

State of Arizona
Senate
Fiftieth Legislature
Second Regular Session
2012

CHAPTER 88
SENATE BILL 1119

AN ACT

AMENDING SECTIONS 38-755 AND 38-760, ARIZONA REVISED STATUTES; AMENDING TITLE 38, CHAPTER 5, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 38-776; MAKING AN APPROPRIATION; RELATING TO THE ARIZONA STATE RETIREMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-755, Arizona Revised Statutes, is amended to
3 read:

4 38-755. Information as to member's status; beneficiary
5 designation; spousal consent

6 A. Subject to rules prescribed by the board, on application of a
7 member, the board shall furnish information concerning the member's status.
8 In addition, the board shall annually furnish to each member an account
9 statement showing the status of the member's account, including the name of
10 the member's beneficiary as last listed with the board.

11 B. The member may change the member's beneficiary at any time ~~pursuant~~
12 ~~to rules adopted by the board and on forms furnished by the board~~ IN A MANNER
13 ESTABLISHED BY ASRS.

14 C. A member WHO IS MARRIED shall ~~notify~~ NAME AND MAINTAIN the member's
15 current spouse ~~before the member names~~ AS a beneficiary ~~other than~~ TO RECEIVE
16 AT LEAST FIFTY PER CENT OF THE MEMBER'S ACCOUNT. The member's current spouse
17 ~~or before the member changes the member's beneficiary if the member's current~~
18 ~~spouse is the beneficiary at the time of the change~~ MAY CONSENT TO A WAIVER
19 OF THIS REQUIREMENT PURSUANT TO SECTION 38-776.

20 Sec. 2. Section 38-760, Arizona Revised Statutes, is amended to read:

21 38-760. Optional forms of retirement benefits

22 A. On retirement, members may elect an optional form of retirement
23 benefit as provided in this section.

24 B. The optional retirement benefits available under this section
25 include the following:

26 1. Joint and survivor annuity in a reduced amount payable to the
27 retiring member during life, with the provisions that after the member's
28 death all, two-thirds or one-half of the retirement income, as the member
29 elects, shall be continued during the lifetime of the contingent annuitant
30 designated by the retiring member subject to the restrictions prescribed in
31 section 38-764. The amount of retirement income shall be the actuarial
32 equivalent of the retirement income to which the member would be entitled
33 under normal or early retirement. The election in a manner prescribed by the
34 board shall name the contingent annuitant. The election may be revoked at
35 any time before the member's effective date of retirement. At any time after
36 benefits have commenced, the member may name a different contingent annuitant
37 or rescind the election by written notice to the board as follows:

38 (a) If a different contingent annuitant is named, the annuity of the
39 member under the same joint and survivor annuity option previously elected
40 shall be adjusted to the actuarial equivalent of the original annuity, based
41 on the age of the new contingent annuitant. The adjustment shall include all
42 postretirement increases in retirement income that are authorized by law
43 after the member's date of retirement. Payment of this adjusted annuity
44 shall continue under the provisions of the option previously elected by the
45 member.

1 (b) If the member rescinds the election, the member shall thereafter
2 receive a straight life annuity equal to what the member would otherwise be
3 entitled to receive if the member had not elected the joint and survivor
4 annuity option, including all postretirement increases in retirement income
5 that are authorized by law after the date of retirement. The increased
6 payment shall continue during the remainder of the member's lifetime.

7 (c) If a member whose original date of retirement is before ~~the~~
8 ~~effective date of this amendment to this section~~ JULY 1, 2008 rescinds the
9 joint and survivor annuity option previously elected and receives the
10 straight life annuity pursuant to subdivision (b) of this paragraph, the
11 member may again elect the same joint and survivor annuity option previously
12 elected subject to the same restrictions prescribed in subdivision (a) of
13 this paragraph.

14 (d) A member whose original date of retirement is on or after ~~the~~
15 ~~effective date of this amendment to this section~~ JULY 1, 2008 may exercise a
16 one-time election to rescind the joint and survivor annuity option elected by
17 the member if the contingent annuitant dies or ceases to be a contingent
18 annuitant pursuant to the terms of a qualified domestic relations order.

19 (e) If the member's contingent annuitant is the member's current
20 spouse, the member shall ~~notify~~ OBTAIN THE CONSENT OF the contingent
21 annuitant PURSUANT TO SECTION 38-776 before the member names a new contingent
22 annuitant or before the member rescinds the election, EXCEPT THAT CONSENT IS
23 NOT REQUIRED IF THE RESCISSION IS PURSUANT TO SUBDIVISION (d) OF THIS
24 PARAGRAPH.

