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Legislative Assembly of British Columbia

BILL 33

**PENSION BENEFITS STANDARDS
AMENDMENT ACT, 2023**

Honourable Katrine Conroy
Minister of Finance

Explanatory Notes

CLAUSE 1: *[Pension Benefits Standards Act, section 1]*

- amends the definitions of “commuted value”, “defined contribution provision” and “pension” in relation to variable life benefits;
- adds new definitions of “defined contribution account”, “variable life benefit” and “variable life benefit fund”.

BILL 33 – 2023

**PENSION BENEFITS STANDARDS
AMENDMENT ACT, 2023**

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

1 Section 1 (1) of the Pension Benefits Standards Act, S.B.C. 2012, c. 30, is amended

(a) in the definition of “commuted value” by striking out “or” at the end of paragraph (a) and by repealing paragraph (b) and substituting the following:

- (b) in relation to benefits that a person is entitled to receive under a defined contribution provision of a pension plan, other than variable life benefits, means the balance in the person’s defined contribution account, or
- (c) in relation to variable life benefits that a person is entitled to receive under a defined contribution provision of a pension plan, means the actuarial present value of those benefits determined in accordance with the regulations; ,

(b) by adding the following definition:

“defined contribution account” means the account referred to in paragraph (a) of the definition of “defined contribution provision”;

(c) in paragraph (b) of the definition of “defined contribution provision” by striking out “are determined solely by reference to the amount of that account;” and substituting the following:

- (i) are determined solely by reference to the amount of the defined contribution account, or
- (ii) are variable life benefits; ,

(d) by repealing the definition of “pension” and substituting the following:

“pension” means a series of periodic payments that, under the terms of the plan text document of a pension plan, is payable,

- (a) in the case of payments under a benefit formula provision, for the life of a retired member, whether or not the pension is continued to another person,

CLAUSE 1: *[Pension Benefits Standards Act, section 1 – continued]*

CLAUSE 2: *[Pension Benefits Standards Act, section 3]* disapplies the Act and regulations in certain circumstances to certain “specified individuals”, as that term is used in the Income Tax Regulations (Canada).

CLAUSE 3: *[Pension Benefits Standards Act, section 8]* adds a reference to an RRIF to allow a person to directly transfer to an RRIF in certain circumstances.

CLAUSE 4: *[Pension Benefits Standards Act, section 29]*

- allows a collectively bargained multi-employer plan to establish a condition, based on specified criteria, for when employees are entitled to become members of the plan;
- makes a housekeeping amendment.

- (b) in the case of payments from a member’s defined contribution account under a defined contribution provision, until the earlier of
 - (i) the date on which the member dies, and
 - (ii) the date on which the balance in the member’s defined contribution account is zero, and
- (c) in the case of payments as variable life benefits under a defined contribution provision, for the life of a retired member, whether or not the pension is continued to another person; , **and**

(e) by adding the following definitions:

“variable life benefit”, in relation to a pension plan, means benefits payable from the plan’s variable life benefit fund under a defined contribution provision of the plan;

“variable life benefit fund”, in relation to a pension plan, means a fund established within the plan’s pension fund from which variable life benefits are to be paid; .

2 Section 3 is repealed and the following substituted:

Application to plans for specified individuals

- 3** Except as provided for in the regulations, this Act and the regulations do not apply in respect of a pension plan if all of the members of the plan are specified individuals within the meaning of section 8515 (4) (a) or (b), or both, of the Income Tax Regulations (Canada).

3 Section 8 (2) is amended by adding “or RRIF” after “be transferred to an RRSP”.

4 Section 29 is amended

(a) by repealing subsection (1) (c) and substituting the following:

- (c) in the case of a collectively bargained multi-employer plan, 2 years have elapsed since the employee was first employed with a participating employer and
 - (i) if the plan text document of the plan does not provide for a condition described in subparagraph (ii) (A) or (B), the employee has earned from employment with one or more participating employers, in each of 2 consecutive calendar years, not less than 35% of the Year’s Maximum Pensionable Earnings, or
 - (ii) if the plan text document of the plan provides for one of the following conditions, the employee has met the condition:
 - (A) the employee has completed with one or more participating employers, in each of 2 consecutive fiscal years of the plan, not less than 350 hours of employment;

CLAUSE 4: *[Pension Benefits Standards Act, section 29 – continued]*

CLAUSE 5: *[Pension Benefits Standards Act, section 29]* allows for a member's contributions to a defined contribution plan to increase if the member received a notice with the details of the increase and did not elect not to be subject to the increase set out in the notice.

