
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. Chapter 88, Hawaii Revised Statutes, is amended
2 by adding a new part to be appropriately designated and to read
3 as follows:

4 "PART . QUALIFIED DOMESTIC RELATIONS ORDERS

5 §88-A Definitions. As used in this part:

6 "Alternate payee means a spouse, former spouse, child or
7 other dependent of a member or retirant who is recognized by a
8 domestic relations order as having a right to receive all or a
9 portion of the benefits payable by the retirement system with
10 respect to that member or retirant.

11 "Benefits payable with respect to a member or retirant"
12 means any payment made or required to be made to a member,
13 retirant or beneficiary.

14 "Board" means the board of trustees of the employees'
15 retirement system.

16 "Director" means the director of human resources
17 development.



1 "Domestic relations order" means a judgment, decree, or
2 order, including approval of a property settlement agreement,
3 that:

4 (1) Relates to the provision of child support, alimony
5 payments or marital property rights to a spouse,
6 former spouse, child or other dependent of a member or
7 retirant; and

8 (2) Is made pursuant to a domestic relations law of this
9 State or another state.

10 "Member" means any person included in the membership of the
11 system.

12 "Qualified domestic relations order" means a domestic
13 relations order that:

14 (1) Creates or recognizes the right of an alternate payee,
15 or assigns to an alternate payee, the right to receive
16 all or a portion of the benefits payable with respect
17 to a member or retirant under the system; and

18 (2) Directs the system to disburse benefits to the
19 alternate payee.

20 "Retirant" means a member who has retired and becomes a
21 beneficiary of the system.



1 "System" means the employees' retirement system of the
2 State of Hawaii.

3 §88-B Information to spouse. Upon receipt of an attested
4 copy of the complaint for divorce and a written request that
5 identifies the member or retirant by name and social security
6 number and states the date of the marriage, the system shall
7 provide the spouse or former spouse of a member or retirant with
8 the same information that would be provided to the member or
9 retirant on the member's or retirant's account or benefits that
10 is relevant to the spouse's or former spouse's interest in the
11 member's or retirant's account or benefits.

12 §88-C Payments by employees' retirement system. (a) The
13 system shall make payments of death or retirement benefits or of
14 refunded contributions only as directed by statutes and rules or
15 by a qualified domestic relations order.

16 (b) If benefits are payable pursuant to a qualified
17 domestic relations order that meets the requirement of a
18 domestic relations order as defined in section 414(p) of the
19 Internal Revenue Code, then the applicable requirements of
20 section 414(p) of the Internal Revenue Code shall be followed by
21 the system.



1 §88-D Submission of orders. (a) A person who wishes to
2 have the system review a domestic relations order to establish
3 whether it meets the requirements for a qualified domestic
4 relations order shall submit to the system a written request for
5 review and a copy of the domestic relations order. The request
6 may be made either before or after the order has been entered by
7 the court. The order shall be reviewed as provided by section
8 88-E. If the order has been entered, it shall have been
9 certified by the clerk of the court that entered the order.

10 (b) Subject to review and approval by the board, the
11 director shall establish and may revise from time to time a
12 filing fee for the processing and review of orders. The fee
13 shall be based on the time required for processing and review of
14 orders, reasonable, and not be set at a level that requires the
15 system's members and employers as a whole to subsidize the cost
16 of processing and review. The fee in effect at the time that an
17 order is first submitted, whether before or after entry by the
18 court, shall be paid before the order is processed and reviewed.
19 In addition, the system shall charge for legal and actuarial
20 services and provided by section 88-E(b).

21 (c) If a domestic relations order is submitted for review
22 after it has been entered by the court and is thereafter amended



1 with the intention that it be a qualified domestic relations
2 order, the member or retirant or the alternate payee shall
3 submit a certified copy of the amended order to the system. The
4 system shall review any amended order that it receives according
5 to the same rules applicable to all other orders. A filing fee
6 shall not be required with the submission of an amended order if
7 the fee was paid with the initial submission of the order.

8 §88-E Review of orders. (a) The director shall review
9 the order for compliance with the requirements imposed by this
10 part. Upon completion of the review:

11 (1) If the order has not been entered by the court, the
12 director shall not issue a determination that the
13 order is or is not a qualified domestic relations
14 order but shall inform the person who submitted the
15 order, in writing, whether the order meets the
16 requirements for a qualified domestic relations order,
17 identifying any provisions of this part that the order
18 does not meet;

19 (2) If the order has been entered by the court, the
20 director shall notify the member or retirant and each
21 alternate payee in writing of the determination that
22 the order is or is not a qualified domestic relations



1 order identifying any provisions of this part that the
2 order does not meet.

