

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 51.1-124.3, 51.1-157, 51.1-168, 51.1-301, and 51.1-308 of the Code of*
3 *Virginia, relating to Virginia Retirement System; technical amendments.*

4 [S 1251]
5 Approved

6 **Be it enacted by the General Assembly of Virginia:**
7 **1. That §§ 51.1-124.3, 51.1-157, 51.1-168, 51.1-301, and 51.1-308 of the Code of Virginia are**
8 **amended and reenacted as follows:**

9 **§ 51.1-124.3. Definitions.**

10 As used in this chapter, unless the context requires a different meaning:

11 "Abolished system" means the Virginia Retirement Act, §§ 51-30 through 51-111, repealed by
12 Chapter 1 of the Acts of Assembly of 1952.

13 "Accumulated contributions" means the sum of all amounts deducted from the compensation of a
14 member and credited to his individual account in the member's contribution account, all amounts the
15 member may contribute to purchase creditable service, all member contributions contributed by the
16 employer on behalf of the employee, on or after July 1, 1980, except those amounts contributed on
17 behalf of members of the General Assembly who are otherwise retired under the provisions of this
18 chapter, and all interest accruing to these funds. If a member is retired for disability from a cause which
19 is compensable under the Virginia Workers' Compensation Act (§ 65.2-100 et seq.), dies in service prior
20 to retirement, or requests a refund of contributions in accordance with § 51.1-161, "accumulated
21 contributions" shall include all member contributions paid by the employer on behalf of the member on
22 and after July 1, 1980, and all interest which would have accrued to these funds.

23 "Actuarial equivalent" means a benefit of equal value when computed upon the basis of actuarial
24 tables adopted by the Board.

25 "Average final compensation" means the average annual creditable compensation of a member during
26 his 60 highest consecutive months of creditable service or during the entire period of his creditable
27 service if less than 60 months. However, for any member who (i) is not a person who becomes a
28 member on or after July 1, 2010, and (ii) as of January 1, 2013, has at least 60 months of creditable
29 service, "average final compensation" means the average annual creditable compensation of a member
30 during his 36 highest consecutive months of creditable service. A participant in the hybrid retirement
31 program described in § 51.1-169 shall be considered to be a person who becomes a member on or after
32 July 1, 2010, for the purposes of this definition.

33 If a member ceased employment prior to July 1, 1974, "average final compensation" means the
34 average annual creditable compensation during the five highest consecutive years of creditable service.

35 "Beneficiary" means any person entitled to receive benefits under this chapter.

36 "Board" means the Board of Trustees of the Virginia Retirement System.

37 "Creditable compensation" means the full compensation payable annually to an employee working
38 full time in his covered position. For any state employee of a public institution of higher education or a
39 teaching hospital affiliated with a public institution of higher education who is (i) compensated on a
40 salaried basis and (ii) working full time in a covered position pursuant to a contract of employment for
41 a period of at least nine months, creditable compensation means the full compensation payable over the
42 term of any contract entered into between the employee and the employer, without regard to whether or
43 not the term of the contract coincides with the normal scholastic year. However, if the contract is for
44 more than one year, creditable compensation means that compensation paid for the current year of the
45 contract.

46 Remuneration received by members of the General Assembly not otherwise retired under the
47 provisions of this chapter pursuant to §§ 30-19.11 and 30-19.12 shall be deemed creditable
48 compensation. In addition, for any member of the General Assembly, creditable compensation shall
49 include the full amount of salaries payable to such member for working in covered positions, regardless
50 of whether a contractual salary is reduced and not paid to such member because of service in the
51 General Assembly.

52 "Creditable service" means prior service as set forth in § 51.1-142.2 plus membership service for
53 which credit is allowable.

54 "Employee" means any teacher, state employee, officer, or employee of a locality participating in the
55 Retirement System.

56 "Employer" means the Commonwealth in the case of a state employee, the local public school board

57 in the case of a teacher, or the political subdivision participating in the Retirement System.

58 "Joint Rules Committee" means those members of the House of Delegates and the Senate designated
59 by the Speaker of the House and the Chairman of the Senate Committee on Rules, respectively, to meet
60 with each other and to act jointly on behalf of the Committee on Rules for each house.

