

LEGISLATIVE BILL 682

Approved by the Governor February 11, 1992

Introduced by Schmit, 23; Lindsay, 9

AN ACT relating to judges retirement; to amend section 24-701, 24-703, and 24-710, Revised Statutes Supplement, 1991; to redefine a term; to change provisions relating to monthly payment for a retirement annuity; to require contributions and authorize a purchase of service credit as prescribed; to provide a duty for the Revisor of Statutes; and to repeal the original sections.

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

Section 1. That section 24-701, Revised Statutes Supplement, 1991, be amended to read as follows:

24-701. For purposes of 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, (b)(i) all duly appointed judges of the Nebraska Workmen's Compensation Court who served in such capacity on and after September 20, 1957, and prior to July 17, 1986, and (ii) judges of the Nebraska Workers' Compensation Court who shall serve in such capacity on and after July 17, 1986, (c) judges of separate juvenile courts, (d) judges of the county courts of the respective counties who shall serve in such capacity on and after January 5, 1961, except acting judges of the county court appointed pursuant to section 24-507, (e) judges of the county court and clerk magistrates who were associate county judges and members of the fund at the time of their appointment as clerk magistrates, (f) judges of municipal courts established by Chapter 26, article 1, who served in such capacity on and after October 23, 1967, and prior to July 1, 1985, and (g) judges of the Court of Appeals;

(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 (a) any judge of the Supreme Court or judge of the district court shall serve in such capacity from and after January 3, 1957, (b)(i) any judge of the Nebraska Workmen's Compensation Court served in such capacity from and after September 20, 1957, and prior to July 17, 1986, and (ii) any judge of the Nebraska Workers' Compensation Court shall serve in such capacity on and after July 17, 1986, (c) any county judge shall serve in such capacity from and after January 5, 1961, (d) any judge of a separate juvenile court shall serve in such capacity, (e) any judge of the municipal court shall have served in such capacity subsequent to October 23, 1967, and prior to July 1, 1985, (f) any judge of the county court or associate county judge shall serve in such capacity subsequent to January 4, 1973, (g) any clerk magistrate, who was an associate county judge and a member of the fund at the time of appointment as a clerk magistrate, shall serve in such capacity from and after July 1, 1986, and (h) any judge of the Court of Appeals shall serve in such capacity on or after September 6, 1991;

(5) Military service shall mean active service of (a) any judge of the Supreme Court or judge of the 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, if such service commenced while such judge was holding the office of judge, (b) any judge of the Nebraska Workmen's Compensation Court or the Nebraska Workers' 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, if such service commenced while such judge was holding the office of judge, (c) 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, and prior to July 1, 1985, if such service commenced while such judge was holding the office of judge, (d) any judge of the county court 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, (e) any clerk magistrate,

who was an associate county judge and a member of the fund at the time of appointment as a clerk magistrate, in any of the armed forces of the United States during a war or national emergency on or after July 1, 1986, if such service commenced while such clerk magistrate was holding the office of clerk magistrate, and (f) any judge of the Court of Appeals in any of the armed forces of the United States during a war or national emergency on or after September 6, 1991, 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, 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) Normal form annuity shall mean a series of equal monthly payments payable at the end of each calendar month during the life of a retired judge as provided in sections 24-707 and 24-710. The first payment shall include all amounts accrued since the effective date of the award of the annuity. The last payment shall be at the end of the calendar month in which such judge dies. If at the time of death the amount of annuity payments such judge has received is less than contributions to the fund made by such judge, plus regular interest, the difference shall be paid to the beneficiary or estate;

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

(11) Member shall mean a judge eligible to participate in the retirement system established under sections 24-701 to 24-714;

(12) Original member shall mean a judge who first served as a judge prior to December 25, 1969, and who does not elect to become a future member pursuant to subsection (8) of section 24-703 or section 24-710.01;

(13) Future member shall mean a judge who first served as a judge on or after December 25, 1969, or shall mean a judge who first served as a judge 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 or section 24-710.01;

(14) Final average compensation shall mean the average monthly compensation for the last ~~four~~ three years of service as a judge or, in the event of a judge serving less than ~~four~~ three years, the average monthly compensation for such judge's period of service;

(15) Regular interest shall mean the rate of interest earned each fiscal year commencing July 1, 1974, as determined by the board in conformity with actual and expected earnings on its investments, which may be credited monthly, quarterly, semiannually, or annually as the board may direct;

(16) Normal retirement date shall mean the first day of the month following attainment of age sixty-five; and

(17) Actuarial equivalence shall mean the equality in value of the aggregate amounts expected to be received under different forms of payment. The determinations are to be based on the 1971 Group Annuity Mortality Table reflecting sex-distinct factors blended using seventy-five percent of the male table and twenty-five percent of the female table. An interest rate of seven percent per annum shall be reflected in making these determinations.