CLAUSE 6: *[Pension Benefits Standards Act, section 57]* makes amendments to achieve more consistent wording throughout the Act.

CLAUSE 7: *[Pension Benefits Standards Act, section 65]*

- clarifies the scope of subsection (1) such that the provision applies to the plan text document of any pension plan;
- clarifies that the rule in subsection (2) applies only to pensions payable under a benefit formula provision.

(B) a condition that is equivalent, in the circumstances of the plan, to the condition set out in subparagraph (i) or clause (A) of this subparagraph. , **and**

(b) by repealing subsection (2) (b) (i) and substituting the following:

(i) receives the prescribed notice, and .

5 Section 29 is amended by adding the following subsection:

(2.1) The plan text document of a pension plan that contains a defined contribution provision may provide that, as part of the terms and conditions of an employee’s employment, the contributions made by an employee who became or becomes a member of the plan in accordance with subsection (2) (b) increase in accordance with a method for determining increases in member contributions set out in the plan text document in relation to the defined contribution provision

(a) if the employee or member receives the prescribed notice describing how member contributions increase in accordance with the method for determining increases in member contributions, and

(b) if the employee or member does not, within the prescribed period after receiving that notice, elect in the prescribed manner not to be subject to the increase described in the notice.

6 Section 57 is amended

(a) in subsection (2) by striking out “if and”,

(b) by repealing subsection (4) (d) and substituting the following:

(d) transferred to an insurance company to purchase an annuity; , **and**

(c) in subsection (7) by striking out “reduced” and substituting “determined”.

7 Section 65 is amended

(a) by repealing subsection (1) and substituting the following:

(1) A plan text document of a pension plan must allow a member, after termination of active membership, to start receiving the member’s pension at any time within 10 years before the member reaches the plan’s pension eligibility date. , **and**

(b) in subsection (2) by striking out “A pension that starts before the pension plan’s pension eligibility date” and substituting “A pension payable under a benefit formula provision that starts before the pension plan’s pension eligibility date”.

CLAUSE 8: *[Pension Benefits Standards Act, section 68]* makes a housekeeping amendment.

CLAUSE 9: *[Pension Benefits Standards Act, section 69]*

- makes amendments related to variable life benefits;
- specifies how the amount of a target benefit is to be determined if a person elects to receive the benefit.

CLAUSE 10: *[Pension Benefits Standards Act, sections 70 and 72]* is consequential to an amendment made by this Bill.

CLAUSE 11: *[Pension Benefits Standards Act, section 75]* makes a housekeeping amendment.

CLAUSE 12: *[Pension Benefits Standards Act, section 75.1]* enables a new type of benefit, called variable life benefits, to be offered under the plan text document of a pension plan.

CLAUSE 13: *[Pension Benefits Standards Act, section 79]* adds requirements for the content of the statement or confirmation referred to in this section.

8 Section 68 (2) is repealed and the following substituted:

- (2) Subsection (1) applies to a spouse or former spouse in respect of
 - (a) a share of the pension received by the spouse under Part 5 or 6 of the *Family Relations Act*, or
 - (b) a share of the benefits received by the spouse under Part 5 or 6 of the *Family Law Act*.

9 Section 69 is amended

(a) in subsection (3) (a) by adding “or as variable life benefits under a defined contribution provision” after “other than a person who is receiving a pension under a benefit formula provision”, and

(b) by adding the following subsection:

- (7) If the plan text document of a pension plan contains a target benefit provision and a person who is entitled to receive a benefit under subsection (1) or (3) elects to receive the benefit, the person is entitled to the product of
 - (a) the commuted value of that benefit, and
 - (b) the target benefit funded ratio, as calculated in accordance with the regulations, that is set out in the actuarial valuation report that has most recently been filed in relation to the plan.

