

# Enrolled Senate Bill 370

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CHAPTER .....

AN ACT

Relating to payment of public retirement benefits to alternate payees; creating new provisions; amending ORS 237.600, 237.620, 238.465 and 238A.230; and declaring an emergency.

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

**SECTION 1.** ORS 238A.230, as amended by section 5, chapter 52, Oregon Laws 2014, is amended to read:

238A.230. (1) If a member of the pension program who is vested dies before the member's effective date of retirement, the Public Employees Retirement Board shall pay the death benefit provided for in this section to:

(a) The spouse of the member [or] to **the extent not provided to a former spouse in accordance with a judgment or order under ORS 238.465;**

(b) **The former spouse of the member as provided in a judgment or order under ORS 238.465; or**

(c) Any other person who is constitutionally required to be treated in the same manner as a spouse for the purpose of retirement benefits.

(2)(a) The death benefit to be paid under this section shall be for the life of the spouse, **former spouse** or other person who is constitutionally required to be treated in the same manner as a spouse, and shall be the actuarial equivalent of 50 percent of the pension that would otherwise have been paid to the deceased member.

(b) For the purpose of paragraph (a) of this subsection, the amount of the pension that would otherwise have been paid to the deceased member shall be calculated:

(A) As of the date of death if the member dies after the earliest retirement date for the member under ORS 238A.165; or

(B) As if the member became an inactive member on the date of death and thereafter retired at the earliest retirement date if the member dies before the earliest retirement date for the member under ORS 238A.165.

(3) The death benefit provided under this section is first effective on the first day of the month following the date of death of the member. The surviving spouse, **former spouse** or other person entitled to the death benefit may elect to delay payment of the death benefit, but payment must commence no later than December 31 of the calendar year in which the member would have reached 70-1/2 years of age.

(4) Notwithstanding any other provision of ORS 238A.100 to 238A.250, distributions of death benefits under the pension program must comply with the minimum distribution requirements of 26 U.S.C. 401(a)(9) and the regulations implementing that section, as in effect on December 31, 2013. The board shall adopt rules implementing those minimum distribution requirements.

**SECTION 2.** ORS 238.465 is amended to read:

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

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

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

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

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

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

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

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

**(e) That death benefits under ORS 238A.230 to which the alternate payee has been entitled as the spouse of a member shall be available to the alternate payee after the effective date of the judgment of annulment or dissolution of marriage or of separation.**

(3) The board shall adopt rules that provide for:

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

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

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

(4) An alternate payee may designate a beneficiary for the purposes of death benefits payable under ORS 238.390 and 238.395. Subject to ORS 238A.410 (2), an alternate payee may designate a beneficiary for the purposes of death benefits payable under ORS 238A.410. If the alternate payee fails to designate a beneficiary for the purposes of death benefits payable under ORS 238.390 and 238.395, the benefits shall be paid as provided by ORS 238.390 (2). If the alternate payee fails to designate a beneficiary for the purposes of death benefits payable under ORS 238A.410, the benefits shall be paid as provided by ORS 238A.410 (3). If a judgment, order or agreement awards an interest to an alternate payee, and if the alternate payee predeceases the member before the alternate payee has commenced receiving benefits, the alternate payee shall be considered a member of the system who died before retiring for the purposes of the death benefits provided in ORS 238.390, 238.395, 238A.230 and 238A.410, but for purposes of the death benefits provided in ORS 238.395, the alternate payee shall be considered a member of the system who died before retiring only if the member would have been eligible for death benefits under ORS 238.395 had the member died at the same time as the alternate payee. Payment of the death benefits to the beneficiaries, estate or other persons entitled to receive the benefits under ORS 238.390, 238.395, 238A.230 and 238A.410, shall constitute payment in full of the alternate payee's interest under the judgment, order or agreement.

(5) Any increase in the retirement allowance provided to the member shall increase the amounts paid to the alternate payee in the same proportion, except that:

(a) An alternate payee is not entitled to receive cost-of-living adjustments under ORS 238.360 or any other retirement allowance increase until benefits are first paid from the system on behalf of the member; and

(b) Cost-of-living adjustments under ORS 238.360 or 238A.210 to the retirement allowance paid to an alternate payee shall be calculated on the basis of the amount of the alternate payee's yearly allowance or yearly pension or benefit, as those terms are defined in ORS 238.360 and 238A.210.

