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RETIREMENT BENEFIT AMENDMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: David M. Jones

AN ACT RELATING TO RETIREMENT; ALLOWING MEMBERS TO ASSIGN CERTAIN BENEFITS UNDER VIATICAL SETTLEMENTS; ALLOWING THE ENFORCEMENT OF INTERESTS; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

49-1-606, as last amended by Chapter 81, Laws of Utah 1989

49-1-609, as last amended by Chapter 197, Laws of Utah 1995

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **49-1-606** is amended to read:

49-1-606. Beneficiary designations upon marriage or remarriage -- Revocation of beneficiary designation -- Procedure -- Beneficiary not designated -- Payment to survivors in order established under the Uniform Probate Code -- Restrictions on payment -- Payment of deceased's expenses -- Viatical settlements.

(1) As used in this section, "viatical settlement" means a written contract entered into by a member who may designate a beneficiary for any benefit under this title or who is the policyholder of a life insurance policy insuring the life of the terminally ill member, under which the member assigns, transfers ownership, irrevocably designates a specific person, or otherwise alienates all control and right in the benefit or the insurance policy to another person, when the proceeds of the contract is paid to the member or the member's designee prior to the death of the member.

~~(1)~~ (2) If a member marries or remarries, all beneficiary designations dated prior to the most recent marriage and filed with the retirement office shall be cancelled and the spouse shall be the beneficiary unless a different beneficiary designation is executed on or after the date of the

1 marriage and filed with the retirement office, in which case the designation of beneficiary shall be
2 binding in the payment of any benefits which may be due under this title.

3 ~~[(2)]~~ (3) A member may revoke a designation of beneficiary at any time and may file a
4 different beneficiary designation by executing and filing with the retirement office a written
5 beneficiary designation on forms provided by the retirement office, except where an optional
6 continuing plan is chosen, or the law makes a specific benefit designation to a dependent spouse,
7 in which case the beneficiary designation may not be revoked.

8 ~~[(3)]~~ (4) If no beneficiary is designated or if the estate is the named beneficiary and if a
9 deceased member does not leave an estate requiring probate in the absence of the amounts due
10 from the retirement system, unless otherwise provided in this title, all benefits payable from the
11 retirement system, including retirement benefits accrued but not received prior to death, may be
12 paid or applied to the benefit of the surviving next of kin of the deceased in the order of precedence
13 established under Title 75, Chapter 2, ~~[the Utah Uniform Probate Code]~~ Intestate Succession and
14 Wills.

15 ~~[(4)]~~ (5) No payment may be made to persons included in any of these groups if at the date
16 of payment there are living persons in any of the groups preceding it. Payment to the persons in
17 any group based upon receipt from those persons of an affidavit in a form satisfactory to the
18 administrator that:

- 19 (a) there are no living individuals in the group preceding it;
20 (b) that the probate of the estate of the deceased has not been commenced; and
21 (c) that more than three months have elapsed since the date of death of the decedent, shall
22 be in full satisfaction and discharge of all claims for benefits under this title and payable by reason
23 of the death of the decedent.

24 ~~[(5)]~~ (6) If the location of the nominated beneficiary cannot be ascertained or if the
25 nominated beneficiary is the estate of the deceased person, the administrator may pay the costs of
26 the deceased's last illness, convalescent care, and funeral expenses directly to the undertaking
27 establishment, hospital, doctor, or convalescent home which provided the service. The
28 administrator shall require verified statements of the charges before making partial or full payment.
29 The payment shall discharge the obligation of the system and of the fund up to the amount paid.

30 (7) (a) Notwithstanding any other provision in this title, a member may make an
31 irrevocable viatical settlement for any benefit under this title, including any life insurance policy,

1 for which the member may designate a beneficiary.

2 (b) A person may enforce payment of proceeds from an interest obtained under a viatical
3 settlement.

4 Section 2. Section **49-1-609** is amended to read:

5 **49-1-609. Nonassignability of benefits or payments -- Exemption from legal process**
6 **-- Deduction of amounts owned -- Exception for viatical settlements.**

7 (1) Except as provided in Subsection (4), the right of any member or beneficiary to any
8 benefit, payment, or any other right accrued or accruing to any person under this title and the assets
9 of the fund created by this title are not subject to alienation or assignment by the member or
10 beneficiary and are not subject to attachment, execution, garnishment, or any other legal or
11 equitable process.

12 (2) This section may not be construed to prohibit the administrator from deducting medical
13 or other insurance premiums from a retirant's allowance as requested by the retirant providing that
14 any request is within limitations and rules prescribed by the board.

15 (3) (a) Notwithstanding Subsection (1), the retirement board shall provide for the division
16 of a member's retirement allowance or refund of contributions upon termination to former spouses
17 and family members pursuant to an order of a court of competent jurisdiction with respect to
18 domestic relations matters on file with the retirement office.

19 (b) The court order shall specify the manner in which the retirement allowance or refund
20 of contributions shall be partitioned, whether as a fixed amount or as a percentage of the benefit.

21 (c) The board may also provide for the division of a member's defined contribution
22 account.

23 (d) The board shall make rules to implement this section.

24 (4) (a) In accordance with federal law, the board may deduct the required amount from any
25 benefit, payment, or other right accrued or accruing to any member of a system, plan, or program
26 under this title to offset any amount that member owes to a system, plan, or program administered
27 by the board.

28 (b) The board shall provide for the payment of proceeds for any irrevocable viatical
29 settlement entered into by a member for any benefit under this title, including any life insurance
30 policy, for which the member may designate a beneficiary as provided in Section 49-1-606.

Legislative Review Note

as of 2-4-98 1:51 PM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel