
A BILL FOR AN ACT

RELATING TO QUALIFIED DOMESTIC RELATIONS ORDERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 88-93.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§88-93.5[+] **Distribution of property in a divorce**
4 **action.** (a) As used in this section:

5 "Alternate payee" means a spouse or former spouse of a
6 member, [a] former member who has vested benefit status, or
7 retirant who is recognized by a domestic relations order as
8 having a right to receive all or a portion of the benefits
9 payable by the system with respect to that member, former member
10 with vested benefit status, or retirant.

11 "Benefit the member or former member with vested benefit
12 status is expected to receive" means the benefit the member or
13 former member with vested benefit status is expected to receive
14 without regard to any Hawaii domestic relations order.

15 "Benefit the retirant is receiving" means the benefit the
16 retirant is receiving without regard to any Hawaii domestic
17 relations order.



1 "Benefits payable with respect to a member, [a] former
2 member with vested benefit status, or retirant" means any
3 payment required to be made to a member, [a] former member with
4 vested benefit status, or retirant.

5 "Domestic relations order" means a judgment, decree, or
6 order, including approval of a property settlement agreement,
7 that:

- 8 (1) Relates to the provision of marital property rights to
9 a spouse or former spouse of a member, [a] former
10 member with vested benefit status, or retirant; and
11 (2) Is made pursuant to a domestic relations law of this
12 State or another state.

13 "Hawaii domestic relations order" means a domestic
14 relations order that:

- 15 (1) Creates or recognizes the right of an alternate payee,
16 or assigns to an alternate payee, the right to receive
17 all or a portion of the benefits payable with respect
18 to a member, [a] former member with vested benefit
19 status, or retirant under the system;
20 (2) Directs the system to disburse benefits to the
21 alternate payee; and



- 1 (3) Meets the requirements of this section.
- 2 (b) A Hawaii domestic relations order shall clearly
3 specify:
- 4 (1) The name and last known mailing address, if any, of
5 the member, former member with vested benefit status,
6 or retirant;
- 7 (2) The name and mailing address of the alternate payee
8 covered by the order;
- 9 (3) The amount or percentage of the member's, former
10 member's with vested benefit status, or retirant's
11 benefits to be paid by the system to the alternate
12 payee, or the manner in which the amount or percentage
13 is to be determined; and
- 14 (4) That the order applies to the system.
- 15 (c) If, pursuant to a Hawaii domestic relations order, an
16 alternate payee is receiving all or a portion of a retirant's
17 pension, annuity, or retirement allowance, the alternate payee
18 shall be entitled to receive a post retirement allowance as
19 provided by section 88-90.



- 1 (d) A Hawaii domestic relations order shall not:
- 2 (1) Purport to require the designation by the member,
- 3 former member with vested benefit status, or retirant
- 4 of a particular person as the recipient of benefits
- 5 upon the death of the member, former member with
- 6 vested benefit status, or retirant;
- 7 (2) Purport to require the selection of a particular
- 8 benefit payment plan or option or to limit the benefit
- 9 payment plans or options from which the member or
- 10 former member with vested benefit status may select;
- 11 (3) Require any action on the part of the system contrary
- 12 to its governing laws or plan provisions other than
- 13 the direct payment of the benefit awarded to an
- 14 alternate payee;
- 15 (4) Make the award to the alternate payee an interest that
- 16 is contingent on any condition other than those
- 17 conditions resulting in the liability of the system
- 18 for payment under its plan provisions;
- 19 (5) Purport to give to someone other than a member, former
- 20 member with vested benefit status, or retirant the



- 1 right to designate a beneficiary or to choose any
2 retirement plan or option available from the system;
- 3 (6) Attach a lien to any part of amounts payable with
4 respect to a member, former member with vested benefit
5 status, or retirant;
- 6 (7) Award an alternate payee a portion of the benefits
7 payable with respect to a member, former member with
8 vested benefit status, or retirant under the system
9 and purport to require the system to make a lump sum
10 payment of the awarded portion of the benefits to the
11 alternate payee that are not payable in a lump sum;
- 12 (8) Purport to require the system, without action by the
13 member, to terminate a member from membership or
14 employment, to refund contributions, or to retire a
15 member or former member with vested benefit status;
- 16 (9) Provide any type or form of benefit, or any option,
17 not otherwise provided by the system;
- 18 (10) Provide increased benefits, determined on the basis of
19 actuarial value; or
- 20 (11) Require the system to provide benefits or refunds to
21 an alternate payee that are required to be paid to



1 another alternate payee pursuant to an earlier Hawaii
2 domestic relations order.

3 (e) Upon receipt of a copy of the complaint for divorce,
4 certified by the clerk of the court in which the complaint was
5 filed, or a copy of the divorce decree certified by the clerk of
6 the court in which the divorce decree was filed, and a written
7 request that identifies the member, former member with vested
8 benefit status, or retirant by name and social security number
9 and states the date of the marriage, the system shall provide
10 the spouse or former spouse of a member, former member with
11 vested benefit status, or retirant with the same information
12 that would be provided to the member, former member with vested
13 benefit status, or retirant the member's, former member's with
14 vested benefit status, or retirant's benefits that is relevant
15 to the spouse's or former spouse's interest in the member's,
16 former member's with vested benefit status, or the retirant's
17 benefits.

18 (f) A person who wishes to have the system review a
19 domestic relations order or a proposed domestic relations order
20 to establish whether the order or proposed order meets the
21 requirements for a Hawaii domestic relations order shall submit



1 to the system a written request for review and a copy of the
2 order or proposed order. If the order has been entered by a
3 court, the copy of the order shall be certified by the clerk of
4 the court that entered the order. The order or proposed order
5 shall be reviewed as provided by this section.

6 The filing fee in effect at the time that an order or
7 proposed order is submitted shall be paid before the order or
8 proposed order is processed or reviewed. In addition, the
9 system shall charge for legal and actuarial services as provided
10 by subsection (s).

11 Before any legal or actuarial services are performed, the
12 system shall notify the person who requested the review of the
13 order or proposed order that the services will be needed as part
14 of the review. The notification shall include an estimate of
15 the extent of the services and the estimated costs relating to
16 those services. The charges for legal and actuarial services
17 shall be paid before the system may issue notification of
18 determination on an order or notification regardless of whether
19 [~~or not~~] a proposed order meets the requirements for a Hawaii
20 domestic relations order.



1 If a domestic relations order is submitted for review after
2 it has been entered by the court and is thereafter amended with
3 the intention that it shall be a Hawaii domestic relations
4 order, the member, former member with vested benefit status,
5 retirant, or the alternate payee shall submit a certified copy
6 of the amended order to the system. The system shall review any
7 amended order that it receives according to the same rules
8 applicable to all other orders.

9 (g) The system shall review ~~[and]~~ a domestic relations
10 order or proposed domestic relations order for compliance with
11 the requirements imposed by this section. Upon completion of
12 the review:

13 (1) The system shall not issue a determination that a
14 proposed domestic relations order is or is not a
15 Hawaii domestic relations order but shall ~~[notify]~~
16 issue a notification to the person who submitted the
17 proposed domestic relations order, in writing, ~~[and~~
18 ~~may also notify the member, former member with vested~~
19 ~~benefit status, or alternate payee]~~ whether the
20 proposed domestic relations order meets the
21 requirements for a Hawaii domestic relations order,



1 identifying any provisions of this section that the
2 proposed domestic relations order does not meet[+].
3 The notification may also be provided to the member,
4 former member with vested benefit status, retirant, or
5 alternate payee. The system's notification is
6 advisory, and shall not constitute a determination
7 that a proposed domestic relations order is or is not
8 a Hawaii domestic relations order; and

9 (2) If the domestic relations order has been entered by
10 the court, the system shall [~~notify~~] issue to the
11 member, former member with vested benefit status, or
12 retirant and the alternate payee [~~in writing of the~~] a
13 determination in writing that the domestic relations
14 order is or is not a Hawaii domestic relations order,
15 identifying any provisions of this section that the
16 order does not meet.

17 (h) During any period not exceeding eighteen months,
18 beginning on the date on which the first payment would be
19 required to be made to the alternate payee under the domestic
20 relations order, in which a domestic relations order is under
21 review to determine whether it is a Hawaii domestic relations



1 order, or in which a determination that an order is not
2 qualified is on appeal to the board or to a court, the system
3 shall limit the member's, former member's with vested benefit
4 status, or retirant's rights in the member's, former member's
5 with vested benefit status, or retirant's benefits to the extent
6 the system deems appropriate to protect the largest amount that
7 would be payable to the proposed alternate payee under the
8 system's interpretation of the domestic relations order. Any
9 amounts not paid to the member, former member with vested
10 benefit status, or retirant during this eighteen-month period
11 shall be separately accounted for. If the domestic relations
12 order is determined to be a Hawaii domestic relations order
13 before the end of the eighteen-month period, the system shall
14 pay benefits to the member, former member with vested benefit
15 status, or retirant and the alternate payee in accordance with
16 the Hawaii domestic relations order and the terms of the plan,
17 including any benefits separately accounted for during the
18 period between the date on which the first payment was to be
19 made under the Hawaii domestic relations order and the date the
20 determination is made. If the domestic relations order is
21 finally determined not to be a Hawaii domestic relations order,



1 or if the eighteen-month period expires without a determination
2 that the domestic relations order is a Hawaii domestic relations
3 order, none of the amounts separately accounted for shall be
4 paid to the alternate payee, and the member, former member with
5 vested benefit status, or retirant shall be entitled to the
6 member's, former member's with vested benefit status, or
7 retirant's full benefits in accordance with the terms of this
8 chapter, including any benefits that had been separately
9 accounted for and withheld from the member, former member with
10 vested benefit status, or retirant. If the domestic relations
11 order is determined to be a Hawaii domestic relations order
12 after the end of the eighteen-month period, or if the system
13 later receives another domestic relations order that is
14 determined to be a Hawaii domestic relations order, the Hawaii
15 domestic relations order shall apply prospectively only and
16 shall not affect benefits already paid to the member, former
17 member with vested benefit status, or retirant.

18 (i) Subject to the limitations of applicable statutes and
19 this section, if a domestic relations order is determined to be
20 a Hawaii domestic relations order, the system shall pay benefits
21 in accordance with the order at the time benefits become payable



1 to, or in the case of contributions or hypothetical account
2 balances, are withdrawn by, the member, former member with
3 vested benefit status, or retirant. Any determination that an
4 order is a Hawaii domestic relations order is voidable or
5 subject to modification if the system determines that the
6 provisions of the order have been changed or that circumstances
7 relevant to the determination have changed.

8 (j) If a member or former member with vested benefit
9 status terminates membership in the system by withdrawal of
10 contributions or hypothetical account balance, the system shall
11 pay all or a portion of the amount withdrawn to any alternate
12 payee as directed by a Hawaii domestic relations order. Payment
13 to any alternate payee pursuant to this subsection shall be in a
14 lump sum. If after terminating membership in the system by
15 withdrawal of contributions or hypothetical account balance, the
16 former member or former member with vested benefit status later
17 [~~resumes membership in~~] becomes a member of the system[7] again,
18 the system shall pay to an alternate payee no portion of any
19 benefits [~~payable to the member or retirant~~] that result from
20 the [~~resumption of membership,~~] former member or former member
21 with vested benefit status later becoming a member of the system



1 again, even if those benefits result in part from reinstatement
2 of service credit initially credited during the marriage.

3 (k) In order to receive credit for all service represented
4 by withdrawn or refunded contributions, a member, in reinstating
5 service credit by repaying amounts previously withdrawn or
6 refunded, shall repay the entire amount withdrawn or refunded,
7 regardless of whether a portion or all of the amount was paid to
8 an alternate payee.

9 (l) When the system has not yet begun to make payment to
10 an alternate payee under this section and is provided with proof
11 of the death of the alternate payee, benefits payable with
12 respect to the member, former member with vested benefit status,
13 or retirant shall be paid without regard to the Hawaii domestic
14 relations order.

15 (m) When the system receives a certified copy of a
16 domestic relations order [~~prior to~~] before a member's
17 retirement, and if the domestic relations order is determined to
18 be a Hawaii domestic relations order, the system, except as
19 provided in subsection (j), shall pay the alternate payee a
20 portion of the retirement benefit the member or former member
21 with vested benefit status is expected to receive as follows:



- 1 (1) If the alternate payee will be named beneficiary under
2 any option elected by the retirant at retirement, the
3 remaining benefit to which the retirant is entitled[7]
4 after payments required pursuant to Hawaii domestic
5 relations orders with priority as set forth in
6 subsections (u) and (v), without regard to the Hawaii
7 domestic relations order, shall be apportioned between
8 the retirant and the alternate payee according to the
9 terms of the Hawaii domestic relations order. Upon
10 the death of the retirant or the alternate payee, the
11 benefit amount to be paid to the survivor shall be the
12 amount required under the option elected by the
13 retirant at retirement, as though no Hawaii domestic
14 relations order had existed; or
- 15 (2) If the alternate payee will not be a named beneficiary
16 under the option elected by the retirant at
17 retirement, the remaining benefit to which the
18 retirant is entitled after payments required pursuant
19 to Hawaii domestic relations orders with priority as
20 set forth in subsections (u) and (v), without regard
21 to the Hawaii domestic relations order, shall be



1 apportioned between the retirant and the alternate
2 payee according to the terms of the Hawaii domestic
3 relations order. If the retirant predeceases the
4 alternate payee, payments to the alternate payee shall
5 cease and payments to the retirant's named beneficiary
6 or beneficiaries shall be made as required under the
7 option elected by the retirant at retirement, as
8 though no Hawaii domestic relations order had existed.
9 If the alternate payee predeceases the retirant, the
10 benefit then being paid to the retirant shall be
11 increased by the amount of the benefit that was being
12 paid to the alternate payee at time of death.

13 Payment of the alternate payee's interest under this
14 subsection shall be effective as of the same date that benefit
15 payments are effective for the member[-], subject to
16 subsection (h).

17 (n) When the system receives a certified copy of a
18 domestic relations order subsequent to the member's or former
19 member's with vested benefit status retirement, and if the
20 domestic relations order is determined to be a Hawaii domestic
21 relations order, the interest awarded to the alternate payee by



1 the Hawaii domestic relations order shall be paid as a portion
2 of the retirement benefit the retirant is receiving as follows:

- 3 (1) If the alternate payee is already a named beneficiary
4 under any option elected by the retirant at
5 retirement, the remaining benefit to which the
6 retirant is entitled^[7] after payments required
7 pursuant to Hawaii domestic relations orders with
8 priority as set forth in subsections (u) and (v),
9 without regard to the Hawaii domestic relations order,
10 shall be apportioned between the retirant and the
11 alternate payee according to the terms of the Hawaii
12 domestic relations order. Upon the death of the
13 retirant or the alternate payee, the benefit amount to
14 be paid to the survivor shall be the amount required
15 under the option elected by the retirant at
16 retirement, as though no Hawaii domestic relations
17 order had existed; or
- 18 (2) If the alternate payee is not a named beneficiary
19 under the option elected by the retirant at
20 retirement, the remaining benefit to which the
21 retirant is entitled after payments required pursuant



1 to Hawaii domestic relations orders with priority as
2 set forth in subsections (u) and (v), without regard
3 to the Hawaii domestic relations order, shall be
4 apportioned between the retirant and the alternate
5 payee according to the terms of the Hawaii domestic
6 relations order. If the retirant predeceases the
7 alternate payee, payments to the alternate payee shall
8 cease and payments to the retirant's named beneficiary
9 or beneficiaries shall be made as required under the
10 option elected by the retirant at retirement, as
11 though no Hawaii domestic relations order had existed.
12 If the alternate payee predeceases the retirant, the
13 benefit then being paid to the retirant shall be
14 increased by the amount of the benefit that was being
15 paid to the alternate payee at time of death.

16 Payment according to the terms of the Hawaii domestic
17 relations order under this subsection shall commence as of the
18 first day of the month following the date upon which the order
19 is determined to be qualified, unless the parties jointly direct
20 that payment shall commence at a later date.



1 (o) If a retirant returns to employment requiring active
2 membership in the system:

3 (1) Payments to an alternate payee pursuant to a Hawaii
4 domestic relations order shall not be suspended; and

5 (2) The system shall pay to an alternate payee no portion
6 of any benefits payable to the retirant that result
7 from the [~~resumption of~~] subsequent membership[-]
8 enrollment.

9 (p) For the purpose of calculating earnings limitations
10 for retirants who have been restored to service, the retirant's
11 maximum retirement allowance shall be considered to be the
12 amount that would have been paid if there had not been any
13 Hawaii domestic relations order applicable to the retirant.

14 (q) A court does not have jurisdiction over the system
15 with respect to a divorce or other domestic relations action in
16 which an alternate payee's right to receive all or a portion of
17 the benefits payable to a member, former member with vested
18 benefit status, or retirant is created or established. A
19 determination by the system that a domestic relations order is
20 not a Hawaii domestic relations order shall be subject to review
21 as provided in chapter 91 and the system's rules relating to



1 contested cases. The system shall not be made party to any
2 other judicial proceedings except as provided in this
3 subsection. A party to any action who attempts to make the
4 system a party to the action contrary to this subsection shall
5 be liable to the system for the system's costs and attorney's
6 fees in the action, including [~~attorneys' fee~~] attorney's fees
7 and costs for obtaining a dismissal.

8 (r) If a member, former member with vested benefit status,
9 or retirant, or the beneficiary or estate of any, receives the
10 amount of any distribution that should have been paid by the
11 system to the spouse or former spouse of the member, former
12 member with vested benefit status, or retirant, the recipient
13 shall be designated a constructive trustee for the amount
14 received and shall immediately transmit that amount to the
15 person to whom the amount should have been paid. If a spouse or
16 former spouse of a member, former member with vested benefit
17 status, or retirant, or the estate, heirs, or legatees of the
18 spouse or former spouse receive any amount of a distribution
19 that should have been paid to a member, former member with
20 vested benefit status, or retirant, or the estate, heirs, or
21 legatees of any, the recipient shall be designated a



1 constructive trustee for the amount received and shall
2 immediately transmit that amount to the member, former member
3 with vested benefit status, or retirant or other person to whom
4 the amount should have been paid. If a member, former member
5 with vested benefit status, retirant, or the beneficiary,
6 estate, heirs, or legatees of any, receives any amount that
7 should not have been paid by the system, the recipient shall be
8 designated a constructive trustee for the amount received and
9 shall immediately transmit that amount to the system. If an
10 alternate payee or the estate, heirs, or legatee of the
11 alternate payee, receives any amount that should not have been
12 paid by the system, the recipient shall be designated a
13 constructive trustee for the amount received and shall
14 immediately transmit that amount to the system.

15 (s) The board shall adopt rules in accordance with
16 chapter 91, and adopt forms as it deems necessary to effectuate
17 this section. The board, by motion at a duly noticed meeting of
18 the board, may establish and revise from time to time:

19 (1) A filing fee for processing and review of domestic
20 relations orders and proposed domestic relations
21 orders for the purposes of this section;



1 (2) A schedule of charges for legal and actuarial services
2 incurred by the system in the review and processing of
3 domestic relations orders and proposed Hawaii domestic
4 relations orders for the purposes of this section; and
5 (3) A required form or forms for Hawaii domestic relations
6 orders.
7 (t) Payments made to alternate payees according to the
8 terms of Hawaii domestic relations orders are payments received
9 by the retirant for purposes of sections 88-83(f) and 88-333(c),
10 and the benefit that the retirant received for purposes of
11 section 88-283(g).
12 (u) The priority of Hawaii domestic relations orders shall
13 be determined by the order in which the certified copies of
14 domestic relations orders are received by the system for
15 qualification as a Hawaii domestic relations order, and not by
16 the order in which domestic relations orders are determined to
17 be Hawaii domestic relations orders, the order in which the
18 domestic relations orders are entered by the court, the date the
19 complaint for divorce is filed, the date upon which an order of
20 divorce is entered, or the date of marriage.



1 (v) The qualification of a domestic relations order as a
2 Hawaii domestic relations order supersedes and terminates the
3 qualification of any prior Hawaii domestic relations order
4 between the same alternate payee and member, former member with
5 vested benefit status, or retirant."

6 SECTION 2. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 3. This Act shall take effect upon its approval
9 and shall apply to all domestic relations orders submitted after
10 its effective date.



H.B. NO. 929 H.D. 1

Report Title:

Employees' Retirement System; Hawaii Domestic Relations Orders

Description:

Clarifies benefits to alternate payees, advisory review determinations of Hawaii domestic relations orders, and the priority of multiple orders.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

