

2007 Assembly Bill 893

Date of enactment: **March 21, 2008**

Date of publication\*: **April 4, 2008**

## 2007 WISCONSIN ACT 131

AN ACT *to renumber and amend* 40.02 (8) (b) and 40.80 (2r) (b); *to amend* 40.02 (8) (a) 2., 40.02 (22) (e), 40.02 (39m), 40.03 (6) (i), 40.05 (2) (b), 40.05 (2) (bu), 40.05 (2) (bv), 40.05 (2) (bw), 40.05 (2) (bz), 40.08 (1), 40.08 (3), 40.08 (4), 40.24 (1) (e), 40.25 (5) (b), 40.65 (3), 40.70 (1) (b), 40.70 (6), 40.73 (3) (e) and 40.74 (2); *to repeal and recreate* 40.08 (6) (e); and *to create* 40.02 (8) (b) 2., 40.08 (1r), 40.74 (6) and 40.74 (7) of the statutes; **relating to:** distribution of moneys to Wisconsin Retirement System employers under 1999 Wisconsin Act 11; payment of interest by the Department of Employee Trust Funds on credited or refunded moneys; Wisconsin Retirement System beneficiary standard sequence; accelerated death benefit option continuation under the Wisconsin Retirement System; life insurance benefits administered by the Department of Employee Trust Funds; definition of the term Internal Revenue Code for purposes of benefit plans administered by the Department of Employee Trust Funds; interest rates charged on moneys owed the Department of Employee Trust Funds for benefit programs; payment of death benefits under the Wisconsin Retirement System; authority of the Group Insurance Board; eligibility requirements for duty disability benefit under the Wisconsin Retirement System; amortization period for unfunded prior service liability under the Wisconsin Retirement System; attachment of retirement benefits for delinquent state tax purposes; waiver of benefits under the Wisconsin Retirement System; and granting rule-making authority.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 40.02 (8) (a) 2. of the statutes is amended to read:

40.02 (8) (a) 2. In the absence of a written designation of beneficiary, or if all designated beneficiaries ~~so designated~~ who survive the decedent die before filing with the department a beneficiary designation applicable to that death benefit or an application for any death benefit payable, the person determined in the following sequence: group 1, ~~widow or widower~~ surviving spouse; group 2, children ~~if at least one child survives~~ of the deceased participant, employee or annuitant, ~~in which event~~ equal shares, with the share of any deceased child ~~shall be payable to the surviving spouse~~ issue of the child ~~or to the~~

~~surviving children of the child if there is no spouse, or otherwise or, if there is no surviving issue of a deceased child, to the other eligible children in this group or, if deceased, their issue; group 3, grandchild; group 4, parent, in equal shares if both survive; group 5 4, brother and sister in equal shares and the issue of any deceased brother or sister. The shares payable to the issue of a person shall be determined per stirpes.~~ No payment may be made to a person included in any group if there is a living person in any preceding group, ~~and s. 854.04 (6) shall not apply to a determination under this subsection.~~

**SECTION 2.** 40.02 (8) (b) of the statutes is renumbered 40.02 (8) (b) (intro.) and amended to read:

40.02 (8) (b) (intro.) “Beneficiary” does not include ~~a~~ any of the following:

\* Section 991.11, WISCONSIN STATUTES 2005–06 : Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated” by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

1. A person who dies before filing with the department either a beneficiary designation applicable to that death benefit or an application for any death benefit payable to the person except as otherwise provided under group 2, under par. (a) 2. If a person dies after filing a beneficiary application but before the date on which the benefit check, share draft or other draft is issued or funds are otherwise transferred, any benefit payable shall be paid in accord with the written designation of beneficiary, if any, filed with the department in connection with the application or, if none, in accord with the last designation previously filed by the person, or otherwise to the person's estate.

**SECTION 3.** 40.02 (8) (b) 2. of the statutes is created to read:

40.02 (8) (b) 2. For purposes of a group life insurance benefit plan under this chapter, and at the discretion of the department, an individual who is notified by the department or insurer that a benefit is payable to the individual because of the death of an insured person, who is provided with any necessary application form, and who does not then apply for the benefit within 12 months of the date of notification by the department that the benefit is payable to the individual.

**SECTION 4.** 40.02 (22) (e) of the statutes is amended to read:

40.02 (22) (e) ~~Except For an employee serving in a position covered under and meeting the requirements of 38 USC 4301, et. seq., except for OASDHI purposes, means compensation deemed to have been paid for services deemed to have been rendered while serving in a position covered under, and meeting the requirements of, 38 USC 4301, et seq., at the employee's rate of pay prior to beginning such service determined as required under 38 USC 4318 (b) (3) and regulations adopted thereunder,~~ provided contributions and premiums on the deemed earnings compensation are paid as required under s. 40.05.