10 Sections 70 (1) (c) (i) and 72 (1) (a) and (3) are amended by striking out “or (3)”.

11 Section 75 (b) is amended by striking out “accords” and substituting “is in accordance”.

12 The following section is added:

Variable life benefits

- 75.1** Subject to the regulations, the plan text document of a pension plan may authorize payment of variable life benefits to be made in any manner that
 - (a) complies with the *Income Tax Act* (Canada), and
 - (b) is in accordance with the regulations.

13 Section 79 is amended

(a) in subsection (1) (b) by striking out “a statement in the prescribed form that waives the spousal entitlement referred to in paragraph (a)” and substituting “a statement in the prescribed form that includes the requirements set out in subsection (1.1) or confirmation, in a form and manner satisfactory to the administrator, that section 145 of the *Family Law Act* applies”, and

CLAUSE 13: *[Pension Benefits Standards Act, section 79 – continued]*

CLAUSE 14: *[Pension Benefits Standards Act, section 79]* eliminates the option for the plan text document of a pension plan to require the surviving spouse of a deceased member to make the applicable transfer and makes a consequential change in relation to provisions that enable pension plans to require certain types or amounts of benefits to be transferred in certain circumstances.

CLAUSE 15: *[Pension Benefits Standards Act, section 80]* makes a housekeeping amendment.

CLAUSE 16: *[Pension Benefits Standards Act, section 81]* makes a housekeeping amendment.

CLAUSE 17: *[Pension Benefits Standards Act, section 85]* makes an amendment related to variable life benefits to restrict the ability to elect a transfer of variable life benefits once payments start.

CLAUSE 18: *[Pension Benefits Standards Act, section 88]*

- removes the condition that the plan text document of a pension plan must provide for a transfer;
- makes a housekeeping amendment.

CLAUSE 19: *[Pension Benefits Standards Act, section 89]* clarifies the applicability of this section to a defined contribution provision that authorizes variable life benefits.

(b) by adding the following subsection:

- (1.1) For the purposes of subsection (1) (b), the statement must
- (a) state that the spouse is aware of the spouse’s entitlement referred to in subsection (1) (a),
 - (b) waive that entitlement, and
 - (c) be signed by the spouse, before the member’s death, in the presence of a witness and outside the presence of the member.

14 Section 79 is amended

(a) in subsection (1) (a) (i) by striking out “subject to subsection (3)” and substituting “subject to section 89 (1) or (2)”, and

(b) by repealing subsection (3).

15 Section 80 (5) is amended by striking out “a statement” and substituting “a waiver”.

16 Section 81 (2) is amended by striking out “a waiver statement referred to in section 80 (4) (a)” and substituting “a waiver under section 80 (4) (a)”.

17 Section 85 (3) is repealed and the following substituted:

- (3) A member of a pension plan who is entitled to receive a pension and has reached the member’s pension commencement date is not eligible to elect a transfer under this Division if the pension is payable
- (a) under a benefit formula provision, or
 - (b) as variable life benefits under a defined contribution provision.

18 Section 88 (1) is amended

(a) in paragraph (a) (iii) by striking out “if the plan text document of the plan from which the transfer is to be made so provides,” and

(b) in paragraph (b) by striking out “if the plan text document of the plan from which the transfer is to be made so provides in relation to a deferred member, at any time after the member reaches 50 years of age” and substituting “at any time after a member reaches 50 years of age”.

19 Section 89 (1) is amended by adding “and is in a defined contribution account” after “arises under the defined contribution provision”.

CLAUSE 20: *[Pension Benefits Standards Act, section 89]* makes a housekeeping amendment to accurately reflect the entitlement of the member and the surviving spouse.

CLAUSE 21: *[Pension Benefits Standards Act, section 89.1]*

- modifies the conditions that the administrator must ensure are met by an annuity purchased by the administrator under this section;
- makes a housekeeping amendment.

CLAUSE 22: *[Pension Benefits Standards Act, section 116]* provides that the relevant period is set out in a specified notice.

CLAUSE 23: *[Pension Benefits Standards Act, section 118]* makes a housekeeping amendment.

