

# Senate Bill 872

Sponsored by Senator BROWN; Representative BRUUN

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides that judgment, order or settlement in divorce, annulment or separation proceeding may designate former spouse of judge member of Public Employees Retirement System as alternate payee of member if marriage lasted for at least one year. Provides that judgment, order or settlement may provide that former spouse receive benefits payable to surviving spouse of judge member if former spouse survives judge member.

Provides that judgment, order or settlement in divorce, annulment or separation proceeding may change beneficiary designated by judge member.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to judges' retirement; amending ORS 238.465 and 238.565; and declaring an emergency.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 238.465 is amended to read:

5 238.465. (1) Notwithstanding ORS 238.445 or any other provision of law, payments under this  
6 chapter or ORS chapter 238A of any pension, annuity, retirement allowance, disability benefit, death  
7 benefit, refund benefit or other benefit that would otherwise be made to a person entitled thereto  
8 under this chapter or ORS chapter 238A shall be paid, in whole or in part, by the Public Employees  
9 Retirement Board to an alternate payee if and to the extent expressly provided for in the terms of  
10 any judgment of annulment or dissolution of marriage or of separation, or the terms of any court  
11 order or court-approved property settlement agreement incident to any judgment of annulment or  
12 dissolution of marriage or of separation. Notwithstanding any other provisions of this section, the  
13 total value of benefits payable to a member and to an alternate payee under this section may not  
14 be greater than the value of the benefits the member would otherwise be eligible to receive. Any  
15 payment under this subsection to an alternate payee bars recovery by any other person.

16 (2) A judgment, order or settlement providing for payment to an alternate payee under sub-  
17 section (1) of this section may also provide:

18 (a) That payments to the alternate payee may commence, at the election of the alternate payee,  
19 at any time after the earlier of:

20 (A) The earliest date the member would be eligible to receive retirement benefits if the member  
21 separates from service; or

22 (B) The date the member actually separates from service due to death, disability, retirement or  
23 termination of employment.

24 (b) That the alternate payee may elect to receive payment in any form of pension, annuity, re-  
25 tirement allowance, disability benefit, death benefit, refund benefit or other benefit, except a benefit  
26 in the form of a joint and survivor annuity, that would be available to the member under this  
27 chapter or ORS chapter 238A, or that would be available to the member if the member retired or  
28 separated from service at the time of election by the alternate payee, without regard to the form

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 of benefit elected by the member.

2 (c) That the alternate payee's life is the measuring life for the purpose of measuring payments  
3 to the alternate payee under the form of benefit selected by the alternate payee and for the purpose  
4 of determining necessary employer reserves.

5 (d) Except as provided in ORS 238.305 (10) and 238.325 (7), that any person designated by the  
6 member as a beneficiary under ORS 238.300, 238.305, 238.325, **238.565**, 238A.190 or 238A.400 be  
7 changed, even though the member has retired and has begun receiving a retirement allowance or  
8 pension. If a change of beneficiary is ordered under this paragraph, the board shall adjust the an-  
9 ticipated benefits that would be payable to the member and the beneficiary to ensure that the cost  
10 to the system of providing benefits to the member and the new beneficiary does not exceed the cost  
11 that the system would have incurred to provide benefits to the member and the original beneficiary.  
12 The judgment, order or settlement may not provide for any change to the option selected by the  
13 retired member under ORS 238.300, 238.305, 238.320, 238.325, 238A.190 or 238A.400 as to the form  
14 of the retirement benefit.

15 **(3) A judgment, order or settlement under subsection (1) of this section may designate**  
16 **the former spouse of a judge member as the alternate payee of the member if the judge**  
17 **member was married to the former spouse for at least one year. The judgment, order or**  
18 **settlement may provide that the former spouse receive the benefits payable to a surviving**  
19 **spouse of a judge member under ORS 238.565 if the former spouse survives the judge mem-**  
20 **ber.**

21 [(3)] (4) The board shall adopt rules that provide for:

22 (a) The creation of a separate account in the name of the alternate payee reflecting the judg-  
23 ment's, order's or agreement's distribution of the member's benefits under this chapter or ORS  
24 chapter 238A;

25 (b) The establishing of criteria to determine whether domestic relations judgments, orders and  
26 agreements comply with this section; and

27 (c) The definitions and procedures for the administration of this section.

