

JAN 23 2020

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
7 status, or retirant who is recognized by a domestic relations
8 order as having a right to receive all or a portion of the
9 benefits payable by the system with respect to that member,
10 former member 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

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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;
21 (2) Directs the system to disburse benefits to the
22 alternate payee; and

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1 (3) Meets the requirements of this section.

2 (b) A Hawaii domestic relations order shall clearly
3 specify:

4 (1) The name and last known mailing address, if any, of
5 the member, former member with vested benefit
6 status, or retirant;

7 (2) The name and mailing address of the alternate payee
8 covered by the order;

9 (3) The amount or percentage of the member's, former
10 member's with vested benefit status, or retirant's
11 benefits to be paid by the system to the alternate
12 payee, or the manner in which the amount or percentage
13 is to be determined; and

14 (4) That the order applies to the system.

15 (c) If, pursuant to a Hawaii domestic relations order, an
16 alternate payee is receiving all or a portion of
17 a retirant's pension, annuity, or retirement allowance, the
18 alternate payee shall be entitled to receive a post retirement
19 allowance as provided by section 88-90.

20 (d) A Hawaii domestic relations order shall not:

21 (1) Purport to require the designation by the member,
22 former member with vested benefit

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- 1 status, or retirant of a particular person as the
2 recipient of benefits upon the death of the member,
3 former member with vested benefit status, 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 or
7 former member with vested benefit status may 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, former
17 member with vested benefit status, or retirant the
18 right to designate a beneficiary or to choose any
19 retirement plan or option available from the system;
- 20 (6) Attach a lien to any part of amounts payable with
21 respect to a member, former member with vested benefit
22 status, or retirant;

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- 1 (7) Award an alternate payee a portion of the benefits
2 payable with respect to a member, former member with
3 vested benefit status, or retirant under the system
4 and purport to require the system to make a lump sum
5 payment of the awarded portion of the benefits to the
6 alternate payee that are not payable 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 or former member with vested benefit status;
- 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, or a copy of the divorce decree certified by the clerk of
22 the court in which the divorce decree was filed, and a written

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1 request that identifies the member, former member with vested
2 benefit status, or retirant by name and social security number
3 and states the date of the marriage, the system shall provide
4 the spouse or former spouse of a member, former member with
5 vested benefit status, or retirant with the same information
6 that would be provided to the member, former member with vested
7 benefit status, or retirant the member's, former member's with
8 vested benefit status, or retirant's benefits that is relevant
9 to the spouse's or former spouse's interest in the member's,
10 former member's with vested benefit status, or the retirant's
11 benefits.

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

21 The filing fee in effect at the time that an order or
22 proposed order is submitted shall be paid before the order or

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1 proposed order is processed or reviewed. In addition, the
2 system shall charge for legal and actuarial services as provided
3 by subsection (s).

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

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

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1 (g) The system shall review [~~an~~] a domestic relations
2 order or proposed domestic relations order for compliance with
3 the requirements imposed by this section. Upon completion of
4 the review:

5 (1) The system shall not issue a determination that a
6 proposed domestic relations order is or is not a
7 Hawaii domestic relations order but shall [~~notify~~]
8 issue a notification to the person who submitted the
9 proposed domestic relations order, in writing, [~~and~~
10 ~~may also notify the member, former member with vested~~
11 ~~benefit status, or alternate payee]~~ whether the
12 proposed domestic relations order meets the
13 requirements for a Hawaii domestic relations order,
14 identifying any provisions of this section that the
15 proposed domestic relations order does not meet[~~+~~].
16 The notification may also be provided to the member,
17 former member with vested benefit status, retirant, or
18 alternate payee. The system's notification is
19 advisory, and shall not constitute a determination
20 that a proposed domestic relations order is or is not
21 a Hawaii domestic relations order; and

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1 (2) If the domestic relations order has been entered by
2 the court, the system shall [~~notify~~] issue to the
3 member, former member with vested benefit
4 status, or retirant and the alternate payee [~~in~~
5 ~~writing of the~~] a determination in writing that the
6 domestic relations order is or is not a Hawaii
7 domestic relations order, identifying any provisions
8 of this section that the order does not meet.

