

## LEGISLATIVE BILL 1273

Approved by the Governor April 12, 1996

Introduced by Nebraska Retirement Systems Committee:

Wickersham, 49, Chairperson; Crosby, 29; Lynch, 13; Robak, 22; Wehrbein, 2; Witek, 31

AN ACT relating to retirement; to amend sections 23-2322, 24-701, 24-707, 24-710, 24-710.02, 79-1501, 79-1522.01, 79-1528, 79-1552, 81-2026, 84-1301, 84-1319, 84-1321, 84-1323, and 84-1324, Reissue Revised Statutes of Nebraska, sections 23-2317, 23-2319, and 23-2321, Revised Statutes Supplement, 1994, and sections 23-2301, 81-2014, and 81-2032, Revised Statutes Supplement, 1995; to adopt the Spousal Pension Rights Act; to harmonize provisions; and to repeal the original sections.

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

Section 1. Sections 1 to 13 of this act shall be known and may be cited as the Spousal Pension Rights Act.

Sec. 2. For purposes of the Spousal Pension Rights Act:

(1) Alternate payee means a spouse, former spouse, child, or other dependent of a member who is recognized by a domestic relations order as having a right to receive all or a portion of the benefits payable by a statewide public retirement system with respect to such member;

(2) Benefit means an annuity, a pension, a retirement allowance, a withdrawal of accumulated contributions, or an optional benefit accrued or accruing to a member under a statewide public retirement system;

(3) Domestic relations order means a judgment, decree, or order, including approval of a property settlement agreement, which relates to the provision of child support, alimony payments, maintenance support, or marital property rights to a spouse, former spouse, child, or other dependent of a member and is made pursuant to a state domestic relations law of this state or another state;

(4) Earliest retirement date means the earlier of (a) the date on which the member is entitled to a distribution under the system or (b) the later of (i) the date that the member attains fifty years of age or (ii) the earliest date that the member could receive benefits under the system if the member separated from service;

(5) Qualified domestic relations order means a domestic relations order which creates or recognizes the existence of an alternate payee's right, or assigns to an alternate payee the right, to receive all or a portion of the benefits payable with respect to a member under a statewide public retirement system, which directs the system to disburse benefits to the alternate payee, and which meets the requirements of section 3 of this act;

(6) Segregated amounts means the amounts which would have been payable to the alternative payee during the period of time that the qualified status of an order is being determined. Such amounts shall equal the amounts payable for such period if the order had been determined to be a qualified domestic relations order; and

(7) Statewide public retirement system means the Retirement System for Nebraska Counties, the retirement system for judges provided in sections 24-701 to 24-714, the School Retirement System of the State of Nebraska, the Nebraska State Patrol Retirement System, and the State Employees Retirement System of the State of Nebraska.

Sec. 3. A domestic relations order is a qualified domestic relations order only if such order:

(1) Clearly specifies the following:

(a) The name, social security number, and last-known mailing address, if any, of the member;

(b) The name, social security number, and last-known mailing address, if any, of the alternate payee covered by the order;

(c) The statewide public retirement system or systems to which the order applies;

(d) The number of payments or period to which such order applies;

and  
(e) The amount or percentage of the member's benefits to be paid by each statewide public retirement system to each alternate payee or the manner in which such amount or percentage is determined;

(2) Does not require a statewide public retirement system to provide any type or form of benefit, or any option, not otherwise provided under the

plan:

(3) Does not require a statewide public retirement system to provide increased benefits determined on the basis of actuarial value;

(4) Does not require a statewide public retirement system to pay to an alternate payee benefits which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order; and

(5) Does not require the payment of benefits to an alternate payee before the earliest retirement date of a member.

Sec. 4. (1) A qualified domestic relations order may provide for the payment of benefits to an alternate payee beginning on or after the member's earliest retirement date but before the member terminates employment. Payment of the benefit to the alternate payee pursuant to a qualified domestic relations order shall commence either on the member's retirement date or on the first day of the month immediately following the month in which the alternate payee notifies the statewide public retirement system of the election to begin payment, but not prior to the member's earliest retirement date.

(2) If payment begins after the member's earliest retirement date but prior to the member's retirement date, the alternate payee is only entitled to the actuarial equivalent of the alternate payee's share of the member's benefit payable on the member's earliest retirement date or the alternate payee's election date, whichever is later.

Sec. 5. An alternate payee under a qualified domestic relations order shall receive the form of benefit payment specified in the order or, if not specified, selected by the alternate payee, if such form is a form available to the member and is not a joint and survivor annuity with the alternate payee's subsequent spouse.

Sec. 6. If the alternate payee dies prior to receiving any payment of his or her interest in the member's benefit under a qualified domestic relations order, such interest reverts to the member. If the alternate payee dies after commencement of payments of his or her interest, then the alternate payee's beneficiary is entitled to the balance of the payee's interest under the payment option provided by the order or selected by the payee, except a joint and survivor annuity option with the alternate payee and alternate payee's spouse.

Sec. 7. A qualified domestic relations order may provide that a spouse under a judgment for separate maintenance or a former spouse is considered the surviving spouse under the plan. If the order requires the member to select a payment option with survivorship rights, the Public Employees Retirement Board shall require consent by such spouse for the selection of the annuity option by the member or for any change in the selection of the annuity option by the member. The order may specifically require that the annuity option be a joint and survivor annuity.

