

# VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

## CHAPTER 728

*An Act to amend and reenact § 51.1-168 of the Code of Virginia, relating to a default payment option for a retirement allowance where a payment option has not been elected.*

[S 785]

Approved March 26, 2005

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

**1. That § 51.1-168 of the Code of Virginia is amended and reenacted as follows:**

§ 51.1-168. Limits on creditable compensation; maximum benefits; mandatory payment of allowance.

A. Notwithstanding any other provision of law, creditable compensation used for computing any benefit or employee contribution under or to the Retirement System shall not exceed \$200,000 (as adjusted in \$5,000 increments from time to time by the adjustment factor described in I.R.C. § 415 (d) on the basis of a base period of the calendar quarter beginning July 1, 2001). In determining average final compensation for periods beginning on or after July 1, 2001, the limit on creditable compensation applied to compensation attributable to periods prior to July 1, 2001, shall be \$200,000. Notwithstanding the foregoing, compensation for any employee who became a member of the Retirement System (i) prior to the ninetieth day after the opening date of the 1996 Session of the General Assembly, on whose behalf employee or employer contributions are made into the Retirement System, and for whom annual compensation is used for computing any benefit, shall not exceed the limit on compensation as adjusted by the Commissioner of the Internal Revenue Service pursuant to the transition provisions applicable to eligible participants under state and local governmental plans under I.R.C. § 401 (a) (17) as amended in 1993 and as contained in § 13212 (d) (3) of the Omnibus Budget Reconciliation Act of 1993 (P. L. 103-66).

B. Notwithstanding any other provision of law, the annual benefit under the Retirement System of a member and any related death or other benefit shall, if necessary, be reduced to the extent required by § 415 (b) of the Internal Revenue Code, as adjusted by the Secretary of the Treasury pursuant to § 415 (d) of the Internal Revenue Code. Any adjustment pursuant to § 415 (d) of the Internal Revenue Code shall apply to all members including those who have died, retired, or otherwise terminated service with a nonforfeitable right to a retirement allowance before the effective date of such adjustment. If an employee participating in the Retirement System is also a participant in another defined benefit plan sponsored or maintained by an employer participating in the Retirement System and subject to the limitations under § 415 of the Internal Revenue Code, such employer shall apply the combined limit test required by § 415 (b) of the Internal Revenue Code to all such plans, to the extent required by § 415 of the Internal Revenue Code. Whenever a reduction in annual benefits is required to meet the annual benefit limit required by § 415 (b) of the Internal Revenue Code, the annual benefits under such employer's other plan or plans will be reduced before benefits under the Retirement System.

C. Any vendor for a defined benefit plan sponsored or maintained by an employer that participates in the Retirement System shall (i) request and maintain the records needed, (ii) perform the testing services required to assure compliance with the limitations described in § 415 (b) of the Internal Revenue Code, including testing required where the employer maintains or sponsors another plan that must be tested together with the Retirement System, and (iii) advise the employer of any annual benefit that exceeds the applicable limitation. If there is no vendor for these services, the employer shall (a) request and maintain the records needed, (b) perform the testing services required to assure compliance with the limitations described in § 415 (b) of the Internal Revenue Code, including testing required where the employer maintains or sponsors another plan that must be tested together with the Retirement System, and (c) reduce any annual benefit that exceeds the applicable limitation.

D. On and after January 1, 1989, the retirement allowance of a member who has terminated employment shall begin no later than the later of (i) April 1 of the calendar year following the calendar year that the member attains seventy and one-half years of age or (ii) April 1 of the calendar year following the calendar year in which the member terminates employment. *If the member fails, following reasonable notification, to elect a form of payment by such required beginning date, the retirement allowance shall be paid as a single life annuity and the spousal acknowledgement otherwise required by § 51.1-165.1 shall not be required.*