9 (h) During any period not exceeding eighteen months,
10 beginning on the date on which the first payment would be
11 required to be made to the alternate payee under the domestic
12 relations order, in which a domestic relations order is under
13 review to determine whether it is a Hawaii domestic relations
14 order, or in which a determination that an order is not
15 qualified is on appeal to the board or to a court, the system
16 shall limit the member's, former member's with vested benefit
17 status, or retirant's rights in the member's, former member's
18 with vested benefit status, or retirant's benefits to the extent
19 the system deems appropriate to protect the largest amount that
20 would be payable to the proposed alternate payee under the
21 system's interpretation of the domestic relations order. Any
22 amounts not paid to the member, former member with vested

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1 benefit status, or retirant during this eighteen-month period
2 shall be separately accounted for. If the domestic relations
3 order is determined to be a Hawaii domestic relations order
4 before the end of the eighteen-month period, the system shall
5 pay benefits to the member, former member with vested benefit
6 status, or retirant and the alternate payee in accordance with
7 the Hawaii domestic relations order and the terms of the plan,
8 including any benefits separately accounted for during the
9 period between the date on which the first payment was to be
10 made under the Hawaii domestic relations order and the date the
11 determination is made. If the domestic relations order is
12 finally determined not to be a Hawaii domestic relations order,
13 or if the eighteen-month period expires without a determination
14 that the domestic relations order is a Hawaii domestic relations
15 order, none of the amounts separately accounted for shall be
16 paid to the alternate payee, and the member, former member with
17 vested benefit status, or retirant shall be entitled to the
18 member's, former member's with vested benefit
19 status, or retirant's full benefits in accordance with the terms
20 of this chapter, including any benefits that had been separately
21 accounted for and withheld from the member, former member with
22 vested benefit status, or retirant. If the domestic relations

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1 order is determined to be a Hawaii domestic relations order
2 after the end of the eighteen-month period, or if the system
3 later receives another domestic relations order that is
4 determined to be a Hawaii domestic relations order, the Hawaii
5 domestic relations order shall apply prospectively only and
6 shall not affect benefits already paid to the member, former
7 member with vested benefit status, or retirant.

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

19 (j) If a member or former member with vested benefit
20 status terminates membership in the system by withdrawal of
21 contributions or hypothetical account balance, the system shall
22 pay all or a portion of the amount withdrawn to any alternate

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1 payee as directed by a Hawaii domestic relations order. Payment
2 to any alternate payee pursuant to this subsection shall be in a
3 lump sum. If after terminating membership in the system by
4 withdrawal of contributions or hypothetical account balance, the
5 former member or former member with vested benefit status later
6 resumes membership in the system, the system shall pay to an
7 alternate payee no portion of any benefits [~~payable to the~~
8 ~~member or retirant~~] that result from the resumption of
9 membership, even if those benefits result in part from
10 reinstatement of service credit initially credited during the
11 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
21 respect to the member, former member with vested benefit

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1 status, or retirant shall be paid without regard to the Hawaii
2 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 a portion of the
8 retirement benefit the member or former member with vested
9 benefit status is expected to receive as follows:

10 (1) If the alternate payee will be named beneficiary under
11 any option elected by the retirant at retirement, the
12 benefit to which the retirant is entitled, without
13 regard to the Hawaii domestic relations order, shall
14 be apportioned between the retirant and the alternate
15 payee according to the terms of the Hawaii domestic
16 relations order. Upon the death of the retirant or
17 the alternate payee, the benefit amount to be paid to
18 the survivor shall be the amount required under the
19 option elected by the retirant at retirement, as
20 though no Hawaii domestic relations order had existed;
21 or

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1 (2) If the alternate payee will not be a named beneficiary
2 under the option elected by the retirant at
3 retirement, the benefit to which the retirant is
4 entitled without regard to the Hawaii domestic
5 relations order, shall be apportioned between
6 the retirant and the alternate payee according to the
7 terms of the Hawaii domestic relations order. If
8 the retirant predeceases the alternate payee, payments
9 to the alternate payee shall cease and payments to
10 the retirant's named beneficiary or beneficiaries
11 shall be made as required under the option elected by
12 the retirant at retirement, as though no Hawaii
13 domestic relations order had existed. If the
14 alternate payee predeceases the retirant, the benefit
15 then being paid to the retirant shall be increased by
16 the amount of the benefit that was being paid to the
17 alternate payee at time of death.

