

**Chapter 38. Employment-Related Benefits for Same-Sex Partners of State [EMPLOYEES
AND] Retirees Under the State's Retirement Systems.**

Section

- 05. (Expired)
- 10. **(Repealed)** [SAME-SEX PARTNER INSURANCE COVERAGE]
- 30. **(Repealed)** [ENROLLMENT OF SAME-SEX PARTNER AND SAME-SEX PARTNER'S ELIGIBLE CHILD]
- 50. Imputation of income and effect on pre-tax premiums
- 70. Same-sex partner survivor benefits **for a member of a state retirement system who retired before January 1, 2016**
- 100. Responsibilities and rights of a [STATE EMPLOYEE OR] member of a state retirement system and same-sex partner

2 AAC 38.010 is repealed:

2 AAC 38.010. Same-sex partner insurance coverage. Repealed. (Effective date for medical benefit provisions: 11/12/2006, Register 181; effective date for retirement systems benefits provisions: 11/16/2006, Register 181; repealed __/__/____, Register ____)

Editor's note: The two November 2006 effective dates for the provisions of **former** 2 AAC 38.010 were established by the Alaska Supreme Court in its order of December 19, 2006 in State of Alaska v. Alaska Civil Liberties Union, et al (Supreme Court No. S-12480) 159 P.3d

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513. 2 AAC 38.010 first appeared in print in the Alaska Administrative Code in Register 181, April 2007.

2 AAC 38.030 is repealed:

2 AAC 38.030. Enrollment of same-sex partner and same-sex partner's eligible child. Repealed. (Effective date for medical benefits provisions: 11/12/2006, Register 181; effective date for retirement systems benefits provisions: 11/16/2006, Register 181; repealed ___/___/___, Register ___)

Editor's note: The two November 2006 effective dates for the provisions of **former** 2 AAC 38.030 were established by the Alaska Supreme Court in its order of December 19, 2006 in State of Alaska v. Alaska Civil Liberties Union, et al (Supreme Court No. S-12480) 159 P.3d 513. 2 AAC 38.030 first appeared in print in the Alaska Administrative Code in Register 181, April 2007.

2 AAC 38.050 is amended to read:

2 AAC 38.050. Imputation of income and effect on pre-tax premiums. (a) Income will be imputed for federal tax purposes to

(1) **a** [AN EMPLOYEE OR] member of a state retirement system who **enrolled** [ENROLLS] a same-sex partner or child of a same-sex partner **before January 1, 2016** who is not an eligible dependent under 26 U.S.C. 152, without regard to **26 U.S.C. 152(b)(1) and (2) and (d)(1)(B)** [26 U.S.C. 152(b)(1), (b)(2) AND (d)(1)(B)], in group insurance coverage under

2 AAC 38.010, as that section read on December 31, 2015;

(2) a same-sex partner of a member of a state retirement system enrolled before January 1, 2016 if the same-sex partner was not an eligible dependent of the member under 26 U.S.C. 152, without regard to 26 U.S.C. 152(b)(1) and (2) and (d)(1)(B) [26 U.S.C. 152(b)(1), (b)(2) AND (d)(1)(B)], at the time of the member's death and if the same-sex partner was [IS] enrolled in group insurance coverage as a survivor of the member under 2 AAC 38.010, as that section read on December 31, 2015.

(b) The amount of income imputed to a [AN EMPLOYEE,] retirement system member [,] or survivor under this section will be based on the fair market value of the coverage provided to the non-dependent same-sex partner as established by the administrator of the state's [EMPLOYEE AND] retiree health plans. [THE FAIR MARKET VALUE OF COVERAGE PROVIDED BY A UNION HEALTH TRUST UNDER AN ALTERNATIVE INSURANCE PROGRAM UNDER AN EXEMPTION ALLOWED BY REGULATIONS ADOPTED BY THE COMMISSIONER UNDER AS 39.30.090(a)(2) WILL BE ESTABLISHED IN CONSULTATION WITH THE APPLICABLE TRUST.]

(c) Repealed / / [IF AN EMPLOYEE'S PREMIUM PAYMENT FOR GROUP INSURANCE COVERAGE OF A SAME-SEX PARTNER OR CHILD OF A SAME-SEX PARTNER IS NOT ELIGIBLE FOR PRE-TAX TREATMENT, THE PREMIUM PAYMENT WILL BE DEDUCTED ON A POST-TAX BASIS IN THE AMOUNT ESTABLISHED BY THE ADMINISTRATOR OF THE APPLICABLE PLAN].

