

# Senate Bill 370

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## 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 certain death benefits available to members of Public Employees Retirement System and other public employer retirement plans may be paid to former spouse as provided in judgment of annulment or dissolution of marriage or of separation.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to payment of public retirement benefits to alternate payees; creating new provisions;  
3 amending ORS 237.600, 238.465 and 238A.230; and declaring an emergency.

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

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

7 238A.230. (1) If a member of the pension program who is vested dies before the member's effec-  
8 tive date of retirement, the Public Employees Retirement Board shall pay the death benefit provided  
9 for in this section to:

10 (a) The spouse of the member [*or to*];

11 (b) **The former spouse of the member as provided in a judgment of annulment or dissol-**  
12 **ution of marriage or of separation under ORS 238.465; or**

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

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

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

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

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

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

**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 70-1/2 years of age.

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

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

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

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

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

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

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

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

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

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

45 **(e) That death benefits under ORS 238A.230 to which the alternate payee has been enti-**

1 **tled as the spouse of a member shall be available to the alternate payee after the effective**  
2 **date of the judgment of annulment or dissolution of marriage or of separation.**

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

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

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

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

10 (4) An alternate payee may designate a beneficiary for the purposes of death benefits payable  
11 under ORS 238.390 and 238.395. Subject to ORS 238A.410 (2), an alternate payee may designate a  
12 beneficiary for the purposes of death benefits payable under ORS 238A.410. If the alternate payee  
13 fails to designate a beneficiary for the purposes of death benefits payable under ORS 238.390 and  
14 238.395, the benefits shall be paid as provided by ORS 238.390 (2). If the alternate payee fails to  
15 designate a beneficiary for the purposes of death benefits payable under ORS 238A.410, the benefits  
16 shall be paid as provided by ORS 238A.410 (3). If a judgment, order or agreement awards an interest  
17 to an alternate payee, and if the alternate payee predeceases the member before the alternate payee  
18 has commenced receiving benefits, the alternate payee shall be considered a member of the system  
19 who died before retiring for the purposes of the death benefits provided in ORS 238.390, 238.395,  
20 238A.230 and 238A.410, but for purposes of the death benefits provided in ORS 238.395, the alternate  
21 payee shall be considered a member of the system who died before retiring only if the member would  
22 have been eligible for death benefits under ORS 238.395 had the member died at the same time as  
23 the alternate payee. Payment of the death benefits to the beneficiaries, estate or other persons en-  
24 titled to receive the benefits under ORS 238.390, 238.395, 238A.230 and 238A.410, shall constitute  
25 payment in full of the alternate payee's interest under the judgment, order or agreement.

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

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

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

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

36 (7) An alternate payee who elects to begin receiving payments under subsection (1) of this sec-  
37 tion before the member's effective date of retirement is not eligible to receive any additional pay-  
38 ment by reason of credit in the system acquired by the member after the alternate payee begins to  
39 receive payments.

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

43 (9) Whenever the board is required to make payment to an alternate payee under the provisions  
44 of this section, the board shall charge and collect out of the benefits payable to the member and the  
45 alternate payee actual and reasonable administrative expenses and related costs incurred by the

1 board in obtaining data and making calculations that are necessary by reason of the provisions of  
2 this section. The board may not charge more than \$300 for total administrative expenses and related  
3 costs incurred in obtaining data or making calculations that are necessary by reason of the pro-  
4 visions of this section. The board shall allocate expenses and costs charged under the provisions of  
5 this subsection between the member and the alternate payee based on the fraction of the benefit  
6 received by the member or alternate payee.

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

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

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

17 237.600. (1) Notwithstanding any other provision of law, payment of any pension, annuity, re-  
18 tirement allowance, disability benefit, death benefit, refund benefit or other benefit under any public  
19 employer retirement plan other than the Public Employees Retirement System that would otherwise  
20 be made to a person entitled to benefits under the plan shall be paid, in whole or in part, to an al-  
21 ternate payee if and to the extent expressly provided for in the terms of any judgment of annulment  
22 or dissolution of marriage or of separation, or the terms of any court order or court-approved  
23 property settlement agreement incident to any judgment of annulment or dissolution of marriage or  
24 of separation. Notwithstanding any other provisions of this section, the total value of benefits pay-  
25 able to a member and to an alternate payee under this section may not be greater than the value  
26 of the benefits the member would otherwise be eligible to receive. Any payment under this sub-  
27 section to an alternate payee bars recovery by any other person.

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

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

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

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

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

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

44 **(d) That survivor or death benefits to which the alternate payee has been entitled as the**  
45 **spouse of a member shall be available to the alternate payee after the effective date of the**

1 **judgment of annulment or dissolution of marriage or of separation, notwithstanding the fact**  
 2 **that the alternate payee is no longer the member's spouse.**

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

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

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

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

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

18 (5) Any public employer or public employer retirement plan that is required by the provisions  
 19 of this section to make a payment to some person other than a member of the retirement plan of-  
 20 fered by the public employer shall charge and collect out of the benefits payable to the member and  
 21 the other person actual and reasonable administrative expenses and related costs incurred by the  
 22 public employer or public employer retirement plan in obtaining data and making calculations that  
 23 are necessary by reason of the provisions of this section. A public employer or public employer re-  
 24 tirement plan may not charge more than \$300 for total administrative expenses and related costs  
 25 incurred in obtaining data or making calculations that are necessary by reason of the provisions of  
 26 this section. A public employer or public employer retirement plan that charges and collects ad-  
 27 ministrative expenses and related costs under the provisions of this subsection shall allocate those  
 28 expenses between the member of the retirement plan and any other person receiving a benefit from  
 29 the plan based on the fraction of the benefit received by the member or person.

30 (6) As used in this section:

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

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

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

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

40 **SECTION 4. The amendments to ORS 237.600, 238.465 and 238A.230 by sections 1 to 3 of**  
 41 **this 2015 Act apply only to benefits that accrue on behalf of a member who dies on or after**  
 42 **the effective date of this 2015 Act.**

43 **SECTION 5. This 2015 Act being necessary for the immediate preservation of the public**  
 44 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**  
 45 **on its passage.**

