

but are subject to all other provisions of chapter 16B. When practical, purchases must be made from socially and economically disadvantaged businesses. Additionally, the expenses of inmate vocational training and the inmate release fund may be financed from the correctional industries revolving fund in an amount to be determined by the commissioner. The proceeds and income from all industrial and commercial activities conducted at state correctional facilities shall be deposited in the correctional industries revolving fund subject to disbursement as hereinabove provided. The commissioner of corrections may request that money in the fund be invested pursuant to section 11.10; the proceeds from the investment not currently needed shall be accounted for separately and credited to the fund.

Approved May 15, 1987

#### CHAPTER 157—H.F.No. 940

*An act relating to retirement; various employee pension plans; specifying that exemptions from legal process do not include marital property divisions; requiring the provision of certain pension plan information in marriage dissolution actions; providing for court appointed actuaries in marriage dissolution actions; authorizing conversion of a certain joint and survivor annuity; amending Minnesota Statutes 1986, sections 69.51; 352.15, subdivision 1; 352.96, by adding a subdivision; 352B.071; 353.15; 354.10; 354A.11; 422A.24; 423.39; 423.61; 423.813; 424.27; 518.54, subdivision 5, and by adding subdivisions; and 518.58; proposing coding for new law in Minnesota Statutes, chapters 356 and 518.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1986, section 69.51, is amended to read:

##### 69.51 PAYMENTS EXEMPT FROM PROCESS.

All payments made, or to be made, by any relief association under any of the provisions of sections 69.25 to 69.53 shall be totally exempt from garnishment, execution, or other legal process ~~and~~, except as provided in section 518.58, section 18, or 518.611. No persons entitled to such payment shall have the right to assign the same, nor shall the association have authority to recognize any assignment or to pay any sum on account thereof; ~~and~~. Any attempt to transfer any such right or claim, or any part thereof, shall be void.

Sec. 2. Minnesota Statutes 1986, section 352.15, subdivision 1, is amended to read:

Subdivision 1. **EXEMPTION; EXCEPTIONS.** None of the moneys, annuities, or other benefits mentioned herein shall be assignable either in law or in equity or be subject to any state estate tax, or to execution, levy, attachment, garnishment, or other legal process, except as provided in subdivision 1a or section 518.58, section 18, or 518.611. ~~Provided, however,~~

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Subd. 1a. AUTOMATIC DEPOSITS. The executive director may pay an annuity, benefit or refund to a banking institution, qualified under chapter 48, that is trustee for a person eligible to receive such annuity, benefit or refund. Upon the request of a retired, disabled or former employee, the executive director may mail the annuity, benefit or refund check to a banking institution, savings association or credit union for deposit to such employee's account or joint account with a spouse. The board of directors may prescribe the conditions under which such payments will be made.

Sec. 3. Minnesota Statutes 1986, section 352.96, is amended by adding a subdivision to read:

Subd. 6. EXEMPTION FROM PROCESS. As money to which legal title is vested in the state of Minnesota, no amount of deferred compensation is assignable or subject to execution, levy, attachment, garnishment, or other legal process, except as provided in section 518.58, section 18, or 518.611.

Sec. 4. Minnesota Statutes 1986, section 352B.071, is amended to read:

**352B.071 EXEMPTION FROM PROCESS.**

None of the money, annuities, or other benefits provided for in this chapter shall be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment, or other legal process, except as provided in section 518.58, section 18, or 518.611.

Sec. 5. Minnesota Statutes 1986, section 353.15, is amended to read:

**353.15 NONASSIGNABILITY AND EXEMPTION OF ANNUITIES AND BENEFITS FROM JUDICIAL PROCESS.**

Subdivision 1. EXEMPTION; EXCEPTIONS. No money, annuity, or benefit provided for in this chapter is assignable or subject to any state estate tax, or to execution, levy, attachment, garnishment, or legal process, except as provided in subdivision 2 or section 518.58, section 18, or 518.611. ~~Provided, however,~~

Subd. 2. AUTOMATIC DEPOSITS. The association may pay an annuity, benefit or refund to a trust company, qualified under chapter 48, that is trustee for a person eligible to receive such annuity, benefit or refund. Upon the request of a retired, disabled or former member, the association may mail the annuity, benefit or refund check to a banking institution, savings association or credit union for deposit to such person's account or joint account with a spouse. The association may prescribe the conditions under which such payment will be made.

