

ENROLLED SENATE
BILL NO. 401

By: Morgan of the Senate

and

Stites of the House

An Act relating to retirement; amending 74 O.S. 1991, Section 916.1, as last amended by Section 6, Chapter 167, O.S.L. 1999 and 923, as last amended by Section 9, Chapter 198, O.S.L. 1998 (74 O.S. Supp. 2000, Sections 916.1 and 923), which relates to the Oklahoma Public Employees Retirement System; increasing cap on amount of death benefit payable outside of probate; expanding types of validating documents; deleting conflicting provisions; 74 O.S. 1991, Section 1701, as amended by Section 12, Chapter 359, O.S.L. 1993 (74 O.S. Supp. 2000, Section 1701), which relates to deferred compensation plans; clarifying and expanding types of investments; deleting unnecessary reference to investment type; correcting reference; providing condition for certain legal services of the Office of the Attorney General; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 74 O.S. 1991, Section 916.1, as last amended by Section 6, Chapter 167, O.S.L. 1999 (74 O.S. Supp. 2000, Section 916.1), is amended to read as follows:

Section 916.1 A. Upon the death of a retired member, the Oklahoma Public Employees Retirement System shall pay to the beneficiary of the member or if there is no beneficiary or if the beneficiary predeceases the member, to the estate of the member, the sum of Four Thousand Dollars (\$4,000.00) as a death benefit for those retired members who died prior to July 1, 1999. For those retired members who died on or after July 1, 1999, the sum shall be Five Thousand Dollars (\$5,000.00).

B. Upon the death of a member who dies leaving no living beneficiary or having designated his estate as beneficiary, the System may pay any applicable death benefit, unpaid contributions, or unpaid benefit which may be subject to probate, in an amount of ~~Five Thousand Dollars (\$5,000.00)~~ Ten Thousand Dollars (\$10,000.00) or less, without the intervention of the probate court or probate procedure pursuant to Section 1 et seq. of Title 58 of the Oklahoma Statutes.

1. Before any applicable probate procedure may be waived, the System must be in receipt of the member's proof of death and the following documents from those persons claiming to be the legal heirs of the deceased member:

- a. the member's valid last will and testament, trust documents or affidavit that a will does not exist,
- b. an affidavit or affidavits of heirship which must state:
 - (1) the names and signatures of all claiming heirs to the deceased member's estate including the claiming heirs' names, relationship to the deceased, current addresses and current telephone numbers,
 - (2) a statement or statements by the claiming heirs that no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction,
 - (3) a statement that the value of the deceased member's entire estate is subject to probate, and that the estate wherever located, less liens and encumbrances, does not exceed ~~Five Thousand Dollars (\$5,000.00)~~ Ten Thousand Dollars (\$10,000.00), including the payment of benefits or unpaid contributions from the System as authorized by this subsection,
 - (4) a description of the personal property claimed (i.e., death benefit or unpaid contributions or both), together with a statement that such personal property is subject to probate, and
 - (5) a statement by each individual claiming heir identifying the amount of personal property that the heir is claiming from the System, and that the heir has been notified of, is aware of and consents to the identified claims of all the other claiming heirs of the deceased member pending with the System,
- c. a written agreement or agreements signed by all claiming heirs of the deceased member which provides that the claiming heirs release, discharge and hold harmless the System from any and all liability, obligations and costs which it may incur as a result of making a payment to any of the deceased member's heirs,
- d. a corroborating affidavit from an individual other than a claiming heir, who was familiar with the affairs of the deceased member, and
- e. proof that all debts of the deceased member, including payment of last sickness, hospital, medical, death,

funeral and burial expenses have been paid or provided for.

2. The Executive Director of the System shall retain complete discretion in determining which requests for probate waiver may be granted or denied, for any reason. Should the System have any question as to the validity of any document presented by the claiming heirs, or as to any statement or assertion contained therein, the probate requirement provided for in Section 1 et seq. of Title 58 of the Oklahoma Statutes shall not be waived.

3. After paying any death benefits or unpaid contributions to any claiming heirs as provided pursuant to this subsection, the System is discharged and released from any and all liability, obligation and costs to the same extent as if the System had dealt with a personal representative of the deceased member. The System is not required to inquire into the truth of any matter specified in this subsection or into the payment of any estate tax liability.

SECTION 2. AMENDATORY 74 O.S. 1991, Section 923, as last amended by Section 9, Chapter 198, O.S.L. 1998 (74 O.S. Supp. 2000, Section 923), is amended to read as follows:

Section 923. A. Except as otherwise provided by this section, no alteration, amendment, or repeal of this act shall affect the then existing rights of members and beneficiaries, but shall be effective only as to rights which would otherwise accrue hereunder as a result of services rendered by an employee after such alteration, amendment, or repeal. Any annuity, benefits, fund, property, or rights created by or accruing to any person under the provisions of this act shall not be subject to execution, garnishment or attachment, or any other process or claim whatsoever, and shall be unassignable, except as specifically provided by ~~this act~~ Section 901 et seq. of this title.

