

VIRGINIA ACTS OF ASSEMBLY -- 2009 SESSION

CHAPTER 362

An Act to amend and reenact §§ 51.1-142.2, 51.1-156, 51.1-162, and 51.1-505 of the Code of Virginia, relating to the Virginia Retirement System; membership credit for service in the military.

[H 2128]

Approved March 27, 2009

Be it enacted by the General Assembly of Virginia:

1. That §§ 51.1-142.2, 51.1-156, 51.1-162, and 51.1-505 of the Code of Virginia are amended and reenacted as follows:

§ 51.1-142.2. Prior service or membership credit for certain members; service credit for accumulated sick leave.

Certain members may purchase credit for service as provided in this section.

A. 1. In order to receive credit for the service made available in subsection B, a member in service shall be required to make a payment. For each year, or portion thereof, to be credited at the time of purchase, a member shall pay an amount equal to five percent of his creditable compensation or five percent of his average final compensation, whichever is greater, unless the member in service is purchasing the service made available in subsection B through a pre-tax or post-tax deduction, in which case the cost to purchase each year, or portion thereof, of such service shall be five percent of his creditable compensation. However, if a person becoming a member on or after July 1, 2001, does not purchase, or enter into a purchase of service contract for, such service within three years from his first date of hire or within three years of the final day of any leave of absence under subdivision B 2, as applicable, then, for each year to be credited at the time of purchase, the member shall pay an amount equal to the actuarial equivalent cost.

2. If a member in service on June 30, 2001, and July 1, 2001, did not, prior to July 1, 2001, purchase, or enter into a contract with the Retirement System to purchase, such service under former § 51.1-142, then, for each year, or portion thereof, to be credited at the time of purchase, the member shall pay an amount equal to the actuarial equivalent cost, unless such member purchases, or enters into a purchase of service contract for, such service within three years from the date he became eligible to purchase the service or by July 1, 2004, whichever is later. If the service is purchased or a purchase of service contract is entered into within such time period, the cost to the member for each year to be credited at the time of purchase shall be five percent of his creditable compensation or five percent of his average final compensation, whichever is greater, unless the member in service is purchasing such service through a pre-tax or post-tax deduction, in which case the cost to purchase each year, or portion thereof, of such service shall be five percent of his creditable compensation. If such member first becomes eligible to purchase any of the service under subsection B after July 1, 2001, the cost of such service or portion thereof shall be as provided in subsection A, except that the three-year period in which to purchase, or enter into a purchase of service contract for, such service shall commence on the first day the member becomes eligible to purchase the service.

3. When a member requests credit for a portion of the period, the most recent portion shall be credited. Payment may be made in a lump sum at the time of purchase or by an additional payroll deduction. Only one additional deduction shall be permitted at any time. Should the additional deduction be terminated prior to purchasing the entire period that might otherwise be credited, the member shall be credited with the number of additional months of service for which full payment is made. If the additional deduction is continued beyond the point at which the entire period has been purchased, the member shall be credited with no more than the entire period that might otherwise have been credited and the excess amount deducted shall be refunded to the member.

Any employer may elect to pay an equivalent amount in lieu of all member contributions required of its employees for the purpose of service credit pursuant to this section. These contributions shall not be considered wages for purposes of Chapter 7 (§ 51.1-700 et seq.) of this title, nor shall they be considered to be salary for purposes of this chapter.

B. 1. Any member in service may purchase prior service credit for (i) active duty military service in the armed forces of the United States, provided that the discharge from a period of active duty status with the armed forces was not dishonorable, (ii) creditable service of another state or of a political subdivision or public school system of this or another state, as certified by such state, political subdivision or public school system, (iii) creditable service of a political subdivision of this state not credited to the member under an agreement as provided for in § 51.1-143.1, as certified by such political subdivision, (iv) civilian service of the United States, (v) creditable service at a private institution of higher education if the private institution is merged with a public institution of higher education and graduates of the private institution are then issued new degrees from the public institution, or (vi) any

period of time when the member was employed by a participating employer and not otherwise eligible to participate in the retirement system because the member was not an employee as defined in § 51.1-124.3.

