

JAN 29 2015

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 tax benefits, even if
15 the member retiree is obligated to pay a portion of the benefits
16 to the former spouse.



S.B. NO. 1324

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. Chapter 571, Hawaii Revised Statutes, is
8 amended by adding a new section to be appropriately designated
9 and to read as follows:

10 "§571- Property division, employees retirement system.
11 For the purpose of division of property in actions for divorce,
12 the court may order the assignment and direct payment of all or
13 a portion of any benefits payable by the employees' retirement
14 system established under chapter 88 to a non-member former
15 spouse, in accordance with sections 88-91 and 580-47(f)."

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

18 "§88-91 Exemption from taxation and execution. (a) The
19 right of a person to a pension, an annuity or a retirement
20 allowance, to the return of contributions, the pension, annuity
21 or retirement allowance itself, any optional benefit or death



1 benefit, any other right accrued or accruing to any person under
2 this part and the moneys in the various funds created under this
3 part are exempted from any tax of the State and, except as in
4 section 88-92 provided, shall not be subject to execution,
5 garnishment or any other process and shall be unassignable
6 except as in this part specifically provided.

7 (b) Subsection (a) notwithstanding, if a final judgment,
8 order, or decree in a divorce action awards the non-member
9 former spouse a portion of the member's pension, annuity, or
10 retirement allowance, that portion shall be paid directly to the
11 non-member former spouse; provided that the judgment, order, or
12 decree:

- 13 (1) Identifies the member and non-member former spouse by
14 name and address;
- 15 (2) Directs the administrator to make payment of the non-
16 member former spouse's share directly to the non-
17 member former spouse;
- 18 (3) Clearly identifies the portion awarded to the non-
19 member former spouse;
- 20 (4) Requires that each party shall be taxed on the share
21 of the retirement benefit received; and



- 1 (5) States that the assignment of benefits does not:
- 2 (A) Require the administrator to provide any type or
- 3 form of benefit, or any option, not otherwise
- 4 provided under the judgment, decree, or order;
- 5 (B) Require the administrator to provide increased
- 6 benefits, determined on the basis of actuarial
- 7 value; or
- 8 (C) Require the administrator to provide benefits to
- 9 the non-member former spouse that are required to
- 10 be paid to another former spouse pursuant to a
- 11 valid judgment, decree, or order."

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

14 "§88-93 Named beneficiaries by members and by former
 15 employees; effect of marriage, entry into reciprocal beneficiary
 16 relationship, divorce, termination of reciprocal beneficiary
 17 relationship, or death[-]; award in divorce. (a) All written
 18 designations of beneficiaries for members and for former
 19 employees shall become [~~null and~~] void when:

- 20 (1) The beneficiary predeceases the member or former
- 21 employee;



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

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

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

7 Any of the above events shall operate as a complete revocation
8 of the designation and, except as provided in sections 88-84(b)
9 and 88-338(b) all benefits payable by reason of the death of the
10 member or former employee shall be payable to the member's or
11 former employee's estate unless, after the death, divorce or
12 marriage, or entry into or termination of reciprocal beneficiary
13 relationship, the member or former employee makes other
14 provision in a written designation duly executed and filed with
15 the board.

16 (b) Subsection (a) notwithstanding, when a final judgment,
17 order, or decree in a divorce action awards a non-member former
18 spouse a portion of a member or former employee's pension,
19 annuity, or retirement allowance, that portion shall be paid
20 directly to the non-member former spouse, in accordance with
21 sections 88-91 and 580-47(f).



1 ~~[(b)]~~ (c) Subsection (a) shall not apply to active members
2 who are former retirants who have returned to service. The
3 beneficiaries of retirants who return to service may not be
4 changed except to the extent provided under the retirement
5 allowance option selected by the former retirant when the former
6 retirant first retired."

