LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 278

Introduced by Kolterman, 24.

Read first time January 11, 2017

Committee: Nebraska Retirement Systems

A BILL FOR AN ACT relating to retirement; to amend sections 23-2315.01, 79-951, 84-1301, and 84-1323.01, Reissue Revised Statutes of Nebraska, and sections 23-2301 and 79-902, Revised Statutes Cumulative Supplement, 2016; to redefine disability and change disability retirement application and medical examination provisions under the County Employees Retirement Act, School Employees Retirement Act, and State Employees Retirement Act; to provide duties for the Public Employees Retirement Board; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 23-2301, Revised Statutes Cumulative Supplement, 2016, is amended to read:

23-2301 For purposes of the County Employees Retirement Act, unless the context otherwise requires:

(1) Actuarial equivalent means the equality in value of the aggregate amounts expected to be received under different forms of an annuity payment. The mortality assumption used for purposes of converting the member cash balance account shall be the 1994 Group Annuity Mortality Table using a unisex rate that is fifty percent male and fifty percent female. For purposes of converting the member cash balance account attributable to contributions made prior to January 1, 1984, that were transferred pursuant to the act, the 1994 Group Annuity Mortality Table for males shall be used;

(2) Annuity means equal monthly payments provided by the retirement system to a member or beneficiary under forms determined by the board beginning the first day of the month after an annuity election is received in the office of the Nebraska Public Employees Retirement Systems or the first day of the month after the employee's termination of employment, whichever is later. The last payment shall be at the end of the calendar month in which the member dies or in accordance with the payment option chosen by the member;

(3) Annuity start date means the date upon which a member's annuity is first effective and shall be the first day of the month following the member's termination or following the date the application is received by the board, whichever is later;

(4) Cash balance benefit means a member's retirement benefit that is equal to an amount based on annual employee contribution credits plus interest credits and, if vested, employer contribution credits plus interest credits and dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317;

(5)(a) Compensation means gross wages or salaries payable to the
member for personal services performed during the plan year. Compensation does not include insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, per diems, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125, 403(b), and 457 of the Internal Revenue Code or any other section of the code which defers or excludes such amounts from income.

(b) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

(6) Date of adoption of the retirement system by each county means the first day of the month next following the date of approval of the retirement system by the county board or January 1, 1987, whichever is earlier;

(7) Date of disability means the date on which a member is determined by the board to be disabled;

(8) Defined contribution benefit means a member's retirement benefit from a money purchase plan in which member benefits equal annual contributions and earnings pursuant to section 23-2309 and, if vested, employer contributions and earnings pursuant to section 23-2310;

(9) Disability means an inability to engage in any a substantially gainful activity by reason of any medically determinable physical or mental impairment which was initially diagnosed or which became disabling while the member was an active participant in the plan and can be
expected to result in death or be of a long-continued long and indefinite duration;

(10) Employee means all persons or officers who are employed by a county of the State of Nebraska on a permanent basis, persons or officers employed by or serving in a municipal county formed by at least one county participating in the retirement system, persons employed as provided in section 2-1608, all elected officers of a county, and such other persons or officers as are classified from time to time as permanent employees by the county board of the county by which they are employed, except that employee does not include judges, employees or officers of any county having a population in excess of two hundred fifty thousand inhabitants as determined by the most recent federal decennial census, or, except as provided in section 23-2306, persons making contributions to the School Employees Retirement System of the State of Nebraska;

(11) Employee contribution credit means an amount equal to the member contribution amount required by section 23-2307;

(12) Employer contribution credit means an amount equal to the employer contribution amount required by section 23-2308;

(13) Final account value means the value of a member's account on the date the account is either distributed to the member or used to purchase an annuity from the plan, which date shall occur as soon as administratively practicable after receipt of a valid application for benefits, but no sooner than forty-five days after the member's termination;

(14) Five-year break in service means a period of five consecutive one-year breaks in service;

(15) Full-time employee means an employee who is employed to work one-half or more of the regularly scheduled hours during each pay period;

(16) Future service means service following the date of adoption of the retirement system;
(17) Guaranteed investment contract means an investment contract or account offering a return of principal invested plus interest at a specified rate. For investments made after July 19, 1996, guaranteed investment contract does not include direct obligations of the United States or its instrumentalities, bonds, participation certificates or other obligations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, or collateralized mortgage obligations and other derivative securities. This subdivision shall not be construed to require the liquidation of investment contracts or accounts entered into prior to July 19, 1996;