25 2. A period certain and life annuity actuarially reduced with payments
26 for five, ten or fifteen years that are not dependent on the continued
27 lifetime of the member but whose payments continue for the member's lifetime
28 beyond the five, ten or fifteen year period. At the time of electing this
29 option the member shall name a period certain beneficiary or beneficiaries
30 who are entitled to receive the payments for any portion of the period
31 certain beyond the lifetime of the member. The member may name a different
32 beneficiary at any time. If no beneficiary survives the member, any
33 remaining payments are the property of the member's estate. A member who
34 retires after August 9, 2001 and before ~~the effective date of this amendment~~
35 ~~to this section~~ JULY 1, 2008 may rescind the election of a period certain and
36 life annuity. If the member rescinds the election of a period certain and
37 life annuity, the member shall thereafter receive a straight life annuity
38 equal to what the member would otherwise be entitled to receive if the member
39 had not elected the period certain and life annuity option, including all
40 postretirement increases in retirement income that are authorized by law
41 after the date of retirement. The increased payment shall continue during
42 the remainder of the member's lifetime. If the member reverts to a straight
43 life annuity pursuant to this paragraph, the member may again elect a period
44 certain and life annuity subject to the same provisions of the period certain
45 and life annuity previously elected by the member. IF THE MEMBER'S
46 CONTINGENT ANNUITANT IS THE MEMBER'S CURRENT SPOUSE, THE MEMBER SHALL OBTAIN

1 THE CONSENT OF THE CONTINGENT ANNUITANT PURSUANT TO SECTION 38-776 BEFORE THE
2 MEMBER RESCINDS THE ELECTION OF A PERIOD CERTAIN AND LIFE ANNUITY OR AGAIN
3 ELECTS A PERIOD CERTAIN AND LIFE ANNUITY. A member whose original date of
4 retirement is on or after ~~the effective date of this amendment to this~~
5 ~~section~~ JULY 1, 2008 may exercise a one-time election to rescind the period
6 certain and life annuity option elected by the member if the beneficiary dies
7 or ceases to be a beneficiary pursuant to the terms of a qualified domestic
8 relations order or at the expiration of the member's period certain term. ~~If~~
9 ~~the member's contingent annuitant is the member's current spouse, the member~~
10 ~~shall notify the contingent annuitant before the member rescinds the election~~
11 ~~of a period certain and life annuity or again elects a period certain and~~
12 ~~life annuity pursuant to this paragraph.~~

13 3. Beginning on July 1, 2002, a lump sum payment equal to not more
14 than thirty-six months of the member's retirement benefits under the benefit
15 option elected by the member. The member's benefit shall be actuarially
16 reduced to provide for the lump sum payment. The lump sum payment shall be
17 made at the time of retirement. Any benefit increase granted to a member who
18 elects a lump sum payment pursuant to this paragraph is subject to the
19 following conditions:

20 (a) If the benefit increase is a percentage increase of the member's
21 retirement benefit, the increase shall be based on the actuarially reduced
22 retirement benefit of the member.

23 (b) If the benefit increase is pursuant to section 38-767, the amount
24 of the member's benefit increase shall be calculated without regard to the
25 lump sum payment pursuant to this paragraph.

26 4. Other forms of actuarially reduced optional benefits prescribed by
27 the board.

28 C. A MEMBER WHO IS MARRIED AT THE TIME OF RETIREMENT SHALL ELECT A
29 MONTHLY BENEFIT IN THE FORM OF A JOINT AND SURVIVOR ANNUITY PURSUANT TO
30 SUBSECTION B, PARAGRAPH 1 OF THIS SECTION, AND THE MEMBER'S CURRENT SPOUSE
31 SHALL BE THE CONTINGENT ANNUITANT UNLESS THE MEMBER'S CURRENT SPOUSE CONSENTS
32 TO A WAIVER OF THIS REQUIREMENT PURSUANT TO SECTION 38-776. IF THE MARRIED
33 MEMBER DOES NOT ELECT A TYPE OF JOINT AND SURVIVOR ANNUITY FOR THE MEMBER'S
34 CURRENT SPOUSE AND THE MEMBER'S CURRENT SPOUSE HAS NOT WAIVED THE
35 REQUIREMENTS OF THIS SUBSECTION, ASRS SHALL CANCEL THE MEMBER'S RETIREMENT.
36 THE MEMBER MAY REAPPLY FOR RETIREMENT AT ANY TIME IN A MANNER ESTABLISHED BY
37 ASRS.

38 Sec. 3. Title 38, chapter 5, article 2, Arizona Revised Statutes, is
39 amended by adding section 38-776, to read:

40 38-776. Spousal waiver and consent

41 A. A MEMBER'S CURRENT SPOUSE MAY CONSENT TO ONE OF THE FOLLOWING
42 REQUIREMENTS ESTABLISHED IN SECTION 38-755 OR 38-760 BY SIGNING AND
43 SUBMITTING AN ACKNOWLEDGEMENT IN A MANNER ESTABLISHED BY ASRS:

44 1. A CHANGE OF BENEFICIARY THAT PROVIDES THE MEMBER'S CURRENT SPOUSE
45 WITH LESS THAN FIFTY PER CENT OF THE MEMBER'S ACCOUNT BALANCE.