Sec. 8. The alternate payee shall file a copy of the domestic relations order involving benefits under a statewide public retirement system with the Public Employees Retirement Board within ninety days after the date that the order was entered. Upon good cause shown, the board may accept an order after ninety days following its entry. Within ten days, the board shall notify in writing the member and alternate payee that the board has received the domestic relations order. Such notice shall include a description of the procedure to determine if the domestic relations order is a qualified domestic relations order under the Spousal Pension Rights Act.

Sec. 9. The Public Employees Retirement Board shall adopt and promulgate rules and regulations to establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such orders. Such procedures shall allow an alternate payee to designate a representative for receipt of copies of notices.

Sec. 10. (1) The Public Employees Retirement Board, or the board's designee, shall determine within a reasonable period of time after receiving a domestic relations order, if the order is a qualified domestic relations order under the Spousal Pension Rights Act. The board may determine that an order is not qualified for the following reasons:

(a) The order fails to fulfill all the requirements under section 3 of this act;

(b) The order requires the board to act contrary to the statutory provisions of the statewide public retirement system; or

(c) The order requires payment to the alternate payee in the form of a joint and survivor annuity with respect to the alternate payee and his or her subsequent spouse.

(2) Failure to file an order within ninety days after its entry shall not be the basis for determining that an order is not a qualified

domestic relations order.

(3) Within seven days after making the determination, the board or its designee shall notify the alternate payee and the member whether the domestic relations order is a qualified domestic relation order under the act. If the order is not a qualified domestic relations order, the notice shall specify the basis for such determination.

(4) A determination by the board or its designee that a domestic relations order is not a qualified domestic relations order does not prohibit a member or an alternate payee from filing an amended order with the board.

Sec. 11. (1) During the period of time that a determination, by the board, its designee, or a court of competent jurisdiction, is being made as to whether a domestic relations order is a qualified domestic relations order, the director of the statewide public retirement systems shall separately account for the segregated amounts.

(2) If within the eighteen-month period the order is determined to be a qualified domestic relations order, the director of the statewide public retirement systems shall pay the segregated amounts plus interest to the alternate payee or payees entitled thereto.

(3) If within the eighteen-month period the order is determined not to be a qualified domestic relations order or the qualified status of the order is not resolved, the director of the statewide public retirement systems shall pay the segregated amounts plus interest to the member or other beneficiaries entitled thereto.

(4) If the determination that the order is a qualified domestic relations order is made after the eighteen-month period, the order will be applied prospectively only.

(5) For purposes of this section, the eighteen-month period begins on the date that the first payment would be required under the domestic relations order.

Sec. 12. A domestic relations order filed with the Public Employees Retirement Board prior to the effective date of this act shall be deemed a qualified domestic relations order under the Spousal Pension Rights Act if the statewide public retirement system is making payments under the order on the effective date of this act and such order conforms to section 414(p)(11) of the Internal Revenue Code.

Sec. 13. The member and alternate payee shall hold the statewide public retirement system and its fiduciaries harmless from any liabilities which arise from (1) treating a domestic relations order as being, or not being, a qualified domestic relations order, or (2) taking action pursuant to section 11 of this act. The system's obligation to the member and each alternate payee shall be discharged to the extent of any payment made pursuant to the Spousal Pension Rights Act.

Sec. 14. Section 23-2301, Revised Statutes Supplement, 1995, is amended to read:

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

(1) Employees shall mean all persons or officers who are employed by a county of the State of Nebraska for twenty or more hours per week and who have completed at least twelve months of continuous service at any time, 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 whom they are employed, except that employees shall not include judges, persons making contributions to the School Retirement System of the State of Nebraska, or nonselected employees and nonselected officials of any county having a population in excess of one hundred fifty thousand inhabitants;

(2) Retirement shall mean qualifying for and terminating employment after becoming qualified to receive the retirement allowance granted under the County Employees Retirement Act;

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

(4) Retirement system shall mean the Retirement System for Nebraska Counties;

(5) Required contribution shall mean the deduction to be made from the compensation of employees as provided in the County Employees Retirement Act;

(6) 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, except that service shall not include any period of disability for which disability retirement benefits are received under section 23-2315;

(7) 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;

(8) Date of adoption of the retirement system by each county shall mean 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;

(9) Prior service shall mean service prior to the date of adoption of the retirement system;

(10) Future service shall mean service following the date of adoption of the retirement system;

(11) Group annuity contract shall mean the contract issued by one or more life insurance companies to the board in order to provide the future service benefits described in the County Employees Retirement Act;

(12) Primary carrier shall mean the life insurance company or trust company designated by the retirement board as the administrator of the retirement system;

(13) Regular interest shall mean the rate of interest earned each calendar year as determined by the retirement board in conformity with actual and expected earnings on its investments;

(14) 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 be of a long and indefinite duration;

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

(16) Guaranteed investment contract shall mean an investment contract which guarantees that the account maintained for any participant will not decrease in value but will increase each year by the contribution allocated to the account and by investment earnings and will decrease by the amount of expenses reasonably determined to be allocated to the account; and

(17) Investment manager shall mean one or more insurance companies, bank trust departments, or independent investment advisors designated to invest any portion of the funds of the County Employees Retirement Act; and

(18) 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.