Subd. 3. PAYMENT TO PUBLIC BODIES. If in the judgment of the executive director conditions so warrant, payment may be made to a public body in behalf of an annuitant, disabilitant, or survivor upon such terms as the executive director may prescribe.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Sec. 6. Minnesota Statutes 1986, section 354.10, is amended to read:

**354.10 FUND NOT SUBJECT TO ASSIGNMENT OR PROCESS; BENEFICIARIES.**

Subdivision 1. EXEMPTION; EXCEPTIONS. The right of a teacher to take advantage of the benefits provided by this chapter, is a personal right only and shall not be assignable. All money to the credit of a teacher's account in the fund or any money payable to the teacher from the fund shall belong to the state of Minnesota until actually paid to the teacher or a beneficiary pursuant to the provisions of this chapter. Any power of attorney, assignment or attempted assignment of a teacher's interest in the fund, or of the beneficiary's interest therein, by a teacher or a beneficiary, shall be null and void and the same shall be exempt from taxation under chapter 291 and from garnishment or levy under attachment or execution, except as provided in subdivision 2 or section 518.58, section 18, or 518.611. ~~Provided however,~~

Subd. 2. AUTOMATIC DEPOSITS. The board may pay an annuity or benefit to a banking institution, qualified under chapter 48, that is a trustee for a person eligible to receive such annuity or benefit. Upon completion of the proper forms as provided by the board, the annuity or benefit check may be mailed to a banking institution, savings association or credit union for deposit to the recipient's individual account or joint account with a spouse. The board shall prescribe the conditions which shall govern these procedures.

Subd. 3. PAYMENT TO PUBLIC BODIES. If in the judgment of the executive director conditions so warrant, payment may be made to a public body in behalf of an annuitant, disablitant, or survivor upon such terms as the executive director may prescribe.

Subd. 4. CHANGES IN BENEFICIARIES. Any beneficiary designated by a teacher under the terms of this chapter, may be changed or revoked by the teacher at pleasure, in such manner as the board may prescribe. In case a designated beneficiary dies before the teacher designating the beneficiary dies, and a new beneficiary is not designated, the teacher's estate shall be the beneficiary.

Sec. 7. Minnesota Statutes 1986, section 354A.11, is amended to read:

**354A.11 CERTAIN MONEYS AND CREDITS OF TEACHERS EXEMPT.**

All moneys deposited by a teacher or member or deposited by any other person or corporation, municipal or private, to the credit of a teacher or member of a teachers retirement fund association organized pursuant to this chapter, and all moneys, rights, and interests or annuities due or to become due to a teacher, member, or annuitant, or their beneficiaries, from any association shall not be assignable, shall be exempt from garnishment, attachment, and execution or sale on any final process issued from a court and other legal process, except as provided in section 518.58, section 18, or 518.611, and shall not be subject to the estate tax provisions of this state. ~~This section does not make the moneys nonmarital property.~~

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

**Sec. 8. [356.80] PROVISION OF INFORMATION IN THE EVENT OF MARRIAGE DISSOLUTION.**

Subdivision 1. INFORMATION FOR A PENDING MARRIAGE DISSOLUTION. (a) Upon written request by a person with access to the data under subdivision 3, a public or private pension plan must provide the court and the parties to a marriage dissolution action involving a plan member or former plan member with information regarding pension benefits or rights of the plan member or former plan member. The pension plan shall provide this information upon request of the court or a party to the action without requiring a signed authorization from the plan member or former plan member.

(b) The information must include the pension benefits or rights of the plan member or former plan member as of the first day of the month following the date of the request, as of the first day of the seventh month following the date of the request if the action involves an active plan member, and as of the date of valuation of marital assets under section 518.58, if the person requesting the information specifies that date. The information must also include the accrued service credit of the person, the credited salary of the person for the most current five-year period, a summary of the benefit plan, and any other information relevant to the calculation of the present value of the benefits or rights.

Subd. 2. INFORMATION FOR AN EXISTING DISSOLUTION DECREE. If a marriage dissolution decree rendered by a court of competent jurisdiction prior to the effective date of this section provided a procedure for dividing pension benefits or rights in the form of future pension plan payments, upon request the applicable pension plan shall provide on a timely basis to the court and the parties to the action the required information to implement that procedure.

Subd. 3. ACCESS TO DATA. Notwithstanding any provision of chapter 13 to the contrary, a responsible authority may release private or confidential data on individuals to the court, the parties to a marriage dissolution, their attorneys, and an actuary appointed under section 19, to the extent necessary to comply with this section.