3 (b) In addition to the filing fee provided by section 88-
4 D(b), the system shall charge for legal and actuarial services
5 necessary in the review of an order at a rate to be determined
6 by the director, based upon costs to the system. These charges
7 shall be paid before notification of determination on an order
8 may be issued. Before any legal or actuarial services are
9 performed, the director shall notify the person who requested
10 the review of the order that such services will be needed as
11 part of the review. The notification shall include an estimate
12 of the extent of the services and the estimated costs relating
13 to those services. No charge shall be made for the first hour
14 of legal or actuarial services or combination of both.

15 (c) During any period, not to exceed eighteen months, in
16 which a domestic relations order is under review to determine
17 whether it is a qualified domestic relations order, or a
18 determination that an order is not qualified is on appeal to the
19 board or to court, the system shall identify and hold amounts
20 that would have been paid to the alternate payee if the order
21 had been determined to be a qualified domestic relations order



1 and shall pay those amounts during or after the period as
2 therein provided.

3 §88-F Payment pursuant to qualified orders. If the order
4 is determined to be a qualified domestic relations order, the
5 system, subject to the limitations of applicable statutes and
6 this part, shall pay benefits in accordance with the order at
7 the time benefits become payable to, or in the case of
8 contributions are withdrawn by, the member. Any determination
9 that an order is a qualified domestic relations order is
10 voidable or subject to modification if the system determines
11 that the provisions of the order have been changed or that
12 circumstances relevant to the determination have changed.

13 §88-G Orders not qualified. The director shall provide a
14 written notice of any determination that an order is not a
15 qualified domestic relations order, identifying the provisions
16 of this part that the order does not meet.

17 (1) The order shall provide for all possible distributions
18 of benefits by the system for the member or retirant
19 under plan provisions. This requirement shall be
20 deemed to have been met by a provision that:

21 (A) Awards to the alternate payee a specific or
22 clearly determinable percentage, rather than an



1 amount, of each distribution by the system based
2 on the member's account or retirant's benefit; or

3 (B) Awards to the member or retirant, in accordance
4 with plan provisions, all benefits payable with
5 respect to a member or retirant not specifically
6 awarded to the alternate payee.

7 (2) The order shall provide for reducing the amount
8 awarded if there is a reduction of the benefit based
9 on the age of the member upon retirement, each
10 reduction to be in proportion to the factors used to
11 reduce the standard monthly benefit on the basis of
12 the member's age below normal retirement age. This
13 requirement shall be deemed to have been met if:

14 (A) The order awards a percentage of whatever monthly
15 benefit is payable after all elections have been
16 made by the member, or for death benefits, by the
17 designated beneficiary;

18 (B) The member or retirant has reached normal
19 retirement age and, if a retirant, has retired
20 without any reduction for early age retirement at
21 the time of the determination as to whether the
22 order is a qualified domestic relations order; or



1 (C) The order reflects that the retirant is or will
2 be receiving retirement benefits reduced for
3 early age retirement and the award to the
4 alternate payee has considered the reduced amount
5 of the retirant's monthly benefit payments.

6 (3) The order shall not:

7 (A) Purport to require the designation by the member
8 or retirant of a particular person and the
9 recipient of benefits upon the death of the
10 member or retirant;

11 (B) Purport to require the selection of a particular
12 benefit payment plan or option or to limit the
13 benefit payment plans or options from which the
14 member or beneficiary may select;

15 (C) Require any action on the part of the system
16 contrary to its governing laws or plan provisions
17 other than the direct payment of the benefit
18 awarded to an alternate payee;

19 (D) Make the award to the alternate payee an interest
20 which is contingent on any condition other than
21 those conditions resulting in the liability of
22 the system for payment under its plan provisions;



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1 (E) Purport to give to someone other than a member or
2 retirant the right to designate a beneficiary or
3 to choose any retirement plan or option available
4 from the system;

5 (F) Attach a lien to any part of amounts payable with
6 respect to a member or retirant;

7 (G) Award an alternate payee a portion of the
8 benefits payable with respect to a member or
9 retirant under the system and purport to require
10 the system to make a lump sum payment of the
11 awarded portion of the benefits to the alternate
12 payee that are not payable in a lump sum; or

13 (H) Purport to require the system, without action by
14 the member, to terminate a member from membership
15 or employment, to refund contributions, or to
16 retire a member.