Sec. 2. That section 24-703, Revised Statutes Supplement, 1991, be amended to read as follows:

24-703. (1) Each original member shall contribute monthly four percent of his or her monthly compensation to the fund until the maximum benefit as limited in subsection (1) of section 24-710 has been earned. It shall be the duty of the Director of Administrative Services in accordance with subsection (10) of this section to make a deduction of four percent on the monthly payroll of each original member who is a judge of the Supreme Court, a judge of the Court of Appeals, a judge of the district court, a judge of a separate juvenile court, a judge of the county court, a clerk magistrate of the county court who was an associate county judge and a member of the fund at the time of his or her appointment as a clerk magistrate, or a judge of the Nebraska Workers' Compensation Court showing the amount to be deducted and its credit to the fund. The Director of Administrative Services and the State Treasurer shall credit the four percent as shown on the payroll and the amounts received from the various counties to the fund and remit the same to the director in charge of the judges retirement system who shall keep

an accurate record of the contributions of each judge.

(2) Each future member shall contribute monthly six percent of his or her monthly compensation to the fund until the maximum benefit as limited in subsection (2) of section 24-710 has been earned. Any time the maximum benefit is changed, a future member who has previously earned the maximum benefit as it existed prior to the change shall contribute monthly six percent of his or her monthly compensation to the fund until the maximum benefit as changed and as limited in subsection (2) of section 24-710 has been earned. It shall be the duty of the Director of Administrative Services to make a deduction of six percent on the monthly payroll of each such future member who is a judge of the Supreme Court, a judge of the Court of Appeals, a judge of the district court, a judge of a separate juvenile court, a judge of the county court, a clerk magistrate of the county court who was an associate county judge and a member of the fund at the time of his or her appointment as a clerk magistrate, or a judge of the Nebraska Workers' Compensation Court showing the amount to be deducted and its credit to the fund. This shall be done each month. The Director of Administrative Services and the State Treasurer shall credit the six percent as shown on the payroll and the amounts received from the various counties to the fund and remit the same to the director in charge of the judges retirement system who shall keep an accurate record of the contributions of each judge.

(3) A Nebraska Retirement Fund for Judges fee of one dollar shall be taxed as costs in each civil cause of action, criminal cause of action, traffic misdemeanor or infraction, and city or village ordinance violation filed in the district courts and the county courts. In county courts a sum shall be charged which is equal to ten percent of each fee provided by sections 33-125, 33-126.02, 33-126.03, and 33-126.06. No judges retirement fee shall be charged for filing a report pursuant to sections 33-126.02 and 33-126.06. When collected by the clerk of the district or county court, such fees shall be paid to the director in charge of the judges retirement system on forms prescribed by the board by the clerk within ten days after the close of each calendar quarter. Such director shall promptly thereafter remit the same to the state treasury. Upon the receipt thereof, the State Treasurer shall credit the same to the fund.

(4) All expenditures from the fund shall be authorized by voucher in the manner prescribed in

section 24-713. The fund shall be used for the payment of all annuities and other benefits and for the expenses of administration.

(5) The fund shall consist of the total fund as of December 25, 1969, the contributions of members as provided in this section, all supplementary court fees as provided in subsection (3) of this section, and any required contributions of the state.

(6) Not later than January 1 of each year, the State Treasurer shall transfer to the fund the amount certified by the board as being necessary to pay the cost of any benefits accrued during the fiscal year ending the previous June 30 in excess of member contributions for that fiscal year and court fees as provided in subsection (3) of this section, if any, for that fiscal year plus any required contributions of the state as provided in subsection (9) of this section.

(7) Benefits under the retirement system to members or to their beneficiaries shall be paid from the fund.

(8) Any member who is making contributions to the fund on December 25, 1969, may, on or before June 30, 1970, elect to become a future member by delivering written notice of such election to the board.

(9) Not later than January 1 of each year, the State Treasurer shall transfer to the fund an amount, determined on the basis of an actuarial valuation as of the previous June 30 and certified by the board, to fully fund the unfunded accrued liabilities of the retirement system as of June 30, 1988, by level payments up to January 1, 2000. Such valuation shall be on the basis of actuarial assumptions recommended by the actuary, approved by the board, and kept on file with the board. Any change in the unfunded accrued liabilities due to benefit or assumption changes shall be fully funded over the average expected future service of the active members of the retirement system or by the first day of the twenty-sixth calendar year after the date of the actuarial valuation which first recognized these changes, whichever occurs first. The change in the unfunded accrued liabilities shall be funded by level annual payments which shall be made over the lesser of twenty-five years or the average expected future service of the active members of the retirement system. If the unfunded accrued liability for the retirement system, determined under the entry age actuarial cost method, is zero or less than zero on any actuarial valuation date, then all prior unfunded accrued liability amounts shall be considered fully

funded. Effective July 1, 1988, actuarial gains and losses shall be amortized over the expected future service of the active members as part of the annual normal cost.

