

FIRST REGULAR SESSION

SENATE BILL NO. 403

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CROWELL.

Read 1st time January 30, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

1520S.02I

AN ACT

To repeal sections 104.312 and 104.1051, RSMo, and to enact in lieu thereof two new sections relating to orders for division of benefits under the Missouri state employees' retirement system.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 104.312 and 104.1051, RSMo, are repealed and two
2 new sections enacted in lieu thereof, to be known as sections 104.312 and
3 104.1051, to read as follows:

104.312. 1. The provisions of subsection 2 of section 104.250, subsection
2 2 of section 104.540, subsection 2 of section 287.820, RSMo, and section 476.688,
3 RSMo, to the contrary notwithstanding, any pension, annuity, benefit, right, or
4 retirement allowance provided pursuant to this chapter, chapter 287, RSMo, or
5 chapter 476, RSMo, is marital property and after August 28, 1994, a court of
6 competent jurisdiction may divide the pension, annuity, benefits, rights, and
7 retirement allowance provided pursuant to this chapter, chapter 287, RSMo, or
8 chapter 476, RSMo, between the parties to any action for dissolution of marriage.
9 A division of benefits order issued pursuant to this section:

10 (1) Shall not require the applicable retirement system to provide any form
11 or type of annuity or retirement plan not selected by the member and not
12 normally made available by that system;

13 (2) Shall not require the applicable retirement system to commence
14 payments until the member submits a valid application for an annuity and the
15 annuity becomes payable in accordance with the application;

16 (3) Shall identify the monthly amount to be paid to the alternate payee,
17 which shall be expressed as a percentage and which shall not exceed fifty percent
18 of the amount of the member's annuity accrued during all or part of the time

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

19 while the member and alternate payee were married; and which shall be based
20 on the member's vested annuity on the date of the dissolution of marriage or an
21 earlier date as specified in the order, which amount shall be adjusted
22 proportionately if the member's annuity is reduced due to early retirement **or the**
23 **member's annuity is reduced pursuant to section 104.395 under an**
24 **annuity option in which the member named the alternate payee as**
25 **beneficiary prior to the dissolution of marriage or pursuant to section**
26 **104.090 under an annuity option in which the member on or after**
27 **August 28, 2007, named the alternative payee as beneficiary prior to the**
28 **dissolution of marriage**, and the percentage established shall be applied to the
29 pro rata portion of any lump sum distribution pursuant to subsection 6 of section
30 104.335, accrued during the time while the member and alternate payee were
31 married;

32 (4) Shall not require the payment of an annuity amount to the member
33 and alternate payee which in total exceeds the amount which the member would
34 have received without regard to the order;

35 (5) Shall provide that any benefit formula increases, additional years of
36 service, increased average compensation or other type of increases accrued after
37 the date of the dissolution of marriage shall accrue solely to the benefit of the
38 member; except that on or after September 1, 2001, any annual benefit increase
39 shall not be considered to be an increase accrued after the date of termination of
40 marriage and shall be part of the monthly amount subject to division pursuant
41 to any order issued after September 1, 2001;

42 (6) Shall terminate upon the death of either the member or the alternate
43 payee, whichever occurs first;

44 (7) Shall not create an interest which is assignable or subject to any legal
45 process;

46 (8) Shall include the name, address and Social Security number of both
47 the member and the alternate payee, and the identity of the retirement system
48 to which it applies;

49 (9) Shall be consistent with any other division of benefits orders which are
50 applicable to the same member.

51 2. A system established by this chapter shall provide the court having
52 jurisdiction of a dissolution of marriage proceeding or the parties to the
53 proceeding with information necessary to issue a division of benefits order
54 concerning a member of the system, upon written request from either the court,
55 the member or the member's spouse, which cites this section and identifies the

56 case number and parties.

57 3. A system established by this chapter shall have the discretionary
58 authority to reject a division of benefits order for the following reasons:

59 (1) The order does not clearly state the rights of the member and the
60 alternate payee;

61 (2) The order is inconsistent with any law governing the retirement
62 system.

63 4. The amount paid to an alternate payee under an order issued pursuant
64 to this section shall be based on [what the member would have received had the
65 member elected coverage under the closed plan pursuant to section 104.1015
66 regardless of the actual election made by the member pursuant to that section]
67 **the plan the member was in on the date of the dissolution of marriage;**
68 except that any annual benefit increases subject to division shall be based on the
69 actual annual benefit increases received after the retirement plan election.

104.1051. 1. Any annuity provided pursuant to the year 2000 plan is
2 marital property and a court of competent jurisdiction may divide such annuity
3 between the parties to any action for dissolution of marriage if at the time of the
4 dissolution the member has at least five years of credited service pursuant to
5 sections 104.1003 to 104.1093. A division of benefits order issued pursuant to
6 this section:

7 (1) Shall not require the applicable retirement system to provide any form
8 or type of annuity or retirement plan not selected by the member;

9 (2) Shall not require the applicable retirement system to commence
10 payments until the member's annuity starting date;

11 (3) Shall identify the monthly amount to be paid to the former spouse,
12 which shall be expressed as a percentage and which shall not exceed fifty percent
13 of the amount of the member's annuity accrued during all or part of the period
14 of the marriage of the member and former spouse and which shall be based on the
15 member's vested annuity on the date of the dissolution of marriage or an earlier
16 date as specified in the order, which amount shall be adjusted proportionately
17 upon the annuity starting date if the member's annuity is reduced due to the
18 receipt of an early retirement annuity **or the member's annuity is reduced**
19 **pursuant to section 104.1027 under an annuity option in which the**
20 **member named the alternate payee as beneficiary prior to the**
21 **dissolution of marriage;**

22 (4) Shall not require the payment of an annuity amount to the member
23 and former spouse which in total exceeds the amount which the member would

24 have received without regard to the order;

25 (5) Shall provide that any annuity increases, additional years of credited
26 service, increased final average pay, increased pay pursuant to subsections 2 and
27 5 of section 104.1084, or other type of increases accrued after the date of the
28 dissolution of marriage and any temporary annuity received pursuant to
29 subsection 4 of section 104.1024 shall accrue solely to the benefit of the member;
30 except that on or after September 1, 2001, any cost-of-living adjustment (COLA)
31 due after the annuity starting date shall not be considered to be an increase
32 accrued after the date of termination of marriage and shall be part of the monthly
33 amount subject to division pursuant to any order issued after September 1, 2001;

34 (6) Shall terminate upon the death of either the member or the former
35 spouse, whichever occurs first;

36 (7) Shall not create an interest which is assignable or subject to any legal
37 process;

38 (8) Shall include the name, address, date of birth, and Social Security
39 number of both the member and the former spouse, and the identity of the
40 retirement system to which it applies;

41 (9) Shall be consistent with any other division of benefits orders which are
42 applicable to the same member.

43 2. A system shall provide the court having jurisdiction of a dissolution of
44 a marriage proceeding or the parties to the proceeding with information necessary
45 to issue a division of benefits order concerning a member of the system, upon
46 written request from either the court, the member, or the member's spouse, citing
47 this section and identifying the case number and parties.

48 3. A system shall have the discretionary authority to reject a division of
49 benefits order for the following reasons:

50 (1) The order does not clearly state the rights of the member and the
51 former spouse;

52 (2) The order is inconsistent with any law governing the retirement
53 system.

54 **4. Any member of the closed plan who elected the year 2000 plan**
55 **pursuant to section 104.1015 and then becomes divorced and subject to**
56 **a division of benefits order shall have the division of benefits order**
57 **calculated pursuant to the provisions of the year 2000 plan.**

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