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# A BILL FOR AN ACT

RELATING TO DIVORCE.

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

1           SECTION 1. The purpose of this Act is to authorize and  
2 require the employees' retirement system to make direct payments  
3 to the spouse or former spouse of an employees' retirement  
4 system member or retirant when the spouse or former spouse has  
5 been awarded all or a portion of the member's or retirant's  
6 retirement benefits as part of a property division adjudicated,  
7 ordered, or decreed by a court in a domestic relations  
8 proceeding. The actuarial cost of the benefits paid by the  
9 employees' retirement system to the retirant and the retirant's  
10 beneficiaries, if any, and the retirant's spouse or former  
11 spouse shall not exceed the actuarial cost of the benefits that  
12 would be payable to the retirant and the retirant's  
13 beneficiaries, if any, in the absence of this Act. It is the  
14 intent of the legislature that the approach taken by this Act,  
15 for the allocation of the benefit when the award is made prior  
16 to the member's retirement, be based upon what is often referred  
17 to as a "separate interest approach." The legislature also  
18 intends that the approach taken by this Act, for the allocation



1 of the benefit when the award is made after the member's  
2 retirement, be based upon what is often referred to as a "shared  
3 payment approach."

4 The legislature recognizes that the employees' retirement  
5 system is not subject to the Employee Retirement Income Security  
6 Act of 1974 and it is not the intent of the legislature to  
7 require the employees' retirement system to comply with the  
8 provisions of that act. It is, however, the legislature's  
9 intent that this Act shall comply with the requirements of  
10 section 414(p)(11) of the Internal Revenue Code of 1986, as  
11 amended, to the extent necessary to allow the distributions or  
12 payments made by the employees' retirement system pursuant to  
13 this Act to be treated as made pursuant to a qualified domestic  
14 relations order for federal income tax purposes.

15 SECTION 2. Chapter 88, part II, subpart C, Hawaii Revised  
16 Statutes, is amended by adding a new section to be appropriately  
17 designated and to read as follows:

18 "§88- Distribution of property in a divorce action. (a)

19 As used in this section:

20 "Alternate payee" means a spouse or former spouse of a  
21 member or retirant who is recognized by a domestic relations



1 order as having a right to receive all or a portion of the  
2 benefits payable by the system with respect to that member or  
3 retirant.

4 "Benefits payable with respect to a member or retirant"  
5 means any payment required to be made to a member or retirant.

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

- 9 (1) Relates to the provision of marital property rights to
- 10 a spouse or former spouse of a member 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 or retirant under the system;
- 19 (2) Directs the system to disburse benefits to the
- 20 alternate payee; and
- 21 (3) Meets the requirements of this section.



- 1        (b) A Hawaii domestic relations order shall clearly  
2 specify:
- 3        (1) The name and last known mailing address, if any, of  
4        the member or retirant;
- 5        (2) The name and mailing address of the alternate payee  
6        covered by the order;
- 7        (3) The amount or percentage of the member or retirant's  
8        benefits to be paid by the system to the alternate  
9        payee, or the manner in which the amount or percentage  
10       is to be determined;
- 11       (4) The number of payments or period to which the order  
12       applies; and
- 13       (5) That the order applies to the system.
- 14       (c) If, pursuant to a Hawaii domestic relations order, an  
15 alternate payee is receiving all or a portion of a retirant's  
16 pension, annuity, or retirement allowance, the alternate payee  
17 shall be entitled to receive a post retirement allowance as  
18 provided by section 88-90.
- 19       (d) A Hawaii domestic relations order shall not:



- 1        (1) Purport to require the designation by the member or  
2                    retirant of a particular person as the recipient of  
3                    benefits upon the death of the member or retirant;
- 4        (2) Purport to require the selection of a particular  
5                    benefit payment plan or option or to limit the benefit  
6                    payment plans or options from which the member may  
7                    select;
- 8        (3) Require any action on the part of the system contrary  
9                    to its governing laws or plan provisions other than  
10                   the direct payment of the benefit awarded to an  
11                   alternate payee;
- 12       (4) Make the award to the alternate payee an interest that  
13                   is contingent on any condition other than those  
14                   conditions resulting in the liability of the system  
15                   for payment under its plan provisions;
- 16       (5) Purport to give to someone other than a member or  
17                   retirant the right to designate a beneficiary or to  
18                   choose any retirement plan or option available from  
19                   the system;
- 20       (6) Attach a lien to any part of amounts payable with  
21                   respect to a member or retirant;



