

25:2-1

LEGISLATIVE HISTORY CHECKLIST
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(Creditors claims & estates in
bankruptcy--exempt certain pensions &
profit sharing assets)

NJSA: 25:2-1

LAWS OF: 1993 **CHAPTER:** 177

BILL NO: A288/1462

SPONSOR(S) Penn and others

DATE INTRODUCED: Pre-filed

COMMITTEE: **ASSEMBLY:** Financial Institutions
SENATE: Commerce

AMENDED DURING PASSAGE: No **Assembly Committee**
Substitute enacted

DATE OF PASSAGE: **ASSEMBLY:** October 29, 1993
SENATE: June 17, 1993

DATE OF APPROVAL: July 9, 1993

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes
SENATE: Yes

FISCAL NOTE:

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

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ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, Nos. 288 and 1462

STATE OF NEW JERSEY

ADOPTED SEPTEMBER 14, 1992

By Assemblymen PENN, CATANIA, KAVANAUGH,
HARTMANN, McENROE, Gaffney, Kramer, Lustbader,
W. Brown, Roberts and Assemblywoman Vandervalk

1 AN ACT exempting certain pension or profit-sharing assets and
2 distributions from creditors and amending R.S.25:2-1.

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4 BE IT ENACTED *by the Senate and General Assembly of the*
5 *State of New Jersey:*

6 1. R.S.25:2-1 is amended to read as follows:

7 25:2-1. Conveyances of personal property in trust for use of
8 persons making them void as to creditors. [Every] a. Except as
9 provided in subsection b. of this section, every deed of gift and
10 every conveyance, transfer and assignment of goods, chattels or
11 things in action, made in trust for the use of the person making
12 the same, shall be void as against creditors.

13 b. Notwithstanding the provisions of any other law to the
14 contrary, any property held in a qualifying trust and any
15 distributions from a qualifying trust, regardless of the
16 distribution plan elected for the qualifying trust, shall be exempt
17 from all claims of creditors and shall be excluded from an estate
18 in bankruptcy, except that:

19 (1) no exemption shall be allowed for any preferences or
20 fraudulent conveyances made in violation of the "Uniform
21 Fraudulent Transfer Act," R.S.25:2-20 et seq., or any other State
22 or federal law; and

23 (2) no qualifying trust shall be exempt from the claims under
24 any order for child support or spousal support or of an alternate
25 payee under a qualified domestic relations order. However, the
26 interest of any alternate payee under a qualified domestic
27 relations order is exempt from all claims of any creditor of the
28 alternate payee. As used in this paragraph, the terms "alternate
29 payee" and "qualified domestic relations order" have the
30 meanings ascribed to them in section 414(p) of the federal
31 Internal Revenue Code of 1986 (26 U.S.C. §414(p)).

32 For purposes of this section, a "qualifying trust" means a trust
33 created or qualified and maintained pursuant to federal law,
34 including, but not limited to, section 401, 403, 408, or section 409
35 of the federal Internal Revenue Code of 1986 (26 U.S.C. §401,
36 403, 408 or 409).

37 (cf: R.S.25:2-1)

38 2. This act shall take effect immediately.

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Provides that certain pension or profit-sharing assets and
distributions are exempt from creditors.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

ASSEMBLY, No. 288

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1992 SESSION

By Assemblymen PENN and KAVANAUGH

1 AN ACT exempting certain pension or profit-sharing benefits
2 from legal process and supplementing chapter 17 of Title 2A of
3 the New Jersey Statutes.

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5 BE IT ENACTED *by the Senate and General Assembly of the*
6 *State of New Jersey:*

7 1. Money received by any debtor as pensioner of the United
8 States within three months next preceding the issuing of an
9 execution, attachment, or garnishment process may not be
10 applied to the payment of the debts of the pensioner when it is
11 made to appear by the affidavit of the debtor or otherwise that
12 the pension money is necessary for the maintenance of the
13 debtor's support or a family supported wholly or in part by the
14 pension money. The filing of the affidavit by the debtor, or the
15 making of such proof by the debtor, is prima facie evidence; and
16 it is the duty of the court in which the proceeding is pending to
17 release all pension moneys held by such attachment or
18 garnishment process, immediately, upon the filing of such
19 affidavit or the making of such proof.

20 2. a. Except as provided in subsection b. of this section, any
21 money or other assets payable to a participant or beneficiary
22 from, or any interest of any participant or beneficiary in, a
23 retirement or profit-sharing plan that is qualified under the
24 Internal Revenue Code (26 U.S.C. §401(a), 403(a), 403(b), 408,
25 409) is exempt from all claims of creditors of the beneficiary or
26 participant.

27 b. Any plan or arrangement described in subsection a. of this
28 section, is not exempt from the claims under any order for child
29 support or spousal support or of an alternate payee under a
30 qualified domestic relations order. However, the interest of any
31 alternate payee under a qualified domestic relations order is
32 exempt from all claims of any creditor of the alternate payee.
33 As used in this subsection, the terms "alternate payee" and
34 "qualified domestic relations order" have the meanings ascribed
35 to them in the Internal Revenue Code (26 U.S.C. §414(p)).