(18) Interest credit rate means the greater of (a) five percent or (b) the applicable federal mid-term rate, as published by the Internal Revenue Service as of the first day of the calendar quarter for which interest credits are credited, plus one and one-half percent, such rate to be compounded annually;

(19) Interest credits means the amounts credited to the employee cash balance account and the employer cash balance account at the end of each day. Such interest credit for each account shall be determined by applying the daily portion of the interest credit rate to the account balance at the end of the previous day. Such interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account after a member ceases to be an employee, except that no such credit shall be made with respect to the employee cash balance account and the employer cash balance account for any day beginning on or after the member's date of final account value. If benefits payable to the member's surviving spouse or beneficiary are delayed after the member's death, interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account until such surviving spouse or beneficiary commences receipt of a distribution from the plan;
(20) Member cash balance account means an account equal to the sum of the employee cash balance account and, if vested, the employer cash balance account and dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317;

(21) One-year break in service means a plan year during which the member has not completed more than five hundred hours of service;

(22) Participation means qualifying for and making the required deposits to the retirement system during the course of a plan year;

(23) Part-time employee means an employee who is employed to work less than one-half of the regularly scheduled hours during each pay period;

(24) Plan year means the twelve-month period beginning on January 1 and ending on December 31;

(25) Prior service means service prior to the date of adoption of the retirement system;

(26) Regular interest means the rate of interest earned each calendar year as determined by the retirement board in conformity with actual and expected earnings on the investments through December 31, 1985;

(27) Required contribution means the deduction to be made from the compensation of employees as provided in the act;

(28) Retirement means qualifying for and accepting the retirement benefit granted under the act after terminating employment;

(29) Retirement application means the form approved and provided by the retirement system for acceptance of a member's request for either regular or disability retirement;

(30) Retirement board or board means the Public Employees Retirement Board;

(31) Retirement date means (a) the first day of the month following the date upon which a member's request for retirement is received on a retirement application if the member is eligible for retirement and has
terminated employment or (b) the first day of the month following
termination of employment if the member is eligible for retirement and
has filed an application but has not yet terminated employment;
(32) Retirement system means the Retirement System for Nebraska
Counties;
(33) Service means the actual total length of employment as an
employee and is not deemed to be interrupted by (a) temporary or seasonal
suspension of service that does not terminate the employee's employment,
(b) leave of absence authorized by the employer for a period not
exceeding twelve months, (c) leave of absence because of disability, or
(d) military service, when properly authorized by the retirement board.
Service does not include any period of disability for which disability
retirement benefits are received under section 23-2315;
(34) Surviving spouse means (a) the spouse married to the member on
the date of the member's death or (b) the spouse or former spouse of the
member if survivorship rights are provided under a qualified domestic
relations order filed with the board pursuant to the Spousal Pension
Rights Act. The spouse or former spouse shall supersede the spouse
married to the member on the date of the member's death as provided under
a qualified domestic relations order. If the benefits payable to the
spouse or former spouse under a qualified domestic relations order are
less than the value of benefits entitled to the surviving spouse, the
spouse married to the member on the date of the member's death shall be
the surviving spouse for the balance of the benefits;
(35) Termination of employment occurs on the date on which a county
which is a member of the retirement system determines that its employer-
employee relationship with an employee is dissolved. The county shall
notify the board of the date on which such a termination has occurred.
Termination of employment does not occur if an employee whose employer-
employee relationship with a county is dissolved enters into an employer-
employee relationship with the same or another county which participates
in the Retirement System for Nebraska Counties and there are less than
one hundred twenty days between the date when the employee's employer-
employee relationship ceased with the county and the date when the
employer-employee relationship commenced with the same or another county
which qualifies the employee for participation in the plan. It is the
responsibility of the employer that is involved in the termination of
employment to notify the board of such change in employment and provide
the board with such information as the board deems necessary. If the
board determines that termination of employment has not occurred and a
retirement benefit has been paid to a member of the retirement system
pursuant to section 23-2319, the board shall require the member who has
received such benefit to repay the benefit to the retirement system; and

(36) Vesting credit means credit for years, or a fraction of a year,
of participation in another Nebraska governmental plan for purposes of
determining vesting of the employer account.

Sec. 2. Section 23-2315.01, Reissue Revised Statutes of Nebraska, is
amended to read:

23-2315.01 (1) Any member, disregarding the length of service, may
be retired as a result of disability either upon his or her own
application or upon the application of his or her employer or any person
acting in his or her behalf. Before any member may be so retired, a
medical examination shall be made at the expense of the retirement
system, which examination shall be conducted by a disinterested physician
legally authorized to practice medicine under the laws of the state in
which he or she practices, such physician to be selected by the
retirement board, and the physician shall certify to the board that the
member should be retired because he or she suffers from an inability to
engage in any a substantially gainful activity by reason of any medically
determinable physical or mental impairment which began while the member
was a participant in the plan and which was initially diagnosed or which
became disabling while the member was an active participant in the plan
and can be expected to result in death or to be of long-continued and indefinite duration. The medical examination may be waived if, in the judgment of the retirement board, extraordinary circumstances exist which preclude substantial gainful activity by the member. Such circumstances shall include hospice placement or similar confinement for a terminal illness or injury. The application for disability retirement shall be made within one year of termination of employment.

(2) The retirement board may require any disability beneficiary who has not attained the age of fifty-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.

(3) The retirement board shall adopt and promulgate rules and regulations and prescribe the necessary forms to carry out this section.

Sec. 3. Section 79-902, Revised Statutes Cumulative Supplement, 2016, is amended to read:

79-902 For purposes of the School Employees Retirement Act, unless the context otherwise requires:

(1) Accumulated contributions means the sum of all amounts deducted from the compensation of a member and credited to his or her individual account in the School Retirement Fund together with regular interest thereon, compounded monthly, quarterly, semiannually, or annually;

(2) Actuarial equivalent means the equality in value of the aggregate amounts expected to be received under different forms of payment. The determinations shall be based on the 1994 Group Annuity Mortality Table reflecting sex-distinct factors blended using twenty-five percent of the male table and seventy-five percent of the female table. An interest rate of eight percent per annum shall be reflected in making these determinations except when a lump-sum settlement is made to an estate. If the lump-sum settlement is made to an estate, the interest rate will be determined by the Moody's Triple A Bond Index as of the
prior June 30, rounded to the next lower quarter percent;

(3) Beneficiary means any person in receipt of a school retirement allowance or other benefit provided by the act;

(4)(a) Compensation means gross wages or salaries payable to the member for personal services performed during the plan year and includes:
(i) overtime pay, (ii) member retirement contributions, (iii) retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements, and (iv) amounts contributed by the member to plans under sections 125, 403(b), and 457 of the Internal Revenue Code as defined in section 49-801.01 or any other section of the code which defers or excludes such amounts from income.

(b) Compensation does not include (i) fraudulently obtained amounts as determined by the retirement board, (ii) amounts for unused sick leave or unused vacation leave converted to cash payments, (iii) insurance premiums converted into cash payments, (iv) reimbursement for expenses incurred, (v) fringe benefits, (vi) per diems paid as expenses, (vii) bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, or (viii) beginning on September 4, 2005, employer contributions made for the purposes of separation payments made at retirement and early retirement inducements as provided for in section 79-514.

(c) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code as defined in section 49-801.01 shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

(5) County school official means (a) until July 1, 2000, the county superintendent or district superintendent and any person serving in his or her office who is required by law to have a teacher's certificate and
(b) on or after July 1, 2000, the county superintendent, county school administrator, or district superintendent and any person serving in his or her office who is required by law to have a teacher's certificate;

(6) Creditable service means prior service for which credit is granted under sections 79-926 to 79-929, service credit purchased under sections 79-933.03 to 79-933.06 and 79-933.08, and all service rendered while a contributing member of the retirement system. Creditable service includes working days, sick days, vacation days, holidays, and any other leave days for which the employee is paid regular wages as part of the employee's agreement with the employer. Creditable service does not include lump-sum payments to the employee upon termination or retirement in lieu of accrued benefits for such days, eligibility and vesting credit, nor service years for which member contributions are withdrawn and not repaid. Creditable service also does not include service rendered by a member for which the retirement board determines that the member was paid less in compensation than the minimum wage as provided in the Wage and Hour Act or service which the board determines was rendered with the intent to defraud the retirement system;

(7) Current benefit means the initial benefit increased by all adjustments made pursuant to the School Employees Retirement Act;

(8) Disability means an inability to engage in any a substantially gainful activity by reason of any medically determinable physical or mental impairment which was initially diagnosed or which became disabling while the member was an active participant in the plan and can be expected to result in death or be of a long-continued long and indefinite duration;