(d) Repealed / / [INCOME IMPUTED UNDER THIS SECTION DOES NOT CONSTITUTE COMPENSATION FOR PURPOSES OF DETERMINING EMPLOYER

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OR EMPLOYEE CONTRIBUTIONS OR COMPUTATION OF BENEFITS UNDER THE STATE'S RETIREMENT SYSTEMS OR ALASKA SUPPLEMENTAL ANNUITY PLAN].

(Effective date for medical benefits provisions: 11/12/2006, Register 181; effective date for retirement systems benefits provisions: 11/16/2006, Register 181; am ___/___/____, Register ___)

Authority: AS 14.25.005 AS 39.30.090 Former AS 39.37.090
AS 22.25.027 AS 39.35.005

2 AAC 38.070 is amended to read:

2 AAC 38.070. Same-sex partner survivor benefits for a member of a state retirement system who retired before January 1, 2016. (a) [A STATE EMPLOYEE OR MEMBER OF A STATE RETIREMENT SYSTEM MAY DESIGNATE THE EMPLOYEE'S OR RETIREMENT SYSTEM MEMBER'S SAME-SEX PARTNER AS THE BENEFICIARY TO RECEIVE SURVIVOR BENEFITS THAT ARE AVAILABLE TO AN EMPLOYEE'S OR RETIREMENT SYSTEM MEMBER'S SURVIVING SPOUSE IN ACCORDANCE WITH THIS SECTION.] Survivor benefits **for a member of a state retirement system who retired before January 1, 2016 and made an irrevocable designation of a same-sex partner to receive survivor benefits** are payable to a same-sex partner designated [UNDER THIS SECTION] to the extent the benefits are not payable to a former spouse under the terms of a qualified domestic relations order. **A designation by the member of a state retirement system of a same-sex partner to receive survivor benefits must meet the requirements of this section.**

(b) A designation **made before January 1, 2016** of a same-sex partner to receive survivor benefits that may be paid to a person other than a spouse under applicable statute is valid to the same extent the designation of any other non-spouse beneficiary is valid under the statute.

(c) A designation **made before January 1, 2016** by a member of a state retirement system of a same-sex partner as beneficiary to receive survivor benefits that are available to a surviving spouse under AS 14.25.155, 14.25.157, 14.25.160, 14.25.162, 14.25.164, 14.25.167, 14.25.420, 14.25.485, 14.25.487; AS 22.25.030; AS 39.35.420, 39.35.430, 39.35.440, 39.35.450, 39.35.890, 39.35.892; or former AS 39.37.060 is not valid unless the member files with the administrator

(1) with the designation of beneficiary an affidavit executed by the member and the same-sex partner **declaring** [MAKING THE DECLARATIONS,] under penalty of perjury **that they**

(A) are at least 18 years of age and are each competent to enter into a contract;

(B) have been in an exclusive, committed, and intimate relationship with each other for 12 consecutive months before the member's retirement effective date and intend to continue that relationship indefinitely;

(C) have resided together at a common primary residence for 12 consecutive months before the member's retirement effective date and intend to reside together indefinitely;

(D) consider themselves to be members of each other's immediate

family;

(E) are not related to each other to a degree of closeness that would preclude them from marrying each other in this state if they were of the opposite sex from each other;

(F) are neither one of them legally married to anyone else;

(G) have not executed an affidavit affirming same-sex partner status with anyone else within 12 months before the member's retirement effective date;

(H) are each other's sole domestic partner and are each responsible for the common welfare of the other;

(I) share financial obligations, including joint responsibility for basic living expenses and health care costs;

(J) understand that, under applicable federal income tax law, payments for medical coverage of a same-sex partner or child of a same-sex partner may not be eligible for pre-tax treatment, and coverage of a same-sex partner may result in additional imputed taxable income to the covered retirement system member, or survivor and related withholding for pension and annuity taxes; and

(K) understand that, in addition to requirements of this section, there are terms and conditions of coverage set out in the state plan of self-insurance for retirees [, SET OUT IN 2 AAC 38.010(b)]; and

(2) documentation establishing that the **retirement system** member and same-sex partner meet at least five of the **following** criteria:

(A) joint interest in real property, as evidenced by title or mortgage,

lease, or rental agreement, by the retirement system member and the same-sex partner;

(B) joint ownership or purchase of a motor vehicle by the retirement system member and the same-sex partner;

(C) joint ownership of a checking, savings, or investment account or joint liability for a loan or credit account by the retirement system member and the same-sex partner;

(D) the same-sex partner is named as primary beneficiary for a life insurance policy of the retirement system member;

(E) the same-sex partner is named as primary beneficiary for the retirement system member's pension or annuity plan benefits, deferred compensation plan, Individual Retirement Arrangement or Account, 401(k) plan, Keogh plan, or other tax-deferred or taxable plan;

(F) the same-sex partner is named as primary beneficiary in the retirement system member's will;

(G) the same-sex partner has authority to deal with property owned by the retirement system member under a valid written power of attorney;

(H) the retirement system member has given the same-sex partner written authority to make decisions concerning the retirement system member's health and well being if the retirement system member is unable to do so [SET OUT

IN 2 AAC 38.010(c)].

