

CHAPTER 181B

PRIVATE PENSION BENEFITS PROTECTION

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181B.01 CITATION.

Sections 181B.01 to 181B.17 shall be known and may be cited as the "Private Pension Benefits Protection Act"

History: 1974 c 437 s 1

181B.02 DEFINITIONS.

Subdivision 1. As used in sections 181B.01 to 181B.17, the following terms shall have the meanings given.

Subd. 2. "Employer" means any person, firm or corporation who employs 100 or more people at least one of whom is employed in this state at any time within one year prior to the date that it ceases to operate a place of employment or a pension plan or such longer period as may be prescribed by the commissioner pursuant to section 181B.14.

Subd. 3. "Place of employment" means any location within this state at which an employer employs any employees at any time within one year prior to the date that the employer ceases to operate at such location or such longer period as may be prescribed by the commissioner pursuant to section 181B.14.

Subd. 4. "Employee" means any person employed at the place of employment at any time within one year prior to the date when the employer ceases to operate the place of employment or a pension plan or such longer period as may be prescribed by the commissioner pursuant to section 181B.14. "Employee" also means any person who is not employed by the employer but who was formerly employed in this state, and is eligible or will be eligible without the earning of additional pension credits to receive a pension benefit from the employer's pension plan.

Subd. 5. "Commissioner" means the commissioner of labor and industry.

Subd. 6. "Ceases to operate a place of employment or a pension plan" means:

- (a) The complete termination of operations at a place of employment, or
- (b) A substantial reduction in the number of employees at a place of employment, or
- (c) The termination or substantial reduction of pension plan operations or benefits for all or a portion of an employer's employees.

The term shall not mean any temporary cessation of operations or reduction of employees. Neither shall the term mean any cessation of operations by a single employer who participates in a pension plan to which more than one employer makes contributions if such cessation does not also entail the termination of the master pension plan. In determining whether any reduction has been substantial the commissioner shall take into consideration not only the absolute size of the reduction but the relative size of the reduction as it relates to the corporate and employment history of the group or subgroup suffering the reduction. In addition, the commissioner may find that a number of unsubstantial reductions are, for the purposes of sections 181B.01 to 181B.17, equivalent to a substantial reduction. When an employer ceases to operate a place of employment or a pension plan but offers to retain without

loss of pension credit all of the employees in comparable jobs with equal or increased compensation at another location within the state or at some other location outside this state as specified in any voluntary agreement authorized by section 181B.10, sections 181B.01 to 181B.17 shall not apply except as it affects persons not employed by the employer but who are eligible or will be eligible without the earning of additional pension credits to receive the pension benefits from the employer's pension plan.

Subd. 7. "Pension plan" means any plan, fund or program which is established, maintained or entered into by an employer for the purpose of providing retirement benefits for its employees, or their beneficiaries and which is designated as a qualified pension plan under section 401 of the United States Internal Revenue Code of 1986, as amended through December 31, 1992, but does not mean any plan established by collective bargaining agreement which is excluded from the coverage of United States Code, title 29, section 186(c) (5) (B) by United States Code, title 29, section 186(g) and for which the employer has no administrative responsibility and no responsibility for the establishment of the retirement benefit schedule. Sections 181B.01 to 181B.17 shall not apply to any retirement fund or program providing benefits only for public employees of the federal government or the state government or a subdivision of the state, nor shall it apply to any pension plan established on behalf of a religious, charitable, or educational organization as defined by section 501 (c) (3) of the United States Internal Revenue Code of 1986, as amended through December 31, 1992. Further, sections 181B.01 to 181B.17 shall not apply to any money purchase, profit sharing, or stock bonus plan in which no definitely determinable level of benefits is stipulated to be given to qualified plan participants at normal retirement age or some other age.

Subd. 8. "Normal retirement benefit" means that benefit payable under a pension plan in the event of retirement at the normal retirement age.

Subd. 9. "Normal retirement age" means the lesser of either the normal retirement age as prescribed by the pension plan or age 65.