(9) Disability retirement allowance means the annuity paid to a person upon retirement for disability under section 79-952;

(10) Disability retirement date means the first day of the month following the date upon which a member's request for disability retirement is received on a retirement application provided by the
(11) Eligibility and vesting credit means credit for years, or a fraction of a year, of participation in a Nebraska government plan for purposes of determining eligibility for benefits under the School Employees Retirement Act. Such credit shall not be included as years of creditable service in the benefit calculation;

(12) Emeritus member means a person (a) who has entered retirement under the provisions of the act, including those persons who have retired since July 1, 1945, under any other regularly established retirement or pension system as contemplated by section 79-916, (b) who has thereafter been reemployed in any capacity by a public school, a Class V school district, or a school under the control and management of the Board of Trustees of the Nebraska State Colleges, the Board of Regents of the University of Nebraska, or a community college board of governors or has become a state school official or county school official subsequent to such retirement, and (c) who has applied to the board for emeritus membership in the retirement system. The school district or agency shall certify to the retirement board on forms prescribed by the retirement board that the annuitant was reemployed, rendered a service, and was paid by the district or agency for such services;

(13) Employer means the State of Nebraska or any subdivision thereof or agency of the state or subdivision authorized by law to hire school employees or to pay their compensation;

(14)(a) Final average compensation means:

(i) Except as provided in subdivision (ii) of this subdivision:

(A) The sum of the member's total compensation during the three twelve-month periods of service as a school employee in which such compensation was the greatest divided by thirty-six; or

(B) If a member has such compensation for less than thirty-six
months, the sum of the member's total compensation in all months divided by the total number of months of his or her creditable service therefor; and

(ii) For an employee who became a member on or after July 1, 2013:

(A) The sum of the member's total compensation during the five twelve-month periods of service as a school employee in which such compensation was the greatest divided by sixty; or

(B) If a member has such compensation for less than sixty months, the sum of the member's total compensation in all months divided by the total number of months of his or her creditable service therefor.

(b) Payments under the Retirement Incentive Plan pursuant to section 79-855 and Staff Development Assistance pursuant to section 79-856 shall not be included in the determination of final average compensation;

(15) Fiscal year means any year beginning July 1 and ending June 30 next following;

(16) Initial benefit means the retirement benefit calculated at the time of retirement;

(17) Member means any person who has an account in the School Retirement Fund;

(18) Participation means qualifying for and making required deposits to the retirement system during the course of a plan year;

(19) Plan year means the twelve-month period beginning on July 1 and ending on June 30 of the following year;

(20) Prior service means service rendered as a school employee in the public schools of the State of Nebraska prior to July 1, 1945;

(21) Public school means any and all schools offering instruction in elementary or high school grades, as defined in section 79-101, which schools are supported by public funds and are wholly under the control and management of the State of Nebraska or any subdivision thereof, including (a) schools or other entities established, maintained, and controlled by the school boards of local school districts, except Class V
school districts, (b) any educational service unit, and (c) any other educational institution wholly supported by public funds, except schools under the control and management of the Board of Trustees of the Nebraska State Colleges, the Board of Regents of the University of Nebraska, or the community college boards of governors for any community college areas;

(22) Regular employee means an employee hired by a public school or under contract in a regular full-time or part-time position who works a full-time or part-time schedule on an ongoing basis for twenty or more hours per week. An employee hired as described in this subdivision to provide service for less than twenty hours per week but who provides service for an average of twenty hours or more per week in each calendar month of any three calendar months of a plan year shall, beginning with the next full payroll period, commence contributions and shall be deemed a regular employee for all future employment with the same employer;

(23) Regular interest means interest fixed at a rate equal to the daily treasury yield curve for one-year treasury securities, as published by the Secretary of the Treasury of the United States, that applies on July 1 of each year, which may be credited monthly, quarterly, semiannually, or annually as the board may direct;

(24) Relinquished creditable service means, with respect to a member who has withdrawn his or her accumulated contributions under section 79-955, the total amount of creditable service which such member has given up as a result of his or her election not to remain a member of the retirement system;

(25) Required deposit means the deduction from a member's compensation as provided for in section 79-958 which shall be deposited in the School Retirement Fund;

(26) Retirement means qualifying for and accepting a school or disability retirement allowance granted under the School Employees Retirement Act;
(27) Retirement application means the form approved and provided by the retirement system for acceptance of a member's request for either regular or disability retirement;

