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# 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           "Benefits payable with respect to a member, a former member  
12 with vested benefit status, or retirant" means any payment  
13 required to be made to a member, a former member with vested  
14 benefit status, or retirant.

15           "Benefit the member or former member with vested benefit  
16 status is expected to receive" means the benefit the member or



1 former member with vested benefit status is expected to receive  
2 without regard to any Hawaii domestic relations order.

3 "Benefit the retirant is receiving" means the benefit the  
4 retirant is receiving without regard to any Hawaii domestic  
5 relations order.

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, a former member  
11 with vested benefit status, or retirant; and  
12 (2) Is made pursuant to a domestic relations law of this  
13 State or another state.

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

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



- 1           (2) Directs the system to disburse benefits to the  
2           alternate payee; and
- 3           (3) Meets the requirements of this section.
- 4           (b) A Hawaii domestic relations order shall clearly  
5 specify:
- 6           (1) The name and last known mailing address, if any, of  
7           the member, former member with vested benefit status,  
8           or retirant;
- 9           (2) The name and mailing address of the alternate payee  
10          covered by the order;
- 11          (3) The amount or percentage of the member's, former  
12          member's with vested benefit status, or retirant's  
13          benefits to be paid by the system to the alternate  
14          payee, or the manner in which the amount or percentage  
15          is to be determined; and
- 16          (4) That the order applies to the system.
- 17          (c) If, pursuant to a Hawaii domestic relations order, an  
18 alternate payee is receiving all or a portion of a retirant's  
19 pension, annuity, or retirement allowance, the alternate payee  
20 shall be entitled to receive a post retirement allowance as  
21 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 whether or not a  
19 proposed order meets the requirements for a Hawaii domestic  
20 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 ~~[an]~~ 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 that  
7 a proposed domestic relations order is or is not a  
8 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 the system, the system shall pay to an  
18 alternate payee no portion of any benefits [~~payable to the~~  
19 ~~member or retirant~~] that result from the resumption of  
20 membership, even if those benefits result in part from



1 reinstatement of service credit initially credited during the  
2 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 a member's retirement, and if  
17 the domestic relations order is determined to be a Hawaii  
18 domestic relations order, the system, except as provided in  
19 subsection (j), shall pay the alternate payee a portion of the  
20 retirement benefit the member or former member with vested  
21 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           benefit to which the retirant is entitled, without  
4           regard to the Hawaii domestic relations order, shall  
5           be apportioned between the retirant and the alternate  
6           payee according to the terms of the Hawaii domestic  
7           relations order. Upon the death of the retirant or  
8           the alternate payee, the benefit amount to be paid to  
9           the survivor shall be the amount required under the  
10          option elected by the retirant at retirement, as  
11          though no Hawaii domestic relations order had existed;  
12          or
- 13          (2) If the alternate payee will not be 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 Hawaii domestic  
17          relations order, shall be apportioned between the  
18          retirant and the alternate payee according to the  
19          terms of the Hawaii domestic relations order. If the  
20          retirant predeceases the alternate payee, payments to  
21          the alternate payee shall cease and payments to the



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

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

12          (n) When the system receives a certified copy of a  
13          domestic relations order subsequent to the member's or former  
14          member's with vested benefit status retirement, and if the  
15          domestic relations order is determined to be a Hawaii domestic  
16          relations order, the interest awarded to the alternate payee by  
17          the Hawaii domestic relations order shall be paid as a portion  
18          of the retirement benefit the retirant is receiving as follows:

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



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

- 10 (2) If the alternate payee is not a named beneficiary  
11 under the option elected by the retirant at  
12 retirement, the benefit to which the retirant is  
13 entitled without regard to the Hawaii domestic  
14 relations order, shall be apportioned between the  
15 retirant and the alternate payee according to the  
16 terms of the Hawaii domestic relations order. If the  
17 retirant predeceases the alternate payee, payments to  
18 the alternate payee shall cease and payments to the  
19 retirant's named beneficiary or beneficiaries shall be  
20 made as required under the option elected by the  
21 retirant at retirement, as though no Hawaii domestic





1 relations order had existed. If the alternate payee  
2 predeceases the retirant, the benefit then being paid  
3 to the retirant shall be increased by the amount of  
4 the benefit that was being paid to the alternate payee  
5 at time of death.

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

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

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

15 (2) The system shall pay to an alternate payee no portion  
16 of any benefits payable to the retirant that result  
17 from the resumption of membership.

18 (p) For the purpose of calculating earnings limitations  
19 for retirants who have been restored to service, the retirant's  
20 maximum retirement allowance shall be considered to be the



1 amount that would have been paid if there had not been any  
2 Hawaii domestic relations order applicable to the retirant.

3 (q) A court does not have jurisdiction over the system  
4 with respect to a divorce or other domestic relations action in  
5 which an alternate payee's right to receive all or a portion of  
6 the benefits payable to a member, former member with vested  
7 benefit status, or retirant is created or established. A  
8 determination by the system that a domestic relations order is  
9 not a Hawaii domestic relations order shall be subject to review  
10 as provided in chapter 91 and the system's rules relating to  
11 contested cases. The system shall not be made party to any  
12 other judicial proceedings except as provided in this  
13 subsection. A party to any action who attempts to make the  
14 system a party to the action contrary to this subsection shall  
15 be liable to the system for the system's costs and attorney's  
16 fees in the action, including attorneys' fee and costs for  
17 obtaining a dismissal.

18 (r) If a member, former member with vested benefit status,  
19 or retirant, or the beneficiary or estate of any, receives the  
20 amount of any distribution that should have been paid by the  
21 system to the spouse or former spouse of the member, former



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



1 paid by the system, the recipient shall be designated a  
2 constructive trustee for the amount received and shall  
3 immediately transmit that amount to the system.

4 (s) The board shall adopt rules in accordance with chapter  
5 91, and adopt forms as it deems necessary to effectuate this  
6 section. The board, by motion at a duly noticed meeting of the  
7 board, may establish and revise from time to time:

8 (1) A filing fee for processing and review of domestic  
9 relations orders and proposed domestic relations  
10 orders for the purposes of this section;

11 (2) A schedule of charges for legal and actuarial services  
12 incurred by the system in the review and processing of  
13 domestic relations orders and proposed Hawaii domestic  
14 relations orders for the purposes of this section; and

15 (3) A required form or forms for Hawaii domestic relations  
16 orders.

17 (t) Payments made to alternate payees according to the  
18 terms of Hawaii domestic relations orders are payments received  
19 by the retirant for purposes of sections 88-83(f) and 88-333(c),  
20 and the benefit that the retirant received for purposes of  
21 section 88-283(g).



1       (u) The priority of Hawaii domestic relations orders shall  
2 be determined by the order in which the certified copies of  
3 domestic relations orders are received by the system for  
4 qualification as a Hawaii domestic relations order, and not by  
5 the order in which domestic relations orders are determined to  
6 be Hawaii domestic relations orders, the order in which the  
7 domestic relations orders are entered by the court, the date the  
8 complaint for divorce is filed, the date upon which an order of  
9 divorce is entered, or the date of marriage."

10       SECTION 2. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12       SECTION 3. This Act shall take effect on January 1, 2050.



**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. Effective 1/1/2050. (HD1)

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