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

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

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

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

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

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

**SECTION 3.** ORS 237.600 is amended to read:

237.600. (1) Notwithstanding any other provision of law, payment of any pension, annuity, retirement allowance, disability benefit, death benefit, refund benefit or other benefit under any public employer retirement plan other than the Public Employees Retirement System that would otherwise be made to a person entitled to benefits under the plan shall be paid, in whole or in part, to an alternate payee if and to the extent expressly provided for in the terms of any judgment of annulment or dissolution of marriage or of separation, or the terms of any court order or court-approved property settlement agreement incident to any judgment of annulment or dissolution of marriage or of separation. Notwithstanding any other provisions of this section, the total **actuarial** value of benefits payable to a member and to an alternate payee under this section may not be greater than the value of the benefits the member would otherwise be eligible to receive **if the annulment or dissolution of marriage or separation had not occurred**. Any payment under this subsection to an alternate payee bars recovery by any other person.

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

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

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

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

(b) That the alternate payee may elect to receive payment in any form of pension, annuity, retirement allowance, disability benefit, death benefit, refund benefit or other benefit, except a benefit in the form of a joint and survivor annuity, available to the member under the public employer retirement plan, or that would be available to the member if the member retired or separated from service at the time of election by the alternate payee, without regard to the form of benefit elected by the member.

(c) That the alternate payee's life is the measuring life for the purposes of measuring payments to the alternate payee under the form of benefit selected by the alternate payee.

**(d) That death benefits to which the alternate payee has been entitled as the spouse of a member shall be available to the alternate payee after the effective date of the judgment of annulment or dissolution of marriage or of separation.**

(3) Subsection (1) of this section applies only to payments made by the public employer retirement plan after the date of receipt by the administrators of the plan of written notice of the judgment, order or agreement and such additional information and documentation as the plan administrators may prescribe.

(4)(a) A judgment, order or agreement providing for payment to an alternate payee under subsection (1) of this section may not provide for payment to an alternate payee of:

(A) Any disability payments provided to a member of a public employer retirement plan in lieu of workers' compensation benefits pursuant to ORS 656.027 (6), to the extent those payments are to be made before the member attains 55 years of age; or

(B) Any medical or hospital benefits payable to a member as part of a disability benefit provided to a member of a public employer retirement plan in lieu of workers' compensation benefits pursuant to ORS 656.027 (6), regardless of the member's age.

(b) Paragraph (a) of this subsection does not prevent a court from considering the disability payments described in that paragraph in making a division of property pursuant to ORS 107.105 or an award of support.

(5) Any public employer or public employer retirement plan that is required by the provisions of this section to make a payment to some person other than a member of the retirement plan offered by the public employer shall charge and collect out of the benefits payable to the member and

the other person actual and reasonable administrative expenses and related costs incurred by the public employer or public employer retirement plan in obtaining data and making calculations that are necessary by reason of the provisions of this section. A public employer or public employer retirement plan may not charge more than \$300 for total administrative expenses and related costs incurred in obtaining data or making calculations that are necessary by reason of the provisions of this section. A public employer or public employer retirement plan that charges and collects administrative expenses and related costs under the provisions of this subsection shall allocate those expenses between the member of the retirement plan and any other person receiving a benefit from the plan based on the fraction of the benefit received by the member or person.

(6) As used in this section:

(a) "Court" means any court of appropriate jurisdiction of this or any other state or of the District of Columbia.

(b) "Member" means a person entitled to a benefit from a public employer retirement plan.

(c) "Public employer" means the state, one of its agencies, any city, county, municipal or public corporation, any political subdivision of the state or any instrumentality thereof, or an agency created by two or more such political subdivisions to provide themselves governmental services.

(d) "Public employer retirement plan" means any system, program, annuity, contract or other plan established by a public employer for the purpose of providing a pension, annuity, retirement allowance or disability benefit to officers or employees of the public employer.