(28) Retirement board or board means the Public Employees Retirement Board;

(29) Retirement date means (a) if the member has terminated employment, the first day of the month following the date upon which a member's request for retirement is received on a retirement application provided by the retirement system or (b) if the member has filed a retirement application but has not yet terminated employment, the first day of the month following the date on which the member terminates employment. An application may be filed no more than one hundred twenty days prior to the effective date of the member's initial benefit;

(30) Retirement system means the School Employees Retirement System of the State of Nebraska;

(31) Savings annuity means payments for life, made in equal monthly payments, derived from the accumulated contributions of a member;

(32) School employee means a contributing member who earns service credit pursuant to section 79-927. For purposes of this section, contributing member means the following persons who receive compensation from a public school: (a) Regular employees; (b) regular employees having retired pursuant to the School Employees Retirement Act who subsequently provide compensated service on a regular basis in any capacity; and (c) regular employees hired by a public school on an ongoing basis to assume the duties of other regular employees who are temporarily absent. Substitute employees, temporary employees, and employees who have not attained the age of eighteen years shall not be considered school employees;

(33) School year means one fiscal year which includes not less than one thousand instructional hours or, in the case of service in the State of Nebraska prior to July 1, 1945, not less than seventy-five percent of
the then legal school year;

(34) School retirement allowance means the total of the savings annuity and the service annuity or formula annuity paid a person who has retired under sections 79-931 to 79-935. The monthly payments shall be payable at the end of each calendar month during the life of a retired member. The first payment shall include all amounts accrued since the effective date of the award of annuity. The last payment shall be at the end of the calendar month in which such member dies or in accordance with the payment option chosen by the member;

(35) Service means employment as a school employee and shall not be deemed interrupted by (a) termination at the end of the school year of the contract of employment of an employee in a public school if the employee enters into a contract of employment in any public school, except a school in a Class V school district, for the following school year, (b) temporary or seasonal suspension of service that does not terminate the employee's employment, (c) leave of absence authorized by the employer for a period not exceeding twelve months, (d) leave of absence because of disability, or (e) military service when properly authorized by the retirement board. Service does not include any period of disability for which disability retirement benefits are received under sections 79-951 to 79-953;

(36) Service annuity means payments for life, made in equal monthly installments, derived from appropriations made by the State of Nebraska to the retirement system;

(37) State deposit means the deposit by the state in the retirement system on behalf of any member;

(38) State school official means the Commissioner of Education and his or her professional staff who are required by law or by the State Department of Education to hold a certificate as such term is defined in section 79-807;

(39) Substitute employee means a person hired by a public school as
a temporary employee to assume the duties of regular employees due to a temporary absence of any regular employees. Substitute employee does not mean a person hired as a regular employee on an ongoing basis to assume the duties of other regular employees who are temporarily absent;

(40) Surviving spouse means (a) the spouse married to the member on the date of the member's death or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under a qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits;

(41) Temporary employee means an employee hired by a public school who is not a regular employee and who is hired to provide service for a limited period of time to accomplish a specific purpose or task. When such specific purpose or task is complete, the employment of such temporary employee shall terminate and in no case shall the temporary employment period exceed one year in duration; and

(42) Termination of employment occurs on the date on which the member experiences a bona fide separation from service of employment with the member's employer, the date of which separation is determined by the end of the member's contractual agreement or, if there is no contract or only partial fulfillment of a contract, by the employer. A member shall not be deemed to have terminated employment if the member subsequently provides service to any employer participating in the retirement system provided for in the School Employees Retirement Act within one hundred eighty days after ceasing employment unless such service:

(a) Is bona fide unpaid voluntary service or substitute service,
provided on an intermittent basis; or

(b) Is as provided in subsection (2) of section 79-920.

Nothing in this subdivision precludes an employer from adopting a policy which limits or denies employees who have terminated employment from providing voluntary or substitute service within one hundred eighty days after termination.

A member shall not be deemed to have terminated employment if the board determines that a claimed termination was not a bona fide separation from service with the employer or that a member was compensated for a full contractual period when the member terminated prior to the end date of the contract.