20 *Section 89 (2) is amended by striking out “if the commuted value of the benefit to which the member or the surviving spouse is entitled on that termination does not exceed the prescribed amount, elect a transfer of that commuted value under this Division” and substituting “if the commuted value of the benefit to which the member is entitled on that termination or to which the surviving spouse is entitled on the member’s death does not exceed the prescribed amount, elect a transfer of that commuted value under this Division”.*

21 *Section 89.1 (1) and (2) is repealed and the following substituted:*

- (1) Subject to this section and the regulations, the plan text document of a pension plan that contains a defined benefit provision may provide that the administrator of the plan may, if the plan has not been terminated, transfer assets from the portion of the plan that relates to the defined benefit provision to an insurance company to purchase an annuity in the form of a pension that is required or allowed by this Act in respect of any of the following persons:
 - (a) a deferred member who is entitled to a benefit under the defined benefit provision;
 - (b) the surviving spouse of a deceased member who is entitled to a benefit under the defined benefit provision and who is not receiving a pension under the defined benefit provision;
 - (c) an active member who is entitled to a benefit under the defined benefit provision and has ceased accruing benefits under the defined benefit provision;
 - (d) a person who is receiving a pension under the defined benefit provision.
- (2) If an annuity is to be purchased under subsection (1), the administrator must ensure that the annuity,
 - (a) in respect of a person referred to in subsection (1) (a), (b) or (c), provides the person with the same benefits as the person would have received under the defined benefit provision had the transfer not been made, and
 - (b) in respect of a person referred to in subsection (1) (d), provides payments to the person in the same amount and form as the pension that the person would have received under the defined benefit provision had the transfer not been made.

22 *Section 116 (1) (d) is amended by striking out “within the period required by the regulations for that provision” and substituting “within the period stipulated in a notice served under section 110 (3) (b)”.*

23 *Section 118 (1) (a) is amended by striking out “section 113 (1), (2) or (3)” and substituting “section 113 (1) or (2)”.*

CLAUSE 24: *[Pension Benefits Standards Act, section 133]*

- updates a reference to the Income Tax Regulations (Canada);
- modifies the references for the notices in section 29;
- provides for regulation-making authority if a variable life benefit fund is terminated or wound up.

CLAUSE 25: *[Pension Benefits Standards Act, section 133]* makes an amendment related to regulation-making authority for standards, codes and rules.

CLAUSE 26: *[Transition – section 3 of the Pension Benefits Standards Act]* provides transitional rules for section 3 of the *Pension Benefits Standards Act* as that section is enacted by this Bill.

24 Section 133 is amended

(a) by repealing subsection (2) (a) and substituting the following:

- (a) applying all or any portion of this Act and the regulations to pension plans of which all of the members are specified individuals within the meaning of section 8515 (4) (a) or (b), or both, of the Income Tax Regulations (Canada); ,

(b) in subsection (2) (e) by striking out “respecting the notice referred to in section 29 (2) (b)” and substituting “respecting the notices referred to in section 29 (2) (b) and (2.1) (a)”, and

(c) by adding the following paragraph:

- (u) respecting the termination or winding-up of a variable life benefit fund.

25 Section 133 is amended

(a) by repealing subsection (4), and

(b) by adding the following subsection:

(4.1) The Lieutenant Governor in Council may, in making a regulation under section 1 (2), 38 (1) (b) or (c) or 55 (1),

- (a) adopt one or more standards, codes and rules
 - (i) published by a provincial, national or international body or standards association, or
 - (ii) enacted as or under a law of this or another jurisdiction, and
- (b) adopt a standard, code or rule referred to in paragraph (a)
 - (i) in whole, in part or with any changes considered appropriate, or
 - (ii) as amended from time to time or as it stands at a specific date or at the time of adoption.

Transitional Provision

Transition – section 3 of the *Pension Benefits Standards Act*

- 26** The Lieutenant Governor in Council may make regulations for the purpose of more effectively bringing into operation or preventing, minimizing or otherwise addressing any difficulties encountered in bringing into operation section 3 of the *Pension Benefits Standards Act* as enacted by section 2 of this Act, and for that purpose disapplying or varying any provision of the *Pension Benefits Standards Act* or the regulations.

CLAUSE 27: *[Family Law Act, section 110]* adds a definition of “variable life benefit” and makes related amendments to the definitions of “defined contribution provision” and “pension”.