Sec. 9. Minnesota Statutes 1986, section 422A.24, is amended to read:

**422A.24 ALLOWANCES NOT ASSIGNABLE OR SUBJECT TO PROCESS.**

No moneys payable pursuant to this chapter shall be assignable either in law or equity or be subject to execution, levy, attachment, garnishment, or other legal process, except as provided in section 518.58, section 18, or 518.611, nor shall any of the proceeds of payments due pursuant to this chapter be subject to the inheritance tax provisions of this state upon transfer to a surviving spouse or minor or dependent child of the decedent or a trust for their benefit.

Sec. 10. Minnesota Statutes 1986, section 423.39, is amended to read:

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

**423.39 FUNDS EXEMPT FROM EXECUTION.**

All payments made or to be made by any such police officers' relief association under any of the provisions of Laws 1947, Chapter 625, shall be totally exempt from garnishment, execution, or other legal process, except as provided in section 518.58, section 18, or 518.611; ~~and~~. No persons entitled to such payment shall have the right to assign the same, nor shall the association have authority to recognize any assignment, or to pay any sum on account thereof; ~~and~~. Any attempt to transfer any such right or claim, or any part thereof, shall be absolutely void.

Sec. 11. Minnesota Statutes 1986, section 423.61, is amended to read:

**423.61 PENSION EXEMPT FROM LEGAL PROCESS.**

All payments made or to be made by any such police officers' relief association under any of the provisions of sections 423.41 to 423.62 shall be totally exempt from garnishment, execution, or other legal process, except as provided in section 518.58, section 18, or 518.611; ~~and~~. No persons entitled to such payment shall have the right to assign the same, nor shall the association have authority to recognize any assignment, or to pay any sum on account thereof; ~~and~~. Any attempt to transfer any such right or claim, or any part thereof, shall be absolutely void.

Sec. 12. Minnesota Statutes 1986, section 423.813, is amended to read:

**423.813 PAYMENTS EXEMPT FROM PROCESS, ASSIGNMENT FORBIDDEN.**

Any payment made by the association under any provision of sections 423.801 to 423.814 is exempt from any legal process, except as provided in section 518.58, section 18, or 518.611. No person entitled to any such payment may assign the same. The association may not recognize any assignment or pay any sum on account thereof.

Sec. 13. Minnesota Statutes 1986, section 424.27, is amended to read:

**424.27 PAYMENTS EXEMPT FROM LEGAL PROCESS.**

All payments made or to be made by any relief associations under any of the provisions of sections 424.01 to 424.29 shall be totally exempt from garnishment, execution, or other legal process, except as provided in section 518.58, section 18, or 518.611; ~~and~~. No persons entitled to such payment shall have the right to assign the same, nor shall the association have authority to recognize any assignment, or to pay any sum on account thereof; ~~and~~. Any attempt to transfer any such right or claim or any part thereof shall be void.

Sec. 14. Minnesota Statutes 1986, section 518.54, subdivision 5, is amended to read:

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Subd. 5. **MARITAL PROPERTY; EXCEPTIONS.** "Marital property" means property, real or personal, including vested public or private pension plan benefits or rights, acquired by the parties, or either of them, to a dissolution, legal separation, or annulment proceeding at any time during the existence of the marriage relation between them, or at any time during which the parties were living together as husband and wife under a purported marriage relationship which is annulled in an annulment proceeding. All property acquired by either spouse subsequent to the marriage and before a decree of legal separation is presumed to be marital property regardless of whether title is held individually or by the spouses in a form of coownership such as joint tenancy, tenancy in common, tenancy by the entirety, or community property. Each spouse shall be deemed to have a common ownership in marital property that vests not later than the time of the entry of the decree in a proceeding for dissolution or annulment. The extent of the vested interest shall be determined and made final by the court pursuant to section 518.58. The presumption of marital property is overcome by a showing that the property is nonmarital property.

"Nonmarital property" means property real or personal, acquired by either spouse before, during, or after the existence of their marriage, which

(a) is acquired as a gift, bequest, devise or inheritance made by a third party to one but not to the other spouse;

(b) is acquired before the marriage;

(c) is acquired in exchange for or is the increase in value of property which is described in clauses (a), (b), (d), and (e);

(d) is acquired by a spouse after a decree of legal separation; or

(e) is excluded by a valid antenuptial contract.

Sec. 15. Minnesota Statutes 1986, section 518.54, is amended by adding a subdivision to read:

Subd. 10. PUBLIC PENSION PLAN BENEFITS OR RIGHTS. "Public pension plan benefits or rights" means a benefit or right from a public pension plan accrued to the end of the month in which marital assets are valued, as determined under the terms of the laws or other plan document provisions governing the plan, including section 356.30.

