

FIRST REGULAR SESSION

HOUSE BILL NO. 391

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DEMPSEY.

Read 1st time January 11, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

1339L.01I

AN ACT

To repeal sections 104.312 and 104.1051, RSMo, and to enact in lieu thereof two new sections relating to the division of retirement benefits.

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Section A. Sections 104.312 and 104.1051, RSMo, are repealed and two new sections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

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

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

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 (3) Shall identify the monthly amount to be paid to the alternate payee, which shall be
16 expressed as a percentage and which shall not exceed fifty percent of the amount of the member's
17 annuity accrued during all or part of the time while the member and alternate payee were
18 married; and which shall be based on the member's vested annuity on the date of the dissolution
19 of marriage or an earlier date as specified in the order, which amount shall be adjusted
20 proportionately if the member's annuity is reduced due to early retirement **or the member's**
21 **annuity is reduced under section 104.395 under an annuity option in which the member**
22 **named the alternative payee as beneficiary prior to the dissolution of marriage or under**
23 **section 104.090 under an annuity option in which the member on or after August 28, 2007,**
24 **named the alternative payee as beneficiary prior to the dissolution of marriage,** and the
25 percentage established shall be applied to the pro rata portion of any lump sum distribution
26 pursuant to subsection 6 of section 104.335, accrued during the time while the member and
27 alternate payee were married;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (4) Shall not require the payment of an annuity amount to the member and former spouse
20 which in total exceeds the amount which the member would have received without regard to the
21 order;

22 (5) Shall provide that any annuity increases, additional years of credited service,
23 increased final average pay, increased pay pursuant to subsections 2 and 5 of section 104.1084,
24 or other type of increases accrued after the date of the dissolution of marriage and any temporary
25 annuity received pursuant to subsection 4 of section 104.1024 shall accrue solely to the benefit
26 of the member; except that on or after September 1, 2001, any cost-of-living adjustment (COLA)
27 due after the annuity starting date shall not be considered to be an increase accrued after the date

28 of termination of marriage and shall be part of the monthly amount subject to division pursuant
29 to any order issued after September 1, 2001;

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

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

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

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

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

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

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

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

46 **4. Any member of the closed plan who elected the year 2000 plan under section**
47 **104.1015 and then becomes divorced and subject to a division of benefits order shall have**
48 **the division of benefits order calculated under the provisions of the year 2000 plan.**

✓