Sec. 15. Section 23-2317, Revised Statutes Supplement, 1994, is amended to read:

23-2317. (1) The future service retirement benefit shall be an annuity, payable monthly with the first payment made as of the retirement date, which shall be the actuarial equivalent of the retirement value based on factors determined by the board, except that gender shall not be a factor when determining the amount of such payments pursuant to subsection (2) of this section.

~~At~~ Except as provided in section 7 of this act, at any time before the retirement date, the retiring employee may choose to receive his or her annuity either in the form of a straight life annuity or any optional form that is determined by the board.

~~In~~ Except as provided in section 7 of this act, in lieu of the future service retirement annuity, a retiring employee may, upon application to the board, receive a benefit not to exceed the amount in his or her employer and employee accounts payable in a lump sum and, if the employee chooses not to receive the entire amount in such accounts, an annuity equal to the actuarial equivalent of the remainder of the retirement value, and the employee may choose any form of such annuity as provided for by the board.

In any case, the amount of the monthly payment shall be such that the annuity chosen shall be the actuarial equivalent of the retirement value except as provided in this section.

The board shall provide to any county employee who is eligible for retirement, prior to his or her selecting any of the retirement options provided by this section, information on the federal and state income tax consequences of the various annuity or retirement benefit options.

(2) The monthly income payable to a member retiring on or after January 1, 1984, shall be as follows:

He or she shall receive at retirement the amount which may be purchased by the accumulated contributions based on annuity rates in effect on the date of purchase which do not utilize gender as a factor, except that such amounts shall not be less than the retirement income which can be provided by the sum of the amounts derived pursuant to subdivisions (a) and (b) of this subsection as follows:

(a) The income provided by the accumulated contributions made prior to January 1, 1984, based on male annuity purchase rates in effect on the date of purchase; and

(b) The income provided by the accumulated contributions made on and after January 1, 1984, based on the annuity purchase rates in effect on the date of purchase which do not use gender as a factor.

(3) Any amount, in excess of contributions, which may be required in order to purchase the retirement income specified in subsection (2) of this section shall be withdrawn from the County Equal Retirement Benefit Fund.

(4) Retirement benefits for persons who retire prior to January 1, 1984, shall not be affected by changes to this section which become operative on or after January 1, 1984.

Sec. 16. Section 23-2319, Revised Statutes Supplement, 1994, is amended to read:

23-2319. (1) Any Except as provided in section 7 of this act, any member of the retirement system who ceases to be an employee before his or her fifty-fifth birthday may, upon application, receive from the primary carrier:

(a) If not vested, a termination benefit not to exceed the amount of his or her employee account (i) payable in a lump sum or (ii) payable in a lump sum deferred no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years;

(b) If vested, a termination benefit not to exceed (i) the amount of his or her employee account payable in a lump sum plus a deferred account provided by his or her employer account under which the lump-sum or first annuity payment shall be made no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years, (ii) the amount of the employee account payable in a lump sum plus a lump sum of the employer account deferred no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years, or (iii) the total amount of the employee account and the employer account payable in a lump sum deferred no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years; or

(c) A deferred account provided by the employee account and, if vested, the employer account under which the lump-sum or first annuity payment shall be made no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years.

If the terminating member does not make such application, he or she shall receive the benefits provided under subdivision (1)(c) of this section.

(2) At the option of the terminating member, any lump sum of the employer account or any annuity payment provided under subsection (1) of this section may commence as of the first of the month at any time after such member attains the age of fifty-five years and no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years. Such election by the terminating member may be made at any time prior to the commencement of the lump-sum or annuity payments.

(3) The vesting percentage shall be one hundred after five years of participation. The vesting percentage shall equal one hundred for any disability retirement under section 23-2315.

(4) If the terminating member is not credited with one hundred percent of his or her employer account, the remainder shall first be used to meet the expense charges incurred by the board in connection with administering the system, and the remainder shall then be used to reduce the county contributions which would be otherwise required to fund future service retirement benefits.

Sec. 17. Section 23-2321, Revised Statutes Supplement, 1994, is amended to read:

23-2321. In the event of the death before his or her retirement date of any employee who is a member of the system, a death benefit shall be paid to the member's beneficiary or to an alternate payee pursuant to a qualified domestic relations order as provided in section 7 of this act. The death benefit shall be equal to the total of the employee account and the employer account. The beneficiary may elect any retirement option to which the member would have been entitled. If an annuity option is not selected within sixty days after the death of the member, the beneficiary shall receive a lump-sum payment.

Sec. 18. Section 23-2322, Reissue Revised Statutes of Nebraska, is

amended to read:

23-2322. All annuities or benefits which any person shall be entitled to receive under the County Employees Retirement Act shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable except to the extent that such annuities or benefits are subject to a qualified domestic relations order as such term is defined in section 414(p) of the Internal Revenue Code under the Spousal Pension Rights Act.

Sec. 19. Section 24-701, Reissue Revised Statutes of Nebraska, is amended to read:

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, except as provided in section 7 of this act. 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, who does not elect to become a future member pursuant to subsection (8) of section 24-703 or section 24-710.01, and who was retired on or before December 31, 1992;

(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 three years of service as a judge or, in the event of a judge serving less than 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; and

(18) 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 the 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.