Subd. 10. "Accrued portion of the normal retirement benefit" with respect to employees with ten or more years of covered service means the larger of either the present value of the pension benefit which the employee has earned prior to cessation under the terms of the pension plan itself or the present value of the normal retirement benefit to which the employee would be entitled under the plan as in effect on the date of the cessation if the employee continued to earn pension credits based on the covered service which would have accumulated had the employee continued as a plan participant until normal retirement age or if the employee continued to earn annually until normal retirement age the same rate of compensation as that which had been earned prior to cessation, upon which a pension credit would have been computed under the plan at the rate specified by the plan for the years subsequent to the cessation, multiplied by a fraction not to exceed one, the numerator of which is the total number of years of covered service as of the date of cessation, and the denominator of which is the total number of years the employee would have had in covered service in such plan as of normal retirement age if the employee had continued to be an active participant in the plan until attaining such age.

With respect to employees with less than ten years of covered service, the defining term means the present value of the total amount of pension benefits which have been vested on or prior to the date of cessation. Where the above formulas are inapplicable or inequitable the defined term means that portion of the normal retirement benefit to which the commissioner determines actuarially the employee should be entitled based on the covered service of the employee, as of the date of the cessation.

Subd. 11. "Covered service" means the longer of either:

(a) The period of employment with an employer including predecessor employers as allowed in section 181B.07, clause (1) which is recognized under the terms of the employer's pension plan for the purposes of determining either an employee's eligibility to receive benefits under the plan or the amount of such benefits, or

(b) The amount of time after institution of the present pension plan or any substantially similar predecessor plan that an employee has been continuously employed in a full time capacity by an employer including predecessor employers as allowed in section 181B.07, clause (1) prior to the cessation of operations. Temporary and seasonal layoffs and unpaid

vacations and leaves of absence need not be credited as covered service but neither shall they serve to interrupt an employee's continuity of service. Part time employment may be credited as covered service if the commissioner determines that a previous full time employee has been reduced, to part time status as part of a plan to evade provisions of sections 181B.01 to 181B.17.

Subd. 12. "Vested right" means a legal right obtained by an employee participating in a pension plan to that part of an immediate or deferred pension benefit which arises from the employee's covered service under the plan and is no longer contingent on the employee remaining covered under the plan.

Subd. 13. "Vested pension benefit" means that accrued portion of the normal retirement benefit of an employee participating, or who has participated, in a pension plan to which the employee has a vested right.

Subd. 14. "Nonvested pension benefit" means the accrued portion of the normal retirement benefit of an employee participating in a pension plan to which the employee does not have a vested right.

Subd. 15. "Present value of the total amount of nonvested pension benefits" means that sum of money which if earning interest in a secure investment from the date of the cessation of operations onward would equal the value of the nonvested pension benefit on the date on which the plan participant reached normal retirement age.

Subd. 16. "Present value of the total amount of vested pension benefits" means that sum of money which if earning interest in a secure investment from the date of cessation of operations onward would equal the value of the vested pension benefit on the date on which the plan participant reached normal retirement age minus that sum of money which is set aside in trust or exclusively reserved to finance pension benefits for plan participants.

Subd. 17. "Present value of the normal retirement benefit" means that sum of money which if earning interest in a secure investment from the date of the cessation of operations onward would equal the value of the normal retirement benefit on the date on which the plan participant reached normal retirement age.

History: 1974 c 437 s 2; 1986 c 444; 1993 c 375 art 8 s 14

181B.03 PENSION REFUNDING CHARGE, VESTED BENEFITS PRIOR TO PENSION BENEFITS PROTECTION ACT.

Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of vested pension benefits based upon covered service occurring before April 10, 1974, of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose vested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such vested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17.

History: 1974 c 437 s 3; 1986 c 444

181B.04 NONVESTED BENEFITS PRIOR TO ACT.

Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of nonvested pension benefits based upon service occurring before April 10, 1974, of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose nonvested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such nonvested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17.

History: 1974 c 437 s 4; 1986 c 444

181B.05 VESTED BENEFITS UNDER ACT.

Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of vested pension benefits based upon covered service occurring after April 10, 1974 of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose vested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such vested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17.

History: 1974 c 437 s 5; 1986 c 444

181B.06 NONVESTED BENEFITS UNDER ACT.

Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of nonvested pension benefits based upon covered service occurring after April 10, 1974 of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose nonvested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such nonvested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17.

History: 1974 c 437 s 6; 1986 c 444

181B.07 EXCEPTIONS TO PENSION FUNDING REQUIREMENTS.

