

HOUSE BILL No. 4023

January 8, 1997, Introduced by Rep. Ciaramitaro and referred to the Committee on Judiciary.

A bill to amend 1991 PA 46, entitled
"Eligible domestic relations order act,"
by amending sections 2, 3, 4, 5, and 10 (MCL 38.1702, 38.1703,
38.1704, 38.1705, and 38.1710) and by adding sections 5a and
10a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

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

6 (b) "Benefit" means an annuity, a pension, a retirement
7 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) "DEFINED CONTRIBUTION PLAN" MEANS A DEFINED CONTRIBUTION
4 PLAN AS DEFINED IN SECTION 414(I) OF THE INTERNAL REVENUE CODE.

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

11 (E) ~~-(d)-~~ "Earliest retirement date" means the earliest date
12 on which a participant meets all of the requirements for retire-
13 ment under a retirement system except for termination of
14 employment.

15 (F) ~~-(e)-~~ "Eligible domestic relations order" or "EDRO"
16 means a domestic relations order that is considered an eligible
17 domestic relations order under section 11 or that meets all of
18 the following requirements:

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

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

25 (iii) The domestic relations order states the amount or per-
26 centage of the benefit to be paid to an alternate payee, or the
27 manner under which the retirement system is to determine the

1 amount or percentage of the benefit to be paid to an alternate
2 payee, IF ANY AMOUNT IS TO BE PAID TO AN ALTERNATE PAYEE.

3 (iv) The domestic relations order states that it applies to
4 the retirement system and that the retirement system shall make
5 payments to the alternate payee, IF ANY, as required under the
6 eligible domestic relations order and this act.

7 (v) The domestic relations order does not require the
8 retirement system to provide a type or form of benefit not pro-
9 vided by the retirement system or a form of payment not provided
10 by this act.

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

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

18 (viii) ~~The domestic relations order is filed before the~~
19 ~~participant's retirement allowance effective date.~~ THE DOMESTIC
20 RELATIONS ORDER STATES THE MANNER IN WHICH THE PARTICIPANT OR
21 ALTERNATE PAYEE, OR BOTH, SHALL PAY THE RETIREMENT SYSTEM FOR ALL
22 COSTS ASSOCIATED WITH ANY ACTUARIAL EVALUATION NEEDED TO IMPLE-
23 MENT THE EDRO UNDER THIS ACT.

24 (ix) THE DOMESTIC RELATIONS ORDER STATES THAT AN ELECTION TO
25 RECEIVE A REDUCED RETIREMENT ALLOWANCE BY THE PARTICIPANT IS CON-
26 sidered void as provided in section 5A(2), IF NECESSARY.

1 (G) "NORMAL RETIREMENT AGE" MEANS THE AGE AT WHICH THE
2 PARTICIPANT IS ELIGIBLE UNDER THE RETIREMENT SYSTEM TO RETIRE
3 WITH FULL UNREDUCED BENEFITS. NORMAL RETIREMENT AGE DOES NOT
4 INCLUDE THE AGE AT WHICH THE PARTICIPANT IS ELIGIBLE TO RETIRE
5 WITH FULL UNREDUCED BENEFITS UNDER AN EARLY-OUT PROVISION THAT IS
6 OFFERED BY THE RETIREMENT SYSTEM DURING A LIMITED TIME PERIOD TO
7 CERTAIN MEMBERS OF THE RETIREMENT SYSTEM.

8 (H) ~~-(f)-~~ "Participant" means a member, deferred member,
9 vested former member, deceased former member, or retirant under
10 the retirement system.

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

13 (i) A supplemental annuity.

14 (ii) A supplemental payment to a participant.

15 (iii) A percentage increase to a benefit payable to a
16 participant.

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

19 (J) ~~-(h)-~~ "Retirement system" means a public employee
20 retirement system created and established by this state or any
21 political subdivision of this state.

