
A BILL FOR AN ACT

RELATING TO DIVORCE.

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

1 SECTION 1. The legislature finds that section 88-91,
2 Hawaii Revised Statutes, as currently written and as interpreted
3 by Attorney General Opinion 79-3, prohibits the direct payment
4 of a former spouse's share of an employees' retirement system
5 member's retirement benefits by the employees' retirement system
6 administrator. In many cases, this leads to a former spouse not
7 receiving a court ordered portion of the member's retirement
8 benefits as part of a property division in a finalized divorce.
9 This situation can also create a burden on the member having to
10 comply with a court order as the member is required to write
11 monthly checks to the former spouse. Moreover, the inability of
12 a former spouse to receive direct payment from the employees'
13 retirement system administrator may result in the member retiree
14 bearing all of the tax liability on the taxable benefits, even
15 if the member retiree is obligated to pay a portion of the
16 benefits to the former spouse.



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

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

9 "§88-91 Exemption from taxation and execution. (a) The
10 right of a person to a pension, an annuity or a retirement
11 allowance, to the return of contributions, the pension, annuity
12 or retirement allowance itself, any optional benefit or death
13 benefit, any other right accrued or accruing to any person under
14 this part and the moneys in the various funds created under this
15 part are exempted from any tax of the State and, except as in
16 section 88-92 provided, shall not be subject to execution,
17 garnishment or any other process and shall be unassignable
18 except as in this part specifically provided.

19 (b) Notwithstanding subsection (a), if a final judgment,
20 order, or decree in a divorce action awards the former spouse a
21 portion of the member's pension, annuity, or retirement



1 allowance, that portion shall be paid directly to the former
2 spouse; provided that the judgment, order, or decree:

3 (1) Identifies the member and former spouse by name and
4 address;

5 (2) Directs the administrator to make payment of the
6 former spouse's share directly to the former spouse;

7 (3) Clearly identifies the portion awarded to the former
8 spouse;

9 (4) Requires that each party shall be taxed on the share
10 of the retirement benefit received; and

11 (5) States that the assignment of benefits does not:

12 (A) Require the administrator to provide any type or
13 form of benefit, or any option, not otherwise
14 provided under the judgment, order, or decree;

15 (B) Require the administrator to provide increased
16 benefits, determined on the basis of actuarial
17 value;

18 (C) Require the administrator to provide benefits to
19 the former spouse that are required to be paid to
20 another former spouse pursuant to a valid
21 judgment, order, or decree; or



1 (D) Require the administrator to provide benefits to
2 a former spouse upon the death of the member or a
3 deceased former spouse of a member."

4 SECTION 3. Section 88-93, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§88-93 Named beneficiaries by members and by former
7 employees; effect of marriage, entry into reciprocal beneficiary
8 relationship, divorce, termination of reciprocal beneficiary
9 relationship, or death[-]; award in divorce. (a) All written
10 designations of beneficiaries for members and for former
11 employees shall become [~~null and~~] void when:

12 (1) The beneficiary predeceases the member or former
13 employee;

14 (2) The member or former employee is divorced from the
15 beneficiary;

16 (3) The member or former employee is unmarried, and
17 subsequently marries; or

18 (4) The member or former employee enters into or
19 terminates a reciprocal beneficiary relationship.

20 Any of the above events shall operate as a complete revocation
21 of the designation and, except as provided in sections 88-84(b)

1 and 88-338(b) all benefits payable by reason of the death of the
2 member or former employee shall be payable to the member's or
3 former employee's estate unless, after the death, divorce or
4 marriage, or entry into or termination of reciprocal beneficiary
5 relationship, the member or former employee makes other
6 provision in a written designation duly executed and filed with
7 the board.

8 (b) Notwithstanding subsection (a), when a final judgment,
9 order, or decree in a divorce action awards a former spouse a
10 portion of a member or former employee's pension, annuity, or
11 retirement allowance, that portion shall be paid directly to the
12 former spouse, in accordance with section 88-91; provided that
13 the administrator may assess a ten per cent administrative fee
14 to be shared equally among the member and the former spouse.

15 [~~(b)~~] (c) Subsection (a) shall not apply to active members
16 who are former retirants who have returned to service. The
17 beneficiaries of retirants who return to service may not be
18 changed except to the extent provided under the retirement
19 allowance option selected by the former retirant when the former
20 retirant first retired."



1 SECTION 4. The board of trustees of the employees'
2 retirement system shall adopt rules in accordance with chapter
3 91, Hawaii Revised Statutes, and produce forms as necessary to
4 effectuate this Act.

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

7 SECTION 6. This Act shall take effect on July 1, 2115.



Report Title:

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

Description:

Provides statutory authority for the ERS Administrator to make direct payment of benefits to a former spouse of a member pursuant to valid court judgment, order, or decree for divorce. Allows for the ERS Administrator to assess a ten per cent administrative fee. (SB1324 HD1)

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