**SECTION 5.** 40.02 (39m) of the statutes is amended to read:

40.02 (39m) "Internal revenue code" means the federal internal revenue code under Title 26, USC, as ~~defined for the current taxable year under s. 71.01 (6) amended,~~ and applicable federal regulations adopted under the internal revenue code by the federal department of the treasury, including temporary regulations.

**SECTION 6.** 40.03 (6) (i) of the statutes is amended to read:

40.03 (6) (i) May ~~Shall~~ accept timely appeals of determinations made by the department affecting any right or benefit under any group insurance plan provided for under this chapter.

**SECTION 7.** 40.05 (2) (b) of the statutes is amended to read:

40.05 (2) (b) Contributions shall be made by each participating employer for unfunded prior service liability

ity in a percentage of the earnings of each participating employee. A separate percentage rate shall be determined for the employee occupational categories under s. 40.23 (2m) as of the employer's effective date of participation. The rates shall be sufficient to amortize as a level percent of payroll over a period of ~~40~~ 30 years from the later of that date or January 1, 1986, the unfunded prior service liability for the categories of employees of each employer determined under s. 40.05 (2) (b), 1981 stats., increased to reflect any creditable prior service granted on or after January 1, 1986, increased to reflect the effect of 1983 Wisconsin Act 141, increased at the end of each calendar year after January 1, 1986, by interest at the assumed rate on the unpaid balance at the end of the year and adjusted under pars. (bu), (bv) and (bw).

**SECTION 8.** 40.05 (2) (bu) of the statutes is amended to read:

40.05 (2) (bu) The employer contribution rate determined under par. (b) for each employer shall be adjusted, if necessary, to reflect the added prior service liability of paying additional joint and survivor death benefits to beneficiaries of participating employees as a result of 1997 Wisconsin Act 58 and that rate shall be sufficient to amortize the unfunded prior service liability of the employers over the remainder of the 40-year amortization period under ~~par. (b) s. 40.05 (2) (b), 2005 stats.~~

**SECTION 9.** 40.05 (2) (bv) of the statutes is amended to read:

40.05 (2) (bv) The employer contribution rate determined under par. (b) for participating employees who served in the U.S. maritime service shall be adjusted to reflect the cost of granting creditable service under s. 40.02 (15) (a) 7. and that rate shall be sufficient to amortize the unfunded prior service liability of the employers over the remainder of the 40-year amortization period under ~~par. (b) s. 40.05 (2) (b), 2005 stats.~~

**SECTION 10.** 40.05 (2) (bw) of the statutes is amended to read:

40.05 (2) (bw) The employer contribution rate determined under par. (b) for the University of Wisconsin System shall be adjusted to reflect the cost of granting creditable service under s. 40.285 (2) (e) and that rate shall be sufficient to amortize the unfunded prior service liability of the employers over the remainder of the 40-year amortization period under ~~par. (b) s. 40.05 (2) (b), 2005 stats.~~

**SECTION 11.** 40.05 (2) (bz) of the statutes is amended to read:

40.05 (2) (bz) The employer contribution rate determined under par. (b) for the department of administration shall be adjusted to reflect the cost of granting creditable service under s. 40.02 (17) (gm) and that rate shall be sufficient to amortize the unfunded prior service liability of the department of administration over the remainder of the 40-year amortization period under ~~par. (b) s. 40.05 (2) (b), 2005 stats.~~

**SECTION 12.** 40.08 (1) of the statutes is amended to read:

40.08 (1) EXEMPTIONS. The benefits payable to, or other rights and interests of, any member, beneficiary or distributee of any estate under any of the benefit plans administered by the department, including insurance payments, shall be exempt from any tax levied by the state or any subdivision of the state and shall not be assignable, either in law or equity, or be subject to execution, levy, attachment, garnishment or other legal process except as specifically provided in this section; ~~except that, notwithstanding s. 40.01 (2), the department of revenue may attach benefit payments to satisfy delinquent tax obligations. The board and any member or agent thereof and the department and any employee or agent thereof are immune from civil liability for any act or omission while performing official duties relating to withholding any annuity payment under this subsection.~~ The exemption from taxation under this section shall not apply with respect to any tax on income.

**SECTION 13.** 40.08 (1r) of the statutes is created to read:

40.08 (1r) DELINQUENT STATE TAX OBLIGATIONS. Notwithstanding sub. (1) and s. 40.01 (2), the department of revenue may attach any lump sum payment or monthly annuity paid under s. 40.23, 40.24, 40.25 (1) or (2), or 40.63 to satisfy delinquent tax obligations. The board and any member or agent thereof and the department and any employee or agent thereof are immune from civil liability for any act or omission while performing official duties relating to withholding any payment under this subsection.

