

LEGISLATIVE BILL 223

Approved by the Governor March 30, 1983

Introduced by Nebraska Retirement Systems,
 Fowler, 27, Chairperson; Warner, 25;
 Goodrich, 20; Schmit, 23; Wesely, 26;
 Vickers, 38

AN ACT relating to retirement; to amend sections 24-701, 24-707, and 24-709, Reissue Revised Statutes of Nebraska, 1943, and 84-1301, Revised Statutes Supplement, 1982; to redefine terms; to change retirement provisions for certain judges; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 24-701, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-701. As used in sections 24-701 to 24-714, unless the context otherwise requires:

(1) Fund shall mean the Nebraska Retirement Fund for Judges;

(2) Judge shall mean and include (a) all duly elected or appointed Chief Justices or Judges of the Supreme Court and judges of the district courts of Nebraska, who shall serve in such capacity on and after January 3, 1957, and shall mean and include (b) all duly appointed judges of the Nebraska Workmen's Compensation Court who shall serve in such capacity on and after September 20, 1957, (c) judges of separate juvenile courts, (d) county judges of the respective counties, who shall serve in such capacity on and after January 5, 1961, except acting county judges appointed pursuant to section 24-507, (e) district county judges and associate county judges, who shall serve in such capacity on and after January 4, 1973, except (i) associate county judges serving on a pro tempore basis as designated by the Supreme Court or (ii) associate county judges appointed after the effective date of this act, and (f) judges of municipal courts established by Chapter 26, article 1, who shall serve in such capacity on and after October 23, 1967;

(3) Prior service shall mean all the periods of time any person has served as a (a) Judge of the

Supreme Court or judge of the district court prior to January 3, 1957, (b) judge of the county court prior to January 5, 1961, (c) judge of the Nebraska Workmen's Compensation Court prior to September 20, 1957, (d) judge of the separate juvenile court, or (e) judge of the municipal court prior to October 23, 1967;

(4) Current service shall mean the period of service any Judge of the Supreme Court or judge of the district court shall serve in such capacity from and after January 3, 1957, and shall mean the period of service any judge of the Nebraska Workmen's Compensation Court shall serve in such capacity from and after September 20, 1957, and any county judge shall serve in such capacity from and after January 5, 1961, and any judge of a separate juvenile court shall serve in such capacity and any judge of the municipal court shall serve in such capacity subsequent to October 23, 1967, and any district county judge or associate county judge shall serve in such capacity subsequent to January 4, 1973;

(5) Military service shall mean active service of any Judge of the Supreme Court or district court in any of the armed forces of the United States during a war or national emergency prior or subsequent to September 18, 1955, and shall mean active service of any judge of the Nebraska Workmen's Compensation Court in any of the armed forces of the United States during a war or national emergency prior or subsequent to September 20, 1957, and shall mean active service of any judge of the municipal court in any of the armed forces of the United States during a war or national emergency prior or subsequent to October 23, 1967, if such service commenced while such judge was holding the office of judge, and shall mean active service of any district county judge or associate county judge in any of the armed forces of the United States during a war or national emergency prior or subsequent to January 4, 1973, if such service commenced while such judge was holding the office of judge. The board shall have the power to determine when a national emergency exists or has existed for the purpose of applying this definition and provision;

(6) Total years of service shall mean the total number of years served as a judge, including prior service, military service, and current service as defined in this section computed to the nearest one-twelfth year;

(7) Salary shall mean the statutory salary of a judge or the salary being received by such judge pursuant to law;

(8) Beneficiary shall mean a person so designated by a judge in the last written designation of beneficiary on file with the board, or if no designated

person survives or if no designation is on file, the estate of such judge;

(9) Annuity shall mean a series of equal monthly payments payable at the end of each calendar month during the life of a retired judge. The first payment shall be made as of the end of the calendar month in which such annuity was awarded and the last payment shall be at the end of the calendar month in which such judge shall die. The first payment shall include all amounts accrued since the effective date of the award of annuities, including a pro rata portion of the monthly amount of any fraction of a month elapsing between the effective date of such annuity and the end of the calendar month in which such annuity began;

(10) Board shall mean the Public Employees Retirement Board;

(11) Member shall mean a judge, as defined in subdivision (2) of this section, eligible to participate in the retirement system established under the provisions of sections 24-701 to 24-714;

(12) Original member shall mean a judge who first served as a judge, as defined in subdivision (2) of this section, prior to December 25, 1969, and who does not elect to become a future member on or before June 30, 1970;

(13) Future member shall mean a judge who first served as a judge, as defined in subdivision (2) of this section, on or after December 25, 1969, or shall mean a judge who first served as a judge, as defined in subdivision (2) of this section, prior to December 25, 1969, who elects to become a future member on or before June 30, 1970, as provided in subsection (8) of section 24-703;

(14) Final average salary shall mean the average monthly salary for the last four years service as a judge or, in the event of a judge serving less than four years, the average monthly salary for such judge's period of service. ~~The~~ ; Provided, that final average salary of any judge who has retired or who will retire during or at the end of the presently current judicial term shall mean the average monthly salary for his or her last year of service before retirement; and

(15) Regular interest shall mean the rate of interest earned each fiscal year commencing July 1, 1974, as determined by the retirement board in conformity with actual and expected earnings on its investments.

