

HOUSE BILL No. 4884

May 28, 1991, Introduced by Reps. Brown, Barns, Ciaramitaro, Gubow, Fitzgerald, Nye, Dobb, Martin and London and referred to the Committee on Senior Citizens and Retirement.

A bill to authorize the payment of public employee retirement system assets to certain individuals; and to prescribe the powers and duties of certain retirement systems, state departments, public officials, and public employees.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "eligible domestic relations order act".

3 Sec. 2. As used in this act:

4 (a) "Alternate payee" means a spouse of a participant under
5 a judgment of separate maintenance, or a former spouse, child, or
6 dependent of a participant, who is named in an eligible domestic
7 relations order.

8 (b) "Benefit" means an annuity, a pension, a retirement
9 allowance, or an optional benefit accrued or accruing to a

1 participant under a retirement system or a postretirement subsidy
2 payable to a participant under a retirement system.

3 (c) "Domestic relations order" means a judgment, decree, or
4 order of a court made pursuant to the domestic relations law of
5 this state and relating to the provision of alimony payments,
6 child support, or marital property rights to a spouse of a par-
7 ticipant under a judgment of separate maintenance, or to a former
8 spouse, child, or dependent of a participant.

9 (d) "Earliest retirement date" means the earliest date on
10 which a participant meets all of the requirements for retirement
11 under a retirement system except for termination of employment.

12 (e) "Eligible domestic relations order" or "EDRO" means a
13 domestic relations order that is considered an eligible domestic
14 relations order under section 11 or that meets all of the follow-
15 ing requirements:

16 (i) The domestic relations order states the name, last known
17 address, and social security number of the participant.

18 (ii) The domestic relations order states the name, last
19 known address, and social security number of the alternate
20 payee.

21 (iii) The domestic relations order states the amount or per-
22 centage of the benefit to be paid to an alternate payee, or the
23 manner under which the retirement system is to determine the
24 amount or percentage of the benefit to be paid to an alternate
25 payee.

26 (iv) The domestic relations order states that it applies to
27 the retirement system and that the retirement system shall make

1 payments to the alternate payee as required under the eligible
2 domestic relations order and this act.

3 (v) The domestic relations order does not require the
4 retirement system to provide a type or form of benefit not pro-
5 vided by the retirement system or a form of payment not provided
6 by this act.

7 (vi) The domestic relations order does not require the
8 retirement system to provide an increased benefit determined on
9 the basis of actuarial value.

10 (vii) The domestic relations order does not require the pay-
11 ment of a benefit to an alternate payee that is required to be
12 paid to another alternate payee under a previously filed eligible
13 domestic relations order.

14 (viii) The domestic relations order is filed before the
15 participant's retirement allowance effective date.

16 (f) "Participant" means a member, deferred member, vested
17 former member, deceased former member, or retirant under the
18 retirement system.

19 (g) "Postretirement subsidy" includes, but is not limited
20 to, all of the following:

21 (i) A supplemental annuity.

22 (ii) A supplemental payment to a participant.

23 (iii) A percentage increase to a benefit payable to a
24 participant.

25 (iv) Any other payment to a participant or increase to a
26 benefit payable to a participant, excluding health benefits.

1 (h) "Retirement system" means a public employee retirement
2 system created and established by this state or any political
3 subdivision of this state.

4 Sec. 3. Subject to the requirements of this act, an alter-
5 nate payee is entitled to an actual interest in a share of a ben-
6 efit that is or will become payable to a participant, if so pro-
7 vided in an EDRO filed with the retirement system. The retire-
8 ment system shall administer the payment of a benefit pursuant to
9 the EDRO and this section.

10 Sec. 4. Except as otherwise provided in this act, the pay-
11 ment of a benefit to an alternate payee under an EDRO and this
12 act shall begin on the retirement allowance effective date of the
13 participant. The payment of a benefit under an EDRO and this act
14 shall be paid in 1 of the following forms, as applicable:

15 (a) A single life annuity that is equal to the actuarial
16 equivalent of the alternate payee's share of the benefit payable
17 throughout the life of the alternate payee. If the participant
18 is entitled to the payment of a benefit that is not reduced due
19 to early retirement under the retirement system, the alternate
20 payee's single life annuity shall be calculated using the
21 participant's unreduced benefit. If the participant is only
22 entitled to the payment of a benefit that is reduced due to early
23 retirement under the retirement system, the alternate payee's
24 single life annuity shall be calculated using the participant's
25 reduced benefit.

26 (b) If a retirement system offers a participant an optional
27 form of payment of a benefit at retirement, a reduced benefit

1 that is equal to the actuarial equivalent of the total benefit
2 being divided under the EDRO payable throughout the lives of the
3 participant and the alternate payee. The reduced benefit shall
4 be payable in the manner provided under the optional form of pay-
5 ment under the retirement system. The EDRO shall specify the
6 percentage or amount of the reduced benefit that is payable under
7 this subdivision to the participant and to the alternate payee
8 while both are alive. If the participant predeceases the alter-
9 nate payee while a reduced benefit is being paid to the partici-
10 pant and the alternate payee under this subdivision, the survivor
11 portion of the reduced benefit shall be payable to the alternate
12 payee. If the alternate payee predeceases the participant while
13 a reduced benefit is being paid to the participant and the alter-
14 nate payee under this subdivision, the alternate payee's percen-
15 tage or amount of the reduced benefit shall revert to and become
16 payable to the participant.

