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## HIGHLIGHTS OF *THE PENSION BENEFITS AMENDMENT ACT*

*The Pension Benefits Amendment Act* (Amendment Act) received royal assent on April 19, 2005. It may be accessed at <http://web2.gov.mb.ca/laws/statutes/2005/c00205e.php>. The Amendment Act will come into effect on the Proclamation date. Accompanying amendments to the *Pension Benefits Regulations* must be prepared to facilitate numerous provisions in this new legislation. Therefore, an implementation date has not yet been finalized for the complete Amendment Act.

Notwithstanding the above, the regulations to permit a Life Income Fund (LIF) or Locked-in Retirement Income Fund (LRIF) owner who is at least age 55, to apply for a one-time or Prescribed Transfer of up to 50% of the balance in one or more of his or her LIFs or LRIFs to a Prescribed Registered Retirement Income Fund was effective May 25, 2005, and Section 21.4 of the Amendment Act proclaimed into law effective the same date.

The changes include:

- enabling pension plans to contain provisions more advantageous to members than the minimum standards set by the Act and the regulations, except where the provisions would be contrary to an express prohibition or restriction in the Act or the regulations
- limiting the ability to waive or contract out of the requirements of the Act and the regulations
- prohibiting minimum service requirements for vesting and locking-in of a member's entitlement to a pension
- allowing for pre-retirement payments in the event of a shortened life expectancy
- setting minimum standards for
  - normal retirement age
  - accrual of benefits for members who continue to be employed and make contributions after reaching normal retirement age
  - entitlement to commence a pension on early retirement
- clarifying the rule limiting an employee's funding of a defined benefit pension to 50% of its commuted value
- amending provisions for portability of pension benefits before pension commencement
- revising minimum standards for mandatory participation in pension plans
- providing a pension to the surviving spouse or common-law partner of a member who dies before his or her pension commences only if they were cohabiting immediately before death and permitting the survivor pension on pre-retirement death to be waived
- providing for ancillary benefits
- providing for optional ancillary contributions and related benefits
- permitting a non-resident (former) plan member or other beneficiary to withdraw the commuted value of a pension, if permitted by the pension plan
- permitting payments from a pension plan to a member under an agreement for a phased retirement
- harmonizing joint pension requirements with those of other jurisdictions by requiring a minimum 60% survivor's pension reducing on the member's death only, and requiring a joint pension only where the member and his or her spouse or common-law partner are cohabiting at pension commencement

- allowing surplus to be paid, subject to certain conditions, to an employer whose proposal regarding the payment of surplus has received the level of consent from plan members and other beneficiaries required by the Act
- clarifying provisions relating to multi-unit pension plans, and expanding them to include certain multi-employer plans
- requiring the board of trustees of a multi-unit pension plan to include a member who represents the interests of those who are receiving or are entitled to receive a pension and are no longer contributing to the plan
- requiring certain pension plans to be administered by a pension committee that includes both member and employer representatives
- clarifying the duty of administrators regarding the investment of pension assets
- requiring a division of a pension or pension benefit credit between separated spouses or common-law partners not only when family assets are to be divided under an agreement or a court order made under *The Family Property Act*, but also when a court of another Canadian jurisdiction requires a pension or pension benefit credit to be divided
- permitting a non-resident owner of a locked-in retirement savings or benefit plan to withdraw the balance under the plan, if permitted by the plan

Other changes to the Act include:

- permitting the owner of a locked-in retirement benefit plan (LIF/LRIF) a one-time only transfer of up to 50% of the balance in an individual locked-in retirement benefit plan (LIF/LRIF) to a creditor-proof Registered Retirement Income Fund
- enabling a separated common-law partner who is not eligible to apply for an order under *The Family Property Act* to apply to the Court of Queen's Bench for an order requiring his or her partner's pension or pension benefit credit to be divided
- correcting various technical deficiencies in the Act, and modernizing some of the terminology of the Act.

The Act also makes consequential amendments to *The Family Maintenance Act*, *The Garnishment Act*. and *The Human Rights Code*.

For more information please contact:

Manitoba Pension Commission  
 1004 – 401 York Avenue  
 Winnipeg MB R3C 0P8

Tel: 204-945-2740  
 Fax: 204-948-2375  
 Email: [pensions@gov.mb.ca](mailto:pensions@gov.mb.ca)  
 Website: <http://www.gov.mb.ca/labour/pension/index.html>

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