Sec. 20. Section 24-707, Reissue Revised Statutes of Nebraska, is amended to read:

24-707. In the event of the death of a judge prior to retirement, if such judge shall have had five or more years of service, the surviving spouse of such judge shall at his or her option be immediately entitled to receive those benefits which the surviving spouse would have been entitled to under subsection (3) of section 24-710 had the judge elected to have the retirement annuity paid as a joint and survivor annuity payable as long as either the judge or the judge's surviving spouse should survive and had the judge retired (1) on the date of death if his or her age at death is sixty-five or more or (2) at age sixty-five if his or her age at death is less than sixty-five. If such option is not exercised by such surviving spouse

within ninety days of the judge's death, if there is no surviving spouse, survives, or if the judge has not served for five years, then the beneficiary, or the estate if 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 retirement, if such 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 section 24-710, the amount of annuities 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, plus regular interest, the difference shall be paid to the beneficiary or estate. Benefits to which the surviving spouse, beneficiary, or estate of a judge shall be entitled shall commence immediately upon the death of such judge.

Sec. 21. Section 24-710, Reissue Revised Statutes of Nebraska, is amended to read:

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-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 seventy percent of the final average compensation such judge was receiving when he or she last served as such judge.

(3) ~~Any Except as provided in section 7 of this act, 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 (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) A one-time cost-of-living adjustment shall be made for each retired judge and each surviving beneficiary who is receiving a retirement annuity as provided for in this section. The annuity shall be adjusted by the increase in the cost of living or wage levels between the effective date of retirement and June 30, 1992, except that such increases shall not exceed three percent per year of retirement and the total increase shall not exceed two hundred fifty dollars per month.

Sec. 22. Section 24-710.02, Reissue Revised Statutes of Nebraska, is amended to read:

24-710.02. All annuities or benefits which any person shall be entitled to receive under sections 24-701 to 24-714 shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable except to the extent that such annuities or benefits are subject to a qualified domestic relations order as such term is defined in section 414(p) of the Internal Revenue Code under the Spousal Pension Rights Act.

Sec. 23. Section 79-1501, Reissue Revised Statutes of Nebraska, is



amended to read:

79-1501. For purposes of the School Employees Retirement Act, unless the context otherwise requires:

(1) Accumulated contributions shall mean 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) Beneficiary shall mean any person in receipt of a school retirement allowance or other benefit provided by the act;

(3) Member shall mean any person who has an account in the School Retirement Fund;

(4) County school official shall mean 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;

(5) Creditable service shall mean prior service for which credit is granted under sections 79-1515 to 79-1518 plus all service rendered while a member of the retirement system and shall include 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 shall not include lump-sum payments to the employee upon termination or retirement in lieu of accrued benefits for such days;

(6) Disability retirement allowance shall mean the annuity paid to a person upon retirement for disability under section 79-1524;

(7) Employer shall mean 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;

(8) Fiscal year shall mean any year beginning July 1 and ending June 30 next following;

(9) Regular interest shall mean interest at such a rate as shall be determined by the retirement board in conformity with actual and expected earnings on its investments;

(10) Junior school employee shall mean a school employee who has not arrived at his or her twenty-first birthday anniversary on August 15 preceding;

(11) Present senior school employee shall mean a senior school employee who was employed within the State of Nebraska on September 1, 1945;

(12) School employee shall mean a contributing member who acquires five hundred sixteen hours or more of service in a fiscal year and thereby earns one-half year of service credit. A contributing member who acquires one thousand thirty-two hours or more of service in a fiscal year shall earn one year of service credit. For purposes of this subdivision, contributing member shall mean the following persons who receive compensation from a public school: (a) Regular teachers and administrators employed on a written contract basis; (b) regular employees, not certified, hired upon a full-time basis which contemplates a workweek of not less than thirty hours; and (c) part-time employees hired on a workweek of not less than fifteen hours;

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

(14) Public school shall mean any and all schools supported by public funds and wholly under the control and management of the State of Nebraska or any subdivision thereof, including schools or other entities established, maintained, and controlled by the school boards of local school districts and schools under the control and management of the Nebraska state colleges or the Board of Regents of the University of Nebraska, any educational service unit, and any other educational institution wholly supported by public funds;

(15) Retirement shall mean qualifying for and accepting a school or disability retirement allowance granted under the act;

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

(17) Retirement system shall mean the School Retirement System of the State of Nebraska;

(18) Required deposit shall mean the deduction from a member's compensation as provided for in section 79-1531 which shall be deposited in the School Retirement Fund;

(19) School year shall mean one fiscal year which shall include not less than one thousand thirty-two 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;

(20) Senior school employee shall mean a school employee who has arrived at his or her twenty-first birthday anniversary on August 15 preceding;

(21) Service shall mean service as a school employee;

(22) School retirement allowance shall mean the total of the savings annuity and the service annuity or formula annuity paid a person who has retired under sections 79-1520 to 79-1522.02, 79-1522.04, and 79-1522.05. 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;

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

(24) State deposit shall mean the deposit by the state in the retirement system on behalf of any member;

(25) State school official shall mean the Commissioner of Education and his or her professional staff and the assistant commissioner of education in charge of vocational education and his or her professional staff;