Sec. 16. Minnesota Statutes 1986, section 518.54, is amended by adding a subdivision to read:

Subd. 11. PUBLIC PENSION PLAN. "Public pension plan" means a pension plan or fund specified in section 356.20, subdivision 2, or 356.30, subdivision 3, the deferred compensation plan specified in section 352.96, or any retirement or pension plan or fund, including a supplemental retirement plan or fund, established, maintained, or supported by a governmental subdivision or public body whose revenues are derived from taxation, fees, assessments, or from other public sources.

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Sec. 17. Minnesota Statutes 1986, section 518.58, is amended to read:

**518.58 DIVISION OF MARITAL PROPERTY.**

Subdivision 1. GENERAL. Upon a dissolution of a marriage, an annulment, or in a proceeding for disposition of property following a dissolution of marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property and which has since acquired jurisdiction, the court shall make a just and equitable division of the marital property of the parties without regard to marital misconduct, after making findings regarding the division of the property. The court shall base its findings on all relevant factors including the length of the marriage, any prior marriage of a party, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, needs, opportunity for future acquisition of capital assets, and income of each party. The court shall also consider the contribution of each in the acquisition, preservation, depreciation or appreciation in the amount or value of the marital property, as well as the contribution of a spouse as a homemaker. It shall be conclusively presumed that each spouse made a substantial contribution to the acquisition of income and property while they were living together as husband and wife. The court may also award to either spouse the household goods and furniture of the parties, whether or not acquired during the marriage.

If the court finds that either spouse's resources or property, including the spouse's portion of the marital property as defined in section 518.54, subdivision 5 are so inadequate as to work an unfair hardship, considering all relevant circumstances, the court may, in addition to the marital property, apportion up to one-half of the property otherwise excluded under section 518.54, subdivision 5, clauses (a) to (d) to prevent the unfair hardship. If the court apportions property other than marital property, it shall make findings in support of the apportionment. The findings shall be based on all relevant factors including the length of the marriage, any prior marriage of a party, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, needs, and opportunity for future acquisition of capital assets and income of each party.

If the court finds that it is necessary to preserve the marital assets of the parties, the court may order the sale of the homestead of the parties or the sale of other marital assets, as the individual circumstances may require, during the pendency of a proceeding for a dissolution of marriage or an annulment. If the court orders a sale, it may further provide for the disposition of the funds received from the sale during the pendency of the proceeding. If liquid or readily liquidated marital property other than property representing vested pension benefits or rights is available, the court, so far as possible, shall divide the property representing vested pension benefits or rights by the disposition of an equivalent amount of the liquid or readily liquidated property.

Subd. 2. PENSION PLANS. The division of marital property that repre-

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sents vested public pension benefits or rights in the form of future public pension plan payments:

(1) may not commence until the public plan member submits a valid application for a public pension plan benefit and the benefit becomes payable;

(2) is payable only to the extent of the amount of the public pension plan benefit payable under the terms of the plan;

(3) is not payable for a period that exceeds the time that public pension plan benefits are payable to the public pension plan benefit recipient;

(4) is not payable in a lump sum amount from public pension plan assets attributable in any fashion to a spouse with the status of an active member, deferred retiree, or benefit recipient of a public pension plan; and

(5) if the former spouse to whom the payments are to be made dies prior to the end of the specified payment period with the right to any remaining payments accruing to an estate or to more than one survivor, is payable only to a trustee on behalf of the estate or the group of survivors for subsequent apportionment by the trustee.

#### Sec. 18. [518.581] SURVIVING SPOUSE BENEFIT.

Subdivision 1. AWARD OF BENEFIT. If a current or former employee's marriage is dissolved, the court may order the employee, the employee's pension plan, or both, to pay amounts as part of the division of pension rights that the court may make under section 518.58, or as an award of maintenance in the form of a percentage of periodic or other payments or in the form of a fixed dollar amount. The court may, as part of the order, award a former spouse all or part of a survivor benefit unless the plan does not allow by law the payment of a surviving spouse benefit to a former spouse.

Subd. 2. PAYMENT OF FUNDS BY RETIREMENT PLAN. (a) If the court has ordered that a spouse has an interest in a pension plan, the court may order the pension plan to withhold payment of a refund upon termination of employment or lump sum distribution to the extent of the spouse's interest in the plan, or to provide survivor benefits ordered by the court.

