

HOUSE BILL REPORT

HB 1211

*As Reported By House Committee on:
Judiciary*

Title: An act relating to the assignment of retirement benefits.

Brief Description: Revising retirement benefits.

Sponsor(s): Representatives Belcher, Hine, Silver, G. Fisher, Fraser, Winsley, Padden and Phillips.

Brief History:

Reported by House Committee on:
Judiciary, January 29, 1991, DPS.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *That Substitute House Bill No. 1211 be substituted therefore, and the substitute bill do pass.*
Signed by 16 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Paris, Assistant Ranking Minority Member; Broback; Forner; Hargrove; Inslee; R. Meyers; Mielke; H. Myers; Riley; Scott; Tate; Vance; and Wineberry.

Staff: Pat Shelledy (786-7149).

Background: When a married couple gets divorced, vested retirement benefits are divided according to community property rules. Until 1977, the Department of Retirement Systems (DRS) was responsible for dividing the retirement benefits according to dissolution decrees or other court orders. DRS was required under various retirement acts to make direct payments to the nonmember spouse (obligee) according to the property division in the divorce decree.

In addition to community property divisions, the court can order spousal maintenance based upon equitable principles.

In 1977, the Legislature passed a bill that was intended to clarify the department's responsibilities when making direct payments. The bill was also passed to create a collection mechanism for obligees whose ex-spouses were not paying the court ordered spousal maintenance. The bill created a mechanism call the "mandatory benefits assignment order"

(MBAO). That mechanism placed responsibility upon the obligee to obtain a court order requiring the department to make specified payments to the obligee from the obligor's nonexempt disposable benefits. The obligee could not obtain an order until the member spouse (obligor) was 15 days delinquent in an amount of \$100 or more. DRS could not withhold more than 50 percent of the obligor's periodic retirement benefits. The 50 percent cap provisions refer to the garnishment statutes, but the garnishment statutes do not cross-reference the MBAO provisions. If an obligor is subject to two or more MBAOs, DRS must apportion the nonexempt disposable benefits among the obligees equally. Obligees must substantially comply with a statutory MBAO form. DRS may collect administrative fees for processing the MBAOs. DRS is not liable to the obligor for wrongful withholding if DRS complies with the court order.

The 1977 law eliminated direct payment of the community property division. As a result, obligees no longer automatically receive the benefits they had received automatically under the prior direct benefit scheme.

The law requires DRS to notify the obligee if the obligor requests a lump sum withdrawal of accumulated contributions but does not provide a mechanism to legally prevent DRS from disbursing those sums to the obligor, even if the obligor intends to subvert the court order by withdrawing all the retirement benefits.

Summary of Substitute Bill: The Department of Retirement Systems (DRS) is required to make direct payments of court ordered community property divisions of retirement benefits to the ex-spouses (obligees) of the retirement system members (obligors). The obligee spouse may still obtain a mandatory assignment of benefits order (MBAO) to enforce collection of delinquent spousal maintenance. The provisions governing each mechanism are separated to reduce confusion. An obligee may obtain a restraining order pending resolution of the dissolution restraining DRS from disbursing funds to the obligor until a court rules on the appropriate distribution between the parties.

Mandatory Assignment of Benefits Orders (MBAO) amendments. DRS may not consider any withholding that is elective to the obligor to calculate the obligor's disposable benefits. The term "disposable benefits" is amended accordingly. DRS may withhold elective withholdings after deducting the amount due the obligee under the MBAO. The 50 percent cap on withdrawing funds to satisfy the MBAO is clarified to distinguish it from garnishments. The garnishment statute is amended to reflect that garnishments for spousal maintenance have a 50 percent cap. If the obligor's

retirement benefits are subject to two or more MBAOs, DRS must apportion the various amounts proportionately. Any obligee may seek a court order reapportioning the division upon notice to all parties. The court order form in the statute is amended to provide that the obligees must comply with the statutory format, not just substantially comply. Any funds DRS collects from the fee for processing the MBAOs will be placed in DRS' expense account. If DRS complies with the court order DRS will not be liable to the obligee as well as the obligor for wrongful withholding.

Direct Payment of Community Property Divisions of Retirement Benefits. The court may not order DRS to pay more than 75 percent of the periodic retirement benefits to the obligee. DRS must notify obligees who obtained divorce decrees after the 1977 act's effective date, but before this act's effective date, that obligees may receive direct payment of retirement benefits if their court orders comply or are modified to comply with this act's requirements. Obligees must obtain court orders that comply with specific language necessary for DRS to adequately administer the orders or DRS will not have to comply with the orders. DRS may collect up to a \$75 setup fee and may charge \$6 for subsequent disbursements. The obligor and obligee will share the fee equally. Money collected will be deposited in DRS' expense fund. Benefits cease upon the obligor's death except that if the court order so provides, the obligee may obtain a lump sum death benefit. If allowed under federal confidentiality laws, DRS must provide the obligee spouse with timely information about the account so the obligee can comply with federal tax requirements. Several technical and procedural sections and definitions are created to enable DRS to effectively administer the act. DRS will not be liable to the obligor or obligee for wrongful withholding if DRS complies with the court order.

Substitute Bill Compared to Original Bill: A technical change clarifies that the court may not force a member of the retirement systems to choose between a lump sum benefit or periodic benefits.

Fiscal Note: Requested January 17, 1991.

Appropriation: \$78,049.00 to Department of Retirement Systems.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: Restoration of direct payment of court awarded community property divisions of retirement benefits reflects the intent of the Legislature and is equitable

while the technical changes assist the department in implementing the bill.

Testimony Against: None.

Witnesses: Paul Neal, Department of Retirement Systems (in favor of bill); and Kim Prochnau, Washington State Bar Association, Family Law Section (supports).