22 Sec. 3. Subject to the requirements of this act, an alter-
23 nate payee is entitled to an actual interest in a share of a ben-
24 efit that is or will become payable to a participant, if so pro-
25 vided in an EDRO filed with the retirement system. The retire-
26 ment system shall administer the payment of a benefit pursuant to
27 the EDRO and this section. THE RETIREMENT SYSTEM SHALL NOT PAY

1 FOR ANY COSTS ASSOCIATED WITH ANY ACTUARIAL EVALUATION NEEDED TO
2 IMPLEMENT AN EDRO UNDER THIS ACT.

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

8 (a) A single life annuity that is equal to the actuarial
9 equivalent of the alternate payee's share of the benefit payable
10 throughout the life of the alternate payee. If the participant
11 is entitled to the payment of a benefit that is not reduced due
12 to early retirement under the retirement system, the alternate
13 payee's single life annuity shall be calculated using the
14 participant's unreduced benefit. If the participant is only
15 entitled to the payment of a benefit that is reduced due to early
16 retirement under the retirement system, the alternate payee's
17 single life annuity shall be calculated using the participant's
18 reduced benefit.

19 (b) If a retirement system offers a participant an optional
20 form of payment of a benefit at retirement, a reduced benefit
21 that is equal to the actuarial equivalent of the total benefit
22 being divided under the EDRO payable throughout the lives of the
23 participant and the alternate payee. The reduced benefit shall
24 be payable in the manner provided under the optional form of pay-
25 ment under the retirement system. The EDRO shall specify the
26 percentage or amount of the reduced benefit that is payable under
27 this subdivision to the participant and to the alternate payee

1 while both are alive. If the participant predeceases the
2 alternate payee while a reduced benefit is being paid to the par-
3 ticipant and the alternate payee under this subdivision, the sur-
4 vivor portion of the reduced benefit shall be payable to the
5 alternate payee. If the alternate payee predeceases the partici-
6 pant while a reduced benefit is being paid to the participant and
7 the alternate payee under this subdivision, the alternate payee's
8 percentage or amount of the reduced benefit shall revert to and
9 become payable to the participant.

10 (c) A single life annuity that is equal to the alternate
11 payee's share of the benefit payable throughout the life of the
12 participant.

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

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

23 (2) If an alternate payee elects to receive his or her
24 interest in the benefit of a participant after the participant's
25 earliest retirement date but before the participant's termination
26 of employment, the alternate payee is only entitled to the
27 actuarial equivalent of the alternate payee's share of the

1 participant's benefit that would be payable when the participant
2 reaches ~~age 60~~ HIS OR HER NORMAL RETIREMENT AGE. If the par-
3 ticipant retires before ~~age 60~~ HIS OR HER NORMAL RETIREMENT
4 AGE, the retirement system shall recalculate the benefit payable
5 to the alternate payee so that the recalculated benefit payable
6 to the alternate payee plus the benefit previously paid to the
7 alternate payee are the actuarial equivalent of the alternate
8 payee's share of the benefit payable to the participant. If the
9 recalculated benefit is more than the benefit the alternate payee
10 is receiving, the retirement system shall begin paying the recal-
11 culated benefit to the alternate payee effective the first day of
12 the month immediately following the month in which the partici-
13 pant retires.

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

17 (2) IF A PARTICIPANT WHO IS A RETIRANT FROM THE RETIREMENT
18 SYSTEM AND WHO IS RECEIVING A REDUCED RETIREMENT ALLOWANCE UNDER
19 AN OPTION UNDER THAT RETIREMENT SYSTEM IS DIVORCED FROM THE
20 SPOUSE WHO HAD BEEN DESIGNATED AS THE RETIRANT'S RETIREMENT
21 ALLOWANCE BENEFICIARY UNDER THAT OPTION, AN EDRO MAY PROVIDE THAT
22 THE ELECTION OF THE OPTION SHALL BE CONSIDERED VOID BY THE
23 RETIREMENT SYSTEM. THE EDRO SHALL STATE THAT THE ELECTION OF THE
24 OPTION TO RECEIVE A REDUCED RETIREMENT ALLOWANCE IS TO BE CONSID-
25 ERED VOID BY THE RETIREMENT SYSTEM. THE EDRO SHALL BE DATED
26 AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
27 SECTION OR AFTER THE RETIRANT'S RETIREMENT ALLOWANCE EFFECTIVE

