Maria E. Seaman *Legislative Service Commission*

Sub. H.B. 535

123rd General Assembly
(As Reported by H. Health, Retirement & Aging)

Reps. Willamowski, Terwilleger, Van Vyven, Hartnett, Grendell, Netzley, Clancy, A. Core, Mottley, Hollister, Vesper, Williams

BILL SUMMARY

- Permits a state retirement system or alternative retirement plan provider, pursuant to a court order dividing marital property, to make payments to a member's former spouse for the purpose of dividing a retirement benefit or lump sum payment.

CONTENT AND OPERATION

Background

Current law provides for division of marital property on termination of a marriage. Marital property includes retirement benefits or an interest in retirement benefits acquired by either or both of the spouses during the marriage. However, state law governing the state retirement systems and the alternative retirement program do not authorize withholding from a benefit except pursuant to a support order or to enforce restitution for certain crimes.[1]

The bill

(secs. 145.56, 742.47, 3305.08, 3307.71, 3309.66, and 5505.22)

The bill permits a public retirement program, which it defines as a state retirement system or the provider of an alternative retirement plan, to make

---

[1] *The five state retirement systems are the Public Employees Retirement System, Ohio Police and Fire Pension Fund, State Teachers Retirement System, School Employees Retirement System, and State Highway Patrol Retirement System. The alternative retirement program is established under current law for academic and administrative employees of public institutions of higher education and consists of retirement plans established by individual institutions.*

payments to a member's former spouse pursuant to a court order for the purpose of dividing a retirement benefit or lump sum payment.

Court order for the division of marital property

(secs. 145.27(E)(5), 742.41(E)(5), 3105.81, 3105.82, 3105.821, 3105.90, 3305.20, 3307.21(E)(5), 3309.22(E)(5), and 5505.04(E)(5))

Under the bill, a court order requiring a public retirement program to make payments for the purpose of dividing a retirement benefit must meet all of the following requirements:

(1) Be on a form jointly created by the state retirement systems;

(2) Set forth the name and address of the public retirement program subject to the order or, if the court determines that the retirement program participant has contributions on deposit with more than one public retirement program, the name and address of each public retirement program that is potentially subject to the order;[2]

(3) Set forth the names, Social Security numbers, and current addresses of the participant and the person to whom payments are to be made, referred to in the bill as the alternate payee;[3]

(4) Specify the amount to be paid the alternate payee as one of the following:

(a) As both a monthly dollar amount should the participant elect a benefit and as a one-time payment should the participant elect a lump sum payment;

(b) As a percentage of a fraction determined as follows of a monthly benefit or lump sum payment:

---

[2] *The bill defines a "participant" as a member, contributor, retirant, or disability benefit recipient who is or will be entitled to a benefit or lump sum payment under a state retirement system or an academic or administrative employee who elects to participate in an alternative retirement plan. (Sec. 3105.80.)*

[3] *The "alternate payee" is defined by the bill as the person who is to receive one or more payments from a public retirement program benefit or lump sum payment under a court order to divide marital property. (Sec. 3105.80.)*

(i) The numerator of the fraction is the number of years during which the participant was both a member of a public retirement program and married to the alternate payee;

(ii) The denominator, determined by the public retirement program at the time the participant elects to take the benefit or payment, is the participant's total years of service or, in the case of a participant in an alternative retirement plan, years of participation in the plan.

(5) Require an individual who is a participant or alternate payee to notify the public retirement program in writing of a change in the individual's mailing address;

(6) Notify the alternate payee of the conditional nature of the right to a benefit or payment and the possible reduction or termination of the amount paid to the alternate payee by the public retirement program (see "***Reduction or termination of an alternate payee's payment***" below);

(7) Apply to payments made by the public retirement program after retention of an order (see "***Retention of an order***" below).