CLAUSE 28: *[Family Law Act, section 116]* clarifies the applicability of this section to a defined contribution provision that does or does not provide for variable life benefits.

Consequential and Related Amendments

Family Law Act

27 Section 110 of the Family Law Act, S.B.C. 2011, c. 25, is amended

(a) in paragraph (b) of the definition of “defined contribution provision” by striking out “are determined solely by reference to the amount of that account;” and substituting the following:

- (i) are determined solely by reference to the amount of the defined contribution account, or
- (ii) are variable life benefits; ,

(b) in paragraph (c) of the definition of “pension” by striking out “in the case of payments under a defined contribution provision” and substituting “in the case of payments from a member’s defined contribution account under a defined contribution provision”,

(c) in the definition of “pension” by adding the following paragraph:

- (c.1) in the case of payments as variable life benefits under a defined contribution provision, for the life of a member, whether or not the pension is continued to another person; , **and**

(d) by adding the following definition:

“variable life benefit”, in relation to a plan, means benefits payable

- (a) under a defined contribution provision from the plan’s variable life benefit fund within the meaning of the *Pension Benefits Standards Act*, or
- (b) from the plan’s variable life payment fund within the meaning of the *Pooled Registered Pension Plans Act*.

28 Section 116 (2) (c) is amended

(a) in subparagraph (i) by adding “that does not provide for variable life benefits” after “under a defined contribution provision” and by striking out “and”, and

(b) by adding the following subparagraph:

- (i.1) to the extent that benefits are determined under a defined contribution provision that provides for variable life benefits, section 116.1 [*defined contribution provision providing variable life benefits*] applies, and .

CLAUSE 29: *[Family Law Act, section 116.1]* sets out the choices available to a spouse who is entitled to a share of the member’s benefits under a defined contribution provision that provides for variable life benefits.

CLAUSE 30: *[Family Law Act, section 145]* amends the definition of “benefit”, as that term is used in section 145 of the *Family Law Act*, for purposes related to the amendments made by this Bill to the *Pooled Registered Pension Plans Act*.

CLAUSE 31: *[Pooled Registered Pension Plans Act, section 2]*

- adds provisions consequential to amendments to the federal Act;
- makes housekeeping amendments.

29 The following section is added:

Defined contribution provision providing variable life benefits

- 116.1** (1) This section applies if the benefits to be divided
- (a) are under a local plan, and
 - (b) are determined under a defined contribution provision that provides for variable life benefits.
- (2) A spouse is entitled, by giving notice in accordance with section 136 [*notice or waiver*], to a division of benefits as follows:
- (a) if the member may choose to receive benefits that are either or both in a defined contribution account or variable life benefits, that choice is available to the spouse also;
 - (b) if benefits are either or both in a defined contribution account or variable life benefits,
 - (i) to the extent that benefits are in a defined contribution account, section 114 [*benefits determined under defined contribution provision*] applies, and
 - (ii) to the extent that benefits are variable life benefits, section 117 [*local plans after pension commencement*] applies.

30 Section 145 (5) (b) is repealed and the following substituted:

- (b) funds that have been transferred under the *Pooled Registered Pension Plans Act* to
 - (i) a retirement savings plan of the kind prescribed for the purposes of section 50 (1) (b), 50 (3) (b), 51.6 (c), 54 (2) (b) or 62 (12) (b) of the applied Act, as that term is defined in the *Pooled Registered Pension Plans Act*, or
 - (ii) a life annuity of the kind prescribed for the purposes of section 50 (1) (c), 50 (3) (c), 51.6 (d), 54 (2) (c) or 62 (12) (c) of the applied Act, as that term is defined in the *Pooled Registered Pension Plans Act*.

Pooled Registered Pension Plans Act

31 Section 2 of the *Pooled Registered Pension Plans Act*, S.B.C. 2014, c. 17, is amended

- (a) **in subsection (1) by striking out** “This Act does not apply in respect of a member of a pooled registered pension plan unless the member is an individual who” **and substituting** “This Act applies in respect of a member of a pooled registered pension plan who is an individual who”,

CLAUSE 31: *[Pooled Registered Pension Plans Act, section 2 – continued]*

CLAUSE 32: *[Pooled Registered Pension Plans Act, section 3]* adds provisions consequential to amendments to the federal Act.

