

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 263

An Act to amend and reenact § 51.1-165 of the Code of Virginia, relating to optional benefits of the Virginia Retirement System.

[H 2487]

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1. That § 51.1-165 of the Code of Virginia is amended and reenacted as follows:

§ 51.1-165. Optional benefits.

A. Any member not taking 50/10 retirement as provided in §§ 51.1-153, 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 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~~ 10 percent of such amount. 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 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. Level income option. - *If a member retires from service prior to his retirement age, as such term is defined under the Social Security Act (42 U.S.C. § 416 et seq., as now or hereafter amended), he may elect to receive an increased retirement allowance beginning on the member's effective date of retirement and continuing until the member reaches age 62 or any whole age up to his normal retirement age, as such term is defined under the Social Security Act (42 U.S.C. § 416 et seq., as now or hereafter amended) and a decreased retirement allowance thereafter, thereby providing a more nearly level retirement allowance when such decreased retirement allowance is added to his anticipated primary benefits under the federal Social Security Act. In determining the amount of such retirement allowance under this option before the electing retiree reaches his retirement age, as such term is defined under the Social Security Act (42 U.S.C. § 416 et seq., as now or hereafter amended), the Board may use an estimate of the member's anticipated social security benefit for computing the amount of such retirement allowance. Any member electing to receive such an allowance shall not be entitled to a joint and last survivor benefit. The amount of the increased retirement allowance shall be determined actuarially, but the election of this option shall not result in more than a 50 percent reduction in the member's benefit as provided in §§ 51.1-155, 51.1-206, 51.1-217, or § 51.1-306.*

B. Any member taking 50/10 retirement as provided in §§ 51.1-153, 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~~ 20 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~~ 60 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.