For purposes of this subsection "active duty military service" means full-time service of at least 180 consecutive days in the United States Army, Navy, Air Force, Marines, Coast Guard, or reserve components thereof.

2. Any member (i) granted a leave of absence for educational purposes may purchase service credit for such leave of absence; or (ii) granted any unpaid leave of absence due to the birth or adoption of a child may purchase up to one year of service credit per occurrence of leave.

C. Any member in service may purchase service credit for creditable service lost from ceasing to be a member under this chapter, as provided in § 51.1-128, because of the withdrawal of his accumulated contributions. Notwithstanding any other provision in this section, the cost to purchase such service shall be five percent of his creditable compensation or five percent of his average final compensation, whichever is greater, unless the member in service is purchasing such service through a pre-tax or post-tax deduction, in which case the cost to purchase each year, or portion thereof, of such service shall be five percent of his creditable compensation. If the member either purchases or enters into a contract to purchase such service within three years of the date he became eligible to purchase the service or by July 1, 2004, whichever is later, then the service may be purchased in a lump sum at the time of purchase or through an additional payroll deduction. Any purchase of such service made at a time later than such period shall be made in a lump sum at the time of purchase.

D. Any member in service may purchase service credit for accumulated sick leave on his effective date of retirement based upon such sums as the employer may provide as payment for any unused sick leave balances. The cost of service credit purchased under this subsection shall be the actuarial equivalent cost of such service.

E. In any case where member and employer contributions, as required under this chapter, were not made because of an error in the payroll, personnel, or other classification system of an employer participating in the retirement system, service that has not been credited because of such error may be purchased on the following basis:

1. The most recent three years of service shall be purchased, using applicable member and employer contribution rates and creditable compensation in effect for such period, in a manner and cost prescribed by the Board; and

2. All other years of service the employer shall purchase at an actuarial equivalent cost.

F. The service credit to be credited to a member under this section shall be calculated at the ratio of one year, or portion thereof, of service credit to one year, or portion thereof, of service purchased, except for part-time service purchased under clause (vi) of subdivision B 1 which shall be calculated at the ratio of one month of service credit for each 173 hours of service as certified by the employer and as purchased by the member. Up to a maximum of four years of service credit may be purchased for each of clauses (i) through (vi) of subdivision B 1 and clause (i) and (ii) of subdivision B 2. In addition, a member in service may purchase service credit for every year or portion thereof for service lost from cessation of membership as described in subsection C.

Except as otherwise required by Chapter 1223 of Title 10 of the United States Code, the service credit made available under this section may not be purchased if, before being purchased or at the time of such purchase pursuant to this section, the service to be purchased is service that is included in the calculation of any retirement allowance received or to be received by the member from this or another retirement system.

G. Any member may receive credit at no cost for service rendered in the armed forces of the United States provided (i) the member was on leave of absence from a covered position, (ii) the discharge from a period of active duty with the armed forces was not dishonorable, (iii) the member has not withdrawn his accumulated contributions, ~~and~~ (iv) *the member is not disabled or killed while on leave without pay while performing active duty military service in the armed forces of the United States*, and (v) the member reenters service in a covered position within one year after discharge from the armed forces. In order to receive such service, the member must complete such forms and other requirements as are required by the Board and the retirement system.

§ 51.1-156. Disability retirement.

A. Any member in service or within ninety days after termination of service who has not withdrawn his accumulated contributions as provided for in § 51.1-128 may retire for disability not compensable under the Virginia Workers' Compensation Act (§ 65.2-100 et seq.) upon written notification to the Board setting forth the date the retirement is to become effective.

B. Any member in service or within ninety days after termination of service may retire for disability from a cause compensable under the Virginia Workers' Compensation Act upon written notification to the Board setting forth the date the retirement is to become effective.

C. If no compensation is finally awarded under the Virginia Workers' Compensation Act, due to legal proceedings or otherwise resulting in settlement from the persons causing the disability, the Virginia Workers' Compensation Commission shall determine whether the member's disability is from a cause

compensable under the Virginia Workers' Compensation Act.

D. The effective date of retirement shall be after the member's last day of service but shall not be more than ninety days prior to the filing of the notice of retirement. The Board may waive the ninety-day requirement upon a showing of good cause.

