

JAN 17 2014

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, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:
3 "(a) All written designations of beneficiaries for members
4 and for former employees shall become null and void when:
5 (1) The beneficiary predeceases the member or former
6 employee;
7 (2) The member or former employee is divorced from the
8 beneficiary;
9 (3) The member or former employee is unmarried, and
10 subsequently marries; or
11 (4) The member or former employee enters into or
12 terminates a reciprocal beneficiary relationship.
13 Any of the above events shall operate as a complete revocation
14 of the designation and, except as provided in sections 88-84(b)
15 and 88-338(b) all benefits payable by reason of the death of the
16 member or former employee shall be payable to the member's or
17 former employee's estate unless, after the death, divorce or
18 marriage, or entry into or termination of reciprocal beneficiary



1 relationship, the member or former employee makes other
2 provision in a written designation duly executed and filed with
3 the board. All or a portion of the benefits payable by reason
4 of the death of the member or former employee shall be payable
5 to the alternate beneficiary designated under a qualified
6 domestic relations order; provided that the alternate
7 beneficiary designated is a spouse, former spouse, child, or
8 other dependent of the member or former employee."

9 SECTION 2. Section 580-47, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§580-47 Support orders; qualified domestic relations**
12 **orders; division of property.** (a) Upon granting a divorce, or
13 thereafter if, in addition to the powers granted in subsections
14 (c) and (d), jurisdiction of those matters is reserved under the
15 decree by agreement of both parties or by order of court after
16 finding that good cause exists, the court may make any further
17 orders as shall appear just and equitable (1) compelling the
18 parties or either of them to provide for the support,
19 maintenance, and education of the children of the parties; (2)
20 compelling either party to provide for the support and
21 maintenance of the other party; (3) finally dividing and
22 distributing the estate of the parties, real, personal, or



1 mixed, whether community, joint, or separate; and (4)
2 allocating, as between the parties, the responsibility for the
3 payment of the debts of the parties whether community, joint, or
4 separate, and the attorney's fees, costs, and expenses incurred
5 by each party by reason of the divorce. In making these further
6 orders, the court shall take into consideration: the respective
7 merits of the parties, the relative abilities of the parties,
8 the condition in which each party will be left by the divorce,
9 the burdens imposed upon either party for the benefit of the
10 children of the parties, the concealment of or failure to
11 disclose income or an asset, or violation of a restraining order
12 issued under section 580-10(a) or (b), if any, by either party,
13 and all other circumstances of the case. In establishing the
14 amounts of child support, the court shall use the guidelines
15 established under section 576D-7. Provision may be made for the
16 support, maintenance, and education of an adult or minor child
17 and for the support, maintenance, and education of an
18 incompetent adult child whether or not the petition is made
19 before or after the child has attained the age of majority. In
20 those cases where child support payments are to continue due to
21 the adult child's pursuance of education, the agency, three
22 months prior to the adult child's nineteenth birthday, shall



1 send notice by regular mail to the adult child and the custodial
2 parent that prospective child support will be suspended unless
3 proof is provided by the custodial parent or adult child to the
4 child support enforcement agency, prior to the child's
5 nineteenth birthday, that the child is presently enrolled as a
6 full-time student in school or has been accepted into and plans
7 to attend as a full-time student for the next semester a post-
8 high school university, college, or vocational school. If the
9 custodial parent or adult child fails to do so, prospective
10 child support payments may be automatically suspended by the
11 child support enforcement agency, hearings officer, or court
12 upon the child reaching the age of nineteen years. In addition,
13 if applicable, the agency, hearings officer, or court may issue
14 an order terminating existing assignments against the
15 responsible parent's income and income assignment orders.

16 In addition to any other relevant factors considered, the
17 court, in ordering spousal support and maintenance, shall
18 consider the following factors:

- 19 (1) Financial resources of the parties;
- 20 (2) Ability of the party seeking support and maintenance
21 to meet his or her needs independently;
- 22 (3) Duration of the marriage;



- 1 (4) Standard of living established during the marriage;
- 2 (5) Age of the parties;
- 3 (6) Physical and emotional condition of the parties;
- 4 (7) Usual occupation of the parties during the marriage;
- 5 (8) Vocational skills and employability of the party
- 6 seeking support and maintenance;
- 7 (9) Needs of the parties;
- 8 (10) Custodial and child support responsibilities;
- 9 (11) Ability of the party from whom support and maintenance
- 10 is sought to meet his or her own needs while meeting
- 11 the needs of the party seeking support and
- 12 maintenance;
- 13 (12) Other factors which measure the financial condition in
- 14 which the parties will be left as the result of the
- 15 action under which the determination of maintenance is
- 16 made; and
- 17 (13) Probable duration of the need of the party seeking
- 18 support and maintenance.

19 The court may order support and maintenance to a party for
20 an indefinite period or until further order of the court;
21 provided that in the event the court determines that support and
22 maintenance shall be ordered for a specific duration wholly or



1 partly based on competent evidence as to the amount of time
2 which will be required for the party seeking support and
3 maintenance to secure adequate training, education, skills, or
4 other qualifications necessary to qualify for appropriate
5 employment, whether intended to qualify the party for a new
6 occupation, update or expand existing qualification, or
7 otherwise enable or enhance the employability of the party, the
8 court shall order support and maintenance for a period
9 sufficient to allow completion of the training, education,
10 skills, or other activity, and shall allow, in addition,
11 sufficient time for the party to secure appropriate employment.