28 [(4)] (5) An alternate payee may designate a beneficiary for the purposes of death benefits pay-  
29 able under ORS 238.390 and 238.395. Subject to ORS 238A.410 (2), an alternate payee may designate  
30 a beneficiary for the purposes of death benefits payable under ORS 238A.410. If the alternate payee  
31 fails to designate a beneficiary for the purposes of death benefits payable under ORS 238.390 and  
32 238.395, the benefits shall be paid as provided by ORS 238.390 (2). If the alternate payee fails to  
33 designate a beneficiary for the purposes of death benefits payable under ORS 238A.410, the benefits  
34 shall be paid as provided by ORS 238A.410 (3). If a judgment, order or agreement awards an interest  
35 to an alternate payee, and if the alternate payee predeceases the member before the alternate payee  
36 has commenced receiving benefits, the alternate payee shall be considered a member of the system  
37 who died before retiring for the purposes of the death benefits provided in ORS 238.390, 238.395,  
38 238A.230 and 238A.410, but for purposes of the death benefits provided in ORS 238.395, the alternate  
39 payee shall be considered a member of the system who died before retiring only if the member would  
40 have been eligible for death benefits under ORS 238.395 had the member died at the same time as  
41 the alternate payee. Payment of the death benefits to the beneficiaries, estate or other persons en-  
42 titled to receive the benefits under ORS 238.390, 238.395, 238A.230 and 238A.410, shall constitute  
43 payment in full of the alternate payee's interest under the judgment, order or agreement.

44 [(5)] (6) Any increase in the retirement allowance provided to the member shall increase the  
45 amounts paid to the spouse or former spouse of the member in the same proportion, except that an

1 alternate payee is not entitled to receive cost-of-living adjustments under ORS 238.360 or any other  
2 retirement allowance increase until benefits are first paid from the system on behalf of the member.

3 [(6)] (7) An alternate payee under this section is not eligible to receive the benefits provided  
4 under ORS 238.410, 238.415, 238.420 and 238.440 by reason of the provisions of this section.

5 [(7)] (8) An alternate payee who elects to begin receiving payments under subsection (1) of this  
6 section before the member's effective date of retirement is not eligible to receive any additional  
7 payment by reason of credit in the system acquired by the member after the alternate payee begins  
8 to receive payments.

9 [(8)] (9) Subsection (1) of this section applies only to payments made by the board after the date  
10 of receipt by the board of written notice of the judgment, order or agreement and such additional  
11 information and documentation as the board may prescribe.

12 [(9)] (10) Whenever the board is required to make payment to an alternate payee under the  
13 provisions of this section, the board shall charge and collect out of the benefits payable to the  
14 member and the alternate payee actual and reasonable administrative expenses and related costs  
15 incurred by the board in obtaining data and making calculations that are necessary by reason of the  
16 provisions of this section. The board may not charge more than \$300 for total administrative ex-  
17 penses and related costs incurred in obtaining data or making calculations that are necessary by  
18 reason of the provisions of this section. The board shall allocate expenses and costs charged under  
19 the provisions of this subsection between the member and the alternate payee based on the fraction  
20 of the benefit received by the member or alternate payee.

21 [(10)] (11) Unless otherwise provided by the judgment, order or agreement, a member has no  
22 interest in the benefit payable to an alternate payee under this section. Upon the death of an al-  
23 ternate payee, the board shall make such payment to the beneficiary designated by the alternate  
24 payee as may be required under the form of benefit elected by the alternate payee. If a death benefit  
25 is payable under ORS 238.390 or 238.395 by reason of the death of an alternate payee, payment of  
26 the death benefit shall be made to the beneficiary designated by the alternate payee under ORS  
27 238.390 (1), or as otherwise provided by ORS 238.390 and 238.395.

28 [(11)] (12) As used in this section, "court" means any court of appropriate jurisdiction of this  
29 or any other state or of the District of Columbia.

30 **SECTION 2.** ORS 238.565 is amended to read:

31 238.565. (1) For the purposes of this section, the beneficiary of the judge member shall be any  
32 person, or the personal representative of the estate of the judge member, or a trustee named by the  
33 judge member to execute an express trust, whom the judge member designates as a beneficiary by  
34 written designation duly acknowledged and filed with the board before the death of the judge mem-  
35 ber.

36 (2)(a) If a judge member who has six or more years of service as a judge dies before retiring,  
37 and the judge member is not an inactive judge member who is performing a pro tem service obli-  
38 gation under the provisions of ORS 238.545 (4), the surviving spouse of the judge member shall re-  
39 ceive a life pension, payable monthly, equal to two-thirds of the service retirement allowance the  
40 judge member would have received under ORS 238.535 (1)(a) had the judge member retired on the  
41 date of death.

