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# 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 status, or  
7 retirant who is recognized by a domestic relations order as  
8 having a right to receive all or a portion of the benefits  
9 payable by the system with respect to that member, former member  
10 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           "Domestic relations order" means a judgment, decree, or  
16 order, including approval of a property settlement agreement,  
17 that:



1 (1) Relates to the provision of marital property rights to  
2 a spouse or former spouse of a member, a former member  
3 with vested benefit status, or retirant; and

4 (2) Is made pursuant to a domestic relations law of this  
5 State or another state.

6 "Hawaii domestic relations order" means a domestic  
7 relations order that:

8 (1) Creates or recognizes the right of an alternate payee,  
9 or assigns to an alternate payee, the right to receive  
10 all or a portion of the benefits payable with respect  
11 to a member, a former member with vested benefit  
12 status, or retirant under the system;

13 (2) Directs the system to disburse benefits to the  
14 alternate payee; and

15 (3) Meets the requirements of this section.

16 (b) A Hawaii domestic relations order shall clearly  
17 specify:

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



- 1           (2) The name and mailing address of the alternate payee
- 2           covered by the order;
- 3           (3) The amount or percentage of the member's, former
- 4           member's with vested benefit status, or retirant's
- 5           benefits to be paid by the system to the alternate
- 6           payee, or the manner in which the amount or percentage
- 7           is to be determined; and
- 8           (4) That the order applies to the system.
- 9           (c) If, pursuant to a Hawaii domestic relations order, an
- 10          alternate payee is receiving all or a portion of a retirant's
- 11          pension, annuity, or retirement allowance, the alternate payee
- 12          shall be entitled to receive a post retirement allowance as
- 13          provided by section 88-90.
- 14          (d) A Hawaii domestic relations order shall not:
- 15           (1) Purport to require the designation by the member,
- 16           former member with vested benefit status, or retirant
- 17           of a particular person as the recipient of benefits
- 18           upon the death of the member, former member with
- 19           vested benefit status, or retirant;
- 20           (2) Purport to require the selection of a particular
- 21           benefit payment plan or option or to limit the benefit



- 1 payment plans or options from which the member or  
2 former member with vested benefit status may select;
- 3 (3) Require any action on the part of the system contrary  
4 to its governing laws or plan provisions other than  
5 the direct payment of the benefit awarded to an  
6 alternate payee;
- 7 (4) Make the award to the alternate payee an interest that  
8 is contingent on any condition other than those  
9 conditions resulting in the liability of the system  
10 for payment under its plan provisions;
- 11 (5) Purport to give to someone other than a member, former  
12 member with vested benefit status, or retirant the  
13 right to designate a beneficiary or to choose any  
14 retirement plan or option available from the system;
- 15 (6) Attach a lien to any part of amounts payable with  
16 respect to a member, former member with vested benefit  
17 status, or retirant;
- 18 (7) Award an alternate payee a portion of the benefits  
19 payable with respect to a member, former member with  
20 vested benefit status, or retirant under the system  
21 and purport to require the system to make a lump sum



- 1 payment of the awarded portion of the benefits to the  
2 alternate payee that are not payable in a lump sum;
- 3 (8) Purport to require the system, without action by the  
4 member, to terminate a member from membership or  
5 employment, to refund contributions, or to retire a  
6 member or former member with vested benefit status;
- 7 (9) Provide any type or form of benefit, or any option,  
8 not otherwise provided by the system;
- 9 (10) Provide increased benefits, determined on the basis of  
10 actuarial value; or
- 11 (11) Require the system to provide benefits or refunds to  
12 an alternate payee that are required to be paid to  
13 another alternate payee pursuant to an earlier Hawaii  
14 domestic relations order.
- 15 (e) Upon receipt of a copy of the complaint for divorce,  
16 certified by the clerk of the court in which the complaint was  
17 filed, or a copy of the divorce decree certified by the clerk of  
18 the court in which the divorce decree was filed, and a written  
19 request that identifies the member, former member with vested  
20 benefit status, or retirant by name and social security number  
21 and states the date of the marriage, the system shall provide



1 the spouse or former spouse of a member, former member with  
2 vested benefit status, or retirant with the same information  
3 that would be provided to the member, former member with vested  
4 benefit status, or retirant on the member's, former member's  
5 with vested benefit status, or retirant's benefits that is  
6 relevant to the spouse's or former spouse's interest in the  
7 member's, former member's with vested benefit status, or  
8 retirant's benefits.

