

Legislative Analysis



DIVORCE PROCEEDINGS: MODIFY SPLIT OF PENSIONS

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House Bill 5953 as enrolled
Public Act 288 of 2006
Sponsor: Rep. Tonya Shuitmaker
House Committee: Judiciary
Senate Committee: Judiciary

Second Analysis (2-5-07)

BRIEF SUMMARY: The bill would clarify provisions pertaining to the division of vested and unvested pension, annuity, or retirement benefits in a judgment of divorce or judgment of separation.

FISCAL IMPACT: The bill has no fiscal implications.

THE APPARENT PROBLEM:

In a divorce proceeding, pension benefits can be subject to the division of property by a Qualified Domestic Relations Order (QDRO). In 1999, the Michigan Court of Appeals upheld a lower court decision that a share of any component of a party's pension benefits could only be transferred if they were specifically granted in the judgment of divorce. (*Quade v Quade*, 238 Mich App 222; 604 NW2d 778 (1999)). Legislation has been offered that would reverse the *Quade* decision and subject all components of a pension to division unless specifically excluded.

THE CONTENT OF THE BILL:

House Bill 5953 would amend Public Act 259 of 1909 (MCL 552.101), which pertains to judgments of divorce and judgments of separate maintenance, to clarify that each judgment of divorce or judgment of separation would have to determine all rights, including any contingent rights, of the parties regarding any vested pension, annuity, or retirement benefits; any accumulated contributions in any pension, annuity, or retirement system; and, in accordance with Section 18 of Chapter 84 of the Revised Statutes of 1846, any unvested pension, annuity, or retirement benefits. (The changes in language proposed by the bill are underlined.)

Further, the bill would specify that if a judgment of divorce or judgment of separate maintenance provided for the assignment of any rights in and to any pension, annuity, or retirement benefits, a proportionate share of all components of the annuity, pension, or retirement benefits would have to be included in the assignment unless specifically excluded in the judgment of divorce or judgment of separate maintenance. "Components" would include, but not be limited to, supplements, subsidies, early

retirement benefits, post-retirement benefit increases, surviving spouse benefits, and death benefits.

The above would apply regardless of the characterization of the pension, annuity, or retirement benefit as regular, early, or disability retirement; death benefit; or any other characterization or classification unless specifically excluded in the judgment of divorce or separation of maintenance.

The bill would only apply to a divorce or separate maintenance action filed on or after September 1, 2006.

ARGUMENTS:

For:

The effect of the bill would be to reverse the Michigan Appeals Court decision in *Quade v Quade*. In *Quade*, the divorce judgment awarded one-half of the defendant's pension to the plaintiff. The plaintiff also sought to have 50 percent of the defendant's early retirement benefits transferred by a Qualified Domestic Relations Order (QDRO), but the request was rejected by the trial court (and subsequently by the appellate court) because the judgment of divorce did not specifically award any of the early retirement benefits to the plaintiff.

Since that court case, only those components of a pension that have been specifically awarded in a judgment of divorce or judgment of separate maintenance have been subject to division of property. The bill would reverse the court decision and instead make all components of a pension subject to division unless specifically excluded.

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