

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 711, L.D. 1016, Bill, "An Act Relating to Distribution of Retirement Benefits in Divorce"

Amend the bill by striking out the title and substituting the following:

An Act Relating to the Division of a Member's Rights and Benefits under the Maine State Retirement System Pursuant to a Qualified Domestic Relations Order'

Further amend the bill by striking out everything after the title and before the statement of fact and inserting in its place the following:

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, retirement benefits in many domestic relations cases such as divorce are divided as part of the court decrees, but the Maine State Retirement System is not authorized to pay the benefits as awarded. Under current law, the Maine State Retirement System is authorized to pay benefits to members only; the limited exceptions do not include spousal awards in divorce; and

Whereas, authorizing the Maine State Retirement System to pay benefits to nonmembers awarded benefits pursuant to qualified domestic relations orders would help ensure proper and efficient implementation of divorce and other domestic relations action decrees and reduce the instances of parties not receiving benefits that have been awarded; and

2 **Whereas,** this legislation establishes a process for the
Maine State Retirement System to administer domestic relations
orders properly and provides requirements so that courts can
begin immediately to structure domestic relations orders to
comply with the law; and

6
8 **Whereas,** in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
safety; now, therefore,

12 **Be it enacted by the People of the State of Maine as follows:**

14 **Sec. 1. 3 MRSA §703,** as enacted by PL 1985, c. 507, §1, is
16 repealed and the following enacted in its place:

18 **§703. Legal process and assignment**

20 The right of a person to a retirement allowance, the
22 retirement allowance itself, the refund of a person's accumulated
contributions, any death benefit, any other right accrued or
24 accruing to a person under this chapter and the money in the
various funds created by this chapter are not subject to
26 execution, garnishment, attachment or any other process and are
unassignable except that:

28 **1. Retirement allowance available for child support.** A
30 member's retirement allowance is available to satisfy a child
support obligation that is otherwise enforceable by execution,
32 garnishment, attachment, assignment or other process;

34 **2. Accumulated contributions available for child support.**
A member's accumulated contributions, which are refundable under
36 section 805, are available to satisfy a child support obligation
that is otherwise enforceable by execution, garnishment,
38 attachment, assignment or other process; and

40 **3. Qualified domestic relations order.** The rights and
42 benefits of a member or retiree under this chapter are subject to
the rights of or assignment to an alternate payee, as defined in
44 Title 5, section 17001, subsection 3-B, under a qualified
domestic relations order in accordance with Title 5, section
17059.

46 **Sec. 2. 4 MRSA §1203,** as amended by PL 1983, c. 863, Pt. B,
48 §§11 and 45, is repealed and the following enacted in its place:

50 **§1203. Legal process and assignment**

The right of a person to a retirement allowance, the retirement allowance itself, the refund of a person's accumulated contributions, any death benefit, any other right accrued or accruing to a person under this chapter and the money in the various funds created by this chapter are not subject to execution, garnishment, attachment or any other process and are unassignable except that:

1. Retirement allowance available for child support. A member's retirement allowance is available to satisfy a child support obligation that is otherwise enforceable by execution, garnishment, attachment, assignment or other process;

2. Accumulated contributions available for child support. A member's accumulated contributions, which are refundable under section 1305, are available to satisfy a child support obligation that is otherwise enforceable by execution, garnishment, attachment, assignment or other process; and

3. Qualified domestic relations order. The rights and benefits of a member or retiree under this chapter are subject to the rights of or assignment to an alternate payee, as defined in Title 5, section 17001, subsection 3-B, under a qualified domestic relations order in accordance with Title 5, section 17059.

Sec. 3. 5 MRSA §17001, sub-§3-B is enacted to read:

3-B. Alternate payee. "Alternate payee" means a spouse, former spouse, child or other dependent of a member or retiree who is recognized by a domestic relations order as having a right to receive all or a portion of the benefits payable by the retirement system with respect to that member or retiree.

