
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.

11 (a) If a final judgment, order, or decree in a divorce action
12 awards the spouse or former spouse of a member or retirant a
13 portion of the pension, annuity, retirement allowance, or
14 refunded contributions of the member or retirant, that portion
15 shall be paid directly to the spouse or former spouse of the
16 member or retirant; provided that the judgment, order, or
17 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 retirants who have 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;
- 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; and
- 8 (3) An administrative fee of up to ten per cent of the
9 amount ordered to be paid; provided that the
10 administrative fee shall not exceed the actual cost of
11 implementing the direct payment and otherwise
12 complying with this section. The administrative fee
13 shall be imposed equally upon the member and the
14 former spouse."

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

17 "**§88-91 Exemption from taxation and execution.** The right
18 of a person to a pension, an annuity or a retirement allowance,
19 to the return of contributions, the pension, annuity or
20 retirement allowance itself, any optional benefit or death
21 benefit, any other right accrued or accruing to any person under



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

7 SECTION 4. The board of trustees of the employees'
8 retirement system shall adopt rules in accordance with chapter
9 91, Hawaii Revised Statutes, and produce forms as necessary to
10 effectuate this Act.

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 Statutory material to be repealed is bracketed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

13 SECTION 6. This Act shall take effect on January 1, 2018;
14 provided that section 4 of this Act shall take effect upon
15 approval.

16



Report Title:

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

Description:

Provides statutory authority for the ERS 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 board to adopt rules to assess fees for filing, for processing costs, and a ten per cent administrative fee. Effective January 1, 2018. Requires the ERS to adopt rules pursuant to chapter 91, HRS, upon the approval of this Act.
(CD1)

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