(d) A deceased [EMPLOYEE'S OR] retirement system member's same-sex partner

whom the administrator determines is validly designated as the [EMPLOYEE'S OR] member's beneficiary to receive survivor benefits has the same rights to survivor benefits, including group insurance and alternative insurance benefits available under the applicable plan, that a surviving spouse would have, and is subject to the same requirements that a surviving spouse would be subject to relating to those benefits.

(e) [AN EMPLOYEE OR MEMBER OF A STATE RETIREMENT SYSTEM MAY REVOKE A DESIGNATION OF BENEFICIARY UNDER THIS SECTION AT ANY TIME.]

After the date of retirement, a **retirement system** member's revocation of the designation of the member's same-sex partner as the beneficiary to receive survivor benefits does not change the form or amount of a joint and survivor benefit payable to the member or allow designation of a different beneficiary to receive the joint and survivor benefit.

(f) **A** [AN EMPLOYEE OR] member of a state retirement system who has designated a same-sex partner as beneficiary under this section shall provide written confirmation of the designation, supplementing documentation provided under (c) of this section if that information has changed, upon request of and in the manner requested by the plan administrator. Failure to provide written confirmation requested by the plan administrator may result in ineligibility of the designated same-sex partner for survivor benefits.

2 AAC 38.070 is amended by adding new subsections to read:

(g) A retirement system member who enrolls a same-sex partner, or same-sex partner and eligible child under (c) of this section, in coverage under this section shall pay any premium established by the plan that the retirement system member is required to pay for comparable

coverage for a spouse or spouse and dependent child.

(h) In this section, "resided together at a common primary residence" requires the member of a state retirement system and the member's same-sex partner to share the same domicile. The common primary residence can change during the 12-month period set out in (c) of this section. Once a member of a state retirement system and same-sex partner have begun to reside together at a common primary residence, absence by the retirement system member or the same-sex partner required for employment that requires periodic absence from the common primary residence, education, medical reasons, military service, or other reasons determined by the plan administrator will not result in a break in eligibility, as long as the absent retirement system member or same-sex partner intends to return to common primary residence. (Effective date for medical benefits provisions: 11/12/2006, Register 181; effective date for retirement systems benefits provisions: 11/16/2006, Register 181; am __/__/__, Register ____)

Authority: AS 14.25.005 AS 39.35.005 Former AS 39.37.090
AS 22.25.027

2 AAC 38.100 is amended to read:

2 AAC 38.100. Responsibilities and rights of a [STATE EMPLOYEE OR] member of a state retirement system and same-sex partner. (a) It is the responsibility of a [STATE EMPLOYEE OR] member of a state retirement system to comply with all requirements of an insurance, retirement, or benefit plan or program, including all application, designation, affidavit, and documentation requirements, in order to provide or allow provision of benefits to the [EMPLOYEE'S OR] retirement system member's same-sex partner. Except when specifically

provided by this chapter or the terms of an insurance, retirement, or benefit plan or program, **a** [AN EMPLOYEE'S OR] retirement system member's compliance with the application, affidavit, and documentation requirements of a plan or program does not entitle the [EMPLOYEE'S OR] retirement system member's same-sex partner to rights or benefits under a different plan or program.

(b) Nothing in this chapter supersedes the requirements of a court order regarding rights or benefits of a former spouse or dependents of **a** [AN EMPLOYEE OR] retirement system member.

(c) Nothing in this chapter provides, or allows the provision of, any right or benefit to the same-sex partner of **a** [AN EMPLOYEE OR] retirement system member that would not be available to the spouse of the [EMPLOYEE OR] retirement system member. (Effective date for medical benefit provisions: 11/12/2006, Register 181; effective date for retirement systems benefits provisions: 11/16/2006, Register 181; am ___/___/____, Register ____)

Authority: AS 14.25.005 AS 39.30.090 Former AS 39.37.090
 AS 22.25.027 AS 39.35.005