Sec. 4. 5 MRSA §17001, sub-§12-A is enacted to read:

12-A. Domestic relations order. "Domestic relations order" means a judgment, decree or order, including approval of a property settlement agreement, that:

A. Relates to the provision of child support, alimony payments or marital property rights to a spouse, former spouse, child or other dependent of a member or retiree; and

B. Is made pursuant to a domestic relations law of this State or another state.

Sec. 5. 5 MRSA §17001, sub-§30-A is enacted to read:

2 30-A. Qualified domestic relations order. "Qualified
domestic relations order" means a domestic relations order that:

4 A. Creates or recognizes the right of an alternate payee,
or assigns to an alternate payee the right, to receive all
6 or a portion of the benefits payable with respect to a
member or retiree under the retirement system;

8 B. Directs the retirement system to disburse benefits to
10 the alternate payee; and

12 C. Meets the requirements of section 17059.

14 **Sec. 6. 5 MRSA §17054, sub-§2, as amended by PL 1991, c. 184,**
16 **§1, is further amended to read:**

18 **2. Accumulated contributions available for child support.**
A member's accumulated contributions, being refundable under
20 sections 17705, 17706, 18306 and 18307, are available to satisfy
any child support obligation that is otherwise enforceable by
22 execution, garnishment, attachment, assignment or other process;
and

24 **Sec. 7. 5 MRSA §17054, sub-§3, as enacted by PL 1991, c. 184,**
26 **§2, is amended to read:**

28 **3. Recovery of overpayments by the retirement system.** Any
amounts due the retirement system as the result of overpayment of
benefits or an excess refund of contributions may be recovered
30 from an individual's contributions or any benefits payable under
this Part to the individual or the beneficiary of the
32 individual. If the overpayment or excess refund of contributions
resulted from an unintentional mistake by an employee of the
34 retirement system, the retiree or the recipient of the benefit,
no interest may be collected by the retirement system on the
36 amount to be recovered. The executive director may also take
action to recover those amounts due from any amounts payable to
38 the individual by any other state agency or by an action in a
court of competent jurisdiction. Whenever the executive director
40 makes a decision to recover any amounts under this subsection,
that decision is subject to appeal under section 17451; and

42 **Sec. 8. 5 MRSA §17054, sub-§4 is enacted to read:**

44 **4. Qualified domestic relations order.** The rights of a
46 member or retiree under this Part are subject to the rights of or
assignment to an alternate payee under a qualified domestic
48 relations order in accordance with section 17059.

50 **Sec. 9. 5 MRSA §§17059 to 17061 are enacted to read:**

2 §17059. Qualified domestic relations orders

4 1. Determination by executive director. The executive
6 director or the executive director's designee has exclusive
8 authority to determine whether a domestic relations order is a
10 qualified domestic relations order under this section. A
determination by the executive director or the executive
director's designee under this section may be appealed to the
board as provided by section 17451.

12 2. No jurisdiction over retirement system. A court does
14 not have jurisdiction over the retirement system and the
16 retirement system may not be made a party with respect to a
18 divorce or other domestic relations action in which an alternate
20 payee's right to receive all or a portion of the benefits payable
22 to a member or retiree under the retirement system is created or
established. A party to such an action who attempts to make the
retirement system a party to the action contrary to this
subsection is liable to the retirement system for its costs and
attorney's fees.

24 3. Benefits and withdrawal of contributions. For the
26 purposes of this section, benefits payable with respect to a
28 member or retiree under the retirement system include the types
of benefits payable by the retirement system and a withdrawal of
contributions from the retirement system.

30 4. Requirements. A domestic relations order is a qualified
domestic relations order only if the order:

32 A. Clearly specifies the name, social security number and
34 last known mailing address, if any, of the member or retiree
and the name, social security number and mailing address of
36 each alternate payee covered by the order;

38 B. Clearly specifies the amount or percentage of the
40 member's or retiree's benefits to be paid by the retirement
system to each alternate payee or the manner in which the
amount or percentage is to be determined;

42 C. Clearly specifies the number of payments or the period
44 to which the order applies;

46 D. Clearly specifies that the order applies to the
retirement system;

48 E. Does not require the retirement system to provide a type
50 or form of benefit or an option not otherwise provided by
the retirement system;

2 F. Does not require the retirement system to provide
4 increased benefits determined on the basis of actuarial
 value;

6 G. Does not require the payment of benefits to an alternate
8 payee that are required to be paid to another alternate
 payee under another order previously determined to be a
10 qualified domestic relations order; and

12 H. Does not require the payment of benefits to an alternate
14 payee before the retirement of a member, the distribution of
 a withdrawal of contributions to a member or other
 distribution to a member required by law.

16 5. Additional criteria. The board may also require by rule
18 that a qualified domestic relations order meet one or more of the
 following requirements.