**SECTION 14.** 40.08 (3) of the statutes is amended to read:

40.08 (3) WAIVERS. Any participant, beneficiary, or distributee of any estate may waive, absolutely and without right of reconsideration or recovery, the right to or the payment of all or any portion of any benefit payable or to become payable under this chapter. The waiver shall be effective ~~on the first day of the 2nd month commencing 30 days~~ after it is received by the department or on the date specified in the waiver, ~~if later~~ earlier. The waiver may be cancelled by the participant, beneficiary, or distributee in writing before the effective date.

**SECTION 15.** 40.08 (4) of the statutes is amended to read:

40.08 (4) RETENTION OF PAYMENTS. Unless voluntarily repaid and except as limited by sub. (10), the department may retain out of any annuity or benefit an amount as the department in its discretion may determine, for the purpose of reimbursing the appropriate benefit plan accounts for a balance due under s. 40.25 (5) or for any money paid, plus interest at the ~~effective rate of the core annuity division assumed rate, unless the department sets a different rate by rule,~~ to any person or estate, through misrepresentation, fraud, or error. Upon the request of

the department any employer shall withhold from any sum payable by the employer to any person or estate and remit to the department any amount, plus interest at the ~~effective rate of the core annuity division assumed rate, unless the department sets a different rate by rule,~~ which the department paid to the person or estate through misrepresentation, fraud, or error. Any amount, plus interest at the ~~effective rate~~ assumed rate, unless the department sets a different rate by rule, not recovered by the department from the employer may be procured by the department by action brought against the person or estate.

**SECTION 16.** 40.08 (6) (e) of the statutes is repealed and recreated to read:

40.08 (6) (e) In accordance with rules promulgated by the department, and at the rate of interest established by rule, the department may credit interest on moneys refunded or credited under this subsection.

**SECTION 17.** 40.24 (1) (e) of the statutes is amended to read:

40.24 (1) (e) A reduced annuity payable in the normal form or any of the optional life forms provided under this section, plus a temporary annuity payable monthly but terminating with the payment payable in the month following the month in which the annuitant attains age 62 ~~or, if earlier, on the death of the annuitant.~~ If the annuitant dies before the end of the final payment, the remaining payments of the temporary annuity certain shall be made to the named survivor or, if there is no living named survivor, in accordance with s. 40.73 (2) to the annuitant's beneficiary. It is the intent of this option that so far as is practicable the amounts of the life annuity and temporary annuity shall be determined so that the annuitant's total anticipated benefits from the fund and from his or her primary OASDHI benefit will be the same each month both before and after attainment of age 62.

**SECTION 18.** 40.25 (5) (b) of the statutes is amended to read:

40.25 (5) (b) The full amount of the benefit paid, plus interest at the ~~effective rate~~ assumed rate, unless the department sets a different rate by rule, shall be repaid to the Wisconsin retirement system by the employer of an employee whose rights and creditable service are reestablished under par. (a) within 60 days after the effective date of the employee's reinstatement. The amount repaid by the employer under this paragraph shall be deducted by the employer from any payment due the employee as a result of the resolution of the appeal or, if that amount is insufficient, the balance shall be deducted from the employee's earnings except the amount deducted from each earnings payment shall be not less than 10% nor more than 25% of the earnings payment. If the employee terminates employment the employer shall notify the department of the amount not yet repaid, including any interest due, at the same time it notifies the department of the termination of employment, and the department shall repay to the employer the balance of the amount due from

retentions made under s. 40.08 (4). The employer may charge interest at a rate not in excess of the current year's assumed rate on any amount unpaid at the end of any calendar year after the year of reinstatement.

**SECTION 19.** 40.65 (3) of the statutes is amended to read:

40.65 (3) The Wisconsin retirement board shall determine the amount of each monthly benefit payable under this section and its effective date. The board shall periodically review the dollar amount of each monthly benefit and adjust it to conform with the provisions of this section. The board may request any income or benefit information, or any information concerning a person's marital status, which it considers to be necessary to implement this subsection and ~~shall~~ may require a participant to ~~submit a certified~~ authorize the board to obtain a copy of his or her most recent state or federal income tax return. The board may terminate the monthly benefit of any person who refuses to submit information requested by the board, ~~who refuses to authorize the board to obtain a copy of his or her most recent state or federal income tax return,~~ or who submits false information to the board.