B. 1. The provisions of subsection A of this section shall not apply to a qualified domestic order as provided pursuant to this subsection.

2. The term "qualified domestic order" means an order issued by a district court of this state pursuant to the domestic relation laws of the State of Oklahoma which relates to the provision of marital property rights to a spouse or former spouse of a member or provision of support for a minor child or children and which creates or recognizes the existence of the right of an alternate payee, or assigns to an alternate payee the right, to receive a portion of the benefits payable with respect to a member of the System ~~and amounts payable to a plan participant of the Oklahoma State Employees Deferred Compensation Plan as provided pursuant to Section 1701 et seq. of this title.~~

3. For purposes of the payment of marital property, to qualify as an alternate payee, a spouse or former spouse must have been married to the related member for a period of not less than thirty (30) continuous months immediately preceding the commencement of the proceedings from which the qualified domestic order issues.

4. A qualified domestic order is valid and binding on the State Board and the related member only if it meets the requirements of this subsection.

5. A qualified domestic order shall clearly specify:

- a. the name and last-known mailing address (if any) of the member and the name and mailing address of the alternate payee covered by the order,
- b. the amount or percentage of the member's benefits to be paid by the System to the alternate payee,
- c. the number of payments or period to which such order applies,
- d. the characterization of the benefit as to marital property rights or child support, and
- e. each plan to which such order applies.

6. A qualified domestic order meets the requirements of this subsection only if such order:

- a. does not require the System to provide any type or form of benefit, or any option not otherwise provided under state law as relates to the System,
- b. does not require the System to provide increased benefits, and
- c. does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee pursuant to another order previously determined to be a qualified domestic order or an order recognized by the System as a valid order prior to the effective date of this act.

7. A qualified domestic order shall not require payment of benefits to an alternate payee prior to the actual retirement date or withdrawal of the related member and shall not attach to or require the payment of any amount of benefits related to a deferred compensation plan or program authorized by Section 1701 et seq. of this title.

8. The obligation of the System to pay an alternate payee pursuant to a qualified domestic order shall cease upon the death of the related member.

9. This subsection shall not be subject to the provisions of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C.A. Section 1001 et seq., as amended from time to time, or rules and regulations promulgated thereunder, and court cases interpreting said act.

10. The Oklahoma Public Employees Retirement System Board of Trustees shall promulgate such rules as are necessary to implement the provisions of this subsection.

11. An alternate payee who has acquired beneficiary rights pursuant to a valid qualified domestic order must fully comply with all provisions of the rules promulgated by the Board pursuant to this subsection in order to continue receiving his or her benefit.

SECTION 3. AMENDATORY 74 O.S. 1991, Section 1701, as amended by Section 12, Chapter 359, O.S.L. 1993 (74 O.S. Supp. 2000, Section 1701), is amended to read as follows:

Section 1701. A. The State of Oklahoma, its agencies and the political subdivisions thereof and the employees of a duly constituted authority or instrumentality of the State of Oklahoma, its agencies and the political subdivisions thereof, municipalities and any local governmental entity may enter into a written agreement to defer a portion of any employee's compensation which is derived from a state or local government. The compensation to be deferred shall be subject to any federal limitations imposed by the Internal Revenue Code, Sections 1 et seq. of Title 26 of the United States Code. The state or local governments may, under a written agreement, invest the deferred compensation in life insurance, annuities, United States Agency or Treasury Bills, Notes or Bonds, savings accounts and/or mutual funds with a company licensed or eligible to do business in the state or in a contract or commingled trust or program ~~maintained by a nonprofit organization classified as tax exempt by the Internal Revenue Service of the United States government.~~ Deferred compensation programs shall exist and be in addition to, and not be a part of, any existing retirement, pension or Social Security system provided for the benefit of state and local government employees.

B. The Oklahoma Public Employees Retirement System Board shall offer a deferred compensation program and shall be responsible for establishing rules and regulations and participation agreement forms for said program. The Oklahoma State Employee Benefits Council shall communicate this program with eligible participants.

C. The Office of the Attorney General of this state shall be responsible for interpreting all applicable laws and fiduciary responsibilities for the deferred compensation programs of state and local governments if the programs do not maintain in-house counsel.

D. Prior to January 1, 1991, the Board of Trustees of the Oklahoma Public Employees Retirement System, the Plan Administrator, and the Office of State Finance shall jointly develop a system that provides for state employee participation amounts in the deferred compensation plan be posted and transferred to the investment option selected by the state employee within ten (10) business days of the payday, the end of the payroll period, or the process date for supplemental payrolls, whichever is later.

SECTION 4. This act shall become effective July 1, 2001.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 30th day of April, 2001.

Presiding Officer of the Senate

Passed the House of Representatives the 17th day of April, 2001.

Presiding Officer of the House
of Representatives