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

21 (n) When the system receives a certified copy of a
22 domestic relations order subsequent to the member's or former

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1 member's with vested benefit status retirement, and if the
2 domestic relations order is determined to be a Hawaii domestic
3 relations order, the interest awarded to the alternate payee by
4 the Hawaii domestic relations order shall be paid as a portion
5 of the retirement benefit the retirant is receiving as follows:

6 (1) If the alternate payee is already a named beneficiary
7 under any option elected by the retirant at
8 retirement, the benefit to which the retirant is
9 entitled, without regard to the Hawaii domestic
10 relations order, shall be apportioned between
11 the retirant and the alternate payee according to the
12 terms of the Hawaii domestic relations order. Upon
13 the death of the retirant or the alternate payee, the
14 benefit amount to be paid to the survivor shall be the
15 amount required under the option elected by
16 the retirant at retirement, as though no Hawaii
17 domestic relations order had existed; or

18 (2) If the alternate payee is not a named beneficiary
19 under the option elected by the retirant at
20 retirement, the benefit to which the retirant is
21 entitled without regard to the Hawaii domestic
22 relations order, shall be apportioned between

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

13 Payment according to the terms of the Hawaii domestic
14 relations order under this subsection shall commence as of the
15 first day of the month following the date upon which the order
16 is determined to be qualified, unless the parties jointly direct
17 that payment shall commence at a later date.

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

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

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

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

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

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1 fees in the action, including attorneys' fee and costs for
2 obtaining a dismissal.

3 (r) If a member, former member with vested benefit
4 status, or retirant, or the beneficiary or estate of
5 any, receives the amount of any distribution that should have
6 been paid by the system to the spouse or former spouse of the
7 member, former member with vested benefit status, or retirant,
8 the recipient shall be designated a constructive trustee for the
9 amount received and shall immediately transmit that amount to
10 the person to whom the amount should have been paid. If a
11 spouse or former spouse of a member, former member with vested
12 benefit status, or retirant, or the estate, heirs, or legatees
13 of the spouse or former spouse receive any amount of a
14 distribution that should have been paid to a member, former
15 member with vested benefit status, or retirant, or the estate,
16 heirs, or legatees of any, the recipient shall be designated a
17 constructive trustee for the amount received and shall
18 immediately transmit that amount to the member, former member
19 with vested benefit status, or retirant or other person to whom
20 the amount should have been paid. If a member, former member
21 with vested benefit status, retirant, or the beneficiary,
22 estate, heirs, or legatees of any, receives any amount that

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

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1 (t) Payments made to alternate payees according to the
2 terms of Hawaii domestic relations orders are payments received
3 by the retirant for purposes of sections 88-83(f) and 88-333(c),
4 and the benefit that the retirant received for purposes of
5 section 88-283(g).

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

15 SECTION 2. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

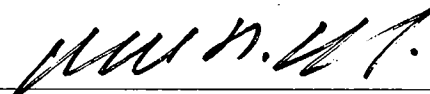
17 SECTION 3. This Act shall take effect on July 1, 2020.

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20

INTRODUCED BY: _____



21

BY REQUEST

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Report Title:

Employees' Retirement System; Hawaii Domestic Relations Orders

Description:

Amendments to clarify benefits to alternate payees, advisory review determinations of Hawaii Domestic Relations Orders and the priority of multiple orders.

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

JUSTIFICATION SHEET

DEPARTMENT: Budget and Finance

TITLE: A BILL FOR AN ACT RELATING TO QUALIFIED DOMESTIC RELATIONS ORDERS

PURPOSE: This bill amends section 88-93.5, Hawaii Revised Statutes (HRS), to clarify specific benefit- and processing-related details to facilitate its implementation and to provide transparency to Employees' Retirement System ("ERS") members, retirants, beneficiaries, and alternate payees regarding Hawaii Domestic Relations Orders.

MEANS: Amends section 88-93.5, HRS.

JUSTIFICATION: The ERS will begin processing Hawaii Domestic Relations Orders to allow the ERS to make direct payments to alternate payees on July 1, 2020. In order to facilitate its implementation and to provide transparency on ERS benefits payable to parties involved, this bill specifies the benefits payable and clarifies the process of the qualification, approval, and application of Hawaii Domestic Relations Orders. This bill clarifies the following: (1) that Hawaii Domestic Relations Orders apply to benefits the ERS member is expected to receive or is receiving, (2) that the release of a member's ERS information may be initiated by a complaint for divorce or by a divorce decree, (3) that the ERS will notify the parties of the advisory review determination on proposed domestic relations orders, (4) that a Hawaii Domestic Relations Order applied to a termination refund will not apply to any future return to work benefits, (5) that, should a retirant be deceased within a year of retirement, any payments made to an alternate payee will be considered payments to the retirant, should the beneficiary select an alternative

benefit option, and (6) that the priority of multiple orders will be based upon the date of the receipt of the domestic relations order.

Impact on the public: None.

Impact on the department and other agencies:
None.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: BUF-141/Retirement.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: July 1, 2020.