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

18 The filing fee in effect at the time that an order or  
19 proposed order is submitted shall be paid before the order or  
20 proposed order is processed or reviewed. In addition, the



1 system shall charge for legal and actuarial services as provided  
2 by subsection (s).

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

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



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

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





1 writing of the determination that the domestic  
2 relations order is or is not a Hawaii domestic  
3 relations order, identifying any provisions of this  
4 section that the order does not meet.

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



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



1 later receives another domestic relations order that is  
2 determined to be a Hawaii domestic relations order, the Hawaii  
3 domestic relations order shall apply prospectively only and  
4 shall not affect benefits already paid to the member, former  
5 member with vested benefit status, or retirant.

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

17 (j) If a member or former member with vested benefit  
18 status terminates membership in the system by withdrawal of  
19 contributions or hypothetical account balance, the system shall  
20 pay all or a portion of the amount withdrawn to any alternate  
21 payee as directed by a Hawaii domestic relations order. Payment



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

10 (k) In order to receive credit for all service represented  
11 by withdrawn or refunded contributions, a member, in reinstating  
12 service credit by repaying amounts previously withdrawn or  
13 refunded, shall repay the entire amount withdrawn or refunded,  
14 regardless of whether a portion or all of the amount was paid to  
15 an alternate payee.

16 (l) When the system has not yet begun to make payment to  
17 an alternate payee under this section and is provided with proof  
18 of the death of the alternate payee, benefits payable with  
19 respect to the member, former member with vested benefit status,  
20 or retirant shall be paid without regard to the Hawaii domestic  
21 relations order.



1           (m) When the system receives a certified copy of a  
2 domestic relations order prior to a member's retirement, and if  
3 the domestic relations order is determined to be a Hawaii  
4 domestic relations order, the system, except as provided in  
5 subsection (j), shall pay the alternate payee a portion of the  
6 retirement benefit the member or former member with vested  
7 benefit status is expected to receive as follows:

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

20           (2) If the alternate payee will not be a named beneficiary  
21 under the option elected by the retirant at



1 retirement, the benefit to which the retirant is  
2 entitled without regard to the Hawaii domestic  
3 relations order, shall be apportioned between the  
4 retirant and the alternate payee according to the  
5 terms of the Hawaii domestic relations order. If the  
6 retirant predeceases the alternate payee, payments to  
7 the alternate payee shall cease and payments to the  
8 retirant's named beneficiary or beneficiaries shall be  
9 made as required under the option elected by the  
10 retirant at retirement, as though no Hawaii domestic  
11 relations order had existed. If the alternate payee  
12 predeceases the retirant, the benefit then being paid  
13 to the retirant shall be increased by the amount of  
14 the benefit that was being paid to the alternate payee  
15 at time of death.

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

19 (n) When the system receives a certified copy of a  
20 domestic relations order subsequent to the member's or former  
21 member's with vested benefit status retirement, and if the



1 domestic relations order is determined to be a Hawaii domestic  
2 relations order, the interest awarded to the alternate payee by  
3 the Hawaii domestic relations order shall be paid as a portion  
4 of the retirement benefit the retirant is receiving as follows:

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

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



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





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, the retirant's  
6 maximum retirement allowance shall be considered to be the  
7 amount that would have been paid if there had not been any  
8 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



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



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

10 (s) The board shall adopt rules in accordance with chapter  
11 91, and adopt forms as it deems necessary to effectuate this  
12 section. The board, by motion at a duly noticed meeting of the  
13 board, may establish and revise from time to time:

14 (1) A filing fee for processing and review of domestic  
15 relations orders and proposed domestic relations  
16 orders for the purposes of this section;

17 (2) A schedule of charges for legal and actuarial services  
18 incurred by the system in the review and processing of  
19 domestic relations orders and proposed Hawaii domestic  
20 relations orders for the purposes of this section; and



1 (3) A required form or forms for Hawaii domestic relations  
2 orders.

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

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

17 SECTION 2. Statutory material to be repealed is bracketed  
18 and stricken. New statutory material is underscored.

19 SECTION 3. This Act shall take effect upon its approval  
20 and shall apply to all domestic relations orders submitted on or  
21 after its effective date.



**Report Title:**

Employees' Retirement System; Hawaii Domestic Relations Orders

**Description:**

Clarifies benefits to alternate payees, advisory review determinations of Hawaii domestic relations orders and the priority of multiple orders. Applies to domestic relations orders submitted on or after its effective date. (SD1)

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