61 "Local officer" means the treasurer, commissioner of the revenue, attorney for the Commonwealth,
62 clerk of a circuit court, or sheriff of any county or city, or deputy or employee of any such officer.

63 "Medical Board" means the boards composed of physicians or other health care professionals as
64 provided by this chapter.

65 "Member" means any person included in the membership of the Retirement System.

66 "Membership service" means service as an employee rendered while a contributing member of the
67 Retirement System except as provided in this chapter.

68 "Normal retirement date" means a member's sixty-fifth birthday. However, for any (i) person who
69 becomes a member on or after July 1, 2010, or (ii) member who does not have at least 60 months of
70 creditable service as of January 1, 2013, under this chapter his normal retirement date shall be the date
71 that the member attains his "retirement age" as defined under the Social Security Act (42 U.S.C. § 416
72 et seq., as now or hereafter amended).

73 "Person who becomes a member on or after July 1, 2010," means a person who is not a member of
74 a retirement plan administered by the Virginia Retirement System the first time he is hired on or after
75 July 1, 2010, in a covered position. Subsequent separation from such position and subsequent
76 employment in a covered position shall not alter the status of a person who becomes a member on or
77 after July 1, 2010.

78 "Political subdivision" means any county, city, or town, any political entity, subdivision, branch, or
79 unit of the Commonwealth, or any commission, public authority, or body corporate created by or under
80 an act of the General Assembly specifying the powers, privileges, or authority capable of exercise by the
81 commission, public authority, or body corporate.

82 "~~Primary social security benefit" means, with respect to any member, the primary insurance amount~~
83 ~~to which the member is entitled, for old age or disability, as the case may be, pursuant to the provisions~~
84 ~~of the federal Social Security Act as in effect at his date of retirement, under the provisions of this~~
85 ~~chapter except as otherwise specifically provided.~~

86 "Prior service" means service rendered prior to becoming a member of the Retirement System.

87 "Purchase of service contract" means a contract entered into by the member and the Retirement
88 System for the purchase of service credit by the member as provided in § 51.1-142.2.

89 "Retirement allowance" means the retirement payments to which a member is entitled.

90 "Retirement plan administered by the Virginia Retirement System" means a retirement plan
91 established under this title administered by the Virginia Retirement System, or by an agency that has
92 been delegated administrative responsibility by the Virginia Retirement System, but such term shall
93 exclude any plan established under Chapter 6 (§ 51.1-600 et seq.) or Chapter 6.1 (§ 58.1-607 et seq.).

94 "Retirement System" means the Virginia Retirement System.

95 "Service" means service as an employee.

96 "*Social security disability benefit" means, with respect to any member, the social security disability*
97 *benefits to which the member is entitled pursuant to the provisions of the federal Social Security Act as*
98 *in effect at his date of retirement.*

99 "State employee" means any person who is regularly employed full time on a salaried basis, whose
100 tenure is not restricted as to temporary or provisional appointment, in the service of, and whose
101 compensation is payable, no more often than biweekly, in whole or in part, by the Commonwealth or
102 any department, institution, or agency thereof. "State employee" shall include any faculty member, but
103 not including adjunct faculty, of a public institution of higher education (a) who is compensated on a
104 salary basis, (b) whose tenure is not restricted as to temporary or provisional appointment, and (c) who
105 regularly works at least 20 hours but less than 40 hours per week (or works the equivalent of one-half
106 of a full time equivalent position) engaged in the performance of teaching, administrative, or research
107 duties at such institution; such faculty member shall be deemed an eligible employee for purposes of the
108 retirement provisions under §§ 51.1-126, 51.1-126.1, and 51.1-126.3. "State employee" shall also include
109 the Governor, Lieutenant Governor, Attorney General, and members of the General Assembly but shall
110 not include (i) any local officer, (ii) any employee of a political subdivision of the Commonwealth, (iii)
111 individuals employed by the Department for the Blind and Vision Impaired pursuant to § 51.5-72, (iv)
112 any member of the State Police Officers' Retirement System, (v) any member of the Judicial Retirement
113 System, or (vi) any member of the Virginia Law Officers' Retirement System.

114 "Teacher" means any person who is regularly employed full time on a salaried basis as a professional
115 or clerical employee of a county, city, or other local public school board.