17 (c) A single life annuity that is equal to the alternate
18 payee's share of the benefit payable throughout the life of the
19 participant.

20 Sec. 5. (1) An EDRO may provide for the payment of a bene-
21 fit to an alternate payee beginning on or after the participant's
22 earliest retirement date but before the participant terminates
23 employment as provided in this section. An alternate payee shall
24 begin to receive the payment of a benefit under this section
25 effective the first day of the month immediately following the
26 month in which the alternate payee notifies the retirement system

1 of his or her election to begin to receive payment of his or her
2 interest in the benefit of a participant.

3 (2) If an alternate payee elects to receive his or her
4 interest in the benefit of a participant after the participant's
5 earliest retirement date but before the participant's termination
6 of employment, the alternate payee is only entitled to the actu-
7 arial equivalent of the alternate payee's share of the
8 participant's benefit that would be payable when the participant
9 reaches age 60. If the participant retires before age 60, the
10 retirement system shall recalculate the benefit payable to the
11 alternate payee so that the recalculated benefit payable to the
12 alternate payee plus the benefit previously paid to the alternate
13 payee are the actuarial equivalent of the alternate payee's share
14 of the benefit payable to the participant. If the recalculated
15 benefit is more than the benefit the alternate payee is receiv-
16 ing, the retirement system shall begin paying the recalculated
17 benefit to the alternate payee effective the first day of the
18 month immediately following the month in which the participant
19 retires.

20 Sec. 6. An EDRO may provide that a spouse under a judgment
21 of separate maintenance or a former spouse is considered the
22 spouse of a participant for the purpose of receiving a benefit as
23 a surviving spouse under the retirement system. The benefit pay-
24 able to a spouse under a judgment of separate maintenance or a
25 former spouse as a surviving spouse under this section shall be
26 computed as provided in the EDRO and the retirement system. If
27 the amount or percentage of the benefit to be paid to a spouse

1 under a judgment of separate maintenance or a former spouse as
2 the surviving spouse of the participant under this section is
3 less than the entire amount payable under the retirement system,
4 the surviving spouse or other beneficiary of the participant, as
5 determined under the retirement system, is entitled to receive
6 the portion of the benefit not payable to a spouse under a judg-
7 ment of separate maintenance or a former spouse under this
8 section.

9 Sec. 7. If an alternate payee under this act dies before
10 receiving any payment of his or her interest in a benefit pursu-
11 ant to this act and an EDRO, that interest reverts to the
12 participant.

13 Sec. 8. The creation, assignment, or recognition of a right
14 of an alternate payee to an actual interest in a share of a bene-
15 fit that is or will become payable to a participant pursuant to
16 an EDRO under this act is not a prohibited assignment under a
17 retirement system.

18 Sec. 9. Each retirement system shall establish a reasonable
19 procedure to determine if a domestic relations order is an EDRO
20 under this act. The retirement system shall promptly notify the
21 participant and alternate payee named in a domestic relations
22 order that the retirement system has received the domestic rela-
23 tions order. The notice shall include a description of the pro-
24 cedure by which the retirement system determines if the domestic
25 relations order is an EDRO under this act.

26 Sec. 10. The retirement system shall, within a reasonable
27 period of time after receiving a domestic relations order,

1 determine if the domestic relations order is an EDRO under this
2 act. If the retirement system determines that the domestic rela-
3 tions order is an EDRO under this act, the retirement system
4 shall promptly notify the participant and alternate payee named
5 in the EDRO that the domestic relations order is an EDRO. The
6 retirement system shall begin the payment of a benefit under this
7 act pursuant to the EDRO and this act on the first day of the
8 month following the month in which the domestic relations order
9 was determined to be an EDRO or the first day of the month fol-
10 lowing the month in which a benefit is payable under the EDRO and
11 this act, whichever is later. If the retirement system deter-
12 mines that the domestic relations order is not an EDRO under this
13 act, the retirement system shall promptly notify the participant
14 and alternate payee named in the domestic relations order that
15 the domestic relations order is not an EDRO. The retirement
16 system shall specify in the notice why the retirement system
17 determined that the domestic relations order is not an EDRO under
18 this act. A determination by the retirement system that a domes-
19 tic relations order is not an EDRO under this act does not pro-
20 hibit a participant, alternate payee, or court from filing an
21 amended domestic relations order with the retirement system under
22 this act.

23 Sec. 11. A domestic relations order filed with the retire-
24 ment system before the effective date of this act is considered
25 an EDRO under this act if the retirement system is making pay-
26 ments under the domestic relations order on the effective date of
27 this act or to the extent a domestic relations order is

1 consistent with the provisions of this act. This section does
2 not prohibit a participant, alternate payee, or court from filing
3 an amended domestic relations order under this act.