1 DATE, WHICHEVER IS LATER. THE PARTICIPANT SHALL PROVIDE A
2 CERTIFIED COPY OF THE DOMESTIC RELATIONS ORDER TO THE RETIREMENT
3 SYSTEM. IF AN ELECTION TO RECEIVE A REDUCED RETIREMENT ALLOWANCE
4 IS CONSIDERED VOID UNDER AN EDRO AND THIS SUBSECTION, THE
5 PARTICIPANT'S RETIREMENT ALLOWANCE SHALL REVERT TO A REGULAR
6 RETIREMENT ALLOWANCE, INCLUDING POSTRETIREMENT ADJUSTMENTS, IF
7 ANY. THE RETIREMENT ALLOWANCE SHALL REVERT TO A REGULAR RETIRE-
8 MENT ALLOWANCE UNDER THE EDRO AND THIS SUBSECTION EFFECTIVE THE
9 FIRST DAY OF THE MONTH FOLLOWING THE MONTH IN WHICH THE DOMESTIC
10 RELATIONS ORDER IS DETERMINED TO BE AN EDRO. THIS SUBSECTION
11 DOES NOT SUPERSEDE A DOMESTIC RELATIONS ORDER IN EFFECT ON THE
12 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION.

13 Sec. 10. (1) The retirement system shall, within a reason-
14 able period of time after receiving a domestic relations order,
15 determine if the domestic relations order is an EDRO under this
16 act. If the retirement system determines that the domestic rela-
17 tions order is an EDRO under this act, the retirement system
18 shall promptly notify the participant and alternate payee named
19 in the EDRO that the domestic relations order is an EDRO. ~~The~~
20 EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE retirement
21 system shall begin the payment of a benefit under this act pursu-
22 ant to the EDRO and this act on the first day of the month fol-
23 lowing the month in which the domestic relations order was deter-
24 mined to be an EDRO or the first day of the month following the
25 month in which a benefit is payable under the EDRO and this act,
26 whichever is later.

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

12 (3) IF THE PAYMENT OF A BENEFIT UNDER SUBSECTION (1) IS
13 DELAYED AFTER THE MONTH IN WHICH A BENEFIT IS PAYABLE UNDER THE
14 EDRO BECAUSE OF ADMINISTRATIVE DELAYS IN DETERMINING WHETHER THE
15 DOMESTIC RELATIONS ORDER IS AN EDRO, THE RETIREMENT SYSTEM MAY
16 PROVIDE FOR THE RETROACTIVE PAYMENT OF A BENEFIT TO THE FIRST DAY
17 OF THE MONTH FOLLOWING THE MONTH IN WHICH A BENEFIT IS PAYABLE
18 UNDER THE EDRO.

19 SEC. 10A. FOR THE PURPOSE OF ALL ACTUARIAL CALCULATIONS
20 REQUIRED BY THIS ACT, A RETIREMENT SYSTEM SHALL USE THE INTEREST
21 RATES AND UNDERLYING UNISEX MORTALITY TABLE SPECIFIED BY THE PEN-
22 SION BENEFIT GUARANTY CORPORATION FOR DETERMINING THE VALUE OF
23 PLAN BENEFITS UNDER TERMINATING SINGLE-EMPLOYER PENSION PLANS
24 UNDER SUBPART B OF 29 C.F.R. PART 4044. THE RETIREMENT SYSTEM
25 SHALL USE THE INTEREST RATE SPECIFIED BY THE PENSION BENEFIT
26 GUARANTY CORPORATION FOR THE SECOND MONTH PRECEDING THE DATE OF
27 COMMENCEMENT OF THE ALTERNATE PAYEE'S BENEFIT.