116 **§ 51.1-157. Disability retirement allowance.**

117 A. Allowance payable on retirement. — Upon retirement for disability, a member who has five or

118 more years of creditable service shall receive an annual retirement allowance during his lifetime and
 119 continued disability equal to 1.70 percent of his average final compensation multiplied by the smaller of
 120 (i) twice the amount of his creditable service or (ii) the amount of creditable service he would have
 121 completed at age 60 if he had remained in service to that age. Notwithstanding the foregoing, for a
 122 member who (a) is a person who becomes a member on or after July 1, 2010, or (b) does not have at
 123 least 60 months of creditable service as of January 1, 2013, the allowance shall equal 1.65 percent of his
 124 average final compensation multiplied by the smaller of (1) twice the amount of his creditable service or
 125 (2) the amount of creditable service he would have completed at age 60 if he had remained in service to
 126 that age. If a member has already attained age 60, the amount of creditable service at his date of
 127 retirement shall be used.

128 For retirements between October 1, 1994, and December 31, 1998, any employee or local officer
 129 who is a member or beneficiary of a retirement system administered by the Board shall receive an
 130 additional retirement allowance equal to three percent of the disability retirement allowance payable
 131 under this section; provided that, for purposes of this additional retirement allowance, the term employee
 132 shall include only those employees of political subdivisions that have adopted a resolution providing for
 133 such an allowance under subsection B of § 51.1-130. Average final compensation attributable to service
 134 as Governor, Lieutenant Governor, Attorney General, or member of the General Assembly shall not be
 135 included in computing this additional retirement allowance.

136 B. Workers' compensation guarantee. — If a member retires for disability from a cause which is
 137 compensable under the Virginia Workers' Compensation Act (§ 65.2-100 et seq.), the amount of the
 138 annual retirement allowance shall equal 66 and two-thirds percent of the member's average final
 139 compensation if the member does not qualify for ~~primary~~ social security *disability* benefits under the
 140 provisions of the Social Security Act in effect on the date of his retirement. If the member qualifies for
 141 ~~primary~~ social security *disability* benefits *or has attained his normal retirement age* under the provisions
 142 of the Social Security Act in effect on the date of his retirement, the allowance payable from the
 143 retirement system shall equal 50 percent of his average final compensation. A member shall be entitled
 144 to the larger of the retirement allowance as determined under the provisions of subsection A or under
 145 the provisions of this subsection.

146 C. Reduction of allowance. — Any allowance payable to a member who retires for disability from a
 147 cause compensable under the Virginia Workers' Compensation Act shall be reduced by the amount of
 148 any payments under the provisions of the Act in effect on the date of retirement of the member and the
 149 excess of the allowance shall be paid to the member. When the time for compensation payments under
 150 the Act has elapsed, the member shall receive the full amount of the allowance payable during his
 151 lifetime and continued disability. If the member's payments under the Virginia Workers' Compensation
 152 Act are adjusted or terminated for refusal to work or to comply with the requirements of § 65.2-603, his
 153 allowance shall be computed as if he were receiving the compensation to which he would otherwise be
 154 entitled.

155 D. Special retirement allowance guarantee. — Any member retired from a cause which is not
 156 compensable under the Virginia Workers' Compensation Act shall be guaranteed an annual retirement
 157 allowance during his lifetime and continued disability which equals 50 percent of the member's average
 158 final compensation if the member does not qualify for ~~primary~~ social security *disability* benefits under
 159 the provisions of the Social Security Act in effect on the date of his retirement. If the member qualifies
 160 for ~~primary~~ social security *disability* benefits *or has attained his normal retirement age* under the
 161 provisions of the Social Security Act in effect on the date of retirement, the allowance payable from the
 162 retirement system shall equal 33 and one-third percent of his average final compensation.

163 E. Determination of retirement allowance. — For the purposes of this section, the retirement
 164 allowance shall be determined on the assumption that the retirement allowance is payable to the member
 165 alone and that no optional retirement allowance is elected.

