



BILL NO. 109

Government Bill

*2nd Session, 63rd General Assembly
Nova Scotia
68 Elizabeth II, 2019*

An Act to Amend Chapter 41 of the Acts of 2011, the Pension Benefits Act

CHAPTER 21
ACTS OF 2019

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
APRIL 12, 2019**

The Honourable Karen Casey
Minister of Finance and Treasury Board

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

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**An Act to Amend Chapter 41
of the Acts of 2011,
the Pension Benefits Act**

Be it enacted by the Governor and Assembly as follows:

1 Section 2 of Chapter 41 of the Acts of 2011, the *Pension Benefits Act*, as amended by Chapter 25 of the Acts of 2013, Chapter 37 of the Acts of 2014, Chapters 6 and 48 of the Acts of 2015 and Chapter 4 of the Acts of 2018, is further amended by adding immediately after clause (at) the following clause:

(ata) “reserve account” means a separate account established pursuant to subsection 76A(1) within a pension fund if the pension plan contains a defined benefit provision;

2 Subsection 15(3) of Chapter 41 is repealed and the following subsection substituted:

(3) Information that is filed, collected by or submitted to the Superintendent in relation to a pension or a pension plan must be kept confidential by the Superintendent and must not be disclosed to any other person, except to a person referred to in any of clauses 42(1)(a) to (k) and in accordance with Sections 42 and 43.

3 Section 62 of Chapter 41 is repealed and the following Sections substituted:

62 (1) Subject to this Section and the prescribed requirements, where a defined benefit pension plan has not been wound up in whole, the administrator may transfer assets from the defined benefit portion of the plan to an insurance company for the purchase of an annuity in the form of a deferred pension or a pension, as the case may be, and any ancillary benefits or other benefits required or authorized by this Act, for any of the following persons:

(a) a former member or a retired member within the meaning of subclause 2(au)(ii) who does not intend to elect, or has not within the prescribed period elected to transfer an amount equal to the commuted value of that individual’s deferred pension or pension, as the case may be, in accordance with Section 61;

(b) a retired member within the meaning of subclause 2(au)(i), (iii) or (iv); and

(c) a person, other than a retired member, who is receiving a pension under the defined benefit provision of the pension plan.

(2) The administrator shall give notice of the intended purchase of an annuity pursuant to subsection (1) to the persons referred to in subsection (1), in accordance with the prescribed requirements.

(3) When an annuity is purchased under subsection (1), the administrator shall ensure that the annuity provides

(a) in respect of a former member or a retired member described in clause (1)(a), the former member or retired member with the same deferred pension, ancillary benefits or other benefits as the former member or retired member would have received from the pension plan had the transfer not been made;

(b) in respect of a retired member described in clause (1)(b), payments to the retired member in the same amount and form as the pension, ancillary benefits or other benefits that the retired member would have received from the pension plan had the transfer not been made; and

(c) in respect of a person, other than a retired member, who is receiving a pension, payments to the person in the same amount and form as the pension, ancillary benefits or other benefits that the person would have received from the pension plan had the transfer not been made.

(4) When purchasing an annuity under subsection (1), the administrator must be satisfied that

(a) the insurance company is authorized to sell annuities;

(b) the contract for the purchase of a deferred pension or a pension and any ancillary benefits meets the prescribed requirements; and

(c) the purchase meets all other prescribed requirements, conditions and limitations.

(5) An administrator is discharged on filing a certificate that meets the prescribed requirements and is prepared and signed by an actuary certifying that the administrator has complied with this Section and the prescribed requirements related to the purchase or purchases of

(a) in the case of a former member or a retired member described in clause (1)(a), a deferred pension and any ancillary benefits;

(b) in the case of a retired member described in clause (1)(b), a pension and any ancillary benefits; and

(c) in the case of a person other than a retired member, who is receiving a pension, a pension and any ancillary benefits.

(6) Subject to subsection (7), when an administrator is discharged in accordance with subsection (5), a former member, a retired member or another person who is receiving a pension and for whom the purchase was made under this Section is no longer a former member, a retired member or another person receiving a pension for the purpose of this Act.

(7) A person who receives a deferred pension or a pension in accordance with subsections (1) and (3) is entitled, for three years from the date of the purchase of the annuity, to participate in the allocation of surplus of the pension plan, in accordance with Sections 103 to 105 and the prescribed requirements, in the event of the pension plan's wind-up.

62A (1) Subject to subsection (3) and notwithstanding the filing of a certificate pursuant to subsection 62(5), should it be discovered after the filing of the certificate that the purchase referenced in the certificate did not comply with the requirements of this Section, the administrator is deemed, as of the filing of the certificate, not to have been discharged.

(2) The administrator who is deemed under subsection (1) not to have been discharged must immediately notify the former member, the retired member or the person, other than a retired member, who is receiving a pension that the administrator did not comply with the requirements and is not discharged under subsection 62(5).

(3) An administrator who is deemed under subsection (1) not to have been discharged may subsequently be discharged upon complying with the requirements of Section 62 and upon filing a new certificate pursuant to subsection 62(5).

(4) The Superintendent may, subject to Section 115, by order require the insurance company from whom the annuity was purchased under subsection 62(1), to repay an amount not greater than the amount of the payment together with interest thereon if the purchase does not comply with the requirements of Section 62.

(5) Subject to Section 115, an order made pursuant to subsection (4), exclusive of the reasons therefor, may, for the purpose of enforcement of the order, be registered with the Supreme Court of Nova Scotia and is enforceable in the same manner as a judgment of that Court.