- 1        (7) Award an alternate payee a portion of the benefits  
2                    payable with respect to a member or retirant under the  
3                    system and purport to require the system to make a  
4                    lump sum payment of the awarded portion of the  
5                    benefits to the alternate payee that are not payable  
6                    in a lump sum;
- 7        (8) Purport to require the system, without action by the  
8                    member, to terminate a member from membership or  
9                    employment, to refund contributions, or to retire a  
10                   member;
- 11       (9) Provide any type or form of benefit, or any option,  
12                   not otherwise provided by the system;
- 13       (10) Provide increased benefits, determined on the basis of  
14                   actuarial value; or
- 15       (11) Require the system to provide benefits or refunds to  
16                   an alternate payee that are required to be paid to  
17                   another alternate payee pursuant to an earlier Hawaii  
18                   domestic relations order.
- 19       (e) Upon receipt of a copy of the complaint for divorce,  
20                   certified by the clerk of the court in which the complaint was  
21                   filed, and a written request that identifies the member or



1 retirant by name and social security number and states the date  
2 of the marriage, the system shall provide the spouse or former  
3 spouse of a member or retirant with the same information that  
4 would be provided to the member or retirant on the member's or  
5 retirant's benefits that is relevant to the spouse's or former  
6 spouse's interest in the member's or retirant's benefits.

7       (f) A person who wishes to have the system review a  
8 domestic relations order or a proposed domestic relations order  
9 to establish whether the order or proposed order meets the  
10 requirements for a Hawaii domestic relations order shall submit  
11 to the system a written request for review and a copy of the  
12 order or proposed order. If the order has been entered by a  
13 court, the copy of the order shall be certified by the clerk of  
14 the court that entered the order. The order or proposed order  
15 shall be reviewed as provided by this section.

16       The filing fee in effect at the time that an order or  
17 proposed order is submitted shall be paid before the order or  
18 proposed order is processed or reviewed. In addition, the  
19 system shall charge for legal and actuarial services as provided  
20 by subsection (s).



1 Before any legal or actuarial services are performed, the  
2 system shall notify the person who requested the review of the  
3 order or proposed order that the services will be needed as part  
4 of the review. The notification shall include an estimate of  
5 the extent of the services and the estimated costs relating to  
6 those services. The charges for legal and actuarial services  
7 shall be paid before the system may issue notification of  
8 determination on an order or notification whether or not a  
9 proposed order meets the requirements for a Hawaii domestic  
10 relations order.

11 If a domestic relations order is submitted for review after  
12 it has been entered by the court and is thereafter amended with  
13 the intention that it shall be a Hawaii domestic relations  
14 order, the member, retirant, or the alternate payee shall submit  
15 a certified copy of the amended order to the system. The system  
16 shall review any amended order that it receives according to the  
17 same rules applicable to all other orders.

18 (g) The system shall review an order or proposed order for  
19 compliance with the requirements imposed by this section. Upon  
20 completion of the review:





- 1        (1) The system shall not issue a determination that a  
2        proposed order is or is not a Hawaii domestic  
3        relations order but shall notify the person who  
4        submitted the proposed order, in writing, and may also  
5        notify the member or alternate payee whether the  
6        proposed order meets the requirements for a Hawaii  
7        domestic relations order, identifying any provisions  
8        of this section that the proposed order does not meet;  
9        and
- 10       (2) If the order has been entered by the court, the system  
11       shall notify the member or retirant and the alternate  
12       payee in writing of the determination that the order  
13       is or is not a Hawaii domestic relations order,  
14       identifying any provisions of this section that the  
15       order does not meet.
- 16       (h) During any period not exceeding eighteen months,  
17       beginning on the date on which the first payment would be  
18       required to be made to the alternate payee under the domestic  
19       relations order, in which a domestic relations order is under  
20       review to determine whether it is a Hawaii domestic relations  
21       order, or in which a determination that an order is not



1 qualified is on appeal to the board or to a court, the system  
2 shall limit the member's or retirant's rights in the member's or  
3 retirant's benefits to the extent the system deems appropriate  
4 to protect the largest amount that would be payable to the  
5 proposed alternate payee under the system's interpretation of  
6 the domestic relations order. Any amounts not paid to the  
7 member or retirant during this eighteen-month period shall be  
8 separately accounted for. If the domestic relations order is  
9 determined to be a Hawaii domestic relations order before the  
10 end of the eighteen-month period, the system shall pay benefits  
11 to the member or retirant and the alternate payee in accordance  
12 with the Hawaii domestic relations order and the terms of the  
13 plan, including any benefits separately accounted for during the  
14 period between the date on which the first payment was to be  
15 made under the Hawaii domestic relations order and the date the  
16 determination is made. If the domestic relations order is  
17 finally determined not to be a Hawaii domestic relations order,  
18 or if the eighteen-month period expires without a determination  
19 that the domestic relations order is a Hawaii domestic relations  
20 order, none of the amounts separately accounted for shall be  
21 paid to the alternate payee, and the member or retirant shall be