7 SECTION 5. Section 580-47, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§580-47 Support orders; division of property.** (a) Upon
10 granting a divorce, or thereafter if, in addition to the powers
11 granted in subsections (c) and (d), jurisdiction of those
12 matters is reserved under the decree by agreement of both
13 parties or by order of court after finding that good cause
14 exists, the court may make any further orders as shall appear
15 just and equitable (1) compelling the parties or either of them
16 to provide for the support, maintenance, and education of the
17 children of the parties; (2) compelling either party to provide
18 for the support and maintenance of the other party; (3) finally
19 dividing and distributing the estate of the parties, real,
20 personal, or mixed, whether community, joint, or separate; and
21 (4) allocating, as between the parties, the responsibility for



1 the payment of the debts of the parties whether community,
2 joint, or separate, and the attorney's fees, costs, and expenses
3 incurred by each party by reason of the divorce. In making
4 these further orders, the court shall take into consideration:
5 the respective merits of the parties, the relative abilities of
6 the parties, the condition in which each party will be left by
7 the divorce, the burdens imposed upon either party for the
8 benefit of the children of the parties, the concealment of or
9 failure to disclose income or an asset, or violation of a
10 restraining order issued under section 580-10(a) or (b), if any,
11 by either party, and all other circumstances of the case. In
12 establishing the amounts of child support, the court shall use
13 the guidelines established under section 576D-7. Provision may
14 be made for the support, maintenance, and education of an adult
15 or minor child and for the support, maintenance, and education
16 of an incompetent adult child whether or not the petition is
17 made before or after the child has attained the age of
18 majority. In those cases where child support payments are to
19 continue due to the adult child's pursuance of education, the
20 agency, three months prior to the adult child's nineteenth
21 birthday, shall send notice by regular mail to the adult child



1 and the custodial parent that prospective child support will be
2 suspended unless proof is provided by the custodial parent or
3 adult child to the child support enforcement agency, prior to
4 the child's nineteenth birthday, that the child is presently
5 enrolled as a full-time student in school or has been accepted
6 into and plans to attend as a full-time student for the next
7 semester a post-high school university, college, or vocational
8 school. If the custodial parent or adult child fails to do so,
9 prospective child support payments may be automatically
10 suspended by the child support enforcement agency, hearings
11 officer, or court upon the child reaching the age of nineteen
12 years. In addition, if applicable, the agency, hearings
13 officer, or court may issue an order terminating existing
14 assignments against the responsible parent's income and income
15 assignment orders.

16 In addition to any other relevant factors considered, the
17 court, in ordering spousal support and maintenance, shall
18 consider the following factors:

- 19 (1) Financial resources of the parties;
- 20 (2) Ability of the party seeking support and maintenance
21 to meet his or her needs independently;



- 1 (3) Duration of the marriage;
- 2 (4) Standard of living established during the marriage;
- 3 (5) Age of the parties;
- 4 (6) Physical and emotional condition of the parties;
- 5 (7) Usual occupation of the parties during the marriage;
- 6 (8) Vocational skills and employability of the party
- 7 seeking support and maintenance;
- 8 (9) Needs of the parties;
- 9 (10) Custodial and child support responsibilities;
- 10 (11) Ability of the party from whom support and maintenance
- 11 is sought to meet his or her own needs while meeting
- 12 the needs of the party seeking support and
- 13 maintenance;
- 14 (12) Other factors which measure the financial condition in
- 15 which the parties will be left as the result of the
- 16 action under which the determination of maintenance is
- 17 made; and
- 18 (13) Probable duration of the need of the party seeking
- 19 support and maintenance.

20 The court may order support and maintenance to a party for
21 an indefinite period or until further order of the court;



1 provided that in the event the court determines that support and
2 maintenance shall be ordered for a specific duration wholly or
3 partly based on competent evidence as to the amount of time
4 which will be required for the party seeking support and
5 maintenance to secure adequate training, education, skills, or
6 other qualifications necessary to qualify for appropriate
7 employment, whether intended to qualify the party for a new
8 occupation, update or expand existing qualification, or
9 otherwise enable or enhance the employability of the party, the
10 court shall order support and maintenance for a period
11 sufficient to allow completion of the training, education,
12 skills, or other activity, and shall allow, in addition,
13 sufficient time for the party to secure appropriate employment.