An employer shall not be liable for any pension funding charge under sections 181B.03 to 181B.06 when (1) the employer ceases to operate a place of employment or a pension plan as a result of merger, consolidation, or acquisition of assets, if the successor to the employer continues the pension plan of the employer or establishes a comparable pension plan which covers all previously covered employees of the employer with no reduction in credited covered service for purposes of sections 181B.01 to 181B.17 and no reduction in the value of the pension credits already earned by the employees; or (2) the employer ceasing to operate a place of employment or a pension plan has (a) in each of the five years prior to cessation made a contribution to the pension plan at least equal to the maximum contribution which would have been exempt from income taxation under section 404 of the United States Internal Revenue Code of 1986, as amended through December 31, 1992, or (b) in at least eight of the ten years immediately prior to cessation made a contribution to the pension plan at least equal to the maximum contribution which would have been exempt from income taxation under section 404 of the United States Internal Revenue Code of 1986, as amended through December 31, 1992, or (c) when the pension plan has been instituted less than five years prior to cessation, in every year since the institution of the plan, made a contribution to the pension plan at least equal to the maximum contribution which would have been exempt from income taxation under section 404 of the United States Internal Revenue Code of 1986, as amended through December 31, 1992.

History: 1974 c 437 s 7; 1993 c 375 art 8 s 14

181B.08 NOTICE OF INTENTION TO CEASE OPERATIONS.

Any employer who intends to cease to operate a place of employment or a pension plan within this state shall notify the commissioner of such intention not later than six months prior to the date the employer intends to cease such operation. In the case of an employer who intends to cease to operate a place of employment or a pension plan within this state within six months of April 10, 1974, the notice required by this section shall be given by the employer as soon as practicable, but not later than ten days after April 10, 1974.

History: 1974 c 437 s 8

181B.09 INVESTIGATION BY COMMISSIONER.

Upon receipt of such notification, or upon the commissioner's initiative when such notification is not given as required, the commissioner shall cause an investigation to be made of the employer to determine the number of employees who have completed ten or more years of covered service under the pension plan of the employer and whose nonvested or vested pension benefits have been or will be forfeited by such cessation, the number of employees whose vested pension benefits have been or will be forfeited by such cessation, the amounts of such nonvested or vested pension benefits, if any, of such employees, and any other facts or circumstances concerning the employer, employees and the pension plan for such employees as may be necessary or useful to the commissioner to carry out duties and responsibilities under sections 181B.01 to 181B.17. The investigation, insofar as practicable, shall be conducted at the employer's place of business during normal business hours. The employer shall cooperate fully with the commissioner in such investigation, and shall make available to the commissioner any books, records or other information necessary or useful to such investigation. To aid in such investigations, the commissioner is authorized to administer oaths and affirmations and to issue subpoenas to compel the attendance of witnesses or the production of books, records or other documents. The commissioner may seek, through the attorney general, orders from any court of competent jurisdiction to compel an employer to comply with the provisions of sections 181B.01 to 181B.17 and to punish disobedience of any subpoena issued pursuant to sections 181B.01 to 181B.17.

History: 1974 c 437 s 9; 1986 c 444

181B.10 DETERMINATION OF AMOUNT OF BENEFITS; AGREEMENTS AS TO BENEFITS.

As part of the investigation of an employer, the commissioner shall determine the amount of nonvested and vested pension benefits which have been compromised or settled to the commissioner's satisfaction. Nonvested and vested pension benefits may be compromised or settled by voluntary agreement between the employer and individual employees which is mutually understood by both parties to be a complete and final satisfaction of the employer's obligations regarding such benefits, provided that both parties are made fully aware of their rights and obligations under sections 181B.01 to 181B.17 prior to the making of such voluntary agreement. Before any such settlement can be made it must be approved by the commissioner. The commissioner shall not approve any settlement that is not fair and equitable. Further, for all settlements entered into by the employer the relationship between the present value of the compromised pension credits and the value of the settlement must be as constant as is practicable.

History: 1974 c 437 s 10; 1986 c 444

181B.101 LOSS OF RIGHTS CLAUSE VOID.

A clause in a pension or profit sharing plan which provides that the employee will lose a vested right or vested pension or profit sharing benefit if the employee joins a competing employer is void. This section is effective for rights and benefits which become vested before or after August 1, 1975.

History: 1975 c 307 s 1

181B.11 CERTIFICATION OF AMOUNTS AVAILABLE.