20 A. The order must provide for a proportional reduction of
22 the amount awarded to an alternate payee in the event of the
 retirement of the member before normal retirement age.

24 B. The order may not purport to require the designation of
26 a particular person as the recipient of benefits in the
 event of a member's or retiree's death.

28 C. The order may not purport to require the selection of a
30 particular benefit payment plan or option.

32 D. The order must provide clearly for each possible benefit
 distribution under plan provisions.

34 E. The order may not require any action on the part of the
36 retirement system contrary to its governing laws or plan
 provisions other than the direct payment of the benefit
 awarded to an alternate payee.

38 F. The order may not make the award of an interest
40 contingent on any condition other than those conditions
42 resulting in the liability of the retirement system for
 payments under its plan provisions.

44 G. The order may not purport to award any future benefit
46 increases that are provided or required by the Legislature.

48 H. The order must provide for a proportional reduction of
50 the amount awarded to an alternate payee in the event that
 benefits available to the retiree or member are reduced by
 law.

2 6. Determination. The executive director or the executive
3 director's designee, upon receipt of a certified copy of a
4 domestic relations order and written request for a determination,
5 shall determine whether the order is a qualified domestic
6 relations order and shall notify the member or retiree and each
7 alternate payee of the determination.

8
9
10 A. If the order is determined to be a qualified domestic
11 relations order, the retirement system shall pay benefits in
12 accordance with the order.

13
14 B. If the order is determined not to be a qualified
15 domestic relations order, the member or retiree or any
16 alternate payee named in the order may appeal the executive
17 director's determination in the manner specified in section
18 17451 or may petition the court that issued the order to
19 amend the order so that it is qualified. The court that
20 issued the order or that otherwise would have jurisdiction
21 over the matter has jurisdiction to amend the order so that
22 it will be qualified even though all other matters incident
23 to the action or proceeding have been fully and finally
24 adjudicated.

25
26 7. Interim accounting. During any period in which the
27 issue of whether a domestic relations order is a qualified
28 domestic relations order is being determined by the executive
29 director, the executive director's designee, the board, a court
30 of competent jurisdiction or otherwise, the retirement system
31 shall account separately for the amounts, in this section
32 referred to as the "segregated amounts," that would have been
33 payable to the alternate payee during that period if the order
34 had been determined to be a qualified domestic relations order.

35
36 8. Payment of segregated amounts. If a domestic relations
37 order is determined to be a qualified domestic relations order,
38 the retirement system shall pay the segregated amounts without
39 interest to the person or persons entitled to the segregated
40 amounts and shall thereafter pay benefits pursuant to the order.

41
42 9. Payments if determined not qualified or if no
43 determination within 18 months. If a domestic relations order is
44 determined not to be a qualified domestic relations order or if
45 the issue as to whether a domestic relations order is a qualified
46 domestic relations order is not resolved within 18 months of the
47 date the order and written request for a determination are
48 received by the retirement system, the retirement system shall
49 pay the segregated amounts without interest, and shall thereafter
50 pay benefits, to the person or persons who would have been
entitled to such amounts if there had been no order. This

2 subsection may not be construed to limit or otherwise affect any
3 liability, responsibility or duty of a party with respect to any
4 other party to the action from which the order arose.

6 10. Determination after 18 months. Any determination that
7 an order is a qualified domestic relations order that is made
8 after the close of the 18-month period established in subsection
9 9 must be applied prospectively only.

10 11. No liability. The retirement system, the board and
11 officers and employees of the retirement system are not liable to
12 any person for making payments of any benefits in accordance with
13 a domestic relations order in a cause of action in which a member
14 or a retiree was a party or for making payments in accordance
15 with subsection 9.

16 12. Information provided to spouse. Upon being furnished
17 with an attested copy of a complaint for divorce, the retirement
18 system shall provide the spouse of a member with the same
19 information that would be provided to the member.

20 13. Rules. The board may adopt rules to implement this
21 section. The rules may provide for charging a reasonable fee for
22 processing domestic relations orders.

23 14. Application. This section applies to all domestic
24 relations orders issued after the effective date of this section
25 and, with the mutual consent of the parties, to any domestic
26 relations orders issued on or before the effective date of this
27 section.