**SECTION 20.** 40.70 (1) (b) of the statutes is amended to read:

40.70 (1) (b) The employee files ~~with the department~~ an application in the manner provided by rule or contract, to be effective on a date fixed by the department, for one or more of the types of coverage established under this subchapter. The group insurance board may provide a different method of enrollment than provided under this subsection.

**SECTION 21.** 40.70 (6) of the statutes is amended to read:

40.70 (6) Except as provided in sub. (7m), any employee who has not applied for coverage under sub. (1) ~~within 6 months~~ the time period specified by rule or contract after becoming eligible for coverage or any employee whose insurance terminates under sub. (8) shall not thereafter become insured for that coverage unless ~~prior to the attainment of age 55~~ the employee furnishes evidence of insurability satisfactory to the insurer, at his or her own expense. If the evidence is approved, the employee shall become insured on the first day of the first month beginning after the approval.

**SECTION 22.** 40.73 (3) (e) of the statutes is amended to read:

40.73 (3) (e) Any beneficiary who is eligible to receive a beneficiary annuity may elect to receive the annuity in any of the optional annuity forms provided for retirement annuities, other than ~~as an annuity under s. 40.24 (1) (e) or any annuity payable over the joint life expectancies of the beneficiary and another person.~~ The number of guaranteed monthly payments available to a beneficiary may not exceed the life expectancy of the beneficiary.

**SECTION 23.** 40.74 (2) of the statutes is amended to read:

40.74 (2) A beneficiary of a deceased participant, annuitant, alternate payee, beneficiary, or employee may waive absolutely and without right of reconsideration or recovery all or part of any benefit payable under this chapter. The beneficiary shall then be determined as if the waiving beneficiary had died prior to the decedent except that if the person was a beneficiary under group 2 under s. 40.02 (8) (a) 2., payment shall be made as if at least one child had survived the participant, alternate payee, beneficiary, employee, or annuitant. Unless the department receives the beneficiary's written request to cancel the waiver before the date on which it would otherwise become effective, the waiver shall be effective ~~on the first day of the 2nd month commencing 30 days~~ after it is received by the department or the date specified in the waiver, if ~~later~~ earlier. The waiver may be cancelled by the beneficiary in writing before the effective date. A waiver received after the effective date on which a beneficiary has commenced a monthly annuity under s. 40.73 (2) or (3) shall apply to monthly payments payable after the effective date of the waiver. Payment shall be subject to the restrictions specified in s. 40.73 (2) (b).

**SECTION 24.** 40.74 (6) of the statutes is created to read:

40.74 (6) Any potential primary beneficiary under s. 40.02 (8) who cannot be located by reasonable efforts within 12 months after the later of the date of death of the participant or the date on which the department determines the person, trust, or estate initially became a potential primary beneficiary may be treated as a beneficiary that predeceased the participant and all other potential beneficiaries.

**SECTION 25.** 40.74 (7) of the statutes is created to read:

40.74 (7) A trust that does not exist on the date of the participant's death or an estate not opened or reopened within 12 months after the department determines the estate initially became a potential primary beneficiary under s. 40.02 (8) may be treated as a beneficiary that predeceased the participant and all other potential beneficiaries.

**SECTION 26.** 40.80 (2r) (b) of the statutes is renumbered 40.08 (1r) and amended to read:

40.08 (1r) Notwithstanding ~~s. 40.08 sub.~~ (1), a participant's accumulated assets held in an account in the deferred compensation plan established under ~~this subchapter subch. VII~~ may be divided, in the manner provided by the deferred compensation board and under s. 40.80 (2r), pursuant to a domestic relations order, as defined under s. 40.80 (2r) (a).

**SECTION 27. Nonstatutory provisions.**

(1) DISTRIBUTION OF MONEYS FROM RESERVE ESTABLISHED UNDER 1999 WISCONSIN ACT 11. Notwithstanding the requirement under 1999 Wisconsin Act 11, section 27

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(1) (b), that the employee trust funds board make deductions on a monthly basis from employers' credit balances, the board shall distribute all remaining moneys in the reserve established under 1999 Wisconsin Act 11, section 27 (1) (b), before January 1, 2009.

**SECTION 28. Initial applicability.**

(1) The treatment of section 40.05 (2) (b) of the statutes first applies to unfunded prior service liabilities under the Wisconsin Retirement System that are incurred

on the effective date of this subsection.

(2) The treatment of section 40.24 (1) (e) of the statutes first applies to annuities that became effective on the effective date of this subsection.

**SECTION 29. Effective dates.** This act takes effect on the day after publication, except as follows:

(1) The treatment of section 40.24 (1) (e) of the statutes and SECTION 28 (2) of this act take effect on the first day of the 3rd month after publication.

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