After the investigation of the employer the commissioner shall certify to the employer the present value of the total amount of nonvested and vested pension benefits which are includable in determining an employer's pension funding charge liability under sections 181B.01 to 181B.17 and the amount of such benefits which have been compromised or settled to the satisfaction of the commissioner. When the assets of an employer available for distribution under sections 181B.01 to 181B.17 are less than the sum total of the pension funding charges owed to employees as calculated by the commissioner, the commissioner shall calculate the proportion of available assets owed to each employee so that the actual amount to be received by any covered employee at normal retirement age divided by the amount that employee would have received at normal retirement age had there been no short-

age of assets available for distribution under sections 181B.01 to 181B.17 is a ratio as constant as is possible from employee to employee. In seeking to keep such ratio constant the commissioner shall consider the amounts to be received by an employee from trust fund assets set aside for employee pension benefits but unavailable for distribution under sections 181B.01 to 181B.17. The amount certified by the commissioner shall be due and payable to the employees in the manner specified in section 181B.12 on the date that the employer ceases to operate its place of employment or a pension plan and shall be a lien upon the employer's assets. If the pension funding charge is not paid when due, the employer shall be liable for interest on the amount due at the rate of eight percent per annum until the charge and interest are paid, and the attorney general of this state shall bring action in an appropriate district court of this state or in the courts of another state or in an appropriate federal court as provided for in section 181B.13.

History: 1974 c 437 s 11

181B.12 PURCHASE OF PREPAID DEFERRED ANNUITY.

The amount certified by the commissioner as due and payable to the employees shall be paid to the employees by the employer through the purchase of a prepaid deferred annuity payable to the employee when normal retirement age is reached or to a beneficiary upon the employee's death. Such purchase shall be made through a trust authorized by the United States Internal Revenue Service to make such purchases in a manner which exempts from federal income taxation the money used to purchase the annuity and all income earned by such annuity up to the date of the distribution of the annuity amount. In no event shall the amount of annuity to be distributed at normal retirement age exceed the amount of the accrued normal retirement benefit.

History: 1974 c 437 s 12; 1986 c 444

181B.13 RECOVERY OF AMOUNTS DUE.

The commissioner shall maintain a separate record of each employee owed a pension funding charge under sections 181B.01 to 181B.17. Ten days after any pension funding charge is due the commissioner shall tabulate all unpaid amounts and certify that figure to the attorney general who shall immediately take appropriate legal action as authorized in section 181B.11 on behalf of all aggrieved employees in a class action suit.

History: 1974 c 437 s 13

181B.14 ACTS CONSTITUTING TERMINATION.

For the purposes of sections 181B.01 to 181B.17, the employment of any employee involuntarily terminated within one year of the date an employer ceases to operate a place of employment or a pension plan within this state, or within such longer period as prescribed by the commissioner when the commissioner determines that an employer is attempting to evade the provisions of sections 181B.01 to 181B.17, shall be deemed to have been terminated because of the employer's ceasing to operate its place of employment or a pension plan, unless the employer can conclusively show that the termination was attributable to some other cause.

History: 1974 c 437 s 14; 1986 c 444

181B.15 RULES.

The commissioner may promulgate rules to provide for the efficient administration of the provisions of sections 181B.01 to 181B.17, or to clarify such provisions as may be necessary to effectuate the purposes of sections 181B.01 to 181B.17, and may from time to time specify any appropriate actuarial assumptions necessary to effectuate the purposes of sections 181B.01 to 181B.17.

History: 1974 c 437 s 15; 1985 c 248 s 70

181B.16 PROTECTION OF FUNDS FROM EXECUTION OR PROCESS.

The funds of any employer which are set aside or reserved for benefits under a pension plan of the employer to which employees have a vested right shall not be liable to levy or

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attachment by virtue of any execution or civil process whatever, issued out of any court of this state, for the collection of the pension funding charge imposed by sections 181B.01 to 181B.17.

History: *1974 c 437 s 16*

181B.17 EFFECTIVE DATE; EFFECT OF FEDERAL ACT IN AREA.

Sections 181B.01 to 181B.17 shall take effect April 10, 1974. Provided that sections 181B.01 to 181B.17 shall become null and void upon the institution of a mandatory plan of termination insurance guaranteeing the payment of a substantial portion of an employee's vested pension benefits pursuant to any law of the United States.

History: *1974 c 437 s 17*