28 §17060. Life annuity or lump-sum payment in lieu of benefits
29 awarded by qualified domestic relations order

30 1. Annuity or lump sum. The board may by rule provide
31 that, in lieu of paying an alternate payee the interest awarded
32 by a qualified domestic relations order, the retirement system
33 may pay the alternate payee an amount that is the actuarial
34 equivalent of that interest in the form of:

35 A. An annuity payable in equal monthly installments for the
36 life of the alternate payee; or

37 B. A lump sum.

38 2. Determination by retirement system. The determination
39 of whether to pay an amount authorized by this section in lieu of
40 the interest awarded by the qualified domestic relations order is
41 within the exclusive discretion of the retirement system.

2 3. Reduced payment to member, retiree or beneficiary. If
3 the retirement system elects to pay the alternate payee pursuant
4 to this section, the benefit payable by the retirement system to
5 the member, retiree or beneficiary must be reduced by the
6 interest in the benefit awarded to the alternate payee by the
7 qualified domestic relations order.

8 4. Reliance on designation or selection. If the retirement
9 system pays the alternate payee pursuant to this section, the
10 retirement system is entitled to rely on a beneficiary
11 designation or benefit option selection made or changed pursuant
12 to its plan without regard to any domestic relations order.

14 §17061. Termination of interest in retirement system

15 The death of an alternate payee as defined in section 17001,
16 subsection 3-B terminates the interest of the alternate payee in
17 the retirement system. This section does not affect an interest
18 in the retirement system accrued to an individual as a member of
19 the retirement system.

22 **Sec. 10. Application.** This Act applies to all domestic
23 relations orders issued after the effective date of this Act and,
24 with the mutual consent of the parties, to any domestic relations
25 order issued on or before the effective date of this Act.

26
27 The Maine State Retirement is not obligated to review
28 domestic relations orders until after September 1, 1992.

30 **Emergency clause.** In view of the emergency cited in the
31 preamble, this Act takes effect when approved.

34 **FISCAL NOTE**

36 The Maine State Retirement System will incur some additional
37 costs to administer the benefit changes for qualified domestic
38 relations orders. The estimated initial cost for programming and
39 other operating costs is approximately \$30,000 in fiscal year
40 1992-93; ongoing future costs will be approximately \$15,000
41 annually. These additional costs will not appreciably affect
42 contribution rates for state employees and teachers.

44 **STATEMENT OF FACT**

46 This amendment replaces the bill. It also adds an emergency
47 preamble, an emergency clause and a fiscal note.

COMMITTEE AMENDMENT "A" to H.P. 711, L.D. 1016

2 This amendment authorizes the Maine State Retirement System
3 to pay some or all of the benefits otherwise payable to a member
4 or retiree to another person if the benefits are awarded to that
5 other person in a qualified domestic relations order. Currently,
6 the retirement system may pay the member's or retiree's benefits
7 to someone other than the member or retiree only for child
8 support.

9 This amendment defines a qualified domestic relations order
10 as an order issued in a domestic relations action, such as a
11 divorce, that assigns all or part of a member's or retiree's
12 retirement system benefits to another person and that meets other
13 criteria established by law and, when applicable, by retirement
14 system rules. A process is created for determination, appeal of
15 determinations, segregation of amounts to be paid and payment of
16 benefits to the proper parties. The retirement system is not
17 liable to any person because of its compliance with the process
18 and the payment of benefits as dictated by the process.

19 This amendment also allows the retirement system, at its
20 discretion, to substitute a life annuity or lump-sum payment
21 equal to the amount specified in the qualified domestic relations
22 order.

23 This amendment provides that the death of the alternate
24 payee terminates the interest of that payee in the retirement
25 system.

26 The amendment makes the new process applicable to all
27 domestic relations orders issued after the effective date of this
28 Act, and, with the mutual consent of the parties, to any domestic
29 relations order issued on or before the effective date of this
30 Act. This will allow courts and parties to start tailoring
31 immediately domestic relations orders to meet the requirements
32 for qualified domestic relations orders. It also allows
33 previously issued orders to be submitted for determination if the
34 parties consent. The retirement system is not obligated to begin
35 reviewing domestic relations orders until September 1, 1992.
36 This interim will be used to adopt emergency rules to spell out
37 additional criteria, establish the process and develop the
38 necessary computer capabilities to administer the law.
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Reported by the Committee on Judiciary
Reproduced and distributed under the direction of the Clerk of the
House
2/12/92 (Filing No. H-924)