

# VIRGINIA ACTS OF ASSEMBLY -- 2001 SESSION

## CHAPTER 679

*An Act to amend and reenact §§ 51.1-163 and 51.1-165 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 51.1-165.01, relating to the establishment of a partial lump-sum payment option for certain retirement allowances.*

[S 843]

Approved March 26, 2001

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 51.1-163 and 51.1-165 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 51.1-165.01 as follows:**

§ 51.1-163. Death after retirement.

If a member dies after the effective date of retirement, any excess of his accumulated contributions as of the effective date of his retirement, over the total retirement allowances received by him, shall be paid in the same manner as provided in subsection A of § 51.1-162, *subsection A of § 51.1-207, or subsection A of § 51.1-218, in accordance with the retirement plan covering such member*, unless the retirement allowance is then being paid in accordance with any of the optional benefits provided for in (i) ~~§ 51.1-165 A 1, A 2 or A 4~~ or (ii) ~~§ 51.1-165 A 3~~, if commencing prior to January 1, 1994 ~~§ 51.1-165 or § 51.1-165.01~~. Accumulated contributions as of the effective date of retirement shall include all member contributions paid by the employer on behalf of the member on and after July 1, 1980, and all interest which would have accrued to these funds.

§ 51.1-165. Optional benefits.

A. Any member not taking 50/10 retirement as provided in §§ 51.1-153, ~~or § 51.1-205, or § 51.1-216, in accordance with the retirement plan covering such member~~, may elect to have his retirement allowance payable under one of the options set forth in this subsection and receive the actuarial equivalent of the retirement allowance otherwise payable to him. The election of an optional benefit shall be subject to the approval of the Board.

1. Straight life option. - A member may elect to receive an increased retirement allowance in lieu of any death benefits.

2. Joint and last-survivor option. - A member may elect to receive a decreased retirement allowance during his lifetime ~~and have the retirement allowance, or one-half thereof, continued after his death to a contingent annuitant during the lifetime of such person in order that a fraction of such retirement allowance be continued to a contingent annuitant at the death of the member. The amount to be received by the contingent annuitant, in accordance with such election by the member, shall not exceed 100 percent of the amount to be received by the member during his lifetime nor shall it be less than ten percent of such amount.~~ If the member's retirement is for disability, the election of the retirement allowance to be continued after the member's death shall be limited to one-half of the decreased retirement allowance received by the member during his lifetime. In case of such an election, death benefits that might otherwise be provided shall not be payable upon the death of the member unless death of the member occurs prior to the effective date of retirement as set forth in subsection B of this section. This option may not be elected by a member if the leveling option of subdivision 3 of this subsection has previously been elected; nor may it be elected if the contingent annuitant is not the spouse of the member and the actuarially computed present value of the payments expected to be made to the member is less than one-half of the actuarially computed combined present value of the total payments expected to be made to the member and the contingent annuitant. ~~This option may be elected if the contingent annuitant is the spouse of the member. If the contingent annuitant is not the spouse of the member, this option may be elected only if the actuarial present value of the payments expected to be made to the member is greater than one-half of the actuarial present value of the total payments expected to be made to the member and contingent annuitant.~~

3. Leveling option. - If a member retires from service on or after January 1, 1994, he may elect to receive a temporary increased retirement allowance beginning on the member's effective date of retirement and continuing until the member reaches age fifty-nine and one-half or any whole age up through age seventy and one-half, as designated by the member at the time of his retirement. Upon attaining the age designated, the temporary allowance shall cease and the retirement allowance shall be reduced on an actuarially equivalent basis. The temporary retirement allowance specified by the member shall not result in more than a fifty percent reduction in the member's benefit as provided in ~~§ 51.1-155~~. Any member electing to receive such an allowance shall not be entitled to a joint and last survivor benefit.

4. Other options. - Some other benefits may be paid either to the member or to contingent annuitants he elects. However, the actuarially computed expected duration of the payment of any such benefits

shall not exceed the actuarially computed life expectancy of the member and his spouse, and the actuarially computed present value of the payments expected to be made to the member shall be greater than one-half of the actuarially computed combined present value of the total payments expected to be made to the member and any contingent annuitant, but in no event shall the payment to the contingent annuitant exceed the amount of the member's benefit payable under the special option selected. If the member's retirement is for disability, the election of the retirement allowance to be continued after the member's death shall be equal to the decreased retirement allowance or one-half of the decreased retirement allowance received by the member during his lifetime.

B. Any member taking 50/10 retirement as provided in §§ 51.1-153, ~~or~~ § 51.1-205, *or* § 51.1-216, in accordance with the retirement plan covering such member, may elect to have his retirement allowance payable under the option set forth in this subsection and receive the actuarial equivalent of the retirement allowance otherwise payable to him. The election of this optional benefit shall be subject to the approval of the Board.

50/10 retirement joint and last-survivor option. - A member may elect to receive a decreased retirement allowance during his lifetime and have the retirement allowance continued after his death to a contingent annuitant during the lifetime of such person. The retirement allowance pursuant to this option shall be determined as provided in subdivision A 5 of § 51.1-155, *subdivision A 3 of § 51.1-206, or subdivision A 3 of § 51.1-217, in accordance with the retirement plan covering such member*, except (i) the present value of future retirement benefits shall be calculated based on the life expectancies of both the member and the contingent annuitant and (ii) the actuarially computed present value of the payments expected to be made under this option shall be actuarially equivalent to the actuarially computed present value of the payments expected to be made to the member as determined pursuant to subdivision A 5 of § 51.1-155, *subdivision A 3 of § 51.1-206, or subdivision A 3 of § 51.1-217, in accordance with the retirement plan covering such member*.