166 **§ 51.1-168. Limits on creditable compensation; maximum benefits; mandatory payment of**
 167 **allowance.**

168 A. Notwithstanding any other provision of law, creditable compensation used for computing any
 169 benefit or employee contribution under or to the Retirement System shall not exceed \$200,000 (as
 170 adjusted in \$5,000 increments from time to time by the adjustment factor described in I.R.C. § 415 (d)
 171 on the basis of a base period of the calendar quarter beginning July 1, 2001). In determining average
 172 final compensation for periods beginning on or after July 1, 2001, the limit on creditable compensation
 173 applied to compensation attributable to periods prior to July 1, 2001, shall be \$200,000. Notwithstanding
 174 the foregoing, compensation for any employee who became a member of the Retirement System (i) prior
 175 to the ninetieth day after the opening date of the 1996 Session of the General Assembly, on whose
 176 behalf employee or employer contributions are made into the Retirement System, and for whom annual
 177 compensation is used for computing any benefit, shall not exceed the limit on compensation as adjusted
 178 by the Commissioner of the Internal Revenue Service pursuant to the transition provisions applicable to

179 eligible participants under state and local governmental plans under I.R.C. § 401 (a)(17) as amended in
 180 1993 and as contained in § 13212 (d)(3) of the Omnibus Budget Reconciliation Act of 1993 (P. L.
 181 103-66).

182 B. Notwithstanding any other provision of law, the annual benefit under the Retirement System of a
 183 member and any related death or other benefit shall, if necessary, be reduced to the extent required by
 184 § 415 (b) of the Internal Revenue Code, as adjusted by the Secretary of the Treasury pursuant to § 415
 185 (d) of the Internal Revenue Code. Any adjustment pursuant to § 415 (d) of the Internal Revenue Code
 186 shall apply to all members including those who have died, retired, or otherwise terminated service with
 187 a nonforfeitable right to a retirement allowance before the effective date of such adjustment. If an
 188 employee participating in the Retirement System is also a participant in another defined benefit plan
 189 sponsored or maintained by an employer participating in the Retirement System and subject to the
 190 limitations under § 415 of the Internal Revenue Code, such employer shall apply the combined limit test
 191 required by § 415 (b) of the Internal Revenue Code to all such plans, to the extent required by § 415 of
 192 the Internal Revenue Code. Whenever a reduction in annual benefits is required to meet the annual
 193 benefit limit required by § 415 (b) of the Internal Revenue Code, the annual benefits under such
 194 employer's other plan or plans will be reduced before benefits under the Retirement System.

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

205 D. On and after January 1, 1989, the retirement allowance of a member who has terminated
 206 employment shall begin no later than the later of (i) April 1 of the calendar year following the calendar
 207 year that the member attains ~~seventy and one-half years of age~~ *the required age as provided in the*
 208 *Internal Revenue Code of 1986, as amended*, or (ii) April 1 of the calendar year following the calendar
 209 year in which the member terminates employment. If the member fails, following reasonable
 210 notification, to elect a form of payment by such required beginning date, the retirement allowance shall
 211 be paid as a single life annuity and the spousal acknowledgement otherwise required by § 51.1-165.1
 212 shall not be required. Notwithstanding any other provisions of law, § 401(a)(9) of the Internal Revenue
 213 Code, as amended or renumbered, and the regulations thereunder applicable to governmental plans are
 214 incorporated by reference.

215 § 51.1-301. Definitions.

216 As used in this chapter, unless the context requires a different meaning:

217 "Appointing authority" means the General Assembly or the Governor.

218 "Creditable service" means prior service plus membership service, as further defined in and modified
 219 by § 51.1-303, for which credit is allowable under this chapter.

220 "Judge" means any justice or judge of a court of record of the Commonwealth, any member of the
 221 State Corporation Commission or Virginia Workers' Compensation Commission, any judge of a district
 222 court of the Commonwealth other than a substitute judge of such district court, and any executive
 223 secretary of the Supreme Court assuming such position between December 1, 1975, and January 31,
 224 1976.

225 "Normal retirement date" means a member's sixty-fifth birthday.

226 "Previous systems" means the systems established under the provisions of Chapters 2 (§ 51-3 et seq.)
 227 and 2.2 (§ 51-29.8 et seq.) of Title 51, and, in the case of judges of regional juvenile and domestic
 228 relations courts, the Virginia Retirement System.

