
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. (a)
11 If a final judgment, order, or decree in a divorce action awards
12 the spouse or former spouse of a member or retirant a portion of
13 the pension, annuity, retirement allowance, or refunded
14 contributions of the member or retirant, that portion shall be
15 paid directly to the spouse or former spouse of the member or
16 retirant; provided that the judgment, order, or 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 complying with
9 the 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 in reinstating 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 receives the amount of any distribution that should
19 have been paid by the system to the spouse or former spouse of
20 the member or retirant, the recipient shall be designated a
21 constructive trustee for the amount received and shall



1 immediately transmit that amount to the person to whom the
2 amount should have been paid. If a spouse or former spouse of a
3 member or retirant, or the estate, heirs, or legatees of the
4 spouse or former spouse receives any amount of a distribution
5 that should have been paid to a member or retirant, or the
6 estate, heirs, or legatees of either, the recipient shall be
7 designated a constructive trustee for the amount received and
8 shall immediately transmit that amount to the member or retirant
9 or other person to whom the amount should have been paid to the
10 recipient. If a member, retirant, or the beneficiary, estate,
11 heirs, or legatees of either, receive any amount that should not
12 have been paid by the system, the recipient shall be designated
13 a constructive trustee for the amount received and shall
14 immediately transmit that amount to the system.

15 (j) The board shall adopt rules in accordance with chapter
16 91 and produce such forms as it deems necessary to effectuate
17 this section. The board may, by motion at a duly noticed
18 meeting of the board, establish and revise from time to time:

19 (1) A filing fee for the processing and review of
20 judgments, orders, and decrees issued for the purposes
21 of this section; and



1 (2) A schedule of charges for legal and actuarial services
 2 incurred by the system in the review and processing of
 3 judgments, orders, and decrees issued for the purposes
 4 of this section."

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

7 "**§88-91 Exemption from taxation and execution.** The right
 8 of a person to a pension, an annuity or a retirement allowance,
 9 to the return of contributions, the pension, annuity or
 10 retirement allowance itself, any optional benefit or death
 11 benefit, any other right accrued or accruing to any person under
 12 this part and the moneys in the various funds created under this
 13 part are exempted from any tax of the State and, except as
 14 provided in [section] sections 88-92 [provided,] and 88- ,
 15 shall not be subject to execution, garnishment or any other
 16 process and shall be unassignable except as in this part
 17 specifically provided."

18 SECTION 4. There is appropriated out of the general
 19 revenues of the State of Hawaii the sum of \$ or so
 20 much thereof as may be necessary for fiscal year 2015-2016 and
 21 the same sum or so much thereof as may be necessary for fiscal



1 year 2016-2017 for the planning and expenditures necessary for
2 the implementation of this Act.

3 The sums appropriated shall be expended by the employees'
4 retirement system of the State of Hawaii for the purposes of
5 this Act.

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

8 SECTION 6. This Act shall take effect on January 7, 2059.

9



Report Title:

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

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. Appropriates money to implement the purposes of this Act. Takes effect on 1/7/2059. (SD1)

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