E. After a medical examination of the member or after reviewing pertinent medical records, the Medical Board shall certify that (i) the member is and has been continuously since the effective date of retirement if prior to filing of the notification, mentally or physically incapacitated for the further performance of duty, (ii) the incapacity is likely to be permanent, and (iii) the member should be retired. A member shall not be retired for disability for any condition which existed at the time of becoming a member unless medical evidence, convincing to the Board, supports the fact that the pre-existing condition has worsened substantially.

F. In the event the member is physically or mentally unable to submit written notification of his intention to retire, the member's appointing authority may submit notification on his behalf.

G. Any member who has been on leave of absence without pay for a period exceeding twenty-four months shall not be entitled to retire under the provisions of this section. *This subsection shall not apply to any member who is disabled while on leave without pay while performing active duty military service in the armed forces of the United States.*

H. For good cause shown, the Board may waive the ninety-day notification periods set forth in subsections A and B. For purposes of this section, good cause shall exist and the Board shall waive such ninety-day notification periods if (i) the member would otherwise qualify for disability retirement but for failing to comply with the requirements of subsection A or B and (ii) the Medical Board, acting solely in its own discretion after reviewing objective medical evidence of the disability and its cause, certifies that: (a) the disability and its cause existed on the date the member's employment was terminated, (b) the member had no knowledge of the existence of the disability and its cause at any time within ninety days after the date the member's employment was terminated, and (c) the member could not, with reasonable inquiry, have ascertained the existence of the disability and its cause within ninety days after the date the member's employment was terminated.

§ 51.1-162. Death before retirement.

A. If a member dies before retirement, and if no benefits are payable under subsection B, the amount of his accumulated contributions shall be paid to the designated beneficiary or to a surviving relative according to the order of precedence set forth in this section. This amount shall be reduced by the amount of any retirement allowance previously received by the member under this chapter or the abolished system. Each member shall designate who is to receive a refund of accumulated contributions credited to his account in the event of the death of the member prior to retirement. The designation must be made on a form prepared by the Board, signed and acknowledged by the member before a person authorized to take acknowledgments, and filed in a manner prescribed by the Board. The designation may be changed by the member by the written designation of some other person, signed, acknowledged, and filed in a manner prescribed by the Board.

If no designation has been made, or the death of the designated person occurs prior to the death of the member and another designation has not been made, the proceeds shall be paid to the persons surviving at the death of the member in the following order of precedence:

First, to the spouse of the member;

Second, if no surviving spouse, to the children of the member and descendants of deceased children, per stirpes;

Third, if none of the above, to the parents of the member;

Fourth, if none of the above, to the duly appointed executor or administrator of the estate of the member;

Fifth, if none of the above, to other next of kin of the member entitled under the laws of the domicile of the member at the time of his death.

B. If a member dies in service, *including a member who is on leave without pay while performing active duty military service in the armed forces of the United States*, and if no benefits are payable under subsection C of this section, a retirement allowance shall be paid to the person or persons designated as provided in subsection A of this section if the person is the member's (i) surviving spouse, (ii) minor child, or (iii) parent(s). If no designation has been made, or if the death of the designated person occurs prior to the death of the member and another designation has not been made, a retirement allowance shall be paid in the following order of precedence to the member's (a) surviving spouse, (b) minor children, or (c) parent(s). The retirement allowance shall be paid to the first person qualifying in the orders of precedence set out in this subsection. If more than one minor child survives the deceased member, the allowance shall be divided among them in a manner determined by the Board. If more than one parent survives the deceased member, the allowance shall be divided among them in a manner determined by the Board. The retirement allowance shall be continued during the lifetime of the person or in the case of a minor child until the child dies or attains the age of majority, whichever occurs first. The retirement allowance shall equal the decreased retirement allowance that would have been payable under the joint and survivor option so that the same amount would be continued to such person after the

member's death. If the member dies prior to his fifty-fifth birthday, then, for purposes of this subsection, the member shall be presumed to be age fifty-five on his date of death. When determining the allowance that would have been payable to the member had the member retired on the date of his death, the provisions of subdivision A 4 of § 51.1-155 shall not apply. If the person elects in writing under seal and duly acknowledged, the amount of the member's accumulated contributions or lump sum payment shall be paid to him exclusively, in lieu of any other benefits under this section. This amount shall be reduced by the amount of any retirement allowance previously received by the member under this chapter.