The monthly benefit used under (4)(b) above to determine the amount to be paid an alternate payee is to be whichever of the following applies:

(1) If the participant is receiving a monthly benefit, the monthly benefit is to be the benefit the participant is receiving at the time the decree of divorce or dissolution becomes final;

(2) If the participant has applied for but is not yet receiving a monthly benefit, the monthly benefit is to be the benefit for which the participant is eligible;

(3) If the participant has not applied for a benefit, the monthly benefit is to be the benefit calculated at the time the participant elects to take it.

The bill provides that on the written request of an alternate payee a retirement program must furnish information on the amount and status of any amounts payable to the alternate payee.

Division of a retirement benefit or payment

(secs. 3105.85 and 3105.87)

The bill specifies that the total amount to be paid to the alternate payee must not exceed 50% of a benefit or lump sum payment or if the withholding is to

be from more than one benefit or lump sum payment, fifty per cent of the total of the benefits or lump sum payments.

Under the bill, if a participant's benefit or lump sum payment is or will be subject to more than one order that divides it as part of a division of martial property, the public retirement program is not to withhold an aggregate amount for all the orders that exceeds 50% of the benefit or payment. If the benefit or lump sum payment is or will be subject to a division of marital property order that includes the benefit or lump sum payment and to one or more withholding orders that provide for child support payments, the public retirement program is prohibited from withholding an aggregate amount for all such division of marital property orders that exceeds the difference between 50% of the benefit or payment and the percentage of the benefit or payment that is or will be paid under the child support orders that provides for child support payments.

The bill permits the court to order a public retirement program to provide information from a participant's personal history record necessary to determine the monthly payments or lump sum payment to be paid the alternate payee.[4]

Transmission of an order

(sec. 3105.88)

The bill requires the clerk of courts to transmit a certified copy of an order to each public retirement program named in the order. If the clerk fails to transmit an order, the public retirement program named in the order is not required to administer it.

Retention of an order

(secs. 145.571(B), 742.462(B), 3105.88, 3307.721(B), 3309.671(B), and 5505.261(B))

On receipt of an order for the division of a retirement benefit or payment due to termination of a marriage, the public retirement program must determine whether the order meets the requirements set forth in the bill. The retirement program must retain in the participant's record an order the retirement program

---

[4] *"Personal history record" means information maintained by the public retirement program on an individual who is a member, former member, contributor, former contributor, retirant, or beneficiary that includes the address, telephone number, Social Security number, record of contributions, correspondence with the system, or other information determined by a retirement board to be confidential. (Secs. 145.27, 742.41, 3305.20, 3307.21, 3309.22, and 5505.04.)*

determines meets the requirements. The retirement program is not to retain an order unless it is filed in a court with jurisdiction in this state.

The bill requires the retirement program to return to the court that issued the order, not later than 60 days after receipt, any order the system determines does not meet the statutory requirements. If the retirement program returns an order, the clerk of courts must notify the counsel of record that the order was not retained by the retirement program.

Reduction or termination of an alternate payee's payment

(secs. 145.571(F), 742.462(F), 3105.85(B), 3105.86, 3305.21(F), 3307.721(F), 3309.671(F), and 5505.261(F))

Under the bill, if a participant's benefit or lump sum payment is or will be subject to more than one order dividing it or such an order and a child support withholding order, the retirement program must, after determining that the amounts that are or will be withheld will cause the benefit to fall below the statutory limits, do all of the following:

(1) Establish, the priority in which the orders are or will be paid by the retirement program (see "***Prioritizing orders***" below);

(2) Reduce the amount paid to the alternate payee based on the established priority;

(3) Notify, by regular mail, a participant and alternate payee of any reduction in the payee's benefit or payment.

Under the bill, the alternate payee's rights under an order dividing a retirement benefit or lump sum payment is terminated on the earlier of the following:

(1) The death of the participant;

(2) The death of the alternate payee;

(3) The termination of a benefit paid to a participant under the laws governing the public retirement programs.

