



# HOUSE BILL No. 5176

November 2, 1993, Introduced by Rep. Ciaramitaro and referred to the Committee on Public Retirement.

A bill to amend sections 2, 3, 4, 5, and 10 of Act No. 46 of the Public Acts of 1991, entitled "Eligible domestic relations order act," being sections 38.1702, 38.1703, 38.1704, 38.1705, and 38.1710 of the Michigan Compiled Laws; and to add sections 5a and 10a.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1 Section 1. Sections 2, 3, 4, 5, and 10 of Act No. 46 of the  
2 Public Acts of 1991, being sections 38.1702, 38.1703, 38.1704,  
3 38.1705, and 38.1710 of the Michigan Compiled Laws, are amended  
4 and sections 5a and 10a are added to read as follows:

5 Sec. 2. As used in this act:

6 (a) "Alternate payee" means a spouse of a participant under  
7 a judgment of separate maintenance, or a former spouse, child, or

1 dependent of a participant, who is named in an eligible domestic  
2 relations order.

3 (b) "Benefit" means an annuity, a pension, a retirement  
4 allowance, or an optional benefit accrued or accruing to a par-  
5 ticipant under a retirement system or a postretirement subsidy  
6 payable to a participant under a retirement system.

7 (C) "DEFINED CONTRIBUTION PLAN" MEANS A RETIREMENT SYSTEM  
8 THAT PROVIDES FOR AN INDIVIDUAL ACCOUNT FOR EACH MEMBER OF THE  
9 RETIREMENT SYSTEM AND THAT PROVIDES FOR BENEFITS BASED SOLELY  
10 UPON THE AMOUNT CONTAINED WITHIN THE INDIVIDUAL ACCOUNT AT THE  
11 TIME OF COMMENCEMENT OF BENEFITS.

12 (D) ~~(c)~~ "Domestic relations order" means a judgment,  
13 decree, or order of a court made pursuant to the domestic rela-  
14 tions law of this state and relating to the provision of alimony  
15 payments, child support, or marital property rights to a spouse  
16 of a participant under a judgment of separate maintenance, or to  
17 a former spouse, child, or dependent of a participant.

18 (E) ~~(d)~~ "Earliest retirement date" means the earliest date  
19 on which a participant meets all of the requirements for retire-  
20 ment under a retirement system except for termination of  
21 employment.

22 (F) ~~(e)~~ "Eligible domestic relations order" or "EDRO"  
23 means a domestic relations order that is considered an eligible  
24 domestic relations order under section 11 or that meets all of  
25 the following requirements:

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

1 (ii) The domestic relations order states the name, last  
2 known address, and social security number of the alternate payee  
3 OR THE NAME OF THE FORMER SPOUSE OF THE PARTICIPANT IF THERE IS  
4 NO ALTERNATE PAYEE NAMED IN THE DOMESTIC RELATIONS ORDER.

5 (iii) The domestic relations order states the amount or per-  
6 centage of the benefit to be paid to an alternate payee, or the  
7 manner under which the retirement system is to determine the  
8 amount or percentage of the benefit to be paid to an alternate  
9 payee, IF ANY AMOUNT IS TO BE PAID TO AN ALTERNATE PAYEE.

10 (iv) The domestic relations order states that it applies to  
11 the retirement system and that the retirement system shall make  
12 payments to the alternate payee, IF ANY, as required under the  
13 eligible domestic relations order and this act.

14 (v) The domestic relations order does not require the  
15 retirement system to provide a type or form of benefit not pro-  
16 vided by the retirement system or a form of payment not provided  
17 by this act.

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

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

25 (viii) ~~The domestic relations order is filed before the~~  
26 ~~participant's retirement allowance effective date.~~ THE DOMESTIC  
27 RELATIONS ORDER STATES THE MANNER IN WHICH THE PARTICIPANT OR

1 ALTERNATE PAYEE, OR BOTH, SHALL PAY THE RETIREMENT SYSTEM FOR ALL  
2 COSTS ASSOCIATED WITH ANY ACTUARIAL EVALUATION NEEDED TO IMPL-  
3 MENT THE EDRO UNDER THIS ACT.

4 (ix) THE DOMESTIC RELATIONS ORDER STATES THAT AN ELECTION TO  
5 RECEIVE A REDUCED RETIREMENT ALLOWANCE BY THE PARTICIPANT IS CON-  
6 SIDERED VOID AS PROVIDED IN SECTION 5A(2), IF NECESSARY.