Sec. 4. Section 79-951, Reissue Revised Statutes of Nebraska, is amended to read:

79-951 (1) Any member, disregarding the length of service, may be retired as a result of disability either upon his or her own application or upon the application of his or her employer or any person acting in his or her behalf. Before any member may be so retired, a medical examination shall be made at the expense of the retirement system, which examination shall be conducted by a disinterested physician legally authorized to practice medicine under the laws of the state in which he or she practices, such physician to be selected by the retirement board, and the physician shall certify to the board that the member should be retired because he or she suffers from an inability to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment which began while the member was a participant in the plan and which was initially diagnosed or which became disabling while the member was an active participant in the plan and can be expected to result in death or to be of long-continued and indefinite duration. The medical examination may be waived if, in the judgment of the retirement board, extraordinary circumstances exist which preclude substantial gainful activity by the member. Such circumstances shall
include hospice placement or similar confinement for a terminal illness
or injury. The application for disability retirement shall be made within
one year of termination of employment. A member shall be retired on
account of disability, either upon his or her own application or the
application of his or her employer or a person acting in his or her
behalf, if a medical examination, made at the expense of the retirement
system and conducted by a competent disinterested physician legally
authorized to practice medicine under the laws of the state in which he
or she practices, selected by the retirement board, shows and the
physician certifies to the retirement board that the member is unable to
engage in a substantially gainful activity by reason of any medically
determinable physical or mental impairment which began while the member
was a participant in the plan and which can be expected to result in
death or be of a long and indefinite duration. The medical examination
may be waived if, in the judgment of the retirement board, extraordinary
circumstances exist which preclude substantial gainful activity by the
member. Such circumstances shall include hospice placement or similar
confinement for a terminal illness or injury.

(2) The retirement board may require any disability beneficiary who
has not attained the age of fifty-five to undergo a medical examination
at the expense of the board once each year. If any disability beneficiary
refuses to undergo such an examination, the disability retirement benefit
may be discontinued by the board. The member shall have five years from
the date he or she terminates employment in a public school located in
Nebraska in which to make application for disability retirement benefits
if the disability is related to employment in a public school located in
Nebraska. If the disability is not related to a public school located in
Nebraska, the member shall have one year from the date he or she
terminates employment in which to make application for disability
retirement benefits. Any application for retirement on account of
disability shall be made on a retirement application provided by the

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retirement system. Upon approval by the board, benefits shall begin on
the disability retirement date.

(3) The retirement board shall adopt and promulgate rules and
regulations and prescribe the necessary forms to carry out this section.

Sec. 5. Section 84-1301, Reissue Revised Statutes of Nebraska, is
amended to read:

84-1301 For purposes of the State Employees Retirement Act, unless
the context otherwise requires:

(1) Actuarial equivalent means the equality in value of the
aggregate amounts expected to be received under different forms of an
annuity payment. The mortality assumption used for purposes of converting
the member cash balance account shall be the 1994 Group Annuity Mortality
Table using a unisex rate that is fifty percent male and fifty percent
female. For purposes of converting the member cash balance account
attributable to contributions made prior to January 1, 1984, that were
transferred pursuant to the act, the 1994 Group Annuity Mortality Table
for males shall be used;

(2) Annuity means equal monthly payments provided by the retirement
system to a member or beneficiary under forms determined by the board
beginning the first day of the month after an annuity election is
received in the office of the Nebraska Public Employees Retirement
Systems or the first day of the month after the employee's termination of
employment, whichever is later. The last payment shall be at the end of
the calendar month in which the member dies or in accordance with the
payment option chosen by the member;

(3) Annuity start date means the date upon which a member's annuity
is first effective and shall be the first day of the month following the
member's termination or following the date the application is received by
the board, whichever is later;

(4) Cash balance benefit means a member's retirement benefit that is
equal to an amount based on annual employee contribution credits plus
interest credits and, if vested, employer contribution credits plus
interest credits and dividend amounts credited in accordance with
subdivision (4)(c) of section 84-1319;

(5)(a) Compensation means gross wages or salaries payable to the
member for personal services performed during the plan year. Compensation
does not include insurance premiums converted into cash payments,
reimbursement for expenses incurred, fringe benefits, per diems, or
bonuses for services not actually rendered, including, but not limited
to, early retirement inducements, cash awards, and severance pay, except
for retroactive salary payments paid pursuant to court order,
arbitration, or litigation and grievance settlements. Compensation
includes overtime pay, member retirement contributions, and amounts
contributed by the member to plans under sections 125, 403(b), and 457 of
the Internal Revenue Code or any other section of the code which defers
or excludes such amounts from income.