Prioritizing orders

(secs. 145.571(G), 742.462(G), 3305.21(G), 3307.721(G), 3309.671(G), and 5505.261(G))

The bill specifies that a withholding or deduction notice for child support has priority over all other orders and is to be complied with in accordance with child support enforcement laws. All other orders are entitled to priority in order of earliest retention by the retirement program.[5]

Payment under an order

(secs. 145.571, 742.462, 3105.83, 3105.84, 3305.21, 3307.721, 3309.671, and 5505.261)

Under the bill, a public retirement program must comply with a retained order at the following times, as appropriate:

(1) If the participant has applied for or is receiving a benefit or has applied for but not yet received a lump sum payment, as soon as practicable;

(2) If the participant has not applied for a benefit or lump sum payment, on application for a benefit or lump sum payment.

The bill specifies that an alternative payee has no right or privilege under the provisions of the Revised Code governing public retirement programs that is not provided in those provisions. It also provides that a court order providing for division of a retirement benefit may not require a public retirement program to take any action or provide any benefit, allowance, or payment not authorized under the law governing the program.

If a public retirement program transfers a participant's service credit or contributions made by or on behalf of a participant, or in the case of an alternative retirement program the account balance of a participant, to another retirement program not named in the order, the retirement program must (1) notify the court that issued the order by sending the court a copy of the order and the name and address of the retirement program to which the transfer was made, and (2) send a copy of the order to the retirement program to which the transfer was made.

Under the bill, if a retirement program receives a participant's service credit or contributions, or in the case of an alternative retirement plan, a participant's account balance, and a copy of an order for the division of a retirement benefit, the

---

[5] *Current law does not specify that a pension or benefit may be assignable or not exempt from garnishment to pay on a child support order received from another state. The bill specifically permits assignment and garnishment for child support orders of another state.*

retirement program must administer the order as if it were the retirement program named in the order.

The bill authorizes the board of the retirement program that is or will be paying the benefit or lump sum payment to withhold from any benefit or payment that is subject to an order an amount determined by the retirement program to be necessary to defray the cost of administering the order. This amount is to be divided equally between the participant and the alternate payee.

Retirement programs exempt from liability

(secs. 145.571(H), 742.462(H), 3305.21(H), 3307.721(H), 3309.671(H), and 5505.261(H))

The bill specifies that the public retirement programs are not liable in civil damages for loss resulting from any action or failure to act in regard to retaining and complying with an order to divide a retirement benefit.

Courts jurisdiction

(sec. 3105.89)

The bill specifies that the court is to retain jurisdiction to modify or supervise the implementation of an order that divides a retirement benefit.

Under the bill, the court may modify an order that provides for division of marital property on termination of a marriage and was effective prior to the bill's effective date for the purpose of enforcing the order or carrying out the manifest intentions of the parties. A modified order must meet the bill's requirements.

Recovery of payments

(secs. 145.563, 742.64, 3305.22, 3307.751, 3309.70, and 5505.34)

Current law requires an individual who is a member, former member, contributor, former contributor, retirant, or beneficiary of the Public Employees Retirement System, State Teachers Retirement System, or School Employees Retirement System to repay to the retirement system any benefit received to which the individual is not entitled. If the individual fails to make the repayment, the

retirement system is authorized to withhold the amount due from any future benefit.[6]

The bill requires an individual who is an alternate payee to repay any payment to which the individual is not entitled and requires the retirement system or entity providing an alternative retirement plan to withhold the amount due from future payments if the individual fails to make the repayment.[7]

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	01-11-00	p.	1493
Reported, H. Health, Retirement & Aging	04-12-00	p.	1822

H0535-RH.123/ejs

[6] *Current law governing the Ohio Police and Fire Pension Fund and State Highway Patrol Retirement System does not specifically provide for those retirement systems to recover erroneous benefits.*

[7] *This provision applies to all five state retirement systems.*