

REFERENCE TITLE: ASRS; spousal consent

State of Arizona
Senate
Fifty-first Legislature
First Regular Session
2013

SB 1171

Introduced by
Senators Yarbrough: Worsley

AN ACT

AMENDING SECTION 38-755, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2012, CHAPTER 87, SECTION 4 AND CHAPTER 88, SECTION 1; AMENDING SECTION 38-760, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2012, CHAPTER 88, SECTION 2 AND CHAPTER 362, SECTION 11; AMENDING SECTION 38-776, ARIZONA REVISED STATUTES; 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, as amended by
3 Laws 2012, chapter 87, section 4 and chapter 88, section 1, is amended to
4 read:

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

7 A. Subject to rules prescribed by the board, on application of a
8 member, the board shall furnish information concerning the member's status.
9 In addition, the board shall furnish to each member an account, that may be
10 electronic or online, showing the status of the member's account, including
11 the name of the member's beneficiary as last listed with the board.

12 B. The member may change the member's beneficiary at any time in a
13 manner established by ASRS.

14 C. A member who is married shall name and maintain the member's
15 current spouse as a beneficiary to receive at least fifty per cent of the
16 member's account, **UNLESS NAMING OR MAINTAINING THE CURRENT SPOUSE AS A**
17 **BENEFICIARY VIOLATES ANOTHER LAW, AN EXISTING CONTRACT OR A COURT ORDER.** The
18 member's current spouse may consent to a waiver of this requirement pursuant
19 to section 38-776.

20 Sec. 2. Section 38-760, Arizona Revised Statutes, as amended by Laws
21 2012, chapter 88, section 2 and chapter 362, section 11, is amended to read:

22 38-760. Optional forms of retirement benefits

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

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

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

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

1 shall continue under the provisions of the option previously elected by the
2 member.

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

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

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

20 (e) If the member's contingent annuitant is the member's current
21 spouse, the member shall obtain the consent of the contingent annuitant
22 pursuant to section 38-776 before the member names a new contingent annuitant
23 or before the member rescinds the election, except that consent is not
24 required if the rescission is pursuant to subdivision (d) of this 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 July 1, 2008 may rescind the election
35 of a period certain and life annuity. If the member rescinds the election of
36 a period certain and life annuity, the member shall thereafter receive a
37 straight life annuity equal to what the member would otherwise be entitled to
38 receive if the member had not elected the period certain and life annuity
39 option, including all postretirement increases in retirement income that are
40 authorized by law after the date of retirement. The increased payment shall
41 continue during the remainder of the member's lifetime. If the member
42 reverts to a straight life annuity pursuant to this paragraph, the member may
43 again elect a period certain and life annuity subject to the same provisions
44 of the period certain and life annuity previously elected by the member. If
45 the member's contingent annuitant is the member's current spouse, the member

1 shall obtain the consent of the contingent annuitant pursuant to section
2 38-776 before the member rescinds the election of a period certain and life
3 annuity or again elects a period certain and life annuity. A member whose
4 original date of retirement is on or after July 1, 2008 may exercise a
5 one-time election to rescind the period certain and life annuity option
6 elected by the member if the beneficiary dies or ceases to be a beneficiary
7 pursuant to the terms of a qualified domestic relations order or at the
8 expiration of the member's period certain term.

9 3. Beginning on July 1, 2002, a lump sum payment equal to not more
10 than thirty-six months of the member's retirement benefits based on the
11 actuarial equivalent of the retirement income to which the member would be
12 entitled under normal or early retirement. The member's benefit shall be
13 actuarially reduced to provide for the lump sum payment. The lump sum
14 payment shall be made at the time of retirement. Any benefit increase
15 granted to a member who elects a lump sum payment pursuant to this paragraph
16 is subject to the following conditions:

17 (a) If the benefit increase is a percentage increase of the member's
18 retirement benefit, the increase shall be based on the actuarially reduced
19 retirement benefit of the member.

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

23 4. Other forms of actuarially reduced optional benefits prescribed by
24 the board.

25 C. A member who is married at the time of retirement shall elect a
26 monthly benefit in the form of a joint and survivor annuity pursuant to
27 subsection B, paragraph 1 of this section, and the member's current spouse
28 shall be the contingent annuitant unless the member's current spouse consents
29 to a waiver of this requirement pursuant to section 38-776 **OR THE ELECTION**
30 **WOULD VIOLATE ANOTHER LAW, AN EXISTING CONTRACT OR A COURT ORDER.** If the
31 married member does not elect a type of joint and survivor annuity for the
32 member's current spouse and the member's current spouse has not waived the
33 requirements of this subsection, ASRS shall cancel the member's retirement.
34 The member may reapply for retirement at any time in a manner established by
35 ASRS.

36 Sec. 3. Section 38-776, Arizona Revised Statutes, is amended to read:
37 **38-776. Spousal waiver and consent**

38 A. A member's current spouse may consent to one of the following
39 requirements established in section 38-755 or 38-760 by signing and
40 submitting an acknowledgement in a manner established by ASRS:

41 1. A change of beneficiary that provides the member's current spouse
42 with less than fifty per cent of the member's account balance.

43 2. The member's retirement application that does not name the member's
44 current spouse as a contingent annuitant of a joint and survivor annuity.

1 3. A change or rescission of the member's current spouse's contingent
2 annuitant status.

3 B. If the member's current spouse is not capable of executing the
4 acknowledgement because of an incapacitating mental or physical condition, a
5 power of attorney or guardian may execute the acknowledgment on the current
6 spouse's behalf.

7 C. The member may affirm in writing under penalty of perjury in a
8 manner determined by ASRS that spousal consent is not required because of one
9 of the following reasons:

10 1. The member is not married.

11 2. The member's current spouse has no identifiable community property
12 interest in the member's benefits.

13 3. The member does not know, and has taken all reasonable steps to
14 determine, the location of the member's current spouse.

15 4. The member has received notification from the board that a domestic
16 relations order is acceptable pursuant to section 38-773 and that domestic
17 relations order requires ASRS to pay benefits to an alternate payee that is
18 contrary to the requirements of section 38-760.

19 5. Obtaining consent violates another law, ~~or~~ AN existing **CONTRACT OR**
20 **A** court order.

21 D. This section does not abrogate any community property laws of this
22 state.

23 E. Payments or distributions made by ASRS in good faith reliance on
24 the consent or waiver of a member's current spouse, the affirmations of a
25 member contained in documents submitted to ASRS pursuant to this section or
26 the member's indication to ASRS that the member is not married constitute a
27 full and complete discharge and release of all liability of the board or
28 ASRS, or both, respecting these payments or distributions.

29 F. If questions arise as to the distribution of a particular member's
30 account, ASRS shall use reasonable judgment to distribute the account in a
31 manner that is consistent with Arizona community property laws and
32 interpretations of those laws.

33 Sec. 4. Retroactivity

34 The amendments to the following sections apply retroactively to from
35 and after June 30, 2013:

36 1. Section 38-755, Arizona Revised Statutes, as amended by Laws 2012,
37 chapter 87, section 4 and chapter 88, section 1, and this act.

38 2. Section 38-760, Arizona Revised Statutes, as amended by Laws 2012,
39 chapter 88, section 2 and chapter 362, section 11, and this act.

40 3. Section 38-776, Arizona Revised Statutes, as amended by this act.