5) For the purposes of this section, the definitions
6 of earnings, disposable earnings, and garnishment are as set
7 forth in 15 U.S.C. 1672."

8 NEW SECTION. **Section 3.** Repealer. Section 25-13-411,
9 MCA, is repealed.

10 NEW SECTION. **Section 4.** Effective date --
11 applicability. [This act] is effective on passage and
12 approval and applies to bankruptcy petitions in which
13 discharge takes place on or after [the effective date of
14 this act].

-End-

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ON JUDICIARY

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 3 Bachman
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5 the week exceed 30 times the federal minimum hourly wage in
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7 (b) 25% of his disposable earnings for that week.

8 (3) The restrictions of subsection (2) do not apply in
9 the case of an order or judgment for the maintenance or
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INTRODUCED BY

Bachin

Thompson

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE LAWS RELATING TO THE EXEMPTION OF WAGES AND RETIREMENT BENEFITS; TO INCLUDE RETIREMENT BENEFITS IN THE PROPERTY AN INDIVIDUAL MAY EXEMPT IN A BANKRUPTCY PROCEEDING; AMENDING SECTIONS 25-13-614 AND 31-2-106, MCA; REPEALING SECTION 25-13-411, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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32, and 80-2-245;

(2) the individual's right to receive unemployment compensation and unemployment benefits; and

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SENATE STANDING COMMITTEE REPORT

March 8, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 248 (third reading copy -- blue), respectfully report that HB 248 be amended and as so amended be concurred in:

Sponsor: McDonough (Mazurek)

1. Page 2, line 4.

Following: "from"

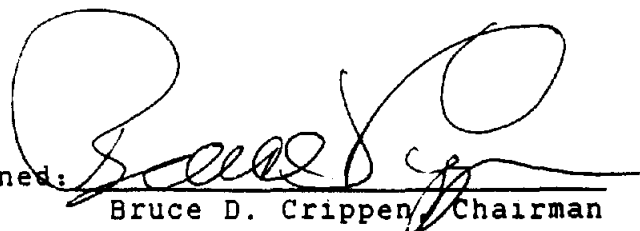
Insert: "or interest in"

2. Page 2, line 8.

Following: "service"

Insert: ", excluding that portion of contributions made by the individual within 1 year before the filing of the petition in bankruptcy, which portion exceeds 15% of the individual's gross income for that 1-year period"

AND AS AMENDED BE CONCURRED IN

Signed: 

Bruce D. Crippen, Chairman

SENATE

scrhb248.308

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INTRODUCED BY MCDONOUGH, MAZUREK, BACHINI, ADDY

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(3) the individual's right to receive benefits from OR INTEREST IN a private or governmental retirement, pension, stock bonus, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, EXCLUDING THAT PORTION OF CONTRIBUTIONS MADE BY THE INDIVIDUAL WITHIN 1 YEAR BEFORE THE FILING OF THE PETITION IN BANKRUPTCY, WHICH PORTION EXCEEDS 15% OF THE INDIVIDUAL'S GROSS INCOME FOR THAT 1-YEAR PERIOD, unless:

(a) the plan or contract was established by or under the auspices of an insider that employed the individual at the time the individual's rights under the plan or contract arose;

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