4 Chapter 41 is further amended by adding immediately after Section 76 the following Section:

76A (1) Where a pension plan text document contains a defined benefit provision the administrator may establish a reserve account for the defined benefit portion of the pension plan.

(2) Contributions to a reserve account are limited to payments made in respect of a solvency deficiency or other prescribed contributions.

(3) Notwithstanding subsection (2), assets may not be transferred from an account in a pension fund to the fund's reserve account.

(4) Notwithstanding the provisions of the pension plan text document, the administrator may, on the full wind-up of the pension plan, withdraw surplus from the plan's reserve account if

(a) the prescribed conditions for the withdrawal of surplus from the reserve account are satisfied, including any prerequisite conditions for the making of the withdrawal application;

(b) the administrator has applied to the Superintendent in accordance with the prescribed requirements requesting the Superintendent's consent for the withdrawal of surplus from the reserve account; and

(c) the Superintendent has consented in accordance with the prescribed requirements to the withdrawal of surplus from the reserve account and the consent has not been revoked.

5 Subsection 77(3) of Chapter 41 is repealed.

6 (1) Subsection 80(1) of Chapter 41 is amended by striking out “holds” in the third line and substituting “is deemed to hold”.

(2) Subsection 80(3) of Chapter 41 is amended by striking out “holds” in the second line and substituting “is deemed to hold”.

(3) Subsection 80(4) of Chapter 41 is amended by striking out “holds” in the second line and substituting “is deemed to hold”.

(4) Section 80 of Chapter 41 is further amended by adding immediately after subsection (9) the following subsection:

(9A) In the event of a liquidation, assignment or bankruptcy of an employer, an amount equal to the amount that is deemed to be held in trust pursuant to subsections (1), (3) and (4) is deemed to be separate and form no part of the estate in liquidation, assignment or bankruptcy, regardless of whether that amount has been kept separate and apart from the employer’s own money or from the assets of the estate.

7 Chapter 41 is further amended by adding immediately after Section 102 the following Section:

102A In Sections 103, 104 and 105, “eligible annuity recipient” means the person for whom an annuity was purchased pursuant to subsections 62(1) and (3) who is or may be entitled to participate in the allocation of surplus of the pension plan in accordance with subsection 62(7).

8 (1) Subsection 103(1) of Chapter 41 is amended by adding “, other than surplus held in a reserve account,” immediately after “surplus” in the first line.

(2) Subsection 103(2) of Chapter 41 is amended by adding immediately after clause (c) the following clause:

(ca) any eligible annuity recipient;

9 (1) Subsection 104(1) of Chapter 41 is amended by striking out “The” in the first line and substituting “Subject to subsection (1A), the”.

(2) Section 104 of Chapter 41 is amended by adding immediately after subsection (1) the following subsection:

(1A) Subsection (1) does not apply to the payment of surplus from a reserve account.

(3) Subsection 104(3) of Chapter 41 is amended by

(a) adding “other than surplus held in a reserve account,” immediately after “1988,” in the third line; and

(b) adding “, any eligible annuity recipients” immediately after “retired members” in the fourth line.

(4) Subsection 104(4) of Chapter 41 is amended by adding “, other than surplus held in a reserve account,” immediately after “plan” in the third line.

(5) Subclause 104(7)(b)(iii) of Chapter 41 is amended by adding “, eligible annuity recipients” immediately after “retired members” in the second line.

(6) Subsection 104(8) of Chapter 41 is amended by adding “, eligible annuity recipients” immediately after “retired members” in the fourth line.

10 Subsection 105(3) of Chapter 41 is amended by adding “, eligible annuity recipients” immediately after “retired members” in the third line.

11 Subsection 115(2) of Chapter 41 is amended by striking out “62(5)” in the second line and substituting “62A(4)”.

12 Subsection 131(1) of Chapter 41 is amended by striking out “62(6)” in the second line and substituting “62A(5)”.

13 Subsection 139(1) of Chapter 41 is amended by

(a) adding “, other than surplus in a reserve account,” immediately after “surplus” in the second line of clause (i);

(b) adding immediately after clause (a) the following clauses:

(ata) prescribing pension plan contributions that may be paid into a reserve account other than solvency deficiency payments;

(atb) prescribing for a pension plan’s reserve account

(i) conditions for withdrawals from the surplus,

(ii) requirements respecting an application for the Superintendent’s consent to the withdrawal,

(iii) requirements respecting the Superintendent’s consent to the withdrawal,

(iv) the amount of and the manner in which the surplus may be withdrawn,

(v) the persons authorized to make withdrawals from the surplus and any notice to be provided of the withdrawal,

(vi) the conditions to be met before a withdrawal may be made from the surplus,

(vii) the basis upon which the amount proposed to be withdrawn is calculated, and

(viii) the times at which and the period within which an amount may be withdrawn;

and

(c) adding immediately after clause (bbb) the following clauses:

(bbc) prescribing requirements for the form and content of a notice of intended purchase of an annuity pursuant to subsection 62(2) including the giving of the notice;

(bbd) prescribing for the purchase of an annuity pursuant to Section 62

(i) requirements for the form and content of the contract for the purchase of a deferred pension or a pension and any ancillary benefits, and

(ii) conditions, requirements and limitations related to the purchase including conditions, requirements and limitations related to pension plan funding;

(bbe) prescribing requirements for the actuarial certificate for the purpose of subsection 62(5);

(bbf) respecting the discharge of an administrator pursuant to Section 62 and the deeming that an administrator has not been discharged pursuant to Section 62A;

14 This Act, except Sections 2 and 6, comes into force on such day as the Governor in Council orders and declares by proclamation.