229 "~~Primary social security benefit" means, with respect to any member, the primary insurance amount~~
 230 ~~to which the member is entitled, for old age or disability, as the case may be, pursuant to the federal~~
 231 ~~Social Security Act as in effect at his date of retirement, under the provisions of this chapter except as~~
 232 ~~otherwise specifically provided.~~

233 "Retirement system" means the Judicial Retirement System.

234 "Service" means service as a judge.

235 "*Social security disability benefit" means, with respect to any member, the social security disability*
 236 *benefits to which the member is entitled pursuant to the provisions of the federal Social Security Act as*
 237 *in effect at his date of retirement.*

238 § 51.1-308. Disability retirement allowance.

239 A. Allowance payable on retirement. — Upon retirement for disability, a member who has five or

240 more years of creditable service shall receive an annual retirement allowance payable during his lifetime
 241 and continued disability equal to 1.70 percent of average final compensation when multiplied by the
 242 smaller of (i) twice the amount of creditable service or (ii) the amount of creditable service he would
 243 have completed at age 60 if he had remained in service to that age. However, for a member appointed
 244 or elected to an original term commencing on or after January 1, 2013, the applicable percentage shall
 245 be 1.65 percent, and for a member participating in the hybrid retirement program described in
 246 § 51.1-169, the applicable percentage shall be one percent. If a member has already attained age 60, the
 247 amount of creditable service at his date of retirement shall be used.

248 In no case shall the annual retirement allowance exceed 78 percent of the average final compensation
 249 of the member.

250 B. Workers' compensation guarantee. — If a member retires for disability from a cause which is
 251 compensable under the Virginia Workers' Compensation Act (§ 65.2-100 et seq.), the amount of the
 252 annual retirement allowance shall, subject to the provisions of subsection D, equal 66 and two-thirds
 253 percent of the member's average final compensation if the member does not qualify for ~~primary~~ social
 254 security *disability* benefits under the provisions of the Social Security Act in effect on the date of his
 255 retirement. If the member qualifies for ~~primary~~ social security *disability* benefits *or has attained his*
 256 *normal retirement age* under the provisions of the Social Security Act in effect on the date of his
 257 retirement, the allowance payable from the retirement system shall equal 50 percent of his average final
 258 compensation. A member shall be entitled to the larger of the retirement allowance as determined under
 259 the provisions of subsection A ~~of this section~~ or under the provisions of this subsection.

260 C. General disability retirement guarantee. — The disability retirement allowance payable to a
 261 member who immediately prior to July 1, 1970, was a member of one of the previous systems shall be
 262 at least an amount equal to the disability retirement allowance to which he would have been entitled
 263 under the provisions of the previous system.

264 D. Determination of retirement allowance. — For the purposes of this section, the retirement
 265 allowance shall be determined on the assumption that the retirement allowance is payable to the member
 266 alone and that no optional retirement allowance is elected.

267 E. Reduction of allowance. — Any allowance payable to a member who retires for disability from a
 268 cause compensable under the Virginia Workers' Compensation Act shall be reduced by the amount of
 269 any payments under the provisions of the Act in effect on the date of retirement of the member and the
 270 excess of the allowance shall be paid to such member. When the time for compensation payments under
 271 the Act has elapsed, the member shall receive the full amount of the allowance payable during his
 272 lifetime and continued disability. If the member's payments under the Virginia Workers' Compensation
 273 Act are adjusted or terminated for refusal to work or to comply with the requirements of § 65.2-603, his
 274 allowance shall be computed as if he were receiving the compensation to which he would otherwise be
 275 entitled.

276 F. Special retirement allowance guarantee. — Any member retired from a cause which is not
 277 compensable under the Virginia Workers' Compensation Act shall be guaranteed an annual retirement
 278 allowance during his lifetime and continued disability which equals 50 percent of the member's average
 279 final compensation if the member does not qualify for ~~primary~~ social security *disability* benefits under
 280 the provisions of the Social Security Act in effect on the date of his retirement. If the member qualifies
 281 for ~~primary~~ social security *disability* benefits *or has attained his normal retirement age* under the
 282 provisions of the Social Security Act in effect on the date of retirement, the allowance payable from the
 283 retirement system shall equal 33 and one-third percent of his average final compensation.