14 (b) An order as to the custody, management, and division
15 of property and as to the payment of debts and the attorney's
16 fees, costs and expenses incurred in the divorce shall be final
17 and conclusive as to both parties subject only to appeal as in
18 civil cases. The court shall at all times, including during the
19 pendency of any appeal, have the power to grant any and all
20 orders that may be necessary to protect and provide for the
21 support and maintenance of the parties and any children of the



1 parties to secure justice, to compel either party to advance
2 reasonable amounts for the expenses of the appeal including
3 attorney's fees to be incurred by the other party, and to amend
4 and revise such orders from time to time.

5 (c) No order entered under the authority of subsection (a)
6 or entered thereafter revising so much of such an order as
7 provides for the support, maintenance, and education of the
8 children of the parties shall impair the power of the court from
9 time to time to revise its orders providing for the support,
10 maintenance, and education of the children of the parties upon a
11 showing of a change in the circumstances of either party or any
12 child of the parties since the entry of any prior order relating
13 to the support, maintenance, and education. The establishment
14 of the guidelines or the adoption of any modifications made to
15 the guidelines set forth in section 576D-7 may constitute a
16 change in circumstances sufficient to permit review of the
17 support order. A material change of circumstances will be
18 presumed if support as calculated pursuant to the guidelines is
19 either ten per cent greater or less than the support amount in
20 the outstanding support order. The need to provide for the
21 child's health care needs through health insurance or other



1 means shall be a basis for petitioning for a modification of the
2 support order. The most current guidelines shall be used to
3 calculate the amount of the child support obligation.

4 (d) Upon the motion of either party supported by an
5 affidavit setting forth in particular a material change in the
6 physical or financial circumstances of either party, or upon a
7 showing of other good cause, the moving party, in the discretion
8 of the court, and upon adequate notice to the other party, may
9 be granted a hearing. The fact that the moving party is in
10 default or arrears in the performance of any act or payment of
11 any sums theretofore ordered to be done or paid by the party
12 shall not necessarily constitute a bar to the granting of the
13 hearing. The court, upon such hearing, for good cause shown may
14 amend or revise any order and shall consider all proper
15 circumstances in determining the amount of the allowance, if
16 any, which shall thereafter be ordered.

17 (e) The responsible parent or the custodial parent shall
18 have a right to petition the family court or the child support
19 enforcement agency not more than once every three years for
20 review and adjustment of the child support order without having
21 to show a change in circumstances. The responsible or custodial



1 parent shall not be precluded from petitioning the family court
2 or the child support enforcement agency for review and
3 adjustment more than once in any three-year period if the second
4 or subsequent request is supported by proof of a substantial or
5 material change of circumstances.

6 (f) In dividing and distributing the estate of the parties
7 in a divorce action, in accordance with section 88-91, the court
8 may require that a non-member party receive direct payment from
9 the employees' retirement system of all or a portion of the
10 benefits payable to a member or former employee.

11 [~~f~~] (g) Attorney's fees and costs. The court hearing
12 any motion for orders either revising an order for the custody,
13 support, maintenance, and education of the children of the
14 parties, or an order for the support and maintenance of one
15 party by the other, or a motion for an order to enforce any such
16 order or any order made under subsection (a) [~~of this section~~],
17 may make such orders requiring either party to pay or contribute
18 to the payment of the attorney's fees, costs, and expenses of
19 the other party relating to such motion and hearing as shall
20 appear just and equitable after consideration of the respective
21 merits of the parties, the relative abilities of the parties,



1 the economic condition of each party at the time of the hearing,
2 the burdens imposed upon either party for the benefit of the
3 children of the parties, the concealment of or failure to
4 disclose income or an asset, or violation of a restraining order
5 issued under section 580-10(a) or (b), if any, by either party,
6 and all other circumstances of the case."

7 SECTION 6. The board of trustees of the employees'
8 retirement system shall adopt rules in accordance with chapter
9 91, Hawaii Revised Statutes, and produce such forms as necessary
10 to effectuate this Act.

11 SECTION 7. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 8. This Act shall take effect on January 1, 2017.

14

INTRODUCED BY: _____



S.B. NO. 1324

Report Title:

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

Description:

Provides statutory authority for the employees' retirement system administrator to make direct payment to a former spouse of a member of benefits or portion thereof pursuant to valid court judgment, order, or decree. Takes effect on 1/1/2017.

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