7 (G) "NORMAL RETIREMENT AGE" MEANS THE AGE AT WHICH THE PAR-  
8 TICIPANT IS ELIGIBLE UNDER THE RETIREMENT SYSTEM TO RETIRE WITH  
9 FULL UNREDUCED BENEFITS. NORMAL RETIREMENT AGE DOES NOT INCLUDE  
10 THE AGE AT WHICH THE PARTICIPANT IS ELIGIBLE TO RETIRE WITH FULL  
11 UNREDUCED BENEFITS UNDER AN EARLY-OUT PROVISION THAT IS OFFERED  
12 BY THE RETIREMENT SYSTEM DURING A LIMITED TIME PERIOD TO CERTAIN  
13 MEMBERS OF THE RETIREMENT SYSTEM.

14 (H) ~~(f)~~ "Participant" means a member, deferred member,  
15 vested former member, deceased former member, or retirant under  
16 the retirement system.

17 (I) ~~(g)~~ "Postretirement subsidy" includes, but is not  
18 limited to, all of the following:

19 (i) A supplemental annuity.

20 (ii) A supplemental payment to a participant.

21 (iii) A percentage increase to a benefit payable to a  
22 participant.

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

25 (J) ~~(h)~~ "Retirement system" means a public employee  
26 retirement system created and established by this state or any  
27 political subdivision of this state.

1       Sec. 3. Subject to the requirements of this act, an  
2 alternate payee is entitled to an actual interest in a share of a  
3 benefit that is or will become payable to a participant, if so  
4 provided in an EDRO filed with the retirement system. The  
5 retirement system shall administer the payment of a benefit pur-  
6 suant to the EDRO and this section. THE RETIREMENT SYSTEM SHALL  
7 NOT PAY FOR ANY COSTS ASSOCIATED WITH ANY ACTUARIAL EVALUATION  
8 NEEDED TO IMPLEMENT AN EDRO UNDER THIS ACT.

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

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

25       (b) If a retirement system offers a participant an optional  
26 form of payment of a benefit at retirement, a reduced benefit  
27 that is equal to the actuarial equivalent of the total benefit

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

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

19 (D) A LUMP SUM PAYMENT FROM A DEFINED CONTRIBUTION PLAN.

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~~ HIS OR HER NORMAL RETIREMENT AGE. If the par-  
10 ticipant retires before ~~age 60~~ HIS OR HER NORMAL RETIREMENT  
11 AGE, the retirement system shall recalculate the benefit payable  
12 to the alternate payee so that the recalculated benefit payable  
13 to the alternate payee plus the benefit previously paid to the  
14 alternate payee are the actuarial equivalent of the alternate  
15 payee's share of the benefit payable to the participant. If the  
16 recalculated benefit is more than the benefit the alternate payee  
17 is receiving, the retirement system shall begin paying the recal-  
18 culated benefit to the alternate payee effective the first day of  
19 the month immediately following the month in which the partici-  
20 pant retires.

21 SEC. 5A. (1) AN EDRO ISSUED AFTER THE PARTICIPANT'S RETIRE-  
22 MENT ALLOWANCE EFFECTIVE DATE MAY PROVIDE FOR THE PAYMENT OF A  
23 BENEFIT TO AN ALTERNATE PAYEE AS PROVIDED IN THIS ACT.

24 (2) IF A PARTICIPANT WHO IS A RETIRANT FROM THE RETIREMENT  
25 SYSTEM AND WHO IS RECEIVING A REDUCED RETIREMENT ALLOWANCE UNDER  
26 AN OPTION UNDER THAT RETIREMENT SYSTEM IS DIVORCED FROM THE  
27 SPOUSE WHO HAD BEEN DESIGNATED AS THE RETIRANT'S RETIREMENT