Sec. 2. That section 24-707, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-707. In the event of the death of a judge prior to his retirement, if such judge shall have had ten five or more years of service, the spouse of such

judge shall at his or her option be immediately entitled to receive those benefits which the spouse would have been entitled to under subsection (5) of section 24-710, had the judge retired on the date of death and elected to have the retirement annuity paid as a joint and survivor annuity payable as long as either the judge or the judge's spouse should survive. --- If ; Provided, that if such option is not exercised by such spouse within ninety days of the judge's death, if no spouse survives, or if the judge has not served for ten five years, then his the beneficiary, or his the estate if he the judge has not filed a written statement with the board naming a beneficiary, shall be paid a lump sum equal to all contributions to the fund made by such judge plus regular interest. In the event of the death of a judge subsequent to his retirement, if such a judge has not filed a written statement of intent with the board to elect to receive any other form of annuity which may be provided for by sections 24-707 and 24-710, the amount of annuities he such judge has received under the provisions of sections 24-701 to 24-714 shall be computed and if such amount shall be less than the contributions to the fund made by such judge, the difference shall be paid to his the beneficiary.

Sec. 3. That section 24-709, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-709. Any judge, except an associate county judge, who has become physically or mentally disabled, which disability seriously interferes with the performance of his or her duties and which disability is determined to be permanent or reasonably likely to become permanent, may, upon being found so disabled by the Commission on Judicial Qualifications, retire or be retired, and upon such retirement he or she shall be entitled to receive the retirement annuity as provided in section 24-710. Any judge, or the guardian of any judge, so permanently disabled desiring to so retire, shall file an application for such retirement with the commission, which application shall be in such form and contain such information as such commission shall require. Such commission may require such judge to be examined by a physician appointed by the commission and may require such other evidence and proof of disability as it deems necessary to reach a determination as to whether such judge is so permanently disabled. If the commission shall determine that any such judge is so permanently disabled, it shall promptly notify the judge and the Public Employees Retirement Board and thereupon such judge shall be placed on retirement by the board and receive the retirement annuity each month as is provided in section 24-710.

Sec. 4. That section 84-1301, Revised Statutes Supplement, 1982, be amended to read as follows:

84-1301. As used in sections 84-1301 to 84-1331, unless the context otherwise requires:

(1) Employee shall mean any employee of the State Board of Agriculture who is a member of the state retirement plan on July 1, 1982, and any person or officer employed by the State of Nebraska whose compensation is paid out of state funds or funds controlled or administered by a state department through any of its executive or administrative officers when acting exclusively in their respective official, executive, or administrative capacities; but shall not include judges, except associate county judges appointed after the effective date of this act, members of the Nebraska State Patrol, employees of the University of Nebraska, employees of the state colleges, employees of technical community colleges, employees of the Division of Employment of the Department of Labor, the Commissioner of Labor, employees of the State Board of Agriculture who are not members of the state retirement plan on July 1, 1982, the Nebraska National Guard air and army technicians, or persons eligible for membership under the School Retirement System of the State of Nebraska who have not elected to become members of the system pursuant to subsection (1) of section 79-1565 or made members of the system pursuant to subsection (3) of section 79-1565, except that those persons so eligible and who as of September 2, 1973, are contributing to the State Employees Retirement System shall continue as members of such system. Any ; Provided, that any individual appointed by the Governor may elect not to become a member of such retirement system;

(2) Part-time employee shall mean an employee who works less than one half of the regularly scheduled hours;

(3) Retirement shall mean qualifying for and accepting a retirement allowance granted under the provisions of sections 84-1301 to 84-1331;

(4) Retirement board or board shall mean the Public Employees Retirement Board;

(5) Retirement system shall mean the State Employees Retirement System of the State of Nebraska;

(6) Required contribution shall mean the deduction to be made from the salary of employees, as provided in sections 84-1301 to 84-1331;

(7) Service shall mean the actual total length of employment as an employee and shall include leave of absence because of disability or military service when properly authorized by the retirement board, but ; Provided, that service shall not include any period of

disability for which disability retirement benefits are received under the provisions of section 84-1317;

(8) Straight life annuity shall mean an ordinary annuity, payable for the life of the primary annuitant only, and terminating at his or her death without refund or death benefit of any kind;

(9) Prior service shall mean service before January 1, 1964;

(10) Group annuity contract shall mean the contract or contracts issued by one or more life insurance companies to the retirement system in order to provide the benefits described in sections 84-1301 to 84-1331;

(11) Primary carrier shall mean the life insurance company or trust company designated as the administrator of the group annuity contract;

(12) State department shall mean any department, bureau, commission, or other division of state government, not otherwise specifically defined or exempted in sections 84-1301 to 84-1331, whose employees and officers are not already covered by a retirement plan;

(13) Disability shall mean an inability to engage in a substantially gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration;

(14) Date of disability shall mean the date on which a member is determined to be disabled by the board; and

(15) Regular interest shall mean the rate of interest earned each calendar year commencing January 1, 1975, as determined by the retirement board in conformity with actual and expected earnings on its investments.

Sec. 5. (1) Associate county judges appointed before the effective date of this act shall have questions of disability decided by the Public Employees Retirement Board. Any such associate county judge may be retired as a result of disability either upon his or her own application or upon the application of an employer or any person acting in his or her behalf. Upon such retirement he or she shall be entitled to receive the retirement annuity as provided in section 24-710. Before any such associate county judge may be retired, a medical examination shall be made at the expense of the Nebraska Retirement Fund for Judges, which examination shall be conducted by a disinterested physician licensed to practice medicine in this state, such physician to be selected by the board, and the physician shall certify to the board that the associate county judge is physically or mentally incapable of further performing his or her duties and should be

retired. The application for disability retirement shall be made within one year of termination of employment.

(2) The board may require any such disability beneficiary who has not attained the age of sixty-five to undergo a medical examination at the expense of the board once each year. Should any disability beneficiary refuse to undergo such an examination, his or her disability retirement benefit may be discontinued by the board.

Sec. 6. That original sections 24-701, 24-707, and 24-709, Reissue Revised Statutes of Nebraska, 1943, and 84-1301, Revised Statutes Supplement, 1982, are repealed.