1 entitled to the member's or retirant's full benefits in  
2 accordance with the terms of this chapter, including any  
3 benefits that had been separately accounted for and withheld  
4 from the member or retirant. If the domestic relations order is  
5 determined to be a Hawaii domestic relations order after the end  
6 of the eighteen-month period, or if the system later receives  
7 another domestic relations order that is determined to be a  
8 Hawaii domestic relations order, the Hawaii domestic relations  
9 order shall apply prospectively only and shall not affect  
10 benefits already paid to the member or retirant.

11 (i) Subject to the limitations of applicable statutes and  
12 this section, if a domestic relations order is determined to be  
13 a Hawaii domestic relations order, the system shall pay benefits  
14 in accordance with the order at the time benefits become payable  
15 to, or in the case of contributions or hypothetical account  
16 balances, are withdrawn by, the member or retirant. Any  
17 determination that an order is a Hawaii domestic relations order  
18 is voidable or subject to modification if the system determines  
19 that the provisions of the order have been changed or that  
20 circumstances relevant to the determination have changed.



1       (j) If a member terminates membership in the system by  
2 withdrawal of contributions or hypothetical account balance, the  
3 system shall pay all or a portion of the amount withdrawn to any  
4 alternate payee as directed by a Hawaii domestic relations  
5 order. Payment to any alternate payee pursuant to this  
6 subsection shall be in a lump sum. If the former member later  
7 resumes membership in the system, the system shall pay to an  
8 alternate payee no portion of any benefits payable to the member  
9 or retirant that result from the resumption of membership, even  
10 if those benefits result in part from reinstatement of service  
11 credit initially credited during the marriage.

12       (k) In order to receive credit for all service represented  
13 by withdrawn or refunded contributions, a member, in reinstating  
14 service credit by repaying amounts previously withdrawn or  
15 refunded, shall repay the entire amount withdrawn or refunded,  
16 regardless of whether a portion or all of the amount was paid to  
17 an alternate payee.

18       (l) When the system has not yet begun to make payment to  
19 an alternate payee under this section and is provided with proof  
20 of the death of the alternate payee, benefits payable with



1 respect to the member or retirant shall be paid without regard  
2 to the Hawaii domestic relations order.

3 (m) When the system receives a certified copy of a  
4 domestic relations order prior to a member's retirement, and if  
5 the domestic relations order is determined to be a Hawaii  
6 domestic relations order, the system, except as provided in  
7 subsection (j), shall pay the alternate payee an amount that is  
8 the actuarial equivalent of the benefit that is awarded to the  
9 alternate payee in the form of an annuity payable in equal  
10 monthly installments for the life of the alternate payee.

11 Payment under this subsection shall be determined as  
12 follows:

- 13 (1) As of the date payment to the alternate payee is  
14 scheduled to begin, the system shall determine the  
15 single life annuity value of the retirement benefit  
16 payable to the member;
- 17 (2) If the portion of the benefit awarded to the alternate  
18 payee by the order is not clearly stated as a  
19 percentage of the member's maximum retirement  
20 allowance, the system shall determine the percentage  
21 of the member's maximum retirement allowance that is



- 1           the equivalent to the benefit awarded to the alternate  
2           payee;
- 3           (3) The single life annuity value determined by the system  
4           shall be multiplied by the percentage of the member's  
5           maximum retirement allowance awarded to the alternate  
6           payee. The result of this calculation shall be  
7           actuarially converted to a single life annuity payable  
8           to the alternate payee for the lifetime of the  
9           alternate payee;
- 10          (4) The benefit payable to the member shall be reduced by  
11          an amount actuarially equivalent to the value of the  
12          benefit payable to the alternate payee; payment by the  
13          system of the alternate payee's interest as provided  
14          by this section shall have no effect on the right of a  
15          member to name a beneficiary or the right of a member  
16          to choose an optional method of payment upon  
17          retirement; and
- 18          (5) Payment of the alternate payee's interest under this  
19          subsection shall be effective as of the same date that  
20          benefit payments are effective for the member.