(b) Compensation in excess of the limitations set forth in section
401(a)(17) of the Internal Revenue Code shall be disregarded. For an
employee who was a member of the retirement system before the first plan
year beginning after December 31, 1995, the limitation on compensation
shall not be less than the amount which was allowed to be taken into
account under the retirement system as in effect on July 1, 1993;

(6) Date of disability means the date on which a member is
determined to be disabled by the board;

(7) Defined contribution benefit means a member's retirement benefit
from a money purchase plan in which member benefits equal annual
contributions and earnings pursuant to section 84-1310 and, if vested,
employer contributions and earnings pursuant to section 84-1311;

(8) Disability means an inability to engage in any a substantially
gainful activity by reason of any medically determinable physical or
mental impairment which was initially diagnosed or which became disabling
while the member was an active participant in the plan and can be
expected to result in death or to be of long-continued and indefinite
duration;

(9) Employee means any employee of the State Board of Agriculture
who is a member of the state retirement system 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. Employee does not include (a) judges as
defined in section 24-701, (b) members of the Nebraska State Patrol,
except for those members of the Nebraska State Patrol who elected
pursuant to section 60-1304 to remain members of the State Employees
Retirement System of the State of Nebraska, (c) employees of the
University of Nebraska, (d) employees of the state colleges, (e)
employees of community colleges, (f) employees of the Department of Labor
employed prior to July 1, 1984, and paid from funds provided pursuant to
Title III of the federal Social Security Act or funds from other federal
sources, except that if the contributory retirement plan or contract let
pursuant to section 48-609 is terminated, such employees shall become
employees for purposes of the State Employees Retirement Act on the first
day of the first pay period following the termination of such
contributory retirement plan or contract, (g) employees of the State
Board of Agriculture who are not members of the state retirement system
on July 1, 1982, (h) the Nebraska National Guard air and army
technicians, (i) persons eligible for membership under the School
Employees Retirement System of the State of Nebraska who have not elected
to become members of the retirement system pursuant to section 79-920 or
been made members of the system pursuant to such section, except that
those persons so eligible and who as of September 2, 1973, are
contributing to the State Employees Retirement System of the State of
Nebraska shall continue as members of such system, or (j) employees of
the Coordinating Commission for Postsecondary Education who are eligible for and have elected to become members of a qualified retirement program approved by the commission which is commensurate with retirement programs at the University of Nebraska. Any individual appointed by the Governor may elect not to become a member of the State Employees Retirement System of the State of Nebraska;

(10) Employee contribution credit means an amount equal to the member contribution amount required by section 84-1308;

(11) Employer contribution credit means an amount equal to the employer contribution amount required by section 84-1309;

(12) Final account value means the value of a member's account on the date the account is either distributed to the member or used to purchase an annuity from the plan, which date shall occur as soon as administratively practicable after receipt of a valid application for benefits, but no sooner than forty-five days after the member's termination;

(13) Five-year break in service means five consecutive one-year breaks in service;

(14) Full-time employee means an employee who is employed to work one-half or more of the regularly scheduled hours during each pay period;

(15) Fund means the State Employees Retirement Fund created by section 84-1309;

(16) Guaranteed investment contract means an investment contract or account offering a return of principal invested plus interest at a specified rate. For investments made after July 19, 1996, guaranteed investment contract does not include direct obligations of the United States or its instrumentalities, bonds, participation certificates or other obligations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, or collateralized mortgage obligations and other derivative securities. This subdivision shall not be construed to require
the liquidation of investment contracts or accounts entered into prior to July 19, 1996;

(17) Interest credit rate means the greater of (a) five percent or (b) the applicable federal mid-term rate, as published by the Internal Revenue Service as of the first day of the calendar quarter for which interest credits are credited, plus one and one-half percent, such rate to be compounded annually;

(18) Interest credits means the amounts credited to the employee cash balance account and the employer cash balance account at the end of each day. Such interest credit for each account shall be determined by applying the daily portion of the interest credit rate to the account balance at the end of the previous day. Such interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account after a member ceases to be an employee, except that no such credit shall be made with respect to the employee cash balance account and the employer cash balance account for any day beginning on or after the member's date of final account value. If benefits payable to the member's surviving spouse or beneficiary are delayed after the member's death, interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account until such surviving spouse or beneficiary commences receipt of a distribution from the plan;