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

(27) Emeritus member shall mean 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 79-1512, (b) who has thereafter been reemployed in any capacity by a public school in Nebraska 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;

(28) Primary carrier shall mean the life insurance companies and trust companies designated as the underwriter or trustee of the retirement system;

(29) Actuarial equivalent shall mean the equality in value of the aggregate amounts expected to be received under different forms of payment. The determinations shall be based on the 1971 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 seven percent per annum shall be reflected in making these determinations;

(30) Retirement date shall mean the first day of the month following the date upon which a member's request for retirement is received on an application form provided by the retirement system if the member has ceased employment in the school system. An application may be filed no more than ninety days in advance of the date on which a member ceases employment in the school system;

(31) Disability retirement date shall mean the first day of the month following the date upon which a member's request for disability retirement is received on an application form provided by the retirement system if the member has ceased employment in the school system and has complied with sections 79-1523 to 79-1526 as such sections refer to disability retirement; and

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

(33) 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.

Sec. 24. Section 79-1522.01, Reissue Revised Statutes of Nebraska, is amended to read:

79-1522.01. In lieu of the school retirement allowance provided by section 79-1522, any member who is not an employee of a Class V school district and who becomes eligible to make application for and receive a school retirement allowance under section 79-1520 may receive a formula annuity retirement allowance if it is greater than the school retirement allowance provided by section 79-1522.

Subject to the other provisions of this section, the monthly formula

annuity in the normal form shall be determined by multiplying the number of years of service for which such member would otherwise receive the service annuity provided by section 79-1522 (1) by one and one-quarter percent of his or her final average compensation, (2) by one and one-half percent of his or her final average compensation, (3) by one and sixty-five hundredths percent of his or her final average compensation, or (4) by one and seventy-three hundredths percent of his or her final average compensation. If the annuity begins prior to the sixty-fifth birthday of the member and the member has completed thirty or more years of creditable service and is at least sixty years of age, the annuity shall not be reduced. If the annuity begins on or after the sixtieth birthday of the member and the member has completed five or more but less than thirty years of creditable service, the annuity shall be reduced by three percent for each year by which the member's age is less than the age at which the member's age plus years of service would have totaled ninety or three percent for each year after the member's sixtieth birthday and prior to his or her sixty-fifth birthday, whichever provides the greater annuity. A member shall have acquired the equivalent of one-half year of service or more as a public school employee under the retirement system following August 24, 1975, to be eligible for computation of his or her formula annuity using one and one-quarter percent of his or her final average compensation as one of the factors, shall have acquired the equivalent of one-half year of service or more as a public school employee under the retirement system following July 17, 1982, to be eligible for computation of his or her formula annuity using one and one-half percent of his or her final average compensation as one of the factors, or shall have acquired the equivalent of one-half year of service or more as a public school employee under the retirement system following July 1, 1984, to be eligible for computation of his or her formula annuity using one and sixty-five hundredths percent of his or her final average compensation as one of the factors. A member shall be actively employed as a public school employee under the retirement system or under contract with an employer on June 1, 1993, to be eligible for computation of his or her formula annuity using one and seventy-three hundredths percent of his or her final average compensation as one of the factors.

The Except as provided in section 7 of this act. the normal form of the formula annuity shall be an annuity payable monthly during the remainder of the member's life with the provision that in the event of his or her death before sixty monthly payments have been made the monthly payments will be continued to his or her estate or to the beneficiary he or she has designated until sixty monthly payments have been made. A Except as provided in section 7 of this act, a member may elect to receive in lieu of the normal form of annuity an actuarially equivalent annuity in any optional form provided by section 79-1530.

Final average compensation for full-time employees shall be determined by dividing the member's total compensation subject to required deposits for the three fiscal years in which such compensation was the highest by thirty-six. Final average compensation for part-time employees shall be determined by dividing total adjusted compensation subject to required deposits for the three fiscal years in which such adjusted compensation was the highest by thirty-six. If a member has such compensation for less than three such fiscal years, his or her final average compensation shall be determined by dividing his or her total compensation in all such years by twelve times the total number of years of his or her service therefor. Adjusted compensation for any year shall be equal to actual pay times the ratio of one to the actual credited service for such year.

All formula annuities shall be paid from the Annuity Reserve Account. Upon the granting of a formula annuity, there shall be transferred to the Annuity Reserve Account: (a) From the Service Annuity Account, the value of the service annuity which would otherwise be payable; (b) from the School Employees Savings Account, the accumulated contributions of the member; and (c) from the School Employers Deposit Account, the value of the formula annuity in excess of the amounts transferred from the Service Annuity Account and the School Employees Savings Account. The amounts transferred from the Service Annuity Account at any time after such member attains sixty years of age and prior to his or her sixty-fifth birthday or thirty-five years of creditable service shall be on an actuarially reduced basis.

A person receiving a retirement benefit may accept employment in a postsecondary 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, the Community College Board of Governors for each community college area established by section 85-1504, or any other state agency without having to waive retirement payments, without having to notify the retirement board,

and without being subject to any withholding of future retirement payments relating to any retirement system which is provided for a public school.