1 ALLOWANCE BENEFICIARY UNDER THAT OPTION, AN EDRO MAY PROVIDE THAT  
2 THE ELECTION OF THE OPTION SHALL BE CONSIDERED VOID BY THE  
3 RETIREMENT SYSTEM. THE EDRO SHALL STATE THAT THE ELECTION OF THE  
4 OPTION TO RECEIVE A REDUCED RETIREMENT ALLOWANCE IS TO BE CONSID-  
5 ERED VOID BY THE RETIREMENT SYSTEM. THE EDRO SHALL BE DATED  
6 AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS  
7 SECTION OR AFTER THE RETIRANT'S RETIREMENT ALLOWANCE EFFECTIVE  
8 DATE, WHICHEVER IS LATER. THE PARTICIPANT SHALL PROVIDE A CERTI-  
9 FIED COPY OF THE DOMESTIC RELATIONS ORDER TO THE RETIREMENT  
10 SYSTEM. IF AN ELECTION TO RECEIVE A REDUCED RETIREMENT ALLOWANCE  
11 IS CONSIDERED VOID UNDER AN EDRO AND THIS SUBSECTION, THE  
12 PARTICIPANT'S RETIREMENT ALLOWANCE SHALL REVERT TO A REGULAR  
13 RETIREMENT ALLOWANCE, INCLUDING POSTRETIREMENT ADJUSTMENTS, IF  
14 ANY. THE RETIREMENT ALLOWANCE SHALL REVERT TO A REGULAR RETIRE-  
15 MENT ALLOWANCE UNDER THE EDRO AND THIS SUBSECTION EFFECTIVE THE  
16 FIRST DAY OF THE MONTH FOLLOWING THE MONTH IN WHICH THE DOMESTIC  
17 RELATIONS ORDER IS DETERMINED TO BE AN EDRO. THIS SUBSECTION  
18 DOES NOT SUPERSEDE A DOMESTIC RELATIONS ORDER IN EFFECT ON THE  
19 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION.

20       Sec. 10. (1) The retirement system shall, within a reason-  
21 able period of time after receiving a domestic relations order,  
22 determine if the domestic relations order is an EDRO under this  
23 act. If the retirement system determines that the domestic rela-  
24 tions order is an EDRO under this act, the retirement system  
25 shall promptly notify the participant and alternate payee named  
26 in the EDRO that the domestic relations order is an EDRO. ~~The~~  
27 EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE retirement

1 system shall begin the payment of a benefit under this act  
2 pursuant to the EDRO and this act on the first day of the month  
3 following the month in which the domestic relations order was  
4 determined to be an EDRO or the first day of the month following  
5 the month in which a benefit is payable under the EDRO and this  
6 act, whichever is later.

7 (2) If the retirement system determines that the domestic  
8 relations order is not an EDRO under this act, the retirement  
9 system shall promptly notify the participant and alternate payee  
10 named in the domestic relations order that the domestic relations  
11 order is not an EDRO. The retirement system shall specify in the  
12 notice why the retirement system determined that the domestic  
13 relations order is not an EDRO under this act. A determination  
14 by the retirement system that a domestic relations order is not  
15 an EDRO under this act does not prohibit a participant, alternate  
16 payee, or court from filing an amended domestic relations order  
17 with the retirement system under this act.

18 (3) IF THE PAYMENT OF A BENEFIT UNDER SUBSECTION (1) IS  
19 DELAYED AFTER THE MONTH IN WHICH A BENEFIT IS PAYABLE UNDER THE  
20 EDRO BECAUSE OF ADMINISTRATIVE DELAYS IN DETERMINING WHETHER THE  
21 DOMESTIC RELATIONS ORDER IS AN EDRO, THE RETIREMENT SYSTEM MAY  
22 PROVIDE FOR THE RETROACTIVE PAYMENT OF A BENEFIT TO THE FIRST DAY  
23 OF THE MONTH FOLLOWING THE MONTH IN WHICH A BENEFIT IS PAYABLE  
24 UNDER THE EDRO.

25 SEC. 10A. FOR THE PURPOSE OF ALL ACTUARIAL CALCULATIONS  
26 REQUIRED BY THIS ACT, A RETIREMENT SYSTEM SHALL USE THE INTEREST  
27 RATES AND UNDERLYING UNISEX MORTALITY TABLE SPECIFIED BY THE

1 PENSION BENEFIT GUARANTY CORPORATION FOR DETERMINING THE VALUE OF  
2 PLAN BENEFITS UNDER TERMINATING SINGLE-EMPLOYER PENSION PLANS  
3 UNDER PART 2619 OF SUBCHAPTER C OF CHAPTER XXVI OF TITLE 29 OF  
4 THE CODE OF FEDERAL REGULATIONS, 29 C.F.R. PART 2619. THE  
5 RETIREMENT SYSTEM SHALL USE THE INTEREST RATE SPECIFIED BY THE  
6 PENSION BENEFIT GUARANTY CORPORATION FOR THE SECOND MONTH PRECED-  
7 ING THE DATE OF COMMENCEMENT OF THE ALTERNATE PAYEE'S BENEFIT.