1        (n) When the system receives a certified copy of a  
2 domestic relations order subsequent to the member's retirement,  
3 and if the domestic relations order is determined to be a Hawaii  
4 domestic relations order, the interest awarded to the alternate  
5 payee by the Hawaii domestic relations order shall be paid as a  
6 portion of the retirement benefit the retirant is receiving as  
7 follows:

8        (1) If the alternate payee is already a named beneficiary  
9 under any option elected by the retirant at  
10 retirement, the benefit to which the retirant is  
11 entitled, without regard to the Hawaii domestic  
12 relations order, shall be apportioned between the  
13 retirant and the alternate payee according to the  
14 terms of the Hawaii domestic relations order. Upon  
15 the death of the retirant or the alternate payee, the  
16 benefit amount to be paid to the survivor shall be the  
17 amount required under the option elected by the  
18 retirant at retirement, as though no Hawaii domestic  
19 relations order had existed; or  
20        (2) If the alternate payee is not a named beneficiary  
21 under the option elected by the retirant at



1 retirement, the benefit to which the retirant is  
2 entitled without regard to the Hawaii domestic  
3 relations order, shall be apportioned between the  
4 retirant and the alternate payee according to the  
5 terms of the Hawaii domestic relations order. If the  
6 retirant predeceases the alternate payee, payments to  
7 the alternate payee shall cease and payments to the  
8 retirant's named beneficiary or beneficiaries shall be  
9 made as required under the option elected by the  
10 retirant at retirement, as though no Hawaii domestic  
11 relations order had existed. If the alternate payee  
12 predeceases the retirant, the benefit then being paid  
13 to the retirant shall be increased by the amount of  
14 the benefit that was being paid to the alternate payee  
15 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 membership.

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

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



1 this subsection. A party to any action who attempts to make the  
2 system a party to the action contrary to this subsection shall  
3 be liable to the system for the system's costs and attorney's  
4 fees in the action, including attorneys' fee and costs for  
5 obtaining a dismissal.

6 (r) If a member or retirant, or the beneficiary or estate  
7 of either, receives the amount of any distribution that should  
8 have been paid by the system to the spouse or former spouse of  
9 the member or retirant, the recipient shall be designated a  
10 constructive trustee for the amount received and shall  
11 immediately transmit that amount to the person to whom the  
12 amount should have been paid. If a spouse or former spouse of a  
13 member or retirant, or the estate, heirs, or legatees of the  
14 spouse or former spouse receive any amount of a distribution  
15 that should have been paid to a member or retirant, or the  
16 estate, heirs, or legatees of either, the recipient shall be  
17 designated a constructive trustee for the amount received and  
18 shall immediately transmit that amount to the member or retirant  
19 or other person to whom the amount should have been paid. If a  
20 member, retirant, or the beneficiary, estate, heirs, or legatees  
21 of either, receives any amount that should not have been paid by



1 the system, the recipient shall be designated a constructive  
2 trustee for the amount received and shall immediately transmit  
3 that amount to the system. If an alternate payee or the estate,  
4 heirs, or legatee of the alternate payee, receives any amount  
5 that should not have been paid by the system, the recipient  
6 shall be designated a constructive trustee for the amount  
7 received and shall immediately transmit that amount to the  
8 system.

9 (s) The board shall adopt rules in accordance with chapter  
10 91, and adopt forms as it deems necessary to effectuate this  
11 section. The board, by motion at a duly noticed meeting of the  
12 board, may establish and revise from time to time:

- 13 (1) A filing fee for processing and review of domestic  
14 relations orders and proposed domestic relations  
15 orders for the purposes of this section;
- 16 (2) A schedule of charges for legal and actuarial services  
17 incurred by the system in the review and processing of  
18 domestic relations orders and proposed Hawaii domestic  
19 relations orders for the purposes of this section; and
- 20 (3) A required form or forms for Hawaii domestic relations  
21 orders."



1 SECTION 3. Section 88-91, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§88-91 Exemption from taxation and execution. The right  
4 of a person to a pension, an annuity or a retirement allowance,  
5 to the return of contributions, the pension, annuity or  
6 retirement allowance itself, any optional benefit or death  
7 benefit, any other right accrued or accruing to any person under  
8 this part and the moneys in the various funds created under this  
9 part are exempted from any tax of the State and, except as  
10 provided in [~~section~~] sections 88-92 [~~provided,~~] and 88-\_\_,  
11 shall not be subject to execution, garnishment or any other  
12 process and shall be unassignable except as in this part  
13 specifically provided."

14 SECTION 4. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 5. This Act shall take effect on July 1, 2018.



**Report Title:**

Employees' Retirement System Benefits; Domestic Relations Order

**Description:**

Requires ERS to make direct payments to a spouse of a system member or retirant pursuant to a Hawaii domestic relations order. (HB1370 CD1)

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