36 3. An individual debtor under the Bankruptcy Reform Act of
37 1978 (11 U.S.C. §101 et seq.) may exempt, in addition to any
38 other exemptions allowed under state law, any property listed in
39 11 U.S.C. §522(d)(10).

40 4. This act shall take effect immediately and shall apply to
41 any bankruptcy or other proceeding filed on or after July 1, 1991.

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STATEMENT

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45 This bill would exempt certain pension or profit-sharing
46 benefits from legal process such as attachment, execution,

1 garnishment and bankruptcy. It is the sponsor's intent that
2 individual debtors be protected from having all retirement assets
3 claimed by creditors.

4 Section 1 of the bill would exempt pension money from
5 execution, attachment or garnishment when the debtor files an
6 affidavit indicating that the pension money is necessary for his or
7 his family's support. Once an affidavit is filed, the court has the
8 duty to release any pension money held by the attachment or
9 garnishment process.

10 Section 2 of the bill would exempt money or assets of a
11 participant in a retirement or profit-sharing plan from all claims
12 of creditors of that participant. An exception is made for claims
13 of an alternate payee under a qualified domestic relations order
14 as defined by the Internal Revenue Code. Thus, a spouse, former
15 spouse, child or other dependent who has a right to receive
16 benefits under a profit-sharing plan, pursuant to a domestic
17 relations order, will maintain that right under the bill.

18 Section 3 of the bill would permit a debtor in bankruptcy to
19 exempt any property permitted under section 522 (d)(10) of the
20 federal bankruptcy law. Such property includes social security
21 benefits; veterans' benefits; disability or unemployment benefits;
22 alimony, support or maintenance; and stock bonus, pension or
23 profit-sharing plans.

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28 Exempts certain pension and profit-sharing benefits from legal
29 process.

ASSEMBLY, No. 1462
STATE OF NEW JERSEY

INTRODUCED MAY 21, 1992

By Assemblymen CATANIA and HARTMANN

1 AN ACT concerning certain pension funds and amending
2 R.S.25:2-1.

3

4 BE IT ENACTED *by the Senate and General Assembly of the*
5 *State of New Jersey:*

6 1. R.S.25:2-1 is amended to read as follows:

7 25:2-1. Conveyances of personal property in trust for use of
8 persons making them void as to creditors. [Every] a. Except as
9 provided in subsection b. of this section, every deed of gift and
10 every conveyance, transfer and assignment of goods, chattels or
11 things in action, made in trust for the use of the person making
12 the same, shall be void as against creditors.

13 b. A pension fund which is established and maintained pursuant
14 to federal law in a self-settled trust is exempt from creditors,
15 except that no exemption shall be allowed for any preferences or
16 fraudulent conveyances made in violation of the Uniform
17 Fraudulent Transfer Act (R.S.25:2-20 et seq.) or any other State
18 or federal law.

19 (cf: R.S.25:2-1)

20 2. This act shall take effect immediately.

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STATEMENT

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25 This bill would assure that retirement funds in self-settled
26 trusts, such as Individual Retirement Accounts, Keogh Plans, and
27 others, would be shielded from creditors and be exempt from
28 inclusion in a bankruptcy estate. Under current law, other types
29 of retirement funds (such as those established by corporations for
30 their employees) are exempt from attachment and from inclusion
31 in a bankruptcy estate, but the law governing pension funds
32 established by individuals is unsettled.

33 The bill provides that no exemption would be allowed for
34 fraudulent or improper conveyances made in violation of State or
35 federal law.

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40 Provides that IRA's and similar pension funds are exempt from
41 creditors and from claims in bankruptcy.

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

ASSEMBLY FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, Nos. 288 and 1462

STATE OF NEW JERSEY

DATED: SEPTEMBER 14, 1992

The Assembly Financial Institutions Committee reports favorably the Assembly Committee Substitute for Assembly, Nos. 288 and 1467.

This bill would assure that funds held in a qualifying trust and distributions from those funds, would be exempt from all claims of creditors and would be excluded from an estate in bankruptcy except that there would be no exemption for any preferences or fraudulent conveyances made in violation of the "Uniform Fraudulent Transfer Act," R.S.25:2-20 et seq., or from the claims under any order for child support or spousal support or of an alternate payee under a qualified domestic relations order.

SENATE COMMERCE COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 288 and 1462

STATE OF NEW JERSEY

DATED: MARCH 18, 1993

The Senate Commerce Committee reports favorably Assembly Bill Nos. 288 and 1462 (ACS).

This bill exempts funds held in a qualifying trust and distributions therefrom from all claims of creditors, including excluding them from an estate in bankruptcy, except that there would be no exemption or exclusion for any preferences or fraudulent conveyances made in violation of the "Uniform Fraudulent Transfer Act," R.S.25:2-20 et seq., or from the claims under any order for child support or spousal support or of an alternate payee under a qualified domestic relations order.

Qualifying trusts under the bill are individual retirement savings such as individual retirement accounts, simplified employee pensions, Keogh plans and employee stock ownership plans.