MEMO# 5855

May 10, 1994

U.S. SENATE PASSES LEGISLATION PROTECTING CERTAIN RETIREMENT ASSETS IN BANKRUPTCY

May 10, 1994 TO: PENSION COMMITTEE NO. 18-94 RE: U.S. SENATE PASSES LEGISLATION PROTECTING CERTAIN RETIREMENT ASSETS IN BANKRUPTCY ____ Attached are copies of the retirement plan-related provisions of S. 540, bankruptcy legislation that the U.S. Senate recently passed. As you know, the Supreme Court held in 1992 in Patterson v. Shumate that a debtor may exclude from the property of the bankruptcy estate retirement plan interests subject to the anti- alienation provisions of the Employee Retirement Income Security Act ("ERISA"). (See Institute Memorandum to Pension Members No. 13-92, dated June 16, 1992.) Section 207(c) of S. 540 would exclude from the bankruptcy estate "any nontransferable interest of the debtor in a qualified employer plan . . . to the extent not otherwise excluded from the debtor's estate." The definition of "qualified employer plan" includes a plan described in section 401(a), section 403(a) or section 403(b) of the Internal Revenue Code. Section 207 would also exempt wage withholding for repayment of certain plan loans from the automatic stay provisions of the Bankruptcy Code, and except plan loans from discharge in bankruptcy. In addition, section 801 of S. 540 would prohibit a state from imposing income tax on certain periodic pension distributions made to an individual who is not a resident or domiciliary of the state. A distribution from a qualified plan, a simplified employee pension (SEP), a section 403(b) arrangement, an individual retirement account (IRA), or an eligible deferred compensation plan under section 457 to a nonresident would be exempt from state income taxation if it were part of a series of substantially equal periodic payments (not less frequently than annually) for the life or life expectancy of the recipient or for the joint lives or joint life expectancies of the recipient and his or her beneficiary, or over a period of 10 years or more. The prohibition against state taxation of nonresidents generally would not apply to nonperiodic distributions; however, an individual who had attained at least age 59-1/2 at the time of receipt could make a one-time election to exempt up to $25,000 (indexed) from such taxation. We will keep you informed of developments. Kathy D. Ireland Associate Counsel - Pension Attachments