C. If a member dies in service from a cause compensable under the Virginia Workers' Compensation Act (§ 65.2-100 et seq.), a retirement allowance shall be paid to the member's surviving spouse. If no compensation is finally awarded under the Virginia Workers' Compensation Act due to legal proceedings or otherwise resulting in settlement from the persons causing such death, the Virginia Workers' Compensation Commission shall determine whether the member's death was from a cause compensable under the Virginia Workers' Compensation Act. If the member leaves no surviving spouse or the surviving spouse dies, any minor children of the deceased member shall be paid an allowance until the children die or attain the age of majority, whichever occurs first. If more than one minor child survives the deceased member, the allowance shall be divided in a manner determined by the Board. If the deceased member leaves neither surviving spouse nor minor child, the allowance, divided in a manner determined by the Board, shall be paid to the member's parents during their lives.

The retirement allowance payable hereunder to a qualifying survivor shall be the annual amount which when added to the compensation payable under the Virginia Workers' Compensation Act for the death of the member equals fifty percent of the member's average final compensation if the survivor does not qualify for death benefits under the provisions of the Social Security Act in effect on the date of the death of the member. If the survivor qualifies for death benefits under the provisions of the Social Security Act in effect on the date of the death of the member, the allowance payable from the retirement system when added to the compensation payable under the Virginia Workers' Compensation Act shall equal thirty-three and one-third percent of the member's average final compensation.

Any beneficiary entitled to the entire amount of a retirement allowance under the provisions of this subsection as a result of the death of a member shall be entitled to waive his rights to the allowance by written notification to the Board within ninety days after the death of the member in order to make available a retirement allowance under the provisions of subsection B of this section.

§ 51.1-505. Amounts of life and accident insurance for each employee; reduction and termination of insurance.

A. Each employee to whom this chapter applies shall, subject to the terms and conditions thereof, be eligible to be insured for an amount of group life insurance plus an amount of group accidental death and dismemberment insurance, each amount equal to twice the amount of his annual salary. If an employee's annual salary is not an even multiple of \$1,000, his annual salary for purposes of this section shall be considered to be the next higher \$1,000. For purposes of this section, the annual salary of a member of the General Assembly shall be his creditable compensation for his last full calendar year of service or his salary under § 30-19.11, whichever is greater, and shall include the full amount of any salaries payable to such member for working in covered positions, regardless of whether such salaries were paid, reduced, or not paid because of such member's service in the General Assembly. The annual salary for an employee retired for service or disability on an immediate retirement allowance may be adjusted by the Board in accordance with the provisions of Chapter 1 (§ 51.1-124.1 et seq.) of this title.

Subject to the conditions and limitations of the group insurance policy, the accidental death and dismemberment insurance shall provide payments as follows:

Loss	Amount Payable
For loss of life	Full amount determined in accordance with the provisions of this section
Loss of one hand or of one foot or loss of sight of one eye	One-half of the amount determined in accordance with the provisions of this section
Loss of two or more such members	Full amount determined in accordance with the provisions of this section.

For any one accident, the aggregate amount of accidental death and dismemberment insurance that may be paid shall not exceed the maximum amount of accidental death and dismemberment insurance determined in accordance with this section.

Notwithstanding the provisions of § 51.1-124.8, the amount of life insurance for which an employee shall be eligible shall be equal to twice the amount of his annual salary without regard to the date of the employee's qualification for a retirement allowance.

B. The amount of life insurance on an employee who retires for service on an immediate retirement allowance or who elects to postpone the receipt of his retirement allowance to some date other than his last day of service shall be the amount set forth in subsection A, reduced by an amount equal to 25

percent thereof on the January 1 following the first full year from the date the employee is separated from service and each January 1 thereafter. The amount of life insurance on an employee who retires for disability on an immediate retirement allowance shall be the amount set forth in subsection A on the date the employee last rendered service reduced by an amount equal to 25 percent thereof on January 1 following the first full year from the date the employee attains age 65, and each January 1 thereafter. If the employee by statute or Board regulation has been construed to be in service to the beginning of the next school year, the reduction shall not apply until the beginning of the next school year. The reduction shall not decrease the amount of life insurance on an employee to less than 25 percent of the amount of life insurance to which the initial reduction is applied. For purposes of this subsection, an employee shall be deemed to have retired only if the employee has five or more years of service as an employee prior to the date of retirement. This requirement shall not be applicable if the employee is retired for disability.