Sec. 25. Section 79-1528, Reissue Revised Statutes of Nebraska, is amended to read:

79-1528. (1) If a member dies before retirement, his or her accumulated contributions shall be paid to his or her estate, to an alternate payee pursuant to a qualified domestic relations order as provided in section 7 of this act, or to the person he or she has nominated by written designation duly executed and filed with the retirement board. If Except for payment to an alternative payee pursuant to a qualified domestic relations order, if no legal representatives or beneficiary designated in writing applies for his or her accumulated contributions within five years following (a) his or her sixty-fifth birthday if death occurred prior to such date or (b) the date of his or her death if death occurred after his or her sixty-fifth birthday, the contributions shall be forfeited to the retirement system and credited to the Contingent Account at that time.

(2) When the deceased member has not less than twenty years of creditable service regardless of age or dies on or after his or her sixty-fifth birthday and leaves a surviving spouse who has been designated in writing as beneficiary and who, as of the date of the member's death, is the sole surviving primary beneficiary, such beneficiary may elect, within ninety days after the death of the member, to receive an annuity which shall be equal to the amount that would have accrued to the member had he or she elected to have the retirement annuity paid as a joint and survivor annuity payable as long as either the member or the member's spouse should survive and had the member retired (a) on the date of death if his or her age at death is sixty-five or more or (b) at age sixty-five if his or her age at death is less than sixty-five. If the requirements of this subsection are not met, then the beneficiary or the estate, if the member 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 member plus regular interest.

(3) Benefits to which a surviving spouse, beneficiary, or estate of a member shall be entitled pursuant to subsections (1) and (2) of this section shall commence immediately upon the death of such member.

Sec. 26. Section 79-1552, Reissue Revised Statutes of Nebraska, is amended to read:

79-1552. The right of a person to an annuity, an allowance, or any optional benefit under the School Employees Retirement Act, any other right accrued or accruing to any person or persons under such act, the various funds and accounts created thereby, and all the money, investments, and income thereof shall be exempt from any state, county, municipal, or other local tax, shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever, and shall not be assignable except to the extent that such annuity, allowance, or benefit is subject to a qualified domestic relations order as such term is defined in section 414(p) of the Internal Revenue Code under the Spousal Pension Rights Act.

Sec. 27. Section 81-2014, Revised Statutes Supplement, 1995, is amended to read:

81-2014. For purposes of sections 81-2014 to 81-2036:

(1) Actuarial equivalent shall mean the equality in value of the aggregate amounts expected to be received under different forms of payment or to be received at an earlier retirement age than the normal retirement age. The determinations shall be based on the 1983 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;

(2) Board shall mean the Public Employees Retirement Board; and

(3) Officer shall mean an officer provided for in sections 81-2001 to 81-2009; and

(4) Surviving spouse means (a) the spouse married to the member on the date of the member's death if married for at least one year prior to death or if married on the date of the member's retirement 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.

Sec. 28. Section 81-2026, Reissue Revised Statutes of Nebraska, is

amended to read:

81-2026. (1) Any officer qualified for an annuity as provided in section 81-2025 for reasons other than disability shall be entitled to receive a monthly annuity for the remainder of the officer's life. The amount of the annuity shall be a percentage of the officer's final average monthly compensation. For retirement on or after the fifty-fifth birthday of the member or on or after the fiftieth birthday of a member who has been in the employ of the state for twenty-five years, as calculated in section 81-2033, the percentage shall be three percent multiplied by the number of years of service, as calculated in section 81-2033, except that the percentage shall never be greater than seventy-five percent.

For retirement pursuant to subsection (2) of section 81-2025 on or after the fiftieth birthday of the member but prior to the fifty-fifth birthday of the member who has been in the employ of the state for less than twenty-five years, as calculated in section 81-2033, the annuity which would apply if the member were age fifty-five at the date of retirement shall be reduced by five-ninths of one percent for each month by which the early retirement date precedes age fifty-five or for each month by which the early retirement date precedes the date upon which the member has served for twenty-five years, whichever is earlier. Any officer who has completed thirty years of service with the Nebraska State Patrol shall have retirement benefits computed as if the officer had reached age fifty-five.

For purposes of this computation, final average monthly compensation shall mean the sum of the officer's total compensation during the final three years of service as an officer divided by thirty-six, and for any officer employed on or before January 4, 1979, the officer's total compensation shall include payments received for unused vacation and sick leave accumulated during the final three years of service.

(2) Any officer qualified for an annuity as provided in section 81-2025 for reasons of disability shall be entitled to receive a monthly annuity for the remainder of the period of disablement as provided in sections 81-2028 to 81-2030. The amount of the annuity shall be fifty percent of the officer's monthly compensation at the date of disablement if the officer has completed seventeen or fewer years of service. If the officer has completed more than seventeen years of service, the amount of the annuity shall be three percent of the final monthly compensation at the date of disablement multiplied by the total years of service but not to exceed seventy-five percent of the final average monthly compensation as defined in subsection (1) of this section. The date of disablement shall be the date on which the benefits as provided in section 81-2028 have been exhausted.