C. The election of any one of the options stated in this section shall be null and void if the member dies prior to the Board receiving written notification of the member's effective date of retirement. The election of a joint and last-survivor option shall be null and void if the contingent annuitant dies before the member's retirement. For purposes of this subsection, retirement shall be deemed to commence on the effective date of a member's service retirement or disability. If the death of the member occurs prior to the effective date of retirement but after the Board has received written notification of the member's effective date of retirement, benefits shall be paid in accordance with the provisions of § 51.1-163 and the requirement that the member be in service shall not apply.

D. A member who has elected any of the options stated in this section may revoke such an election by written notification to the Board any time prior to the later of the effective date of retirement or the date of written notification to the Board of retirement of the member.

E. A retired member who has elected a joint and last-survivor option may, in a manner prescribed by the Board, revoke such election and elect to receive from time of notification either the retirement allowance to which he would have been entitled had no option been elected initially or an allowance actuarially equivalent thereto under a joint and last-survivor option with a different contingent annuitant, if (i) the original contingent annuitant has died, (ii) a final decree of divorce of the retired member from the original contingent annuitant has been entered, or (iii) the written consent of the original contingent annuitant, together with evidence satisfactory to the Board of the good health of the original contingent annuitant, is submitted with the notification. If the provisions of this subsection are invoked by a retired member on the basis of the member's having been divorced from his contingent annuitant and the marriage had been of a duration of twenty years or more, the provisions of this subsection shall not be applicable until the death or remarriage of the former spouse unless such spouse consents in writing to the revocation of the option prior to death or remarriage.

If such an election is made as a result of the death or divorce of the contingent annuitant, the benefit payable to the retired member may be adjusted retroactively for a period of not more than sixty days from the date the Board first receives notification of the desire of the retired member to make such a change.

F. Subject to the provisions of subsection E of this section, any member who retires on or after July 1, 1986, and returns to covered employment shall not be entitled to select a different optional benefit upon making application for retirement a second or subsequent time.

*§ 51.1-165.01. Partial lump-sum option for payment of retirement allowance.*

*A. For purposes of this section:*

*"Normal retirement" means normal retirement as described in §§ 51.1-153, 51.1-205, 51.1-216 or § 51.1-305, in accordance with the retirement plan covering the member.*

*B. The following members are eligible to receive a portion of their retirement allowance paid in a lump-sum distribution upon retirement as provided in this section:*

*1. Any retiring member who (i) has satisfied the requirements for normal retirement after January 1, 2004, or has been credited with at least three years of creditable service for service performed after the date he was first eligible for an unreduced service retirement allowance, and (ii) was in service for at least three full years after January 1, 2001, is eligible to elect one of the partial lump-sum options*

*described in either subdivision C 1, C 2, or C 3 of this section.*

*2. Any retiring member who (i) has been credited with at least two years of creditable service for service performed after the date he was first eligible for an unreduced service retirement allowance and (ii) was in service for at least two full years after January 1, 2001, is eligible to elect one of the partial lump-sum options described in either subdivision C 1 or C 2 of this section.*

*3. Any retiring member who (i) has been credited with at least one year of creditable service for service performed after the date he was first eligible for an unreduced service retirement allowance and (ii) was in service for at least one full year after January 1, 2001, is eligible to elect the partial lump-sum option described in subdivision C 1 of this section.*

*For purposes of this subsection, service of an employee of a locality participating in the Retirement System shall mean service for which retirement credit is granted under this chapter.*

*C. An eligible retiring member may make a one-time election to receive a portion of his retirement allowance paid in a lump-sum distribution upon his retirement. The monthly amount of the service retirement allowance otherwise payable to such member making the election shall be reduced on an actuarially equivalent basis to reflect the payment of such lump-sum distribution. Any optional payment of the retirement allowance, pursuant to § 51.1-165, shall also be based upon such reduced retirement allowance. Such member may elect one of the following partial lump-sum options pursuant to the limitations provided in subsection B:*

*1. A lump-sum distribution equal to twelve times the monthly amount of his service retirement allowance as determined in subsection A of § 51.1-155, subsection A of § 51.1-206, subsection A of § 51.1-217, or subsection A of § 51.1-306, in accordance with the retirement plan covering such member, shall be paid to such member upon his retirement.*

*2. A lump-sum distribution equal to twenty-four times the monthly amount of his service retirement allowance as determined in subsection A of § 51.1-155, subsection A of § 51.1-206, subsection A of § 51.1-217, or subsection A of § 51.1-306, in accordance with the retirement plan covering such member, shall be paid to such member upon his retirement.*

*3. A lump-sum distribution equal to thirty-six times the monthly amount of his service retirement allowance as determined in subsection A of § 51.1-155, subsection A of § 51.1-206, subsection A of § 51.1-217, or subsection A of § 51.1-306, in accordance with the retirement plan covering such member, shall be paid to such member upon his retirement.*

*D. The lump-sum distribution, if elected by the eligible retiring member, shall be paid at the same time that the first monthly annuity payment is paid to such member.*

*E. Before an eligible retiring member may make an election to receive a lump-sum distribution, such member shall have been provided from the Retirement System the amount by which his monthly retirement allowance shall be reduced under each of the partial lump-sum options provided in subsection C, as available to such member.*

*F. The election of any one of the options stated in this section shall be void if the member dies prior to the Board receiving written notification of the member's effective date of retirement. If the death of the member occurs prior to the effective date of retirement but after the Board has received written notification of the member's effective date of retirement, benefits shall be paid in accordance with the provisions of § 51.1-163 and the requirement that the member be in service shall not apply.*

**2. That any retirement allowance being paid under one of the optional payment plans of § 51.1-165, as such section existed before the effective date of this act, shall continue to be paid in accordance with such optional payment plan.**