

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2119 Session of
1993

INTRODUCED BY OLIVER, DeWEESE, ROEBUCK, MICHLOVIC, McNALLY,
HUGHES, THOMAS, LAUGHLIN, BEBKO-JONES, WILLIAMS, ROONEY,
TRELLO, RAYMOND, JOSEPHS, TIGUE, LEDERER, VEON, JAMES,
CAWLEY, STETLER AND HENNESSEY, OCTOBER 6, 1993

REFERRED TO COMMITTEE ON STATE GOVERNMENT, OCTOBER 6, 1993

AN ACT

1 Amending Title 71 (State Government) of the Pennsylvania
2 Consolidated Statutes, providing for attachments pursuant to
3 domestic relations orders.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Section 5102 of Title 71 of the Pennsylvania
7 Consolidated Statutes is amended by adding definitions to read:
8 § 5102. Definitions.

9 The following words and phrases as used in this part, unless
10 a different meaning is plainly required by the context, shall
11 have the following meanings:

12 * * *

13 "Alternate payee." Any spouse, former spouse, child or other
14 dependent of a member who is recognized by a domestic relations
15 order as having a right to receive all or a portion of the
16 benefits payable under this part.

17 * * *

1 "Domestic relations order." Any judgment, decree or order,
2 including approval of a property settlement agreement, which
3 relates to the provision of child or spousal support, separate
4 maintenance, alimony payments or marital property rights to a
5 spouse, former spouse, child or other dependent of a member and
6 is made pursuant to a domestic relations law.

7 * * *

8 "Irrevocable beneficiary." The person or persons permanently
9 designated in writing to the State Employees' Retirement Board
10 by a member under an approved domestic relations order to
11 receive all or a portion of his or her accumulated deductions or
12 lump sum benefit upon the death of that member.

13 "Irrevocable survivor annuitant." The person or persons
14 permanently designated in writing to the State Employees'
15 Retirement Board by a member under a joint and survivor annuity
16 option to receive an annuity upon the death of that member
17 pursuant to an approved domestic relations order.

18 * * *

19 "Secretary." The Secretary of the State Employees'
20 Retirement Board.

21 * * *

22 Section 2. Section 5953(a) of Title 71 is amended to read:

23 § 5953. Taxation, attachment and assignment of funds.

24 (a) General rule.--

25 (1) Except as provided in paragraph (2), the right of a
26 person to any benefit or right accrued or accruing under the
27 provisions of this part and the moneys in the fund are hereby
28 exempt from any State or municipal tax, levy and sale,
29 garnishment, attachment, spouse's election, or any other
30 process whatsoever except for a set-off by the Commonwealth

1 in the case provided in subparagraph (i), and shall be
2 unassignable except:

3 (i) To the Commonwealth in the case of a member who
4 is terminating State service and has been determined to
5 be obligated to the Commonwealth for the repayment of
6 money owed on account of his employment or to the fund on
7 account of a loan from a credit union which has been
8 satisfied by the board from the fund.

9 (ii) To a credit union as security for a loan not to
10 exceed \$750 and interest not to exceed 6% per annum
11 discounted and/or fines thereon if the credit union is
12 now or hereafter organized and incorporated under the
13 laws of this Commonwealth and the membership of such
14 credit union is limited solely to officials and employees
15 of the Commonwealth and if such credit union has paid to
16 the fund \$3 for each such assignment.

17 (iii) To alternate payees as set forth in a domestic
18 relations order which has been certified as an approved
19 domestic relations order by the secretary or his
20 designated representative.

21 (2) Rights under this part shall be subject to
22 forfeiture as provided by the act of July 8, 1978 (P.L.752,
23 No.140), known as the ["Public Employee Pension Forfeiture
24 Act.["]

25 * * *

26 Section 3. Title 71 is amended by adding sections to read:
27 § 5953.1. Approval of domestic relations orders.

28 (a) Certification.--A domestic relations order shall be
29 certified as an approved domestic relations order by the
30 secretary or his designated representative only if that order

1 meets all of the following:

2 (1) Requires the system to provide any type or form of
3 benefit or any option already provided under this part.

4 (2) Requires the system to provide no more than the
5 total amount of benefits that the member would otherwise
6 receive (determined on the basis of actuarial value) unless
7 increased benefits are paid to the member or alternate payee
8 based upon cost-of-living increases or increases based on
9 other than actuarial values.

10 (3) Specifies the amount or percentage of the member's
11 benefits to be paid by the system to each such alternate
12 payee or the manner in which that amount or percentage is to
13 be determined.

14 (4) Specifies the retirement option or options to be
15 selected by the member at retirement or states that the
16 member may select any retirement option offered by the system
17 at retirement.

18 (5) Specifies the name and last known mailing address,
19 if any, of the member and the name and mailing address of
20 each alternate payee covered by the order and states that it
21 is the responsibility of each alternate payee to keep a
22 current mailing address on file with the system.

23 (6) Does not grant alternate payees any of the rights,
24 options or privileges of a member under this part.

25 (b) Approval.--Within a reasonable period after receipt of a
26 domestic relations order, the secretary or his designated
27 representative shall determine whether the order is an approved
28 domestic relations order as defined under section 5102 (relating
29 to definitions) and notify the member and each alternate payee
30 of the determination. Notwithstanding any other provision of

law, the exclusive remedy of any member or alternate payee aggrieved by a decision of the secretary or his designated representative under this section shall be the right to a board adjudication under 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) with appeal therefrom to the Commonwealth Court under 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action) and 42 Pa.C.S. § 763(a)(1) (relating to direct appeals from government agencies).

§ 5953.2. Irrevocable beneficiary.

Notwithstanding any other provision of this part, a domestic relations order may provide for an irrevocable beneficiary. A domestic relations order requiring the nomination of an irrevocable beneficiary shall be deemed to be one that requires a member to nominate an alternate payee as a beneficiary and that prohibits the removal or change of that beneficiary without approval of a court of competent jurisdiction. Such a domestic relations order may be certified as an approved domestic relations order by the secretary or his designated representative after the member makes the nomination, in which case the irrevocable beneficiary so ordered by the court cannot be changed by the member without approval by the court.

§ 5953.3. Irrevocable survivor annuitant.

Notwithstanding any other provisions of this part, a domestic relations order may provide for an irrevocable survivor annuitant. A domestic relations order requiring the designation of an irrevocable survivor annuitant shall be deemed to be one that requires a member to designate an alternate payee as a survivor annuitant and that prohibits the removal or change of that survivor annuitant without approval of a court of competent

1 jurisdiction. Such a domestic relations order may be certified
2 as an approved domestic relations order by the secretary or his
3 designated representative, in which case the irrevocable
4 survivor annuitant so ordered by the court cannot be changed by
5 the member without approval by the court.

6 § 5953.4. Amendment of approved domestic relations orders.

7 (a) Amendment.--In the event that the alternate payee
8 predeceases the member and there are benefits payable to the
9 alternate payee, the divorce court may amend the approved
10 domestic relations order to substitute a person for the deceased
11 alternate payee to receive any benefits payable to the deceased
12 alternate payee.

13 (b) Recertification.--If a divorce court amends the approved
14 domestic relations order for any reason, the amended order must
15 be submitted for recertification as an approved domestic
16 relations order as set forth in this part.

17 Section 4. This act shall take effect immediately.