**SECTION 4.** ORS 237.620 is amended to read:

237.620. (1) Except as provided in this section, all public employers of police officers or firefighters shall provide retirement benefits to those employees under the Public Employees Retirement System.

(2) Notwithstanding subsection (1) of this section, a public employer of police officers or firefighters need not provide retirement benefits to those employees under the Public Employees Retirement System if the Public Employees Retirement Board determines that the public employer provides retirement benefits to each of the following classes of employees that are equal to or better than the retirement benefits that would be provided to the equivalent classes of employees under the Public Employees Retirement System:

(a) Police officers or firefighters who are entitled to receive benefits only under ORS chapter 238 and who established membership in the system before January 1, 1996, as described in ORS 238.430 (2);

(b) Police officers or firefighters who are entitled to receive benefits only under ORS chapter 238 and who established membership in the system on or after January 1, 1996, and before August 29, 2003, as described in ORS 238A.025 (4); and

(c) Police officers or firefighters who establish membership in the system on or after August 29, 2003, and are entitled to benefits only under the Oregon Public Service Retirement Plan.

**(3) A public employer that provides retirement benefits under subsection (2) of this section must provide that:**

**(a) If an employee to whom the public employer provides retirement benefits dies before the employee's effective date of retirement, a former spouse of the employee is entitled to a death benefit if and to the extent provided for in the terms of any judgment of annulment or dissolution of marriage or of separation, or the terms of any court order or court-approved property settlement agreement incident to any judgment of annulment or dissolution of marriage or of separation, as if the former spouse were the surviving spouse of the employee, as provided in ORS 237.600.**

**(b) If an employee to whom the public employer provides retirement benefits dies before the employee's effective date of retirement and has a dependent child who is not supported by the former spouse who is treated as the surviving spouse under paragraph (a) of this subsection, the dependent child is entitled to a death benefit.**

**(4) Notwithstanding subsection (3) of this section, a former spouse or dependent child of an employee is not entitled to a death benefit if, before the death of the employee, the former**

**spouse or dependent child has commenced receiving a retirement benefit provided for in the terms of any judgment of annulment or dissolution of marriage or of separation, or the terms of any court order or court-approved property settlement agreement incident to any judgment of annulment or dissolution of marriage or of separation, as provided in ORS 237.600.**

[3] (5) At such times as may be established by board rule, the Public Employees Retirement Board shall review the retirement benefits provided by a public employer of police officers or fire-fighters that does not provide retirement benefits for those employees under the Public Employees Retirement System. The review must be conducted at the expense of the public employer. Based on the review, the board shall determine whether the public employer complies with the requirements of subsection (2) of this section. If the board determines that the public employer does not comply with the requirements of subsection (2) of this section for any class of employees described in subsection (2) of this section, the public employer must provide that class of employees with retirement benefits adequate to meet the requirements of subsection (2) of this section. If the public employer fails to provide those benefits, any employee within the class may bring an action in circuit court to compel compliance with the requirements of this section.

**SECTION 5. The amendments to ORS 237.620 by section 4 of this 2015 Act do not affect any collective bargaining agreement entered into before the effective date of this 2015 Act. Any collective bargaining agreement entered into on or after the effective date of this 2015 Act must comply with ORS 237.620 as amended by section 4 of this 2015 Act.**

**SECTION 6. (1) The amendments to ORS 237.600, 238.465 and 238A.230 by sections 1 to 3 of this 2015 Act apply only to benefits of a member who dies on or after the effective date of this 2015 Act.**

**(2) The amendments to ORS 237.620 by section 4 of this 2015 Act apply only to employees to whom a public employer provides retirement benefits under ORS 237.620 (2) who die on or after the effective date of this 2015 Act.**

**SECTION 7. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.**

**Passed by Senate April 23, 2015**

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

**Passed by House June 8, 2015**

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Tina Kotek, Speaker of House

**Received by Governor:**

.....M.,....., 2015

**Approved:**

.....M.,....., 2015

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2015

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Jeanne P. Atkins, Secretary of State