17 (4) A qualified domestic relations order shall not provide
18 for the award of a specific amount of a benefit,
19 rather than a percentage of this benefit, to an
20 alternate payee unless the order also provides for a
21 reduction of the amount awarded if the benefits
22 available to the retirant or member are reduced by

1 law. This requirement shall not apply to benefit
2 waivers executed by the member.

3 (5) The system shall divide future benefit increases
4 provided by statute or act of the legislature between
5 the member, retirant, or beneficiary and the alternate
6 payee in the same proportion that the benefits are
7 divided.

8 (6) An order shall specify the date of the marriage, if
9 the alternate payee is the member's or retirant's
10 spouse or former spouse.

11 §88-H Restoration to service. For the purpose of
12 calculating earnings limitations for retirants or recipients of
13 disability retirement benefits who have been restored to
14 service, the retirant's or recipient's retirement benefit or
15 disability benefit shall be considered to be the amount that
16 would have been paid if there had been no qualified domestic
17 relations order.

18 §88-I Amount of disability retirement benefit subject to
19 qualified domestic relations order. If the benefit of a
20 recipient of a disability retirement benefit is reduced because
21 of amounts received by the recipient as workers compensation or
22 Social Security benefits, or both, the amount of the benefit



1 subject to a qualified domestic relations order shall be the
2 amount of benefit remaining after reduction for the workers
3 compensation or the Social Security benefits or both.

4 §88-J Benefits resulting from resumption of membership and
5 reinstatement of service credit. If a member terminates
6 membership in the system by withdrawal of contributions, the
7 system shall pay all or a portion of the amount withdrawn to any
8 alternate payee as directed by a qualified domestic relations
9 order. If the former member later resumes membership in the
10 system, the system shall pay to an alternate payee no portion of
11 any benefits payable to the member or retirant that result from
12 the resumption of membership, even if those benefits result in
13 part from reinstatement of service credit initially credited
14 during the marriage.

15 §88-K Reinstatement of service credit. In order to
16 receive credit for all service represented by withdrawn or
17 refunded contributions, a member who in reinstating service
18 credit by repaying amounts previously withdrawn or refunded
19 shall repay the entire amount withdrawn or refunded, regardless
20 of whether a portion or all of the amount was paid to an
21 alternate payee.



1 §88-L Death of an alternate payee before commencement of
2 payments under a qualified domestic relations order. When the
3 system has not yet begun to make payment to an alternate payee
4 under section's and is provided with proof of the death of the
5 alternate payee, benefits payable with respect to the member or
6 retirant shall be paid without regard to the qualified domestic
7 relations order.

8 §88-M Form of payment to alternate payee; service
9 retirement benefits. (a) When the interest awarded to an
10 alternate payee by a qualified domestic relations order's
11 distributed as a portion of a service retirement benefit, the
12 system shall pay the alternate payee an amount that is the
13 actuarial equivalent of that interest in the form of an annuity
14 payable in equal monthly installments for the life of the
15 alternate payee when:

16 (1) The qualified domestic relations order arises in or
17 because of divorce;

18 (2) The qualified domestic relations order divides service
19 retirement benefits between a member and the member's
20 former spouse; and



1 (3) The determination that the order is a qualified
2 domestic relations order is made prior to the member's
3 retirement.

4 (b) Payment under this subsection shall be determined as
5 follows:

6 (1) As of the date payment to the alternate payee is
7 scheduled to begin, the system shall determine the
8 single life annuity value of the retirement benefit
9 payable to the member;

10 (2) If the portion of the benefit awarded to the alternate
11 payee by the order is not clearly stated as a
12 percentage of full benefits, the system shall
13 determine the percentage of full benefits that is the
14 equivalent to the benefit awarded to the alternate
15 payee;

16 (3) The single life annuity value determined by the system
17 shall be multiplied by the percentage of full benefits
18 awarded to the alternate payee. The result of this
19 calculation shall be actuarially converted to a single
20 life annuity payable to the alternate payee for the
21 lifetime of the alternate payee;



1 (4) The benefit payable to the member shall be reduced by
2 an amount equivalent to the value of the benefit
3 payable to the alternate payee; payment by the system
4 of the alternate payee's interest as provided by this
5 section shall have no effect on the right of a member
6 to name a beneficiary or the right of a member to
7 choose an optional method of payment upon retirement;
8 and

9 (5) Payment of the alternate payee's interest under this
10 subsection will be effective as of the same date
11 benefit payments are effective for the member.

