



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-4571/P1
MIM:klm

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to repeal** 40.08 (1m) (f) 3.; and **to amend** 40.08 (1m) (f) 1. and 40.08 (1m)
2 (f) 2. of the statutes; **relating to:** domestic relations orders executed by the
3 Department of Employee Trust Funds (suggested as remedial legislation by the
4 Department of Employee Trust Funds).

Analysis by the Legislative Reference Bureau

This bill eliminates an expired provision regarding the execution of domestic relations orders (DRO) that divide a Wisconsin Retirement System account. Under current law, a DRO must be provided to DETF within 20 years after the judgment of divorce is entered. Under the original DRO law, DETF could not accept a DRO for a judgment of divorce entered before April 28, 1990. The law was amended by 1997 Wisconsin Act 125 to cover DROs for a judgment of divorce entered between January 1, 1982, and April 27, 1990.

The Wisconsin Supreme Court held in *Johnson v. Masters*, 2013 WI 43, 347 Wis. 2d 238, 830 N.W. 2d 647 (2012), that the 20-year limit for execution of DROs issued under the amended law did not begin until the date DETF was able to divide a WRS account. The 20-year period did not begin to toll until May 2, 1998. DETF has not been authorized to accept a DRO to divide an account under the 1997 Wisconsin Act 125 since May 2, 2018.

For further information, see the NOTES provided by the Law Revision Committee of the Joint Legislative Council.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the Department of Employee Trust Funds and introduced by the Law Revision Committee under s. 13.83 (1) (c) 4. and 5., stats. After careful consideration of the various provisions of the bill, the Law Revision Committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

1 **SECTION 1.** 40.08 (1m) (f) 1. of the statutes is amended to read:

2 40.08 (1m) (f) 1. ~~Subject to subd. 3., if~~ If the participant is not an annuitant on
3 the decree date, an amount equal to the total of the alternate payee share distributed
4 under par. (e), including creditable service, shall be subtracted from the participant's
5 account.

NOTE: SECTIONS 1 and 2 delete cross-references to the statute in SECTION 3.

6 **SECTION 2.** 40.08 (1m) (f) 2. of the statutes is amended to read:

7 40.08 (1m) (f) 2. ~~Subject to subd. 3., if~~ If the participant is an annuitant on the
8 decree date, the annuity shall be recomputed using the total value of the participant's
9 account determined under par. (b) reduced by the total of the alternate payee share
10 transferred under par. (e) 1., in accordance with the actuarial tables in effect and
11 using the participant's age on the decree date. The decree date shall be the effective
12 date of recomputation. If the optional annuity form before division of the
13 participant's account under par. (b) was not a joint and survivor annuity with the
14 alternate payee as the named survivor, the same annuity option with no change in
15 the remaining guarantee period, if any, shall be continued upon recomputation to the
16 participant. The present value of the alternate payee's share of the annuity after
17 division shall be paid to the alternate payee as a straight life annuity based on the

1 age of the alternate payee on the decree date. The alternate payee's annuity shall
2 have the same remaining guarantee period, if any, as the participant's annuity. If
3 the optional annuity form before division of the participant's account under par. (b)
4 was a joint and survivor annuity with the alternate payee as the named survivor, the
5 present value of the annuity after division shall be paid to both the participant and
6 the alternate payee as a straight life annuity based upon their respective ages on the
7 decree date. If the participant's account is reestablished under s. 40.63 (10) after the
8 decree date, the amounts and creditable service reestablished shall be reduced by an
9 amount equal to the percentage of the alternate payee share computed under this
10 subdivision.

11 **SECTION 3.** 40.08 (1m) (f) 3. of the statutes is repealed.

NOTE: This SECTION repeals an obsolete statute relating to the division of Wisconsin Retirement System benefits for any participant whose marriage is terminated by a court during the period that begins on January 1, 1982, and ends on April 27, 1990, and for whom the Department of Employee Trust Funds receives a qualified domestic relations order after May 2, 1998.

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(END)