Any employee who was denied membership in the Retirement System because of having attained age 60 at the time of being employed or reemployed and who has five or more years of service immediately prior to separation from service shall retain the life insurance coverage as though he had retired on an immediate retirement allowance.

C. For any employee, who at any time has at least 20 years of creditable service in any retirement plan administered by the Virginia Retirement System or other Virginia public plan participating in the group life program established by this chapter, the amount of group life insurance shall be an amount equal to twice the amount of the highest annual salary earned during such employment.

The provisions of subsection B providing a reduction in the amount of life insurance shall apply to the amount of group life insurance as determined under this subsection for such employees with at least 20 years of creditable service.

D. The amount of life insurance for an employee who is retired for disability on an immediate retirement allowance, who also has attained age 55, and who elects to receive a retirement allowance as set forth in subsection C of § 51.1-160, shall be reduced as set forth in subsection B of this section. The reduction shall begin the January 1 following the first full year from the date the employee elects a service retirement allowance.

E. All accidental death and dismemberment insurance on an employee shall cease upon the earliest of (i) his separation from service, (ii) his failure to pay, in the manner prescribed by the Board, the contribution required for the first 24 months of leave without pay, (iii) if the employee has not returned to pay status, the expiration of 24 months of leave without pay, or (iv) his retirement.

F. Except in case of retirement as provided in subsections B, C, and D of this section, all life insurance on an employee shall cease upon the earliest of (i) his separation from service, or (ii) his failure to pay, in the manner prescribed by the Board, the contribution required for the first 24 months of leave without pay, or, (iii) if the employee has not returned to pay status, the expiration of 24 months of leave without pay. Except in the case of retirement, life insurance shall be subject to a temporary extension of 31 days. During this 31-day extension, the employee may convert his life insurance into an individual policy of life insurance (without disability or other supplementary benefits) in any one of the forms, except term insurance, then customarily issued by the insuring company. The amount of life insurance which may be converted shall not exceed the amount of his life insurance under the group insurance policy at the time coverage is terminated. The insurance shall be converted to an individual policy (a) without evidence of insurability, (b) at the premium applicable to the class of risk to which he belongs, and (c) to the form and amount of the individual policy at his then attained age, provided application for the individual policy and payment of the first premium thereon is made to the issuing company within the 31 days. The right to convert to an individual policy as provided in § 38.2-3333 shall not apply upon termination of this group policy or elimination of a class of insured employees.

Except as provided in subsection C, the amount of life insurance on each insured employee who retires shall be determined under the provisions of this chapter as it exists on the employee's date of retirement.

G. Each employee of a state institution of higher education or of a local school board who remains in service until the completion of the school year and who makes contributions required to provide insurance coverage until service normally will be resumed the beginning of the next school year shall be deemed to be in service as an employee through the period to which the payments apply. If the employee is retired for service or disability during this period, contributions made by the employee shall be accepted and retained as proper.

Each state employee of a public institution of higher education or a teaching hospital affiliated with a public institution of higher education who (i) is employed pursuant to a contract (a) that is for a term of employment of at least nine months and (b) that does not coincide with the normal scholastic year, (ii) remains in service until the completion of the contract year, and (iii) makes contributions required to provide insurance coverage until service normally will be resumed at the beginning of the next contract year shall be deemed to be in service as an employee through the period to which the payments apply. If the employee is retired for service or disability during this period, contributions made by the employee shall be accepted and retained as proper.

H. The provisions of subsections E and F of this section shall not apply to an employee who is on leave without pay while performing active duty military service in the armed forces of the United States.

H I. That the provisions of this section shall apply to all members of the Virginia Retirement System who, on and after July 1, 1995, are covered under the group life insurance program created pursuant to this section and whose effective date of retirement is (i) before July 1, 1970, or (ii) on and after July 1, 1970.