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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 create statutory  
2 authority for the employees' retirement system to make direct  
3 payment to the former spouse of a retirant who has been awarded  
4 a portion of the retirant's retirement benefits as part of a  
5 property division adjudicated, ordered, or decreed by a family  
6 court in a divorce proceeding.

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

10 "§88- Distribution of property in a divorce action. (a)  
11 If a final judgment, order, or decree in a divorce action awards  
12 the spouse or former spouse of a member or retirant a portion of  
13 the pension, annuity, retirement allowance, or refunded  
14 contributions of the member or retirant, that portion shall be  
15 paid directly to the spouse or former spouse of the member or  
16 retirant; provided that the judgment, order, or decree:



- 1        (1) Identifies the member or retirant and spouse or former  
2                spouse by name, address, and last four digits of  
3                social security number;
- 4        (2) Directs the system to make payment of the share of the  
5                spouse or former spouse directly to the spouse or  
6                former spouse;
- 7        (3) States the amount or percentage of the member or  
8                retirant's benefits to be paid by the system to the  
9                spouse or former spouse, or the manner in which the  
10               amount or percentage is to be determined;
- 11       (4) Specifies that each party shall be liable for any  
12               taxes on the share of the pension, annuity, retirement  
13               benefit, or refunded contributions directly received  
14               by the party from the system; and
- 15       (5) Does not require the system to:
  - 16               (A) Provide any type or form of benefit, or any  
17               option, not otherwise provided by the system;
  - 18               (B) Provide increased benefits, determined on the  
19               basis of actuarial value; or
  - 20               (C) Require the system to provide benefits or refunds  
21               to the spouse or former spouse that are required



1           to be paid to another spouse or former spouse  
2           pursuant to another judgment, decree, or order  
3           subject to this section.

4           (b) Payments to a spouse or former spouse of a portion of  
5 a retirant's pension, annuity, or retirement allowance under  
6 this section shall commence on the later of:

7           (1) The month following the month in which the system  
8           receives a judgment, decree, or order meeting the  
9           requirements of subsection (a) and payment to the  
10           system of any fees and charges for review and  
11           processing of the judgment, decree, or order; or

12           (2) Commencement of the member or retirant's retirement  
13           benefits.

14           (c) Payments to a spouse or former spouse of a portion of  
15 a retirant's pension, annuity or retirement allowance under this  
16 section shall terminate upon the death of the former spouse or  
17 the death of the retirant, whichever occurs earlier.

18           (d) The system shall not be bound by any judgment, decree,  
19 or order made pursuant to a domestic relations law of this State  
20 or another state that:



- 1        (1) Requires any action on the part of the system contrary  
2        to governing law other than the direct payment of the  
3        benefit awarded to the spouse or former spouse of a  
4        member or retirant;
- 5        (2) Makes the award to the spouse or former spouse an  
6        interest that is contingent on any condition other  
7        than those conditions resulting in liability of the  
8        system for payment under governing law;
- 9        (3) Purports to give someone other than a member or  
10       retirant the right to designate a beneficiary or to  
11       choose any retirement plan or option available from  
12       the system;
- 13       (4) Attaches a lien to any part of amounts payable with  
14       respect to a member or retirant; provided that nothing  
15       in this subsection shall be construed as limiting the  
16       ability of the child support enforcement agency from  
17       collecting child support arrearages from benefits;
- 18       (5) Awards a spouse or former spouse of a member or  
19       retirant a portion of the benefits payable with  
20       respect to a member or retirant under the system and  
21       purports to require the system to make a lump sum



1 payment of the awarded portion of the benefits to the  
2 spouse or former spouse that are not payable in a lump  
3 sum; or

4 (6) Purports to require the system, without action by the  
5 member, to terminate a member from membership or  
6 employment, to refund contributions, or to retire a  
7 member.

8 (e) For the purpose of calculating earnings limitations  
9 for a retirant who has 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 been no judgment,  
12 order, or decree for the payment of any portion of the  
13 retirant's pension, annuity, or retirement allowance to the  
14 retirant's spouse or former spouse.

15 (f) If a member terminates membership in the system by  
16 withdrawal of contributions, the system shall pay all or a  
17 portion of the amount withdrawn to a former spouse as directed  
18 by a judgment, order, or decree meeting the requirements of  
19 subsection (a). If the former member later resumes membership  
20 in the system, the system shall pay to the spouse or former  
21 spouse no portion of any benefits payable to the member or



1 retirant that results from the resumption of membership, even if  
2 those benefits result in part from reinstatement of service  
3 credit initially credited during the marriage.

4 (g) Subsection (f) notwithstanding, in order to receive  
5 credit for all service represented by withdrawn or refunded  
6 contributions, a member who reinstates service credit by  
7 repaying amounts previously withdrawn or refunded shall repay  
8 the entire amount withdrawn or refunded, regardless of whether a  
9 portion or all of the amount was paid to a spouse or former  
10 spouse.

11 (h) When the system has not yet begun to make payment to a  
12 spouse or former spouse under this section and is provided with  
13 proof of the death of the spouse or former spouse, benefits  
14 payable with respect to the member or retirant shall be paid  
15 without regard to the judgment, order, or decree providing for  
16 payment to the spouse or former spouse.

17 (i) If a member or retirant, or the beneficiary or estate  
18 of either the member or retirant, receives the amount of any  
19 distribution that should have been paid by the system to the  
20 spouse or former spouse of the member or retirant, the recipient  
21 shall be designated a constructive trustee for the amount



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

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



- 1        (1) A filing fee for the processing and review of
- 2                judgments, orders, and decrees issued for the purposes
- 3                of this section; and
- 4        (2) A schedule of charges for legal and actuarial services
- 5                incurred by the system in the review and processing of
- 6                judgments, orders, and decrees issued for the purposes
- 7                of this section."

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

10                **"§88-91 Exemption from taxation and execution.** The right  
 11 of a person to a pension, an annuity or a retirement allowance,  
 12 to the return of contributions, the pension, annuity or  
 13 retirement allowance itself, any optional benefit or death  
 14 benefit, any other right accrued or accruing to any person under  
 15 this part and the moneys in the various funds created under this  
 16 part are exempted from any tax of the State and, except as  
 17 provided in [section] sections 88-92 [provided,] and 88- ,  
 18 shall not be subject to execution, garnishment or any other  
 19 process and shall be unassignable except as in this part  
 20 specifically provided."





1 SECTION 4. There is appropriated out of the expense fund  
2 of the employees' retirement system the sum of \$ or so  
3 much thereof as may be necessary for fiscal year 2015-2016 and  
4 the same sum or so much thereof as may be necessary for fiscal  
5 year 2016-2017 for the planning and expenditures necessary for  
6 the implementation of this Act.

7 The sums appropriated shall be expended by the employees'  
8 retirement system of the State of Hawaii for the purposes of  
9 this Act.

10 SECTION 5. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 6. This Act shall take effect on January 1, 2016.



**Report Title:**

Employees' Retirement System Benefits; Direct Payment to Former Spouse; Divorce; Appropriation

**Description:**

Provides statutory authority for the employees' retirement system to make direct payment to a former spouse of a member of benefits or portion thereof pursuant to valid court judgment, order, or decree. Appropriates money to implement the purposes of this Act. Takes effect on 01/01/2016. (SD1)

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