(19) Member cash balance account means an account equal to the sum of the employee cash balance account and, if vested, the employer cash balance account and dividend amounts credited in accordance with subdivision (4)(c) of section 84-1319;

(20) One-year break in service means a plan year during which the member has not completed more than five hundred hours of service;

(21) Participation means qualifying for and making the required deposits to the retirement system during the course of a plan year;

(22) Part-time employee means an employee who is employed to work
less than one-half of the regularly scheduled hours during each pay
period;

(23) Plan year means the twelve-month period beginning on January 1
and ending on December 31;

(24) Prior service means service before January 1, 1964;

(25) Regular interest means 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 the investments
through December 31, 1984;

(26) Required contribution means the deduction to be made from the
compensation of employees as provided in section 84-1308;

(27) Retirement means qualifying for and accepting the retirement
benefit granted under the State Employees Retirement Act after
terminating employment;

(28) Retirement application means the form approved and provided by
the retirement system for acceptance of a member's request for either
regular or disability retirement;

(29) Retirement board or board means the Public Employees Retirement
Board;

(30) Retirement date means (a) the first day of the month following
the date upon which a member's request for retirement is received on a
retirement application if the member is eligible for retirement and has
terminated employment or (b) the first day of the month following
termination of employment if the member is eligible for retirement and
has filed an application but has not yet terminated employment;

(31) Retirement system means the State Employees Retirement System
of the State of Nebraska;

(32) Service means the actual total length of employment as an
employee and shall not be deemed to be interrupted by (a) temporary or
seasonal suspension of service that does not terminate the employee's
employment, (b) leave of absence authorized by the employer for a period
not exceeding twelve months, (c) leave of absence because of disability, or (d) military service, when properly authorized by the retirement board. Service does not include any period of disability for which disability retirement benefits are received under section 84-1317;

(33) State department means any department, bureau, commission, or other division of state government not otherwise specifically defined or exempted in the act, the employees and officers of which are not already covered by a retirement plan;

(34) Surviving spouse means (a) the spouse married to the member on the date of the member's death or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under a qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits;

(35) Termination of employment occurs on the date on which the agency which employs the member determines that the member's employer-employee relationship with the State of Nebraska is dissolved. The agency which employs the member shall notify the board of the date on which such a termination has occurred. Termination of employment does not occur if an employee whose employer-employee relationship with the State of Nebraska is dissolved enters into an employer-employee relationship with the same or another agency of the State of Nebraska and there are less than one hundred twenty days between the date when the employee's employer-employee relationship ceased with the state and the date when the employer-employee relationship commenced with the same or another agency. It is the responsibility of the employer that is involved in the
termination of employment to notify the board of such change in employment and provide the board with such information as the board deems necessary. If the board determines that termination of employment has not occurred and a retirement benefit has been paid to a member of the retirement system pursuant to section 84-1321, the board shall require the member who has received such benefit to repay the benefit to the retirement system; and

(36) Vesting credit means credit for years, or a fraction of a year, of participation in another Nebraska governmental plan for purposes of determining vesting of the employer account.

Sec. 6. Section 84-1323.01, Reissue Revised Statutes of Nebraska, is amended to read:

84-1323.01 (1) Any member who is an employee, disregarding the length of service, may be retired as a result of disability either upon the member's own application or upon the application of the member's employer or any person acting in the member's behalf. Before any member may be so retired, a medical examination shall be made at the expense of the retirement system, which examination shall be conducted by a disinterested physician legally authorized to practice medicine under the laws of the state in which he or she practices, such physician to be selected by the retirement board, and the physician shall certify to the board that the member suffers from an inability to engage in any a substantially gainful activity by reason of any medically determinable physical or mental impairment which was initially diagnosed or which became disabling began while the member was an active a participant in the plan and which can be expected to result in death or to be of long-continued and indefinite duration. The medical examination may be waived if, in the judgment of the retirement board, extraordinary circumstances exist which preclude substantial gainful activity by the member. Such circumstances shall include hospice placement or similar confinement for a terminal illness or injury and should be retired. The application for
disability retirement shall be made within one year of termination of
employment.

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

(3) The retirement board shall adopt and promulgate rules and
regulations and prescribe the necessary forms to carry out this section.

Sec. 7. Original sections 23-2315.01, 79-951, 84-1301, and
84-1323.01, Reissue Revised Statutes of Nebraska, and sections 23-2301
and 79-902, Revised Statutes Cumulative Supplement, 2016, are repealed.