(3) Upon the death of an officer after retirement for reasons other than disability, the officer's surviving spouse, ~~if married to the officer on the date of retirement,~~ shall continue to receive seventy-five percent of the amount of such officer's annuity for the remainder of the surviving spouse's life or until the surviving spouse remarries. If the surviving spouse has a dependent child or children under the age of nineteen years in his or her care, the benefit shall be one hundred percent of the amount of such officer's annuity until such time as the youngest such dependent child attains the age of nineteen years, after which time the benefit shall be reduced to seventy-five percent of the amount of such officer's annuity. If there is no surviving spouse living at the date of the officer's death, the officer's child or children, if any, shall continue to receive seventy-five percent of the amount of such officer's annuity until such time as the youngest such child attains the age of nineteen years. If there is more than one such child under the age of nineteen years at such time, the amount thereof shall be divided equally among such children under such age and, as they attain the age of nineteen years, only the other child or children under such age shall participate therein. If there is no surviving spouse or no child under the age of nineteen years at the date of the officer's death, the amount of annuities such officer has received under sections 81-2014 to 81-2036 shall be computed. If such amount is less than the contributions to the State Patrol Retirement Fund made by such officer, plus regular interest, the difference shall be paid to the officer's designated beneficiary or estate. Upon the death of an officer after retirement for reasons of disability, benefits shall be provided as if the officer had retired for reasons other than disability. Upon the death of an officer before retirement, benefits shall be provided as if the officer had retired for reasons of disability on the date of such officer's death as follows: (a) To the surviving spouse and dependent child or children under the age of nineteen years in such spouse's care, the benefit shall be one hundred percent of the amount of such officer's annuity until such time as the youngest dependent child attains the age of nineteen years after which time the benefit shall be reduced to seventy-five percent of the

officer's annuity for the remainder of his or her life or until he or she remarries; (b) if there is no spouse living at the date of the officer's death, his or her child or children, if any, shall continue to receive seventy-five percent of the amount of such officer's annuity until such time as the youngest child attains the age of nineteen years; (c) if there is more than one child under the age of nineteen years at the date of the officer's death, the benefit shall be divided equally among such children and, as they attain the age of nineteen years, only the child or children under the age of nineteen years shall participate therein; and (d) if there is no child or children under the age of nineteen years living at the date of the officer's death, the surviving spouse shall receive seventy-five percent of the amount of such officer's annuity for the remainder of his or her life or until he or she remarries. If no benefits are paid to a surviving spouse or dependent children, benefits will be paid as described in subsection (1) of section 81-2031.

(4) Any benefits provided in subsections (1), (2), and (3) of this section shall apply only to retirements, disabilities, and deaths occurring on or after September 2, 1977. No benefits being paid under the system on September 2, 1977, shall be modified, in any way, by the enactment of Laws 1977, LB 347.

Sec. 29. Section 81-2032, Revised Statutes Supplement, 1995, is amended to read:

81-2032. All annuities or benefits which any person shall be entitled to receive under sections 81-2014 to 81-2036 shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable except to the extent that such annuities or benefits are subject to a qualified domestic relations order as such term is defined in section 414(p) of the Internal Revenue Code under the Spousal Pension Rights Act.

Sec. 30. 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) 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. Employees shall not include (a) judges as defined in section 24-701, (b) members of the Nebraska State Patrol, (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 Social Security Act or funds from other federal sources, (g) the Commissioner of Labor employed prior to July 1, 1984, (h) employees of the State Board of Agriculture who are not members of the state retirement plan on July 1, 1982, (i) the Nebraska National Guard air and army technicians, (j) persons eligible for membership under the School Retirement System of the State of Nebraska who have not elected to become members of the retirement system pursuant to section 79-1565 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 (k) 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 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 terminating employment after becoming qualified to receive the retirement allowance granted under the State Employees Retirement Act;

(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 compensation of employees as provided in section 84-1308;

(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 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 board in order to provide the benefits described in sections 84-1319, 84-1320, 84-1321, 84-1323, and 84-1323.01;

(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 the State Employees Retirement Act, the employees and officers of which 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;

(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;

(16) Fund shall mean the State Employees Retirement Fund created by section 84-1309;

(17) Guaranteed investment contract shall mean an investment contract which guarantees that the account maintained for any participant will not decrease in value but will increase each year by the contribution allocated to the account and by investment earnings and will decrease by the amount of expenses reasonably determined to be allocated to the account; and

(18) Investment manager shall mean one or more insurance companies, bank trust departments, or independent investment advisors designated to invest any portion of the fund; and

(19) 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.

Sec. 31. Section 84-1319, Reissue Revised Statutes of Nebraska, is amended to read:

84-1319. (1) The future service retirement benefit shall be an annuity, payable monthly with the first payment made as of the retirement date, which shall be the actuarial equivalent of the retirement value based on factors determined by the board, except that gender shall not be a factor when determining the amount of such payments except as provided in this section.

At Except as provided in section 7 of this act, at any time before the retirement date, the retiring employee may choose to receive his or her annuity either in the form of a straight life annuity or any optional form that is determined acceptable by the board.

In Except as provided in section 7 of this act, in lieu of the future service retirement annuity, a retiring employee may, upon application to the board, receive a benefit not to exceed the amount in his or her employer and employee accounts payable in a lump sum and, if the employee chooses not to receive the entire amount in such accounts, an annuity equal to the actuarial equivalent of the remainder of the retirement value, and the employee may choose any form of such annuity as provided for by the board.

In any case, the amount of the monthly payment shall be such that the annuity chosen shall be the actuarial equivalent of the retirement value except as provided in this section.

