



S.B. 81

123rd General Assembly
(As Introduced)

Sens. **McLin, Cupp, Furney, Mallory**

BILL SUMMARY

- Requires each of the state retirement systems to withhold amounts specified in qualified domestic relations orders from amounts being paid as benefits or return of contributions.

CONTENT AND OPERATION

Background

Prohibition against assignment of retirement benefits

Under current law governing Ohio's five state retirement systems benefits are generally not subject to legal process, including execution, garnishment, or attachment.¹ The exceptions are that money can be withheld from a benefit pursuant to an administrative or court-issued support order, or under specified circumstances, a restitution order (see **COMMENT 1**).

Qualified domestic relations orders

The Internal Revenue Code recognizes a "qualified domestic relations order" (QDRO) for the purpose of federal law regulating private pensions (see **COMMENT 2**) as a domestic relations order that creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or part of the benefits payable with respect to a participant under a retirement plan (100 Stat. 2085, 26 U.S.C.A. §414(p) (1996)). An "alternate payee" is any spouse, former spouse, child, or other dependent of a participant in a retirement plan who is recognized by a domestic relations order as having a right

¹ *Ohio's five state retirement systems are the Police and Firemen's Disability and Pension Fund, Public Employees Retirement System, School Employees Retirement System, State Highway Patrol Retirement System, and State Teachers Retirement System.*

to receive all or a portion of the benefits payable under the plan to the participant. "Domestic relations order" means any judgment, decree, or order that relates to the provision of child support, spousal support, or marital property rights to a spouse, former spouse, child, or other dependent of a participant in a retirement plan and is made pursuant to state domestic relations law.

To qualify as a QDRO under federal tax law, a domestic relations order must specify (1) the name and last known mailing address of the participant and each alternate payee, (2) the amount or percentage of the participant's benefits to be paid by the retirement plan to each alternate payee, or the method of determining the amount or percentage, (3) the number of payments or the period to which the order applies, and (4) the name of the retirement plan. A domestic relations order will not qualify as a QDRO if it requires the retirement plan to do any of the following:

(1) Provide any type or form of benefit, or any option, that the plan does not otherwise provide;

(2) Provide increased benefits not otherwise available;

(3) Pay benefits to an alternate payee that are already required to be paid to another alternate payee under another order previously determined to be a QDRO.

Operation of the bill

The bill makes the state retirement systems subject to QDROs. Each retirement system board is required to withhold the amount specified in a QDRO at the time the individual who is subject to it has received or is receiving a retirement benefit, or the individual requests a refund of the individual's contributions. Under the bill, "qualified domestic relations order" has the same meaning as under federal law.

COMMENT

1. Under current law, if an individual who is subject to a spousal or child support order is receiving a retirement benefit, or is to receive or has received a refund of the individual's account with the retirement system, a portion of the benefit or refund may be withheld to satisfy the order (Revised Code sections 3111.23(B)(3)(a) and 3113.21(D)(3)(a)).

The person's right to a retirement benefit is subject to a restitution order under two conditions:

(1) The holder of the right to a retirement benefit has been convicted of theft in office and the property or services stolen is owned by federal, state, or local agency, political party, or campaign fund;

(2) The holder has been convicted of specified sex offenses and the court orders restitution for the victim.

2. The Internal Revenue Code provisions that recognize QDROs are applicable to private pension plans. Government plans are not required to comply with the federal law. But neither are they prohibited from adopting comparable provisions.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-23-99	p. 144

S0081-I.123/rss