12 (b) An order as to the custody, management, and division
13 of property and as to the payment of debts and the attorney's
14 fees, costs and expenses incurred in the divorce shall be final
15 and conclusive as to both parties subject only to appeal as in
16 civil cases. The court shall at all times, including during the
17 pendency of any appeal, have the power to grant any and all
18 orders that may be necessary to protect and provide for the
19 support and maintenance of the parties and any children of the
20 parties to secure justice, to compel either party to advance
21 reasonable amounts for the expenses of the appeal including



1 attorney's fees to be incurred by the other party, and to amend
2 and revise such orders from time to time.

3 (c) No order entered under the authority of subsection (a)
4 or entered thereafter revising so much of such an order as
5 provides for the support, maintenance, and education of the
6 children of the parties shall impair the power of the court from
7 time to time to revise its orders providing for the support,
8 maintenance, and education of the children of the parties upon a
9 showing of a change in the circumstances of either party or any
10 child of the parties since the entry of any prior order relating
11 to the support, maintenance, and education. The establishment
12 of the guidelines or the adoption of any modifications made to
13 the guidelines set forth in section 576D-7 may constitute a
14 change in circumstances sufficient to permit review of the
15 support order. A material change of circumstances will be
16 presumed if support as calculated pursuant to the guidelines is
17 either ten per cent greater or less than the support amount in
18 the outstanding support order. The need to provide for the
19 child's health care needs through health insurance or other
20 means shall be a basis for petitioning for a modification of the
21 support order. The most current guidelines shall be used to
22 calculate the amount of the child support obligation.



1 (d) Upon the motion of either party supported by an
2 affidavit setting forth in particular a material change in the
3 physical or financial circumstances of either party, or upon a
4 showing of other good cause, the moving party, in the discretion
5 of the court, and upon adequate notice to the other party, may
6 be granted a hearing. The fact that the moving party is in
7 default or arrears in the performance of any act or payment of
8 any sums theretofore ordered to be done or paid by the party
9 shall not necessarily constitute a bar to the granting of the
10 hearing. The court, upon such hearing, for good cause shown may
11 amend or revise any order and shall consider all proper
12 circumstances in determining the amount of the allowance, if
13 any, which shall thereafter be ordered.

14 (e) The responsible parent or the custodial parent shall
15 have a right to petition the family court or the child support
16 enforcement agency not more than once every three years for
17 review and adjustment of the child support order without having
18 to show a change in circumstances. The responsible or custodial
19 parent shall not be precluded from petitioning the family court
20 or the child support enforcement agency for review and
21 adjustment more than once in any three-year period if the second

1 or subsequent request is supported by proof of a substantial or
2 material change of circumstances.

3 (f) Attorney's fees and costs. The court hearing any
4 motion for orders either revising an order for the custody,
5 support, maintenance, and education of the children of the
6 parties, or an order for the support and maintenance of one
7 party by the other, or a motion for an order to enforce any such
8 order or any order made under subsection (a) of this section,
9 may make such orders requiring either party to pay or contribute
10 to the payment of the attorney's fees, costs, and expenses of
11 the other party relating to such motion and hearing as shall
12 appear just and equitable after consideration of the respective
13 merits of the parties, the relative abilities of the parties,
14 the economic condition of each party at the time of the hearing,
15 the burdens imposed upon either party for the benefit of the
16 children of the parties, the concealment of or failure to
17 disclose income or an asset, or violation of a restraining order
18 issued under section 580-10(a) or (b), if any, by either party,
19 and all other circumstances of the case.

20 (g) In connection with and addition to a divorce decree,
21 the court may issue a qualified domestic relations order for
22 support that designates an alternate beneficiary to receive all



1 or a portion of the benefits payable under chapter 88 upon the
2 death of a member or former employee who is a party to the
3 qualified domestic relations order and subject to chapter 88;
4 provided that the alternate beneficiary designated is a spouse,
5 former spouse, child, or other dependent of the member or former
6 employee.

7 As used in this subsection, "qualified domestic relations
8 order" has the same meaning as in section 206(d) of the Employee
9 Retirement Security Act of 1974, as amended, and section 414(p)
10 of the Internal Revenue Code of 1986, as amended."

11 SECTION 3. New statutory material is underscored.

12 SECTION 4. This Act shall take effect upon its approval.

13

INTRODUCED BY: 

S.B. NO. 2688

Report Title:

Qualified Domestic Relations Orders; Employees' Retirement System; Alternate Beneficiary

Description:

Clarifies that all or a portion of the benefits payable by reason of the death of the member of the employees' retirement system or former employee of the State or counties shall be payable to the alternate beneficiary designated under a qualified domestic relations order. Allows the court to issue a qualified domestic relations order for support for purposes of designating an alternate beneficiary to receive retirement benefits under the employees' retirement system in connection with and in addition to a divorce decree.

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