(b) The court may not order the pension plan to:

(1) pay more than the equivalent of one surviving spouse benefit, regardless of the number of spouses or former spouses who may be sharing in a portion of the total benefit;

(2) pay surviving spouse benefits under circumstances where the plan member does not have a right to elect surviving spouse benefits; or

(3) pay surviving spouse benefits if the former spouse would not be eligible for benefits under the terms of the plan;

Changes or additions are indicated by underline, deletions by ~~strikeout~~.



(4) order survivor benefits which, when combined with the annuity or benefit payable to the pension plan member, exceed the actuarial equivalent value of the normal retirement annuity form, determined under the plan documents of the pension plan then in effect and the actuarial assumptions then in effect for calculating optional annuity forms by the pension plan or for calculating the funding requirements of the pension plan if no optional annuity forms are provided by the pension plan.

(c) If more than one spouse or former spouse is entitled to a surviving spouse benefit, the pension plan shall pay each spouse a portion of the benefit based on the ratio of the number of years the spouse was married to the plan member to the total number of years the plan member was married to spouses who are entitled to the benefit.

**Subd. 3. NOTICE TO FORMER SPOUSE.** A pension plan shall notify a former spouse of an application by the employee for a refund of pension benefits if the former spouse has filed with the pension plan:

(1) a copy of the court order, including a withholding order, determining the former spouse's rights;

(2) the name and last known address of the employee; and

(3) the name and address of the former spouse.

A pension plan shall comply with an order, including a withholding order, issued by a court having jurisdiction over dissolution of marriage that is served on the pension plan, if the order states the name, last known address of the payees, and name and address of the former spouse, or if the names and addresses are provided to the pension plan with service of the order.

**Subd. 4. DEFINITIONS.** For purposes of this section, the following terms have the meanings given in this subdivision.

(a) "Current or former public employee" or "employee" means an individual who has an interest in a pension plan.

(b) "Surviving spouse benefit" means (1) a benefit a surviving spouse may be eligible for under the laws and bylaws of the pension plan if the employee dies before retirement, or (2) a benefit selected for or available to a surviving spouse under the laws and bylaws of the pension plan upon the death of the employee after retirement.

**Sec. 19. [518.582] PROCEDURE FOR VALUING PENSION BENEFITS OR RIGHTS.**

**Subdivision 1. APPOINTMENT OF ACTUARY.** (a) Each court of this state that has jurisdiction to decide marriage dissolution matters may appoint an approved actuary to function as an expert witness in valuing pension benefits or rights.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

(b) An approved actuary is a person who is enrolled as a member of the American Academy of Actuaries, or is enrolled as an actuary pursuant to the Federal Employee Retirement Income Security Act of 1974, as amended.

Subd. 2. STANDARDS. A court appointed actuary shall determine the present value of pension benefits or rights that are marital property of the parties to the action based on the applicable plan documents of the pension plan and the applicable actuarial assumptions specified for use in calculating optional annuity forms by the pension plan or for funding the pension plan, if reasonable, or as specified by the court. The court appointed actuary shall report to the court and to the parties the present value of the pension benefits or rights that are marital property.

Subd. 3. COMPENSATION. The court appointed actuary may be compensated at a rate established by the court. The compensation of the court appointed actuary shall be allocated between the parties as the court directs.

Subd. 4. STIPULATION. In lieu of valuing pension benefits or rights through use of the court appointed actuary, the parties may stipulate the present value of pension benefits or rights that are marital property.

#### Sec. 20. BENEFIT CONVERSION IN CERTAIN CASES.

Subdivision 1. ENTITLEMENT. A retired member of the public employees retirement association, who was born on May 4, 1921, was employed by the city of Edina from September 1, 1965 to March 16, 1984, who elected a joint and survivor annuity pursuant to Minnesota Statutes, section 353.30, subdivision 3, who had their second marriage dissolved on August 20, 1986, shall be entitled to make the election specified in subdivision 2.

Subd. 2. ELECTION. A retired member described in subdivision 1 may elect to convert the joint and survivor annuity from the public employees retirement association covering the spouse of the second marriage to a single life annuity. Notice of the election must be filed with the association within 90 days after the effective date of this section. The single life annuity shall be the actuarial equivalent of the joint and survivor annuity payable on the date of the election of the benefit conversion.

Approved May 15, 1987

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#### CHAPTER 158—H.F.No. 1412

*An act relating to state land; authorizing extension of the date to sell lakeshore cabin site lots; amending Minnesota Statutes 1986, section 92.67, subdivision 4.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Changes or additions are indicated by underline, deletions by ~~strikeout~~.