

**Testimony before House Business and Labor Committee
In support of SB 370 A
On behalf of the OSB Family Law Section**

May 15, 2015

Chair Holvey and Members of the Committee:

My name is Ryan Carty. I am an attorney in private practice limited to family law. I am the legislative liaison for the Family Law Section of the Oregon State Bar for the current legislative session and am currently serving as Chair of the Family Law Section's Legislative Subcommittee. I appear today in that capacity. I am joined today by Clark Williams on the phone that specializes in pension and family law in his practice here in Salem.

The Family Law Section was originally formed in 1978, and today is made of up of over 1,000 attorneys who practice family law throughout Oregon. We have members from 30 different Oregon counties, representing a wide variety of clients each with their own unique problems and concerns. Our executive committee is comprised of 12 members from 7 different counties, spanning from Eastern Oregon, through Central Oregon, and throughout the Willamette Valley. The Executive Committee of the Family Law Section supports Senate Bill 370 A.

The Problem

SB 370 A was brought forward to address a very serious problem regarding how survivor benefits are inconsistently applied to spouses and former spouses of public employees.

The purpose of the proposed legislation is to protect survivor benefits for former spouses of members in a public retirement plan. Where the terms of the retirement plan provide that the spouse is entitled to survivor benefits if the member dies before retirement, then that entitlement should not be deprived by the plan just because the parties become divorced. The plan should still be required to continue that survivor benefit to the former spouse to the extent provided in a court order. The plan is already committed to provide that benefit to the spouse while the parties are married. To be relieved of providing that benefit due to divorce of the parties creates a windfall to the plan and deprives a former spouse of an important protection.

This is exactly what happened in *Rose v. Board of Trustees for the Portland Fire & Police Disability and Retirement Fund*. In this case, Wife divorced Husband (a firefighter with the City of Portland) when he was age 46 and by a qualified domestic relations order, commonly referred to as a QDRO, Wife was awarded a survivor benefit should Husband die before retirement. Husband then died of cancer at age 47, not having remarried, fewer than three years before his early retirement date at age 50. The City denied survivor benefits to Wife and she received nothing.

SB 370 A remedies this problem by requiring that a retirement plan will be required to pay out survivor benefits notwithstanding if the member divorces prior to his or her death so long as the benefit is preserved in a court order.

Only two public retirement plans in Oregon provide for such restricted survivor benefits – the City of Portland and the Oregon Public Service Retirement Plan (OPSRP). SB 370 A will bring these two outliers into conformance with all other public and private sector retirement plans in Oregon, all retirement plans covered by federal law (i.e., ERISA), the Federal Employees' Retirement System, the Civil Service Retirement System, and military retirement.

Senate Amendment

After the initial public hearing in the Senate Judiciary Committee on February 3, 2015, the Oregon State Bar Family Law Section worked with the Public Employee Retirement System (PERS) and the City of Portland to amend the bill. The -5 amendments incorporated suggested changes from PERS, the City of Portland, and private practitioners with the goal of clarifying that SB 370 A will not provide additional benefits beyond what would be provided if the pension member had not divorced his or her spouse. In addition, Legislative Counsel indicated that a savings clause should be added to avoid contract impairment, which has been added. These changes to the bill were adopted in the Senate Judiciary Committee and have been incorporated into the A-Engrossed version of SB 370.

On behalf of the Family Law Section of the Oregon State Bar, I thank the committee for its consideration and urge the passage of SB 370 A. I am happy to address any questions or concerns you might have.

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