The board shall provide to any state employee who is eligible for retirement, prior to his or her selecting any of the retirement options provided by this section, information on the federal and state income tax consequences of the various annuity or retirement benefit options.

(2) The monthly annuity income payable to a member retiring on or after January 1, 1984, shall be as follows:

He or she shall receive at retirement the amount which may be purchased by the accumulated contributions based on annuity rates in effect on the date of purchase which do not utilize gender as a factor, except that such amounts shall not be less than the retirement income which can be provided by the sum of the amounts derived pursuant to subdivisions (a) and (b) of this subsection as follows:

(a) The income provided by the accumulated contributions made prior to January 1, 1984, based on male annuity purchase rates in effect on the date of purchase; and

(b) The income provided by the accumulated contributions made on and after January 1, 1984, based on the annuity purchase rates in effect on the date of purchase which do not use gender as a factor.

(3) Any amounts, in excess of contributions, which may be required in order to purchase the retirement income specified in subsection (2) of this section shall be withdrawn from the State Equal Retirement Benefit Fund.

(4) Retirement benefits for persons who retire prior to January 1, 1984, shall not be affected by changes to this section which become operative on or after January 1, 1984.

(5) At the option of the retiring member, any lump sum or annuity provided under this section or section 84-1320 may be deferred to commence at any time, except that no benefit shall be deferred later than the sixtieth day after the end of the year in which the employee has both attained at least seventy and one-half years of age and has terminated his or her employment with the state. Such election by the retiring member may be made at any time prior to the commencement of the lump-sum or annuity payments.

Sec. 32. Section 84-1321, Reissue Revised Statutes of Nebraska, is amended to read:

84-1321. (1) Any Except as provided in section 7 of this act, any member of the retirement system who ceases to be an employee before becoming eligible for retirement under section 84-1317 may, upon application to the board, receive:

(a) If not vested, a termination benefit not to exceed the amount in his or her employee account (i) payable in a lump sum or (ii) payable in a lump sum deferred no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years;

(b) If vested, a termination benefit not to exceed (i) the amount in his or her employee account payable in a lump sum plus a deferred account provided by his or her employer account under which the lump-sum or first annuity payment shall be made no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years, (ii) the amount of the employee account payable in a lump sum plus a lump sum of the employer account deferred no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years, or (iii) the total amount of the employee account and the employer account payable in a lump sum deferred no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years; or

(c) A deferred account provided by the employee account and, if vested, the employer account under which the lump-sum or first annuity payment shall be made no later than the sixtieth day after the end of the year in which the member attains the age of seventy and one-half years.

If the terminating member does not make application he or she shall receive the benefits provided under subdivision (1)(c) of this section.

(2) At the option of the terminating member, any lump sum of the vested portion of the employer account or any annuity provided under subsection (1) of this section may commence as of the first of the month at any time after such member attains the age of fifty-five or may be deferred, except that no benefit shall be deferred later than the sixtieth day after the end of the year in which the employee has both attained at least seventy and one-half years of age and has terminated his or her employment with the state. Such election by the terminating member may be made at any time prior to the commencement of the lump-sum or annuity payments.

(3) The vesting percentage shall be one hundred after five years of participation in the retirement plan. The vesting percentage shall equal one hundred for any disability retirement under section 84-1317.

(4) In the event that the terminating member is not credited with one hundred percent of his or her employer account, the remainder shall be credited to the State Employees Retirement Fund and shall be applied to reduction of the liability for prior service benefits until such time as such liability is completely funded, and thereafter the remainder shall first be used to meet the expense charges incurred by the Public Employees Retirement



Board in connection with administering the system and the remainder shall then be used to reduce the state contribution which would otherwise be required to fund future service retirement benefits.

(5) If a member ceases to be an employee due to the termination of his or her employment by the state and a grievance or other appeal of the termination is filed, transactions involving forfeiture of his or her employer account shall be suspended pending the final outcome of the grievance or other appeal.

Sec. 33. Section 84-1323, Reissue Revised Statutes of Nebraska, is amended to read:

84-1323. In the event of the death before his or her retirement date of any employee who is a member of the system, a death benefit shall be paid to the member's beneficiary or to an alternate payee pursuant to a qualified domestic relations order as provided in section 7 of this act. The death benefit shall be equal to the total of the employee account and the employer account. The beneficiary may elect any retirement option to which the member would have been entitled. If an annuity option is not selected within sixty days after the death of the member, the beneficiary shall receive a lump-sum payment.

Sec. 34. Section 84-1324, Reissue Revised Statutes of Nebraska, is amended to read:

84-1324. All annuities or benefits which any person shall be entitled to receive under the State Employees Retirement Act shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable except to the extent that such annuities or benefits are subject to a qualified domestic relations order as such term is defined in section 414(p) of the Internal Revenue Code under the Spousal Pension Rights Act.

Sec. 35. Original sections 23-2322, 24-701, 24-707, 24-710, 24-710.02, 79-1501, 79-1522.01, 79-1528, 79-1552, 81-2026, 84-1301, 84-1319, 84-1321, 84-1323, and 84-1324, Reissue Revised Statutes of Nebraska, sections 23-2317, 23-2319, and 23-2321, Revised Statutes Supplement, 1994, and sections 23-2301, 81-2014, and 81-2032, Revised Statutes Supplement, 1995, are repealed.