(10) The state or county shall pick up the member contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code, except that the state or county shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the Internal Revenue Code, these contributions shall not be included as gross income of the member until such time as they are distributed or made available. The state or county shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The state or county shall pick up these contributions by a compensation deduction either through a reduction in the compensation of the member or a combination of a reduction in compensation and offset against a future compensation increase. Member contributions picked up shall be treated for all purposes of sections 24-701 to 24-714 in the same manner and to the extent as member contributions made prior to the date picked up.

Sec. 3. That section 24-710, Revised Statutes Supplement, 1991, be amended to read as follows:

24-710. (1) The retirement annuity of a judge who is an original member, who has not made the election provided for in subsection (8) of section 24-703 or section 24-710.01, and who retires under section 24-708 or 24-709 shall be computed as follows: Each such judge shall be entitled to receive an annuity, each monthly payment of which shall be in an amount equal to three and one-third percent of his or her final average compensation as such judge, multiplied by the number of his or her total years of service. The amount stated in this section shall be supplemental to any benefits received by such judge under the Nebraska and federal old age and survivors' insurance acts at the date of retirement, but the monthly combined benefits received thereunder and by sections 24-701 to 24-714 shall not exceed sixty-five percent of the final average compensation such judge was receiving when he or she last served as such judge. The amount of retirement annuity of a judge who retires under section 24-708 or

24-709 shall not be less than twenty-five dollars per month if he or she has four years or more of service credit.

(2) The retirement annuity of a judge who is a future member and who retires after July 1, 1986, under section 24-708 or 24-709 shall be computed as follows: Each such judge shall be entitled to receive an annuity, each monthly payment of which shall be in an amount equal to three and ~~one-third~~ one-half percent of his or her final average compensation as such judge, multiplied by the number of his or her total years of service, except that the monthly benefits received under this subsection shall not exceed ~~sixty~~ seventy percent of the final average compensation such judge was receiving when he or she last served as such judge.

(3) Any member may, when filing an application as provided by the retirement system, elect to receive, in lieu of the normal form annuity benefits to which the member or his or her beneficiary may otherwise be entitled under sections 24-701 to 24-714, any form of annuity which the board may by rules and regulations provide, the value of which, determined by accepted actuarial methods and on the basis of actuarial assumptions recommended by the actuary, approved by the board, and kept on file in the office of the director, is equal to the value of the benefit replaced. The board shall promptly after September 2, 1973, (a) adopt and promulgate appropriate rules and regulations establishing joint and survivorship annuities, with and without reduction on the death of the first annuitant, and such other forms of annuities as may in its judgment be appropriate, (b) prescribe appropriate forms for making the election by the members, and (c) provide for the necessary actuarial services to make the required valuations.

(4) Notwithstanding anything to the contrary in sections 24-701 to 24-714, the annual benefit payable under such sections shall not at any time exceed the lesser of (a) ninety thousand dollars, as adjusted for cost-of-living adjustments announced by the Internal Revenue Service for each calendar year in which the adjustment is announced, actuarially reduced to reflect distributions prior to age sixty-two, or (b) one hundred percent of the member's average compensation for the highest three consecutive calendar years of service during which the member was an active member in the retirement system provided by sections 24-701 to 24-714. The maximum amount shall be adjusted, when necessary, as follows: (i) When the annual benefit is payable under

the retirement system to a member in a form other than a straight life annuity or a qualified joint and survivor annuity, the maximum amount shall be adjusted to the equivalent of a straight life annuity beginning at the same age on the basis of the actuarial assumptions referred to in subsection (3) of this section; and (ii) when the annual benefit is payable under the retirement system to a member who has less than ten years of service under the retirement system, the maximum amount shall be multiplied by a fraction, the numerator of which is the member's number of years of service under the retirement system and the denominator of which is ten. For purposes of this subsection, qualified joint and survivor annuity means an annuity for the life of the member with not less than fifty percent nor more than one hundred percent of the amount the member was receiving being paid to the member's surviving spouse for the life of the spouse following the death of the member.

Sec. 4. Any future member who has served as a judge for twenty years or more and who has contributed and earned the maximum benefit pursuant to subsection (2) of section 24-710 prior to the effective date of this act may purchase up to two years of service credit in order to qualify for the maximum benefit in effect after the effective date of this act. The amount to be paid shall not exceed the amount the member would have paid into the system based on the salary and two years of service immediately following the year in which the member reached the maximum benefit in effect prior to the effective date of this act, plus the interest on that amount which would have accrued under the retirement system provided by sections 24-701 to 24-714. Any payment made pursuant to this section by a member to qualify for the maximum benefit in effect after the effective date of this act shall be received by the retirement system office by December 31, 1992. Any such payment shall be made in a single lump sum.

This section shall not apply to any member who retires prior to the effective date of this act.

Sec. 5. The Revisor of Statutes shall assign section 4 of this act within sections 24-701 to 24-714, and any reference to sections 24-701 to 24-714 shall include section 4 of this act.

Sec. 6. That original sections 24-701, 24-703, and 24-710, Revised Statutes Supplement, 1991, are repealed.