

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

**SECOND SPECIAL SESSION**

December 12, 1991 to January 7, 1992

**SECOND REGULAR SESSION**

January 8, 1992 to March 31, 1992

THE GENERAL EFFECTIVE DATE FOR  
SECOND REGULAR SESSION  
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JUNE 30, 1992

PUBLISHED BY THE REVISOR OF STATUTES  
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,  
TITLE 3, SECTION 163-A, SUBSECTION 4.

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J.S. McCarthy Company  
Augusta, Maine  
1992

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**PUBLIC LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED AT THE**  
**SECOND REGULAR SESSION**

**of the**  
**ONE HUNDRED AND FIFTEENTH LEGISLATURE**

**1991**

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**Sec. 5. Costs not funded.** Notwithstanding the Maine Revised Statutes, Title 30-A, section 5684, any requirements of this Act that result in additional costs to local and county government are not state mandates subject to that section and the State is not required to fund those costs.

See title page for effective date.

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## CHAPTER 746

### H.P. 711 - L.D. 1016

#### **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**

**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

**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

**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,

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

**Sec. 1. 3 MRSA §703,** as enacted by PL 1985, c. 507, §1, is repealed and the following enacted in its place:

#### **§703. 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 805, 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. 2. 4 MRSA §1203,** as amended by PL 1983, c. 863, Pt. B, §§11 and 45, is repealed and the following enacted in its place:

#### **§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:

**30-A. Qualified domestic relations order.** “Qualified domestic relations order” means a domestic relations order that:

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

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

C. Meets the requirements of section 17059.

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

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

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

**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 from an individual’s con-

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

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

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

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

**§17059. Qualified domestic relations orders**

**1. Determination by executive director.** The executive director or the executive director’s designee has exclusive authority to determine whether a domestic relations order is a 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.

**2. No jurisdiction over retirement system.** The retirement system may not be made a party with respect to a divorce or other domestic relations action in which an alternate payee’s right to receive all or a portion of the benefits payable 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.

**3. Benefits and withdrawal of contributions.** For the purposes of this section, benefits payable with respect to a 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.

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

A. Clearly specifies the name, social security number and last known mailing address, if any, of the

member or retiree and the name, social security number and mailing address of each alternate payee covered by the order;

B. Clearly specifies the amount or percentage of the 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;

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

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

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

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

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

H. Does not require the payment of benefits to an alternate 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.

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

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

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

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

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

E. The order may not require any action on the part of the retirement system contrary to its governing laws or plan provisions other than the di-

rect payment of the benefit awarded to an alternate payee.

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

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

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

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

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

B. If the order is determined not to be a qualified domestic relations order, the member or retiree or any alternate payee named in the order may appeal the executive director's determination in the manner specified in section 17451 or may petition the court that issued the order to amend the order so that it is qualified. Except as otherwise provided by law, the court that issued the order or that otherwise would have jurisdiction over the matter has jurisdiction to amend the order so that it will be qualified even though all other matters incident to the action or proceeding have been fully and finally adjudicated.

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

**8. Payment of segregated amounts.** If a domestic relations order is determined to be a qualified domestic relations order, the retirement system shall pay the segregated amounts to the person or persons entitled to the segregated amounts and shall thereafter pay benefits pursuant to the order.

**9. Payments if determined not qualified or if no determination within 18 months.** If a domestic relations order is determined not to be a qualified domestic relations order or if the issue as to whether a domestic relations order is a qualified domestic relations order is not resolved within 18 months of the date the order and written request for a determination are received by the retirement system, the retirement system shall pay the segregated amounts without interest, and shall thereafter pay benefits, to the person or persons who would have been entitled to such amounts if there had been no order. This subsection may not be construed to limit or otherwise affect any liability, responsibility or duty of a party with respect to any other party to the action from which the order arose.

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

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

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

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

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

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

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

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

B. A lump sum.

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

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

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

**§17061. Termination of interest in retirement system**

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

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

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

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

Effective March 27, 1992.

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**CHAPTER 747**

**H.P. 1605 - L.D. 2267**

**An Act to Address Periodic Crises in the Preparation and Mailing of Checks to Clients of the Department of Human Services and to Ensure Priority Payment of Foster Care Expenses**

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