12 (c) When the interest awarded to an alternate payee by a
13 qualified domestic relations order is distributed as a portion
14 of a service retirement benefit and the determination that the
15 order is a qualified domestic relations order is made subsequent
16 to the member's retirement, the interest awarded the alternate
17 payee by the qualified domestic relations order shall be paid as
18 a portion of the service retirement benefit the retirant is
19 receiving as follows:

20 (1) If the alternate payee is already a named beneficiary
21 under any option elected by the retirant at
22 retirement, the total monthly benefit to which the



1 retirant is entitled without regard to the qualified
2 domestic relations order, whether payable to the
3 retirant only or as divided between the retirant and
4 the alternate payee beneficiary, shall be apportioned
5 between the retirant and the alternate payee according
6 to the terms of the qualified domestic relations
7 order. Upon the death of the retirant or the
8 alternate payee beneficiary, the benefit amount to be
9 paid to the survivor shall be that required under the
10 option elected by the retirant at retirement, as
11 though no qualified domestic relations order had
12 existed; or

- 13 (2) If the alternate payee is not a named beneficiary
14 under the option elected by the retirant at
15 retirement, the benefit to which the retirant is
16 entitled without regard to the qualified domestic
17 relations order, shall be apportioned between the
18 retirant and the alternate payee according to the
19 terms of the qualified domestic relations order. If
20 the retirant predeceases the alternate payee, payments
21 to the alternate payee shall cease and payments to the
22 retirant's named beneficiary or beneficiaries shall be



1 made as required under the option elected by the
2 retirant at retirement, as though no qualified
3 domestic relations order had existed. If the
4 alternate payee predeceases the retirant, the benefit
5 then being paid to the retirant shall be increased by
6 the amount of the benefit that was being paid to the
7 alternate payee at time of death.

8 Payment according to the terms of the qualified domestic
9 relations order under this subsection shall commence as of the
10 first day of the month following the date upon which the order
11 is determined to be qualified, unless the parties jointly direct
12 that payment is to commence at a later date.

13 §88-N Payments made in error. (a) If a member or
14 retirant, or the beneficiary or estate of either, receives any
15 amount of a distribution that has been awarded to an alternate
16 payee, the recipient shall be designated a constructive trustee
17 for the amount received and shall immediately transmit that
18 amount to the alternate payee.

19 (b) If a alternate payee or the estate, heirs, or legatees
20 of the alternate payee receives any amount of a distribution
21 that should have been paid to a member or retirant, or the
22 estate, heirs, or legatees of either, the recipient shall be



1 designated a constructive trustee for the amount received and
2 shall immediately transmit that amount to the member or retirant
3 or other person to whom the amount should have been paid.

4 (c) If a member, retirant, or the beneficiary, estate,
5 heirs, or legatees of either, receive any amount of a
6 distribution that should not have been paid by the system, the
7 recipient shall be designated a constructive trustee for the
8 amount received and shall immediately transmit that amount to
9 the system."

10 SECTION 2. This Act shall take effect upon its approval;
11 provided that:

12 (a) After July 1, 2011, the employees' retirement system
13 shall review domestic relations orders issued on and
14 after January 1, 2011, to determine whether they are
15 qualified domestic relations orders; and

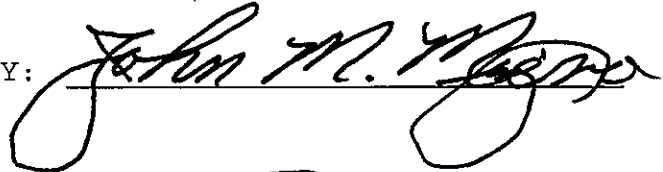
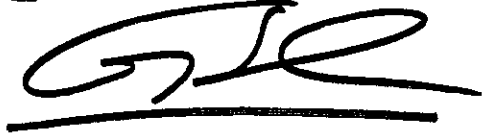
16 (b) Any domestic relations order issued before January 1,
17 2011, shall be reviewed after July 1, 2011, upon
18 receipt by the employees' retirement system of the
19 order and a written declaration signed by both parties



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1 that each consents to the application of this Act to
2 the order.
3

INTRODUCED BY:

JAN 26 2011



Report Title:

Qualified Domestic Relations Orders

Description:

Establishes qualified domestic relations orders by which the employees' retirement system is required to make payments to an alternate payee of benefits payable to a retirant or member.

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