42 (b) If a judge member who has six or more years of service as a judge dies before retiring, and  
43 the judge member is an inactive member who is performing a pro tem service obligation under the  
44 provisions of ORS 238.545 (4), the surviving spouse of the judge member shall receive a life pension,  
45 payable monthly, equal to two-thirds of the service retirement allowance the judge member would

1 have received under ORS 238.535 (1)(b) had the judge member retired on the date of death.

2 (c) If a surviving spouse receiving a pension under paragraph (a) or (b) of this subsection dies  
3 and the total amount received as pension by the surviving spouse is less than the amount credited  
4 to the member account of the judge member in the fund on the date of death of the judge member,  
5 the beneficiary shall receive a lump sum amount equal to the difference between the total amount  
6 received by the surviving spouse and the amount so credited to the member account of the judge  
7 member.

8 (d) If a judge member who has six or more years of service as a judge dies before retiring and  
9 has no surviving spouse, the beneficiary shall receive a lump sum amount equal to the amount  
10 credited to the member account of the judge member in the fund on the date of death of the judge  
11 member.

12 (e) If the surviving spouse of a judge member who dies before retiring is not entitled to a pen-  
13 sion under paragraph (a) or (b) of this subsection, the surviving spouse shall receive a lump sum  
14 amount equal to the amount credited to the member account of the judge member in the fund on the  
15 date of death of the judge member.

16 (3)(a) If a judge member dies after retiring, the surviving spouse of the judge member shall re-  
17 ceive a life pension, payable monthly, equal to two-thirds of the retirement allowance the judge  
18 member is receiving or is entitled to receive on the date of death.

19 (b) If a surviving spouse receiving a pension under paragraph (a) or (b) of this subsection dies  
20 and the total amount received as retirement allowance by the retired judge member and as pension  
21 by the surviving spouse is less than the amount credited to the member account of the judge member  
22 on the date of retirement of the judge member, the beneficiary shall receive a lump sum amount  
23 equal to the difference between the total amount received as retirement allowance and pension and  
24 the amount so credited to the member account of the judge member.

25 (c) If a judge member dies after retiring and has no surviving spouse, and the total amount re-  
26 ceived as retirement allowance by the retired judge member is less than the amount credited to the  
27 member account of the judge member on the date of retirement of the judge member, the beneficiary  
28 shall receive a lump sum amount equal to the difference between the total amount received as re-  
29 tirement allowance and the amount so credited to the member account of the judge member.

30 (4) At any time after becoming a judge member, but not later than the date on which the first  
31 payment on account of retirement is due, a judge member may elect to provide an addition to the  
32 pension of the surviving spouse of the judge member under subsection (3)(a) of this section by se-  
33 lecting a reduced retirement allowance for the judge member. The additional pension to the surviv-  
34 ing spouse shall be the actuarial equivalent of the reduction in the retirement allowance of the  
35 judge member and, in no event, when added to the pension under subsection (3)(a) of this section,  
36 shall it exceed the reduced retirement allowance elected by the judge member.

37 (5) Any accrued retirement allowance due a retired judge member that is unpaid at the time of  
38 death of the judge member shall be paid to the surviving spouse of the judge member. If there is no  
39 surviving spouse, the accrued retirement allowance shall be paid to the beneficiary of the judge  
40 member. If there is no surviving spouse or beneficiary, the accrued retirement allowance shall be  
41 paid as provided in ORS 238.390 (2).

42 (6) Notwithstanding any other provision of this section, a judge member shall be considered to  
43 have died with no surviving spouse if:

44 (a) The judge member has entered into a prenuptial or antenuptial agreement with the spouse  
45 of the judge that provides that the spouse shall have no right or claim to a surviving spouse's pen-

1 sion; *and*]

2 (b) The judge member has filed a copy of the prenuptial or antenuptial agreement with the board  
3 before the death of the judge member; **and**

4 (c) **A judgment, order or settlement has not designated the surviving former spouse as**  
5 **the alternate payee of the judge member under ORS 238.465.**

6 (7) The board shall not be liable for any payment made to a beneficiary by reason of a prenuptial  
7 or antenuptial agreement filed with the board under subsection (6) of this section unless the board  
8 has actual knowledge that the agreement has been revoked.

9 **SECTION 3. This 2007 Act being necessary for the immediate preservation of the public**  
10 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**  
11 **on its passage.**

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