1 2. THE MEMBER'S RETIREMENT APPLICATION THAT DOES NOT NAME THE MEMBER'S
2 CURRENT SPOUSE AS A CONTINGENT ANNUITANT OF A JOINT AND SURVIVOR ANNUITY.

3 3. A CHANGE OR RESCISSION OF THE MEMBER'S CURRENT SPOUSE'S CONTINGENT
4 ANNUITANT STATUS.

5 B. IF THE MEMBER'S CURRENT SPOUSE IS NOT CAPABLE OF EXECUTING THE
6 ACKNOWLEDGEMENT BECAUSE OF AN INCAPACITATING MENTAL OR PHYSICAL CONDITION, A
7 POWER OF ATTORNEY OR GUARDIAN MAY EXECUTE THE ACKNOWLEDGMENT ON THE CURRENT
8 SPOUSE'S BEHALF.

9 C. THE MEMBER MAY AFFIRM IN WRITING UNDER PENALTY OF PERJURY IN A
10 MANNER DETERMINED BY ASRS THAT SPOUSAL CONSENT IS NOT REQUIRED BECAUSE OF ONE
11 OF THE FOLLOWING REASONS:

12 1. THE MEMBER IS NOT MARRIED.

13 2. THE MEMBER'S CURRENT SPOUSE HAS NO IDENTIFIABLE COMMUNITY PROPERTY
14 INTEREST IN THE MEMBER'S BENEFITS.

15 3. THE MEMBER DOES NOT KNOW, AND HAS TAKEN ALL REASONABLE STEPS TO
16 DETERMINE, THE LOCATION OF THE MEMBER'S CURRENT SPOUSE.

17 4. THE MEMBER HAS RECEIVED NOTIFICATION FROM THE BOARD THAT A DOMESTIC
18 RELATIONS ORDER IS ACCEPTABLE PURSUANT TO SECTION 38-773 AND THAT DOMESTIC
19 RELATIONS ORDER REQUIRES ASRS TO PAY BENEFITS TO AN ALTERNATE PAYEE THAT IS
20 CONTRARY TO THE REQUIREMENTS OF SECTION 38-760.

21 5. OBTAINING CONSENT VIOLATES ANOTHER LAW OR EXISTING COURT ORDER.

22 D. THIS SECTION DOES NOT ABROGATE ANY COMMUNITY PROPERTY LAWS OF THIS
23 STATE.

24 E. PAYMENTS OR DISTRIBUTIONS MADE BY ASRS IN GOOD FAITH RELIANCE ON
25 THE CONSENT OR WAIVER OF A MEMBER'S CURRENT SPOUSE, THE AFFIRMATIONS OF A
26 MEMBER CONTAINED IN DOCUMENTS SUBMITTED TO ASRS PURSUANT TO THIS SECTION OR
27 THE MEMBER'S INDICATION TO ASRS THAT THE MEMBER IS NOT MARRIED CONSTITUTE A
28 FULL AND COMPLETE DISCHARGE AND RELEASE OF ALL LIABILITY OF THE BOARD OR
29 ASRS, OR BOTH, RESPECTING THESE PAYMENTS OR DISTRIBUTIONS.

30 F. IF QUESTIONS ARISE AS TO THE DISTRIBUTION OF A PARTICULAR MEMBER'S
31 ACCOUNT, ASRS SHALL USE REASONABLE JUDGMENT TO DISTRIBUTE THE ACCOUNT IN A
32 MANNER THAT IS CONSISTENT WITH ARIZONA COMMUNITY PROPERTY LAWS AND
33 INTERPRETATIONS OF THOSE LAWS.

34 Sec. 4. Applicability

35 Sections 38-755 and 38-760, Arizona Revised Statutes, as amended by
36 this act, and section 38-776, Arizona Revised Statutes, as added by this act,
37 apply to Arizona state retirement system members who retire or name or change
38 their beneficiary or contingent annuitant on or after July 1, 2013.

39 Sec. 5. Appropriation; ASRS; purpose; exemption

40 A. The sum of \$200,000 is appropriated from the Arizona state
41 retirement system administration account in fiscal year 2012-2013 to the
42 Arizona state retirement system for the implementation of this act.

43 B. The appropriation made in subsection A of this section is exempt
44 from the provisions of section 35-190, Arizona Revised Statutes, relating to
45 lapsing of appropriations.

46 Sec. 6. Effective date

S.B. 1119

1 Sections 38-755 and 38-760, Arizona Revised Statutes, as amended by
2 this act, and section 38-776, Arizona Revised Statutes, as added by this act,
3 are effective from and after June 30, 2013.

APPROVED BY THE GOVERNOR MARCH 27, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 27, 2012.