CLAUSE 33: *[Pooled Registered Pension Plans Act, section 9]*

- makes amendments related to variable life benefits;
- adds provisions consequential to amendments to the federal Act.

(b) in subsection (1) by striking out “or” at the end of paragraph (a), by adding “, or” at the end of paragraph (b) (ii) and by adding the following paragraph:

(c) is part of a prescribed class of members. , **and**

(c) in subsection (2) by striking out “an individual described in subsection (1) (a) or (b)” and substituting “an individual described in subsection (1) (a), (b) or (c)”.

32 Section 3 (6) is repealed and the following substituted:

(6) For the purposes of their application under this Act, the following provisions of the federal Act must be read without the references to “or common-law partner”:

(a) section 49 [*entitlement of survivor*];

(b) section 51.5 (3) [*notification of termination of variable life payment fund to employers and members*];

(c) section 51.5 (4) [*non-application of subsection (3)*];

(d) section 52 (1) [*entitlement of survivor*];

(e) section 57 (1) (c) [*provisions respecting information*].

33 Section 9 is amended

(a) by adding the following subsection:

(0.1) In this section, “**variable life payment fund**” means a fund established by a pooled registered pension plan in accordance with section 51.1 [*variable life payments – fund and payments*] of the applied Act. ,

(b) in subsection (1) by adding the following paragraph:

(b.1) entitlement to funds in a variable life payment fund in a pooled registered pension plan, including variable life payments from the fund; ,

(c) by repealing subsection (1) (d) and substituting the following:

(d) funds from a pooled registered pension plan transferred or used under any of the following provisions of the applied Act and amounts earned by the transferred funds:

(i) section 50 (1) [*transfer or purchase of annuity*];

(ii) section 50 (3) [*transfer in case of death*];

(iii) section 51.6 [*transfer or purchase on termination*];

(iv) section 54 (2) [*transfer of funds*];

(v) section 62 (12) [*variable life payments – transfer or purchase*]; ,

(d) in subsection (1) (e) by striking out “account”,

CLAUSE 33: *[Pooled Registered Pension Plans Act, section 9 – continued]*

CLAUSE 34: *[Pooled Registered Pension Plans Act, sections 23 and 27]* repeals spent sections.

(e) by repealing subsection (4) and substituting the following:

- (4) Despite subsection (1) (b), (b.1), (c) and (e), any of the following may be attached by a notice of attachment under section 15 [*notice of attachment*] of the *Family Maintenance Enforcement Act*, an order of garnishment under section 18 (2) [*garnishment*] of that Act or an attachment order under section 24 [*attachment orders*] of that Act:
- (a) a variable payment;
 - (b) a variable life payment;
 - (c) funds from a pooled registered pension plan account withdrawn under a provision, authorized by section 47 (2) [*optional provisions respecting locking in*] of the applied Act, of a pooled registered pension plan;
 - (d) funds from a pooled registered pension plan withdrawn under the regulations. , **and**

(f) in subsection (5) by adding “or from a variable life payment fund” after “from a pooled registered pension plan account”.

34 Sections 23 and 27 are repealed.

Commencement

35 The provisions of this Act referred to in column 1 of the following table come into force as set out in column 2 of the table:

Item	Column 1 Provisions of Act	Column 2 Commencement
1	Anything not elsewhere covered by this table	The date of Royal Assent
2	Sections 1 and 2	By regulation of the Lieutenant Governor in Council
3	Section 3	March 31, 2024
4	Section 5	By regulation of the Lieutenant Governor in Council
5	Sections 9 and 10	By regulation of the Lieutenant Governor in Council
6	Section 12	By regulation of the Lieutenant Governor in Council
7	Section 14	By regulation of the Lieutenant Governor in Council
8	Sections 17 to 19	By regulation of the Lieutenant Governor in Council

Item	Column 1 Provisions of Act	Column 2 Commencement
9	Section 21	By regulation of the Lieutenant Governor in Council
10	Section 24	By regulation of the Lieutenant Governor in Council
11	Section 25	September 30, 2015
12	Sections 26 to 33	By regulation of the Lieutenant Governor in Council